

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 343 Rental Car Surcharge

SPONSOR(S): Economic Affairs Committee, Transportation & Highway Safety Subcommittee, Nuñez

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	10 Y, 2 N, As CS	Johnson	Miller
2) Finance & Tax Subcommittee	18 Y, 0 N	Flieger	Langston
3) Economic Affairs Committee	16 Y, 0 N, As CS	Johnson	Creamer
4) Appropriations Committee	24 Y, 0 N	Davis	Leznoff

SUMMARY ANALYSIS

Section 212.0606(1), F.S., provides that a surcharge of \$2 per day, or part of a day, is imposed upon the lease or rental of a motor vehicle for hire and designed to carry less than nine passengers regardless of whether the motor vehicle is licensed in Florida. The surcharge applies to the first 30 days of the term of any lease or rental and is subject to all taxes imposed by ch. 212, F.S.

The bill creates s. 212.0606(2), F.S., providing that if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the daily rental car surcharge, a surcharge of 50 cents per use is imposed.

The bill defines "car-sharing service" as a membership based organization or business or division thereof which requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car sharing service or its affiliates.

The bill provides that the lease, rental, or usage of a motor vehicle from an airport location is not eligible for the imposition of the surcharge for car-sharing services in lieu of the standard rental car surcharge.

The Revenue Estimating Conference met on March 21, 2014, and projected this bill would have an insignificant negative fiscal impact on General Revenue, a negative \$300,000 impact on state trust funds in Fiscal Year 2014-15, with a recurring negative \$600,000 impact on state trust funds. See the fiscal section for additional detail.

The bill has an effective date of January 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Rental Car Surcharge

Section 212.0606(1), F.S., imposes a surcharge of \$2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed.

The surcharge only applies to the first 30 days of the term of any lease or rental. If the lease is renewed, the first 30 days of the renewed lease is subject to the surcharge. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies. The surcharge is not imposed on leases or rentals to tax-exempt entities. Section 216.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

After deduction for administrative fees and the General Revenue Service Charge, the rental car surcharge is distributed as follows:

- 80 percent to the State Transportation Trust Fund (STTF);
- 15.75 percent to the Tourism Promotional Trust Fund; and
- 4.25 percent to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge deposited into the STTF are allocated to each Department of Transportation (DOT) district for transportation projects, based on the amount of proceeds collected in the counties within each respective district.

Car-Sharing Services

Car-sharing is generally marketed as an alternative to conventional car rental or car ownership and exists in a number of forms.

“Traditional carsharing provides members access to a vehicle for short-term daily use. Automobiles owned or leased by a carsharing operator are distributed throughout a network; members access the vehicles with a reservation and are charged per time and often per mile....

Traditional carsharing is intended for short trips and as a supplement to public transit. Initial market entry in North America focused on the neighborhood carsharing model, characterized by a fleet of shared-use vehicles parked in designated areas throughout a neighborhood or municipality. In recent years, business models have advanced and diversified. Variations on the neighborhood model developed in North America include: business; college/university; government/institutional fleet; and public transit (carsharing provided at public transit stations or multi-modal nodes). Despite differences in target markets, these models share a similar organizational structure, capital ownership, and revenue stream.

The next generation of shared-use vehicle services, which provide access to a fleet of shared-use vehicles, incorporates new concepts, technologies, and operational methods. These models represent innovative solutions and notable advances. They include one-way carsharing and personal vehicle sharing. One-way carsharing, also known as “free-floating” carsharing, frees users from the restriction of having to return a vehicle to the same location from which it was accessed. Instead, users leave vehicles parked at any spot within the organization’s operating area, allowing for the possibility of one-way trips. The one-way model resembles more

traditional forms of carsharing—except for the logistics of vehicle redistribution and the need for expanded vehicle parking.

Personal vehicle sharing ... represents a more distinct model due to differences in organizational structure, capital stock, and liability. Personal vehicle sharing involves short-term access to privately-owned vehicles, enabling a lower operating cost and a wider vehicle distribution. ...”¹

While car sharing began at the local, grassroots level, car-sharing services are now also provided by conventional rental car companies, such as Avis, Enterprise, and Hertz.²

Current Practice Relating to Surcharge

On September 17, 2012, the Department of Revenue (DOR) issued Technical Assistance Advisement 12A-022 in which the question presented to DOR was whether a member based car-sharing service is subject to the Florida rental car surcharge. The facts presented to DOR were as follows:

“Taxpayer [the car-sharing service] offers a member based car-sharing service with a fleet of vehicles available for use by registered members at any time of the day, seven days a week. A member can reserve a vehicle before use, or simply locate one and access it. Each use is labeled as a “trip” and can last up to four consecutive days. A unique feature of Taxpayer’s car-sharing service is members may, and often do, use a car for a much shorter period of time than typical car rentals. According to Taxpayer, the typical trip lasts twenty-five to 40 minutes, costing between \$7 and \$10 before taxes. Members are invoiced daily for all trips that occur and Taxpayer adds the rental car surcharge and sales tax to this invoice.”

First noting taxpayer’s assertion that it is not engaged in the “traditional” rental of cars, DOR concluded that the taxpayer is clearly renting cars, is engaged in the rental of motor vehicles and, therefore, the rental car surcharge does apply. DOR further cited its rule, Fla. Admin. Code 12A-16.002(3)(b): “When the terms of a lease or rental agreement authorize the lessee to extend the lease or rental beyond the initial lease term without executing an additional lease or agreement and without any action on the part of the lessor, the extension period will not be considered a new lease or rental.”

Highlighting the fact that the taxpayer’s members may make multiple trips in one day without executing any additional agreement and without any action required of the taxpayer, and that members are charged for every trip within the same twenty-four hour period on a single daily invoice, DOR concluded that the rental car “surcharge is due from Taxpayer’s members once a day, regardless of the number of trips taken by a member in a twenty-four hour period.” Therefore, car-sharing services must pay the \$2.00 surcharge per day for each member who uses the car-sharing service that day.

It should be noted that use of car-sharing services is also subject to the state’s sales and use tax.

Proposed Changes

The bill creates s. 212.0606(2), F.S., providing that if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the daily rental car surcharge³ a surcharge of 50 cents per use is imposed. If a member of a car-sharing service uses the same motor vehicle for 24 consecutive hours or more, the usual surcharge of \$2 per day or any part of a day shall be imposed.

The bill defines “car-sharing service” as a membership based organization or business or division thereof which requires the payment of an application or membership fee and provides member access to motor vehicles:

¹ Shaheen, Susan, Mark Mallery, and Karly Kingsley (2012). “Personal Vehicle Sharing Services in North America,” *Research in Transportation Business & Management*, Vol. 3, pp.71-81.

² Kell, John, Jan. 2, 2013, “Avis to Buy Car-Sharing Service Zipcar,” *The Wall Street Journal*.

³ This surcharge is imposed pursuant to s. 212.0606(1), F.S.

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car sharing service or its affiliates.

The bill provides that the lease, rental, or usage of a motor vehicle for a location owned, operated, or leased by of for the benefit of an airport or airport authority is not eligible for the imposition of the surcharge for car-sharing services in lieu of the standard rental car surcharge.

The bill has an effective date of January 1, 2015.

B. SECTION DIRECTORY:

Section 1 Amends s. 212.0606, F.S., relating to the rental car surcharge.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on March 21, 2014, and projected this bill would have an insignificant negative fiscal impact on General Revenue, a negative \$300,000 impact on state trust funds in Fiscal Year 2014-15, with a recurring negative \$600,000 impact on state trust funds. The following chart depicts these impacts by trust fund:

Trust Fund	Surcharge Distribution	Estimated Impacts	
		FY 2014-15	Recurring
State Transportation TF	80%	\$ (240,000)	\$ (480,000)
Tourism Promotional TF	15.75%	\$ (47,250)	\$ (94,500)
International Trade and Promotion TF	4.25%	\$ (12,750)	\$ (25,500)
Total		\$ (300,000)	\$ (600,000)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons using car-sharing services for less than a 24-hour period will see a reduction in the rental car surcharge that they will pay.

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 reduces the revenues from discretionary sales taxes levied by local governments; however, an exemption may apply as the negative impact to local governments is expected to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOR may need to revise its rules regarding the rental car surcharge⁴ to conform to provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2015, the Transportation & Highway Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changed the effective date of the bill from July 1, 2014, to January 1, 2015.

On March 13, 2014, the Economic Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment changed the rental car surcharge from 8 cents per hour to 50 cents per use. The bill also conformed to the Senate language.

This analysis is written to the committee substitute as reported by the Economic Affairs Committee.

⁴ Ch. 12A-16, F.A.C.
STORAGE NAME: h0343g.APC
DATE: 4/1/2014