

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 391 Sale of Motor Fuel

SPONSOR(S): Energy & Utilities Subcommittee, Clemens, Bernard and others

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	10 Y, 5 N, As CS	Whittier	Collins
2) State Affairs Committee			

SUMMARY ANALYSIS

There are approximately 9,025 gasoline retailers in the State of Florida. At most of these service stations, consumers may purchase gasoline by means of cash, debit, or credit. Credit card companies, however, charge the seller a specific percentage for each transaction (interchange fee). As high gas prices are resulting in more drivers paying with credit cards, these fees are adding up and lowering station owners' profits.

To counteract this negative fiscal effect (and authorized under the federal Cash Discount Act of 1981 and under state ss. 526.121 and 501.0117, F.S.), many retailers offer discounts of five to 14 cents a gallon to customers that pay for their gasoline with cash. In October 2011, the Petroleum Marketers Association of America, reportedly a federation of 48 state and regional trade associations representing 8,000 independent petroleum marketers nationwide, confirmed that the differences between cash and credit prices were due to interchange fees.

Currently in Florida, most retail gas stations have updated dispensers that have a two-tiered pricing option (referred to as dual PPU – price per unit – in the industry) that provides both the cash discount and credit card pricing directly on the pump. Those retailers that do not own modern pumps have the credit price posted on the pump, and then when cash is used, the pricing numbers roll back to the discounted price.

It is reported that there have been many complaints by drivers who are unaware of the price differential between cash and credit until they are at the pump. It is against the law to post deceptive retail fuel prices; however, some retail fuel purchasers claim that prices have been misrepresented.

Although s. 163.3202(2)(f), F.S., provides that local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum... (f) regulate signage, there is currently no federal or state requirement for both the cash and credit prices for gasoline to be posted on signage simultaneously nor a requirement that the highest price for any grade of gasoline be posted on signage.

The bill mandates that if a retail service station charges different prices for cash and credit sales, the highest price must be displayed on all signage displaying the gasoline and motor fuel prices visible from the main-traveled way.

There appears to be no fiscal impact on state or local governments. See *Direct Economic Impact on Private Sector* section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

There are approximately 9,025 gasoline retailers in the State of Florida.¹ At most of these service stations, consumers may purchase gasoline by means of cash, debit, or credit. Credit card companies, however, charge the seller a specific percentage for each transaction (interchange fee). According to SmartMoney, “[E]ach time a driver swipes a credit card at the pump, station owners get hit with a credit card fee that typically ranges from 1.5% to 3% of the total purchase price. As high gas prices force more drivers to pay with plastic, these fees are adding up and eating into station owners' profits.”²

To counteract this negative fiscal effect [and authorized under the federal Cash Discount Act of 1981^{3,4} and under state law (ss. 526.121⁵ and 501.0117,⁶ F.S.)], many retailers offer discounts of five to 14 cents a gallon to customers that pay for their gasoline with cash.⁷ In October 2011, the Petroleum Marketers Association of America, reportedly a federation of 48 state and regional trade associations representing 8,000 independent petroleum marketers nationwide,⁸ confirmed that the differences between cash and credit prices were due to interchange fees.⁹ The Florida Petroleum Marketers and Convenience Stores Association state that while many independent retailers offer a discount for cash, that incentive has not yet become a majority practice in the industry.¹⁰

Currently, in Florida, most retail gas stations have updated dispensers that have a two-tiered pricing option (referred to as dual PPU – price per unit – in the industry) that provides both the cash discount and credit card pricing directly on the pump.¹¹ Those retailers that do not own modern dispensers have the credit price posted on the pump, and then when cash is used, the pricing numbers roll back to the discounted price.

¹ Department of Agriculture and Consumer Services, Bureau of Petroleum Inspection website:

<http://www.freshfromflorida.com/standard/petro/index.html>.

² *Pay in Cash, Get Cheaper Gas*, by Annamaria Andriotis, June 24, 2008. Found on SmartMoney Website:

<http://www.smartmoney.com/spend/family-money/pay-in-cash-get-cheaper-gas-23349/>.

³ The Cash Discount Act of 1981 was an amendment to the Truth in Lending Act and signed into law July 27, 1981, as Public Law 97-25. It permits retailers to offer unlimited discounts to their customers to encourage cash payments, use of checks, or similar means.

⁴ According to *Senate Analysis for SB 476*, October 18, 2011, “Extending credit for gasoline existed for 60 years as a free service prior to the passage of the Cash Discount Act. In 1982, two major oil companies dropped their credit card programs and many other companies followed. As a result, two-tiered pricing models with ‘discount-for-cash’ programs came into existence. This major departure from the old practice of free extensions of credit resulted in charging credit users a few extra cents per gallon. Similarly, in Florida in the early 1980’s, Sing Oil Company instituted a cash for discount program, whereby a consumer paid a lower price for gasoline if he or she paid cash. This was challenged by the Florida Department of Agriculture and Consumer Services. The Second Judicial Circuit decided that s. 526.121, Florida Statutes, was intended to stop misleading pricing and Sing’s posting of a different price was not misleading, but instead only the ‘granting of a discount.’”

⁵ Section 526.121, F.S., states that there is no prohibition on a price differential between a cash sale and a credit sale of the same grade of gasoline nor between self-service pumps and attendant-controlled pumps supplied from a common storage at the same service station.

⁶ Section 501.0117(1), F.S., permits the offering of a discount for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, if the discount is offered to all prospective customers.

⁷ *Pay in Cash, Get Cheaper Gas*, by Annamaria Andriotis, June 24, 2008. Found on SmartMoney Website:

<http://www.smartmoney.com/spend/family-money/pay-in-cash-get-cheaper-gas-23349/>.

⁸ Petroleum Marketers Association of America website: <http://www.pmaa.org/index.asp>.

⁹ *Cash or Credit at the Gas Pump? The Choice is Costing You*, by Halah Touryalai, October 21, 2011. Found on Forbes website:

<http://www.forbes.com/sites/halahtouryalai/2011/10/21/cash-or-credit-at-the-gas-pump-the-choice-is-costing-you/>.

¹⁰ Email correspondence from a representative of the Florida Petroleum Marketers and Convenience Stores Association, January 13, 2012.

¹¹ Correspondence with Joey Cheek, President of JMP Solutions, distributor for retail fuel dispensers, November 15, 2011.

It is reported that there have been many complaints by drivers who are unaware of the price differential between cash and credit until they are at the pump.¹² It is against the law to post deceptive retail fuel prices; however, some retail fuel purchasers claim that prices have been misrepresented.¹³

Although s. 163.3202(2)(f), F.S., provides that local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum...(f) regulate signage, there is currently no federal or state requirement for both the cash and credit prices for gasoline to be posted on signage simultaneously¹⁴ nor a requirement that the highest price for any grade of gasoline be posted on signage.

Effect of Proposed Changes

The bill mandates that if a retail service station charges different prices for cash and credit sales, the highest price must be displayed on all signage displaying the gasoline and motor fuel prices visible from the main-traveled way.¹⁵

B. SECTION DIRECTORY:

Section 1. Amends s. 526.121, F.S., relating to the pricing of motor fuels.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹²Gasbuddy website: <http://www.gasbuddy.com/>.

¹³Section 531.44(1), F.S., provides that, "No person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person."

¹⁴Department of Agriculture and Consumer Services Analysis of HB 391, October 31, 2011, p. 1.

¹⁵"Main-traveled way" is defined in s. 479.01(13), F.S., as "[T]he traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking areas."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Florida Petroleum Marketers and Convenience Stores Association asserts that, "Zoning and permitting issues apply to signage in every city and county, and compliance with the bill may not be possible in certain instances, but certainly will present additional time and money problems for retailers."¹⁶

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether "the highest price" that must be displayed is referring to the highest price for each grade of gasoline and for diesel, or solely to the highest price of any of the grades.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Energy & Utilities Subcommittee adopted an amendment that changed the original bill requirement that if a retail service station charges different prices for cash and credit sales, the respective price for each type of sale be posted on all signage to requiring that *the highest price be displayed on all signage displaying the gasoline and motor fuel prices visible from the main-traveled way.*

The bill was passed as a Committee Substitute.

¹⁶Conversation with representatives of the Florida Petroleum Marketers and Convenience Stores Association, January 23, 2012.