

By Senator Bennett

21-00994-11

20111284

1                   A bill to be entitled  
2       An act relating to biodiesel; amending s. 206.02,  
3       F.S.; exempting certain biodiesel manufacturers from  
4       bonding requirements; amending s. 206.874, F.S.;  
5       exempting certain biodiesel manufacturers from  
6       specific taxes on diesel fuel; amending s. 206.9925,  
7       F.S.; redefining the term "pollutants" to exclude  
8       certain biodiesel; amending s. 526.202, F.S.;  
9       providing legislative findings regarding the sale of  
10      diesel containing biodiesel; amending s. 526.203,  
11      F.S.; defining the terms "biodiesel" and "diesel  
12      fuel"; establishing standards for the amount of  
13      biodiesel that must be contained in diesel fuel;  
14      requiring dealers and wholesalers to provide certified  
15      fuel analyses upon the department's request; providing  
16      an exemption from regulation; requiring reports to the  
17      Department of Revenue; amending s. 526.205, F.S.;  
18      providing for certain persons to apply for extensions  
19      to comply with the requirements of the act; amending  
20      s. 581.083, F.S.; exempting nonnative plants  
21      cultivated for fuel production from specific  
22      restrictions on such cultivation; providing an  
23      effective date.

24  
25   Be It Enacted by the Legislature of the State of Florida:

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27       Section 1. Subsection (5) of section 206.02, Florida  
28   Statutes, is amended to read:

29       206.02 Application for license; temporary license; terminal

21-00994-11

20111284

30 suppliers, importers, exporters, blenders, biodiesel  
31 manufacturers, and wholesalers.-

32 (5) Each biodiesel manufacturer that processes at least 50  
33 percent of its annual B100 biodiesel production from renewable  
34 feedstocks originating in this state must meet the reporting,  
35 ~~bonding,~~ and licensing requirements prescribed for wholesalers  
36 by this chapter. All other biodiesel manufacturers must comply  
37 with the reporting, bonding, and licensing requirements for  
38 wholesalers in this chapter.

39 Section 2. Subsection (7) of section 206.874, Florida  
40 Statutes, is amended to read:

41 206.874 Exemptions.-

42 (7) Biodiesel fuel manufactured by a public or private  
43 secondary school that produces less than 1,000 gallons annually  
44 for the sole use at the school, by its employees, or its  
45 students, or biodiesel fuel manufactured by a biodiesel  
46 manufacturer that produces at least 50 percent of its annual  
47 B100 biodiesel from renewable feedstocks originating in this  
48 state, is exempt from the tax imposed by this part. A public or  
49 private secondary school that produces less than 1,000 gallons a  
50 year of biodiesel is exempt from the registration requirements  
51 of this chapter.

52 Section 3. Subsection (5) of section 206.9925, Florida  
53 Statutes, is amended to read:

54 206.9925 Definitions.-As used in this part:

55 (5) "Pollutants" includes any petroleum product as defined  
56 in subsection (4) as well as pesticides, ammonia, and chlorine;  
57 lead-acid batteries, including, but not limited to, batteries  
58 that are a component part of other tangible personal property;

21-00994-11

20111284\_\_

59 and solvents as defined in subsection (6), but the term excludes  
60 liquefied petroleum gas, medicinal oils, and waxes. Products  
61 intended for application to the human body or for use in human  
62 personal hygiene or for human ingestion are not pollutants,  
63 regardless of their contents. B100 or B99 biodiesel manufactured  
64 in this state is not a pollutant if at least 50 percent of the  
65 manufacturer's annual production is from renewable feedstocks  
66 originating in this state. For the purpose of the tax imposed  
67 under s. 206.9935(1), "pollutants" also includes crude oil.

68 Section 4. Section 526.202, Florida Statutes, is amended to  
69 read:

70 526.202 Legislative findings.—The Legislature finds it is  
71 vital to the public interest and to the state's economy to  
72 establish a market and the necessary infrastructure for  
73 renewable fuels in this state by requiring that all gasoline  
74 offered for sale in this state include a percentage of  
75 agriculturally derived, denatured ethanol and that all diesel  
76 offered for sale in this state include a specified percentage of  
77 biodiesel. The Legislature further finds that the use of  
78 renewable fuel reduces greenhouse gas emissions and dependence  
79 on imports of foreign oil, improves the health and quality of  
80 life for Floridians, and stimulates economic development and the  
81 creation of a sustainable industry that combines agricultural  
82 production with state-of-the-art technology.

83 Section 5. Section 526.203, Florida Statutes, is amended to  
84 read:

85 526.203 Renewable fuel standard.—

86 (1) DEFINITIONS.—As used in this act:

87 (a) "Biodiesel" has the same meaning as provided in s.

21-00994-11

20111284

88 212.08(7)(ccc).

89 (b)-(a) "Blender," "importer," "terminal supplier," and  
90 "wholesaler" are defined as provided in s. 206.01.

91 (c)-(b) "Blended gasoline" means a mixture of 90 to 91  
92 percent gasoline and 9 to 10 percent fuel ethanol, by volume,  
93 that meets the specifications as adopted by the department. The  
94 fuel ethanol portion may be derived from any agricultural  
95 source.

96 (d) "Diesel fuel" has the same meaning as provided in s.  
97 206.86.

98 (e)-(e) "Fuel ethanol" means an anhydrous denatured alcohol  
99 produced by the conversion of carbohydrates that meets the  
100 specifications as adopted by the department.

101 (f)-(d) "Unblended gasoline" means gasoline that has not  
102 been blended with fuel ethanol and that meets the specifications  
103 as adopted by the department.

104 (2) FUEL STANDARD. ~~Beginning December 31, 2010,~~

105 (a) All gasoline sold or offered for sale in Florida by a  
106 terminal supplier, importer, blender, or wholesaler shall be  
107 blended gasoline.

108 (b)1. Beginning December 31, 2011, all diesel fuel sold by  
109 dealers or wholesalers in this state must contain at least 2  
110 percent biodiesel.

111 2. However, when the annualized biodiesel production  
112 capacity of production facilities in this state reaches 233  
113 million gallons, which is approximately 8 percent of the annual  
114 diesel consumption in the state, the Department of Agriculture  
115 and Consumer Services shall notify all dealers and wholesalers  
116 that the annual biodiesel capacity has reached a minimum level

21-00994-11

20111284

117 and that they must begin selling diesel fuel that contains a  
118 minimum of 5 percent biodiesel no later than 2 months after the  
119 date of such notice.

120 (c) Dealers and wholesalers, upon the request of the  
121 department, shall provide a certificate of analysis of any  
122 biodiesel received.

123 (3) EXEMPTIONS.—The requirements of this act do not apply  
124 to the following:

125 (a) Fuel used in aircraft.

126 (b) Fuel sold for use in gasoline-powered boats and similar  
127 watercraft.

128 (c) Fuel sold to a blender.

129 (d) Fuel sold for use in collector vehicles or vehicles  
130 eligible to be licensed as collector vehicles, off-road  
131 vehicles, motorcycles, or small engines.

132 (e) Fuel unable to comply due to requirements of the United  
133 States Environmental Protection Agency.

134 (f) Fuel transferred between terminals.

135 (g) Fuel exported from the state in accordance with s.  
136 206.052.

137 (h) Fuel qualifying for any exemption in accordance with  
138 chapter 206.

139 (i) Fuel for a railroad locomotive.

140 (j) Fuel for equipment, including vehicle or vessel,  
141 covered by a warranty that would be voided, if explicitly stated  
142 in writing by the vehicle or vessel manufacturer, if the  
143 equipment were to be operated using fuel meeting the  
144 requirements of subsection (2).

145

21-00994-11

20111284

146 All records of sale of unblended gasoline shall include the  
147 following statement: "Unblended gasoline may be sold only for  
148 the purposes authorized under s. 526.203(3), F.S."

149 (4) REPORT.—Pursuant to s. 206.43, each terminal supplier,  
150 importer, blender, and wholesaler shall include in its report to  
151 the Department of Revenue the number of gallons of blended and  
152 unblended gasoline, diesel, and biodiesel sold. The Department  
153 of Revenue shall provide a monthly summary report to the  
154 department.

155 Section 6. Section 526.205, Florida Statutes, is amended to  
156 read:

157 526.205 Enforcement; extensions.—

158 (1) Unless a waiver or suspension pursuant to s. 526.204  
159 applies, or an extension has been granted pursuant to subsection  
160 (3), it shall be unlawful for a terminal supplier, importer,  
161 blender, or wholesaler to sell or distribute, or offer for sale  
162 or distribution, any gasoline or diesel which fails to meet the  
163 requirements of this act.

164 (2) Upon a determination by the department of a violation  
165 of this act, the department shall enter an order imposing one or  
166 more of the following penalties:

167 (a) Issuance of a warning letter.

168 (b) Imposition of an administrative fine of not more than  
169 \$1,000 per violation for a first-time offender. For a second-  
170 time or repeat offender, or any person who is shown to have  
171 willfully and intentionally violated any provision of this act,  
172 the administrative fine shall not exceed \$5,000 per violation.  
173 When imposing any fine under this section, the department shall  
174 consider the monetary benefit to the violator as a result of

21-00994-11

20111284

175 noncompliance, whether the violation was committed willfully,  
176 and the compliance record of the violator. All funds recovered  
177 by the department shall be deposited into the General Inspection  
178 Trust Fund.

179 (3) Any terminal supplier, importer, blender, or wholesaler  
180 may apply to the department by September 30, 2011 ~~2010~~, for an  
181 extension of time to comply with the requirements of this act  
182 relating to biodiesel. The application for an extension must  
183 demonstrate that the applicant has made a good faith effort to  
184 comply with the requirements but has been unable to do so for  
185 reasons beyond the applicant's control, such as delays in  
186 receiving governmental permits. The department shall review each  
187 application and make a determination as to whether the failure  
188 to comply was beyond the control of the applicant. If the  
189 department determines that the applicant made a good faith  
190 effort to comply, but was unable to do so for reasons beyond the  
191 applicant's control, the department shall grant an extension of  
192 time determined necessary for the applicant to comply.

193 Section 7. Subsection (4) of section 581.083, Florida  
194 Statutes, is amended to read:

195 581.083 Introduction or release of plant pests, noxious  
196 weeds, or organisms affecting plant life; cultivation of  
197 nonnative plants; special permit and security required.—

198 (4) A person may not cultivate a nonnative plant, including  
199 a genetically engineered plant or a plant that has been  
200 introduced, for purposes ~~of fuel production or purposes~~ other  
201 than agriculture or fuel production in plantings greater in size  
202 than 2 contiguous acres, except under a special permit issued by  
203 the department through the division, which is the sole agency

21-00994-11

20111284

204 responsible for issuing such special permits. Such a permit  
205 shall not be required if the department determines, in  
206 conjunction with the Institute of Food and Agricultural Sciences  
207 at the University of Florida, that the plant is not invasive and  
208 subsequently exempts the plant by rule.

209 (a)1. Each application for a special permit must be  
210 accompanied by a fee as described in subsection (2) and proof  
211 that the applicant has obtained a bond in the form approved by  
212 the department and issued by a surety company admitted to do  
213 business in this state or a certificate of deposit. The  
214 application must include, on a form provided by the department,  
215 the name of the applicant and the applicant's address or the  
216 address of the applicant's principal place of business; a  
217 statement completely identifying the nonnative plant to be  
218 cultivated; and a statement of the estimated cost of removing  
219 and destroying the plant that is the subject of the special  
220 permit and the basis for calculating or determining that  
221 estimate. If the applicant is a corporation, partnership, or  
222 other business entity, the applicant must also provide in the  
223 application the name and address of each officer, partner, or  
224 managing agent. The applicant shall notify the department within  
225 10 business days of any change of address or change in the  
226 principal place of business. The department shall mail all  
227 notices to the applicant's last known address.

228 2. As used in this subsection, the term "certificate of  
229 deposit" means a certificate of deposit at any recognized  
230 financial institution doing business in the United States. The  
231 department may not accept a certificate of deposit in connection  
232 with the issuance of a special permit unless the issuing



21-00994-11

20111284\_\_

233 institution is properly insured by the Federal Deposit Insurance  
234 Corporation or the Federal Savings and Loan Insurance  
235 Corporation.

236 (b) Upon obtaining a permit, the permitholder may annually  
237 cultivate and maintain the nonnative plants as authorized by the  
238 special permit. If the permitholder ceases to maintain or  
239 cultivate the plants authorized by the special permit, if the  
240 permit expires, or if the permitholder ceases to abide by the  
241 conditions of the special permit, the permitholder shall  
242 immediately remove and destroy the plants that are subject to  
243 the permit, if any remain. The permitholder shall notify the  
244 department of the removal and destruction of the plants within  
245 10 days after such event.

246 (c) If the department:

247 1. Determines that the permitholder is no longer  
248 maintaining or cultivating the plants subject to the special  
249 permit and has not removed and destroyed the plants authorized  
250 by the special permit;

251 2. Determines that the continued maintenance or cultivation  
252 of the plants presents an imminent danger to public health,  
253 safety, or welfare;

254 3. Determines that the permitholder has exceeded the  
255 conditions of the authorized special permit; or

256 4. Receives a notice of cancellation of the surety bond,  
257

258 the department may issue an immediate final order, which shall  
259 be immediately appealable or enjoicable as provided by chapter  
260 120, directing the permitholder to immediately remove and  
261 destroy the plants authorized to be cultivated under the special

21-00994-11

20111284

262 permit. A copy of the immediate final order shall be mailed to  
263 the permitholder and to the surety company or financial  
264 institution that has provided security for the special permit,  
265 if applicable.

266 (d) If, upon issuance by the department of an immediate  
267 final order to the permitholder, the permitholder fails to  
268 remove and destroy the plants subject to the special permit  
269 within 60 days after issuance of the order, or such shorter  
270 period as is designated in the order as public health, safety,  
271 or welfare requires, the department may enter the cultivated  
272 acreage and remove and destroy the plants that are the subject  
273 of the special permit. If the permitholder makes a written  
274 request to the department for an extension of time to remove and  
275 destroy the plants that demonstrates specific facts showing why  
276 the plants could not reasonably be removed and destroyed in the  
277 applicable timeframe, the department may extend the time for  
278 removing and destroying plants subject to a special permit. The  
279 reasonable costs and expenses incurred by the department for  
280 removing and destroying plants subject to a special permit shall  
281 be reimbursed to the department by the permitholder within 21  
282 days after the date the permitholder and the surety company or  
283 financial institution are served a copy of the department's  
284 invoice for the costs and expenses incurred by the department to  
285 remove and destroy the cultivated plants, along with a notice of  
286 administrative rights, unless the permitholder or the surety  
287 company or financial institution object to the reasonableness of  
288 the invoice. In the event of an objection, the permitholder or  
289 surety company or financial institution is entitled to an  
290 administrative proceeding as provided by chapter 120. Upon entry

21-00994-11

20111284

291 of a final order determining the reasonableness of the incurred  
292 costs and expenses, the permitholder shall have 15 days  
293 following service of the final order to reimburse the  
294 department. Failure of the permitholder to timely reimburse the  
295 department for the incurred costs and expenses entitles the  
296 department to reimbursement from the applicable bond or  
297 certificate of deposit.

298 (e) Each permitholder shall maintain for each separate  
299 growing location a bond or a certificate of deposit in an amount  
300 determined by the department, but not less than 150 percent of  
301 the estimated cost of removing and destroying the cultivated  
302 plants. The bond or certificate of deposit may not exceed \$5,000  
303 per acre, unless a higher amount is determined by the department  
304 to be necessary to protect the public health, safety, and  
305 welfare or unless an exemption is granted by the department  
306 based on conditions specified in the application which would  
307 preclude the department from incurring the cost of removing and  
308 destroying the cultivated plants and would prevent injury to the  
309 public health, safety, and welfare. The aggregate liability of  
310 the surety company or financial institution to all persons for  
311 all breaches of the conditions of the bond or certificate of  
312 deposit may not exceed the amount of the bond or certificate of  
313 deposit. The original bond or certificate of deposit required by  
314 this subsection shall be filed with the department. A surety  
315 company shall give the department 30 days' written notice of  
316 cancellation, by certified mail, in order to cancel a bond.  
317 Cancellation of a bond does not relieve a surety company of  
318 liability for paying to the department all costs and expenses  
319 incurred or to be incurred for removing and destroying the

21-00994-11

20111284

320 permitted plants covered by an immediate final order authorized  
321 under paragraph (c). A bond or certificate of deposit must be  
322 provided or assigned in the exact name in which an applicant  
323 applies for a special permit. The penal sum of the bond or  
324 certificate of deposit to be furnished to the department by a  
325 permitholder in the amount specified in this paragraph must  
326 guarantee payment of the costs and expenses incurred or to be  
327 incurred by the department for removing and destroying the  
328 plants cultivated under the issued special permit. The bond or  
329 certificate of deposit assignment or agreement must be upon a  
330 form prescribed or approved by the department and must be  
331 conditioned to secure the faithful accounting for and payment of  
332 all costs and expenses incurred by the department for removing  
333 and destroying all plants cultivated under the special permit.  
334 The bond or certificate of deposit assignment or agreement must  
335 include terms binding the instrument to the Commissioner of  
336 Agriculture. Such certificate of deposit shall be presented with  
337 an assignment of the permitholder's rights in the certificate in  
338 favor of the Commissioner of Agriculture on a form prescribed by  
339 the department and with a letter from the issuing institution  
340 acknowledging that the assignment has been properly recorded on  
341 the books of the issuing institution and will be honored by the  
342 issuing institution. Such assignment is irrevocable while a  
343 special permit is in effect and for an additional period of 6  
344 months after termination of the special permit if operations to  
345 remove and destroy the permitted plants are not continuing and  
346 if the department's invoice remains unpaid by the permitholder  
347 under the issued immediate final order. If operations to remove  
348 and destroy the plants are pending, the assignment remains in

21-00994-11

20111284

349 effect until all plants are removed and destroyed and the  
350 department's invoice has been paid. The bond or certificate of  
351 deposit may be released by the assignee of the surety company or  
352 financial institution to the permitholder, or to the  
353 permitholder's successors, assignee, or heirs, if operations to  
354 remove and destroy the permitted plants are not pending and no  
355 invoice remains unpaid at the conclusion of 6 months after the  
356 last effective date of the special permit. The department may  
357 not accept a certificate of deposit that contains any provision  
358 that would give to any person any prior rights or claim on the  
359 proceeds or principal of such certificate of deposit. The  
360 department shall determine by rule whether an annual bond or  
361 certificate of deposit will be required. The amount of such bond  
362 or certificate of deposit shall be increased, upon order of the  
363 department, at any time if the department finds such increase to  
364 be warranted by the cultivating operations of the permitholder.  
365 In the same manner, the amount of such bond or certificate of  
366 deposit may be decreased when a decrease in the cultivating  
367 operations warrants such decrease. This paragraph applies to any  
368 bond or certificate of deposit, regardless of the anniversary  
369 date of its issuance, expiration, or renewal.

370 (f) In order to carry out the purposes of this subsection,  
371 the department or its agents may require from any permitholder  
372 verified statements of the cultivated acreage subject to the  
373 special permit and may review the permitholder's business or  
374 cultivation records at her or his place of business during  
375 normal business hours in order to determine the acreage  
376 cultivated. The failure of a permitholder to furnish such  
377 statement, to make such records available, or to make and

21-00994-11

20111284\_\_

378 deliver a new or additional bond or certificate of deposit is  
379 cause for suspension of the special permit. If the department  
380 finds such failure to be willful, the special permit may be  
381 revoked.

382       Section 8. This act shall take effect July 1, 2011.