

**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 Agriculture Committee

BILL: CS/SB 310

INTRODUCER: Agriculture Committee and Senator Constantine

SUBJECT: Biomass Energy Production

DATE: March 6, 2008                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	<b>Fav/CS</b>
2.	_____	_____	CU	_____
3.	_____	_____	EP	_____
4.	_____	_____	GA	_____
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:**

This proposed committee substitute (PCS) amends procedures for claiming the sales tax exemption for the purchase of equipment, machinery, and other materials used in renewable energy technology and it raises the annual limit on the amount of refunds from \$1 million to \$2 million. It provides for the transfer of the investment tax credit for renewable energy technologies investments. It amends provisions regarding Florida renewable energy production credits. The PCS renews the “Farm-To-Fuel Grants” program which provides matching grants for bioenergy projects. It establishes incentive programs for biofuel retail sales and production of biofuels from biomass produced in the state.

This PCS substantially amends the following sections of the Florida Statutes: 212.08(7), 220.192, and 220.193.

This PCS creates the following sections of the Florida Statutes: 570.956, 570.958, and 570.959.

**II. Present Situation:**

In 2006, The Florida Legislature created the Florida Energy Commission (FEC) which was charged with the duty to develop recommendations for legislation to establish a state energy

policy. The FEC's initial report was filed on December 31, 2007. Among the findings included in its initial report<sup>1</sup>, the FEC concluded that fuel diversity and renewable energy must form the foundation of the state's energy policy. It also found that, within the State of Florida, there are limited financial incentives to encourage the development of renewable energy sources.

Since 2006, there has been a sales tax exemption for materials used in the manufacturing, blending, fueling, and distribution of biodiesel and ethanol fuels which has a cap of \$1 million dollars per year. The FEC recommended that the Legislature increase the cap to \$2 million<sup>2</sup>.

It was reported that renewable energy technology investments may not attract investors because there are a relatively small number of Florida-based companies with a tax liability status that would enable them to directly benefit from tax credits. The FEC recommended that the Legislature revise the Renewable Energy Technologies Investment Tax Credit to enable the transfer of tax credits<sup>3</sup> in order to stimulate interest in the program.

Solar, wind, biomass burning, and other methods can be used to create distributed generations systems that give consumers the capability of generating electricity on site and improve fuel use efficiency. There is concern that the savings or potential earnings are too small to justify the initial investment. The FEC recommended that the Legislature amend the Renewable Energy Production Tax Credit to include energy used by the producer<sup>4</sup>.

In 2006, The Florida Legislature appropriated \$15 million to the Department of Environmental Protection (DEP) to fund the Renewable Energy Technologies Grants program authorized in s. 377.804, F.S., contingent upon \$5 million being used to fund bioenergy-related projects with the coordination of the Department of Agriculture and Consumer Services (DACS). In 2007, the Florida Legislature transferred a portion of this grant program from DEP to DACS by creating s. 570.957, F.S., with enactment into law of s. 47 of ch. 2007-73, L.O.F. This act established the Farm-To-Fuels Grants Program within DACS and appropriated \$25 million for this purpose. It defined "bioenergy", "department", "person", and "renewable energy" as used in the act. The purpose of the program is to provide matching grants for bioenergy projects relating to the production of bioenergy or feedstocks used in bioenergy production. The act specified who is eligible to receive grants. It also provided authority for the department to adopt rules to administer the program and it set forth factors that may be considered in awarding grants. In evaluating and awarding grants, the act requires the department to consult with DEP, persons having expertise in renewable energy technologies, and the Office of Tourism, Trade, and Economic Development. This act is set to expire on July 1, 2008. The FEC found that the Farm-To-Fuel Grants Program was very successful and it recommended that the Legislature continue, and fund, the program<sup>5</sup>.

With regard to biofuels, the FEC found that the Federal government provided an excise tax exemption for ethanol blended into gasoline and an excise tax credit for biodiesel and biodiesel

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<sup>1</sup> 2007 Florida Energy Commission Report to the Legislature, <http://www.floridaenergycommission.gov/>, December 31, 2007, p. 6 and p. 77.

<sup>2</sup> *Id.*, p. 88

<sup>3</sup> *Id.*, p. 86

<sup>4</sup> *Id.*, p. 87

<sup>5</sup> *Id.*, p. 84

blends blended into petroleum diesel but that there were no federal or State of Florida incentives for producers or retailers of ethanol and/or biodiesel (biofuels). In 2007, the Legislature created a Biofuel Retail Sales Incentive Program to encourage the retail sale of biofuels and a Florida Biofuel Production Incentive Program to encourage the development and expansion of facilities that produce biofuels. The bill which enacted these two incentive programs was part of a larger energy bill which was vetoed by the Governor because he felt it did not go far enough toward forming a unified approach to a state energy policy. The FEC recommended that the Legislature establish, and fund, the Biofuel Retail Sales Incentive Program and the Florida Biofuel Production Incentive Program<sup>6</sup>.

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.08(7), F.S., which deals with a sales tax exemption related to equipment, machinery, and other materials for renewable energy technologies as follows:

- Revises the definition of “Ethanol” to mean anhydrous denatured alcohol produced by the conversion of carbohydrates as opposed to produced by fermentation of plant sugars.
- Increases from \$1 million per year to \$2 million the limit on sales tax refunds for materials used in the distribution of biodiesel and ethanol.
- Provides that the exemption, which is available through a refund process, shall be available only to the end user.
- Requires notification to subsequent purchasers that the item being purchased is no longer eligible for a refund of paid taxes in order to limit the exemption to only one purchase.

**Section 2** amends s. 220.192, F.S., which deals with renewable energy technologies investment tax credit as follows:

- Allows the tax credit to be transferred in whole or part without an accompanying transfer of ownership interest in the property generating the credit.
- Establishes a procedure for transferor to complete the transfer by notice to the Department of Revenue (DOR) which shall then issue a certificate reflecting the tax credit transferred.
- Requires a corporation entitled to tax credits to pass those through to partners, members, or owners, if not otherwise transferred.
- Gives DOR the authority to adopt rules to implement and administer the transfer of tax credits.
- Gives DOR the authority to adopt rules to implement and administer the provisions allowing a pass through of tax credits.

**Section 3** amends 220.193, F.S., which deals with Florida renewable energy production credit as follows:

- Defines term “sale” or “sold” to include the use of electricity by a producer when such use decreases the amount that would otherwise be purchased.
- Provides that a taxpayer’s use of a renewable energy production credit will not reduce any alternative minimum tax credit taxpayer is entitled to under s. 220.186, F.S.

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<sup>6</sup> *Id.*, p. 85

**Section 4** creates s. 570.956, F.S., to reenact the provisions of the expiring Farm-To-Fuel Grants Program contained in s. 570.957, F.S., with minor language and technical changes except as follows:

- The definition for “bioenergy” has been revised.
- The definition for “renewable energy” has been deleted.
- The expiration date of July 1, 2008 has been removed.

**Section 5** creates s. 570.958, F.S. to establish the Biofuel Retail Sales Incentive Program as follows:

- Sets a goal of replacing petroleum consumption by an increasing amount each year ranging from three percent for calendar year 2009 to ten percent for calendar year 2012.
- Defines the following terms used in the PCS: “biodiesel”, “biofuel”, “diesel blended fuel”, “E85 fuel ethanol”, “E10 motor fuel”, “ethanol or fuel ethanol”, “fuel dispenser”, “renewable diesel fuel”, “retail dealer”, and “retail motor fuel site”.
- Provides for incentive payments, subject to specific appropriation, to retail dealers ranging from one cent to three cents per gallon depending on the type of biofuel sold.
- Sets forth procedures for each retail dealer to claim incentives on a calendar year basis by making an application by February 1st of the following year.
- Provides that payment of incentives will be prorated if the incentives applied for exceed the amount appropriated.
- Gives the department authority to adopt rules to administer the incentive program.

**Section 6** creates s. 570.959, F.S. to establish the Florida Biofuel Production Incentive Program as follows:

- Declares purpose is to provide incentives to encourage the development and expansion of facilities that produce biofuels from biomass produced in this state.
- Defines the following terms used in the PCS: “biodiesel”, “biofuel”, “ethanol or fuel ethanol”, and “Florida biofuel production”. Requires an applicant to register and meet the requirements in Chapter 206, Motor and Other Fuel Taxes.
- Sets forth procedures for producers to claim incentives at the rate of five cents per gallon on a calendar year basis by making an application by February 1st of the following year.
- Provides that payment of incentives will be prorated if the incentives applied for exceed the amount appropriated.
- Gives the department authority to adopt rules to administer the incentive program.

**Section 7** provides that this act shall take effect July 1, 2008.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The PCS increases the cap on the amount of the refund of sales taxes on the purchase of materials used in renewable energy technologies from \$1 million to \$2 million. The 2008 Revenue Estimating Conference has not adopted an estimate of it's impact at this time.

B. Private Sector Impact:

Purchasers of qualifying materials will benefit from being able to obtain a refund of sales taxes. Grant recipients and sellers and producers of biofuels will benefit from the grants and financial incentives if they meet the criteria and if funds are appropriated.

C. Government Sector Impact:

An Investigative Specialist II and an Administrative Assistant I will be required to administer these programs at an estimated annual recurring cost of \$108,660 and non-recurring cost of \$10,115 in the first year. This PCS does not have an appropriation for personnel cost, the grant program or the incentive programs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

PCS SB 310 is different from SB 310 in that it adds sections to the bill to amend:

- sales tax exemption provisions related to the purchase of equipment, machinery, and other materials for renewable energy technologies as well as the amount that can be refunded under this exemption.
- investment tax credit provisions related to renewable energy technologies investments.
- renewable energy production credit provisions.

**IX. Makes a technical correction;**

A. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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