

By the Committee on Agriculture; and Senator Constantine

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1 A bill to be entitled

2 An act relating to biomass energy production; amending s.
3 212.08, F.S.; revising the definition of "ethanol";
4 increasing the limit on the amount of taxes that are
5 exempt for the sale or use of materials used to distribute
6 biodiesel and ethanol; limiting the tax exemption to
7 certain end users; providing that such exemption is
8 limited to one purchase of an eligible item; amending s.
9 220.192, F.S.; providing for transfer of the renewable
10 energy technologies investment tax credit; providing
11 requirements for such transfer; requiring that the tax
12 credit be passed through to certain taxpayers; authorizing
13 the Department of Revenue to adopt rules regarding the
14 transfer and pass through of such tax credit; amending s.
15 220.193, F.S.; defining the term "sale" or "sold";
16 providing that the use of the renewable energy production
17 credit does not reduce the alternative minimum tax credit;
18 creating s. 570.956, F.S.; providing definitions;
19 continuing the Farm-to-Fuel Grants Program within the
20 Department of Agriculture and Consumer Services; providing
21 that matching grants be made available for certain
22 bioenergy projects; requiring the department to adopt
23 rules; providing certain factors for consideration in
24 awarding grants; requiring the department to consult with
25 certain agencies and persons; creating s. 570.958, F.S.;
26 creating the Biofuel Retail Sales Incentive Program;
27 providing a purpose; providing that the petroleum
28 consumption be reduced by certain percentages over a
29 specified period; providing definitions; providing an

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30 incentive payment to certain retail dealers who sell
31 biofuel after a certain date; requiring the Department of
32 Agriculture and Consumer Services to develop an
33 application form to claim the incentive; requiring that
34 the application contain certain information; requiring the
35 department to determine the amount of the incentive;
36 requiring the department to prorate the amount of
37 incentives paid to an applicant under certain
38 circumstances; authorizing the department to adopt rules;
39 creating s. 570.959, F.S.; creating the Florida Biofuel
40 Production Incentive Program within the department;
41 providing a purpose; providing definitions; requiring
42 persons engaged in biofuel production to meet certain
43 requirements to receive an economic incentive; providing
44 the criteria for distributing the incentive, subject to
45 appropriation; requiring the department to prorate the
46 amount of incentives to an applicant under certain
47 circumstances; authorizing the department to adopt rules;
48 providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Paragraph (ccc) of subsection (7) of section
53 212.08, Florida Statutes, is amended to read:

54 212.08 Sales, rental, use, consumption, distribution, and
55 storage tax; specified exemptions.--The sale at retail, the
56 rental, the use, the consumption, the distribution, and the
57 storage to be used or consumed in this state of the following are
58 hereby specifically exempt from the tax imposed by this chapter.

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59 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
60 entity by this chapter do not inure to any transaction that is
61 otherwise taxable under this chapter when payment is made by a
62 representative or employee of the entity by any means, including,
63 but not limited to, cash, check, or credit card, even when that
64 representative or employee is subsequently reimbursed by the
65 entity. In addition, exemptions provided to any entity by this
66 subsection do not inure to any transaction that is otherwise
67 taxable under this chapter unless the entity has obtained a sales
68 tax exemption certificate from the department or the entity
69 obtains or provides other documentation as required by the
70 department. Eligible purchases or leases made with such a
71 certificate must be in strict compliance with this subsection and
72 departmental rules, and any person who makes an exempt purchase
73 with a certificate that is not in strict compliance with this
74 subsection and the rules is liable for and shall pay the tax. The
75 department may adopt rules to administer this subsection.

76 (ccc) Equipment, machinery, and other materials for
77 renewable energy technologies.--

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

79 a. "Biodiesel" means the mono-alkyl esters of long-chain
80 fatty acids derived from plant or animal matter for use as a
81 source of energy and meeting the specifications for biodiesel and
82 biodiesel blends with petroleum products as adopted by the
83 Department of Agriculture and Consumer Services. Biodiesel may
84 refer to biodiesel blends designated BXX, where XX represents the
85 volume percentage of biodiesel fuel in the blend.

86 b. "Ethanol" means an ~~nominally~~ anhydrous denatured alcohol
87 produced by the conversion of carbohydrates ~~fermentation of plant~~

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88 ~~sugars~~ meeting the specifications for fuel ethanol and fuel
89 ethanol blends with petroleum products as adopted by the
90 Department of Agriculture and Consumer Services. Ethanol may
91 refer to fuel ethanol blends designated EXX, where XX represents
92 the volume percentage of fuel ethanol in the blend.

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

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

98 a. Hydrogen-powered vehicles, materials incorporated into
99 hydrogen-powered vehicles, and hydrogen-fueling stations, up to a
100 limit of \$2 million in tax each state fiscal year for all
101 taxpayers.

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

104 c. Materials used in the distribution of biodiesel (B10-
105 B100) and ethanol (E10-E100), including fueling infrastructure,
106 transportation, and storage, up to a limit of \$2 million ~~\$1~~
107 ~~million~~ in tax each state fiscal year for all taxpayers. Gasoline
108 fueling station pump retrofits for ethanol (E10-E100)
109 distribution qualify for the exemption provided in this sub-
110 subparagraph.

111 3. The Department of Environmental Protection shall provide
112 to the department a list of items eligible for the exemption
113 provided in this paragraph.

114 4. The exemption provided in this paragraph is available
115 only to the end user of the equipment, machinery, and other
116 materials.

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117 ~~5.a.4.a.~~ The exemption provided in this paragraph shall be
118 available to a purchaser only through a refund of previously paid
119 taxes. Only one purchase of an eligible item is subject to
120 refund. A purchaser who has received a refund on an eligible item
121 shall notify any subsequent purchaser of the item that such item
122 is no longer eligible for a refund of paid taxes. The purchaser
123 shall provide the notice to the subsequent purchaser on the sales
124 invoice or other proof of purchase.

125 b. To be eligible to receive the exemption provided in this
126 paragraph, a purchaser shall file an application with the
127 Department of Environmental Protection. The application shall be
128 developed by the Department of Environmental Protection, in
129 consultation with the department, and shall require:

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

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

134 (III) The sales invoice or other proof of purchase showing
135 the amount of sales tax paid, the date of purchase, and the name
136 and address of the sales tax dealer from whom the property was
137 purchased.

138 (IV) A sworn statement that the information provided is
139 accurate and that the requirements of this paragraph have been
140 met.

141 c. Within 30 days after receipt of an application, the
142 Department of Environmental Protection shall review the
143 application and shall notify the applicant of any deficiencies.
144 Upon receipt of a completed application, the Department of
145 Environmental Protection shall evaluate the application for

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146 exemption and issue a written certification that the applicant is
147 eligible for a refund or issue a written denial of such
148 certification within 60 days after receipt of the application.
149 The Department of Environmental Protection shall provide the
150 department with a copy of each certification issued upon approval
151 of an application.

152 d. Each certified applicant shall be responsible for
153 forwarding a certified copy of the application and copies of all
154 required documentation to the department within 6 months after
155 certification by the Department of Environmental Protection.

156 e. The provisions of s. 212.095 do not apply to any refund
157 application made pursuant to this paragraph. A refund approved
158 pursuant to this paragraph shall be made within 30 days after
159 formal approval by the department.

160 f. The department may adopt all rules pursuant to ss.
161 120.536(1) and 120.54 to administer this paragraph, including
162 rules establishing forms and procedures for claiming this
163 exemption.

164 g. The Department of Environmental Protection shall be
165 responsible for ensuring that the total amounts of the exemptions
166 authorized do not exceed the limits as specified in subparagraph
167 2.

168 ~~6.5.~~ The Department of Environmental Protection shall
169 determine and publish on a regular basis the amount of sales tax
170 funds remaining in each fiscal year.

171 ~~7.6.~~ This paragraph expires July 1, 2010.

172 Section 2. Subsection (7) of section 220.192, Florida
173 Statutes, is amended, present subsections (6) and (7) of that
174 section are redesignated as subsections (7) and (8),

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175 respectively, and a new subsection (6) is added to that section,
176 to read:

177 220.192 Renewable energy technologies investment tax
178 credit.--

179 (6) TRANSFERABILITY OF CREDIT.--

180 (a) Any corporation and any subsequent transferee who
181 receives the tax credit may transfer such tax credit, in whole or
182 in part, to any taxpayer by written agreement without
183 transferring any ownership interest in the property generating
184 the tax credit or any interest in the entity that owns the
185 property. Transferees are entitled to apply the credit against
186 the tax, which has the same effect as if the transferee had
187 incurred the eligible costs.

188 (b) To complete the transfer, the transferor shall send a
189 written statement to the Department of Revenue as notice of the
190 assignor's intent to transfer the tax credit to the assignee. The
191 written statement must include the date the transfer is
192 effective; the assignee's name, address, federal taxpayer
193 identification number and tax period; and the amount of tax
194 credit to be transferred. The Department of Revenue shall issue,
195 upon receipt of such statement, a certificate to the assignee
196 reflecting the tax credit amounts transferred. The assignee shall
197 attach a copy of the certificate to each tax return in which the
198 tax credit is used.

199 (c) If a tax credit is derived from an entity that is
200 treated as a corporation pursuant to this section but is not
201 transferred by such entity to a taxpayer pursuant to this
202 subsection, the tax credit must be passed through to a taxpayer
203 designated as a partner, member, or owner, respectively, in a

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204 manner agreed to by such person, regardless of whether any
205 portion of the federal energy tax credit relating to eligible
206 costs is allocated to such person.

207 (7)~~(6)~~ RULES.--The Department of Revenue shall have the
208 authority to adopt rules relating to:

209 (a) The forms required to claim a tax credit under this
210 section, the requirements and basis for establishing an
211 entitlement to a credit, and the examination and audit procedures
212 required to administer this section.

213 (b) The implementation and administration of a transfer of
214 a tax credit, including the forms, reporting requirements, and
215 the specific procedures, guidelines, and requirements necessary
216 to transfer the tax credit.

217 (c) The implementation and administration of a pass through
218 of a tax credit to an owner, member, or partner, including the
219 forms, reporting requirements, and the specific procedures,
220 guidelines, and requirements necessary for the pass through of
221 credit.

222 Section 3. Paragraph (f) is added to subsection (2) of
223 section 220.193, Florida Statutes, and paragraph (j) is added to
224 subsection (3) of that section, to read:

225 220.193 Florida renewable energy production credit.--

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

227 (f) "Sale" or "sold" means the use of electricity by the
228 producer of such electricity which decreases the amount of
229 electricity that the producer would otherwise have to purchase.

230 (3) An annual credit against the tax imposed by this
231 section shall be allowed to a taxpayer, based on the taxpayer's
232 production and sale of electricity from a new or expanded Florida

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233 renewable energy facility. For a new facility, the credit shall
234 be based on the taxpayer's sale of the facility's entire
235 electrical production. For an expanded facility, the credit shall
236 be based on the increases in the facility's electrical production
237 that are achieved after May 1, 2006.

238 (j) A taxpayer's use of the credit granted pursuant to this
239 section does not reduce the amount of any credit available to
240 such taxpayer under s. 220.186.

241 Section 4. Section 570.956, Florida Statutes, is created to
242 read:

243 570.956 Farm-to-Fuel Grants Program.--

244 (1) As used in this section, the term:

245 (a) "Bioenergy" means energy produced from organic matter
246 which is available on a renewable or recurring basis, including
247 crops and trees, agricultural food and feed crop residues, wood
248 and wood wastes and residues, aquatic plants, grasses, animal
249 wastes and residues, and other organic waste materials.

250 (b) "Department" means the Department of Agriculture and
251 Consumer Services.

252 (c) "Person" means an individual, partnership, joint
253 venture, private or public corporation, association, firm, public
254 service company, or any other public or private entity.

255 (2) The Farm-to-Fuel Grants Program is established within
256 the department to provide matching grants for bioenergy projects.
257 Such grants may be made for research, demonstration, or
258 commercialization projects relating to the production of
259 bioenergy or feedstocks used in bioenergy production.

260 (a) Matching grants for bioenergy demonstration,
261 commercialization, research, and development projects may be made

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262 to any of the following:

- 263 1. Municipalities and county governments.
- 264 2. Established for-profit companies licensed to do business
265 in the state.
- 266 3. Universities and colleges in the state.
- 267 4. Utilities located and operating within the state.
- 268 5. Not-for-profit organizations.
- 269 6. Other qualified persons, as determined by the
270 department.

271 (b) The department may adopt rules to provide for
272 allocation of grant funds by project type, application
273 requirements, ranking of applications, and awarding of grants
274 under this program.

275 (c) Factors for consideration in awarding grants may
276 include, but are not limited to, the degree to which:

277 1. The project produces bioenergy from Florida-grown crops
278 or biomass.

279 2. The project demonstrates efficient use of energy and
280 material resources.

281 3. Matching funds and in-kind contributions from an
282 applicant are available.

283 4. The project has a reasonable assurance of enhancing the
284 value of agricultural products or will expand agribusiness in the
285 state.

286 5. Preliminary market and feasibility research has been
287 conducted by the applicant or others and shows there is a
288 reasonable assurance of a potential market.

289 6. The project stimulates in-state capital investment and
290 economic development in metropolitan and rural areas, including

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291 the creation of jobs and the future development of a commercial
292 market for bioenergy.

293 7. The project incorporates an innovative new technology or
294 an innovative application of an existing technology.

295 (d) In evaluating and awarding grants under this section,
296 the department shall consult with and solicit input from the
297 Department of Environmental Protection.

298 (e) In determining the technical feasibility of grant
299 applications, the department shall coordinate and actively
300 consult with persons having expertise in renewable energy
301 technologies.

302 (f) In determining the economic feasibility of bioenergy
303 grant applications, the department shall consult with the Office
304 of Tourism, Trade, and Economic Development.

305 Section 5. Section 570.958, Florida Statutes, is created to
306 read:

307 570.958 Biofuel Retail Sales Incentive Program.--

308 (1) The purpose of this section is to encourage the retail
309 sale of biofuels and replace petroleum consumption in the state
310 by the following percentages over the specified periods:

311 (a) Three percent from January 1, 2009, through December
312 31, 2009.

313 (b) Five percent from January 1, 2010, through December 31,
314 2010.

315 (c) Seven percent from January 1, 2011, through December
316 31, 2011.

317 (d) Ten percent from January 1, 2012, through December 31,
318 2012.

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

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320 (a) "Biodiesel" means the mono-alkyl esters of long-chain
321 fatty acids derived from plant or animal matter for use as a
322 source of energy and meeting the specifications for biodiesel and
323 biodiesel blended with petroleum products adopted by the
324 department.

325 (b) "Biofuel" means E85 fuel ethanol, E10 motor fuel,
326 biodiesel, and diesel blended fuel.

327 (c) "Diesel blended fuel" means a fuel mixture containing
328 10 percent or more biodiesel or renewable diesel fuel with the
329 balance comprised of diesel fuel and meeting the specifications
330 for diesel blends as adopted by the department.

331 (d) "E85 fuel ethanol" means ethanol blended with gasoline
332 and formulated with a nominal percentage of 85 percent ethanol by
333 volume and meeting the applicable fuel quality specifications as
334 adopted by the department.

335 (e) "E10 motor fuel" means a motor fuel blend consisting of
336 nominal percentages of 90 percent gasoline by volume and 10
337 percent ethanol by volume and meeting the fuel quality
338 specifications for gasoline as adopted by the department.

339 (f) "Ethanol or fuel ethanol" means an anhydrous denatured
340 alcohol produced by the conversion of carbohydrates and meeting
341 the specifications for fuel ethanol as adopted by the department.

342 (g) "Fuel dispenser" means a pump, meter, or similar device
343 used to measure and deliver motor fuel or diesel fuel on a retail
344 basis.

345 (h) "Renewable diesel fuel" means a fuel that meets the
346 registration requirements for fuels and fuel additives
347 established by the Environmental Protection Agency in the Clean
348 Air Act; is not a mono-alkyl ester; is intended for use in

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349 engines that are designed to run on conventional petroleum-
350 derived diesel fuel; is derived from nonpetroleum renewable
351 resources, including, but not limited to, vegetable oils, animal
352 wastes, including fats and wastes materials from poultry and
353 other animals, or municipal solid wastes, sludges, and oils
354 derived from wastewater and the treatment of wastewater; and
355 meets the specifications for diesel fuel as adopted by the
356 department.

357 (i) "Retail dealer" means a person who is engaged in the
358 business of selling fuel at retail at posted retail prices.

359 (j) "Retail motor fuel site" means a geographic location in
360 this state where a retail dealer sells or offers for sale motor
361 fuel, diesel fuel, or biofuel to the general public.

362 (3)(a) Subject to specific appropriation, a retail dealer
363 who sells biofuel through fuel dispensers at retail motor fuel
364 sites is entitled to an incentive payment of:

365 1. One cent for each gallon of E10 motor fuel sold through
366 a fuel dispenser.

367 2. Five cents for each gallon of E85 fuel ethanol sold
368 through a fuel dispenser.

369 3. One cent for each gallon of diesel blended fuel sold
370 through a fuel dispenser.

371 4. Three cents for each gallon of biodiesel sold through a
372 fuel dispenser.

373 (b) The incentive may be claimed for biofuel sold on or
374 after January 1, 2009. Beginning in 2010, each applicant who
375 claims an incentive under this section must first apply to the
376 department by February 1 of each year for an allocation of the
377 available incentive for the preceding calendar year. The

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378 department shall develop an application form. The application
379 form shall, at a minimum, require a sworn affidavit from each
380 retail dealer certifying:

381 1. The name and principal address of the retail dealer.

382 2. The address of the retail dealer's retail motor fuel
383 sites from which it sold biofuels during the preceding calendar
384 year.

385 3. The total gallons of E10 ethanol sold through fuel
386 dispensers.

387 4. The total gallons of E85 ethanol sold through fuel
388 dispensers.

389 5. The total gallons of diesel blended fuel sold through
390 fuel dispensers.

391 6. The total gallons of biodiesel sold through fuel
392 dispensers.

393 7. Any other information the department considers is
394 necessary to adequately ensure that the incentive allowed under
395 this section is made only to qualified retail dealers in the
396 state.

397 (c) The department shall determine the amount of the
398 incentive allowed under this section.

399 (4) If the amount of incentives applied for each year
400 exceeds the amount appropriated, the department shall pay to each
401 applicant a prorated amount based on the gallonage of biofuel
402 sold and dispensed by each applicant who is eligible for the
403 incentive under this section.

404 (5) The department may adopt rules pursuant to ss.
405 120.536(1) and 120.54 to administer this section, including rules
406 prescribing forms, the documentation needed to substantiate a

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407 claim for the incentive, and the specific procedures and
408 guidelines for claiming the incentive.

409 Section 6. Section 570.959, Florida Statutes, is created to
410 read:

411 570.959 Florida Biofuel Production Incentive Program.--

412 (1) The purpose of this section is to provide economic
413 incentives that encourage the development and expansion of
414 facilities that produce biofuels in this state from crops,
415 agricultural waste and residues, and other biomass produced in
416 this state.

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

418 (a) "Biodiesel" means the mono-alkyl esters of long-chain
419 fatty acids derived from plant or animal matter for use as a
420 source of energy and meeting the specifications for biodiesel and
421 biodiesel blended with petroleum products as adopted by the
422 department.

423 (b) "Biofuel" means ethanol or biodiesel.

424 (c) "Ethanol" or "fuel ethanol" means an anhydrous
425 denatured alcohol produced by the conversion of carbohydrates and
426 meeting the specifications for fuel ethanol adopted by the
427 department.

428 (d) "Florida biofuel production" means production of
429 biofuel in this state from crops, agricultural waste and
430 residues, and other biomass produced in this state.

431 (3) In order to be eligible for the incentive provided in
432 this section, a person engaged in Florida biofuel production must
433 have registered and have met the requirements in chapter 206.

434 (4) An incentive, subject to appropriation, shall be paid
435 to a producer based on Florida biofuel production as follows:

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436 (a) The incentive shall be 5 cents for each gallon of
437 unblended Florida biofuel produced, exclusive of denaturant,
438 during a given calendar year and sold to an unrelated blender of
439 biofuel.

440 (b) The incentive may be earned for production on or after
441 January 1, 2009. Beginning in 2010, each producer who claims an
442 incentive under this section must first apply to the department
443 by February 1 of each year for an allocation of available
444 incentives. The department shall develop an application form
445 that, at a minimum, requires a sworn affidavit from each producer
446 certifying the production that forms the basis of the application
447 and certifying that all information in the application is true
448 and correct.

449 (c) The department shall determine whether or not such
450 production is eligible for the incentive under this section.

451 (d) If the amount of incentives applied for each year
452 exceeds the amount appropriated, the department shall pay to each
453 applicant a prorated amount based on the percentage of biofuel
454 produced that is eligible for the incentive under this section.

455 (5) The department may adopt rules pursuant to ss.
456 120.536(1) and 120.54 to administer this section, including rules
457 prescribing forms, the documentation needed to substantiate a
458 claim for the incentive, and the specific procedures and
459 guidelines for claiming the incentive.

460 Section 7. This act shall take effect July 1, 2008.