

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 Finance and Tax

BILL: CS/SB 1272

INTRODUCER: Finance and Tax Committee and Senator Hukill

SUBJECT: Florida Renewable Energy Production Credit

DATE: February 9, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1272 extends the Florida renewable energy production credit statute permanently and increases the annual cap on the total value of credits from the current \$10 million to \$15 million per year. It also deletes a provision that any unused credit funding in a fiscal year is to be used to fund renewable energy technologies investment tax credits against the corporate income tax as that credit expires December 31, 2016, and replaces it with a provision to carry forward the excess funds.

The bill also authorizes the Department of Agriculture and Consumer Affairs to conduct on-site monitoring visits to renewable energy facilities that receive certification for energy production tax credits to verify that the information contained in their application is true and correct.

The bill takes effect July 1, 2016.

The Revenue Estimating Conference estimates that CS/SB 1272 will reduce General Revenue Fund receipts by \$5 million in Fiscal Year 2016-2017 and by \$15 million annually beginning in Fiscal Year 2017-2018.

II. Present Situation:

Chapter 220, F.S., provides for corporate income tax. Section 220.193, F.S., provides for a credit against the corporate income tax for Florida renewable energy production. The purpose of the

credit is to encourage the development and expansion of facilities that produce renewable energy in Florida. The credit is allowed annually based on the taxpayer's¹ production and sale² of electricity from a new³ or expanded⁴ Florida renewable energy facility.⁵ For a new facility, the credit is based on the taxpayer's sale of the facility's entire electrical production. For an expanded facility, the credit is based on the increases in the facility's electrical production that are achieved after May 1, 2012.

The credit is \$0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year. It may be claimed for electricity produced and sold on or after January 1, 2013. Beginning in 2014 and continuing until 2017, each taxpayer claiming a credit under this section must apply to the Department of Agriculture and Consumer Services (DACS) by the date established by DACS for an allocation of available credits for that year. The application form must be adopted by DACS by rule in consultation with the Public Service Commission (commission.) The application form must, at a minimum, require a sworn affidavit from each taxpayer certifying the increase in production and sales that form the basis of the application and certifying that all information contained in the application is true and correct.

Credits may be earned between January 1, 2013, and June 30, 2016. The combined total amount of tax credits which may be granted for all taxpayers is limited to \$5 million in state fiscal year 2012-2013 and \$10 million per state fiscal year in state fiscal years 2013-2014 through 2016-2017. If the annual tax credit authorization amount is not exhausted by allocations of credits within that particular state fiscal year, any authorized but unallocated credit amounts may be used to grant credits that were earned pursuant to s. 220.192, F.S.,⁶ but were not allocated because of the statutory limit.

¹ The section defines the term "taxpayer" to include a general partnership, limited partnership, limited liability company, trust, or other artificial entity in which a corporation, as defined in s. 220.03(1)(e), F.S., owns an interest and is taxed as a partnership or is disregarded as a separate entity from the corporation under this chapter.

² The section defines the term "sale" or "sold" to include the use of electricity by the producer of such electricity which decreases the amount of electricity that the producer would otherwise have to purchase.

³ The section defines the term "new facility" to mean a Florida renewable energy facility that is operationally placed in service after May 1, 2006. The term includes a Florida renewable energy facility that has had an expansion operationally placed in service after May 1, 2006, and whose cost exceeded 50 percent of the assessed value of the facility immediately before the expansion.

⁴ The section defines the term "expanded facility" to mean a Florida renewable energy facility that increases its electrical production and sale by more than 5 percent above the facility's electrical production and sale during the 2011 calendar year.

⁵ The section defines the term "Florida renewable energy facility" to mean a facility in the state that produces electricity for sale from renewable energy, as defined in s. 377.803, F.S. The cross-referenced section defines "renewable energy" to mean electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, F.S., solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

⁶ Section 220.192, F.S., provides a credit against corporate income tax, for tax years beginning on or after January 1, 2013, in an amount equal to the eligible costs, defined as 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2012, and June 30, 2016, not to exceed \$1 million per state fiscal year for each taxpayer and up to a limit of \$10 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel distribution qualify as an eligible cost under this section. These credits may be used in tax years beginning January 1, 2013, and ending December 31, 2016.

If the amount of credits applied for each year exceeds the amount authorized, DACS must allocate credits to qualified applicants based on the following priority.

- First priority is given to applicants who place a new facility in operation after May 1, 2012, up to a maximum of \$250,000 per applicant. If an applicant has remaining credits, they will be paid at the third priority level. If the claims for credits at this level of priority exceed the state fiscal year cap, credits are prorated among these applicants based upon each applicant's qualified production and sales as a percentage of total production and sales for all applicants in this category for the fiscal year.
- Second priority is given to applicants who do not qualify for the first level priority but who claim a credit of \$50,000 or less. If the claims for credits at this level push the total over the annual cap, second priority credits are prorated based upon each applicant's qualified production and sales as a percentage of total qualified production and sales for all applicants in this category for the fiscal year.
- Third priority is given to applicants who do not qualify for either first or second level priority and to an applicant who did qualify for first level priority but has remaining unallocated credits. If there are insufficient credits left to meet these claims, the credits are to be prorated based upon each applicant's unallocated claims for qualified production and sales as a percentage of total unallocated claims for qualified production and sales of all applicants in this category, up to a maximum of \$1 million per taxpayer per state fiscal year. If, after application of this \$1 million cap, there is excess capacity under the state fiscal year cap in any state fiscal year, that remaining capacity is to be used to allocate additional credits with priority given in the order set forth for third level priority claims and without regard to the \$1 million per taxpayer cap.

If the credit granted to a taxpayer is not fully used in one year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed five years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers.

DACS must determine the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue (DOR). DACS also is responsible for ensuring that the corporate income tax credits granted in each fiscal year do not exceed the limits provided for in this section. DACS must determine and regularly publish on its website the amount of available tax credits remaining in each fiscal year.

DOR is authorized to perform additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax certificate applicant, which are necessary to verify the information on the tax return and to ensure compliance. DACS is directed to provide technical assistance when requested by DOR on any technical audits or examinations.

III. Effect of Proposed Changes:

Currently, the annual limit on the total amount of credits that may be allocated is \$10 million through Fiscal Year 2016-2017. The bill removes the expiration date and increases the limit to \$15 million per year.

When the Florida renewable energy production credit was created in 2006,⁷ it was applicable to credits earned between January 1, 2007 and June 30, 2010. In 2012, the credit was revived for another four-year period, applying to credits earned between January 1, 2013, and June 30, 2016.⁸ The bill deletes all references to time-period limitations, making the credit permanent, unless revised by a future Legislature.

As noted above, the statute currently provides that if the annual tax credit authorization amount is not used within a particular state fiscal year, any authorized but unallocated credit amounts may be used to grant credits that were earned pursuant to s. 220.192, F.S., but unallocated due to a lack of authorized funds. That section provides a corporate income tax credit for specified types of expenditures for renewable fuel technologies. The section also provides that the credits may be earned in tax years beginning January 1, 2013, and ending December 31, 2016, after which the credit expires. This credit is not being renewed. Accordingly the bill changes the s. 220.193, F.S., provision on use of any unused renewable energy production credit money in any particular fiscal year, providing that the unused money is to be carried forward.

The bill authorizes DACS to conduct on-site monitoring visits to renewable energy facilities that receive certification for energy production tax credits to verify that the information contained in their application is true and correct.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 1272 reduces the General Revenue Fund by \$5 million in Fiscal Year 2016-2017 and by \$15 million on a recurring basis.

⁷ Chapter 2006-230, s. 13, Laws of Fla.

⁸ Chapter 2012-117, s. 7, Laws of Fla.

B. Private Sector Impact:

CS/SB 1272 makes the Florida renewable energy production credit against the corporate income tax statute permanent, and increases the cap on the credit from \$10 million to \$15 million for Fiscal Year 2016-2017 and by \$15 million on a recurring basis, which will benefit those corporations that produce renewable energy.

CS/SB 1272 authorizes on-site monitoring visits by DACS for facilities certified to receive tax credits.

C. Government Sector Impact:

DACS is authorized to conduct on-site monitoring visits to renewable energy facilities that receive certification for energy production tax credits to verify that the information contained in their application is true and correct.

VI. Technical Deficiencies:

The Department of Revenue states that “it is unclear how the effective date should be applied to the corporate income tax (i.e., tax years ending on or after July 1, 2016, tax years beginning on or after July 1, 2016, or some other application).” The department suggests that the effective date provision read: “This act shall take effect July 1, 2016, and shall apply to tax years ending on or after December 31, 2016.”

VII. Related Issues:

Since its original enactment, s. 220.193, F.S., has provided: “The purpose of this section is to encourage the development and expansion of facilities that produce renewable energy in Florida.” To accomplish this, the credits were available only for “the taxpayer’s production and sale of electricity from a new or expanded Florida renewable energy facility,” with a new facility being one “operationally placed in service after May 1, 2006” and an expanded facility being one “that increases its electrical production and sale by more than five percent above the facility’s electrical production and sale during the 2005 calendar year.”

While the bill retains this stated purpose in the statute, it is uncertain how far the bill will go in accomplishing it. According to a report supporting the extension of the renewable energy production credit:

During the most recent state tax year, 15 renewable energy resources generated 1,385,000 megawatt hours (MWh). They would have qualified for up to \$13.8 million in EPCs [energy production credits] but for the cap. ... As can be seen, among the 15 entities are firms operating in competitive industries (i.e., agriculture, fertilizer, forest products). Other recipients include electric utilities, landfill management and food recycling firms.”⁹

⁹ J. Pollock Incorporated, *The Policy Reasons for Renewing the Energy Production Credit*, (Sept. 2015, page 2) (on file with the Senate Committee on Communications, Energy, and Public Utilities).

Even extending the cap to \$15 million, it appears that existing production facilities will produce enough renewable energy to earn the full amount of credits available. Thus the bill's effect as an incentive for new or expanded facilities is uncertain. This seems to be acknowledged in the report, which states: "Thus, the EPC [energy production credit] will help retain industries that have invested in renewable resources."¹⁰

VIII. Statutes Affected:

This bill substantially amends section 220.193 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on February 8, 2016:

The CS authorizes DACS to conduct on-site monitoring visits to renewable energy facilities that receive certification for energy production tax credits to verify that the information contained in their application is true and correct.

B. Amendments:

None.

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

¹⁰ *Id.*