

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: SJR 1206

INTRODUCER: Senator Bennett

SUBJECT: Proposing an Amendment Relating to The Property Tax Exemption for a Renewable Energy Source Device

DATE: March 3, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McGuire/Wiehle	Caldwell	CU	Favorable
2.	_____	_____	CA	_____
3.	_____	_____	FT	_____
4.	_____	_____	WPSC	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

This is a joint resolution proposing an amendment to article VII, sections 3 and 4 of the Florida Constitution, which if approved by voters at the next general election, would give the Legislature authority to grant an ad valorem tax exemption to a renewable energy source device and the real property on which the device is installed and operated. The value and duration of the exemption shall be fixed by general law, not to exceed the original cost of the device or the term of ten years.

The joint resolution also creates a new section in article XII of the Florida Constitution proposing a schedule of effective dates for changes made to the constitution by this amendment. The joint resolution contains the statement that is to be placed on the ballot for the upcoming statewide election.

This joint resolution must be approved by a three-fifths vote of each house of the Legislature.

This joint resolution amends article VII, sections 3 and 4 of the Florida Constitution and creates a new section of article XII in the Florida Constitution.

II. Present Situation:

Article VII, section 4 of the Florida Constitution requires all property, with some exceptions, to be assessed at a just valuation for the purposes of ad valorem taxation.¹

¹ Article VII, s. 4, Fla. Constitution

In 1980, a property tax exemption relating to the installation of renewable energy source devices was added at article VII, section 3(d) of the Florida Constitution. The exemption was as follows:

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, for the period of time fixed by general law not to exceed ten years.

During the same year, the Legislature enacted a statute for this provision authorizing a property tax exemption for real property on which a renewable energy source device is installed and being operated.² The exemption was not available for renewable energy source devices installed before January 1, 1980, or after December 31, 1990. In December 2000, the last of the property tax exemptions under this statute expired.³ This rendered the statute inoperative and article VII, section 3(d) of the Florida Constitution unimplemented.

During 2008, the Legislature and the Taxation and Budget Reform Commission (TBRC) took conflicting action.

During the 2008 Regular Session, HB 7135 was enacted, which removed the time-period limitation in the then-existing property tax exemption statute and would have allowed property owners to once again apply for the exemption. However, at the same time, the TBRC proposed a constitutional amendment to remove this section of the constitution and make revisions to article VII, section 4 authorizing the Legislature to prohibit an increase in the assessed value of real property used for residential purposes as a result of installing a renewable energy source device or improvements made to increase the property's resistance to wind damage.

In November 2008, voters approved the TBRC's proposed constitutional amendment. During the 2009 Regular Session, bills were introduced in the Senate and House of Representatives to implement changes made to the constitution with the passage of TBRC's proposed amendment. However, neither piece of legislation passed. Thus, there is currently a statute in effect without the necessary constitutional provision authorizing it, and there have been no statutes enacted specifically to implement the new provisions passed by voters in 2008. Finally, there is doubt as to whether the current statute could be used to effectively implement the new provisions.

Currently, proposed legislation has been filed for the 2010 regular session to implement the new provisions of the constitution relating to exempting from assessed value of real property the installation of renewable energy source devices and improvements made to increase a property's resistance to wind damage.⁴ There is also proposed legislation to repeal the implementing statute for the previously existing property tax exemption provision, s. 196.175, F.S.⁵

² 196.175, F.S.

³ Interim Report 2010-116, Florida Senate Committee on Finance and Tax

⁴ HB 151; SB 1164; SB 1380; and SB 1410 (2010 Reg. Session)

⁵ HB 7005 and SB 1410 (2010 Reg. Session)

III. Effect of Proposed Changes:

This joint resolution essentially restores to article VII, section 3 of the Florida Constitution the previous constitutional authority of the Legislature to grant an ad valorem property tax exemption to a renewable energy device and to the property on which it is installed and operated. The resolution also deletes the provision in article VII, section 4 on renewable energy devices and their exclusion in the assessed value of real property, leaving in the provision which authorizes the legislature to exclude from the assessed value of real property improvements or changes made to increase the property's resistance to wind damage.

The proposed changes to the constitution would expand application of the exemptions for installation and operation of renewable energy sources devices to properties other than just those used for residential purposes.

The proposed changes to article VII, section 3 will take effect January 1, 2011. Proposed changes to article VII, section 4 will take effect upon approval by voters at the next general election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before electors at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for the specific purpose.

Article XI, section (5)(e) of the State Constitution, requires 60 percent voter approval for a constitutional amendment to take effect. If approved by 60 percent of the electors voting on the measure in the next general election, changes to article VII, section 3 (replacement of authorization for exemption) will take effect January 1, 2011, and changes to article VII, section 4 (repeal of provision on assessed value) will take effect upon approval by voters.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

This joint resolution, if approved by voters at the next general election, will provide an ad valorem tax exemption for renewable energy source devices and the real property on which the devices are installed and operated. This will have an indeterminate effect on the assessed value of property and therefore, on property tax collected by local governments.

If this joint resolution were passed by the Legislature and approved by the voters, it would change the authorization for the Legislature to provide a property tax incentive for renewable energy source devices. The economic effect of this is uncertain. There are differences between the two: the current authorization allows the Legislature to prohibit the consideration of the installation of a renewable energy source device in the determination of the assessed value of real property used for residential purposes, and the joint resolution would authorize the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to the real property on which the device is installed and operated regardless of whether the property is used for residential purposes, with the value of the exemption to be fixed by general law and not to exceed the original cost of the device. Also, the duration of the exemption is to be fixed by general law, but is not to exceed ten years. The differences in the details ensure a different economic impact, but the net effect cannot be determined as it depends on differences in the additional details of implementing statutes, which are not known as the current authorization has not been implemented.

B. Private Sector Impact:

The net economic impact on those paying property taxes is indeterminate. However, there appears to be a potential for greater benefit for consumers under the provision for granting a tax exemption for renewable energy source devices and the property on which they are installed and operated, as compared to the current provision to prohibit the value of such device in the assessed value of residential real property. Also, the exemption provision does not limit benefits to just residential real property. See section "A. Tax/Fee Issues" above.

C. Government Sector Impact:

The Department of State (DOS) Division of Elections is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county.⁶ The average cost per word to advertise an amendment as reported by DOS is \$94.68. DOS estimates the advertisement for this amendment would cost \$227,610.72.

VI. Technical Deficiencies:

None.

⁶ Article XI, s. 5(d), Fla. Const.

VII. Related Issues:

Proposed changes to the constitution made by this joint resolution may have the effect of affording the Legislature greater flexibility with implementing policy related to renewable energy sources, as the actual amount of benefit granted under this exemption provision is subject to implementation by the Legislature and can be changed to fit the time. For example, in fiscal years with declining revenues, implementing statute can be amended to adjust the benefit of the exemption as needed.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
