

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 942

INTRODUCER: Commerce Committee and Senators Sobel and Bennett

SUBJECT: Energy-Efficient Products

DATE: April 1, 2009

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Hrdlicka | Cooper | CM | Fav/CS |
| 2. | | | FT | |
| 3. | | | WPSC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 942 creates an annual sales-tax exemption period for new energy-efficient products that have a sales price of \$1,500 or less. This holiday will occur during the month of October every year.

The energy-efficient products must meet ENERGY STAR or federal energy efficiency requirements and are limited to dishwashers, clothes washers, air conditioners, ceiling fans, compact florescent light bulbs, dehumidifiers, programmable thermostats, and refrigerators. The exemption applies only when the product is purchased for noncommercial home or personal use, and cannot apply to products purchased for trade, business, or resale.

The Florida Department of Revenue (DOR) is authorized to adopt emergency rules to administer this section. For FY 2009-2010, the DOR is appropriated \$73,891 from the General Revenue Fund to implement this tax holiday. For FY 2010-2011, a recurring appropriation of \$57,028 from the General Revenue Fund is appropriated to the DOR to administer the tax holiday.

This act takes effect upon becoming a law.

This CS creates an undesignated section of the Florida Statutes.

II. Present Situation:

Previous Legislation:

In 2006, the Governor signed into law ch. 2006-230, L.O.F. Part of this chapter was a sales tax exemption period for new energy-efficient products. This exemption was good only for 1 week, between 12:01 a.m. on October 5, 2006, through midnight October 11, 2006. It applied only to certain ENERGY STAR rated products with a sales price of \$1,500 or less. The exempted items were limited to new:

- Dishwashers
- Clothes washers
- Air conditioners
- Ceiling fans
- Incandescent or florescent light bulbs
- Dehumidifiers
- Programmable thermostats
- Refrigerators

The exemption was applicable only to products purchased for noncommercial home or personal use, and did not apply to products purchased for trade, business, or resale. Further, purchases could not be made using a business or company credit or debit card or check. The Florida Department of Revenue (DOR) was appropriated \$63,379 to administer this tax holiday and was authorized to adopt rules. The law also stated that any construction company, building contractor, or commercial business that tried to purchase or did make purchases pursuant to the exemption was committing an unfair method of competition in violation of s. 501.204, F.S.

Similar measures were proposed in the 2007 and 2008 legislative sessions, but were not passed.

ENERGY STAR Program and Energy Efficiency Requirements:

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (U.S. DOE) are the federal agencies which monitor and create standards for energy-efficient consumer products. The ENERGY STAR Product Development teams are made up of a joint effort by the EPA and the U.S. DOE. Their aim is to “transform the market for manufactured goods by expanding the availability and visibility of energy-efficient products.” They review goods pursuant to established ENERGY STAR Specification Development Guiding Principles. The evaluation process “draws upon the expertise and resources of other stakeholders, including manufacturers, utilities, environmental groups, and other government agencies. This process allows [the ENERGY STAR Product Development team] to make an informed decision as to whether or not to proceed with formulating or revising a product specification.”¹

The U.S. DOE has an Office of Energy Efficiency and Renewable Energy. One of their goals is “making a difference in the everyday lives of Americans by enhancing their energy choices and

¹ ENERGY STAR Product Specification Development and Revision Process, at http://www.energystar.gov/index.cfm?c=prod_development.prod_development_spec_rev (last visited 4/1/2009).

their quality of life.”² Most of the energy efficiency recommendations or requirements for consumer products refer to the ENERGY STAR program.

Incandescent and Florescent Light Bulbs:

The ENERGY STAR program qualifies only compact florescent light bulbs (CFL) as part of the program. This is for several factors:³

- An ENERGY STAR qualified CFL uses about 75 percent less energy than a comparable standard incandescent light bulb. They state that replacing a 60-watt incandescent bulb with a 13-watt CFL can save more than \$30 in energy costs over the life of the bulb.
- Qualified CFLs generate 75 percent less heat than standard incandescent bulbs. They are safer because they are cool to the touch and help reduce home cooling costs.
- Qualified CFLs meet strict guidelines for lifespans: a CFL must last 6,000 hours. The standard life of an incandescent bulb is 1,000 hours.

Further, the Energy Independence and Security Act of 2007 (Public Law No: 110-140), signed into law in December 2007, essentially phases out incandescent light bulbs over a 2-year period from 2012 to 2014. “The phase-out will start with 100-watt bulbs in January 2012 and end with 40-watt bulbs in January 2014.” In 2014 a minimum energy efficiency standard will apply to almost all general purpose lighting. Then, by 2020 all light bulbs will be required to be at least 70 percent more efficient than today’s incandescent light bulbs, which the EPA says is effectively equal to today’s CFLs.

This law does not single out incandescent bulbs as a “ban”; instead the limitations are set by certain efficiency improvement standards. Thus, incandescent light bulbs could be improved to meet the increased efficiency requirements. Further there are several types of incandescent light bulbs that are exempt from the law, such as refrigerator light bulbs, 3-way bulbs, and plant lights.⁴

Current sales tax exempt energy products under Florida law:

Solar Energy Systems and Components: The Florida Legislature exempted solar energy systems or any component thereof from state sales tax starting on July 1, 1997, in s. 212.08(7)(hh), F.S. This exemption was originally enacted by ch. 96-320, L.O.F., with a repeal date of July 1, 2002. Then, section 10 of ch. 2000-351, L.O.F., extended the repeal date to July 1, 2005. The exemption was made permanent after review by the Florida Legislature in 2005.⁵ The Florida

² Mission statement of the U.S. DEP Office of Energy Efficiency and Renewable Energy, at http://www1.eere.energy.gov/office_eere/mission.html (last visited 4/1/2009).

³ Listed in a publication: ENERGY STAR Qualified Lighting, at http://www.energystar.gov/ia/new_homes/features/Lighting_062906.pdf (last visited 4/1/2009).

⁴ See ENERGY STAR Frequently Asked Questions, “I hear CFLs will be required by 2012. Is that true?”, http://energystar.custhelp.com/cgi-bin/energystar.cfg/php/enduser/std_adp.php?p_faqid=4913&p_created=1200431178&p_sid=LMjvkv8j&p_accessibility=0&p_redirect=&p_lva=&p_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbnQ9OCw4JnBfcHJvZHM9MzE1JnBfY2F0cz0mcF9wdj0xLjMxNSZwX2N2PSZwX3BhZ2U9MSZwX3NIYXJjaF90ZXh0PXB0YXNlIG91dA**&p_li=&p_topview=1 (last visited 4/1/2009). See also Barkenbus, Jack, Jonathan Gilligan, and Michael P. Vandenberg. *Individual Carbon Emissions: The Low-Hanging Fruit*, Symposium on Changing Climates: Adapting Law and Policy to a Transforming World, 55 UCLALR 1701 (Aug 2008).

⁵ Ch. 2005-83, L.O.F..

Solar Energy Center is required from time to time to certify to the DOR a list of equipment and requisite hardware considered to be a solar energy system or a component thereof.

Use of electricity or steam for recycling: Section 212.08(7)(ff), F.S., in part exempts from the sales tax certain charges for electricity or steam used to operate machinery and equipment at a fixed location in Florida to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations. The exemption applies only to industries classified under certain Standard Industrial Classification Manual industry group numbers published by the Office of Management and Budget, Executive Office of the President.

Equipment, Machinery, and Other Materials for Renewable Energy Technologies: An exemption from the sales tax was created in 2006 for equipment, machinery and other materials for renewable energy technologies.⁶ This exemption is found in s. 212.08(7)(ccc), F.S. The sale or use of the following in the state of Florida between July 1, 2006, and June 30, 2010, is tax exempt:

- Hydrogen-powered vehicles, materials incorporated into hydrogen powered vehicles, and hydrogen-fueling stations, up to a limit of \$2 million in tax each state fiscal year for all taxpayers.
- Commercial stationary hydrogen fuel cells, up to a limit of \$1 million in tax each state fiscal year for all taxpayers.
- Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-100), including fueling infrastructure, transportation, and storage, up to a limit of \$1 million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption.

The exemption is only available as a refund of previously paid taxes. The Florida Energy and Climate Commission administers the sales tax exemption with the Florida Department of Agriculture and Consumer Services and the DOR. The exemption expires on July 1, 2010.⁷

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of Florida law, which establishes an annual exemption from state and local sales tax for certain energy-efficient products. The annual exemption will run from 12:01 a.m. on October 1st to midnight on October 31st. The products must:

- Be new;
- Have a sales price of \$1,500 or less;
- Be purchased only for noncommercial home or personal use; and
- Either:
 - Meet U.S. DOE requirements for energy-efficiency, or
 - Meet the requirements of the ENERGY STAR Program.

⁶ Ch. 2006-230, L.O.F..

⁷ See Florida Department of Environmental Protection's Energy Act Tax Incentives Program at <http://www.dep.state.fl.us/energy/energyact/incentives.htm> (last visited 4/1/2009) .

The exemption is limited to new:

- Dishwashers
- Clothes washers
- Air conditioners
- Ceiling fans
- Compact florescent light bulbs
- Dehumidifiers
- Programmable thermostats
- Refrigerators

The exemption does not apply to products purchased for trade, business, or resale. The DOR is authorized to adopt emergency rules to administer this section.

Section 2 appropriates funds to the DOR from the General Revenue Fund to implement this tax holiday:

- FY 2009-2010: \$73,891 appropriation; and
- FY 2010-2011: recurring \$57,028 appropriation.

Section 3 provides an effective date upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (which is \$1.88 million for FY 2009/10), are exempt.

The Revenue Estimating Conference estimated that a similar bill would have a \$900,000 negative fiscal impact on local governments in FY 09-10, an increasing annual recurring negative fiscal impact. Consequently, it is exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference met on February 6, 2009, and made the following assessment of the impact of a similar sales tax exemption period in a similar bill:

| | FY 2009-2010 | FY 2010-2011 | FY 2011-2012 | FY 2012-2013 |
|---------------------------|---------------------|---------------------|---------------------|---------------------|
| General Revenue | (4.2) | (4.2) | (4.4) | (4.7) |
| State Trust | (Insignificant) | (Insignificant) | (Insignificant) | (Insignificant) |
| Total State Impact | (4.2) | (4.2) | (4.4) | (4.7) |

| | FY 2009-2010 | FY 2010-2011 | FY 2011-2012 | FY 2012-2013 |
|------------------------------|---------------------|---------------------|---------------------|---------------------|
| Revenue Sharing | (.1) | (.1) | (.2) | (.2) |
| Local Gov't Half Cent | (.4) | (.4) | (.4) | (.5) |
| Local Option | (.4) | (.4) | (.4) | (.5) |
| Total Local Impact | (.9) | (.9) | (1.0) | (1.2) |

| | FY 2009-2010 | FY 2010-2011 | FY 2011-2012 | FY 2012-2013 |
|---------------------|---------------------|---------------------|---------------------|---------------------|
| Total Impact | (5.1) | (5.1) | (5.4) | (5.9) |

B. Private Sector Impact:

Private citizens would benefit from the sales tax exemption if they make a purchase of particular energy-efficient products during October each year.

Manufacturers and retailers of appliances meeting the energy efficiency requirements of the U.S. DOE or the ENERGY STAR program should experience an increase in sales during the sales tax exemption period.

C. Government Sector Impact:

Implementation of the “tax holiday” will impose new administrative regulations on the DOR. The department has requested the following resources to properly implement the requirements of the bill:

- For the 2008-2009 Fiscal Year, the sum of \$73,891
- For the 2009-2010 Fiscal Year, a recurring sum of \$57,028

The DOR reports that the amount for the first year of the exemption period is higher so that the department can mail out Tax Information Publications (TIP) by first class mail to retailers selling the products prior to the July exemption period. Notification by first class

mail will be necessary for the first year of the program given the short time period between the bill being signed into law and the exemption period. For subsequent years, the DOR will use standard postage rates because it will have sufficient time to draft and mail TIPs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 976 by Senator Sobel seeks to impose a similar sales tax exemption period for energy-efficient products. The CS essentially adopts SB 976 with some technical changes recommended by the DOR.

The DOR recommended in its analysis that a provision similar to that of the 2006 sales tax exemption period be included in the bill. That provision states that purchases cannot be made using a business or company credit or debit card or check.

The U.S. DOE and EPA both administer the ENERGY STAR program. Neither federal agency has a separate set of requirements for energy efficient for consumer products.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Committee Substitute by the Commerce Committee on April 1, 2009:

This committee substitute:

- Removes the statutory designation and section title (Consumer Energy Savings Act);
- Changes the energy efficient holiday from 1 week to one month;
- Applies the holiday to only new products;
- The holiday does not apply to the purchase of incandescent light bulbs;
- The items must meet U.S. Department of Energy efficiency requirements or ENERGY STAR requirements; and
- The DOR may adopt emergency rules to administer the tax holiday;

The amendment adds appropriations to the DOR:

- For the 2008-2009 Fiscal Year, the sum of \$73,891
- For the 2009-2010 Fiscal Year, a recurring sum of \$57,028

The amendment changes the effective date from July 1, 2009, to upon becoming a law.

B. Amendments:

None.