



ENERGY & UTILITIES POLICY COMMITTEE

**Wednesday, February 17, 2010
2:45 PM – 6:00 PM
Morris Hall**

MEETING PACKET

**Larry Cretul
Speaker**

**Stephen Precourt
Chair**



The Florida House of Representatives

General Government Policy Council

Energy & Utilities Policy Committee

Larry Cretul
Speaker

Stephen L. Precourt
Chair

AGENDA

February 17, 2010

2:45 p.m. – 6:00 p.m.

Morris Hall (17 House Office Building)

Opening Remarks by Chair Precourt

Consideration of the following bills:

- HB 43 -- Relating to Tax on Sales, Use, and Other Transactions
Representative Domino
- HB 281-- Communications Services Taxes
Representative Schultz

Presentation by the Florida Public Service Commission on Legislative Proposals for the 2010 Session

Curt Kiser, General Counsel

Discussion of the Vision of Florida's Energy Policy

Closing Remarks by Chair Precourt

Adjournment

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 43 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Energy & Utilities Policy
2 Committee

3 Representative(s) Domino offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (ccc) of subsection (7) of section
8 212.08, Florida Statutes, is amended to read:

9 212.08 Sales, rental, use, consumption, distribution, and
10 storage tax; specified exemptions.—The sale at retail, the
11 rental, the use, the consumption, the distribution, and the
12 storage to be used or consumed in this state of the following
13 are hereby specifically exempt from the tax imposed by this
14 chapter.

15 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
16 entity by this chapter do not inure to any transaction that is
17 otherwise taxable under this chapter when payment is made by a
18 representative or employee of the entity by any means,

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19 including, but not limited to, cash, check, or credit card, even
20 when that representative or employee is subsequently reimbursed
21 by the entity. In addition, exemptions provided to any entity by
22 this subsection do not inure to any transaction that is
23 otherwise taxable under this chapter unless the entity has
24 obtained a sales tax exemption certificate from the department
25 or the entity obtains or provides other documentation as
26 required by the department. Eligible purchases or leases made
27 with such a certificate must be in strict compliance with this
28 subsection and departmental rules, and any person who makes an
29 exempt purchase with a certificate that is not in strict
30 compliance with this subsection and the rules is liable for and
31 shall pay the tax. The department may adopt rules to administer
32 this subsection.

33 (ccc) Equipment, machinery, and other materials for
34 renewable energy technologies.—

35 1. As used in this paragraph, the term:

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

43 b. "Ethanol" means an anhydrous denatured alcohol produced
44 by the conversion of carbohydrates meeting the specifications
45 for fuel ethanol and fuel ethanol blends with petroleum products

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46 as adopted by the Department of Agriculture and Consumer
47 Services. Ethanol may refer to fuel ethanol blends designated
48 EXX, where XX represents the volume percentage of fuel ethanol
49 in the blend.

50 c. "Hydrogen fuel cells" means equipment using hydrogen or
51 a hydrogen-rich fuel in an electrochemical process to generate
52 energy, electricity, or the transfer of heat.

53 d. "Renewable diesel" means liquid fuel for use in diesel
54 powered engines which is derived from biomass and meets the
55 registration requirements for fuel and fuel additives
56 established by the United States Environmental Protection Agency
57 and the specifications and requirements as adopted by the
58 Department of Agriculture and Consumer Services.

59 e. "Renewable fuel oil" means liquid fuel for use in fuel
60 oil applications which is derived from biomass and meets the
61 registration requirements for fuel and fuel additives
62 established by the United States Environmental Protection Agency
63 and the specifications and requirements as adopted by the
64 Department of Agriculture and Consumer Services.

65 2. The sale or use of the following in the state is exempt
66 from the tax imposed by this chapter:

67 a. Hydrogen-powered vehicles, materials incorporated into
68 hydrogen-powered vehicles, and hydrogen-fueling stations, up to
69 a limit of \$2 million in tax each state fiscal year for all
70 taxpayers.

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71 b. Commercial stationary hydrogen fuel cells, up to a
72 limit of \$1 million in tax each state fiscal year for all
73 taxpayers.

74 c. Materials used in the distribution of biodiesel (B10-
75 B100), ~~and~~ ethanol (E10-E100), renewable diesel, and renewable
76 fuel oil, including fueling infrastructure, transportation, and
77 storage, up to a limit of \$1 million in tax each state fiscal
78 year for all taxpayers. Gasoline fueling station pump retrofits
79 for ethanol (E10-E100) distribution qualify for the exemption
80 provided in this sub-subparagraph.

81 3. The Florida Energy and Climate Commission shall provide
82 to the department a list of items eligible for the exemption
83 provided in this paragraph.

84 4.a. The exemption provided in this paragraph shall be
85 available to a purchaser only through a refund of previously
86 paid taxes. An eligible item is subject to refund one time. A
87 person who has received a refund on an eligible item shall
88 notify the next purchaser of the item that such item is no
89 longer eligible for a refund of paid taxes. This notification
90 shall be provided to each subsequent purchaser on the sales
91 invoice or other proof of purchase.

92 b. To be eligible to receive the exemption provided in
93 this paragraph, a purchaser shall file an application with the
94 Florida Energy and Climate Commission. The application shall be
95 developed by the Florida Energy and Climate Commission, in
96 consultation with the department, and shall require:

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97 (I) The name and address of the person claiming the
98 refund.

99 (II) A specific description of the purchase for which a
100 refund is sought, including, when applicable, a serial number or
101 other permanent identification number.

102 (III) The sales invoice or other proof of purchase showing
103 the amount of sales tax paid, the date of purchase, and the name
104 and address of the sales tax dealer from whom the property was
105 purchased.

106 (IV) A sworn statement that the information provided is
107 accurate and that the requirements of this paragraph have been
108 met.

109 c. Within 30 days after receipt of an application, the
110 Florida Energy and Climate Commission shall review the
111 application and shall notify the applicant of any deficiencies.
112 Upon receipt of a completed application, the Florida Energy and
113 Climate Commission shall evaluate the application for exemption
114 and issue a written certification that the applicant is eligible
115 for a refund or issue a written denial of such certification
116 within 60 days after receipt of the application. The Florida
117 Energy and Climate Commission shall provide the department with
118 a copy of each certification issued upon approval of an
119 application.

120 d. Each certified applicant shall be responsible for
121 forwarding a certified copy of the application and copies of all
122 required documentation to the department within 6 months after
123 certification by the Florida Energy and Climate Commission.

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124 e. A refund approved pursuant to this paragraph shall be
125 made within 30 days after formal approval by the department.

126 f. The Florida Energy and Climate Commission may adopt the
127 form for the application for a certificate, requirements for the
128 content and format of information submitted to the Florida
129 Energy and Climate Commission in support of the application,
130 other procedural requirements, and criteria by which the
131 application will be determined by rule. The department may adopt
132 all other rules pursuant to ss. 120.536(1) and 120.54 to
133 administer this paragraph, including rules establishing
134 additional forms and procedures for claiming this exemption.

135 g. The Florida Energy and Climate Commission shall be
136 responsible for ensuring that the total amounts of the
137 exemptions authorized do not exceed the limits as specified in
138 subparagraph 2.

139 5. The Florida Energy and Climate Commission shall
140 determine and publish on a regular basis the amount of sales tax
141 funds remaining in each fiscal year.

142 6. This paragraph expires July 1, 2015 ~~2010~~.

143 Section 2. Subsection (1) of section 220.192, Florida
144 Statutes, is amended to read:

145 220.192 Renewable energy technologies investment tax
146 credit.—

147 (1) DEFINITIONS.—For purposes of this section, the term:

148 (a) "Biodiesel" means biodiesel as defined in s.

149 212.08(7)(ccc).

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150 (b) "Corporation" includes a general partnership, limited
151 partnership, limited liability company, unincorporated business,
152 or other business entity, including entities taxed as
153 partnerships for federal income tax purposes.

154 (c) "Eligible costs" means:

155 1. Seventy-five percent of all capital costs, operation
156 and maintenance costs, and research and development costs
157 incurred between July 1, 2006, and June 30, 2015 ~~2010~~, up to a
158 limit of \$3 million per state fiscal year for all taxpayers, in
159 connection with an investment in hydrogen-powered vehicles and
160 hydrogen vehicle fueling stations in the state, including, but
161 not limited to, the costs of constructing, installing, and
162 equipping such technologies in the state.

163 2. Seventy-five percent of all capital costs, operation
164 and maintenance costs, and research and development costs
165 incurred between July 1, 2006, and June 30, 2015 ~~2010~~, up to a
166 limit of \$1.5 million per state fiscal year for all taxpayers,
167 and limited to a maximum of \$12,000 per fuel cell, in connection
168 with an investment in commercial stationary hydrogen fuel cells
169 in the state, including, but not limited to, the costs of
170 constructing, installing, and equipping such technologies in the
171 state.

172 3. Seventy-five percent of all capital costs, operation
173 and maintenance costs, and research and development costs
174 incurred between July 1, 2006, and June 30, 2015 ~~2010~~, up to a
175 limit of \$6.5 million per state fiscal year for all taxpayers,
176 in connection with an investment in the production, storage, and

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177 distribution of biodiesel (B10-B100), and ethanol (E10-E100),
178 renewable diesel, and renewable fuel oil in the state, including
179 the costs of constructing, installing, and equipping such
180 technologies in the state. Gasoline fueling station pump
181 retrofits for ethanol (E10-E100) distribution qualify as an
182 eligible cost under this subparagraph.

183 (d) "Ethanol" means ethanol as defined in s.
184 212.08(7)(ccc).

185 (e) "Hydrogen fuel cell" means hydrogen fuel cell as
186 defined in s. 212.08(7)(ccc).

187 (f) "Renewable diesel" means renewable diesel as defined
188 in s. 212.08(7)(ccc).

189 (g) "Renewable fuel oil" means renewable fuel oil as
190 defined in s. 212.08(7)(ccc).

191 (h) ~~(f)~~ "Taxpayer" includes a corporation as defined in
192 paragraph (b) or s. 220.03.

193 Section 3. This act shall take effect July 1, 2010.

194

195

196 **T I T L E A M E N D M E N T**

197 Remove the entire title and insert:

198

199 An act relating to the tax on sales, use, and other
200 transactions; amending s. 212.08, F.S.; defining the
201 terms "renewable diesel" and "renewable fuel oil" for
202 certain tax exemption purposes; providing that
203 renewable diesel and renewable fuel oil shall be

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 43 (2010)

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204 exempt from the tax imposed in ch. 212, F.S.; amending
205 an expiration provision; amending s. 220.192, F.S.;
206 amending expiration provisions; defining the terms
207 "renewable diesel" and "renewable fuel oil" for
208 purposes of the renewable energy technologies
209 investment tax credit; providing an effective date.

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Energy & Utilities Policy Committee		Whittier <i>SW</i>	Collins <i>JC</i>
2)	Finance & Tax Council			
3)	General Government Policy Council			
4)				
5)				

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.¹ 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.

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

1 A bill to be entitled
 2 An act relating to the tax on sales, use, and other
 3 transactions; amending s. 212.08, F.S.; expanding the
 4 definition of the term "biodiesel" for certain tax
 5 exemption purposes; deleting an expiration provision;
 6 reenacting s. 220.192(1)(a) , F.S., relating to the
 7 renewable energy technologies investment tax credit, to
 8 incorporate the amendment to s. 212.08, F.S., in a
 9 reference thereto; providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Paragraph (ccc) of subsection (7) of section
 14 212.08, Florida Statutes, is amended to read:

15 212.08 Sales, rental, use, consumption, distribution, and
 16 storage tax; specified exemptions.--The sale at retail, the
 17 rental, the use, the consumption, the distribution, and the
 18 storage to be used or consumed in this state of the following
 19 are hereby specifically exempt from the tax imposed by this
 20 chapter.

21 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
 22 entity by this chapter do not inure to any transaction that is
 23 otherwise taxable under this chapter when payment is made by a
 24 representative or employee of the entity by any means,
 25 including, but not limited to, cash, check, or credit card, even
 26 when that representative or employee is subsequently reimbursed
 27 by the entity. In addition, exemptions provided to any entity by
 28 this subsection do not inure to any transaction that is

29 otherwise taxable under this chapter unless the entity has
 30 obtained a sales tax exemption certificate from the department
 31 or the entity obtains or provides other documentation as
 32 required by the department. Eligible purchases or leases made
 33 with such a certificate must be in strict compliance with this
 34 subsection and departmental rules, and any person who makes an
 35 exempt purchase with a certificate that is not in strict
 36 compliance with this subsection and the rules is liable for and
 37 shall pay the tax. The department may adopt rules to administer
 38 this subsection.

39 (ccc) Equipment, machinery, and other materials for
 40 renewable energy technologies.--

41 1. As used in this paragraph, the term:

42 a. "Biodiesel" means:

43 (I) The mono-alkyl esters of long-chain fatty acids
 44 derived from plant or animal matter for use as a source of
 45 energy and meeting the specifications for biodiesel and
 46 biodiesel blends with petroleum products as adopted by the
 47 Department of Agriculture and Consumer Services. Biodiesel may
 48 refer to biodiesel blends designated BXX, where XX represents
 49 the volume percentage of biodiesel fuel in the blend; or

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

57 b. "Ethanol" means an anhydrous denatured alcohol produced
 58 by the conversion of carbohydrates meeting the specifications
 59 for fuel ethanol and fuel ethanol blends with petroleum products
 60 as adopted by the Department of Agriculture and Consumer
 61 Services. Ethanol may refer to fuel ethanol blends designated
 62 EXX, where XX represents the volume percentage of fuel ethanol
 63 in the blend.

64 c. "Hydrogen fuel cells" means equipment using hydrogen or
 65 a hydrogen-rich fuel in an electrochemical process to generate
 66 energy, electricity, or the transfer of heat.

67 2. The sale or use of the following in the state is exempt
 68 from the tax imposed by this chapter:

69 a. Hydrogen-powered vehicles, materials incorporated into
 70 hydrogen-powered vehicles, and hydrogen-fueling stations, up to
 71 a limit of \$2 million in tax each state fiscal year for all
 72 taxpayers.

73 b. Commercial stationary hydrogen fuel cells, up to a
 74 limit of \$1 million in tax each state fiscal year for all
 75 taxpayers.

76 c. Materials used in the distribution of biodiesel (B10-
 77 B100) and ethanol (E10-E100), including fueling infrastructure,
 78 transportation, and storage, up to a limit of \$1 million in tax
 79 each state fiscal year for all taxpayers. Gasoline fueling
 80 station pump retrofits for ethanol (E10-E100) distribution
 81 qualify for the exemption provided in this sub-subparagraph.

82 3. The Florida Energy and Climate Commission shall provide
 83 to the department a list of items eligible for the exemption
 84 provided in this paragraph.

85 4.a. The exemption provided in this paragraph shall be
 86 available to a purchaser only through a refund of previously
 87 paid taxes. An eligible item is subject to refund one time. A
 88 person who has received a refund on an eligible item shall
 89 notify the next purchaser of the item that such item is no
 90 longer eligible for a refund of paid taxes. This notification
 91 shall be provided to each subsequent purchaser on the sales
 92 invoice or other proof of purchase.

93 b. To be eligible to receive the exemption provided in
 94 this paragraph, a purchaser shall file an application with the
 95 Florida Energy and Climate Commission. The application shall be
 96 developed by the Florida Energy and Climate Commission, in
 97 consultation with the department, and shall require:

98 (I) The name and address of the person claiming the
 99 refund.

100 (II) A specific description of the purchase for which a
 101 refund is sought, including, when applicable, a serial number or
 102 other permanent identification number.

103 (III) The sales invoice or other proof of purchase showing
 104 the amount of sales tax paid, the date of purchase, and the name
 105 and address of the sales tax dealer from whom the property was
 106 purchased.

107 (IV) A sworn statement that the information provided is
 108 accurate and that the requirements of this paragraph have been
 109 met.

110 c. Within 30 days after receipt of an application, the
 111 Florida Energy and Climate Commission shall review the
 112 application and shall notify the applicant of any deficiencies.

113 Upon receipt of a completed application, the Florida Energy and
 114 Climate Commission shall evaluate the application for exemption
 115 and issue a written certification that the applicant is eligible
 116 for a refund or issue a written denial of such certification
 117 within 60 days after receipt of the application. The Florida
 118 Energy and Climate Commission shall provide the department with
 119 a copy of each certification issued upon approval of an
 120 application.

121 d. Each certified applicant shall be responsible for
 122 forwarding a certified copy of the application and copies of all
 123 required documentation to the department within 6 months after
 124 certification by the Florida Energy and Climate Commission.

125 e. A refund approved pursuant to this paragraph shall be
 126 made within 30 days after formal approval by the department.

127 f. The Florida Energy and Climate Commission may adopt the
 128 form for the application for a certificate, requirements for the
 129 content and format of information submitted to the Florida
 130 Energy and Climate Commission in support of the application,
 131 other procedural requirements, and criteria by which the
 132 application will be determined by rule. The department may adopt
 133 all other rules pursuant to ss. 120.536(1) and 120.54 to
 134 administer this paragraph, including rules establishing
 135 additional forms and procedures for claiming this exemption.

136 g. The Florida Energy and Climate Commission shall be
 137 responsible for ensuring that the total amounts of the
 138 exemptions authorized do not exceed the limits as specified in
 139 subparagraph 2.

140 5. The Florida Energy and Climate Commission shall
 141 determine and publish on a regular basis the amount of sales tax
 142 funds remaining in each fiscal year.

143 ~~6. This paragraph expires July 1, 2010.~~

144 Section 2. For the purpose of incorporating the amendment
 145 made by this act to section 212.08, Florida Statutes, in a
 146 reference thereto, paragraph (a) of subsection (1) of section
 147 220.192, Florida Statutes, is reenacted to read:

148 220.192 Renewable energy technologies investment tax
 149 credit.--

150 (1) DEFINITIONS.--For purposes of this section, the term:

151 (a) "Biodiesel" means biodiesel as defined in s.
 152 212.08(7)(ccc).

153 Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 281 Communications Services Taxes
SPONSOR(S): Schultz and others
TIED BILLS: None IDEN./SIM. BILLS: SB 344

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

SUMMARY ANALYSIS

Current law provides that a communications service provider subject to the Communications Services Tax may take a credit, or claim a refund, for tax the provider has paid on a balance that is ultimately written off as bad debt for a worthless account.

This bill allows dealers to "net" the tax paid on amounts later written off as bad debt against the amount of tax due to the state or to a local jurisdiction for reporting purposes, provided that the resulting amount is not less than zero.

This bill provides for retroactive operation to July 1, 2000, as a remedial measure. However, the bill does not create a right to a refund or require a refund by any governmental entity of any tax, penalty, or interest remitted to the Department of Revenue before July 1, 2010.

The Revenue Estimating Conference estimates that this bill will have no fiscal impact on state or local governments.

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

Chapter 202, F.S., establishes the "Communications Services Tax Simplification Law."¹ This law restructured taxes applicable to a broad array of communications services, including local and long distance telephone services, cable television, direct-to-home satellite television, and other related services.

The communications services tax (CST) replaced and consolidated several different state and local taxes and fees into two taxes: the Florida CST and the local CST. The Florida CST is established in s. 202.12, F.S., and is applied at a rate of 6.8 percent to all communications services except direct-to-home satellite services, which are taxed at a rate of 10.8 percent. The local CST is established in s. 202.19, F.S., varies by jurisdiction, and is not applicable to direct-to-home satellite services. The Florida CST and the local CST are collected by communications service providers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.²

Section 202.29, F.S., states that a communications services provider subject to the CST may take a credit, or claim a refund, for tax the provider has paid on a balance that is ultimately written off as bad debt for a worthless account. Pursuant to s. 202.27, F.S., the provider (also referred to in chapter 202, F.S., as a "dealer") must file a communications services tax return with DOR. According to DOR, the dealer is required to report credits for bad debts separately from the tax when filing its return, and must do so based on the time period and the jurisdiction in which the original sale(s) occurred.

DOR estimates that, historically, dealers have received an average tax credit amount of approximately 3 percent.

Proposed Changes

This bill amends s. 202.29, F.S., by allowing dealers to "net" the credit allowed by s. 202.29, F.S., against the amount of tax due to the state or to a local jurisdiction for reporting purposes. This "netting" may not reduce the amount due to the state or to any local jurisdiction below zero.

¹ Ch. 2000-260 and 2001-140, Laws of Florida.

² See, generally, <http://dor.myflorida.com/dor/taxes/cst.html>.

This bill allows dealers to use a "proportionate allocation method" to determine the credit for bad debt attributable to the state or to a local jurisdiction, rather than specifically identify the jurisdiction in which the bad debt originated. The allocation method must be based upon current gross taxes due, rather than requiring dealers to identify the specific time period of the sales associated with the bad debt. In addition, the bill allows dealers to use other reasonable allocation methods approved by DOR.

This bill provides for retroactive operation to July 1, 2000, as a remedial measure. However, the bill specifies that the retroactive operation of its provisions does not create a right to a refund or require a refund by any governmental entity of any tax, penalty, or interest remitted to DOR before July 1, 2010.

This bill has an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends s. 202.29, F.S., relating to credits against communications services taxes for bad debts.

Section 2. Provides for retroactive operation to July 1, 2000, in a remedial manner.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates that this bill will have no fiscal impact on state government.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that this bill will have no fiscal impact on local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It appears that the provisions of this bill will ease data retention requirements on dealers who may seek a credit for bad debt. As a result, dealers may experience lower administrative costs.

D. FISCAL COMMENTS:

DOR has indicated that this bill would not have an operational impact on the agency or present difficulty in implementation, administration, or enforcement.

In addition, it appears that this bill will not impact the total amount of credit claimed for bad debt or the total amount of revenues collected. According to DOR, a proportionate allocation method will distribute any credit for bad debt to the state and to the local jurisdictions in the same proportion as CST revenues are distributed in a given month. Therefore, some slight variances in revenues may be expected from month-to-month. However, over time, total revenues should not be affected.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to communications services taxes; amending
 3 s. 202.29, F.S.; authorizing dealers to report a credit
 4 for bad debt by netting the credit against the tax due;
 5 authorizing dealers to use a proportionate allocation
 6 method or other reasonable method in determining the
 7 amount of bad debt attributable to the state or local
 8 jurisdiction; providing for retroactive operation;
 9 specifying that the act is remedial in nature and not a
 10 basis for certain refunds of tax; providing an effective
 11 date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (4) is added to section 202.29,
 16 Florida Statutes, to read:

17 202.29 Bad debts.--

18 (4) (a) A dealer may report the credit for bad debt allowed
 19 under this section by netting such credit against the tax due to
 20 the state pursuant to s. 202.12 or to a local jurisdiction
 21 pursuant to s. 202.19, but such netting may not reduce the
 22 amount due to the state or to any local jurisdiction below zero.

23 (b) For purposes of determining the amount of bad debt
 24 that is attributable to the state or to a local jurisdiction, a
 25 dealer may employ a proportionate allocation method based on
 26 current gross taxes due or another reasonable allocation method
 27 approved by the department.

28 Section 2. This act shall operate retroactively to July 1,

HB 281

2010

29 | 2000; however, the retroactive operation of this act is remedial
30 | in nature, does not create a right to a refund, and does not
31 | require a refund by any governmental entity of any tax, penalty,
32 | or interest remitted to the Department of Revenue before July 1,
33 | 2010.

34 | Section 3. This act shall take effect July 1, 2010.

Florida Public Service Commission

Recommendations for Legislative Changes to Chapter 350

- Expansion of current ex parte communication restrictions
- Extension of ex parte restrictions to additional parties
- Penalties for external parties and regulated entities
- Post-employment prohibitions for commissioners & direct staff
- Code of Judicial Conduct

Goal

- Protect Commissioners and staff from undue influence;
- Assure the public that Commission decisions are fact-based, and not influenced by prohibited communication;
- Affirm the independence of the Public Service Commission; and
- Preserve the due process rights of ALL parties to proceedings.

Ex Parte Restrictions

- Ex parte restrictions to Commissioners and direct reporting staff; i.e., Chief Advisor, Executive Assistant/Secretary
 - Protection for decision-makers
 - Protection for staff who can influence Commissioners

- Include all proceedings, except undocketed workshops and internal affairs meetings
 - Includes administrative rulemaking

- Remove 90 day restriction
 - Any issue that could be “reasonably foreseen”

Ex Parte Defined

“...any communication that, if written, is not served on all the parties to a proceeding, and if oral, is made without adequate notice to the parties and without an opportunity for them to be present and heard”.

(Current Senate version of the bill uses the term “prohibited communication.”)

Extension of Ex Parte Restrictions

- Includes the Governor, Cabinet, and Legislature
 - A status inquiry that does not address the merits of a proceeding is not an ex parte communication.
 - Communication that attaches or forwards constituent correspondence that relates to the merits of a proceeding will be placed in the docketed files.

- Definition of “legally interested party”
 - “...any party to, or a representative of a party to a proceeding before the Commission, corporations, partnerships, limited liability companies, elected or appointed officials of state government, and other public and elected officials.”
 - Not just party or intervenor to a proceeding; anyone outside the Commission.
 - Is NOT an individual ratepayer.

Unintended Communication

- Commissioners and direct reporting staff who unknowingly receive an ex parte communication:
 - Must place all written communication and summaries of all oral communications are placed on the record.
 - Opportunity for all other parties to respond to the communication.
 - Commissioner may withdraw from a proceeding to eliminate the effect of an ex parte communication

- Legally Interested Party who participates in an ex parte communication:
 - Submit written statement/summary to the Commission to place on the record.

Penalties

- Failure to place ex parte communication “on the record” is subject to removal and civil fine up to \$5,000. Refusal to pay the fine can result in an action in circuit court.
- Commission on Ethics investigates complaints and reports its findings to the Governor and PSC Nominating Council.
- A legally interested party can also face civil fine up to \$5,000
- The entity represented by the party may be assessed an additional penalty:
 - One-tenth of one percent of the entity’s annual operating revenue.

Post-Employment Prohibitions

- Four-year prohibition for former Commissioners AND former direct reporting staff:
 - May not appear before the Commission to represent any client or industry regulated by the Commission.
 - May not lobby the executive or legislative branch as a representative of any regulated entity.
 - May not accept employment or compensation from a regulated entity, or any subsidiary of a regulated entity, or any business or trade association that has been a party to a Commission proceeding within preceding 4 years.

- Four-year prohibition for former employees:
 - May not represent any regulated entity before the Commission.

- Applies to former Commissioners, direct reporting staff, and employees appointed, reappointed, or hired after July 1, 2010.

Code of Judicial Conduct

- In adjudicatory hearings, Commissioners perform a quasi-judicial function.
- Some canons of the Code of Judicial Conduct can be applied to Commissioners when performing those quasi-judicial functions:

"...Commissioners shall observe and abide by the Code of Judicial Conduct ...in docketed proceedings before the Commission. In cases where all or part of a canon of the Code of Judicial Conduct conflicts with statutory provisions applicable to commissioners or the commission, statutory provisions shall control..."

Questions?

VISION FOR FLORIDA'S ENERGY POLICY

Overall Statement of Legislative Intent

It is the intent of the Legislature to provide a framework that ensures an adequate and reliable supply of energy for Florida in a manner that promotes the health and welfare of the public, promotes sustainable economic growth, and minimizes and mitigates adverse impacts. The Legislature also intends that governance of energy policy within Florida be efficiently directed toward achieving this vision.

In furtherance of this vision, consideration shall be given to the following:

- Ensuring an affordable energy supply;
- Ensuring adequate supply and capacity;
- Ensuring a secure and reliable energy supply;
- Minimizing energy cost volatility;
- Minimizing negative impacts of energy production on Florida's environment, social fabric, and the public health and welfare;
- Maximizing economic synergies for Florida associated with energy policy;
- Reducing the net export of energy expenditures; and
- Providing effective, efficient, and certain governance of energy policy.