SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ways and Means Committee

BILL: CS/CS/CS/SB 528, 530 & 858

INTRODUCER: Ways and Means Committee, Community Affairs Committee, Domestic Security Committee, Senators Geller, Atwater, Diaz de la Portilla, and others

SUBJECT: Disaster Preparedness Response and Recovery

DATE: April 24, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	DS	**Fav/Combined CS**
2.	Earlywine	Cooper	CM	**Fav/7 amendments**
3.	Herrin	Yeatman	CA	**Fav/CS**
4.	McVaney	Coburn	WM	**Fav/CS**
5.				
6.				

I. Summary:

The bill requires certain motor fuel dispensing facilities to have alternate generated power capacity in order to become operational after a major disaster. These facilities include motor fuel terminal facilities and wholesalers, newly constructed or substantially renovated motor fuel retail outlets, and certain existing motor fuel retail outlets that are located within one-half mile of an interstate highway or designated evacuation route. The bill requires businesses to keep and produce records documenting the installation and periodic maintenance of the equipment. The bill also provides for certain exemptions.

The bill establishes the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs (DCA). The program allows for pre-certification of motor fuel retail outlets that will have the capacity to operate on alternate generated power after a major disaster. Such outlets will be able to provide priority fuel sales to emergency responders as well as fuel for the general public.

This bill requires residential multi-family dwellings at least 75 feet in height and having a public elevator, be capable of operating at least one elevator on alternate generated power. The elevator must be able to operate for an unspecified number of hours each day for a period of 5 days after a disaster or emergency resulting in an electrical power outage. The bill provides for inspection and verification requirements and requires the owner, managing entity, or operator to develop a written emergency operations plan. Newly constructed residential multi-family dwellings covered under this section must meet engineering, installation, and verification requirements before occupancy.

The bill also requires owners of affordable residential dwellings for persons age 62 and older which are financed or insured by the U. S. Department of Housing and Urban Development to make every effort to obtain grant funding to comply the provisions of this bill. If the owner of these dwelling units is unable to comply with the alternate generated power requirement, the owner shall develop an emergency evacuation plan.

This bill also:

- Requires the Division of Emergency Management to complete an inventory of generators owned by the state and local governments which are capable of operating during a major disaster;
- Provides that the Division of Emergency Management may keep a list of private entities, along with contact information, which offer generators for sale or lease and to make the list available to the public;
- modifies the duration of the "prohibition against unconscionable prices" based on a declaration of a state of emergency.
- Expands the powers and duties of the Division of Emergency Management within the Department of Community Affairs to include a broader public awareness campaign and an inventory of generators in the state.

This bill creates section 526.143, Florida Statutes, and amends sections 252.35, 501.160, 553.509, F.S.

II. Present Situation:

During the 2005 hurricane season, Florida was affected by storm-related electrical power outages and concerns about fuel availability. In August and September of 2005, Hurricanes Katrina and Rita severely damaged portions of the nation's fuel production infrastructure. The immediate impact resulted in spot shortages and per gallon prices stabilizing at close to $3 per gallon. Since Florida receives between 92-98 percent of its motor fuel supply by ship or barge[1], two-thirds of which comes from U. S. supply origins[2], damage to the Gulf Coast production infrastructure and disruption of the Gulf shipping lanes gave Florida further cause for concern. As Hurricane Wilma approached on October 22, 2005, four Gulf Coast refineries, 62 percent of Gulf oil production, and 52 percent of Gulf natural gas production remained closed.[3]

Florida, however, was able to seek additional sources of product and combined with conservation measures, experienced tight supplies in some locations, but no serious shortages prior to Wilma. On Saturday, October 22, 2005, Florida's fuel inventories stood at approximately 213 million gallons available in storage in the ports. Since Florida normally uses about 25 million gallons of motor fuel a day, the fuel in storage amounted to about nine days of supply available.[4] Hurricane Wilma came ashore at approximately 6:30 AM on Monday, October 24, 2005, knocking out power to almost 3.5 million customers and forcing the temporary closure of

[1] Source: Florida Department of Environmental Protection, 2005 Energy Forum.
[2] Source: Port Everglades Legislative Briefing, Jan. 18, 2006.
[3] Florida SERT Hurricane Wilma Situation Report No. 8, October 22, 2005.
[4] Id.

South Florida ports including Port Everglades. Port Everglades supplies Florida with almost 40 percent of its transportation fuels.[5]

The fuel on hand immediately after Wilma's landfall remained at 9-days supply across the state with locations on I-4, I-95, I-75, and the Florida Turnpike reporting plenty of fuel.[6] By mid-afternoon the next day, Tuesday, October 25, 2005, Port Everglades was reporting that it had generator capacity to off load fuel ships, but the shipping channel was still closed to vessel traffic.

On Wednesday morning, October 26, 2005, Port Everglades reported partial power restoration with two days worth of normal fuel distribution supply in its tanks. That day, service plazas on the Florida Turnpike from Miami to Yeehaw Junction began to experience five plus mile back-ups requiring consumers to wait 3 to 5 hours in line for fuel. Sales were limited to $20 worth per vehicle which purchased about seven and a half gallons of fuel. Further north, Orlando's gas stations, which had power and a supply chain fed via pipeline from the Port of Tampa, were operating normally. By the end of that day an estimated 2.65 million customers across Florida remained without power. As a conservation measure, South Florida retail outlets also began adopting the policy of limiting fuel purchases to $20 at those stations capable of operations.[7]

By noon on Thursday, October 27, 2005, ExxonMobil reported 55 stations were operational in Palm Beach, Broward, and Miami-Dade counties. Amerada Hess reported providing generators for back-up power at their South Florida facilities. Palm Beach, Broward, and Miami-Dade counties have approximately 1,820 gas stations and some other company gas stations were likely open, but not listed in the State Emergency Response Situation Reports. Fuel availability for the public was a problem.[8] Fuel in storage in the ports statewide reflected an approximate seven day supply with replenishment priority given to emergency crews and first responders. Retail gas stations with available power along major transportation corridors and in major metropolitan areas were also given replenishment priority to support the needs of returning evacuees.[9] By the end of the day, 2.1 million customers still remained without power.

Throughout the Hurricane Wilma recovery, bulk fuel inventories were sufficient to meet essential needs. The problem Floridians encountered was delivery at the local retail level. Fuel in local retail outlet tanks was for the most part inaccessible without the electrical power to dispense it. Media reports showed long lines at South Florida gas stations until power was gradually restored. By November 1, 2005, over 700,000 customers still were without power.[10]

Chapter 252, F.S., provides for Emergency Management in the State of Florida. Section 252.35, F.S., provides for emergency management powers for the Division of Emergency Management. Included in this section are provisions calling for the establishment of strategies for ensuring sufficient, reasonably priced fueling locations along evacuation routes.

[5] Source: Port Everglades Legislative Briefing, Jan. 18, 2006.
[6] Florida SERT Hurricane Wilma Situation Report No. 14, October 24, 2005.
[7] Florida SERT Hurricane Wilma Situation Report No. 20, October 26, 2005.
[8] Florida SERT Hurricane Wilma Situation Report No. 23, October 27, 2005.
[9] Florida Emergency Operations Center Media Release, October 27, 2005.
[10] Florida Emergency Operations Center Media Release, November 1, 2005.

Section 252.38, F.S., provides for emergency management powers of political subdivisions. Counties are required to establish an emergency management agency and develop and maintain an emergency management plan and program consistent with the state emergency management plan and program.

Section 526.303, F.S., provides definitions for the sale of liquid fuels including the definitions for motor fuels, retail outlet, sale, and terminal facility.

The 2001 Florida Building Code (effective March 1, 2002), section 1016.2.4 and the 2004 Florida Building Code, section 1006.2.4, requires high-rise buildings (defined as buildings having occupied floors located more than 75 feet above the lowest level of fire department vehicle access) be provided with Class 1, Type 60 standby power. Chapter 27 of the Florida Building Code requires the standby power system to have sufficient capacity and rating to supply all required equipment. The standby system must be connected to the emergency lighting system, at least one elevator serving all floors and transferable to all building elevators, and the mechanical equipment serving smoke proof enclosures.

The Code requires high-rise emergency power be provided for elevator car lighting and emergency voice/alarm communications systems. Standby power is required for power and lighting for the fire command center, electrically powered fire pumps, ventilation and automatic fire detection equipment for smoke proof enclosures, and elevators.

Section 3003 of the 2004 Florida Building Code requires that:

- Standby power shall be manually transferable to all elevators in each bank;
- If there is only one elevator, it shall automatically transfer to standby power within 60 seconds after failure of normal power;
- If there are two or more elevators controlled by a common operating system, all elevators must transfer to standby power within 60 seconds, providing the standby power source is of sufficient capacity to operate all elevators at the same time. Where the power source is not sufficient, then all elevators shall transfer to standby power in sequence, return to the designated landing and disconnect from the standby power source, then at least one elevator shall remain operable on standby power; and
- Where standby power is connected to elevators, the machine room ventilation or air conditioning shall also be connected to the standby power source.

Emergency and standby power must be installed in accordance with NFPA 70 (the National Electrical Code) and NFPA 110 (the Standard for Emergency and Standby Power Systems).

III. Effect of Proposed Changes:

Section 1 provides legislative findings and directs the Department of Community Affairs to conduct a feasibility study on incorporating into the state's emergency management plan the logistical supply and distribution of essential commodities by nongovernmental entities.

Section 2 creates s. 526.143, F.S., to require certain motor fuel dispensing facilities to have alternate generated power capacity in order to become operational after a major disaster. Motor

fuel terminal facilities and wholesalers, as defined in s. 526.303, F.S., must be capable of operating their distribution loading racks using an alternate generated power source.[11] The equipment must be capable of a minimum of 72 hours of operation.

Newly constructed or substantially renovated motor fuel retail outlets[12] receiving a certificate of occupancy on or after July 1, 2006, are also required to have the capacity to operate with alternate generated power. "Substantially renovated" is defined as a renovation that increases the assessed value of the motor fuel retail outlet by more than 50 percent. The inspection for a certificate of occupancy for new or substantially renovated facilities must include a check for the required alternate generated power equipment and whether it is operational.

Motor fuel terminal facilities, wholesalers, and motor fuel retail outlets must maintain a written statement of periodic testing and ensured operational capability. Such documents must be furnished to the Division of Emergency Management and the director of the county emergency management agency upon request.

Certain motor fuel retail outlets that are within ½ mile of an interstate highway, or a state or federally designated evacuation route, are required to have the capacity to operate with alternate generated power no later than June 1, 2007. The motor fuel retail outlets that are subject to this requirement are:

- County populations having 300,000 or more residents – Stations having 16 or more fueling positions;
- County populations having 100,000 or more residents but fewer than 300,000 – Stations having 12 or more fueling positions; and
- County populations having less than 100,000 residents – Stations having 8 or more fueling positions.[13]

Installation of the required wiring and transfer switches necessary to provide alternate operational capacity must be performed by a certified electrical contractor. A copy of the documentation of such installation and a written statement of periodic testing and ensured operational capability are required to be maintained by the outlet or its corporate headquarters. Such documents must be furnished to the Division of Emergency Management and the director of the county emergency management agency upon request.

This bill specifies that the alternate generated power source requirement for motor fuel retail outlets applies to any outlet that is self-service, full-service, or a combination thereof, regardless of its location on the grounds of or ownership by a business not engaged primarily in the selling of motor fuel.

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[11] Section 526.303, F.S., defines "terminal facility" as "any inland, waterfront, or offshore appurtenance on land used for the purpose of storing, handling, or transferring motor fuel, but does not include bulk storage facilities owned or operated by a wholesaler." This section also defines the term "wholesaler" as "any person, other than a refiner or dealer, who purchases motor fuel at a terminal facility and supplies motor fuel to retail outlets."

[12] Section 526.303, F.S., defines the term "retail outlet" as "a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public."

[13] Note - A fueling position is considered to be the place where a single vehicle may be refueled. Fuel dispensers where vehicles may be fueled simultaneously on either side of the stand are considered to be two fueling positions.

The bill provides an exemption from the alternate generated power source requirement for motor fuel retail outlets for: automobile dealers; persons who operate a fleet of motor vehicles; persons who sell fuel exclusively to a fleet of motor vehicles; and outlets that have an agreement with a public hospital that the hospital will provide the outlet with an alternative means of power generation onsite.

This bill also requires each corporation or other entity that owns or operates more than 10 or more motor fuel retail outlets to maintain at least one portable generator capable of providing alternate generated power for every 10 outlets or a multiple of 10 outlets plus an additional generator for every six outlets over the 10 outlets or a multiple of 10. The required generators for motor fuel retail outlets may be located anywhere in the state or out of state if located within 250 miles of the state, but must be available for use in the affected area within 24 hours after a disaster. A corporation or entity that owns 10 or more motor fuel retail outlets within a single domestic security region and that does not own outlets outside the region must maintain an agreement with one or more similarly situated entities outside the affected domestic security region to provide for the use of portable generators.

Section 3 creates the Florida Disaster Motor Fuel Supplier Program within DCA. Each county governing body may choose to participate in the program. This program allows motor fuel retail outlets to participate in a network of emergency responders. These outlets will provide fuel to government, medical, critical infrastructure, and other responders as well as the general public, during a declared disaster. Participation in the program requires precertification by the county emergency management agency.

Businesses that are pre-certified will be:

- Required to have the capability to dispense fuel to State Emergency Response Team members within 24 hours of a major disaster;
- Permitted to choose to sell fuel to the general public or may be directed to do so by emergency managers;
- Able to request appropriate law enforcement personnel be provided on site to maintain civil order during operating hours; and
- Requested to remain open during a declared curfew to provide service for emergency personnel if directed to do so by emergency managers.
- Able to request priority fuel re-supply although such a request is not binding but shall be given consideration by emergency management officials.

Any participating county may impose a fee to cover the actual cost of program administration. Such fee shall not exceed actual administration costs. Funds collected shall be deposited into the appropriate county operating account.

Section 4 amends s. 501.160, F.S., to modify the duration of the "prohibition against unconscionable prices" based on a declaration of a state of emergency. Rather than being effective until the declaration expires or is terminated, this prohibition is effective for not more than 60 days but may be renewed by any subsequent renewal of the declared state of emergency.

Section 5 amends s. 553.509, F.S., to require a person, firm, or corporation that owns, manages, or operates a residential multi-family dwelling, including a condominium, which is at least 75 feet high and contains a public elevator, to have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator will ensure that residents have building access for an unspecified number of hours each day over a 5-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system which controls elevator operations in the building.

This section specifies that, at a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power. Also, the power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. Such dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request.

The section requires that local building inspectors must provide verification of engineering plans for alternate generated power capability to the county emergency management director by December 31, 2006. Local building inspectors must verify the installation and operational capability of the alternate generated power source to the county emergency management director by December 31, 2007. Newly constructed residential multi-family dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements before occupancy.

This section requires that dwellings covered under this section must maintain a written emergency operations plan. The plan must detail the sequence of operations before, during, and after a disaster or emergency situation. The plan must include at a minimum:

- A life safety plan for evacuation;
- Maintenance of the electrical and lighting supply; and
- Provision for the health, safety, and welfare of the residents.

The section requires an owner, managing entity, or operator to maintain a log of quarterly maintenance inspections and any contracts for alternate power generation equipment. The emergency operations plan and log shall be open for periodic inspections by local and state government agencies as deemed necessary. The owner, managing entity, or operator must keep a generator key in a lockbox posted at or near any installed generator unit.

The section also requires that annual elevator inspections conducted pursuant to s. 399.061, F.S., shall confirm installed generators are in working order, logs are current, and the required generator key is present. If the building does not have an installed generator, the inspector shall ensure the transfer switch is visible in the utility connection box and confirm that a contract for contingent services for alternate generated power is current for the operating period.

This section requires that multi-story affordable residential dwellings for persons age 62 and older which are financed or insured by the U. S. Department of Housing and Urban Development make every effort to obtain grant funding to comply with this section. The owner, if unable to

comply with this section, must develop a plan with the local emergency management director to ensure residents are evacuated to a place of safety. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

Section 6 amends s. 252.35, F.S., to add to the powers and responsibilities of the Division of Emergency Management.

This section expands the information in the public awareness campaign to include:

- The personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster, and
- Relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters.

The section provides that for all educational materials to be available in alternative formats and mediums to ensure that the material is available to persons with disabilities.

This section requires the division and the Department of Education to coordinate with the Agency for Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria.

This section also requires the Division of Emergency Management to complete an inventory of generators owned by the state and local governments which are capable of operating during a major disaster. The division shall complete the inventory by January 1, 2007 and shall maintain it thereafter. The division may keep a list of private entities, along with contact information, which offer generators for sale or lease. Such a list shall be available to the public in written and electronic formats.

Section 7 appropriates $76,150 of non-recurring general revenue to the Department of Community Affairs for the study required by section 1 of this bill.

Section 8 provides for severability should any provision of the act be held invalid.

Section 9 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To engineer and pre-wire a gas station in compliance with this bill, and to install the appropriate generator wiring, coupling, and transfer switch is estimated by industry representatives to cost approximately $4,000 per station. This cost would be borne initially by the station owner.

Options to power the station by portable generator include purchase and guaranteed services contracts in which a second party provides the generator, maintenance, and servicing for a fee. Costs for purchasing a generator are dependent on each individual application. As an approximate general rule, standby generators cost $300 to $500 per kilo-watt. Thus, a 20 KW standby generator would cost between $6,000 and $10,000. A 100 KW generator would cost between $30,000 and $50,000.

The cost of a guaranteed services contract would be subject to many variables and is unknown. However, it is likely to be considerably less than the cost of a purchased generator.

C. Government Sector Impact:

The bill requires the Department of Community Affairs to conduct a feasibility study on incorporating into the state's emergency management plan the logistical supply and distribution of essential commodities by non governmental entities. The sum of $76,150 in non-recurring general revenue is appropriated for this purpose.

The bill allows counties participating in the Florida Disaster Motor Fuel Supplier Program to impose fees to offset the costs to administer the program.

The bill requires the Division of Emergency Management to complete and maintain an inventory of generators owned by the state and local governments which are capable of operating during a major disaster. Additional funding for this purpose is not provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.