

By the Committees on Community Affairs; Domestic Security; and Senators Geller, Atwater, Diaz de la Portilla, Campbell, Bullard, Klein and Wilson

578-2252-06

1                                A bill to be entitled  
2                                An act relating to emergency management;  
3                                creating s. 212.099, F.S.; providing a sales  
4                                tax credit for equipment and installation costs  
5                                to retail dealers of motor fuel participating  
6                                in the Florida Disaster Motor Fuel Supplier  
7                                Program; creating s. 526.143, F.S.; requiring  
8                                motor fuel terminal facilities, wholesalers,  
9                                new or substantially renovated motor fuel  
10                               retail outlets, and other motor fuel retail  
11                               outlets meeting specified criteria for size and  
12                               location to be capable of operating with  
13                               alternate generated power; providing  
14                               requirements for the installation of such  
15                               equipment; requiring that such businesses  
16                               maintain documentation of compliance; providing  
17                               exemptions; creating the Florida Disaster Motor  
18                               Fuel Supplier Program within the Department of  
19                               Community Affairs; providing for motor fuel  
20                               retail outlets to participate in a network of  
21                               emergency responders; prescribing duties of  
22                               county emergency management agencies and the  
23                               Division of Emergency Management; prescribing  
24                               requirements to participate in the program;  
25                               providing for security at participating  
26                               outlets; exempting participating outlets from  
27                               curfew requirements; providing a state tax  
28                               credit for equipment and installation costs to  
29                               motor fuel retail outlets participating in the  
30                               program; preempting regulation of alternate  
31                               power sources at motor fuel terminal

1 facilities, motor fuel wholesalers, and motor  
2 fuel retail sales outlets to the state;  
3 requiring the Division of Emergency Management  
4 to complete an inventory of generators owned by  
5 the state and local governments; authorizing  
6 the division to maintain a list of private  
7 entities offering generators for sale or lease  
8 and make that list available to the public;  
9 requiring that the Energy Office of the  
10 Department of Environmental Protection review  
11 the progress in postdisaster fuel supply  
12 distribution and provide a report to the  
13 Legislature; providing for severability;  
14 providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 212.099, Florida Statutes, is  
19 created to read:

20 212.099 Florida Disaster Motor Fuel Supplier Program  
21 Tax Credit Program.--

22 (1) Any retail dealer of motor fuel which has chosen  
23 to participate in the Florida Disaster Motor Fuel Supplier  
24 Program within the Department of Community Affairs may receive  
25 a credit of up to 25 percent against the tax remitted under  
26 this chapter, not to exceed \$2,000, of the value of the cost  
27 to install appropriate wiring and transfer switches required  
28 to meet certification requirements established by the Division  
29 of Emergency Management of the Department of Community Affairs  
30 or by the director of the county emergency management agency.  
31 In addition, the retail dealer may receive a credit of up to

1 25 percent against the tax remitted under this chapter, not to  
2 exceed \$12,500, of the value of the purchase of a generator,  
3 permanently affixed to the site, required to meet these  
4 certification requirements.

5 (a) An application for the credit must be filed with  
6 the Division of Emergency Management to determine whether the  
7 purchase and installation of the generator meet certification  
8 requirements established by the Division of Emergency  
9 Management or by the director of the county emergency  
10 management agency. The application for credit shall be  
11 developed by the Division of Emergency Management in  
12 consultation with the Department of Revenue.

13 (b) The application, attested to under oath, must  
14 include a sworn statement, under penalty of perjury, that the  
15 credit is for the purpose of purchasing and installing wiring  
16 and transfer switches or for purchasing a generator to comply  
17 with the provision of the Florida Disaster Motor Fuel Supplier  
18 Program to serve as an alternate power source to pump motor  
19 and other fuels described in chapter 206 during an electrical  
20 power outage in a county subject to an emergency as defined by  
21 s. 252.34, which has been declared by the Governor pursuant to  
22 s. 252.36, or declared by law.

23 (c) Within 10 working days after receipt of a  
24 completed application, the Division of Emergency Management  
25 shall inform the applicant that the application has been  
26 approved or denied and state the amount of the approved  
27 credit.

28 (d) Within 10 working days after approving an  
29 application, the Division of Emergency Management shall  
30 forward the amount of the approved credit and the prescribed  
31

1 information to properly establish the retail dealer's credit  
2 information with the Department of Revenue.

3 (e) Within 30 days after receipt from the Division of  
4 Emergency Management of the approved amount of the credit and  
5 the information required to properly establish the retail  
6 dealer's credit information, the Department of Revenue shall  
7 notify the retail dealer of any amount of credit the retail  
8 dealer is allowed and how the credit may be taken by the  
9 dealer.

10 (2) Any person who knowingly and willfully gives false  
11 information for the purpose of claiming reimbursement under  
12 this section commits a misdemeanor of the first degree,  
13 punishable as provided in s. 775.082, or by a fine not  
14 exceeding \$5,000, or both.

15 (3) The department may adopt rules to establish  
16 guidelines concerning the requisites for an affirmative  
17 showing of qualification for the credit under this section.

18 Section 2. Section 526.143, Florida Statutes, is  
19 created to read:

20 526.143 Alternate generated power capacity for motor  
21 fuel dispensing facilities.--

22 (1) By June 1, 2007, each motor fuel terminal  
23 facility, as defined in s. 526.303, and each wholesaler, as  
24 defined in s. 526.303, which sells motor fuel in this state  
25 must be capable of operating its distribution loading racks  
26 using an alternate generated power source for a minimum of 72  
27 hours. Pending a postdisaster examination of the equipment by  
28 the operator to determine any extenuating damage that would  
29 render it unsafe to use, the facility must have such alternate  
30 generated power source available for operation no later than  
31 36 hours after a major disaster as defined in s. 252.34.

1 Installation of appropriate wiring, including a transfer  
2 switch, shall be performed by a certified electrical  
3 contractor. Each business that is subject to this subsection  
4 must keep a copy of the documentation of such installation on  
5 site or at its corporate headquarters. In addition, each  
6 business must keep a written statement attesting to the  
7 periodic testing and ensured operational capacity of the  
8 equipment. The required documents must be made available, upon  
9 request, to the Division of Emergency Management and the  
10 director of the county emergency management agency.

11 (2) Each newly constructed or substantially renovated  
12 motor fuel retail outlet, as defined in s. 526.303, for which  
13 a certificate of occupancy is issued on or after July 1, 2006,  
14 shall be prewired with an appropriate transfer switch, and  
15 capable of operating all fuel pumps, dispensing equipment,  
16 life-safety systems, and payment-acceptance equipment using an  
17 alternate generated power source. As used in this subsection,  
18 the term "substantially renovated" means a renovation that  
19 results in an increase of greater than 50 percent in the  
20 assessed value of the motor fuel retail outlet. Local building  
21 inspectors shall include this equipment and operations check  
22 in the normal inspection process before issuing a certificate  
23 of occupancy. Each retail outlet that is subject to this  
24 subsection must keep a copy of the certificate of occupancy on  
25 site or at its corporate headquarters. In addition, each  
26 retail outlet must keep a written statement attesting to the  
27 periodic testing of and ensured operational capability of the  
28 equipment. The required documents must be made available, upon  
29 request, to the Division of Emergency Management and the  
30 director of the county emergency management agency.

31

1           (3)(a) No later than June 1, 2007, each motor fuel  
2 retail outlet described in subparagraphs 1., 2., or 3., which  
3 is located within 1/2 mile proximate to an interstate highway  
4 or state or federally designated evacuation route must be  
5 prewired with an appropriate transfer switch and be capable of  
6 operating all fuel pumps, dispensing equipment, life-safety  
7 systems, and payment-acceptance equipment using an alternate  
8 generated power source:

9           1. A motor fuel retail outlet located in a county  
10 having a population of 300,000 or more which has 16 or more  
11 fueling positions.

12           2. A motor fuel retail outlet located in a county  
13 having a population of 100,000 or more, but fewer than  
14 300,000, which has 12 or more fueling positions.

15           3. A motor fuel retail outlet located in a county  
16 having a population of fewer than 100,000 which has eight or  
17 more fueling positions.

18           (b) Installation of appropriate wiring and transfer  
19 switches must be performed by a certified electrical  
20 contractor. Each retail outlet that is subject to this  
21 subsection must keep a copy of the documentation of such  
22 installation on site or at its corporate headquarters. In  
23 addition, each retail outlet must keep a written statement  
24 attesting to the periodic testing of and ensured operational  
25 capacity of the equipment. The required documents must be made  
26 available, upon request, to the Division of Emergency  
27 Management and the director of the county emergency management  
28 agency.

29           (4)(a) Subsections (2) and (3) apply to any  
30 self-service, full-service, or combination self-service and  
31 full-service motor fuel retail outlet regardless of whether

1 the retail outlet is located on the grounds of, or is owned  
2 by, another retail business establishment that does not engage  
3 in the business of selling motor fuel.

4 (b) Subsections (2) and (3) do not apply to:

5 1. An automobile dealer;

6 2. A person who operates a fleet of motor vehicles;

7 3. A person who sells motor fuel exclusively to a  
8 fleet of motor vehicles; or

9 4. A motor fuel retail outlet that has a written  
10 agreement with a public hospital, in a form approved by the  
11 Division of Emergency Management, wherein the public hospital  
12 agrees to provide the motor fuel retail outlet with an  
13 alternative means of power generation onsite so that the  
14 outlet's fuel pumps may be operated in the event of a power  
15 outage.

16 (5)(a) Each corporation or other entity that owns 10  
17 or more motor fuel retail outlets located within this state  
18 shall maintain at least one portable generator that is capable  
19 of providing an alternate generated power source as required  
20 under subsection (2) for every 10 outlets. If an entity owns  
21 more than 10 outlets or a multiple of 10 outlets plus an  
22 additional six outlets, the entity must provide one additional  
23 generator to accommodate such additional outlets. Each  
24 portable generator must be stored within this state, or may be  
25 stored in another state if located within 250 miles of this  
26 state, and must be available for use in an affected location  
27 within 24 hours after a disaster.

28 (b) Each corporation or other entity that owns 10 or  
29 more motor fuel retail outlets located within a single  
30 domestic security region, as determined pursuant to s.  
31 943.0312(1), and that does not own additional outlets located

1 outside the domestic security region shall maintain a written  
2 document of agreement with one or more similarly equipped  
3 entities for the use of portable generators that may be used  
4 to meet the requirements of paragraph (a) and that are located  
5 within this state but outside the affected domestic security  
6 region. The agreement may be reciprocal, may allow for payment  
7 for services rendered by the providing entity, and must  
8 guarantee the availability of the portable generators to an  
9 affected location within 24 hours after a disaster.

10 (c) For purposes of this section, ownership of a motor  
11 fuel establishment shall be the owner of record of the fuel  
12 storage systems operating at the location, as identified in  
13 the Department of Environmental Protection underground storage  
14 facilities registry pursuant to s. 376.303(1).

15 Section 3. Florida Disaster Motor Fuel Supplier  
16 Program.--

17 (1) The Florida Disaster Motor Fuel Supplier Program  
18 is created within the Department of Community Affairs. The  
19 program shall allow any motor fuel retail outlet doing  
20 business in the state to participate in a network of emergency  
21 responders for the purpose of providing fuel supplies and  
22 services to government, medical, critical infrastructure, and  
23 other responders, as well as to the general public, during a  
24 declared disaster, as described in s. 252.36, Florida  
25 Statutes. Participation in the program requires  
26 precertification of preparedness to provide emergency services  
27 by the Division of Emergency Management or the director of the  
28 county emergency management agency. Requirements for  
29 precertification shall be implemented by the Division of  
30 Emergency Management or by the director of the county  
31



1 emergency management agency as expeditiously as possible, but  
2 no later than June 1, 2007.

3 (a) A business that is precertified shall be issued a  
4 State Emergency Response Team logo decal for public display to  
5 alert responders and the public that the business is capable  
6 of assisting in an emergency. In each county having an active  
7 program, the county emergency management agency shall be  
8 primarily responsible for administering the program within  
9 that county. In counties that do not have active programs, the  
10 Division of Emergency Management may precertify businesses as  
11 members of the State Emergency Response Team and issue  
12 appropriate signage.

13 (b) The Division of Emergency Management may adopt  
14 rules to administer this program. The Division of Emergency  
15 Management or the emergency management agency of the county  
16 may charge a fee to cover the actual costs of precertifying a  
17 location, including the cost of performing an inspection,  
18 filing the necessary forms, and producing the logo decal for  
19 public display. Additional charges may not be imposed for  
20 processing the individual documents associated with the  
21 program. Funds collected shall be deposited into the Emergency  
22 Management Preparedness Assistance Trust Fund or, if the  
23 emergency management agency of the county is administering the  
24 program, into the appropriate county operating account.

25 (2) At a minimum, each business that is precertified  
26 as a member of the State Emergency Response Team must have the  
27 capability to provide on site fuel-dispensing services to  
28 other members of the State Emergency Response Team within 24  
29 hours after a major disaster has occurred, or demonstrate the  
30 ability to have such service available and agree to make  
31 service available as needed. A business may sell fuel through

1 a preexisting contract with local, state, or federal response  
2 agencies or may provide point-of-sale service to such  
3 agencies. In addition, a business may sell to the general  
4 public or may be directed to provide such service by county or  
5 state emergency management officials pursuant to ss. 252.35  
6 and 252.38, Florida Statutes. If requested, appropriate law  
7 enforcement security personnel may be provided to the  
8 participating business to maintain civil order during  
9 operating hours.

10 (3) Persons who are designated as members of the State  
11 Emergency Response Team and who can produce appropriate  
12 identification, as determined by state or county emergency  
13 management officials, shall be given priority for purchasing  
14 fuel at businesses designated as members of the State  
15 Emergency Response Team. A business may be directed by county  
16 or state emergency management officials to remain open during  
17 a declared curfew in order to provide service for emergency  
18 personnel. Under such direction, the business is not in  
19 violation of the curfew and may not be penalized for such  
20 operation and the emergency personnel are not in violation of  
21 the curfew. A person traveling during a curfew must be able to  
22 produce valid official documentation of his or her position  
23 with the State Emergency Response Team or the local emergency  
24 management agency. Such documentation may include, but need  
25 not be limited to, current SERT identification badge, current  
26 law enforcement or other response agency identification or  
27 shield, current health care employee identification card, or  
28 current government services identification card indicating a  
29 critical services position.

30 (4) A business that is designated as a member of the  
31 State Emergency Response Team may request priority in

1 receiving a resupply of fuel in order to continue service to  
2 emergency responders. Such request is not binding, but shall  
3 be considered by emergency management officials in determining  
4 appropriate response actions.

5 (5) Pursuant to s. 212.099, Florida Statutes, a retail  
6 dealer of motor fuel that chooses to participate in the  
7 Florida Disaster Motor Fuel Supplier Program may receive a  
8 sales tax credit of up to 25 percent of the value of the cost  
9 to install appropriate wiring and transfer switches required  
10 to meet certification requirements established by the Division  
11 of Emergency Management or by the director of the county  
12 emergency management agency. The total tax credit for a single  
13 certified location may not exceed \$2,000.

14 (6) In addition, a retail dealer of motor fuel that  
15 chooses to participate in the Florida Disaster Motor Fuel  
16 Supplier Program may receive a sales tax credit of up to 25  
17 percent of the value of the purchase of a generator,  
18 permanently affixed to the site, required to meet  
19 certification requirements established by the Division of  
20 Emergency Management or by the director of the county  
21 emergency management agency. The total tax credit for a single  
22 certified location may not exceed \$12,500.

23 Section 4. Regulation of alternate power sources at  
24 motor fuel outlets and other facilities preempted to the  
25 state.--Notwithstanding any other law or local ordinance and  
26 for the purpose of ensuring an appropriate emergency  
27 management response following major disasters in this state,  
28 the regulation, siting, and placement of alternate power  
29 source capabilities and equipment at motor fuel terminal  
30 facilities, motor fuel wholesalers, and motor fuel retail  
31 sales outlets are preempted to the state.

1           Section 5. (1) By January 1, 2007, the Division of  
2 Emergency Management shall complete an inventory of portable  
3 generators owned by the state and local governments which are  
4 capable of operating during a major disaster. The inventory  
5 must identify, at a minimum, the location of each generator,  
6 the number of generators stored at each specific location, to  
7 agency to which each the generator belongs, the primary use of  
8 the generator by the owner agency, and the names, addresses,  
9 and telephone numbers of persons having the authority to loan  
10 the stored generators as authorized by the Division of  
11 Emergency Management during a declared emergency.

12           (2) The division shall maintain an inventory list of  
13 generators owned by the state and local governments. In  
14 addition, the division may keep a list of private entities,  
15 along with appropriate contact information, which offer  
16 generators for sale or lease. The list of private entities  
17 shall be available to the public for inspection in written and  
18 electronic formats.

19           Section 6. Review of Florida disaster motor fuel  
20 supply distribution.--The Energy Office of the Department of  
21 Environmental Protection shall review situational progress in  
22 postdisaster motor fuel supply distribution and provide a  
23 report to the Legislature by March 1, 2007. The report must  
24 include information concerning statewide compliance with s.  
25 526.143, Florida Statutes, and an identification of all motor  
26 fuel retail outlets that are participating in the Florida  
27 Disaster Motor Fuel Supplier Program.

28           Section 7. If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 invalidity does not affect other provisions or applications of  
31 the act which can be given effect without the invalid

1 provision or application, and to this end the provisions of  
2 this act are severable.

3           Section 8. This act shall take effect upon becoming a  
4 law.

5  
6                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7                   COMMITTEE SUBSTITUTE FOR  
8                   CS/SB 528,530 & 858

9 The committee substitute for committee substitute (CS) extends  
10 the deadline by which motor fuel terminal facilities,  
11 wholesalers and motor fuel retail outlets must be capable of  
12 operating on an alternate generated power source from December  
13 31, 2006, to June 1, 2007. It changes the requirement that  
14 each entity owning 5 or more retail fuel outlets within a  
15 single county must maintain at least one portable generator  
16 for every 5 outlets owned to require instead that there be one  
17 portable generator for every 10 outlets. If any entity owns 6  
18 outlets in addition to the first 10, or a multiple of 10, one  
19 additional portable generator is required. The CS revises the  
20 language that required the portable generators to be kept  
21 within the county. It allows an entity to store the required  
22 generators anywhere in the state or out-of-state if located  
23 within 250 miles of FLorida.

24 The CS amends the language providing for agreements on the  
25 provisions of generators between entities owning outlets in  
26 different domestic security regions, so that it affects  
27 entities owning 10 or more motor fuel retail outlets in a  
28 region rather than 5 within a county. This CS also clarifies  
29 that the state preemption on alternative power source  
30 capabilities and equipment applies to motor fuel retail  
31 terminal facilities, motor fuel wholesalers, and motor fuel  
32 retail sales outlets.