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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/27/2008	.	
	.	
	.	

1 The Committee on Communications and Public Utilities (Bennett)
2 recommended the following **amendment**:

3
4 **Senate Amendment (with title amendment)**

5 Delete lines 696 through 974
6 and insert:

7 Section 7. Paragraph (ccc) of subsection (7) of section
8 212.08, Florida Statutes, is amended to read:

9 212.08 Sales, rental, use, consumption, distribution, and
10 storage tax; specified exemptions.--The sale at retail, the
11 rental, the use, the consumption, the distribution, and the
12 storage to be used or consumed in this state of the following are
13 hereby specifically exempt from the tax imposed by this chapter.

14 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
15 entity by this chapter do not inure to any transaction that is
16 otherwise taxable under this chapter when payment is made by a
17 representative or employee of the entity by any means, including,



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18 but not limited to, cash, check, or credit card, even when that
19 representative or employee is subsequently reimbursed by the
20 entity. In addition, exemptions provided to any entity by this
21 subsection do not inure to any transaction that is otherwise
22 taxable under this chapter unless the entity has obtained a sales
23 tax exemption certificate from the department or the entity
24 obtains or provides other documentation as required by the
25 department. Eligible purchases or leases made with such a
26 certificate must be in strict compliance with this subsection and
27 departmental rules, and any person who makes an exempt purchase
28 with a certificate that is not in strict compliance with this
29 subsection and the rules is liable for and shall pay the tax. The
30 department may adopt rules to administer this subsection.

31 (ccc) Equipment, machinery, and other materials for
32 renewable energy technologies.--

33 1. As used in this paragraph, the term:

34 a. "Biodiesel" means the mono-alkyl esters of long-chain
35 fatty acids derived from plant or animal matter for use as a
36 source of energy and meeting the specifications for biodiesel and
37 biodiesel blends with petroleum products as adopted by the
38 Department of Agriculture and Consumer Services. Biodiesel may
39 refer to biodiesel blends designated BXX, where XX represents the
40 volume percentage of biodiesel fuel in the blend.

41 b. "Ethanol" means an ~~nominally~~ anhydrous denatured alcohol
42 produced by the conversion of carbohydrates ~~fermentation of plant~~
43 ~~sugars~~ meeting the specifications for fuel ethanol and fuel
44 ethanol blends with petroleum products as adopted by the
45 Department of Agriculture and Consumer Services. Ethanol may
46 refer to fuel ethanol blends designated EXX, where XX represents
47 the volume percentage of fuel ethanol in the blend.



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48 c. "Hydrogen fuel cells" means equipment using hydrogen or
49 a hydrogen-rich fuel in an electrochemical process to generate
50 energy, electricity, or the transfer of heat.

51 d. "Wind energy" or "wind turbines" means rotary mechanical
52 equipment that uses wind to produce at least 10kW of electrical
53 energy.

54 2. The sale or use of the following in the state is exempt
55 from the tax imposed by this chapter:

56 a. Hydrogen-powered vehicles, materials incorporated into
57 hydrogen-powered vehicles, and hydrogen-fueling stations, up to a
58 limit of \$2 million in tax each state fiscal year for all
59 taxpayers.

60 b. Commercial stationary hydrogen fuel cells, up to a limit
61 of \$1 million in tax each state fiscal year for all taxpayers.

62 c. Materials used in the distribution of biodiesel (B10-
63 B100) and ethanol (E10-E100), including fueling infrastructure,
64 transportation, and storage, up to a limit of \$1 million in tax
65 each state fiscal year for all taxpayers. Gasoline fueling
66 station pump retrofits for ethanol (E10-E100) distribution
67 qualify for the exemption provided in this sub-subparagraph.

68 d. Wind turbines, up to a limit of \$1 million in tax each
69 state fiscal year for all taxpayers.

70 3. The Florida Energy and Climate Commission ~~Department of~~
71 ~~Environmental Protection~~ shall provide to the department a list
72 of items eligible for the exemption provided in this paragraph.

73 4.a. The exemption provided in this paragraph shall be
74 available to a purchaser only through a refund of previously paid
75 taxes. Only the initial purchase of an eligible item from the
76 manufacturer is subject to refund. A purchaser who has received a
77 refund on an eligible item must notify any subsequent purchaser



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78 of the item that the item is no longer eligible for a refund of
79 tax paid. This notification must be provided to the subsequent
80 purchaser on the sales invoice or other proof of purchase.

81 b. To be eligible to receive the exemption provided in this
82 paragraph, a purchaser shall file an application with the
83 commission ~~Department of Environmental Protection~~. The
84 application shall be developed by the commission ~~Department of~~
85 ~~Environmental Protection~~, in consultation with the department,
86 and shall require:

87 (I) The name and address of the person claiming the refund.

88 (II) A specific description of the purchase for which a
89 refund is sought, including, when applicable, a serial number or
90 other permanent identification number.

91 (III) The sales invoice or other proof of purchase showing
92 the amount of sales tax paid, the date of purchase, and the name
93 and address of the sales tax dealer from whom the property was
94 purchased.

95 (IV) A sworn statement that the information provided is
96 accurate and that the requirements of this paragraph have been
97 met.

98 c. Within 30 days after receipt of an application, the
99 commission ~~Department of Environmental Protection~~ shall review
100 the application and shall notify the applicant of any
101 deficiencies. Upon receipt of a completed application, the
102 commission ~~Department of Environmental Protection~~ shall evaluate
103 the application for exemption and issue a written certification
104 that the applicant is eligible for a refund or issue a written
105 denial of such certification within 60 days after receipt of the
106 application. The commission ~~Department of Environmental~~



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107 ~~Protection~~ shall provide the department with a copy of each
108 certification issued upon approval of an application.

109 d. Each certified applicant shall be responsible for
110 forwarding a certified copy of the application and copies of all
111 required documentation to the department within 6 months after
112 certification by the commission ~~Department of Environmental~~
113 ~~Protection~~.

114 e. ~~The provisions of s. 212.095 do not apply to any refund~~
115 ~~application made pursuant to this paragraph.~~ A refund approved
116 pursuant to this paragraph shall be made within 30 days after
117 formal approval by the department.

118 f. The commission may adopt the form for the application
119 for a certificate, requirements for the content and format of
120 information submitted to the commission in support of the
121 application, other procedural requirements, and criteria by which
122 the application will be determined by rule. The department may
123 adopt all other rules pursuant to ss. 120.536(1) and 120.54 to
124 administer this paragraph, including rules establishing
125 additional forms and procedures for claiming this exemption.

126 g. The commission ~~Department of Environmental Protection~~
127 shall be responsible for ensuring that the total amounts of the
128 exemptions authorized do not exceed the limits as specified in
129 subparagraph 2.

130 5. The commission ~~Department of Environmental Protection~~
131 shall determine and publish on a regular basis the amount of
132 sales tax funds remaining in each fiscal year.

133 6. This paragraph expires July 1, 2010, except as it
134 relates to wind turbines. The provisions of this paragraph
135 relating to wind turbines expire July 1, 2012.



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136 Section 8. Subsection (1) of section 220.192, Florida
137 Statutes, is amended, present subsection (6) of that section is
138 renumbered as subsection (7) and amended, present subsection (7)
139 of that section is renumbered as subsection (8), and a new
140 subsection (6) is added to that section, to read:

141 220.192 Renewable energy technologies investment tax
142 credit.--

143 (1) DEFINITIONS.--For purposes of this section, the term:

144 (a) "Biodiesel" means biodiesel as defined in s.

145 212.08(7)(ccc).

146 (b) "Corporation" includes a general partnership, limited
147 partnership, limited liability company, unincorporated business,
148 or other business entity, including entities taxed as
149 partnerships for federal income tax purposes.

150 (c) ~~(b)~~ "Eligible costs" means:

151 1. Seventy-five percent of all capital costs, operation and
152 maintenance costs, and research and development costs incurred
153 between July 1, 2006, and June 30, 2010, up to a limit of \$3
154 million per state fiscal year for all taxpayers, in connection
155 with an investment in hydrogen-powered vehicles and hydrogen
156 vehicle fueling stations in the state, including, but not limited
157 to, the costs of constructing, installing, and equipping such
158 technologies in the state.

159 2. Seventy-five percent of all capital costs, operation and
160 maintenance costs, and research and development costs incurred
161 between July 1, 2006, and June 30, 2010, up to a limit of \$1.5
162 million per state fiscal year for all taxpayers, and limited to a
163 maximum of \$12,000 per fuel cell, in connection with an
164 investment in commercial stationary hydrogen fuel cells in the



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165 state, including, but not limited to, the costs of constructing,
166 installing, and equipping such technologies in the state.

167 3. Seventy-five percent of all capital costs, operation and
168 maintenance costs, and research and development costs incurred
169 between July 1, 2006, and June 30, 2010, up to a limit of \$14
170 ~~\$6.5~~ million per state fiscal year for all taxpayers, in
171 connection with an investment in the production, storage, and
172 distribution of biodiesel (B10-B100) and ethanol (E10-E100) in
173 the state, including the costs of constructing, installing, and
174 equipping such technologies in the state. Gasoline fueling
175 station pump retrofits for ethanol (E10-E100) distribution
176 qualify as an eligible cost under this subparagraph.

177 4. Seventy-five percent of all capital costs, operation and
178 maintenance costs, and research and development costs incurred
179 between July 1, 2008, and June 30, 2012, up to a limit of \$9
180 million per state fiscal year for all taxpayers, in connection
181 with an investment in the production of wind energy.

182 (d) ~~(e)~~ "Ethanol" means ethanol as defined in s.
183 212.08(7) (ccc).

184 (e) ~~(d)~~ "Hydrogen fuel cell" means hydrogen fuel cell as
185 defined in s. 212.08(7) (ccc).

186 (f) "Wind energy" or "wind turbines" has the same meaning
187 as in s. 212.08(7) (ccc).

188 (g) "Taxpayer" includes corporations as defined in ss.
189 220.03 or 220.192.

190 (6) TRANSFERABILITY OF CREDIT.--

191 (a) For tax years beginning on or after January 1, 2009,
192 any corporation or subsequent transferee allowed a tax credit
193 under this section may transfer the credit, in whole or in part,
194 to any taxpayer by written agreement without transferring any



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195 ownership interest in the property generating the credit or any
196 interest in the entity owning such property. The transferee is
197 entitled to apply the credits against the tax with the same
198 effect as if the transferee had incurred the eligible costs.

199 (b) To perfect the transfer, the transferor shall provide
200 the department with a written transfer statement notifying the
201 department of the transferor's intent to transfer the tax credits
202 to the transferee; the date the transfer is effective; the
203 transferee's name, address, and federal taxpayer identification
204 number; the tax period; and the amount of tax credits to be
205 transferred. The department shall, upon receipt of a transfer
206 statement conforming to the requirements of this paragraph,
207 provide the transferee with a certificate reflecting the tax
208 credit amounts transferred. A copy of the certificate must be
209 attached to each tax return for which the transferee seeks to
210 apply such tax credits.

211 (c) A tax credit authorized under this section which is
212 held by a corporation and not transferred under this subsection
213 shall be passed through to the taxpayers designated as partners,
214 members, or owners, respectively, in the manner agreed to by such
215 persons whether or not such partners, members, or owners are
216 allocated or allowed any portion of the federal energy tax credit
217 for the eligible costs.

218 (7)(6)- RULES.--The Department of Revenue shall have the
219 authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to
220 administer this section, including rules relating to:

221 (a) The forms required to claim a tax credit under this
222 section, the requirements and basis for establishing an
223 entitlement to a credit, and the examination and audit procedures
224 required to administer this section.



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225 (b) The implementation and administration of the provisions
226 allowing a transfer of a tax credit, including rules prescribing
227 forms, reporting requirements, and specific procedures,
228 guidelines, and requirements necessary to transfer a tax credit.

229 Section 9. Paragraphs (f) and (g) are added to subsection
230 (2) and paragraphs (f) and (g) of subsection (3) of section
231 220.193, Florida Statutes, are amended, and paragraphs (j) and
232 (k) are added to subsection (3) of that subsection, to read:

233 220.193 Florida renewable energy production credit.--

234 (2) As used in this section, the term:

235 (f) "Sale" or "sold" includes the use of electricity by the
236 producer of such electricity which decreases the amount of
237 electricity that the producer would otherwise have to purchase.

238 (g) "Taxpayer" includes a general partnership, limited
239 partnership, limited liability company, trust, or other
240 artificial entity in which a corporation, as defined in s.
241 220.03(1)(e), owns an interest and is taxed as a partnership or
242 is disregarded as a separate entity from the corporation under
243 chapter 220.

244 (3) An annual credit against the tax imposed by this
245 section shall be allowed to a taxpayer, based on the taxpayer's
246 production and sale of electricity from a new or expanded Florida
247 renewable energy facility. For a new facility, the credit shall
248 be based on the taxpayer's sale of the facility's entire
249 electrical production. For an expanded facility, the credit shall
250 be based on the increases in the facility's electrical production
251 that are achieved after May 1, 2006.

252 (f)1. Tax credits that may be available under this section
253 to an entity eligible under this section may be transferred after



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254 a merger or acquisition to the surviving or acquiring entity and
255 used in the same manner with the same limitations.

256 2. The entity or its surviving or acquiring entity as
257 described in subparagraph 1. may transfer any unused credit in
258 whole or in units of no less than 25 percent of the remaining
259 credit. The entity acquiring such credit may use it in the same
260 manner and with the same limitations under this section. Such
261 transferred credits may not be transferred again although they
262 may succeed to a surviving or acquiring entity subject to the
263 same conditions and limitations as described in this section.

264 3. In the event the credit provided for under this section
265 is reduced as a result of an examination or audit by the
266 department, such tax deficiency shall be recovered from the first
267 entity or the surviving or acquiring entity to have claimed such
268 credit up to the amount of credit taken. Any subsequent
269 deficiencies shall be assessed against any entity acquiring and
270 claiming such credit, or in the case of multiple succeeding
271 entities in the order of credit succession.

272 4. It is the intent of the Legislature that this paragraph
273 is remedial in nature and applies retroactively to the effective
274 date of the law establishing the credit.

275 (g) Notwithstanding any other provision of this section,
276 credits for the production and sale of electricity from a new or
277 expanded Florida renewable energy facility may be earned between
278 January 1, 2007 and June 30, 2010. The combined total amount of
279 tax credits which may be granted for all taxpayers under this
280 section is limited to \$5 million per state fiscal year. It is the
281 intent of the Legislature that this paragraph is remedial in
282 nature and applies retroactively to the effective date of the law
283 establishing the credit.



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284 (j) When an entity treated as a partnership or a
285 disregarded entity under this chapter produces and sells
286 electricity from a new or expanded renewable energy facility, the
287 tax credit earned by such entity shall pass through in the same
288 manner as items of income and expense pass through for federal
289 income tax purposes. It is the intent of the Legislature that
290 this paragraph is remedial in nature and applies retroactively to
291 the effective date of the law establishing the credit.

292 (k) A taxpayer's use of the tax credit granted pursuant to
293 this section does not reduce the amount of any credit available
294 to such taxpayer under s. 220.186. It is the intent of the
295 Legislature that this paragraph is remedial in nature and applies
296 retroactively to the effective date of the law establishing the
297 credit.

298
299 ===== T I T L E A M E N D M E N T =====

300 And the title is amended as follows:

301 Delete lines 41 through 58

302 and insert:

303 technologies; requiring that the Florida Energy and
304 Climate Commission rather than the Department of
305 Environmental Protection implement certain
306 responsibilities concerning eligibility and application
307 for the tax exemption; requiring the commission to adopt,
308 by rule, an application form, including the required
309 content and documentation to support the application, for
310 the taxpayer to use in claiming the tax exemption;
311 amending s. 220.192, F.S.; defining terms relating to a
312 tax credit; providing that 75 percent of all capital,
313 operation, and maintenance costs, and research and



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314 development costs incurred between specified dates, up to
315 a specified limit, may be credited against taxes owed in
316 connection with an investment in the production of wind
317 energy; allowing the tax credit to be transferred for a
318 specified period; providing procedures and requirements;
319 authorizing the Department of Revenue to adopt rules;
320 amending s. 220.193, F.S.; defining the term "sale" or
321 sold"; defining the term "taxpayer"; providing legislative
322 intent concerning retroactive application of certain
323 renewable energy production tax credits; providing for
324 passing of a renewable energy production tax credit under
325 certain conditions;