HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 43 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Energy & Utilities Policy Committee and Domino
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 788

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Energy & Utilities Policy Committee	12 Y, 0 N, As CS	Whittier	Collins
2)	Finance & Tax Council			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 212.08(7)(ccc), F.S., provides a state sales tax exemption for equipment, machinery, and other materials used for renewable energy technologies. The following items are exempt from the state sales tax:

- Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations up to a limit of $2 million in tax each fiscal year for all taxpayers.
- Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each fiscal year for all taxpayers.
- Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100), including fueling infrastructure, gasoline fueling station pump retrofits for ethanol distribution, transportation, and storage, up to a limit of $1 million in tax each fiscal year for all taxpayers.

Section 220.192, F.S., provides for a renewable energy technologies investment tax credit against either the corporate income tax or the franchise tax to be granted in an amount equal to eligible costs, which are defined as seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred in connection with an investment in the following:

- Hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of $3 million per state fiscal year for all taxpayers.
- Commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell.
- Production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state [gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify], up to a limit of $6.5 million per state fiscal year for all taxpayers.

Both the exemption and the credit are currently authorized from July 1, 2006, through June 30, 2010. The bill extends the sunset date of the sales tax exemption and the investment tax credit program through June 30, 2015.

The bill adds definitions of “renewable diesel fuel” and “renewable fuel oil” to both the sales tax and the investment tax credit provisions. The addition of these definitions allows the materials and infrastructure associated with these products to be eligible for the incentives that currently apply to materials and infrastructure associated with biodiesel and ethanol.

The Revenue Estimating Conference has not yet reviewed the Committee Substitute.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

<u>Present Situation</u>

Sales and Use Tax Exemption

Section 212.08(7)(ccc), F.S., provides for a state sales tax exemption[1] for equipment, machinery, and other materials used for renewable energy technologies. The following renewable energy items are exempt from the state sales tax:

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

  ✓ *According to the Florida Energy and Climate Commission (FECC), the sales tax exemption for hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, has not been utilized in the three-and-a-half fiscal years that the program has been in existence.*

- Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each fiscal year for all taxpayers.

  ✓ *According to the FECC, the sales tax exemption for commercial stationary hydrogen fuel cells was not used for the first two fiscal years that the program was in existence, but has been partially used the last one-and-a-half fiscal years. See Fiscal Comments.*

- Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100), including fueling infrastructure, gasoline fueling station pump retrofits for ethanol distribution, transportation, and storage, up to a limit of $1 million in tax each fiscal year for all taxpayers.

  ✓ *According to the FECC, the sales tax exemption for materials used in the distribution of biodiesel and ethanol, including fueling infrastructure, transportation, and storage, was*

[1] Within 30 days of receipt of an application for a sales tax refund, the FECC is required to review the application and notify the applicant of any deficiencies. After receiving the completed application, the FECC is required to evaluate the application for exemption and issue a written certification of whether or not the applicant is eligible for a refund of the taxes paid for that item. A refund must be made within 30 days of the formal approval by the Department of Revenue.

not used the first fiscal year that the program was in existence, but has been partially used during the last two-and-a-half fiscal years. See Fiscal Comments.

The exemption is authorized from July 1, 2006, through June 30, 2010.

Renewable Energy Technologies Investment Tax Credit

Section 220.192, F.S., provides that, for tax years beginning on or after January 1, 2007, a credit against either the corporate income tax or the franchise tax will be granted in an amount equal to the eligible costs. Eligible costs are defined as seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs, incurred between July 1, 2006, and June 30, 2010, in connection with an investment in the following:

- Hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of $3 million per state fiscal year for all taxpayers.

  ✓ *According to the FECC, investment credits for hydrogen-powered vehicles and hydrogen vehicle fueling station were not issued during the first three fiscal years that the program was in existence, but has been partially used (approximately half) during the current fiscal year. See Fiscal Comments.*

- Commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell.

  ✓ *According to the FECC, credits for commercial stationary hydrogen fuel cell investments were not issued during the first two fiscal years that the program was in existence; however, the cap has been reached in both Fiscal Year 08-09 and the current fiscal year. See Fiscal Comments.*

- Production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state [gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify], up to a limit of $6.5 million per state fiscal year for all taxpayers.

  ✓ *According to the FECC, credits were issued every fiscal year for investments in production, storage, and distribution of biodiesel and ethanol, with varying balances in the fiscal years. Credits issued in this fiscal year have not yet been reported. See Fiscal Comments.*

The tax credit is authorized from July 1, 2006, through June 30, 2010.

Renewable Fuels

In 2008, the Legislature adopted a Renewable Fuel Standard (within HB 7135), requiring that beginning on December 31, 2010, all gasoline sold in Florida contain a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume. The standard also provides for exceptions, waivers, and extensions.

On February 3, 2010, the U.S. Environmental Protection Agency (EPA) passed a final rule with regard to the Renewable Fuels Standard (RFS), establishing a goal of 36 billion gallons of renewable fuel by 2022. The 2022 goal includes 21 billion gallons to come from advanced biofuels (defined as those that cut greenhouse gas emissions by at least 50%). The EPA estimates that meeting the 2022 goal could reduce U.S. dependence on oil by more than 328 million barrels per year. The EPA final rule establishes the RFS for 2010 at 12.95 billion gallons of renewable fuel, all of which must be used in transportation fuels over the course of the year.[2]

"Ethanol," is defined in s. 212.08(7)(ccc)1.b., F.S., as:

> [A]n anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services.

"Biodiesel," is defined in s. 212.08(7)(ccc)1.a., F.S., as:

> [T]he mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services.

According to the U.S. Environmental Protection Agency, biodiesel is designed for complete compatibility with petroleum diesel and can be blended in any ratio, from additive levels to 100 percent biodiesel. It is typically produced from soybean or rapeseed oil or can be reprocessed from waste cooking oils or animal fats such as waste fish oil.[3]

Effect Of Proposed Changes

The bill adds the following two definitions to the items eligible for the state sales tax exemption for equipment, machinery, and other materials used for renewable energy technologies, and for the Renewable Energy Technologies Investment Tax Credit:

- "Renewable diesel fuel," which means "liquid fuel for use in diesel-powered engines which is derived from biomass and meets the registration requirements for fuel and fuel additives established by the United States Environmental Protection Agency and the specifications and requirements as adopted by the Department of Agriculture and Consumer Services."

- "Renewable fuel oil," which means "liquid fuel for use in fuel oil applications which is derived from biomass and meets the registration requirements for fuel and fuel additives established by the United States Environmental Protection Agency and the specifications and requirements as adopted by the Department of Agriculture and Consumer Services."

The addition of these definitions allows the materials and infrastructure associated with these products (which are derived from various types of biomass, such as plant oil or animal fat) to be eligible for the incentives that currently apply to materials and infrastructure associated with biodiesel and ethanol.

The bill extends the expiration date of the state sales tax exemption from July 1, 2010, to July 1, 2015, and extends the date by which credits can be earned for costs incurred for the investment tax credit from June 30, 2010, to June 30, 2015.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.08, F.S., providing definitions and extending a sunset date.

Section 2. Amends s. 220.192, F.S., providing definitions and extending a sunset date.

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[2] U.S. Department of Energy website: http://www1.eere.energy.gov/biomass/news_detail.html?news_id=15788.

[3] U.S. Environmental Protection Agency website: http://yosemite.epa.gov/R10/airpage.nsf/283d45bd5bb068e68825650f0064cdc2/6db6325d85a15adc88256d9e005f1f2b!OpenDocument.

Section 3. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not yet reviewed the Committee Substitute.

2. Expenditures:

   The Department of Revenue estimates the following expenditures:

   Non-Recurring

Expenses[4]	$282
OCO	$0
Total	**$282**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has not yet reviewed the Committee Substitute.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is anticipated to have a positive effect on the private sector because more products would be eligible for the sales tax exemption and investment tax credits.

D. FISCAL COMMENTS:

Sales and Use Tax Exemption

Section 212.08(7)(ccc), F.S., currently provides for a sales tax exemption for renewable energy technologies in Florida, occurring between July 1, 2006, and June 30, 2010. According to the FECC, the following are the **balances** for each category[5] at the end of each fiscal year that the program has been in existence:

	FY 2006-2007	FY 2007-2008	FY 2008-2009	FY 2009-2010
Hydrogen Vehicles ($2 million cap per yr)	$2 million	$2 million	$2 million	$2 million

[4] The department states that the bill will require a Tax Information Publication to be sent to companies that are potentially interested in producing, selling, or distributing renewable diesel fuel or renewable fuel oil. This population of 646 companies includes: carriers; wholesalers; blenders; and suppliers. The costs are for printing, envelopes, and 1st Class Postage.

[5] Unused funds in this program do not accumulate or carry forward from year to year.

Hydrogen Stationary Fuel Cells ($1 million cap per yr)	$1 million	$1 million	$658,944.91	$764,823.10
Biofuels Distribution ($1 million cap per yr)	$1 million	$996,017.40	$958,650.94	$517,273.31

Renewable Energy Technologies Investment Tax Credit

Section 220.192, F.S., currently provides for a credit against either the corporate income tax or the franchise tax for specified costs incurred between July 1, 2006, and June 30, 2010. According to the FECC, the following are the **balances** for each category[6] at the end of each fiscal year that the program has been in existence:[7]

	FY 2006-2007	**FY 2007-2008**	**FY 2008-2009**	**FY 2009-2010**
Hydrogen Vehicles ($3 million cap per yr)	$3 million	$3 million	$3 million	$1,452,413.25
Hydrogen Stationary Fuel Cells ($1.5 million cap per yr)	$1.5 million	$1.5 million	$0	$0
Biofuels Infrastructure ($6.5 million cap per yr)	$3,152,517.38	$1,980,339.70	$4,029,543.76	$6,500,000

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The Revenue Estimating Conference has not yet reviewed the Committee Substitute.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[6] Unused funds in this program do not accumulate or carry forward from year to year.
[7] The total Corporate Income Tax Credits issued for Biodiesel Infrastructure for the current fiscal year have not yet been reported.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Energy & Utilities Policy Committee adopted a strike-all amendment that added definitions for “renewable diesel fuel” and “renewable fuel oil” instead of modifying the definition of biodiesel for the sales tax exemption and the investment tax credit.

The amendment also extended the sales tax exemption and the income tax credit for five years.