

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 167 Exemption from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Finance & Tax Council; Energy & Utilities Policy Committee; Abruzzo
TIED BILLS: None. IDEN./SIM. BILLS: SB 942

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Energy & Utilities Policy Committee, General Government Policy Council, Finance & Tax Council, Policy Council, and an empty row.

SUMMARY ANALYSIS

The bill creates s. 377.807, F.S., relating to the "Energy-efficient appliance rebate program". The bill authorizes the Florida Energy and Climate Commission to develop and administer a consumer rebate program for residential energy-efficient appliances, consistent with 42 U.S.C., s. 15821 and any federal agency guidance or regulations issued in furtherance of federal law.

The commission is authorized to enter into contracts or memoranda of agreement with other state agencies, public-private partnerships, or other arrangements such that the most efficient means of administering consumer rebates can be achieved.

The sum of \$150,000 is appropriated from the General Revenue Fund to the Florida Energy and Climate Commission for the purpose of administering the energy-efficient appliance rebate program. However the funds shall not be released to the commission until it has submitted a report to the Legislative Budget Commission certifying that the Energy-efficient appliance rebate program complies with 42 U.S.C., s. 15821 and that the state will receive funds pursuant to 42 U.S.C., s. 15821 and the American Recovery and Reinvestment Act of 2009 to implement the energy-efficient appliance rebate program.

The bill has an effective date of July 1, 2009.

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:

Florida Energy and Climate Commission:

The Florida Energy and Climate Protection Act was passed in 2006, and later amended in 2008, by the Legislature.¹ The purpose of this act, in part, is to provide incentives for the purchase of energy-efficient appliances.² When this act was passed in 2006, it included a sales tax holiday for energy-efficient appliances for one week that year.³

Leading up to the act, the state's energy policy was managed by the Energy Office, administratively housed in the Department of Environmental Protection (DEP). In 2005, Governor Bush, by executive order, called for the creation of an energy forum to develop the state's energy plan.⁴ A report on Florida's Energy Plan was issued in 2006 by the DEP based on the results of the energy forum.⁵ One of the report recommendations was to provide consumer rebates for purchases of energy efficient ENERGY STAR appliances.

In 2008, the State Energy Program, from DEP and the Florida Energy Commission, created in 2006, were combined to create the Florida Energy and Climate Commission (commission) in the Executive Office of the Governor.⁶ The commission is the primary organization for state energy and climate change programs and policies. The commission is charged with administering financial incentive programs; completing annual assessments of Florida's Energy and Climate Change Action Plan; and providing recommendations to the Governor and the Legislature.⁷ The commission also works with other state entities, including the Florida Public Service Commission, the DEP, the Florida Department of Community Affairs, and the Florida Energy Systems Consortium, to develop state energy and climate change policies and programs.

¹ Chapter 377, Part 3, F.S.

² Section 377.802, F.S.

³ Chapter 2006-230, L.O.F., ss. 6 and 74.

⁴ Executive Order No. 05-241.

⁵ Florida's Energy Plan, January 17, 2006, Department of Environmental Protection, at <http://www.dep.state.fl.us/energy/energyact/default.htm> (last visited 4/7/2009).

⁶ Chapter 2008-227, L.O.F.

⁷ Section 377.6015, F.S.

Federal Energy Efficient Rebate Program:

As part of its duties, the commission is also responsible for “performing or coordinating the functions of any federal energy programs delegated to the state...”⁸ The Energy Policy Act of 2005, by Congress, set up an energy efficient appliance rebate program for administration by the states.⁹ A program is created in 42 U.S.C. 15821 for eligible states to receive an allocation of funds based on the ratio of the state’s population to all eligible states. Eligible states are those states which establish or have established a state energy efficient appliance rebate program to “provide rebates to residential consumers for the purchase of residential Energy Star products, or products with improved energy efficiency in cold climates, to replace used appliances of the same type.” The allocation is made to the state’s energy office, or the state agency responsible for developing the state’s energy conservation plans, and such allocation may be used to pay up to 50 percent of the cost of establishing and carrying out the program.

In February 2009, the American Recovery and Reinvestment Act of 2009 (Recovery Act) became law. The Recovery Act distributes billions of dollars to the federal government, states, and localities in an effort to relieve the current economic crisis. The U.S. Department of Energy’s Office of Energy Efficiency & Renewable Energy received a total of \$16.8 billion for different programs, including \$6.7 billion for energy efficiency and renewable energy. Of that \$6.7 billion, \$300 million has been dedicated for an energy efficient appliance rebate program and the ENERGY STAR program. This money will be distributed to states through the rebate program created by the Energy Policy Act of 2005, in 42 U.S.C. 15821.¹⁰ Plans for the products eligible and the administration of the program have not been finalized yet.

Energy Star Program

In 1992, the U.S. Environmental Protection Agency (EPA) created the Energy Star Program as a voluntary labeling program to identify and promote energy-efficient products designed to reduce greenhouse gas emissions. In 1996, the U.S. Department of Energy (DOE) became a partner of the EPA for particular product categories within the program.

According to Energy Star, the program partners with more than 12,000 private and public sector organizations and delivers the “technical information and tools that organizations and consumers need to choose energy-efficient solutions and best management practices.” The program estimates having delivered energy and cost savings in the U.S. of approximately \$16 billion in 2007.¹¹

Energy Star claims to provide a trustworthy label on over 50 product categories (and thousands of models) that deliver the same or better performance as comparable models while using less energy and saving money.¹² A listing of Energy Star Qualified Products in the categories of appliances, heating and cooling, and water heaters may be found at the following web address:
http://www.energystar.gov/index.cfm?fuseaction=find_a_product.

Effect of Proposed Changes

The bill creates s. 377.807, F.S., relating to the “Energy-efficient appliance rebate program”. The bill authorizes the Florida Energy and Climate Commission to develop and administer a consumer rebate program for residential energy-efficient appliances, consistent with 42 U.S.C., s. 15821 and any federal agency guidance or regulations issued in furtherance of federal law. The bill authorizes the commission to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., designating eligible appliances,

⁸ Section 377.703(2)(b), F.S.

⁹ Public L. No. 109-58. Currently there is a bill in Congress to add “smart appliances” to the rebate program. Smart appliances are appliances able to use smart grid technologies set forth in the Energy Independence and Security Act of 2007 (15 U.S.C. 17381). See H.R. 1774.

¹⁰ See U.S. Department of Energy websites at <http://www.energy.gov/recovery/index.htm> and <http://www.eere.energy.gov/recovery/> (last visited 4/7/2009).

¹¹ Energy Star website: http://www.energystar.gov/index.cfm?c=about.ab_history.

¹² *ibid*.

rebate amounts, and the administration of the issuance of rebates. The rules shall be consistent with 42 U.S.C., s. 15821 and any subsequent implementing federal regulations or guidance.

The commission is authorized to enter into contracts or memoranda of agreement with other state agencies, public-private partnerships, or other arrangements such that the most efficient means of administering consumer rebates can be achieved.

The sum of \$150,000 is appropriated from the General Revenue Fund to the Florida Energy and Climate Commission for the purpose of administering the energy-efficient appliance rebate program. However the funds shall not be released to the commission until it has submitted a report to the Legislative Budget Commission certifying that the Energy-efficient appliance rebate program complies with 42 U.S.C. s. 15821 and that the state will receive funds pursuant to 42 U.S.C. s. 15821 and the American Recovery and Reinvestment Act of 2009 to implement the energy-efficient appliance rebate program.

The bill has an effective date of July 1, 2009.

B. SECTION DIRECTORY:

Section 1. Creates s. 212.0802, F.S., regarding the "Consumer Energy Savings Act."

Section 2. Provides appropriations.

Section 3. Provides that the bill become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The sum of \$150,000 is appropriated from the General Revenue Fund to Florida Energy and Climate Commission for the purpose of administering the energy-efficient appliance rebate program. However the funds shall not be released to the commission until it has submitted a report to the Legislative Budget Commission certifying that the energy-efficient appliance rebate program complies with 42 U.S.C., s. 15821 and that the state will receive funds pursuant to 42 U.S.C., s. 15821 and the American Recovery and Reinvestment Act of 2009 to implement the energy-efficient appliance rebate program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and retailers of appliances meeting Energy Star Program ratings should experience an increase in sales. Consumers purchasing new energy-efficiency products will receive rebates.

D. FISCAL COMMENTS:

The Florida Energy and Climate Commission estimates that Florida will be eligible to receive at least \$18 million in federal funds to implement the rebate program. However, the federal government has not yet issued any implementing regulations or guidance for 42 U.S.C., s. 15821; therefore, the amount of funds that Florida will receive and the specific restrictions on these funds is unknown at this time.

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:

The bill authorizes the Florida Energy and Climate Commission to adopt rules to administer the rebate program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2009, the Energy & Utilities Policy Committee reported the bill favorably as a Committee Substitute, making the following changes:

- Allows the sales tax exemption to apply to the *first* \$1,500 of the sales price of an Energy Star product, rather than *\$1,500 or less*; therefore, if the item is priced at \$1,600, only the last \$100 is taxable.
- Changes the wording of the holiday date to provide clarity.
- Prohibits purchases under the exemption from being made on business or company credit cards, debit cards, or checks.

- Removes incandescent light bulbs from the list of Energy Star items that are eligible for the sales tax exemption for the reason that incandescent light bulbs are not deemed Energy Star status nor are they considered energy-efficient.
- Provides appropriations of \$73,891 for FY 2008-2009 and \$57,028 for FY 2009-2010 from the General Revenue Fund for the Department of Revenue to implement s. 212.0802, F.S.
- Changes the effective date from July 1, 2009, to “upon becoming a law.”

On April 20, 2009, the Finance & Tax Council adopted a strike-all amendment. The strike-all amendment replaced language that created the “Consumer Energy Savings Act.” The original bill provided that sales tax would not be collected on the first \$1,500 of the selling price of a new energy-efficient product during the period beginning two Saturdays prior to the last Sunday in July at 12:01 a.m., continuing for nine days, and ending at midnight on the last Sunday in July. The analysis reflects the changes made by the strike-all amendment.