

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 43 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Domino
TIED BILLS: None. IDEN./SIM. BILLS: SB 788

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Energy & Utilities Policy Committee, Whittier, Collins.

SUMMARY ANALYSIS

Section 212.08(7)(ccc), F.S., provides a state sales tax exemption for equipment, machinery, and other materials used for renewable energy technologies. The following items are exempt from the state sales tax:

- Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations up to a limit of \$2 million in tax each fiscal year for all taxpayers.
Commercial stationary hydrogen fuel cells, up to a limit of \$1 million in tax each fiscal year for all taxpayers.
Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100), including fueling infrastructure, gasoline fueling station pump retrofits for ethanol distribution, transportation, and storage, up to a limit of \$1 million in tax each fiscal year for all taxpayers.

The exemption is currently authorized from July 1, 2006, through June 30, 2010. The bill removes the sunset date of the sales tax exemption.

According to the U.S. Environmental Protection Agency, biodiesel is designed for complete compatibility with petroleum diesel and can be blended in any ratio, from additive levels to 100 percent biodiesel. It is typically produced from soybean or rapeseed oil or can be reprocessed from waste cooking oils or animal fats such as waste fish oil.

HB 43 expands the definition of "biodiesel" to mean a substitute for diesel fuel that is derived from nonpetroleum renewable resources and that is produced from biological sources. The expansion of the definition allows the materials and infrastructure associated with these products to be eligible for the sales tax exemption that currently applies to materials and infrastructure associated with biodiesel and ethanol.

On February 12, 2010, the Revenue Estimating Conference estimated a negative fiscal impact on the state of \$.9 million for FY 2010-2011; \$1.1 million for FY 2011-2012; and \$1.4 million for FY 2012-2013. The Revenue Estimating Conference estimated the following negative fiscal impact on local governments: \$.2 million for FY 2010-2011; \$.2 million for FY 2011-2012; and \$.2 million for FY 2012-2013.

The bill will have a minimal fiscal impact on the Department of Revenue.

1 According to the bill, it also must, when intended for use in motor vehicles, be registered under 40 C.F.R. part 79 as a motor vehicle fuel or fuel additive; and, when intended for use in non-motor-vehicle applications, is properly registered as required by existing federal or state law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Sales and Use Tax Exemption

Section 212.08(7)(ccc), F.S., provides for a state sales tax exemption² for equipment, machinery, and other materials used for renewable energy technologies. The following items are exempt from the state sales tax:

- Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations up to a limit of \$2 million in tax each fiscal year for all taxpayers.
 - ✓ *According to the Florida Energy and Climate Commission (FECC), the sales tax exemption for hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, has not been utilized in the three-and-a-half fiscal years that the program has been in existence.*
- Commercial stationary hydrogen fuel cells, up to a limit of \$1 million in tax each fiscal year for all taxpayers.
 - ✓ *According to the FECC, the sales tax exemption for commercial stationary hydrogen fuel cells was not used for the first two fiscal years that the program was in existence, but has been partially used the last one-and-a-half fiscal years. See Fiscal Comments.*
- Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100), including fueling infrastructure, gasoline fueling station pump retrofits for ethanol distribution, transportation, and storage, up to a limit of \$1 million in tax each fiscal year for all taxpayers.

² Within 30 days of receipt of an application for a sales tax refund, the Florida Energy and Climate Commission (FECC) is required to review the application and notify the applicant of any deficiencies. After receiving the completed application, the FECC is required to evaluate the application for exemption and issue a written certification of whether or not the applicant is eligible for a refund of the taxes paid for that item. A refund must be made within 30 days of the formal approval by the Department of Revenue.

- ✓ According to the FECC, the sales tax exemption for materials used in the distribution of biodiesel and ethanol, including fueling infrastructure, transportation, and storage, was not used the first fiscal year that the program was in existence, but has been partially used during the last two-and-a-half fiscal years. See *Fiscal Comments*.

Biodiesel

“Biodiesel,” is defined in s. 212.08(7)(ccc)1.a., F.S., as:

[T]he mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

According to the U.S. Environmental Protection Agency, biodiesel is designed for complete compatibility with petroleum diesel and can be blended in any ratio, from additive levels to 100 percent biodiesel. It is typically produced from soybean or rapeseed oil or can be reprocessed from waste cooking oils or animal fats such as waste fish oil.³

It has high-lubricity, is a clean-burning fuel and can be a fuel component for use in existing, unmodified diesel engines. This means that no retrofits are necessary when using biodiesel fuel in any diesel powered combustion engine. It is the only alternative fuel that offers such convenience. Biodiesel acts like petroleum diesel, but produces less air pollution, comes from renewable sources, is biodegradable and is safer for the environment.⁴

The exemption is authorized from July 1, 2006, through June 30, 2010.

Effect Of Proposed Changes

Section 212.08(7)(ccc)1., F.S., provides an expanded definition of “biodiesel” to mean:

(II) A substitute for diesel fuel that is derived from nonpetroleum renewable resources; is produced from biological sources; when intended for use in motor vehicles, is registered under 40 C.F.R. part 79 as a motor vehicle fuel or fuel additive; and, when intended for use in non-motor-vehicle applications, is properly registered as required by existing federal or state law.

The amended definition expands the term to include a type of renewable diesel that is made from any biomass - such as plant oil or animal fat - that is produced for use in diesel engines. The expansion of the definition allows the materials and infrastructure associated with these products to be eligible for the sales tax exemption that currently applies to items associated with biodiesel and ethanol.

The Department of Agriculture and Consumer Services (DACS) states that the bill expands the definition of biodiesel to include products that are not actually biodiesel products under applicable laws and rules of the DACS.⁵ This could result in a situation where the Department of Revenue would be awarding tax credits for some products labeled as “biodiesel” that the DACS could not authorize to be sold as biodiesel fuel. See *Comments*.

³ U.S. Environmental Protection Agency website:

<http://yosemite.epa.gov/R10/airpage.nsf/283d45bd5bb068e68825650f0064cdc2/6db6325d85a15adc88256d9e005f1f2b!OpenDocument>.

⁴ Ibid.

⁵ According to DACS, the original definition of biodiesel is based on an industry-accepted specific chemical process. The process referred to in the expanded definition produces a different type of product than biodiesel, although the product might be used for the same applications.

The bill also removes the expiration date of the sales tax exemption, so that rather than ending this current fiscal year, the exemption would continue in perpetuity.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.08, F.S., expanding the definition of the term “biodiesel” for certain tax exemption purposes.

Section 2. Reenacts s. 220.192(1)(a), F.S., for purposes of incorporating the amendment to s. 212.08, F.S.

Section 3. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On February 12, 2010, the Revenue Estimating Conference estimated that the bill will have the following negative fiscal impact on state government:

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Revenue	(\$.9 million)	(\$ 1.1 million)	(\$ 1.4 million)
State Trust	(Insignificant)	(Insignificant)	(Insignificant)
Total State Impact	(\$.9 million)	(\$ 1.1 million)	(\$ 1.4 million)

2. Expenditures:

The Department of Revenue estimates the following expenditures:

Non-Recurring

Expenses ⁶	\$282
OCO	\$0
Total	\$282

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On February 12, 2010, the Revenue Estimating Conference estimated that the bill will have the following negative fiscal impact on local governments:

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Revenue Sharing	(Insignificant)	(Insignificant)	(Insignificant)
Local Gov't Half Cent	(\$.1 million)	(\$.1 million)	(\$.1 million)
Local Option	(\$.1 million)	(\$.1 million)	(\$.1 million)
Total Local Impact	(\$.2 million)	(\$.2 million)	(\$.2 million)

⁶ The department states that the bill will require a Tax Information Publication to be sent to companies that are potentially interested in producing, selling, or distributing biodiesel. This population of 646 includes: carriers; wholesalers; blenders; and suppliers. The costs are for printing, envelopes, and 1st Class Postage.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is anticipated to have a positive effect on the private sector because more products would be eligible for the tax exemption.

D. FISCAL COMMENTS:

Section 212.08(7)(ccc), F.S., provides for a sales tax exemption for renewable energy technologies in Florida, occurring between July 1, 2006, and June 30, 2010. According to the FECC, the following are the **balances** for each category⁷ at the end of each fiscal year that the program has been in existence:

	<u>FY 2006-2007</u>	<u>FY 2007-2008</u>	<u>FY 2008-2009</u>	<u>FY 2009-2010</u>
Hydrogen Vehicles (\$2 million cap per yr)	\$2 million	\$2 million	\$2 million	\$2 million
Hydrogen Stationary Fuel Cells (\$1 million cap per yr)	\$1 million	\$1 million	\$658,944.91	\$764,823.10
Biofuels (\$1 million cap per yr)	\$1 million	\$996,017.40	\$958,650.94	\$517,273.31

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is estimated to be insignificant. Therefore, an exemption appears to apply. Accordingly, the bill does not appear to require a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services (DACS) has stated that the bill expands the definition of biodiesel to include products that are not actually biodiesel products under applicable laws and rules of the DACS.

The sponsor of the bill is offering a strike-all amendment that will address the concerns of the Department of Agriculture and Consumer Affairs.

⁷ Unused funds in this program do not accumulate or carry forward from year to year.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES