

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 13-19

Valuation of Property that Generates Electricity Using Certain Energy Sources

QUESTION

Is the language of a proposed amendment to Senate Bill 1000/House Bill 0062 of the 108th Tennessee General Assembly (hereinafter "SB1000") constitutionally defensible in the manner in which it sets forth guidelines for valuing property that generates electricity using geothermal, hydrogen, solar, or wind energy sources?

OPINION

Yes, the proposed amendment to SB1000 is constitutionally defensible.

ANALYSIS

The proposed amendment to SB1000, a copy of which was provided to this Office with this opinion request, would delete subsection (e) of Tenn. Code Ann. § 67-5-601 and substitute the following language in relevant part:

(1) The general assembly finds that any public utility property or commercial and industrial property that generates electricity using geothermal, hydrogen, solar or wind as its energy source, is generally capable of producing less electricity than conventional energy sources, and use of these facilities should be encouraged to promote North American energy independence and to conserve limited natural resources. The general assembly further finds that, unless these findings are considered in the determination of value for tax purposes under this chapter, investment in property to generate electricity using geothermal, hydrogen, solar or wind sources will be unreasonably discouraged, denying the citizens of this state the energy sovereignty, security and environmental benefits associated with the greater use of these domestic renewable energy resources for electric power generation.

(2) The general assembly further finds that, due to their dependence on intermittent energy sources and after due

consideration, the sound, intrinsic and economic value of property that generates electricity using wind as its energy source should not initially exceed a value in excess of thirty-three percent (33%) of its total installed costs, and property that generates electricity using the sun as its energy source should not initially exceed a value in excess of twelve and one-half percent (12.5%) of its total installed costs.

(3) The general assembly further finds that due to its reliance on non-traditional energy sources that are generally capable of producing less electricity than conventional energy sources, the sound intrinsic and economic value of any property that generates electricity using machinery and equipment from a solar machinery and equipment or certified green energy production facility, as defined in § 67-4-2004 and not otherwise addressed in this subsection (e), should not initially exceed a value in excess of the ratio between the estimated actual electricity output of such facility type, as determined by the commissioner of the department of environment and conservation. . . .

(4) The assessor of property, in assessing any such commercial and industrial property, or the comptroller, in assessing any such public utility property, that generates energy using as its energy source wind, solar, or using equipment as defined in § 64-7-2004 shall take these findings by the general assembly into account in determining the sound, intrinsic, and immediate economic value of such property, when the property is initially appraised and each the time the property is reappraised.

To a large degree, the foregoing language appears to be modeled on the current language of Tenn. Code Ann. § 67-5-601(e), which states that

The general assembly finds that any public utility property or commercial and industrial property that generates electricity using wind as its energy source is generally capable of only generating approximately one-third (1/3) of the electricity that competing generation properties are capable of producing using coal or other conventional energy sources and that the commercially competitive disadvantage of such generation property due to its dependence on the intermittent nature of wind as an energy source similarly evidences that its sound, intrinsic, and immediate economic value for all purposes under this chapter should not initially exceed one-third (1/3) of its total installed costs. The general assembly further finds that, unless the findings are considered in the determination of the sound, intrinsic, and

immediate economic value of such property for all purposes under this chapter, investment in property to generate electricity using wind as its energy source will be unreasonably discouraged, denying the citizens of this state the environmental benefits associated with the greater use of wind, as a renewable energy source, for electric power generation. The assessor of property, in assessing any such commercial and industrial property, or the comptroller, in assessing any such public utility property, that generates electricity using wind as its energy source, shall take these findings by the general assembly into account in determining the sound, intrinsic, and immediate economic value of such property, when the property is initially appraised and each time the property is reappraised.

In Tenn. Att’y Gen. Op. 03-068 (May 27, 2003), this Office opined that the current language of Tenn. Code Ann. § 67-5-601(e) is constitutionally defensible. That opinion focused on whether the language violated the uniform taxation provision of the Tennessee Constitution, which requires that “[t]he ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature may direct.” Tenn. Const. art. II, § 28. Observing that “the Legislature has broad discretion to determine the methods for valuing property in this state,” this Office reasoned that the current language in Tenn. Code Ann. § 67-5-601(e) contains a credible rationale for the valuation methodology set forth therein. Tenn. Att’y Gen. Op. 03-068, at 3 (May 27, 2003). In a more recent opinion, this Office explained that Tenn. Code Ann. § 67-5-601(e) “provides a credible rationale for setting the value of property at ‘one-third of its total installed costs’ because of its restricted use.” Tenn. Att’y Gen. Op. 12-102, at 3 (Nov. 1, 2012). This opinion further observed that “the statute instructs local assessors to take this rationale into account in appraising the property, but it does not impose an absolute cap on the appraisals.” *Id.* The principle that a restriction on the use of property may affect its valuation for purposes of ad valorem taxation was recognized in *Marion County v. State Board of Equalization*, 710 S.W.2d 521, 523 (1986) (upholding Greenbelt valuation methodology).

Like the current version of Tenn. Code Ann. § 67-5-601(e), the language of the proposed amendment sets forth a credible rationale for establishing lower values for property that generates electricity using geothermal, hydrogen, solar, or wind energy sources due to the intermittent nature of these energy sources that results in a restricted use of the property. Moreover, the proposed amendment does not impose a cap on appraisals of such property but merely requires the comptroller and local assessors to take the General Assembly’s findings into account in appraising the property. Should this proposed amendment to SB1000 be enacted as law, the courts likely would take into consideration any information in the legislative history that supports the findings and valuation levels set out in the bill amendment. As noted in Tenn. Att’y Gen. Op. 03-068, at 3, “we cannot be certain of a court’s conclusions about” the language of the proposed amendment; however, we believe that the proposed amendment is constitutionally defensible as written.

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