

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 Agriculture Committee

BILL: SB 1284

INTRODUCER: Senator Bennett

SUBJECT: Biodiesel

DATE: March 17, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Spalla	AG	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides incentives to promote the growth of a biodiesel industry by eliminating a bond requirement, certain motor fuel taxes, and permits for cultivating nonnative plants. It requires diesel fuel to contain a minimum 2 percent of biodiesel effective December 31, 2011 and provides guidelines for that percentage to be increased to 5 percent. It provides reporting requirements to the Department of Agriculture and Consumer Services (DACS). It extends statutory provisions making it unlawful to sell or distribute gasoline that doesn't meet state standards to apply to the sale or distribution of diesel. It makes a legislative finding about the importance of including a certain percentage of biodiesel in diesel sold in the state.

This bill substantially amends the following sections of the Florida Statutes: 206.02, 206.874, 206.9925, 526.202, 526.203, 526.205, and 581.083.

II. Present Situation:

All biodiesel manufacturers are required to post a bond with the Department of Revenue (DOR) in the approximate amount of the average monthly tax levied on the operation not to exceed \$100,000 to assure compliance with tax reporting and payment requirements. Currently, only a secondary school that manufactures less than 1,000 gallons of biodiesel fuel annually is exempt from the tax levied on diesel fuel.

Pollutants are subject to an excise tax under Part IV, Chapter 206 (Motor and Other Fuel Taxes) unless exempt under s. 206.9941, F.S. Biodiesel is not exempt nor is it excluded in the definition of "Pollutants" in s. 206.9925, F.S.

The Florida Renewable Fuel Standard Act, ss 526.201-526.207, F.S., (act) contains a legislative finding that it is vital to the public interest and the state's economy to require that all gasoline sold in the state contain a percentage of agriculturally derived, denatured ethanol. This finding does not include biodiesel fuel. The act also requires that all gasoline sold in Florida beginning December 31, 2010 be a blended gasoline which means it must contain a mixture of gasoline and ethanol. There is no similar standard requiring biodiesel to be blended with diesel fuel. There are provisions in the act that make it unlawful to sell gasoline that fails to meet the requirements of the act, but there is no similar language for diesel.

Section 581.03, F.S., requires a special permit be obtained from DACS through the Division of Plant Industry to cultivate a nonnative plant, including a genetically engineered plant for the purposes of fuel production or purposes other than agriculture. A condition of obtaining this permit is that the permit holder must maintain a bond or certificate of deposit in an amount not less than 150 percent of the estimated cost of removing and destroying the cultivated plants in the event eradication is necessary with a maximum bond or certificate of deposit amount capped at \$5,000 per acre.

III. Effect of Proposed Changes:

Section 1 amends s. 206.02, F.S., to eliminate the requirement for a bond for a biodiesel manufacturer whose annual production is derived at least 50 percent from renewable feedstocks originating in Florida.

Section 2 amends s. 206.874, F.S., to create an exemption from the motor fuel tax imposed by s. 206.87, F.S., for biodiesel fuel produced by a manufacturer whose annual production is derived at least 50 percent from renewable feedstocks originating in Florida.

Section 3 amends s. 206.9925, F.S., to amend the definition of "Pollutants" to exclude biodiesel manufactured in this state by a manufacturer whose annual production is derived at least 50 percent from renewable feedstocks originating in Florida.

Section 4 amends s. 526.202, F.S., to extend legislative findings concerning the importance of requiring gasoline offered for sale to contain a percentage of ethanol to include a finding that diesel offered for sale contain a percentage of biodiesel.

Section 5 amends s. 526.203, F.S., to incorporate definitions for "Biodiesel" and "Diesel fuel" by reference to other sections of the Florida statutes. It amends statutory "Fuel Standards" to require that all diesel fuel contain at least 2 percent biodiesel effective December 31, 2011 which percentage will increase to 5 percent when the annualized capacity of biodiesel production facilities reaches 233 million gallons. It requires dealers and wholesalers to provide a certified fuel analysis of biodiesel received upon request of DACS. It provides an exemption for fuel used in gasoline-powered boats and it requires a monthly report to the DOR of gallons of diesel and biodiesel sold.

Section 6 amends 526.205, F.S., to make it unlawful to sell or distribute diesel which fails to meet the state's requirements for the sale of liquid fuels and it provides that persons involved in

the biodiesel process may apply for an extension of time to September 30, 2011 to comply with these requirements.

Section 7 amends s. 581.083, F.S., to eliminate the requirement to obtain a permit to cultivate a nonnative plant, including a genetically engineered plant, if it is being used for purposes of fuel production.

Section 8 provides that this act shall take effect July 1, 2011.

Other Potential Implications:

DACS expresses concerns that the elimination of the permit and related bond requirements could result in the introduction and establishment of extremely invasive plants that could do untold damage to Florida's agriculture and natural resources. Several environmental groups have expressed concerns that removal of the permit requirement and DACS oversight would allow the unregulated planting of species not listed on the noxious weeds lists and elimination of the bond requirement could have a significant fiscal impact to the state if eradication needed to be undertaken. The Petroleum Council expresses concerns that the bill imposes a mandate to achieve a certain percent of biodiesel in diesel product by the end of the year which may not be able to be achieved and that federal law has standards already in effect regarding the blending of ethanol and biodiesel in motor fuels.

DOR points out that elimination of the bond to assure payment of tax for each biodiesel manufacturer that is licensed as a wholesaler which processes at least 50 percent of biodiesel production from renewable feedstocks has the effect of removing a bond requirement on the manufacturer's other products which could potentially approach 50% and would expose the state to a significant loss if the manufacturer defaults on payment of tax on products other than the exempt biodiesel.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Some person or entity could raise a commerce clause issue asserting that there is a discriminatory effect on competition between products produced in the state and products

produced outside the state. However, both in-state and out-of-state manufacturers could potentially meet the qualifications of the exemption in this bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

DACS estimates there would be a \$350 annual reduction in non-recurring fees because of the bill.

B. Private Sector Impact:

Manufacturers of biodiesel fuel and growers of renewable feedstock used for that purpose would realize financial savings of an indeterminate amount depending on their volume of production due to tax, permit, and bonding requirements being exempted by the bill.

C. Government Sector Impact:

DOR estimates it would incur a one-time expense of \$53,812 to implement the change in tax provisions brought about by the bill.

VI. Technical Deficiencies:

The bill introduces “renewable feedstocks” as a term but does not define it. DOR asserts that this would require rulemaking by the agency which could be avoided by amending the bill to define the term.

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.