

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 342

INTRODUCER: Transportation Committee and Senator Diaz

SUBJECT: Vehicle and Vessel Registration

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Vickers</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 342 provides that a tax collector may exercise his or her authority to contract with a privately owned license plate agent, and may determine any additional service charges that will be collected by the license plate agent. Any additional service charges must be fully itemized and disclosed to a person paying the service charges.

The bill requires the license plate agent to enter into a contract with the tax collector regarding the disclosure of additional service charges.

The bill also requires tax collectors and their approved license plate agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles regarding use of the Florida Real Time Vehicle Information System.

The bill does not affect state or local revenues.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Tax Collectors as Agents of the Department of Highway Safety and Motor Vehicles

Sixty-five counties currently have elected tax collectors who are constitutional officers.¹ Broward and Miami-Dade counties currently have appointed tax collectors under each county's charter government.²

Chapters 320, 322, and 328, F.S., provide that tax collectors are agents of the Department of Highway Safety and Motor Vehicles (DHSMV) for the limited purposes of providing motor vehicle and driver license services. Specifically, with regards to the issuance of registration certificates, license plates, and validation stickers (motor vehicle services), the tax collectors in the several counties of the state are “authorized agents of the department [DHSMV] ... subject to the requirements of the law.”^{3, 4, 5}

As a result of Florida Constitutional Amendment 10 (amending Section 3 of Article III, Sections 4 and 11 of Article IV, and Sections 1 and 6 of Article VIII of the Florida Constitution) that passed in 2018, Volusia, Broward and Miami-Dade County tax collector offices will be elected positions. The tax collector in Volusia County took office in 2021 and the Broward and Miami-Dade County tax collectors will take office in 2025. Currently, the motor vehicle services in these charter counties are predominately provided by private tag agency/license plate agent/license tag agencies/private license plate agencies⁶ (collectively referred to as “LPA”) that have an agreement with the county to charge an additional county service fee set by the county commission.⁷

¹ Volusia County formerly had an appointed tax collector. However, pursuant to s. 1(d), Art. VIII of the State Constitution and effective January 5, 2021, Volusia County has an elected tax collector.

² Pursuant to s. 1(d), Art. VIII of the State Constitution, Broward and Miami Dade counties will have elected tax collectors effective January 7, 2025.

³ Section 320.03(1), F.S.

⁴ “The tax collector, who acts as the agent of and under the direction and control of the department in the sale of motor vehicle license plates, is not acting as a county officer and the bond required to be posted protects only the department and not the county for other tax revenues received by the collector.” FL AGO 74-101 (Apr. 1, 1974).

⁵ *Dealer Tag Agency, Inc. v. First Hillsborough County Auto Tag Agency, Inc.*, 14 So. 3d 1238, 1240 (Fla. 2d DCA 2009). The trial court declared the contract void as a matter of law, because the tax collector established no bid protest procedures as required by Chapter 287, F.S. On appeal, the Second DCA held that the trial court erred, because the tax collector was not an executive branch of the state government bound by Chapters 287 or 120. Instead, the tax collector is a constitutional entity created by Article VIII, Section 1(d) of the Florida Constitution. The court held that “The fact that the Tax Collector is described as an “authorized agent” of the DHSMV for the provisions of section 320.03, F.S., does not make it a state agency for the provisions of chapter 287 and 120.” *Id.* at 1240.

⁶ Various combinations of these words are used interchangeably.

⁷ In determining the appropriateness of public funding for equipment used by LPAs, the Attorney General noted for purposes of section 320.03, F.S., that “license tag agencies are the agents of the respective county tax collectors....[and that n]o pecuniary benefit inures to such agents or subagents.” (emphasis added) FL AGO 082-81 (Oct. 11, 1982). The opinion goes on saying, “The license tag agencies in question are the agents of the county tax collector and as such subagents of the department....” *Id.*

Fees for Motor Vehicle Services

Several statutory provisions establish the fees to be charged for various motor vehicle services.⁸ Section 320.03(2), F.S., requires the tax collector to remit and account for all money that comes into his or her possession or control by reason of performing the various tag and titles services. Section 320.03(3), F.S., also requires the tax collector to “pay all sums officially received by the officer into the State Treasury no later than 5 working days after the close of the business day in which the officer received the funds.”

All fees for specific services are set by statute, without discretion to increase or lower the fee. For example, s. 320.03(5), F.S., provides that tax collectors are required to charge 50 cents on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System (FRVIS). In addition, the statute requires the tax collector to charge \$1 for each license registration sold, transferred or replaced and requires a \$1.50 fee for each initial and renewal registration of private-use automobiles and certain trucks.^{9, 10} The tax collector retains \$2.50 for each application handled in connection with a license plate, mobile home sticker, and registration certificate.¹¹ The statute also provides that \$1 must be charged for license plate validation stickers, vessel decals and mobile home stickers issued from an automated vending facility or printer dispensing machine and allows the tax collector to impose an additional service charge of up to 50 cents for the transactions that occur in a tax collector’s branch office.^{12, 13}

However, in two specific situations, fees in excess of these specific amounts can be charged, but again, it is expressly permitted by statute. In s. 320.03(10)(d), F.S., an authorized electronic filing system agent may charge a fee to the customer for use of the electronic filing system, and in s. 320.04(2), F.S., LPAs appointed by the county manager of a charter county which has an appointed tax collector are exempted from the prohibition on charging fees for notary public services in connection with, or incidental to, the issuance of license plates or titles.

A well-known canon of statutory interpretation is “*expressio unius est exclusio alterius*,” which means the expression of one thing implies the exclusion of all others.¹⁴ Because the Legislature has indicated precisely when and how private parties can charge fees beyond the statutory fees set in some areas, it would follow that LPAs cannot charge fees beyond the statutorily mandated fees in any other areas. In other words, the Legislature has determined where a deviation from the statutory fee may occur for certain services provided on behalf of the DHSMV.

License Plate Agents and Fees

Since a tax collector is acting as an agent for the DHSMV in providing motor vehicle services, when the LPA contracts with the tax collector to provide such state services, it also is acting as

⁸ See ss. 319.32 and 320.08, F.S.

⁹ Section 320.03(6), F.S.

¹⁰ Section 320.03(9), F.S.

¹¹ Section 320.04(1)(a), F.S.

¹² Section 320.04(1)(b), F.S.

¹³ Section 320.04(1)(c), F.S.

¹⁴ See, generally, A. Scalia & B. Garner, *Reading Law* (2012).

an agent for the DHSMV.¹⁵ The DHSMV is bound by statute, and therefore lacks authority to allow a tax collector to charge fees in excess of what is provided by statute. In turn, the tax collector, in its role as an agent of the DHSMV, similarly lacks authority to authorize a LPA to charge fees in excess of the statute without express statutory authority.

No statute currently authorizes an additional service fee that may be charged by a LPA or other agent of the state providing a specific motor vehicle service. Several statutes contemplate the use of an LPA that would provide motor vehicle services, but none of these statutes provide any authority for the LPA to charge an additional amount in excess of the fees set by statute.

Sixteen counties have, or have until recently had, contracts with LPAs to operate fifty-seven offices to perform title and registration services for motor vehicles, mobile homes, and vessels, as follows:¹⁶

- Alachua – 1
- Hillsborough – 1
- Manatee – 1
- Pasco – 1
- Bay – 1
- Jefferson – 2
- Miami-Dade – 25
- Pinellas – 3
- Broward – 7
- Lee – 1 (opens in 2021)
- Orange – 4
- Polk – 3
- Highlands – 1
- Leon – 1
- Palm Beach – 2
- Volusia - 3

The LPAs in Broward and Miami-Dade counties charge (and formerly the LPAs in Volusia County charged) fees for motor vehicle, mobile home, and vessel title and registration services in addition to the statutory fees authorized in ch. 319, 320 and 328, F.S. The additional fees levied in Broward and Miami-Dade counties are levied pursuant to county ordinances and are retained by the LPAs.^{17, 18}

The LPAs in counties which have elected tax collectors currently only charge the fees for those services which are expressly authorized in state law. The LPAs in these counties may retain all or a portion of the statutorily authorized service fees tax collectors are allowed for motor vehicle, mobile home, and vessel title and registration services, as provided in the contracts between the LPA and each respective tax collector.

LPAs offering optional “concierge” motor vehicle, mobile home, and vessel title and registration services (including supplementary or complementary services not dealt with by statute) to vehicle or vessel dealerships and other motor vehicle related businesses charge additional fees for these services.

The chart below details the additional fees currently charged by the LPA’s in Broward and Miami-Dade counties and that formerly were charged by the LPAs in Volusia County prior to January 5, 2021.¹⁹

¹⁵ See FL AGO 082-81 (Oct. 11, 1982).

¹⁶ Volusia County’s LPA offices operated prior to the elected Volusia County tax collector taking office on January 5, 2021. Currently, these offices are winding down operations and were to close by February 4, 2021.

¹⁷ The additional fees formerly collected in Volusia County were collected pursuant to the contract between Volusia County and the LPAs that operated in Volusia County.

¹⁸ See, Art. XVII, s. 2-123, Code of Miami-Dade County; Ch. 20, Art. XII, s. 20-251, Code of Broward County.

¹⁹ Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 342*, (January 13, 2021), p. 3 (on file with the Senate Committee on Finance and Tax).

Additional Fees Charged by LPA			
Transaction Type	Broward	Miami-Dade	Volusia
Registration Transaction	\$3.50	\$5.00	\$2.85
Biennial Renewal	\$7.00	\$10.00	\$2.85
Title (original or transfer)	\$15.00	\$18.00	\$12.00
Certificate of Destruction	\$16.00	\$18.00	\$10.00
Duplicate Title	\$6.75	\$8.00	\$2.85
VIN Verification or HIN	\$3.50	\$8.00	\$2.00
Duplicate or corrected registration	\$3.50	\$5.00	\$2.00
Verification of Ownership, lien, tag, decal (not part of title application)	\$3.50	\$4.00	\$0.50
Preparation of affidavits or forms and notarization	N/A	\$3.00	\$0.00
Copies of docs pertaining to MV & vessels	N/A	\$2.00	N/A
Fast title service - additional fees	\$20.00	\$10.00	N/A
Disabled Persons Parking Placards	\$2.00	\$3.00	\$0.50
Temp tag	\$4.00	\$5.00	\$2.00
Dealer Handling Fee (max per transaction - within county)	\$6.75	n/a	\$6.00
Dealer Handling Fee (max per transaction - for other county dealer)	\$25.00	n/a	\$10.00
Print Electronic Title	N/A	\$14.00	\$2.75
Notice of Lien (82139) no title	\$3.50	\$5.00	\$2.00
Assignment of Lien (82139)	\$4.00	\$5.00	\$2.00
Mail receipt - actual cost of postage	Actual Cost	N/A	Actual Cost
Personalize plate reservation	N/A	\$5.00	\$2.85
Personalized plate issuance	N/A	\$5.00	\$0.00
Personalized plate availability	N/A	\$4.00	\$0.00
Registration stop satisfaction	N/A	\$2.00	\$0.00
Registration stop payment	N/A	\$4.00	\$0.00
Email/fax/forms	N/A	\$2.00	\$0.00
OS lienholder letter	N/A	\$9.00	\$0.00
Mark Title Sold	N/A	\$5.00	\$2.85*
Surrender License Plate	N/A	\$5.00	\$2.85
Adding wrecker operator lien	N/A	\$8.00	\$2.85
Satisfying wrecker operator lien	N/A	\$7.00	\$2.85*
N/A - No charge for these specific transactions			
*Charged only if not part of a transaction			

Florida Real Time Vehicle Information System

The DHSMV maintains the FRVIS which facilitates the collection of taxes and fees for tags, titles, and registrations associated with motor vehicles and vessels.²⁰ Local tax collector and LPA offices throughout the state process tag, title, and registration transactions through FRVIS.²¹ Revenue from taxes and fees associated with tags, titles, and registrations for motor vehicles and vessels, together with other sources of the DHSMV’s revenue, are distributed through FRVIS to

²⁰ Department of Highway Safety and Motor Vehicles, *Florida Real Time Vehicle Information System (FRVIS): Information Technology Operational Audit*, (April 2014), available at https://flauditor.gov/pages/pdf_files/2014-183.pdf (last visited March 12, 2021).

²¹ *Id.* at pages 1-2.

various state agencies, including the DHSMV, and non-state entities in accordance with governing Florida Statutes.²²

Access to FRVIS is governed by written agreement in the form of a memorandum of understanding (MOU) between the DHSMV and tax collectors throughout the state, and if a tax collector has an LPA, by an additional MOU between the DHSMV, the tax collector, and the LPA contracted with the tax collector.²³

FRVIS is composed of two processing environments. The first is a distributed environment that consists of the servers at local tax collector and tag agent offices that process tag, title, and registration transactions throughout the state. The second environment is the host portion that consists of the back-end processing that is conducted centrally at the DHSMV's primary data center.²⁴

In addition to residential street addresses, the DHSMV is authorized to collect and store (in FRVIS) e-mail addresses. E-mail addresses may be used, in lieu of the United States Postal Service, to provide certain renewal notices, including registration renewal notices, driver license renewal notices, and vessel registration renewal notices.^{25, 26, 27, 28, 29}

Related Equipment Requirements

Currently, any tax collector or LPA opening a new office or expanding existing offices initially purchases the equipment needed for title and registration issuance to operate that office. The DHSMV periodically refreshes outdated equipment and pays the cost of the new equipment (contingent upon appropriated funds) for both tax collector's and LPA's offices.³⁰

LPAs reimburse the DHSMV for reoccurring circuit costs (i.e., Internet access) for each location, unless the LPA office is collocated with a tax collector office and the circuit is shared.³¹

III. Effect of Proposed Changes:

The bill provides that a tax collector may elect to exercise his or her authority to contract with a LPA, and may determine any additional service charges that will be collected by the LPAs approved by the tax collector. Any additional service charges must be fully itemized and disclosed to a person paying the service charges to the LPA.

The bill requires the LPA to enter into a contract with the tax collector regarding the disclosure of additional service charges.

²² *Id.*, at page 2.

²³ *Supra* FN 19, p. 3

²⁴ *Id.*

²⁵ Section 319.40, F.S.

²⁶ Section 320.95, F.S.

²⁷ Section 322.08(10), F.S.

²⁸ Section 328.30, F.S.

²⁹ Section 328.80, F.S.

³⁰ *Supra* FN 19, p. 4.

³¹ *Id.*

The bill also requires tax collectors and their approved LPAs to enter into an MOU with the DHSMV regarding use of the FRVIS.

The bill has an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Article VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19 of the Florida Constitution requires new or increased taxes or fees to be passed by a two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject.³² A “fee” is defined as “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”³³

While the above provisions do not apply to local government revenues, to the extent that the additional service charges that will be collected by the LPAs as approved by the tax collector (in this capacity operating as authorized agent of the state) are determined to be new state fees, the requirements of Article VII, s. 19 of the Florida Constitution may apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not affect state or local revenues.

³² FLA. CONST. art. VII, s. 19(a).

³³ FLA. CONST. art. VII, s. 19(d)(1).

B. Private Sector Impact:

Individuals who elect to use the services of a tax collector approved LPA may incur additional service charges.

To the extent that LPAs provide services which have been approved by the tax collector to charge additional service charges, the LPAs may receive additional revenue.

C. Government Sector Impact:

The DHSMV stated that if the bill results in more tax collectors using LPAs or more LPA offices being established to perform motor vehicle, mobile home, and vessel title and registration services, recurring costs for replacement equipment for tax collectors' and LPAs' offices may increase and, potentially, impair the ability of the Highway Safety Operating Trust Fund to cover the refresh rate for equipment in tax collector's offices as well as existing LPAs' offices, which is paid from the Highway Safety Operating Trust Fund.³⁴

The DHSMV stated the bill would be a significant impact on the DHSMV's operational resources and resources dedicated to the Motorist Modernization project. Programing would be required in FVRIS to print fees that LPA's would charge on receipts and reports.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address "off-highway vehicle" titles. An "off-highway vehicle" is not included in the definition of "motor vehicle" in ch. 322, F.S. The definition of "off-highway vehicle" and the fees pertaining to titles for those vehicles are found in ch. 317, F.S. The DHSMV recommends provisions for "off-highway vehicle" be added to the bill.³⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 319.32, 320.03, 320.04, and 328.72.

³⁴ *Supra* FN 19, p. 5-6.

³⁵ *Ibid*, p. 6.

³⁶ *Ibid*, p. 7.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Committee on Transportation on March 3, 2021:

- Clarifies that it is discretionary for tax collectors to exercise their authority to contract with a license plate agent and determine additional service charges collected by privately owned license plate agents for motor vehicle titles.

- B. **Amendments:**

None.

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