

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 Agriculture

BILL: CS/CS/SB 1184

INTRODUCER: Agriculture Committee, Commerce and Tourism Committee, and Senator Brandes

SUBJECT: Gasoline Stations

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS
2.	<u>Weidenbenner</u>	<u>Becker</u>	<u>AG</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1184 requires self-service gas stations to display a blue, 15 square inch decal that displays the international symbol of accessibility, the gas station's telephone number, and the words "Call for Assistance." This requirement will be implemented and enforced by the Department of Agriculture and Consumer Services.

The bill also preempts local laws relating to fueling assistance for disabled individuals by self-service gas stations.

The bill prohibits a local government from requiring a retail outlet that sells motor fuel to provide air and vacuum supply without charge.

II. Present Situation:

According to the Department of Agriculture and Consumer Services (DACS), there are 8,000 retail gas stations in Florida.¹ People with disabilities may find it difficult or impossible to use the controls, hose, or nozzle of a self-service gas pump. As a result, at stations that offer both self and full-service, people with disabilities might have no choice but to purchase the more expensive gas from a full-service pump. At locations with only self-service pumps, people with

¹ DACS, *Agency Analysis: SB 1184* (Feb. 27, 2014) (on file with the Committee on Commerce and Tourism)..

disabilities might be unable to purchase gas at all.² State, federal, and local laws have attempted to address these problems.

Florida Fueling Assistance Requirements

Approximately 350 gasoline stations in Florida provide full-service as well as self-service fuel at a lower price.³ Under s. 526.141(5), F.S., these stations, known as “limited full-service” stations, are required to provide refueling assistance for the self-service portion of the station to any motorist displaying an exemption parking permit or a license plate bearing the international accessibility symbol when the operator of the vehicle is the person to whom such permit was issued. Limited full-service stations must prominently display a decal up to 8 square inches in size on the front of all self-service pumps clearly stating the assistance requirements and the penalties for any violations. This section is enforced by the DACS and compliance is monitored through routine gas station inspections.⁴ A violation of this section is a second-degree misdemeanor.⁵ There are currently no similar state-level requirements for self-service only gas stations.

Americans with Disabilities Act Assistance Requirements

The Americans with Disabilities Act (ADA) requires self-service gas stations to provide equal access to their customers with disabilities. Gas stations with more than one employee must provide refueling assistance upon the request of an individual with a disability without any charge beyond the self-service price. Gas stations must let patrons know (e.g., through appropriate signs) that customers with disabilities can obtain refueling assistance by either honking or otherwise signaling an employee. However, a service station or convenience store is not required to provide such service at any time that it is operating on a remote control basis with a single employee, but is encouraged to do so, if feasible.⁶

Local Government Fueling Assistance Regulations

Local governments have begun passing regulations with respect to fueling assistance for disabled drivers. For example, in early 2012, Broward and Hillsborough counties enacted similar ordinances requiring full-service gas stations and self-service gas stations with two or more attendants on duty to provide fueling assistance to a disabled driver when requested. These gas stations are required to place a decal no smaller than 15 square inches with a blue background on the front of all gas pumps that states the telephone number of the gas station, the international symbol of accessibility, and wording such as “Call for Assistance” or “Assistance Available upon Request.” The gas station is not required to provide assistance if a second attendant is not

² Department of Justice, Civil Rights Division, Disability Rights Section, *ADA Business Brief: Assistance at Gas Stations* (June 2002) available at <http://www.ada.gov/gasbrscr.pdf> (last visited Mar. 11, 2014).

³ DACS, *Agency Analysis*.

⁴ Conversation with Grace Lovett, the DACS (Mar. 13, 2014). The limited full-service assistance decals are part of the inspection decal placed on the gas pump after the DACS has inspected the pump. E-mail from Grace Lovett, the DACS (Mar. 14, 2014).

⁵ A second-degree misdemeanor is punishable by up to 60 days in jail or by a \$500 fine. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

⁶ Department of Justice, *ADA Business Brief*.

present at the station. Consequences for violating the ordinances ranges from a \$250 civil fine up to criminal prosecution as a second-degree misdemeanor.⁷

Motor Vehicle Retail Outlet

The term “motor fuel” is defined by s. 526.303(5), F.S., as “any petroleum product, including any special fuel, which is used for the propulsion of motor vehicles.” The term “retail outlet” is defined by s. 526.303(14), F.S., as “a facility, including land in improvements, where motor fuel is offered for sale, at retail, to the motoring public.

Self-service gasoline stations generally provide air and vacuum supply for a fee determined by the station. There is at least one instance in which a city requires gasoline stations within its jurisdiction to provide compressed air services free of charge.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 526.141, F.S., to require a self-service gas station to display a decal that is blue, at least 15 square inches in size, and that clearly displays the international symbol of accessibility, the station’s telephone number, and the words “Call for Assistance.” The DACS is directed to adopt rules to implement and enforce these provisions. The DACS must confirm that conforming decals are in place by July 1, 2016.

The bill also specifically preempts local government laws and regulations pertaining to the provision of fueling assistance by a self-service gas station.

Section 2 creates s. 526.142, F.S., to provide that no motor fuel outlet shall be required to provide air or vacuum supply without charge and it preempts to the state the power to regulate and set pricing for air and vacuum commodities.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ Hillsborough County, Fla., Code part A, ch. 10, art. XI (2012); Broward County, Fla., Code part II, ch. 20, art. III (2012); *see* Leon County, Fla., Code ch. 11, art. XXIV (2013).

⁸See City of Sunrise Codes and Ordinances, Sec. 16-136(g)(5) that states “All gas stations shall provide compressed air during operating hours free of charge with or without the purchase of gasoline or other items.”

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

None.

B. Private Sector Impact:

Decals required by the bill will be produced by the Florida Petroleum Marketers and Convenience Store Association and sold to gas stations at a cost of approximately \$1 per decal.⁹ According to the Florida Petroleum Marketers and Convenience Store Association, a number of gas stations already use decals that will be required by the bill.¹⁰

Gas station owners that fail to comply with the requirements in the bill may face up to 60 days in jail and a \$500 fine.

The bill may provide increased accessibility at gas stations for disabled drivers.

The bill will hinder motorists from having access to air and vacuum supply services at gas stations free of charge unless those services are provided voluntarily by the gas station.

C. Government Sector Impact:

The DACS is not required to make or approve the decals. However, the DACS will check the decals to ensure they comply with the statutory requirements at the same time it conducts gas station inspections.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the DACS to adopt rules to implement and enforce the act.

VIII. Statutes Affected:

The bill substantially amends section 526.141 of the Florida Statutes.

The bill creates s. 526.142 of the Florida Statutes.

⁹ Telephone conversation with Ned Bowman, Executive Director, Florida Petroleum Marketers and Convenience Store Association (Mar. 12, 2014).

¹⁰ *Id.*

¹¹ Conversation with Grace Lovett, the DACS (Mar. 13, 2014); E-mail from Grace Lovett, the DACS (Mar. 14, 2014).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Agriculture Committee on March 31, 2014:

The CS/CS prohibits local governments from requiring a motor fuel retail outlet to provide air and vacuum supply services free of charge and it preempts to the state the power to price and regulate these commodities.

CS by Commerce and Tourism Committee on March 17, 2014:

The committee substitute clarifies that the decal requirement applies to self-service gas stations and requires the DACS to confirm that conforming decals are in place by July 1, 2016.

- B. **Amendments:**

None.