

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 647 Natural Gas Fuel Taxes
SPONSOR(S): Raburn
TIED BILLS: IDEN./SIM. **BILLS:** SB 926

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 0 N	Keating	Keating
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Prior to 2014, owners or operators of Florida-licensed motor vehicles powered by natural gas fuels were required to pay an annual decal fee for each such vehicle. In 2013, the Legislature passed CS/CS/HB 579 to “help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state.” To accomplish these goals, the bill created a 5-year rebate program for certain costs involved in the conversion, purchase, or lease of natural gas fuel fleet vehicles, eliminated the annual decal fees for natural gas vehicles, and created a new tax structure whereby natural gas fuels would be taxed on a per unit basis beginning January 1, 2019. Accordingly, natural gas fuels have not been subject to state fuel taxes since January 1, 2014.

The bill provides for a 5 year delay of the imposition of natural gas fuel taxes that would otherwise go into effect January 1, 2019. The bill changes the effective date of the imposition of these taxes to January 1, 2024. To conform to the delayed imposition of these taxes, the bill:

- Extends by 5 years (from December 31, 2018, to December 31, 2023) the expiration of the current flat penalty scheme that applies to any person who acts as a natural gas retailer without a valid natural gas fuel retailer license, and delays by 5 years (from January 1, 2019, to January 1, 2024) the effective date of a new penalty scheme that is based on a percentage of the tax assessed during the period of unlicensed operations.
- Delays by 5 years (from February 2019 to February 2024) the date by which natural gas fuel retailers must file monthly reports with DOR for the purpose of determining the amount of natural gas fuel taxes imposed.

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill. The bill delays by 5 years the imposition of natural gas fuel taxes until January 1, 2024, resulting in delayed collection of revenues from the taxes in an unknown amount, though preliminary staff estimates suggest the annual impact will be less than \$1 million to state government and less than \$0.5 million to local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Taxation of Natural Gas Fuel

Pre-2014

Prior to 2014, natural gas fuels such as compressed natural gas (CNG) and liquid petroleum gas (LPG) were defined in Florida law as “alternative fuels” when used to fuel motor vehicles.¹ In lieu of the excise tax imposed on diesel fuel under the law, owners or operators of Florida-licensed motor vehicles powered by alternative fuels were required to pay an annual decal fee for each such vehicle.² These annual fees ranged from \$199.10 to \$380.10 per vehicle, depending on the vehicle’s size and weight.³ The sale of alternative fuels also was subject to sales tax imposed under ch. 212, F.S.⁴

With certain exceptions, Florida law prohibited a person from acting as a retailer of alternative fuel unless that person held a valid license as a retailer of alternative fuel issued by the Department of Revenue (DOR).⁵ Any person acting as such without a license was subject to a penalty of 25 percent of the tax assessed on total purchases during the unlicensed period.⁶ Every person who operated as a retailer of alternative fuel, with certain exceptions, was required to report monthly to DOR and pay tax on all fuel purchases.⁷

Revenues from the annual decal fees were deposited into the State Alternative Fuel User Fee Clearing Trust Fund.⁸ After deducting a specified service charge, the proceeds in the trust fund were distributed as follows:

- One-half of the proceeds to the State Transportation Trust Fund (STTF).
- 50 percent of the remainder to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25 percent of the remainder to the Revenue Sharing Trust Fund for Municipalities.
- 25 percent of the remainder to the counties for specified public transportation purposes, distributed as provided by law.

Current Law

In 2013, the Legislature passed CS/CS/HB 579 to ““help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state.”⁹ To accomplish these goals, the bill created a 5-year rebate program for natural gas fuel fleet vehicles and exempted natural gas fuels from state fuel taxes for 5 years. The Natural Gas Fuel Fleet Vehicle Rebate program provided \$6 million per fiscal year, from FY 2013-14 through FY 2017-18, to fund

¹ s. 206.86(4), F.S. (2012).

² s. 206.877, F.S. (2012). The excise tax imposed on diesel fuel was applied to the purchase of alternative fuels by operators of vehicles licensed in other states.

³ See *Use of Natural Gas Fuels to Operate Motor Vehicles is Increasing in Florida*, Office of Program Policy Analysis & Government Accountability, Report No. 17-10 (Oct. 2017) (OPPAGA Report), at p. 4.

⁴ *Id.*

⁵ s. 206.89, F.S. (2012).

⁶ *Id.*

⁷ *Id.*

⁸ s. 206.879, F.S. (2012).

⁹ Ch. 2013-198, Laws of Fla.

rebates for the purchase, conversion, or lease of natural gas fuel fleet vehicles. Further, effective January 1, 2014, the bill eliminated the annual decal fee for natural gas vehicles. The bill replaced it with a new tax structure that creates a “per motor fuel equivalent gallon” tax rate to become effective January 1, 2019.¹⁰

Pursuant to the new structure, the following taxes will be imposed on natural gas fuel¹¹ effective January 1, 2019:¹²

- An excise tax of 4 cents upon each motor fuel equivalent gallon¹³ of natural gas fuel.
- An additional tax of 1 cent upon each motor fuel equivalent gallon of natural gas fuel, which is designated as the “ninth-cent fuel tax.”
- An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the “local option fuel tax.”
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, designated as the “State Comprehensive Enhanced Transportation System (SCETS) Tax.” The tax rate must be determined by DOR each calendar year, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1. The rate is calculated by adjusting the “initially established tax rate of 5.8 cents per gallon” by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.
- An additional tax on each motor fuel equivalent gallon of natural gas fuel “for the privilege of selling natural gas fuel,” designated as the “fuel sales tax.” The tax rate must be determined by DOR each calendar year, rounded to the nearest tenth, for the following 12-month period beginning January 1. The rate is calculated by adjusting the “initially established tax rate of 9.2 cents per gallon” by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

In sum, prior to any of the required annual index-based adjustments by DOR, natural gas fuel will be taxed at a rate of \$0.21 cents per motor fuel equivalent gallon beginning January 1, 2019.¹⁴

Revenues from the natural gas fuel tax will be deposited into the State Alternative Fuel User Fee Clearing Trust Fund to be distributed as follows:¹⁵

- The revenues from the SCETS tax and fuel sales tax will be transferred to the STTF.
- The revenues from the excise tax will be distributed as follows:
 - 50% will be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
 - 25% will be transferred to the Revenue Sharing Trust Fund for Municipalities.
 - 25% will be distributed to the counties for specified public transportation purposes, distributed as provided by law.

¹⁰ *Id.* The provisions of the bill related to taxation of natural gas fuel are codified as Part V of Ch. 206, F.S., consisting of ss. 206.9951 – 206.998, entitled “NATURAL GAS FUEL.”

¹¹ “Natural gas fuel” is defined as “any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. [206.01](#)(23). This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.” s. 206.9951(2), F.S.

¹² ss. 206.9955, F.S.

¹³ “Motor fuel equivalent gallon” is defined as “the volume of natural gas fuel it takes to equal the energy content of 1 gallon of motor fuel.” s. 206.9951(1), F.S. The conversion rates for various types of natural gas fuels is provided in s. 206.9955, F.S.

¹⁴ The law is unclear as to whether the index-based adjustments were to begin with the effective date of the law (January 1, 2014) or the effective date of the new tax rates (January 1, 2019).

¹⁵ s. 206.997, F.S.

- The revenues from the ninth-cent fuel tax and the local option sales tax will be deposited into the Local Alternative Fuel User Fee Clearing Trust Fund and returned monthly to the appropriate counties.

The law provides that until December 31, 2018, any person acting as a natural gas retailer without a valid license to do so must pay a penalty of \$200 for each month of operation without a license. Effective January 1, 2019, the penalty becomes 25 percent of the tax assessed on total purchases made during the unlicensed period.¹⁶ In addition, the law requires natural gas fuel retailers to submit an electronic, monthly report to DOR, beginning with February 2019 and monthly thereafter, showing information on inventory, purchases, nontaxable disposals, table uses, and taxable sales in gallons of natural gas fuel for the preceding month, with certain exceptions and a specified deduction for services rendered and expenses incurred in complying with the reporting requirements.¹⁷

OPPAGA Report on Use of Natural Gas to Fuel Motor Vehicles in Florida

In 2017, the Office of Program Policy Analysis & Government Accountability (OPPAGA) released a report on the use of natural gas fuels to operate motor vehicles in Florida.¹⁸ According to the report, Florida's consumption of natural gas as a motor vehicle fuel had increased by 326% between 2013 and 2016.¹⁹ To gather information about factors that could affect the growth of the natural gas fuel industry, OPPAGA surveyed both natural gas fuel suppliers (license holders) and consumers (applicants to the fleet vehicle rebate program). Consumers and suppliers identified several factors that may have encouraged growth in natural gas fuel consumption, including the natural gas vehicle rebate program, the fuel tax exemption, cleaner emissions, and lower maintenance costs.²⁰ Eighty-nine percent of the consumer respondents indicated that their natural gas vehicle fleets had increased since 2012. Suppliers indicated that they expect their businesses to continue to grow in terms of the number of vehicles served and the gallons of natural gas fuel sold. Seventy-five percent of the consumer respondents said that they anticipate their natural gas vehicles fleets will continue to increase in size over the next 5 years. Thirteen percent of the consumer respondents said that they anticipate a decrease in their fleet size and identified the decreased price of diesel fuel, the lack of natural gas fuel refueling stations, and the end of the rebate program as the main reasons.²¹

In its report, OPPAGA found that, in addition to Florida, three states do not impose statewide taxes on natural gas fuels. Of the remaining 46 states, most (41) levy taxes at a rate of less than \$.30 per gallon, although direct comparison could not be made due to differences in how states define a gallon of natural gas fuel. OPPAGA found that some states offer the option of paying a flat annual decal fee.²²

State Gasoline and Diesel Taxes

*Motor Fuel*²³

Florida law provides for the following taxes on motor fuel:²⁴

- An excise or license tax of 2 cents per net gallon of motor fuel, designated as the “constitutional fuel tax.”

¹⁶ s. 206.9952(3), F.S.

¹⁷ s. 206.996, F.S.

¹⁸ *Use of Natural Gas Fuels to Operate Motor Vehicles is Increasing in Florida*, Office of Program Policy Analysis & Government Accountability, Report No. 17-10 (Oct. 2017) (OPPAGA Report).

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6.

²¹ *Id.*

²² *Id.* at 6-7.

²³ “Motor fuel” is defined as “all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle.” s. 206.01(9), F.S.

²⁴ s. 206.41(1), F.S.

- An additional 1 cent per net gallon, designated as the “county fuel tax.”
- An additional 1 cent per net gallon, designated as the “municipal fuel tax.”
- An additional tax of 1 cent per net gallon may be imposed by each county, designated as the “ninth-cent fuel tax.”
- An additional tax of between 1 and 11 cents per net gallon may be imposed by each county, designated as the “local option fuel tax.”
- An additional tax per net gallon of motor fuel is imposed by each county, designated as the SCETS Tax, at a rate calculated by applying specified index-based adjustments to a rate specified in the law.
- An additional tax per net gallon is imposed “on the privilege of selling motor fuel”, designated as the “fuel sales tax,” at a rate calculated by applying specified index-based adjustments to an initial rate established in the law.
- An additional 0.125 cents per net gallon for defraying expenses incident to inspecting, testing, and analyzing motor fuel in this state.

Beginning January 1, 2018, the state tax rate on motor fuel is 17.7 cents per gallon, the SCETS tax rate on motor fuel is 7.6 cents, and the fuel sales tax rate on motor fuel is 13.7 cents. The local option rate varies by county, and the total state and county rates on motor fuel varies from 31.4 cents to 37.4 cents.²⁵

*Diesel Fuel*²⁶

Florida law provides for the following taxes on diesel fuel:²⁷

- An excise tax of 4 cents per net gallon of diesel fuel.
- An additional 1 cent per net gallon is imposed by each county, designated as the “ninth-cent fuel tax.”
- An additional 6 cents per net gallon is imposed by each county, designated as the “local option fuel tax.”
- An additional tax per net gallon is imposed in each county, designated as the SCETS Tax, at a rate equal to the maximum SCETS Tax rate for motor fuel.
- An additional tax per net gallon “on the privilege of selling diesel fuel,” designated as the “fuel sales tax,” at a rate calculated by applying specified index-based adjustments to an initial rate established in the law.

Beginning January 1, 2018, the state tax rate on diesel fuel is 17.7 cents per gallon, the county tax rate (ninth cent, SCETS, and local option rates) is 14.6 cents statewide, and the fuel sales tax rate is 13.7 cents. The total state and county rates on diesel fuel is 32.3 cents.²⁸

Effect of Proposed Changes

The bill provides for a 5 year delay of the imposition of natural gas fuel taxes that would otherwise go into effect January 1, 2019. The bill changes the effective date of the imposition of these taxes to January 1, 2024. Thus, state fuel taxes will not apply to natural gas fuels for an additional 5 years.

To conform to the delayed imposition of these taxes, the bill:

²⁵ Florida Department of Revenue, Tax Information Publication No. 17B05-03, *Fuel Tax Rates Adjusted Beginning January 1, 2018*, (Nov. 14, 2017), available at: https://revenue.law.floridarevenue.com/LawLibraryDocuments/2017/11/TIP-121500_TIP%2017B05-03%20FINAL%20RLL.pdf.

²⁶ “Diesel fuel” is defined as “all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle.” s. 206.86(1), F.S.

²⁷ s. 206.87(1), F.S.

²⁸ *Supra* note 25.

- Extends by 5 years (from December 31, 2018, to December 31, 2023) the expiration of the current flat penalty scheme that applies to any person who acts as a natural gas retailer without a valid natural gas fuel retailer license, and delays by 5 years (from January 1, 2019, to January 1, 2024) the effective date of a new penalty scheme that is based on a percentage of the tax assessed during the period of unlicensed operations.
- Delays by 5 years (from February 2019 to February 2024) the date by which natural gas fuel retailers must file monthly reports with DOR for the purpose of determining the amount of natural gas fuel taxes imposed.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1. Amends s. 206.9952, F.S., relating to licensing of natural gas fuel retailers.

Section 2. Amends s. 206.9955, F.S., relating to the levy of natural gas fuel tax.

Section 3. Amends s. 206.996, F.S., relating to monthly reports by natural gas fuel retailers.

Section 4. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill. The bill delays by 5 years the imposition of natural gas fuel taxes until January 1, 2024, resulting in delayed collection of revenues from the taxes in an unknown amount, though preliminary staff estimates suggest the annual impact will be less than \$1 million. Under current law, portions of these revenues would be distributed to the State Transportation Trust Fund and the State Board of Administration beginning in 2019.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill. The bill delays by 5 years the imposition of natural gas fuel taxes until January 1, 2024, resulting in delayed collection of revenues from the taxes in an unknown amount, though preliminary staff estimates suggest the annual impact will be less than \$0.5 million. Under current law, portions of these revenues would be distributed to local governments beginning in 2019.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners or operators of natural gas vehicles will achieve cost savings, because the bill delays by 5 years the imposition of natural gas fuel taxes until January 1, 2024.

D. FISCAL COMMENTS:

Current law provides that the SCETS tax rate and the fuel sales tax rate for natural gas fuels must be calculated annually by DOR through index-based adjustments to an initial rate established in the law. The law is not clear as to when those index-based adjustments must begin and could be interpreted to require such adjustments either from the time the law became effective or from the time the taxes become effective. An estimate of the bill's fiscal impact will depend upon the interpretation of these provisions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take action requiring the expenditures 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:

Current law provides that the SCETS tax rate and the fuel sales tax rate for natural gas fuels must be calculated annually by DOR through index-based adjustments to an initial rate established in the law. The law is not clear as to when these index-based adjustments must begin and could be interpreted to require such adjustments either from the time the law became effective or from the time the taxes become effective. The bill does not amend these provisions of the law. To ensure that the intended tax rate becomes effective at the intended time, this ambiguity could be clarified.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.