



Energy & Utilities Subcommittee

Tuesday, February 19, 2013

9:00 AM

Webster Hall (212 Knott)

**Will Weatherford
Speaker**

**Clay Ford
Chair**



The Florida House of Representatives

Regulatory Affairs Committee

Energy & Utilities Subcommittee

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AGENDA

February 19, 2013

9:00 a.m. – 11:00 a.m.

212 Knott Building (Webster Hall)

Opening Remarks by Chair Ford

Consideration of the following bills:

HB 269 by *Rep. Beshears*
Public Construction Projects

HB 435 by *Rep. Davis*
Taxes On Prepaid Calling Arrangements

HB 4001 by *Rep. Gaetz and Perry*
Florida Renewable Fuel Standard Act

Closing Remarks by Chair Ford

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 269 Public Construction Projects
SPONSOR(S): Beshears
TIED BILLS: IDEN./SIM. BILLS: SB 578

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier <i>syw</i>	Collins <i>JAC</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.^{1, 2} There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner.

Section 255.252(3), F.S., provides that, "[i]t is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code" and "[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code."

"Sustainable building rating or national model green building code" means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative's Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.³

According to proponents of the bill, LEED is the only sustainable building rating system that does not award points for timber that is grown on a majority of Florida's 16 million acres of forest, leaving only approximately 200 acres of Florida-grown wood being certified under this rating system.

The Department of Management Services (DMS) is the lead agency for implementing the Florida Energy Conservation and Sustainable Buildings Act and has chosen the LEED rating system to meet its own needs. Proponents of the bill have stated that there may be widespread perception that since DMS has selected LEED as its rating system, other state and local agencies will view this as a recommendation or endorsement of LEED by DMS.

There appears to be no negative fiscal impact on local government and an indeterminate fiscal impact on the state.

¹ Florida Forestry Association website: <http://floridaforest.org/about-us/fl-forests-facts/>.

² 2010 Florida's Forestry and Forest Product Industry Economic Impacts, by the Florida Forest Service (PDF file accessed at <http://floridaforest.org/about-us/fl-forests-facts/>).

³ Section 255.253(7), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Timber Industry

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.^{4, 5} Although forests cover about 50% of the state's land area, Florida's timberlands are located mostly north of Orlando. In the northern half of the state most counties are at least 50% forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90% of its area. The peninsula is forested at 40% or less and a number of counties in southeast Florida are less than 10% forested.⁶

In 2010, there were 59 primary wood-using mills in Florida. Almost half of those are sawmills (27). Other types of mills include mulch (7), pulp/paper (6), chip-and-saw (5), chip mill (3), post (3), plywood (2), pole (2), pellet, strand board, veneer and firewood (1 each). The primary wood-using mills in Florida are located mostly in the northern part of the state.⁷

There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Sustainable Forestry Initiative, the American Tree Farm System, and the Forest Stewardship Council are some commonly-used programs.

The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their "forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value." Further, that the standard "has strong acceptance in the global marketplace so we can deliver a steady supply of wood and paper products from legal and responsible sources. This is especially important at a time when there is growing demand for green building and responsible paper purchasing, and less than 10 percent of the world's forests are certified."⁸

The American Tree Farm System (ATFS), another commonly-used program, "offers certification to landowners who are committed to good forest management....Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest...protect[ing] economic, social and environmental benefits."⁹

The Forest Stewardship Council (FSC) is an independent, non-profit organization. "[M]embership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all

⁴ Florida Forestry Association website: <http://floridaforest.org/about-us/fl-forests-facts/>.

⁵ 2010 Florida's Forestry and Forest Product Industry Economic Impacts, by the Florida Forest Service (PDF file accessed at <http://floridaforest.org/about-us/fl-forests-facts/>).

⁶ *Id.*

⁷ *Id.*

⁸ Sustainable Forestry Initiative website: <http://www.sfiprogram.org/sustainable-forestry-initiative/>.

⁹ American Tree Farm System website: <https://us.fsc.org/about-certification.198.htm>.

FSC-certified forests conform to the requirements contained within an FSC forest management standard....Certifiers are independent of FSC and the companies they are auditing.”¹⁰

Florida Energy Conservation and Sustainable Buildings Act

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,¹¹ which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, F.S.) provides that, “Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings.”¹²

Section 255.252(3), F.S., provides legislative intent that, “[i]t is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code” and “[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code.”

“Sustainable building rating or national model green building code” means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative’s Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.¹³

Direction is again provided in s. 255.257(4)(a), F.S.: “All state agencies shall adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings.” Section 255.2575(2), F.S., provides that, “All county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code.”¹⁴

The Department of Management Services (Department) states on its website, the following:

State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency’s ultimate decision must be made on the basis of long-term cost-effectiveness.¹⁵

¹⁰ Forest Stewardship Council website: <https://us.fsc.org/about-certification.198.htm>.

¹¹ HB 7135 (Chapter 2008-227, L.O.F.)

¹² Section 255.252(2), F.S.

¹³ Section 255.253(7), F.S.

¹⁴ This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.

¹⁵ http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives.

The Department's Rules pertaining to sustainable building ratings¹⁶ implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. The Department then evaluates this life-cycle cost analysis for technical correctness and completeness.¹⁷ According to the Department, these Rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

The following are basic, brief descriptions of the four statutorily-authorized sustainable building rating systems:

- **Leadership in Energy and Environmental Design (LEED)** is a “voluntary, consensus-based, market-driven” program that provides third-party verification of green buildings [and] addresses the entire lifecycle of a building. LEED projects have been established in 135 countries.... For commercial buildings and neighborhoods, to earn LEED certification, a project must satisfy all LEED prerequisites and earn a minimum 40 points on a 110-point LEED rating system scale.¹⁸
- **International Green Construction Code (IgCC)** is the “first model code to include sustainability measures for the entire construction project and its site - from design through construction, certificate of occupancy and beyond. The new code is expected to make buildings more efficient, reduce waste, and have a positive impact on health, safety and community welfare....” The IgCC “creates a regulatory framework for new and existing buildings, establishing minimum green requirements for buildings and complementing voluntary rating systems, which may extend beyond baseline of the IgCC. The code acts as an overlay to the existing set of *International Codes*....”¹⁹
- **Green Globes** is a web-based program for green building guidance and certification that includes an onsite assessment by a third party. “Green Globes offers a streamlined and affordable...way to advance the overall environmental performance and sustainability of commercial buildings. The program has modules supporting new construction...[and]...existing buildings.... It is suitable for a wide range of buildings from large and small offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities.”²⁰
- The **Florida Green Building Coalition (FGBC)** is a nonprofit corporation “dedicated to improving the built environment, [whose] mission is to lead and promote sustainability with environmental, economic, and social benefits through regional education and certification programs. FGBC was conceived and founded in the belief that green building programs will be most successful if there are clear and meaningful principles on which ‘green’ qualification and marketing are based.”²¹

According to proponents of the bill, LEED is the only sustainable building rating system that does not award points for timber that is grown on a majority of Florida's 16 million acres of forest, leaving only approximately 200 acres of Florida-grown wood being certified under this rating system.²²

¹⁶ Chapter 60D, F.A.C.

¹⁷ Rule 60D-4.004(1)(c)1 and 2, F.A.C.

¹⁸ <http://new.usgbc.org/leed>.

¹⁹ <http://www.iccsafe.org/cs/igcc/pages/default.aspx>.

²⁰ <http://www.thegbi.org/green-globes/>.

²¹ <http://www.floridagreenbuilding.org/home>.

²² February 13, 2013, correspondence with staff from the Florida Forestry Association and a representative from Plum Creek Timber Company.

The Department of Management Services (DMS) is the lead agency for implementing the Florida Energy Conservation and Sustainable Buildings Act and has chosen the LEED rating system to meet its own needs. Proponents of the bill have stated that there may be widespread perception that since DMS has selected LEED as its rating system, other state and local agencies will view this as a recommendation or endorsement of LEED by DMS.²³

Effects of Proposed Changes

The bill requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal.

The bill prohibits a state agency, when requiring compliance with a sustainable building rating system or national model green building code, from excluding the use of a sustainable building rating system or national model green building code for new construction and renovation projects associated with publicly owned buildings or facilities.

B. SECTION DIRECTORY:

Section 1. Amends s. 255.20, F.S., to require state agencies to specify certain products associated with public works projects.

Section 2. Amends s. 255.2575, F.S., to prohibit state agencies from excluding the use of certain building rating systems and building codes for certain construction and renovation projects.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida-based lumber and timber companies could see an increase in State of Florida purchases should their products be equal in price, fitness, and quality.

²³ February 13, 2013, correspondence with staff from the Florida Forestry Association and a representative from Plum Creek Timber Company.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill inserts "state agencies" into a section that pertains to entities that are charged with the letting of "local bids and contracts for public construction works."

Pertaining to Section 2 of the bill, the Department of Management Services states, "This change would have the practical effect of not allowing the state to favor any particular sustainable rating system or national model green building code over another when accepting proposed specifications pursuant to a competitive solicitation." Further, the wording "is a little ambiguous in that it can be read to contradict the requirements to adopt a sustainable building system or national model green building code. Given the requirement to adopt a system or green building code, it could create confusion among agencies on how they would do so without excluding other systems or green building codes."²⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁴ Analysis of HB 269, Department of Management Services, February 11, 2013.
STORAGE NAME: h0269.EUS.DOCX
DATE: 2/18/2013

1 A bill to be entitled
 2 An act relating to public construction projects;
 3 amending s. 255.20, F.S.; requiring state agencies to
 4 specify certain products associated with public works
 5 projects; amending s. 255.2575, F.S.; prohibiting
 6 state agencies from excluding the use of certain
 7 building rating systems and building codes for certain
 8 construction and renovation projects; providing an
 9 effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (3) of section 255.20, Florida
 14 Statutes, is amended to read:

15 255.20 Local bids and contracts for public construction
 16 works; specification of state-produced lumber.—

17 (3) All state agencies, county officials, boards of county
 18 commissioners, school boards, city councils, city commissioners,
 19 and all other public officers of state boards or commissions
 20 that are charged with the letting of contracts for public work,
 21 for the construction of public bridges, buildings, and other
 22 structures must specify lumber, timber, and other forest
 23 products produced and manufactured in Florida ~~this state~~ if such
 24 products are available and their price, fitness, and quality are
 25 equal. This subsection does not apply to plywood specified for
 26 monolithic concrete forms, if the structural or service
 27 requirements for timber for a particular job cannot be supplied
 28 by native species, or if the construction is financed in whole

29 | or in part from federal funds with the requirement that there be
 30 | no restrictions as to species or place of manufacture.

31 | Section 2. Subsection (4) is added to section 255.2575,
 32 | Florida Statutes, to read:

33 | 255.2575 Energy-efficient and sustainable buildings.—

34 | (4) For new construction and renovation projects
 35 | associated with publicly owned buildings or facilities, a state
 36 | agency may not, when requiring compliance with a sustainable
 37 | building rating system or national model green building code,
 38 | exclude the use of a sustainable building rating system or
 39 | national model green building code listed in s. 255.253(7).

40 | Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 435 Taxes On Prepaid Calling Arrangements

SPONSOR(S): Davis

TIED BILLS: IDEN./SIM. BILLS: SB 290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating <i>CK</i>	Collins <i>JCC</i>
2) Finance & Tax Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Under current law, both state and local communications services tax (CST) and state gross receipts tax apply to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state. However, the retail sale of a "prepaid calling arrangement," as defined in the law, is not subject to these taxes. Instead, it is subject to the sales tax. Combined CST and gross receipts taxes applicable to communications services can range from 9.47% to 16.29%, depending on the local CST applied to a particular transaction. Sales tax applies to prepaid calling arrangements at a rate of 6%.

In a 2012 Tax Information Publication (TIP), the Florida Department of Revenue (DOR) provided examples of prepaid communications service plans that it deems not within the definition of "prepaid calling arrangement." These examples include: service that includes text messaging, multimedia messaging, web, email, etc.; unlimited calling plans that do not decline with usage; services or plans that are not sold in predetermined units or dollars; and services or plans that are not originated using an access number or authorization code. Based on this TIP, it appears that at least some communications services providers or retailers have collected and remitted the sales tax for certain prepaid services or plans that DOR deems to be outside the definition of "prepaid calling arrangement" and therefore subject to the CST.

The bill amends the definition of "prepaid calling arrangement" in chapter 202, F.S. (relating to the CST and applicable to the gross receipts tax) and chapter 212, F.S. (relating to the sales tax), effectively broadening the definition of "prepaid calling arrangement" for tax purposes in two primary ways: (1) by including prepaid communications services other than those that consist exclusively of telephone calls; and (2) by including prepaid services that are originated by any means, rather than those originated only through use of an access number, authorization code, or similar means. These changes appear to reflect that current prepaid services may include services other than telephone calls, such as messaging, web access, and email, and that current means of access to such services do not rely solely on access numbers and codes. The bill provides that these amendments are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

The Revenue Estimating Conference has not estimated the revenue impacts of this bill on state and local governments. The bill's impact on revenues will depend upon the extent to which sellers have or have not collected the CST rather than the sales tax on the prepaid services at issue. DOR has estimated a non-recurring expenditure of \$45,721 to produce and mail an updated Tax Information Publication.

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill redefines the types of services to which existing local communications services tax rates apply; however, the bill's impact on the authority of counties or municipalities to raise revenue in the aggregate may be insignificant, as it is uncertain whether and to what extent these tax rates have historically been applied to the types of services at issue.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0435.EUS.DOCX

DATE: 2/15/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2000, the Legislature enacted Chapter 202, F.S., the Communications Services Tax Simplification Law, which became effective October 1, 2001. The law simplified and restructured numerous state and local taxes and fees imposed on communications services, such as landline and wireless telephone services, cable television, and direct-to-home satellite service.

Under the law, the state communications services tax (state CST) rate of 6.65 percent is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.¹ Additionally, the governing authority of each county and municipality may, by ordinance, levy a discretionary communications services tax (local CST) on these services.² The local CST rate varies depending on the location of the customer. Currently, local CST rates range from 0.30% to 7.12%. Local CST rates can be found by selecting the "Jurisdiction Rate Table" link at http://dor.myflorida.com/dor/taxes/local_tax_rates.html.

The state and local CST are charged when the taxable service is sold at retail and are computed on each taxable sale for the purpose of remitting the tax due.³ However, the definition of the term "sales price" expressly excludes the "sale or recharge of a prepaid calling arrangement," so communications service tax is not collected on the sale of a prepaid calling arrangement.⁴ The term "prepaid calling arrangement" is defined to mean "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount."⁵

Chapter 212, F.S., provides for the application of the sales tax to certain activities. Under this law, a sales tax rate of 6 percent is applicable to charges for prepaid calling arrangements.⁶ This tax is collected at the time of sale and remitted by the selling dealer. The definition of the term "prepaid calling arrangement" in Chapter 212, F.S., is almost identical to the definition provided in Chapter 202, F.S. It is defined to mean "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount."⁷

Section 203.01, F.S., provides for a gross receipts tax on communications services delivered to a retail consumer in this state. This tax is applied to the same services and transactions subject to the CST and to communications services sold to residential households. The tax is applied to the sales price of communications services when sold at retail, as those terms are defined in Chapter 202, F.S., and is due and payable at the same time as the CST. The rate applied to communications services is 2.37 percent. An additional rate of 0.15 percent is applied to communication services subject to state and local CST. With such sales, a communication services dealer may collect a combined CST rate of 6.8

¹ Section 202.12, F.S.

² Section 202.19, F.S.

³ Pursuant to s. 202.125(1), F.S., the separately stated sales price of communications services sold to residential households is exempt from this tax.

⁴ Section 202.11(13)(b)4., F.S.

⁵ Section 202.11(9), F.S.

⁶ Section 212.05(1)(e)1., F.S.

⁷ *Id.*

percent comprised of the 6.65 percent for the state CST and the 0.15 percent additional gross receipts tax.⁸

In summary, sales of prepaid calling plans or services that meet the definition of a “prepaid calling arrangement” are subject to the sales tax (6%) but are excluded from imposition of the state CST (6.65%) and gross receipts tax (2.37 % for residential service, 2.52% for all others) and the local CST (variable rate) applicable to other communications services.

In a 2012 Tax Information Publication, the Florida Department of Revenue (DOR) provided examples of prepaid communications service plans that it deems not within the definition of “prepaid calling arrangement.”⁹ The publication states that:

Examples of such plans that do **not** fall under this definition include, but are **not** limited to:

- Service that includes text messaging, multimedia messaging, web, email, etc.
- Unlimited calling plans that do **not** decline with usage
- Services or plans that are **not** sold in predetermined units or dollars; or
- Services or plans that are **not** originated using an access number or authorization code.

A sale of a prepaid card or prepaid arrangement that does not fall under the definition of a “prepaid calling arrangement” is not subject to [sales tax]. Instead, sales of such plans are subject to CST, because Florida’s CST law generally applies to services that allow the transmission, conveyance, or routing of voice, data, audio, or video.

The publication further states:

Taxpayers (including communications service providers and retailers) who have not collected and remitted CST on sales of prepaid plans and services that do not fall within the “prepaid calling arrangement” definition are encouraged to contact [DOR] under the Voluntary Disclosure Program to take advantage of compromise authority prior to discovery on audit.¹⁰

Thus, it appears that at least some communications service providers or retailers have collected and remitted the sales tax for certain services or plans that DOR deems to be outside the definition of “prepaid calling arrangement” and therefore subject to the CST.

Effect of Proposed Changes

The bill amends s. 202.11, F.S., to define the term “prepaid calling arrangement” to mean “access to communications services which must be paid for in advance of using such services and which is sold in predetermined units or dollars that expire on a predetermined schedule or that are decremented on a predetermined basis in exchange for such access.” The bill amends s. 212.05, F.S., to define the term “prepaid calling arrangement” as having the same meaning as provided for in s. 202.11, F.S.

⁸ Section 202.12001, F.S.

⁹ Florida Department of Revenue TIP # 12ADM-02, issued March 27, 2012.

¹⁰ Florida’s voluntary disclosure program allows a taxpayer to report previously unpaid or underpaid tax liabilities for any tax administered by DOR, providing the taxpayer an opportunity to voluntarily pay the taxes without being penalized. When the tax and interest liabilities have been paid, all penalties will be waived unless tax has been collected and not remitted. DOR will look back three years immediately preceding the postmark date of the voluntary disclosure request. All taxes administered by the DOR are eligible. See http://dor.myflorida.com/dor/taxes/voluntary_disclosure.html.

The bill effectively broadens the definition of “prepaid calling arrangement” for tax purposes in two primary ways: (1) by including prepaid communications services other than those that consist exclusively of telephone calls; and (2) by including prepaid services that are originated by any means, rather than those originated only through use of an access number, authorization code, or similar means. These changes appear to reflect that current prepaid services may include services other than telephone calls, such as messaging, web access, and email, and that current means of access to such services do not rely solely on access numbers and codes.

In its analysis of the bill, DOR states that services such as Video on Demand, cable television, and direct-to-home satellite service – while not “calling” services – could fall within the bill’s definition of “prepaid calling arrangements.” DOR states that these examples represent communications services that can be paid for in advance of use, sold in predetermined dollars, and expire on a predetermined schedule (i.e., within 24 hours or monthly).

The bill provides that these amendments are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act. Thus, it appears that any communications services provider or retailer that collected and remitted the sales tax, rather than the CST, for services or plans that DOR deems to be outside the definition of “prepaid calling arrangement” would not be assessed for any CST not collected and remitted.

B. SECTION DIRECTORY:

Section 1. Amends s. 202.11, F.S., revising the definition of “prepaid calling arrangement.”

Section 2. Amends s. 212.05, F.S., relating to sales, storage, and use tax.

Section 3. Creates an undesignated section of law, providing for remedial and retroactive application of the act.

Section 4. Provides an effective date of July 1, 2013, except as provided in Section 3 of the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impacts of this bill on state government.

As noted in the Substantive Analysis, it appears that at least some communications services providers or retailers have collected and remitted the sales tax for certain services or plans that DOR now deems to be outside the definition of “prepaid calling arrangement” and therefore subject to the CST. Because the total CST rate (comprised of the state CST rate of 6.65% plus the gross receipts tax rate of 2.37% or 2.52%) exceeds the sales tax rate (6%), the bill’s impact on state revenues will depend upon the extent to which sellers have or have not collected the CST rather than sales tax on these services. If all or most sellers have not collected the CST on these services in the past, then the difference between past revenues and projected revenues under the bill should not be significant.

2. Expenditures:

DOR has indicated that a non-recurring expenditure of \$45,721 will be necessary to cover in-house production and mailing of an updated Tax Information Publication to approximately 110,525 sales tax dealers and communications services providers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impacts of this bill on local governments.

As noted in the Substantive Analysis, it appears that at least some communications services providers or retailers have collected and remitted the sales tax for certain services or plans that DOR now deems to be outside the definition of "prepaid calling arrangement" and therefore subject to the CST. Local CST rates vary by local government and currently range from 0.30% to 7.12%. The bill's impact on local government revenues will depend upon the extent to which sellers have or have not collected the CST rather than sales tax on these services. If all or most sellers have not collected the CST on these services in the past, then the difference between past revenues and projected revenues under the bill should not be significant.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Communications services providers that offer prepaid calling arrangements, as defined by the bill, will not bear the responsibility or cost of identifying, for each sale of such services, the appropriate local government for purposes of collecting and remitting the local CST that may otherwise apply to such arrangements. Further, such providers will be relieved of potential assessments or fines by DOR for any CST not collected and remitted on prepaid calling arrangements as defined by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill redefines the types of services to which existing local Communications Services tax rates apply; however, the bill's impact on the authority of counties or municipalities to raise revenue in the aggregate may be insignificant, as it is uncertain whether and to what extent these tax rates have historically been applied to the types of services at issue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its analysis of the bill, DOR states that services such as Video on Demand, cable television, and direct-to-home satellite service – while not “calling” services – could fall within the bill’s definition of “prepaid calling arrangements.” DOR states that these examples represent communications services that can be paid for in advance of use, sold in predetermined dollars, and expire on a predetermined schedule (i.e., within 24 hours or monthly). It is not clear if the bill intends to exempt such services from the CST.

DOR also states that the bill does not specify whether a communications service, to meet the definition of a “prepaid calling arrangement,” must be discontinued at the expiration of the predetermined schedule or at a point where the decrement at a predetermined basis is exhausted or complete.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to taxes on prepaid calling
 3 arrangements; amending ss. 202.11 and 212.05, F.S.;
 4 revising the definition of "prepaid calling
 5 arrangement" to clarify and update which services are
 6 included under that definition; providing for
 7 retroactive application; providing an effective date.

8
 9 WHEREAS, it is the intent of the Legislature to clarify
 10 that certain communication services that are paid for in advance
 11 are considered prepaid calling arrangements, subject to the
 12 state retail sales tax and are, therefore, excluded from a
 13 communications services tax, and

14 WHEREAS, it is further the intent of the Legislature that
 15 the provisions of this act are remedial in nature, should be
 16 interpreted broadly, as appropriate for a tax exclusion
 17 provision that defines the tax base, and not strictly, as would
 18 be appropriate for a tax exemption provision, NOW, THEREFORE,

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Subsection (9) of section 202.11, Florida
 23 Statutes, is amended to read:

24 202.11 Definitions.—As used in this chapter, the term:

25 (9) "Prepaid calling arrangement" means access to the
 26 ~~separately stated retail sale by advance payment of~~
 27 communications services which must be paid for in advance of
 28 using such services and which is that consist exclusively of

29 ~~telephone calls originated by using an access number,~~
 30 ~~authorization code, or other means that may be manually,~~
 31 ~~electronically, or otherwise entered and that are sold in~~
 32 ~~predetermined units or dollars that expire on a predetermined~~
 33 ~~schedule or that are decremented on a predetermined basis in~~
 34 ~~exchange for such access of which the number declines with use~~
 35 ~~in a known amount.~~

36 Section 2. Paragraph (e) of subsection (1) of section
 37 212.05, Florida Statutes, is amended to read:

38 212.05 Sales, storage, use tax.—It is hereby declared to
 39 be the legislative intent that every person is exercising a
 40 taxable privilege who engages in the business of selling
 41 tangible personal property at retail in this state, including
 42 the business of making mail order sales, or who rents or
 43 furnishes any of the things or services taxable under this
 44 chapter, or who stores for use or consumption in this state any
 45 item or article of tangible personal property as defined herein
 46 and who leases or rents such property within the state.

47 (1) For the exercise of such privilege, a tax is levied on
 48 each taxable transaction or incident, which tax is due and
 49 payable as follows:

50 (e)1. At the rate of 6 percent on charges for:

51 a. Prepaid calling arrangements. The tax on charges for
 52 prepaid calling arrangements shall be collected at the time of
 53 sale and remitted by the selling dealer.

54 (I) "Prepaid calling arrangement" has the same meaning as
 55 provided in s. 202.11 ~~means the separately stated retail sale by~~
 56 ~~advance payment of communications services that consist~~

57 ~~exclusively of telephone calls originated by using an access~~
 58 ~~number, authorization code, or other means that may be manually,~~
 59 ~~electronically, or otherwise entered and that are sold in~~
 60 ~~predetermined units or dollars whose number declines with use in~~
 61 ~~a known amount.~~

62 (II) If the sale or recharge of the prepaid calling
 63 arrangement does not take place at the dealer's place of
 64 business, it shall be deemed to have taken ~~take~~ place at the
 65 customer's shipping address or, if no item is shipped, at the
 66 customer's address or the location associated with the
 67 customer's mobile telephone number.

68 (III) The sale or recharge of a prepaid calling
 69 arrangement shall be treated as a sale of tangible personal
 70 property for purposes of this chapter, whether or not a tangible
 71 item evidencing such arrangement is furnished to the purchaser,
 72 and such sale within this state subjects the selling dealer to
 73 the jurisdiction of this state for purposes of this subsection.

74 b. The installation of telecommunication and telegraphic
 75 equipment.

76 c. Electrical power or energy, except that the tax rate
 77 for charges for electrical power or energy is 7 percent.

78 2. The provisions of s. 212.17(3), regarding credit for
 79 tax paid on charges subsequently found to be worthless, is ~~shall~~
 80 ~~be~~ equally applicable to any tax paid under ~~the provisions of~~
 81 this section on charges for prepaid calling arrangements,
 82 telecommunication or telegraph services, or electric power
 83 subsequently found to be uncollectible. The term ~~word~~ "charges"
 84 under ~~in~~ this paragraph does not include any excise or similar

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85 tax levied by the Federal Government, any political subdivision
 86 of this ~~the~~ state, or any municipality upon the purchase, sale,
 87 or recharge of prepaid calling arrangements or upon the purchase
 88 or sale of telecommunication, television system program, or
 89 telegraph service or electric power, which tax is collected by
 90 the seller from the purchaser.

91 Section 3. The amendments made by this act are intended to
 92 be remedial in nature and apply retroactively, but do not
 93 provide a basis for an assessment of any tax not paid or create
 94 a right to a refund or credit of any tax paid before the
 95 effective date of this act.

96 Section 4. Except as otherwise expressly provided in
 97 section 3 of this act, this act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4001 Florida Renewable Fuel Standard Act
SPONSOR(S): Gaetz and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier <i>SPW</i>	Collins <i>JBC</i>
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (ss. 526.201-526.207, F.S.), which provided findings that "it is vital to the public interest and to the state's economy to establish a market and the necessary infrastructure for renewable fuels in this state by requiring that all gasoline offered for sale in this state include a percentage of agriculturally derived, denatured ethanol." Further, "that the use of renewable fuel reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state-of-the-art technology."¹

Based on these findings, the Legislature established the standard that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.² The Act did not address retail sales of gasoline. In 2012, the Legislature clarified that the Act does not prohibit a retail dealer from selling or offering to sell unblended gasoline.

"Blended gasoline" is defined in the law as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel, by volume.

The Act provides specific exemptions from the standard.³ They include 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 requirements of the Act.

HB 4001 repeals the entire Florida Renewable Fuel Standard Act from the statutes, thereby removing the requirement that all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.

The bill appears to have no fiscal impact on state or local government.

¹ Section 526.202, F.S.

² Section 526.203(2), F.S.

³ Section 526.203(3), F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h4001.EUS.DOCX

DATE: 2/15/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Renewable Fuel Standard

The federal government requires the Environmental Protection Agency (EPA) to develop and implement regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel, through a Renewable Fuel Standard (RFS). The RFS program was created under the Energy Policy Act of 2005, which established the first federal renewable fuel volume mandate in the United States. Originally, the program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.⁴ However, the federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, increased the renewable fuel standard minimum annual goal for renewable fuel use to 9 billion gallons in 2008 and 36 billion gallons by 2022.⁵

Also in accordance with Section 211(o) of the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, the EPA is required to set the annual standards under the RFS program each November for the following year based on gasoline and diesel projections from the Energy Information Administration (EIA) and is required to set the cellulosic biofuel standard each year based on the volume projected to be available during the following year, using EIA projections and assessments of production capability from industry.⁶

Florida Renewable Fuel Standard Act (Act)

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (ss. 526.201-526.207, F.S.), which provided findings that “it is vital to the public interest and to the state’s economy to establish a market and the necessary infrastructure for renewable fuels in this state by requiring that all gasoline offered for sale in this state include a percentage of agriculturally derived, denatured ethanol.” Further, “that the use of renewable fuel reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state-of-the-art technology.”⁷

Based on these findings, the Legislature established the standard that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.⁸ The original Act did not address retail sales of gasoline. In 2012, the Legislature clarified that the Act “does not prohibit a retail dealer...from selling or offering to sell unblended gasoline.”⁹ Terminal suppliers, importers, blenders, and wholesalers are required in their monthly report to the Department of Revenue (DOR) to include the number of gallons of blended and unblended gasoline sold.

“Blended gasoline” is defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel, by volume, which meets the specifications as adopted by the Department of Agriculture and Consumer Services (DACCS or Department). The fuel ethanol or other alternative fuel

⁴See the EPA website: <http://www.epa.gov/otaq/fuels/renewablefuels/>.

⁵ *Id.*

⁶ *EPA Proposes 2012 Renewable Fuel Standards and 2013 Biomass-Based Diesel Volume*, EPA-420-F-11-018, Office of Transportation and Air Quality, June 2011, p. 1.

⁷ Section 526.202, F.S.

⁸ Section 526.203(2), F.S.

⁹ Section 526.203(6), F.S.; CS/CS/HB 7117 (Chapter 2012-117, L.O.F.)

portion may be derived from any agricultural source. "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates which meets the specifications as adopted by the Department.¹⁰

Chapter 206, F.S., relating to Motor and Other Fuel Taxes provides the following definitions:

- "Terminal supplier" means any position holder that has been licensed by the department as a terminal supplier, that has met the requirements of ss. 206.05 and 206.90, and that is registered under s. 4101 of the Internal Revenue Code for transactions involving the bulk storage and transfer of taxable motor or diesel fuels.¹¹
- "Importer" means any person that has met the requirements of s. 206.051 and is licensed by DOR to import motor fuel or diesel fuel upon which no precollection of tax has occurred, other than through bulk transfer, into this state by common carrier or company-owned trucks.¹²
- "Blender" means any person who blends any product with motor or diesel fuel and who has been licensed or authorized by the DOR as a blender.¹³
- "Wholesaler" means any person who holds a valid wholesaler of taxable fuel license issued by the DOR.¹⁴
- "Retail dealer" means any person who is engaged in the business of selling fuel at retail at posted retail prices.¹⁵

The Act provides specific exemptions from the standard.¹⁶ They include 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, F.S.
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.¹⁷
- 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 requirements of the Act.

All records of sale of unblended gasoline by terminal suppliers, importers, blenders, and wholesalers are required to include the following statement: "Unblended gasoline may be sold only for the purposes authorized under s. 526.203(3), F.S."¹⁸

Further, the Act provides that if a terminal supplier, importer, blender, or wholesaler is unable to obtain fuel ethanol or blended gasoline at the same or lower price as unblended gasoline, then the sale or delivery of unblended gasoline by the terminal supplier, importer, blender, or wholesaler is not a violation of the Act. The terminal supplier, importer, blender, or wholesaler shall, upon request of the

¹⁰ Section 526.203(1)(c) and (d), F.S.

¹¹ Section 206.01(22), F.S.

¹² Section 206.01(3), F.S.

¹³ Section 206.01(30), F.S.

¹⁴ Section 206.01(4), F.S.

¹⁵ Section 206.01(5), F.S.

¹⁶ Section 526.203(3), F.S.

¹⁷ Chapter 206, F.S., is entitled *Motor and Other Fuel Taxes*.

¹⁸ Section 526.203(3), F.S.

Department, provide the required documentation regarding the sales transaction and price of fuel ethanol, blended gasoline, and unblended gasoline.¹⁹

If the Department determines that the Act has been violated, the Department must enter an order imposing one or more of the following penalties.²⁰

- Issuance of a warning letter.
- Imposition of an administrative fine of not more than \$1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who is shown to have willfully and intentionally violated any provision of the Act, the administrative fine shall not exceed \$5,000 per violation.

If imposing a fine, the Department is to consider the monetary benefit to the violator as a result of noncompliance, whether the violation was committed willfully, and the compliance record of the violator.²¹

The Department reports that, as of February 13, 2013, there have been no penalties issued for noncompliance with the Renewable Fuel Standard.²²

Ethanol

The U.S. Department of Energy (DOE) describes "ethanol" as a "clear, colorless liquid... [whose] molecules contain a hydroxyl group (-OH) bonded to a carbon atom." Ethanol is made of the same chemical compound regardless of whether it is produced from starch- and sugar-based feedstocks, such as corn grain or sugar cane, or from cellulosic feedstocks, which are dedicated energy crops, such as wood chips or crop residues.²³

Florida currently has an ethanol production facility that is in the start-up phase, and is projected to begin production in the Spring of 2013.^{24, 25} In November 2011, the Florida Biofuels Association reported that there were several commercial advanced biofuel ethanol projects in development.²⁶ Since 2006, the Department has expended approximately \$26.3 million of grant monies for research and development of biofuels.²⁷

There is great debate over the benefits of blending ethanol in gasoline. Proponents of ethanol also state that by reducing the amount of greenhouse gases and ozone created by car exhaust, ethanol is a much better alternative to pure gasoline. The DOE states, on a life-cycle analysis basis, corn-based ethanol production and use reduces greenhouse gas emissions (GHGs) by up to 52% compared to gasoline production and use, and that cellulosic ethanol use could reduce GHGs by as much as 86%.²⁸ Further, proponents assert that ethanol comes from a renewable energy source, reducing reliance on fossil fuels, thereby reducing dependence on other countries for the United States' energy. According to the DOE, "The Renewable Fuels Association's *2012 Ethanol Industry Outlook* calculated that in 2011 the ethanol industry replaced the gasoline produced from more than 485 million barrels of imported oil. Ethanol represents 25% of domestically produced and refined motor fuel for gasoline engines."²⁹

¹⁹ Section 526.204(1), F.S.

²⁰ Section 526.205(2), F.S.

²¹ Section 526.205(2), F.S.

²² February 13, 2013, email correspondence with staff of the Department of Agriculture and Consumer Services.

²³ U.S. Department of Energy website: http://www.afdc.energy.gov/afdc/ethanol/what_is.html.

²⁴ INEOS New Planet BioEnergy, located in Vero Beach, Florida.

²⁵ See article located at <http://www.chemicals-technology.com/projects/ineosbioenergyfacili/>.

²⁶ These include, but are not limited to INEOS – New Planet BioEnergy; Highlands EnviroFuels, LLC; Algenol; LS9; and Southeast Renewable Fuels, LLC.

²⁷ February 15, 2013, correspondence with the Department of Agriculture and Consumer Services.

²⁸ U.S. Department of Energy website: <http://www.afdc.energy.gov/afdc/ethanol/benefits.html>.

²⁹ U.S. Department of Energy website: <http://www.afdc.energy.gov/afdc/ethanol/benefits.html>.

It is argued that the production of ethanol benefits the economy by increasing employment among many sectors within the industry, such as farming, processing, building plants, transportation, etc.

Opponents of ethanol rebut that in order to produce enough corn or other crops to meet the demands of the ethanol industry, farmers may have to restrict how much of their crop will be available for other uses, which would result in higher prices for corn, flour, animal feed, and many other products. Further, that the gasoline gallon equivalent (the number of gallons of a fuel that has the equivalent amount of energy as 1 gallon of gasoline) of ethanol is approximately 1.5 gallons, resulting in lower fuel economy.

The DOE notes, "Ethanol has a higher octane number than gasoline, providing premium blending properties. Minimum octane number requirements prevent engine knocking and ensure drivability. Low-level ethanol blends generally have a higher octane rating than unleaded gasoline. Low-octane gasoline is blended with 10% ethanol to attain the standard 87 octane requirement."³⁰

Most opponents, however, claim that the major disadvantage of ethanol is that it can be very corrosive and can damage certain types of engines. Ethanol can absorb water and dirt easily, which can impair and corrode the inside of the engine block. Many boaters have reported that ethanol use has caused damage to their boats.

Another common grievance has been an inability to obtain unblended gasoline for engines that may be damaged by ethanol. In 2012, the Legislature directed the Department to compile a list of retail fuel stations that sell or offer to sell unblended gasoline and to provide the information on its website.³¹ This information may be accessed using Internet hyperlinks found on the Department's website: <http://www.800helpfla.com/Standards/AltSiteMap.html>. According to pure-gas.org, which can be accessed through the Department's website, there are 363 stations in Florida that sell unblended gasoline.

Currently, almost three-fourths of the gasoline sold by terminal suppliers, importers, blenders, or wholesalers in Florida is blended gasoline. [See chart of Sales of Unblended and Blended Gasoline in 2011-2012 by Terminal Suppliers, Importers, Blenders, and Wholesalers, provided by the Department of Revenue.]

³⁰ U.S. Department of Energy website: http://www.afdc.energy.gov/afdc/ethanol/what_is.html.

³¹ Section 526.203(6), F.S.

**Sales of Unblended and Blended Gasoline in 2011-2012 by
Terminal Suppliers, Importers, Blenders, and Wholesalers**

Applied Date	Product	Sales to Licensed Dealers	Sales to End Users, Retail Dealers, and Resellers	Total Sales	Percent of Total Sales
Nov-11	Gasoline (gallons)	171,744,683.4	154,927,579.2	326,672,262.6	26.7%
	Blended Gasoline (gallons)	361,597,680.0	501,837,975.4	863,435,655.4	70.6%
	Fuel Grade Ethanol (gallons)	32,177,312.8	208,986.0	32,386,298.8	2.6%
		565,519,676.2	656,974,540.6	1,222,494,216.8	
Dec-11	Gasoline (gallons)	181,859,935.0	160,230,823.1	342,090,758.1	27.0%
	Blended Gasoline (gallons)	371,689,983.3	525,328,309.9	897,018,293.2	70.7%
	Fuel Grade Ethanol (gallons)	29,319,912.6	233,278.0	29,553,190.6	2.3%
		582,869,830.9	685,792,411.0	1,268,662,241.9	
Jan-12	Gasoline (gallons)	178,610,236.9	156,184,296.8	334,794,533.7	27.2%
	Blended Gasoline (gallons)	358,687,326.4	508,114,278.8	866,801,605.2	70.5%
	Fuel Grade Ethanol (gallons)	28,184,339.0	214,641.0	28,398,980.0	2.3%
		565,481,902.3	664,513,216.6	1,229,995,118.9	
Feb-12	Gasoline (gallons)	190,612,532.2	222,531,632.1	413,144,164.3	33.0%
	Blended Gasoline (gallons)	363,374,193.0	447,654,680.3	811,028,873.3	64.8%
	Fuel Grade Ethanol (gallons)	26,372,022.0	212,623.0	26,584,645.0	2.1%
		580,358,747.2	670,398,935.4	1,250,757,682.6	
Mar-12	Gasoline (gallons)	207,446,195.5	171,762,356.3	379,208,551.8	27.5%
	Blended Gasoline (gallons)	401,174,013.4	565,101,335.5	966,275,348.9	70.2%
	Fuel Grade Ethanol (gallons)	31,260,862.0	231,143.0	31,492,005.0	2.3%
		639,881,070.9	737,094,834.8	1,376,975,905.7	
Apr-12	Gasoline (gallons)	193,985,076.4	160,496,998.4	354,482,074.8	27.7%
	Blended Gasoline (gallons)	369,670,524.1	524,679,041.5	894,349,565.6	70.0%
	Fuel Grade Ethanol (gallons)	28,793,371.0	218,126.0	29,011,497.0	2.3%
		592,448,971.5	685,394,165.9	1,277,843,137.4	
May-12	Gasoline (gallons)	191,224,477.6	161,961,736.2	353,186,213.8	27.6%
	Gasohol (gallons)	370,210,003.6	526,612,317.5	896,822,321.1	70.2%
	Fuel Grade Ethanol (gallons)	27,347,213.0	234,085.0	27,581,298.0	2.2%
		588,781,694.2	688,808,138.7	1,277,589,832.9	

Jun-12	Gasoline (gallons)	181,964,995.5	152,832,297.6	334,797,293.1	27.3%
	Blended Gasoline (gallons)	359,202,821.0	504,252,819.9	863,455,640.9	70.5%
	Fuel Grade Ethanol (gallons)	26,784,900.0	210,787.0	26,995,687.0	2.2%
		567,952,716.5	657,295,904.5	1,225,248,621.0	
Jul-12	Gasoline (gallons)	184,999,412.1	157,604,181.6	342,603,593.7	27.3%
	Blended Gasoline (gallons)	368,509,816.3	516,453,406.2	884,963,222.5	70.6%
	Fuel Grade Ethanol (gallons)	26,478,583.0	220,541.0	26,699,124.0	2.1%
		579,987,811.4	674,278,128.8	1,254,265,940.2	
Aug-12	Gasoline (gallons)	194,147,452.3	158,701,965.9	352,849,418.2	27.9%
	Blended Gasoline (gallons)	368,871,816.3	517,658,078.6	886,529,894.9	70.0%
	Fuel Grade Ethanol (gallons)	26,614,832.0	221,671.0	26,836,503.0	2.1%
		589,634,100.6	676,581,715.5	1,266,215,816.1	
Sep-12	Gasoline (gallons)	171,504,745.7	142,492,867.8	313,997,613.5	26.8%
	Blended Gasoline (gallons)	343,588,141.2	489,293,081.2	832,881,222.4	71.1%
	Fuel Grade Ethanol (gallons)	24,336,135.0	207,942.0	24,544,077.0	2.1%
		539,429,021.9	631,993,891.0	1,171,422,912.9	
Oct-12	Gasoline (gallons)	193,758,196.8	154,789,287.0	348,547,483.8	27.4%
	Blended Gasoline (gallons)	369,828,128.8	528,079,519.1	897,907,647.9	70.6%
	Fuel Grade Ethanol (gallons)	24,678,332.0	156,075.0	24,834,407.0	2.0%
		588,264,657.6	683,024,881.1	1,271,289,538.7	
	Grand Totals	6,980,610,201.2	8,112,150,763.8	15,092,760,965.0	

12 Month Totals and Percentages

Total Gasoline	4,196,373,961.4	27.8%
Total Blended Gasoline	10,561,469,291.3	70.0%
Total Fuel Grade Ethanol	334,917,712.4	2.2%
Grand Total	15,092,760,965.0	100.0%

Source: Department of Revenue

Effect of Proposed Changes

HB 4001 repeals the entire Florida Renewable Fuel Standard Act from the statutes, thereby removing the requirement that all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline. The bill also removes the requirement that each terminal supplier, importer, blender, or wholesaler include in their monthly report to the Department of Revenue, the number of gallons of blended and unblended gasoline sold.

B. SECTION DIRECTORY:

Section 1. Repeals ss. 526.201, 526.202, 526.203, 526.204, 526.205, 526.206, and 526.207, F.S.

Section 2. Amends s. 206.43, F.S.; removes blended gasoline reporting requirements to the Department of Revenue.

Section 3. Provides an effective date of July 1, 2013.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removal of the requirement that gasoline sold in the state contain 9 to 10 percent ethanol may result in less damage to watercraft and small engines.

Removal of the requirement may negatively impact the renewable fuel industry if the removal results in less of a demand for the products. See *Fiscal Comments*.

D. FISCAL COMMENTS:

Highlands EnviroFuels reports that, "A recent economic impact study by John Urbanchuk demonstrated that the Highlands EnviroFuels' 30 million gallon per year ethanol facility will generate 65 direct jobs, 760 indirect and induced jobs, \$44 million in annual household income, and \$51 million in annual GDP. The facility will use non-food crops including biofuel cane and sweet sorghum, and provide Florida farmers another crop to grow."³²

According to the Department, the Indian River County Economic Development Council states that the "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."³³

³² Information originally supplied by Florida Biofuels Association on November 30, 2011. Confirmed by Highlands EnviroFuels on February 15, 2013.

³³ Bill Analysis for HB 4001 by the Department of Agriculture and Consumer Services, December 10, 2012.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services recommends that the blended and unblended gasoline reporting requirements being stricken in s. 206.43, F.S. (Section 2 of the bill), be retained to provide information and statistics on blended fuel use in the state.³⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁴ February 15, 2013, email correspondence with staff of the Department of Agriculture and Consumer Services.
STORAGE NAME: h4001.EUS.DOCX
DATE: 2/15/2013

1 A bill to be entitled
 2 An act relating to the Florida Renewable Fuel Standard
 3 Act; repealing ss. 526.201-526.207, F.S., the Florida
 4 Renewable Fuel Standard Act, to remove the requirement
 5 that all gasoline offered for sale in this state
 6 include a percentage of ethanol, subject to specified
 7 exemptions, waivers, suspensions, extensions,
 8 enforcement, and reporting; amending s. 206.43, F.S.;
 9 conforming a cross-reference; providing an effective
 10 date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Sections 526.201, 526.202, 526.203, 526.204,
 15 526.205, 526.206, and 526.207, Florida Statutes, are repealed.

16 Section 2. Subsection (2) of section 206.43, Florida
 17 Statutes, is amended to read:

18 206.43 Terminal supplier, importer, exporter, blender, and
 19 wholesaler to report to department monthly; deduction.—The taxes
 20 levied and assessed as provided in this part shall be paid to
 21 the department monthly in the following manner:

22 (2)~~(a)~~ Such report may show in detail the number of
 23 gallons so sold and delivered by the terminal supplier,
 24 importer, exporter, blender, or wholesaler in the state, and the
 25 destination as to the county in the state to which the motor
 26 fuel was delivered for resale at retail or use shall be
 27 specified in the report. The total taxable gallons sold shall
 28 agree with the total gallons reported to the county destinations

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29 for resale at retail or use. All gallons of motor fuel sold
 30 shall be invoiced and shall name the county of destination for
 31 resale at retail or use.

32 ~~(b) Each terminal supplier, importer, blender, and~~
 33 ~~wholesaler shall also include in the report to the department~~
 34 ~~the number of gallons of blended and unblended gasoline, as~~
 35 ~~defined in s. 526.203, sold.~~

36 Section 3. This act shall take effect July 1, 2013.