HOUSE BILL REPORT
HB 1921

As Reported by House Committee On:
Finance

Title: An act relating to the valuation of property related to renewable energy for the purposes of property tax and providing for a payment in lieu of taxes for renewable energy facilities.

Brief Description: Concerning the valuation of property related to renewable energy for the purposes of property tax and providing for a payment in lieu of taxes for renewable energy facilities.

Sponsors: Representatives Ramel, Boehnke, Fitzgibbon, Shewmake, Kloba and Young.

Brief History:
Committee Activity:
Finance: 1/18/22, 2/4/22 [DPS].

Brief Summary of Substitute Bill

- Authorizes a county to enter into an agreement with a renewable energy property owner for payment in lieu of taxes (PILT).
- Exempts renewable energy personal property for which a PILT agreement exists from property tax.
- Requires the Department of Revenue to publish guidance to develop a cost-based appraisal model and industry-specific tables for renewable energy property types.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Thai, Wylie and Young.

Minority Report: Do not pass. Signed by 5 members: Representatives Orcutt, Ranking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Dufault, Assistant Ranking Minority Member; Chase, Stokesbary and Vick.

Staff: Kyle Raymond (786-7190).

Background:

Property Taxes.

Article 7, section 1 of the Washington Constitution (Constitution) defines property as everything that can be owned, whether tangible or intangible. The property tax is applied annually to assessed value (AV) of all property unless it is specifically exempt by law. The Constitution requires that taxes be uniform within a class of property. For property tax purposes, there are two primary classes of property: real property and personal property. Real property covers land and buildings, structures, or improvements that are affixed to the land. In general, personal property consists of all property other than real property. Most personal property, other than property used in business, has been exempted from property taxes by the Legislature.

All real and personal property is subject to a tax each year based on the highest and best use, unless a specific exemption is provided by law. The property tax bill for an individual property is determined by multiplying the assessed value of the property by the tax rate for each taxing district in which the property is located. The aggregate of all regular tax levies upon real and personal property by the state and all taxing districts may not exceed 1 percent of the true and fair value of the property. In addition, the aggregate regular levies of junior taxing districts and senior taxing districts, other than the state, may not exceed $5.90 per $1,000 of assessed valuation.

Property Tax Exemptions.

The Constitution authorizes the Legislature to enact property tax exemptions. The Legislature has enacted various property tax exemptions, including an exemption for intangible property, household goods, business inventories and real property owned by qualified retired persons, disabled persons, and veterans. Any property tax exemption may have the effect of increasing the tax rate of the owners of all other taxable property by reducing the overall base of taxable property in the taxing district.

Summary of Substitute Bill:

Renewable Energy Property Valuation.

The Department of Revenue (DOR) must publish guidance, in cooperation with industry stakeholders, to develop industry-specific tables for each type of renewable energy property and a cost-based appraisal model within 90 days of the effective date of this section to advise county assessors when appraising renewable energy facilities.

Payment in Lieu of Taxes Agreement for Renewable Energy Property.
The value of renewable energy property is exempt from ad valorem taxation if the governing body of a county and the renewable energy property owner enter into an agreement that provides for a payment in lieu of taxes. The exemption is only available upon application by the owner of renewable energy property located within the county and outside the boundaries of any incorporated city that is filed before the date when the property is placed in service. An agreement may not be entered into for an initial period of longer than 10 consecutive tax years, starting from the commencement of construction, and may be renewed at the end of the 10-year period.

A "renewable energy property" is a property, not including real property, that uses solar or wind energy as the sole fuel source for the generation of at least one megawatt of nameplate capacity, alternating current, and all other equipment and materials that comprise the property, including equipment used to store electricity from the property to be released at a later time. "Renewable energy property" does not include any equipment or materials attached to a single-family residential building.

If any portion of a renewable energy property is located within an incorporated city, the governing body of the county must consult with the governing body of the city before entering into an agreement, and the governing body of the city must be a party to the agreement for the renewable energy property located within the boundaries of the incorporated city.

The agreement must require the renewable energy property owner to pay an annual payment to the county in an amount that must be computed at a rate that is based on the per megawatt nameplate capacity, alternating current, of the renewable energy property, plus an additional per megawatt-hour surcharge for any energy storage device that is part of the renewable energy property.

The DOR is required to establish the minimum and maximum allowable amounts of the rate and surcharge. In developing the allowable amounts as described in this subsection, the DOR must survey similar project types for which a cost-based appraisal method was used, base the rate on the per megawatt of nameplate capacity, alternating current of the renewable energy property; and establish a reasonable cost range for each project type that is based on a cost-based appraisal method.

The payments must begin in the first year that a property tax would otherwise be owed. An agreement may include a separate payment amount during the construction period, which may include reduced payments on a prorated schedule agreed to by parties of the agreement. The county treasurer must distribute payment funds to all property tax districts in appropriate tax code areas in the same proportion as it would distribute property taxes from taxable property.

If the required payments are not made, the renewable energy property is not exempt for the

tax year immediately following the nonpayment, unless the delinquent payment plus any penalties and interest are made by October 31 of the current tax year. Delinquent fee payments, interest, and penalties must be collected in the manner provided for the collection of delinquent taxes on personal property.

In the first assessment year, a renewable energy property that has entered into an agreement must file a copy of the agreement and the nameplate capacity of the renewable energy property with the DOR and with the applicable county assessor. In subsequent assessment years, the renewable energy property must report the nameplate capacity of the renewable energy property. The assessment of the property exempt from property tax may not be suspended on account of any agreement or exemption. The exemption granted by the DOR to the renewable energy property is assignable upon the sale or transfer of the renewable energy property.

For the purpose of determining the system value of the operating property of any electric light and power company, the DOR is required to deduct from the true and fair value of the total assets of such company, the value of all renewable energy property owned by such company and located within this state that is part of the company's operating property. The deduction must be made following the deduction of nonoperating property.

In apportioning the value of the operating property of light and power companies to this state, the DOR is required to first apportion the value of renewable energy property subject to the deduction and second apportion the system value of remaining operating property. In apportioning the value of the operating property of light and power companies among a county, the DOR is required to first attribute to each county the value of all renewable energy property owned by such company and located in such county and allocate the remaining value of such company's operating property second.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- It is specified that "renewable energy property" under the bill does not include real property and also does not include equipment or materials attached to a single-family residential building.
- The requirement for renewable energy facilities to be assessed on a cost-based approach is removed.
- It is required that the Department of Revenue (DOR) publish guidance, rather than adopt rules, to develop industry-specific tables and cost-based appraisal models.
- The maximum amount for the rate and surcharge specified in statute is removed, and the DOR is required instead to set the maximum and minimum allowable amounts for the rate and surcharge under the agreement.
- A renewable energy property Payment in Lieu of Taxes (PILT) agreement to begin at the commencement of construction is required.
- The PILT agreement is permitted to include a reduced, prorated payment during the

construction period, which begins in the first year that a property tax would otherwise be owed.
- The requirement for renewable energy property PILT to be extended on the tax roll is removed.
- The requirement for the DOR to transfer data on nameplate capacity to county assessors is removed.
- For the purpose of determining the system value of the operating property of any electric light and power company, the DOR is directed to deduct the value of all renewable energy property owned by a company from the value of the total assets of the company.
- The bill is exempted from the new tax preference requirements of a tax preference performance statement and the automatic 10-year expiration requirement.
- The year at which taxes levied for collection begin to apply is delayed to 2024.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 4, 2022.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Large wind and solar equipment decline faster in value than other kinds of property, which is largely due to how quickly technology advances. With this, different counties appraise depreciation differently over time, which makes it difficult for businesses to invest in projects due to the unpredictability of the taxation. In addition, the appraised value declines steeply over time, resulting in relatively higher taxes at the beginning of the project's life and much lower taxes in later years. This makes it more difficult for these projects to pencil out. In addition, this creates inconsistency in the revenue that counties can expect. Currently based on guidance from the Department of Revenue (DOR), wind and solar projects in Washington are treated the same as industrial facilities for purposes of property tax assessment. Wind and solar generation facility costs have declined, and the decline is expected to continue. This is in contrast to the appreciating value of industrial property. Applying the trend table used for industrial property on wind and solar assets effectively results in an inaccurate and unfair tax today, raising costs and drives investment out of state. This bill gives parties the ability to negotiate consistent Payment in Lieu of Taxes (PILT). The payment would have to be mutually beneficial and mutually agreed to.

The bill ensures Washington's ambitious energy policy can translate into significant in-state economic benefits. The bill also improves the security of the in-state energy supply, compared to relying on imported resources that can be more vulnerable due to reliance on transmission lines that are susceptible to damage from wildfires.

Counties like the level, even payments that the PILT provides. This payment provides certainty over time and it prevents a tax shift to county taxpayers as the property depreciates. This is particularly important for projects located in rural areas that have a relatively small amount of taxpayers. This bill would provide developers more certainty and predictability.

(Opposed) A PILT is an extraordinary tool that is reserved for extraordinary circumstances for which there is no other way to logically measure the tax statewide. That is not the situation in this instance. The bill poses several administrative problems because it puts a dollar amount in an equation that is based on value.

(Other) The maximum PILT rate in the bill should be changed or increased. Estimates show that for solar projects, a PILT rate of $6,300 per megawatt of nameplate capacity is needed in order for the county to break even over the first 10 years of the agreement. Any minimum or maximum PILT in statute removes the ability for the county and the solar company to negotiate. Oregon has a maximum PILT of $7,000 per megawatt of nameplate capacity. Requiring the cost-based assessment methods would result in a huge tax shift.

The DOR has concerns with the bill. The DOR does not use trend tables as required in the bill. Trend tables are not a workable solution because renewable energy properties are too big and include too many assets. Assessing future facilities is different from assessing existing facilitates, and freezing their value for 20 years could create constitutional uniformity concerns. The bill could result in a large tax shift that could eliminate the levy for some junior taxing districts. The bill requires the payment to be included on the tax rolls, treating it like property tax. If challenged, a court could view it as a tax, creating a constitutional uniformity concern.

Persons Testifying: (In support) Representative Alex Ramel, prime sponsor; Matthew Crosby and Angie Fiese, Cypress Creek Renewables; Matt Steuerwalt, Nextera Energy Resources; Mellani McAleenan, Washington State Association of Counties; and Bill Eddie, OneEnergy Renewables.

(Opposed) Steven Drew, Washington State Association of County Assessors.

(Other) Dan Christopher, Klickitat County; and Steve Ewing, Department of Revenue.

Persons Signed In To Testify But Not Testifying: Jeff Gombosky, Renewable Northwest.