

STORAGE NAME: h0081p1.tr

DATE: March 27, 1997

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
TRANSPORTATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: Proposed Committee Substitute for CS/HB 81

RELATING TO: Taxation of Fuels

SPONSOR(S): Committee on Transportation and Committee on Environmental Protection and Representative Mackey

STATUTE(S) AFFECTED: ss. 206.01, 206.026, 206.27, 206.41, 206.414, 206.43, 206.44, 206.874, 206.8745, 206.91, 212.05, 212.0501, 212.08, 336.021, and 336.025, F.S. and creates 206.413, F.S.

COMPANION BILL(S): SB 44 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 0
- (2) FINANCE & TAXATION YEAS 15 NAYS 0
- (3) TRANSPORTATION
- (4)
- (5)

I. SUMMARY:

PCS/CS/HB 81 makes numerous minor revisions and technical corrections to fuel tax provisions that were the subject of a 1995 major rewrite of Florida's law on taxation of fuel contained in Chapter 95-417, Laws of Florida. Changes included in the bill would:

- Provide modifications to clarify who collects the taxes and when taxes must be collected.
- Allow for the sharing of audit information between DOR and the Department of Highway Safety and Motor Vehicles.
- Clarify that the agricultural diesel fuel exemption remains in place.
- Provide changes to assist local governments in the administration of local option taxes, and provide more flexibility in using local option tax proceeds.
- Authorize the sale of dyed (untaxed) diesel fuel to pleasure boats, and provide that sales to commercial or non-commercial vessels of diesel fuel are subject to the sales tax under Chapter 212, F.S.

According to DOR authorizing the sale of dyed (untaxed) diesel fuel to pleasure boats would decrease revenues to state and local governments by an aggregate of \$1 million annually. However, the reinstatement of the sales tax on diesel fuel sold to vessels (and the corresponding enhancement of sales tax collections that result) would generate an estimated \$480,000.

Note: The only provision in CS/HB 81 as amended by the Committee on Finance & Taxation that is not in the Proposed Committee Substitute for CS/HB 81 is the reduction of the State Comprehensive Enhanced Transportation System Tax rate on diesel fuel by 2 cents per

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gallon. The only new provision in the Proposed Committee Substitute provides local governments with more flexibility in using local option fuel taxes proceeds.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Department of Revenue (DOR) is responsible for collecting and enforcing the various state and local fuel taxes levied in Florida. During the 1995 Session, legislation was adopted (Chapter 95-417, Laws of Florida) which contained a major rewrite of the statutes dealing with fuel tax implementation and administration by DOR.

The primary purpose for revising the tax laws was to adopt fuel taxing procedures used by the federal government with a goal of reducing the incidence of fraud and tax evasion and making tax administration more efficient for both DOR and industry.

Prior to July 1, 1996, diesel fuel sold to pleasure boats was subject to a fuel sales tax (Chapter 212, F.S.) of 8.5 cents per gallon. Effective July 1, 1996, Florida replaced the fuel sales tax with the federal taxing system for diesel fuel. The federal system created two categories of diesel fuel: dyed diesel and undyed diesel. Dyed diesel fuel was declared exempt from the tax and is used by commercial vessels. Undyed diesel fuel was taxed and is used by non-commercial or pleasure boats. All undyed fuel is subject to the full highway tax (24.6 cents per gallon) at the time it is removed from storage. Prior to August 1996, the federal government required non-commercial or pleasure boats to use undyed fuel subject to the full federal highway tax.

Effective July 1, 1996, Florida law mirrored the federal requirements which provided for the full taxation of pleasure boat fuel. Effective August 1996, the federal government passed a temporary exemption for pleasure boats authorizing the use of dyed fuel until January 1, 1998. This provision also allows for a refund for the purchase of undyed fuels.

The temporary exemption for pleasure boats has created an administrative problem. Taxes on the undyed fuel are paid prior to the delivery of the fuel to the marinas. Since the tax has already been paid, some form of registration and refund program would have to be designed. Florida has over 10,000 pleasure boats utilizing marinas for fueling purposes.

Florida's dyed fuel sales requirements are now different from federal requirements. The Florida requirement to use undyed fuel causes boat owners to pay state and federal tax on purchases at a marina and claim refunds with the IRS to get back the federal tax.

An administrative solution to this situation was implemented in November 1996. It allows marina operators to register with the state the purchase of untaxed dyed diesel fuel for sale to pleasure boats, provided they have collected and remitted Florida's highway tax on each sale to a pleasure boat. This eliminates the need to pay federal taxes up front as well as the need to file a refund claim with the IRS. However, it continued the collection of the tax at the rate imposed on July 1, 1996.

B. EFFECT OF PROPOSED CHANGES:

The bill makes a number of revisions and technical corrections to fuel tax provisions that were the subject of a 1995 major rewrite of Florida's law on taxation of fuel contained in Chapter 95-417, Laws of Florida. The provisions of the bill will:

- permit terminal suppliers to designate resellers for sales to specific geographical areas and to collect the appropriate taxes;
- expand the DOR's ability to deny licenses to include blenders, carriers, and terminal operators;
- permit the DOR to share audit information with the Department of Highway Safety and Motor Vehicles;
- allow individual fuel dealers to offer assistance to one another in completing departmental forms;
- allow local governments to utilize any service station for fuel purchases;
- conform motor fuel tax collection provisions to previously adopted statutes by requiring terminal operators to ensure that persons buying fuel are properly licensed to remit fuel taxes;
- clarify that when fuel deliveries are made all taxes due will be collected regardless of who owns the fuel;
- clarify that the agricultural diesel fuel sales tax exemption remains in place;
- provide statutory changes to allow specific counties to solve a technical problem concerning the expiration of their local option gas taxes;
- allow local governments more flexibility in the types of transportation projects that may be funded from the ninth cent and ELMS local option fuel taxes; and
- provide additional guidance to assist in determining which interstate commerce practices are eligible for fuel tax exemptions.

In addition to the general revisions provided by the bill it will bring Florida's taxing system for diesel fuel into compliance with recent federal changes. Specific provisions of the bill will:

- Allow for the purchase of dyed or untaxed diesel fuel by non-commercial vessels; and
- Clarify that the purchase of diesel fuels for use by commercial or non-commercial vessels is subject to general sales tax provisions. This change reinstates the fees that were in effect prior to July 1, 1996.

C. APPLICATION OF PRINCIPLES:

1. LESS GOVERNMENT:

The bill would reduce the need for extra DOR staff to handle returns and registrations associated with the diesel fuel tax and provide additional streamlining measures.

2. LOWER TAXES:

In the aggregate the bill would lower taxes on special fuels sold to pleasure boat operators. (See Fiscal Section for detailed information)

3. PERSONAL RESPONSIBILITY:

N/A

4. INDIVIDUAL FREEDOM:

N/A

5. FAMILY EMPOWERMENT:

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 206.01, F.S., 1996 Supplement, to permit terminal suppliers to designate resellers for specific sales and to collect the appropriate taxes.

Section 2: Amends s. 206.026, F.S., to expand DOR's ability to deny licenses.

Section 3: Amends s. 206.27, F.S., 1996 Florida Supplement, to permit DOR to share audit information with the Department of Highway Safety and Motor Vehicles.

Section 4: Amends s. 206.41, F.S., 1996 Supplement, to permit operators to assist one another in completing departmental forms and to allow local governments to purchase fuel from any service stations.

Section 5: Creates s. 206.413, F.S., to provide conforming language concerning terminal operators tax collection responsibilities.

Section 6: Amends s. 206.414, F.S., to clarify that all taxes due must be collected upon delivery of the fuel.

Section 7: Amends s. 206.43, F.S., 1996 Supplement, to clarify eligibility for claiming collection allowances.

Section 8: Amends s. 206.44, F.S., to provide a technical change.

Section 9: Amends s. 206.874, F.S., to provide an exemption to pleasure boaters for the purchase of diesel fuel.

Section 10: Amends s. 206.8745, F.S., 1996 Supplement, to create refund criteria and mechanisms for pleasure boaters who have previously purchased undyed diesel fuel.

Section 11: Amends s. 206.91, F.S., to clarify eligibility for claiming collection allowances.

Section 12: Amends s. 212.05, F.S., 1996 Supplement, to reinstate the sales tax on diesel fuel purchased by pleasure boaters.

Section 13: Amends s. 212.0501, F.S., to clarify that the agricultural diesel fuel tax exemption remains in place.

Section 14: Amends s. 212.08, F.S., 1996 Supplement, to clarify which types of businesses involved in interstate commerce qualify for the fuel tax exemption.

Section 15: Amends s. 336.021, F.S., 1996 Supplement, to allow local governments more flexibility in the types of transportation projects that may be funded from the ninth cent local option fuel tax.

Section 16: Amends s. 336.021, F.S., 1996 Supplement, to provide conforming language.

Section 17: Amends s. 336.025, F.S., 1996 Supplement, to provide a technical change that will allow counties to correct expiration problems with their local option taxes; and to allow local governments more flexibility in the types of transportation projects that may be funded from the ELMS local option fuel tax.

Section 18: Amends s. 336.025, F.S., 1996 Supplement, effective July 1, 1999, to provide conforming language.

Section 19: Provides that the bill shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

	<u>FY 97-98</u>	<u>FY 98-99</u>
General Revenue Fund	(Insign.)	(Insign.)
State Transportation Trust Fund	(0.1M)	(0.1M)
Total Lost Revenues	(0.1M)	(0.1M)

Estimates are provided by the Revenue Impact Conference; the figures reflect the decrease in revenue based on the elimination of the highway tax on diesel sold to pleasure boats, and an increase in revenue based on reinstatement of sales tax on diesel sold to all vessels.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	<u>FY 97-98</u>	<u>FY 98-99</u>
General Revenue Fund	(Insign.)	(Insign.)
State Transportation Trust Fund	(0.1M)	(0.1M)
Total Lost Revenues	(0.1M)	(0.1M)

Estimates are provided by the Revenue Impact Conference; the figures reflect the decrease in revenue based on the elimination of the highway tax on diesel sold to pleasure boats, and an increase in revenue based on reinstatement of sales tax on diesel sold to all vessels.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

	<u>FY 97-98</u>	<u>FY 98-99</u>
Local Tax Impact	(0.5M)	(0.5M)
Total Lost Revenues	(0.5M)	(0.5M)

Estimates are provided by the Revenue Impact Conference; the figures reflect the decrease in revenue based on the elimination of the highway tax on diesel sold to pleasure boats, and an increase in revenue based on reinstatement of sales tax on diesel sold to all vessels.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

Marinas would benefit from not having to maintain separate fuel tanks for dyed and undyed diesel fuel. In addition there would be associated administrative savings and a reduction in taxes paid by pleasure boaters.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

In addition to the local impacts noted above, the bill also gives local governments more flexibility in the types of transportation projects that may be funded from the ninth cent and ELMS local option fuel taxes.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does have a negative fiscal impact on local government revenue. The amount of this impact is estimated as (\$500,000) in the aggregate, and therefore is exempt as an insignificant fiscal impact.

V. COMMENTS:

The only provision in CS/HB 81 as amended by the Committee on Finance & Taxation that is not in the Proposed Committee Substitute for CS/HB 81 is the reduction of the State Comprehensive Enhanced Transportation System Tax rate on diesel fuel by 2 cents per gallon. If this reduction became effective, the Department of Transportation has estimated that over \$140 million in project commitment cuts would be needed over the next five years to balance to the lower revenue levels.

Provisions included in the Proposed Committee Substitute for CS/HB 81 that were not part of CS/HB 81 as amended by the Committee on Finance & Taxation would allow local governments more flexibility in the types of transportation projects that may be funded from the ninth cent (1cent per gallon on all fuels) and ELMS (1 to 5 cents per gallon on motor fuels) local option taxes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 29, 1997, a remove and insert amendment was adopted by the Committee on Environmental Protection which retained the intent of the original bill in addition to providing a series of technical corrections and minor revisions to current fuel taxing provisions. The bill as amended was reported favorably as a committee substitute.

On March 13, 1997, three amendments to CS/HB 81 were adopted by the Committee on Finance & Taxation. Two amendments were technical clarifications of storage tank facility identification numbers provided by the Department of Environmental Protection that should be included on the sales invoice and refund requests. These amended section 206.41(5)(b), F.S. A third amendment, amending section 206.87, F.S., reduced the amount of the State Comprehensive Enhanced Transportation System Tax on diesel by 2 cents per net gallon. The revenue impact to the State Transportation Trust Fund is (\$19.5) million for FY 1997-98 and (\$21.9) million for FY 1998-99, and the impact to General Revenue is (\$1.5) million for FY 1997-98 and (\$1.7) million for FY 1998-99.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Wayne Kiger

Wayne Kiger

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