

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 Committee on Communications, Energy, and Public Utilities

BILL: SB 320

INTRODUCER: Senator Evers

SUBJECT: Florida Renewable Fuel Standard Act

DATE: April 1, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			EP	
3.				
4.				
5.				
6.				

I. Summary:

SB 320 repeals the Florida Renewable Fuel Standard Act, allowing a terminal supplier, importer, blender, or wholesaler to sell unblended gasoline for any use or purpose, not just those currently listed as exemptions to the act.

The bill also amends subsection 206.43(2), F.S., to delete a requirement that a terminal supplier, importer, exporter, blender, and wholesaler report monthly to the Department of Revenue the number of gallons of blended and unblended gasoline sold.

This bill repeals the following sections of the Florida Statutes: 526.201, 526.202, 526.203, 526.204, 526.205, 526.206, and 526.207. It also substantially amends section 206.43 of the Florida Statutes.

II. Present Situation:

Florida Renewable Fuel Standard Act

Sections 526.201, 526.202, 526.203, 526.204, 526.205, 526.206, and 526.207, F. S., are the Florida Renewable Fuel Standard Act, adopted in 2008. The standard establishes a general requirement that all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler be blended gasoline.¹ “Blended gasoline” is defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel which meets the

¹ Subsection 526.203(2), F.S.

specifications adopted by the Department of Agriculture and Consumer Services (DACS).² The fuel ethanol or other alternative fuel portion may be derived from any agricultural source.

There are express exemptions to this requirement for the following:

- Fuel used in aircraft.
- Fuel sold for use in boats and similar watercraft.
- Fuel sold to a blender.
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines.
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency.
- Fuel transferred between terminals.
- Fuel exported from the state in accordance with s. 206.052.
- Fuel qualifying for any exemption in accordance with chapter 206.
- Fuel for a railroad locomotive.
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if the equipment were to be operated using fuel meeting the blended fuel requirements.³

Additionally, the standard does not prohibit a retail dealer from selling unblended gasoline, and requires DACS to compile a list of retail fuel stations that sell or offer to sell unblended gasoline and provide this information on its website to inform consumers of the options available for unblended gasoline.⁴

Federal Renewable Fuel Standard

The federal Energy Policy Act of 2005 amended the Clean Air Act to establish a Renewable Fuel Standard program. The Renewable Fuel Standard requires that the U.S. Environmental Protection Agency (EPA) promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the required, applicable volume of renewable fuel.⁵ The applicable volume of four types of motor vehicle fuels, renewable fuel, advanced biofuels, cellulosic biofuels, and biomass-derived diesel, was stated in an increasing amount per calendar year, beginning in 2006 and ending in 2022. The requirements set out a minimum total of renewable fuel, with a portion of that minimum to be advanced biofuels, including cellulosic biofuels and biomass-based diesel. The standard defines these terms as follows:

- “Renewable fuel” means “fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.”
- “Advanced biofuels” means renewable fuel, other than ethanol derived from corn starch, that has lifecycle greenhouse gas emissions, as determined by the EPA, that are at least 50 percent less than baseline lifecycle greenhouse gas emissions. The types of fuels eligible for consideration as “advanced biofuels” may include any of the following:

² Paragraph 526.203(1)(c), F.S.

³ Subsection 526.203(3), F.S.

⁴ Subsection 526.203(5), F.S.

⁵ 42 USC s. 7545(o) (2), retrieved from <http://www.law.cornell.edu/uscode/text/42/7545> on January 23, 2013.

- Ethanol derived from cellulose, hemicellulose, or lignin.
- Ethanol derived from sugar or starch (other than corn starch).
- Ethanol derived from waste material, including crop residue, other vegetative waste material, animal waste, and food waste and yard waste.
- Biomass-based diesel.
- Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass.
- Butanol or other alcohols produced through the conversion of organic matter from renewable biomass.
- Other fuel derived from cellulosic biomass.
- “Cellulosic biofuels” means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the EPA, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.
- “Biomass-based diesel” means renewable fuel that is biodiesel as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. s. 13220(f)) and that has lifecycle greenhouse gas emissions, as determined by the EPA, that are at least 50 percent less than the baseline lifecycle greenhouse gas emissions. Notwithstanding the preceding sentence, renewable fuel derived from co-processing biomass with a petroleum feedstock shall be advanced biofuel if it meets the requirements of subparagraph (B), (the definition of advanced biofuel) but is not biomass-based diesel.

The federal Renewable Fuel Standard does not create any obligation on or standard for an individual state, nor are calculations to determine the standard’s annual requirements or compliance with those requirements calculated on a state-by-state basis.⁶ Instead, the standard creates a requirement on “obligated parties,” defined as:

any refiner that produces gasoline or diesel fuel within the 48 contiguous states or Hawaii, or any importer that imports gasoline or diesel fuel into the 48 contiguous states or Hawaii during a compliance period. A party that simply blends renewable fuel into gasoline or diesel fuel, as defined in §80.1407(c) or (e), is not an obligated party.⁷

The standard requires obligated parties to periodically prove ownership of a volume of renewable fuels as determined by their Renewable Volume Obligation (RVO).⁸ An obligated party’s RVO is determined by the equation $RVO_i = (RFStd_i \times GV_i) + Di_{i-1}$, where:

RVO_i = The obligated party’s Renewable Volume Obligation for calendar year *i*, in gallons of renewable fuel;

RFStd_i = The renewable fuel standard for calendar year *i*, a percentage determined by EPA pursuant to Title 40 CFR s. 80.1105;

GV_i = The non-renewable gasoline volume which is produced or imported by the obligated party in calendar year *i*, in gallons;

Di_{i-1} = Renewable fuel deficit carryover from the previous year, per Title 40 CFR s. 80.1127(b), in gallons.⁹

⁶ Email from Matthew Arsenault to Kelley Burk (January 24, 2013) (discussing questions from Committee staff).

⁷ Title 40 CFR s. 80.1406 (a)(1).

⁸ *Supra*, note 6.

⁹ *Id.*

As an example,¹⁰ assume that the EPA determines the percentage of each type of renewable fuel that must be in the entire market in order to achieve the volume required by the standard for that year and determines that the total renewable fuel requirement is 5.59 percent. If a refinery produces 500,000 gallons of gasoline, their RVO would be 27,950 gallons. This means that they would have to prove ownership of 27,950 Renewable Identification Numbers (RINs) (assuming they don't have a deficit carryover from the previous year).

Because the standard is a mandate on refiners to blend the fuel before it is taken to retail stores across the United States, the effect is that all states receive the blended fuel.¹¹

III. Effect of Proposed Changes:

The bill repeals the sections comprising the Florida Renewable Fuel Standard Act, allowing a terminal supplier, importer, blender, or wholesaler to sell unblended gasoline for any use or purpose, not just those currently listed as exemptions to the act.

The bill also amends subsection 206.43(2), F.S., to delete a requirement that a terminal supplier, importer, exporter, blender, and wholesaler report monthly to the Department of Revenue the number of gallons of blended and unblended gasoline sold.

The bill takes effect July 1, 2013.

Other Potential Implications:

The repeal of the Florida requirements on sellers of gasoline will leave the federal requirements on producers untouched and in effect. The net effect appears to be that although Florida sellers will be permitted to sell what the market demands, not what the current statute requires, it may be or may become difficult to obtain significant amounts of unblended gasoline, with the federal law still in effect.¹²

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable; this bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

¹⁰ *Id.*

¹¹ *Id.*

¹² See, e.g., Alic, *Ethanol Mandate: Jumping the Gun in a Big Way*, <http://oilprice.com/Alternative-Energy/Biofuels/Ethanol-Mandate-Jumping-the-Gun-in-a-Big-Way.html>.

B. Public Records/Open Meetings Issues:

Not applicable; this bill does not appear to have any effect on public records or open meetings.

C. Trust Funds Restrictions:

Not applicable; this bill does not appear to have any effect on trust funds.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None; the bill does not appear to affect taxes or fees.

B. Private Sector Impact:

Individuals who wish to purchase unblended gasoline may have a greater opportunity to do so, and may see a reduction in price. However, this is uncertain; because the federal Renewable Fuel Standard will still require all refiners to blend ever-increasing amounts of renewable fuel, Florida retailers may find it difficult now or at some future point to obtain significant amounts of unblended gasoline.

According to the Department of Agriculture and Consumer Services, which administers Florida's liquid fuels statutes, the bill could have negative effects on the bio-fuel industry including bio-refineries and the producers of feedstocks used in the development of biofuels. There could be negative effects on communities with active or soon-to-be active bio-refineries. According to the Indian River County Economic Development Council, INEOS bio-energy plant will provide 53 full time jobs with an average wage of \$58,981 and a total capital investment of \$54.3 million. Algenol Biofuels hired more than 100 individuals in Lee County and is expected to increase their staff in the future. Kinder Morgan Energy Partners, L.P., owns and operates the Central Florida Pipeline (CFPL) between Tampa and Orlando, a \$10 million investment. On the other hand, given that their products should qualify under the federal standard as advanced or cellulosic biofuels, there may be sufficient national demand negate the projected impact.

C. Government Sector Impact:

According to the Department of Agriculture and Consumer Services, which administers Florida's liquid fuels statutes, the bill will have no government sector fiscal impact.

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.)

None.

- B. **Amendments:**

None.

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