



Energy & Utilities Subcommittee

**Tuesday, March 5, 2013
1:00 PM
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

March 5, 2013

1:00 p.m. – 3:00 p.m.

212 Knott Building (Webster Hall)

Opening Remarks by Vice Chair Diaz

Consideration of the following bills:

PCS for HB 579 by *Rep. Ray*
Natural Gas Motor Fuel

HB 633 by *Rep. Perry*
Biodiesel Fuel

PCS for HB 649 by *Rep. Cummings*
Public Records/Proprietary Confidential Business

Closing Remarks by Vice Chair Diaz

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 579 Natural Gas Motor Fuel
SPONSOR(S): Energy & Utilities Subcommittee
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee		Whittier <i>SHW</i>	Collins <i>JBC</i>

SUMMARY ANALYSIS

During the past several years domestic exploration has uncovered a prevalent supply of natural gas in the United States which has resulted in a reduction in the price of natural gas and an increased interest in natural gas powered vehicles and fueling stations. Natural gas is touted as the cleanest of the fossil fuels. The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions
- Smog, Air Quality and Acid Rain
- Industrial and Electric Generation Emissions
- Pollution from the Transportation Sector¹

Currently, there are 32 natural gas fueling stations in Florida. Similar to the dilemma facing electric vehicles, there is much discussion surrounding whether to first increase and/or convert fleets to be powered by natural gas in Florida or to begin with expanding the natural gas fueling infrastructure statewide. The Florida Natural Gas Vehicle Coalition (coalition) recommends providing incentives to convert to CNG-powered truck fleets which would, thereby, create a demand for the fueling stations and "produc[e] significant stimulation of Florida's economy."² Although a study released by the coalition suggests several incentive program possibilities that could be examined, this bill addresses tax exemptions for natural gas fuel.³

The bill creates Part V of Chapter 206, F.S., consisting of ss. 206.9951-206.998, and entitles it "Natural Gas Fuel." It repeals the annual decal fee program for motor vehicles powered by alternative fuels effective January 1, 2014, and establishes a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning January 1, 2019, thereby exempting natural gas fuel from fuel taxes for five years. The bill also exempts natural gas fuel from state sales and use taxes and expands the definition of "energy efficiency improvement" to include "installation of systems for natural gas fuel" under uses authorized by the Local Government Infrastructure Surtax.

The bill may result in increased savings for drivers utilizing vehicles powered by natural gas fuel, an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel, and an increase in natural gas refueling infrastructure across the state.

There is expected to be a negative impact on the State Transportation Trust Fund. The Revenue Estimating Conference has not yet determined the fiscal impact of this bill.

¹ Naturalgas.org website: <http://www.naturalgas.org/environment/naturalgas.asp>.

² *Economic Impact of Incentives to Facilitate Compressed Natural Gas Vehicles in Florida*, by Fishkind & Associates, Inc., August 1, 2012.

³ *Id.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Natural Gas

During the past several years domestic exploration has uncovered a prevalent supply of natural gas in the United States which has resulted in a reduction in the price of natural gas and an increased interest in natural gas powered vehicles and fueling stations. Similar to the dilemma facing electric vehicles, there is much discussion surrounding whether to first increase and/or convert fleets to be powered by natural gas in Florida or to begin with expanding the natural gas fueling infrastructure statewide. Currently, there are 32 natural gas fueling stations in Florida.⁴

When compared, using equivalent units of measure, natural gas is less expensive than gasoline or diesel fuel. The U.S. Department of Energy reports that in the fall of 2012 the national average price for gasoline was \$3.82, the price for diesel was \$4.13, and for a gasoline gallon equivalent of compressed natural gas (CNG) was \$2.12.⁵ Although initial savings in fuel costs may be offset by the cost of a natural gas vehicle over a gasoline or diesel-powered vehicle, cost savings may be experienced after a few years.

In a study⁶ prepared for the Florida Natural Gas Vehicle Coalition (FNGVC), the following was noted:

The incremental cost of a standard passenger vehicle powered by CNG, compared to a standard passenger vehicle powered by gasoline, ranges from \$7,000 to \$18,500. Assuming each passenger vehicle consumes 531 gallons per year, and applying a gas-CNG price difference of \$1.74, the payback period ranges from 7.6 years to 20 years. In contrast, the incremental cost of a truck powered by CNG over a diesel-powered truck is \$76,100. Assuming each vehicle consumes 11,706 gallons per year and assuming a price difference of \$1.91, the payback period for conversion of a diesel-powered truck to a CNG-powered truck is only 3.4 years. Further, reduced engine wear and extended service intervals also reduce maintenance costs for CNG-powered vehicles.⁷

Natural gas is touted as the cleanest of the fossil fuels. The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions;
- Smog, Air Quality and Acid Rain;
- Industrial and Electric Generation Emissions; and
- Pollution from the Transportation Sector⁸

⁴ Correspondence from the Florida Natural Gas Association, March 1, 2013.

⁵ *Clean Cities Alternative Fuel Price Report*, U.S. Department of Energy, October 2012, p. 3.

⁶ *Economic Impact of Incentives to Facilitate Compressed Natural Gas Vehicles in Florida*, by Fishkind & Associates, Inc., August 1, 2012.

⁷ *Id.*, pp. 17-18.

⁸ Naturalgas.org website: <http://www.naturalgas.org/environment/naturalgas.asp>.

According to the FNGVC, the following are benefits associated with the use of natural gas for fleet trucks:

- Natural gas vehicles can save a company 30% – 50% of its fuel costs.
- Central fuel and maintenance make fleets highly conducive to CNG fueling infrastructure.
- While it is true that Florida currently has relatively few natural gas fueling stations in place, several companies offer no-cost or low-cost options for construction and maintenance of such infrastructure.
- Maintenance on a natural gas vehicle is no more problematic and often easier than traditional diesel trucks.
- The cost of converting to CNG is decreasing. In addition, such costs are offset by savings in direct fuel costs and possible financial incentives for the purchase of natural gas vehicles.⁹

The FNGVC study recommends providing incentives to utilize CNG-powered truck fleets, thereby creating a demand for the re-fueling stations and “producing significant stimulation of Florida’s economy.”

State Gasoline, Diesel, and Alternative Fuel Taxes

Motor Fuel

Section 206.01(9), F.S., defines “motor fuel” or “fuel” to mean “all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle.” Section 206.41(1), F.S., provides for the following taxes on motor fuel:

- An excise or license tax of 2 cents per net gallon of motor fuel, designated as the “constitutional fuel tax.”
- 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 State Comprehensive Enhanced Transportation System Tax (SCETS), at a rate determined as specified in paragraph (f) of the subsection.
- An additional tax per net gallon is imposed “on the privilege of selling motor fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (g) of the subsection.

The SCETS tax rate on motor fuel for 2013 is 5.9 cents and the fuel sales tax rate on motor fuel for 2013 is 12.9 cents.¹⁰

Diesel Fuel

Section 206.86(1), F.S., defines “diesel fuel” to mean “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.” Section 206.87(1), F.S., provides for the following taxes on diesel fuel:

- An excise tax of 4 cents upon each net gallon of diesel fuel, except for alternative fuels which are subject to the fee imposed by s. 206.877, F.S.

⁹ FNGVC website: <http://www.fuelforjobs.com/wp-content/uploads/2012/03/Executive-Summary-FINAL1.pdf>, p. 6.

¹⁰ Florida Department of Revenue website: http://dor.myflorida.com/dor/tips/pdf/12b05-02_chart.pdf, 2013 Florida Fuel Tax, Collection Allowance, Refund, and Pollutants Tax Rates, p. 2.

- An additional 1 cent per net gallon by each county, designated as the “ninth-cent fuel tax.”
- An additional 6 cents per net gallon by each county, designated as the “local option fuel tax.”
- An additional tax per net gallon by each county, designated as the State Comprehensive Enhanced Transportation System Tax (SCETS), at a rate determined as specified in paragraph (d) of the subsection.
- An additional tax per net gallon “on the privilege of selling diesel fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (e) of the subsection.

The SCETS Tax rate on diesel for 2013 is 7.1 cents and the fuel sales tax rate on diesel for 2013 is 12.9 cents.¹¹

Section 212.0501(5), F.S., provides that diesel fuel upon which the fuel taxes pursuant to ch. 206, F.S., have been paid is exempt from the tax on sales, use, and other transactions imposed by ch. 212, F.S.

Alternative Fuel

Section 206.86(4), F.S., defines “alternative fuel” to mean “any liquefied petroleum gas product or compressed natural gas product or combination thereof used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. 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 or compressed natural gas.” Section 206.86(5), F.S., defines “natural gasoline” as “a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.”

Section 206.877(1)(a), F.S., requires owners or operators of motor vehicles licensed in this state which are powered by alternative fuels to pay, in lieu of the 4 cents per gallon excise tax on diesel fuel, an annual decal fee on each such motor vehicle in accordance with the rate schedule specified in that paragraph.

The Department of Revenue (DOR) issues an annual decal to be attached to the upper right corner of the front windshield on the motor vehicle for which the decal is issued, and it is unlawful to operate a vehicle that is required to have this decal unless the vehicle is titled outside the state. Each sale of alternative fuel placed in a motor vehicle displaying a decal must be documented on an invoice that includes the decal number, the motor vehicle license number, and the number of gallons placed into the motor vehicle. Any person who puts or causes to be put liquefied petroleum gas or compressed natural gas into a motor vehicle required to have a decal is guilty of a first degree misdemeanor unless the vehicle has the required attached decal. A state or local governmental agency is not required to obtain a decal and pay the annual decal fee for a motor vehicle powered by alternative fuel which it operates.¹² The taxes imposed on diesel fuel under s. 206.87, F.S., apply to purchases of alternative fuels by operators of vehicles licensed in other states and other vehicles that do not have the proper decal.

The sale of alternative fuel, as defined in s. 206.86(4), F.S., is also subject to sales and use tax imposed under ch. 212, F.S.¹³

Section 206.89, F.S., provides that a person may not act as a retailer of alternative fuel unless he or she holds a valid retailer of alternative fuel license issued by DOR, and any person acting as such who does not hold a license must pay a penalty of 25% of the tax assessed on the total purchases. A filing fee of \$5 and a bond is required at the time of filing an application for a license. Every person who operates as a retailer of alternative fuel, except those licensed under ch. 206, F.S., including a state

¹¹ Florida Department of Revenue website: http://dor.myflorida.com/dor/tips/pdf/12b05-02_chart.pdf, 2013 Florida Fuel Tax, Collection Allowance, Refund, and Pollutants Tax Rates, p. 2.

¹² Section 206.877, F.S.

¹³ Rule 12A-1.059, F.A.C.

agency, federal agency, municipality, county, or special district, must report monthly to DOR and pay tax on all fuel purchases.

The revenues from the state alternative fuel fees imposed by s. 206.877, F.S., are deposited into the State Alternative Fuel User Fee Clearing Trust Fund. After deducting specified service charges, the proceeds from state alternative fuel fees are distributed as follows:

- One-half of the proceeds shall be transferred to the State Transportation Trust Fund.
- 50% of the remainder shall be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25% of the remainder shall be transferred to the Revenue Sharing Trust Fund for Municipalities.
- 25% of the remainder shall be distributed in accordance with s. 206.60(1), F.S. (to the counties for specified public transportation purposes).¹⁴

The revenues from the local alternative fuel fees imposed in lieu of s. 206.87(1)(b) or (c), F.S., are to be deposited into the Local Alternative Fuel User Fee Clearing Trust Fund. After deducting specified service charges, the proceeds are returned monthly to the appropriate county.¹⁵

Local Discretionary Sales Surtaxes

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions, pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S. Discretionary sales surtaxes must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.¹⁶ The surtax applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.¹⁷

There are eight different types of local discretionary sales surtaxes currently authorized in law:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

Local Government Infrastructure Surtax

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of

¹⁴ Section 206.879(1), F.S.

¹⁵ Section 206.879(2), F.S.

¹⁶ 2012 Florida Tax Handbook, p. 207.

¹⁷ Section 212.054(2)(b)1., F.S.

the county's governing body and approved by voters in a countywide referendum.¹⁸ If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.¹⁹ All counties are eligible to levy this surtax.²⁰

Pursuant to s. 212.055(2)(d), F.S., school districts, counties,²¹ and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county-owned or municipally-owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

For purposes of the Local Government Infrastructure Surtax, s. 212.055(2)(d)2., F.S., defines "energy efficiency improvement" as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

A local government choosing to expend funds under this provision is required to enact or amend its ordinance pursuant to s. 125.66, F.S., and have the ordinance approved by referendum in a subsequent election.

Effects of Proposed Changes

Natural Gas Fuel Taxes

Chapter 206, F.S., addresses "Motor and Other Fuel Taxes." The bill creates Part V of Chapter 206, F.S., consisting of ss. 206.9951-206.998, and entitles it "Natural Gas Fuel." It repeals the annual decal

¹⁸ In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.

¹⁹ If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.

²⁰ The Local Government Infrastructure Surtax is one of four surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

²¹ Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

fee program for motor vehicles powered by alternative fuels and establishes a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning January 1, 2019.

Section 206.9951, F.S., provides the following definitions:

- "Motor fuel equivalent gallon" means the volume of natural gas fuel it takes to equal the energy content of 1 gallon of motor fuel.
- "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23), F.S. 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.
- "Natural gas fuel retailer" means any person who sells natural gas fuel for use in a motor vehicle as defined in s. 206.01(23), F.S.
- "Natural gasoline" is a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.
- "Person" means a natural person, corporation, copartnership, firm, company, agency, or association; a state agency; a federal agency; or a political subdivision of the state

The bill requires any person selling natural gas fuel at retail in Florida to obtain a natural gas fuel retailer license (license) from the Department of Revenue (DOR or department). Until December 31, 2018, any person who acts as a natural gas retailer and does not hold a valid license must pay a penalty of \$200 for each month of operation without a license. Beginning January 1, 2019, a penalty of 25 percent of the tax assessed on total purchases is imposed on any person who acts as a natural gas fuel retailer and does not have a valid license.²² In order to apply for a license from the DOR, the applicant must file an application and a bond with the department and pay a license fee of \$5 for deposit into the General Revenue Fund.²³

The bill replaces the annual decal and fee originally required in s. 206.877, F.S., with a tax on each motor fuel equivalent gallon of natural gas fuel. The bill provides the motor fuel equivalent gallon rates for compressed natural gas, liquefied natural gas, and liquefied petroleum gas. The person liable for payment of the taxes is the person selling the fuel to the end user for use in the fuel supply tank of a motor vehicle as defined in s. 206.01(23), F.S.²⁴

Section 206.9955(2), F.S., provides for the following taxes on natural gas fuel, effective January 1, 2019:

- An excise tax of 4 cents upon each motor fuel equivalent gallon 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 6 cents 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, which is designated as the "State Comprehensive Enhanced Transportation System Tax," at a rate determined pursuant to paragraph (d) of the subsection.²⁵

²² Section 206.9952(3), F.S.

²³ Section 206.9952, F.S.

²⁴ See ss. 206.9955 and 206.996, F.S., for detailed information on specific calculations.

²⁵ Each calendar year, the department shall determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the initially established tax rate of 7.1 cents per gallon

- An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel “for the privilege of selling natural gas fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (e) of the section.

The bill provides that for the purpose of determining the amount of taxes, beginning with February 2019, each natural gas fuel retailer shall file, no later than the 20th of each month, monthly reports with the DOR providing information on inventory, purchases, nontaxable disposals, and taxable sales in gallons of natural gas fuel for the preceding month. The natural gas fuel retailer is allowed to deduct 0.67 percent of the amount of taxes owed to “compensate it for services rendered and expenses incurred in complying with the requirements...”²⁶ Upon the filing of the monthly report, the natural gas fuel retailer shall pay the DOR the full amount of fuel taxes for the preceding month, less the amount allowed for services and expenses.

The bill provides exemptions from the tax imposed by chapter 206 when used or purchased for the following:²⁷

- Exclusive use by the United States or its departments or agencies. Exclusive use by the United States or its departments and agencies means the consumption by the United States or its departments or agencies of natural gas fuel in a motor vehicle as defined in s. 206.01(23).
- Use for agricultural purposes as defined in s. 206.41(4)(c).
- Uses as provided in s. 206.874(3) (which addresses dyed diesel fuel).
- Used to propel motor vehicles operated by state and local government agencies.
- Individual use resulting from residential refueling devices located at a person's primary residence.
- Purchases of natural gas fuel between licensed natural gas fuel retailers.²⁸

Section 206.997, F.S., directs that, beginning with the calendar year 2019 and thereafter, revenues from the natural gas fuel tax be deposited into the State Alternative Fuel User Fee Clearing Trust Fund to be distributed as follows:

- One-half of the proceeds shall be transferred to the State Transportation Trust Fund.
- 50% of the remainder shall be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25% of the remainder shall be transferred to the Revenue Sharing Trust Fund for Municipalities.
- 25% of the remainder shall be distributed in accordance with s. 206.60(1), F.S. (to the counties for specified public transportation purposes).

The bill repeals the Local Alternative Fuel User Fee Clearing Trust Fund. The bill specifies that existing provisions within part I and part II of chapter 206 shall be applicable to the taxes levied, imposed, and collected unless the provision conflicts with the new part.

Local Government Infrastructure Surtax

As noted in the *Present Situation* section, “energy efficiency improvement” is defined within the Local Government Infrastructure Surtax subsection of s. 212.055, F.S., as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

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.

²⁶ Section 206.996(1), F.S.

²⁷ Section 206.9965, F.S.

²⁸ A natural gas fuel retailer that sells tax-paid natural gas fuel to another natural gas fuel retailer may take a credit on its monthly return or may file a claim for refund with the Chief Financial Officer pursuant to s. 215.26, F.S. All sales of natural gas fuel between natural gas fuel retailers must be documented on invoices or other evidence of the sale of such fuel and the seller shall retain a copy of the purchaser's natural gas fuel retailer license.

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

The bill adds "installation of systems for natural gas fuel as defined in s. 206.9951" to the definition of "energy efficiency improvement." This would allow a county to use surtax revenues as loans, grants, or rebates to private property owners who install natural gas fueling systems if a local government ordinance authorizing such use is approved by referendum.²⁹

Sales and Use Tax

The bill exempts natural gas fuel from the state sales and use tax when the fuel is placed into the fuel supply system of a motor vehicle.

B. SECTION DIRECTORY:

Section 1. Amends s. 206.86, F.S.; deletes definitions for the terms "alternative fuel" and "natural gasoline."

Section 2. Amends s. 206.87, F.S.; conforms a cross-reference.

Section 3. Repeals s. 206.877, F.S., relating to the annual decal fee program for motor vehicles powered by alternative fuels.

Section 4. Repeals s. 206.89, F.S., relating to the requirements for alternative fuel retailer licenses.

Section 5. Amends s. 206.91, F.S.; makes grammatical and technical changes.

Section 6. Provides a directive to the Division of Law Revision and Information to create part V of chapter 206, Florida Statutes.

Section 7. Creates s. 206.9951, F.S.; provides definitions.

Section 8. Creates s. 206.9952, F.S.; establishes requirements for natural gas fuel retailer licenses; provides penalties for certain licensure violations.

Section 9. Creates s. 206.9955, F.S.; provides for the levy of the natural gas fuel tax; provides calculations for a motor fuel equivalent gallon; authorizes the Department of Revenue to adopt rules.

Section 10. Creates s. 206.996, F.S.; establishes requirements for monthly reports of natural gas fuel retailers; provides that reports are made under the penalties of perjury; allows natural gas fuel retailers to seek a deduction of the tax levied under specified conditions.

Section 11. Creates s. 206.9965, F.S.; provides exemptions and refunds from the natural gas fuel tax.

²⁹ Section 212.055(2)(d), F.S.
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 DATE: 3/4/2013

Section 12. Transfers and renumbers s. 206.879, F.S., as s. 206.997, F.S., and amends to revise provisions relating to the State Alternative Fuel User Fee Clearing Trust Fund.

Section 13. Terminates the Local Alternative Fuel User Fee Clearing Trust Fund within the Department of Revenue; prescribes procedures for the termination of the trust fund.

Section 14. Creates s. 206.998, F.S.; provides for the applicability of specified sections of parts I and II of ch. 206, F.S.

Section 15. Amends s. 212.055, F.S.; expands the use of the local government infrastructure surtax to include the installation of systems for natural gas fuel.

Section 16. Amends s. 212.08, F.S.; provides an exemption from taxes for natural gas fuel under certain circumstances.

Section 17. Provides an effective date of January 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased savings for drivers utilizing vehicles powered by natural gas fuel, an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel, and an increase in natural gas refueling infrastructure across the state.

D. FISCAL COMMENTS:

There is expected to be a negative impact on the State Transportation Trust Fund. The Revenue Estimating Conference has not yet determined the fiscal impact of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Unknown. The Revenue Estimating Conference has not yet determined the fiscal impact of this bill.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DOR is authorized to adopt rules and publish forms to administer the fuel sales tax in s. 206.9955, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to natural gas motor fuel; amending s.
 3 206.86, F.S.; deleting definitions for the terms
 4 "alternative fuel" and "natural gasoline"; amending s.
 5 206.87, F.S.; conforming a cross-reference; repealing
 6 s. 206.877, F.S., relating to the annual decal fee
 7 program for motor vehicles powered by alternative
 8 fuels; repealing s. 206.89, F.S., relating to the
 9 requirements for alternative fuel retailer licenses;
 10 amending s. 206.91, F.S.; making grammatical and
 11 technical changes; providing a directive to the
 12 Division of Law Revision and Information; creating s.
 13 206.9951, F.S.; providing definitions; creating s.
 14 206.9952, F.S.; establishing requirements for natural
 15 gas fuel retailer licenses; providing penalties for
 16 certain licensure violations; creating s. 206.9955,
 17 F.S.; providing calculations for a motor fuel
 18 equivalent gallon; providing for the levy of the
 19 natural gas fuel tax; authorizing the Department of
 20 Revenue to adopt rules; creating s. 206.996, F.S.;
 21 establishing requirements for monthly reports of
 22 natural gas fuel retailers; providing that reports are
 23 made under the penalties of perjury; allowing natural
 24 gas fuel retailers to seek a deduction of the tax
 25 levied under specified conditions; creating s.
 26 206.9965, F.S.; providing exemptions and refunds from
 27 the natural gas fuel tax; transferring, renumbering,
 28 and amending s. 206.879, F.S.; revising provisions

29 relating to the State Alternative Fuel User Fee
 30 Clearing Trust Fund; terminating the Local Alternative
 31 Fuel User Fee Clearing Trust Fund within the
 32 Department of Revenue; prescribing procedures for the
 33 termination of the trust fund; creating s. 206.998,
 34 F.S.; providing for the applicability of specified
 35 sections of parts I and II of ch. 206, F.S.; amending
 36 s. 212.055, F.S.; expanding the use of the local
 37 government infrastructure surtax to include the
 38 installation of systems for natural gas fuel;
 39 amending s. 212.08, F.S.; providing an exemption from
 40 taxes for natural gas fuel under certain
 41 circumstances; providing an effective date;

42

43 Be It Enacted by the Legislature of the State of Florida:

44

45 Section 1. Section 206.86, Florida Statutes, is amended to
 46 read:

47 206.86 Definitions.—As used in this part:

48 (1) "Diesel fuel" means all petroleum distillates commonly
 49 known as diesel #2, biodiesel, or any other product blended with
 50 diesel or any product placed into the storage supply tank of a
 51 diesel-powered motor vehicle.

52 (2) "Taxable diesel fuel" or "fuel" means any diesel fuel
 53 not held in bulk storage at a terminal ~~and~~ which has not been
 54 dyed for exempt use in accordance with Internal Revenue Code
 55 requirements.

56 (3) "User" includes any person who uses diesel fuels

57 | within this state for the propulsion of a motor vehicle on the
 58 | public highways of this state, even though the motor is also
 59 | used for a purpose other than the propulsion of the vehicle.

60 | ~~(4) "Alternative fuel" means any liquefied petroleum gas~~
 61 | ~~product or compressed natural gas product or combination thereof~~
 62 | ~~used in an internal combustion engine or motor to propel any~~
 63 | ~~form of vehicle, machine, or mechanical contrivance. This term~~
 64 | ~~includes, but is not limited to, all forms of fuel commonly or~~
 65 | ~~commercially known or sold as natural gasoline, butane gas,~~
 66 | ~~propane gas, or any other form of liquefied petroleum gas or~~
 67 | ~~compressed natural gas.~~

68 | ~~(5) "Natural gasoline" is a liquid hydrocarbon that is~~
 69 | ~~produced by natural gas and must be blended with other liquid~~
 70 | ~~petroleum products to produce motor fuel.~~

71 | (4)~~(6)~~ "Removal" means any physical transfer of diesel
 72 | fuel and any use of diesel fuel other than as a material in the
 73 | production of diesel fuel.

74 | (5)~~(7)~~ "Blender" means any person who ~~that~~ produces
 75 | blended diesel fuel outside the bulk transfer/terminal system.

76 | (6)~~(8)~~ "Colorless marker" means material that is not
 77 | perceptible to the senses until the diesel fuel into which it is
 78 | introduced is subjected to a scientific test.

79 | (7)~~(9)~~ "Dyed diesel fuel" means diesel fuel that is dyed
 80 | in accordance with United States Environmental Protection Agency
 81 | or Internal Revenue Service requirements for high sulfur diesel
 82 | fuel or low sulfur diesel fuel.

83 | (8)~~(10)~~ "Ultimate vendor" means a licensee that sells
 84 | undyed diesel fuel to the United States or its departments or

85 agencies in bulk lots of not less than 500 gallons in each
 86 delivery or to the user of the diesel fuel for use on a farm for
 87 farming purposes.

88 (9)~~(11)~~ "Local government user of diesel fuel" means any
 89 county, municipality, or school district licensed by the
 90 department to use untaxed diesel fuel in motor vehicles.

91 (10)~~(12)~~ "Mass transit system" means any licensed local
 92 transportation company providing local bus service that is open
 93 to the public and that travels regular routes.

94 (11)~~(13)~~ "Diesel fuel registrant" means anyone required by
 95 this chapter to be licensed to remit diesel fuel taxes,
 96 including, but not limited to, terminal suppliers, importers,
 97 local government users of diesel fuel, and mass transit systems.

98 (12)~~(14)~~ "Biodiesel" means any product made from
 99 nonpetroleum-based oils or fats which is suitable for use in
 100 diesel-powered engines. Biodiesel is also referred to as alkyl
 101 esters.

102 (13)~~(15)~~ "Biodiesel manufacturer" means those industrial
 103 plants, regardless of capacity, where organic products are used
 104 in the production of biodiesel. This includes businesses that
 105 process or blend organic products that are marketed as
 106 biodiesel.

107 Section 2. Paragraph (a) of subsection (1) of section
 108 206.87, Florida Statutes, is amended to read:

109 206.87 Levy of tax.—

110 (1)(a) An excise tax of 4 cents per gallon is ~~hereby~~
 111 imposed upon each net gallon of diesel fuel subject to the tax
 112 under subsection (2), ~~except alternative fuels which are subject~~

113 | ~~to the fee imposed by s. 206.877.~~

114 | Section 3. Section 206.877, Florida Statutes, is repealed.

115 | Section 4. Section 206.89, Florida Statutes, is repealed.

116 | Section 5. Subsection (1) of section 206.91, Florida
117 | Statutes, is amended to read:

118 | 206.91 Tax reports; computation and payment of tax.—

119 | (1) For the purpose of determining the amount of taxes
120 | imposed by s. 206.87, each diesel fuel registrant shall, not
121 | later than the 20th day of each calendar month, mail to the
122 | department, on forms prescribed by the department, monthly
123 | reports that provide ~~which shall show such~~ information on
124 | inventories, purchases, nontaxable disposals, and taxable sales
125 | in gallons of diesel fuel ~~and alternative fuel,~~ for the
126 | preceding calendar month ~~as may be~~ required by the department.
127 | However, if the 20th day falls on a Saturday, a Sunday, or a
128 | federal or state legal holiday, returns shall be accepted if
129 | postmarked on the next succeeding workday. The reports must
130 | include, ~~shall contain~~ or be verified by, a written declaration
131 | stating that they are ~~such report is~~ made under the penalties of
132 | perjury. The diesel fuel registrant shall deduct from the amount
133 | of taxes shown by the report to be payable an amount equivalent
134 | to .67 percent of the taxes on diesel fuel imposed by s.

135 | 206.87(1) (a) and (e), which deduction is ~~hereby~~ allowed to the
136 | diesel fuel registrant on account of services and expenses in
137 | complying with the provisions of this part. The allowance on
138 | taxable gallons of diesel fuel sold to persons licensed under
139 | this chapter is not ~~shall not be~~ deductible unless the diesel
140 | fuel registrant has allowed 50 percent of the allowance provided

141 | by this section to a purchaser with a valid wholesaler or
 142 | terminal supplier license. This allowance is not ~~shall not be~~
 143 | deductible unless payment of the taxes is made on or before the
 144 | 20th day of the month as ~~herein~~ required in this subsection.
 145 | ~~Nothing in~~ This subsection does not ~~shall be construed to~~
 146 | authorize a deduction from the constitutional fuel tax or fuel
 147 | sales tax.

148 | Section 6. The Division of Law Revision and Information is
 149 | requested to create part V of chapter 206, Florida Statutes,
 150 | consisting of ss. 206.9951-206.998, entitled "NATURAL GAS FUEL."

151 | Section 7. Section 206.9951, Florida Statutes, is created
 152 | to read:

153 | 206.9951 Definitions.—As used in this part, the term:

154 | (1) "Motor fuel equivalent gallon" means the volume of
 155 | natural gas fuel it takes to equal the energy content of 1
 156 | gallon of motor fuel.

157 | (2) "Natural gas fuel" means any liquefied petroleum gas
 158 | product, compressed natural gas product, or combination thereof
 159 | used in a motor vehicle as defined in s. 206.01(23). This term
 160 | includes, but is not limited to, all forms of fuel commonly or
 161 | commercially known or sold as natural gasoline, butane gas,
 162 | propane gas, or any other form of liquefied petroleum gas,
 163 | compressed natural gas, or liquefied natural gas.

164 | (3) "Natural gas fuel retailer" means any person who sells
 165 | natural gas fuel for use in a motor vehicle as defined in s.
 166 | 206.01(23).

167 | (4) "Natural gasoline" is a liquid hydrocarbon that is
 168 | produced by natural gas and must be blended with other liquid

169 petroleum products to produce motor fuel.

170 (5) "Person" means a natural person, corporation,
 171 copartnership, firm, company, agency, or association; a state
 172 agency; a federal agency; or a political subdivision of the
 173 state.

174 Section 8. Section 206.9952, Florida Statutes, is created
 175 to read:

176 206.9952 Application for license as a natural gas fuel
 177 retailer.-

178 (1) It is unlawful for any person to engage in business as
 179 a natural gas fuel retailer within this state unless he or she
 180 is the holder of a valid license issued by the department to
 181 engage in such business.

182 (2) A person who has facilities for placing natural gas
 183 fuel into the supply system of an internal combustion engine
 184 fueled by individual portable containers of 10 gallons or less
 185 is not required to be licensed as a natural gas fuel retailer,
 186 provided that the fuel is only used for exempt purposes.

187 (3) (a) Any person who acts as a natural gas retailer and
 188 does not hold a valid natural gas fuel retailer license shall
 189 pay a penalty of \$200 for each month of operation without a
 190 license. This paragraph expires December 31, 2018.

191 (b) Effective January 1, 2019, any person who acts as a
 192 natural gas fuel retailer and does not hold a valid natural gas
 193 fuel retailer license shall pay a penalty of 25 percent of the
 194 tax assessed on the total purchases made during the unlicensed
 195 period.

196 (4) To procure a natural gas fuel retailer license, a

197 person shall file an application and a bond with the department
 198 on a form prescribed by the department. The department may not
 199 issue a license upon the receipt of any application unless it is
 200 accompanied by a bond.

201 (5) When a natural gas fuel retailer license application
 202 is filed by a person whose previous license was canceled for
 203 cause by the department or the department believes that such
 204 application was not filed in good faith or is filed by another
 205 person as a subterfuge for the actual person in interest whose
 206 previous license has been canceled, the department may, if
 207 evidence warrants, refuse to issue a license for such an
 208 application.

209 (6) Upon the department's issuance of a natural gas fuel
 210 retailer license, such license remains in effect so long as the
 211 natural gas fuel retailer is in compliance with the requirements
 212 of this part.

213 (7) Such license may not be assigned and is valid only for
 214 the natural gas fuel retailer in whose name the license is
 215 issued. The license shall be displayed conspicuously by the
 216 natural gas fuel retailer in the principal place of business for
 217 which the license was issued.

218 (8) With the exception of a state or federal agency or a
 219 political subdivision licensed under this chapter, each person,
 220 as defined in this part, who operates as a natural gas fuel
 221 retailer shall report monthly to the department and pay a tax on
 222 all natural gas fuel purchases beginning January 1, 2019.

223 (9) The license application requires a license fee of \$5.
 224 Each license shall be renewed annually by submitting a

225 | reapplication and the license fee to the department. The license
 226 | fee shall be paid to the department for deposit into the General
 227 | Revenue Fund.

228 | Section 9. Section 206.9955, Florida Statutes, is created
 229 | to read:

230 | 206.9955 Levy of natural gas fuel tax.-

231 | (1) The motor fuel equivalent gallon means the following
 232 | for:

233 | (a) Compressed natural gas gallon: 5.66 pounds, or per
 234 | each 126.67 cubic feet.

235 | (b) Liquefied natural gas gallon: 6.22 pounds.

236 | (c) Liquefied petroleum gas gallon: 1.35 gallons.

237 | (2) Effective January 1, 2019, the following taxes shall
 238 | be imposed:

239 | (a) An excise tax of 4 cents upon each motor fuel
 240 | equivalent gallon of natural gas fuel.

241 | (b) An additional tax of 1 cent upon each motor fuel
 242 | equivalent gallon of natural gas fuel, which is designated as
 243 | the "ninth-cent fuel tax."

244 | (c) An additional tax of 6 cents on each motor fuel
 245 | equivalent gallon of natural gas fuel by each county, which is
 246 | designated as the "local option fuel tax."

247 | (d) An additional tax on each motor fuel equivalent gallon
 248 | of natural gas fuel, which is designated as the "State
 249 | Comprehensive Enhanced Transportation System Tax," at a rate
 250 | determined pursuant to this paragraph. Each calendar year, the
 251 | department shall determine the tax rate applicable to the sale
 252 | of natural gas fuel for the following 12-month period beginning

253 January 1, rounded to the nearest tenth of a cent, by adjusting
 254 the initially established tax rate of 7.1 cents per gallon by
 255 the percentage change in the average of the Consumer Price Index
 256 issued by the United States Department of Labor for the most
 257 recent 12-month period ending September 30.

258 (e)1. An additional tax is imposed on each motor fuel
 259 equivalent gallon of natural gas fuel for the privilege of
 260 selling natural gas fuel and is designated as the "fuel sales
 261 tax." Each calendar year, the department shall determine the tax
 262 rate applicable to the sale of natural gas fuel, rounded to the
 263 nearest tenth of a cent, for the following 12-month period
 264 beginning January 1. The tax rate is calculated by adjusting the
 265 initially established tax rate of 12.9 cents per gallon by the
 266 percentage change in the average of the Consumer Price Index
 267 issued by the United States Department of Labor for the most
 268 recent 12-month period ending September 30.

269 2. The department is authorized to adopt rules and publish
 270 forms to administer this paragraph.

271 (3) Unless otherwise provided by this chapter, the taxes
 272 specified in subsection (2) are imposed on natural gas fuel when
 273 it is placed into the fuel supply tank of a motor vehicle as
 274 defined in s. 206.01(23). The person liable for payment of the
 275 taxes imposed by this section is the person selling the fuel to
 276 the end user, for use in the fuel supply tank of a motor vehicle
 277 as defined in s. 206.01(23).

278 Section 10. Section 206.996, Florida Statutes, is created
 279 to read:

280 206.996 Monthly reports by natural gas fuel retailers;

281 | deductions.—
 282 | (1) For the purpose of determining the amount of taxes
 283 | imposed by s. 206.9955, each natural gas fuel retailer shall
 284 | file beginning with February 2019 and each month thereafter, no
 285 | later than the 20th day of each month, monthly reports
 286 | electronically with the department showing information on
 287 | inventory, purchases, nontaxable disposals, and taxable sales in
 288 | gallons of natural gas fuel for the preceding month. However, if
 289 | the 20th day of the month falls on a Saturday, Sunday, or
 290 | federal or state legal holiday, a return must be accepted if it
 291 | is electronically filed on the next succeeding business day. The
 292 | reports must include, or be verified by, a written declaration
 293 | stating that such report is made under the penalties of perjury.
 294 | The natural gas fuel retailer shall deduct from the amount of
 295 | taxes shown by the report to be payable an amount equivalent to
 296 | 0.67 percent of the taxes on natural gas fuel imposed by s.
 297 | 206.9955(2)(a) and (e), which deduction is allowed to the
 298 | natural gas fuel retailer to compensate it for services rendered
 299 | and expenses incurred in complying with the requirements of this
 300 | part. The allowance on taxable gallons of natural gas fuel sold
 301 | to persons licensed under this part is not deductible unless the
 302 | natural gas fuel retailer has allowed 50 percent of the
 303 | allowance provided by this section to a purchaser that has a
 304 | valid wholesaler or terminal supplier license. This allowance is
 305 | not deductible unless payment of applicable taxes is made on or
 306 | before the 20th day of the month. This subsection may not be
 307 | construed as authorizing a deduction from the constitutional
 308 | fuel tax or the fuel sales tax.

309 (2) Upon the electronic filing of the monthly report, each
 310 natural gas fuel retailer shall pay the department the full
 311 amount of natural gas fuel taxes for the preceding month at the
 312 rate provided in s. 206.9955, less the amount allowed the
 313 natural gas fuel retailer for services and expenses as provided
 314 in subsection (1).

315 (3) The department may authorize a quarterly return and
 316 payment of taxes when the taxes remitted by the natural gas fuel
 317 retailer for the preceding quarter did not exceed \$100, and the
 318 department may authorize a semiannual return and payment of
 319 taxes when the taxes remitted by the natural gas fuel retailer
 320 for the preceding 6 months did not exceed \$200.

321 (4) In addition to the allowance authorized by subsection
 322 (1), every natural gas fuel retailer is entitled to a deduction
 323 of 1.1 percent of the taxes imposed under s. 206.9955(2)(b) and
 324 (c), on account of services and expenses incurred due to
 325 compliance with the requirements of this part. This allowance
 326 may not be deductible unless payment of the tax is made on or
 327 before the 20th day of the month.

328 Section 11. Section 206.9965, Florida Statutes, is created
 329 to read:

330 206.9965 Exemptions and refunds; natural gas fuel
 331 retailers.— Natural gas fuel may be purchased from natural gas
 332 fuel retailers exempt from the tax imposed by this part when
 333 used or purchased for the following:

334 (1) Exclusive use by the United States or its departments
 335 or agencies. Exclusive use by the United States or its
 336 departments and agencies means the consumption by the United

337 States or its departments or agencies of the natural gas fuel in
 338 a motor vehicle as defined in s. 206.01(23).

339 (2) Use for agricultural purposes as defined in s.
 340 206.41(4)(c).

341 (3) Uses as provided in s. 206.874(3).

342 (4) Used to propel motor vehicles operated by state and
 343 local government agencies.

344 (5) Individual use resulting from residential refueling
 345 devices located at a person's primary residence.

346 (6) Purchases of natural gas fuel between licensed natural
 347 gas fuel retailers. A natural gas fuel retailer that sells tax-
 348 paid natural gas fuel to another natural gas fuel retailer may
 349 take a credit on its monthly return or may file a claim for
 350 refund with the Chief Financial Officer pursuant to s. 215.26.
 351 All sales of natural gas fuel between natural gas fuel retailers
 352 must be documented on invoices or other evidence of the sale of
 353 such fuel and the seller shall retain a copy of the purchaser's
 354 natural gas fuel retailer license.

355 Section 12. Section 206.879, Florida Statutes, is
 356 transferred and renumbered as section 206.997, Florida Statutes,
 357 and amended to read:

358 206.997 ~~206.879~~ State and local alternative fuel user fee
 359 clearing trust funds; distribution.-

360 ~~(1)~~ Notwithstanding ~~the provisions of~~ s. 206.875, the
 361 revenues from the natural gas fuel tax imposed by s. 206.9955
 362 ~~state alternative fuel fees imposed by s. 206.877~~ shall be
 363 deposited into the State Alternative Fuel User Fee Clearing
 364 Trust Fund, which is hereby created. After deducting the service

365 charges provided in s. 215.20, the proceeds in this trust fund
 366 shall be distributed as follows: one-half of the proceeds in
 367 calendar year 2019 and ~~one-fifth of the proceeds in calendar~~
 368 ~~year 1991, one-third of the proceeds in calendar year 1992,~~
 369 ~~three-sevenths of the proceeds in calendar year 1993, and one-~~
 370 ~~half of the proceeds in each calendar year thereafter shall be~~
 371 transferred to the State Transportation Trust Fund; the
 372 remainder shall be distributed as follows: 50 percent shall be
 373 transferred to the State Board of Administration for
 374 distribution according to the provisions of s. 16, Art. IX of
 375 the State Constitution of 1885, as amended; 25 percent shall be
 376 transferred to the Revenue Sharing Trust Fund for
 377 Municipalities; and the remaining 25 percent shall be
 378 distributed using the formula contained in s. 206.60(1).

379 ~~(2) Notwithstanding the provisions of s. 206.875, the~~
 380 ~~revenues from the local alternative fuel fees imposed in lieu of~~
 381 ~~s. 206.87(1)(b) or (c) shall be deposited into The Local~~
 382 ~~Alternative Fuel User Fee Clearing Trust Fund, which is hereby~~
 383 ~~created. After deducting the service charges provided in s.~~
 384 ~~215.20, the proceeds in this trust fund shall be returned~~
 385 ~~monthly to the appropriate county.~~

386 Section 13. (1) The Local Alternative Fuel User Fee
 387 Clearing Trust Fund within the Department of Revenue is
 388 terminated.

389 (2) The Department of Revenue shall pay any outstanding
 390 debts or obligations of the terminated fund as soon as
 391 practicable, and the Chief Financial Officer shall close out and
 392 remove the terminated fund from various state accounting systems

393 using generally accepted accounting principles concerning
 394 warrants outstanding, assets, and liabilities.

395 Section 14. Section 206.998, Florida Statutes, is created
 396 to read:

397 206.998 Applicability of specified sections of parts I and
 398 II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026,
 399 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07,
 400 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15,
 401 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204,
 402 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25,
 403 206.27, 206.28, 206.405, 206.406, 206.41, 206.413, 206.43,
 404 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606,
 405 206.608, and 206.61, Florida Statutes, of part I of this chapter
 406 and ss. 206.86, 206.872, 206.874, 206.8745, 206.88, 206.90, and
 407 206.93, Florida Statutes, of part II of this chapter shall, as
 408 far as lawful or practicable, be applicable to the tax levied
 409 and imposed and to the collection thereof as if fully set out in
 410 this part. However, any provision of any such section does not
 411 apply if it conflicts with any provision of this part.

412 Section 15. Paragraph (d) of subsection (2) of section
 413 212.055, Florida Statutes, is amended to read:

414 212.055 Discretionary sales surtaxes; legislative intent;
 415 authorization and use of proceeds.—It is the legislative intent
 416 that any authorization for imposition of a discretionary sales
 417 surtax shall be published in the Florida Statutes as a
 418 subsection of this section, irrespective of the duration of the
 419 levy. Each enactment shall specify the types of counties
 420 authorized to levy; the rate or rates which may be imposed; the

421 maximum length of time the surtax may be imposed, if any; the
 422 procedure which must be followed to secure voter approval, if
 423 required; the purpose for which the proceeds may be expended;
 424 and such other requirements as the Legislature may provide.
 425 Taxable transactions and administrative procedures shall be as
 426 provided in s. 212.054.

427 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

428 (d) The proceeds of the surtax authorized by this
 429 subsection and any accrued interest shall be expended by the
 430 school district, within the county and municipalities within the
 431 county, or, in the case of a negotiated joint county agreement,
 432 within another county, to finance, plan, and construct
 433 infrastructure; to acquire land for public recreation,
 434 conservation, or protection of natural resources; to provide
 435 loans, grants, or rebates to residential or commercial property
 436 owners who make energy efficiency improvements to their
 437 residential or commercial property, if a local government
 438 ordinance authorizing such use is approved by referendum; or to
 439 finance the closure of county-owned or municipally owned solid
 440 waste landfills that have been closed or are required to be
 441 closed by order of the Department of Environmental Protection.
 442 Any use of the proceeds or interest for purposes of landfill
 443 closure before July 1, 1993, is ratified. The proceeds and any
 444 interest may not be used for the operational expenses of
 445 infrastructure, except that a county that has a population of
 446 fewer than 75,000 and that is required to close a landfill may
 447 use the proceeds or interest for long-term maintenance costs
 448 associated with landfill closure. Counties, as defined in s.

449 | 125.011, and charter counties may, in addition, use the proceeds
 450 | or interest to retire or service indebtedness incurred for bonds
 451 | issued before July 1, 1987, for infrastructure purposes, and for
 452 | bonds subsequently issued to refund such bonds. Any use of the
 453 | proceeds or interest for purposes of retiring or servicing
 454 | indebtedness incurred for refunding bonds before July 1, 1999,
 455 | is ratified.

456 | 1. For the purposes of this paragraph, the term
 457 | "infrastructure" means:

458 | a. Any fixed capital expenditure or fixed capital outlay
 459 | associated with the construction, reconstruction, or improvement
 460 | of public facilities that have a life expectancy of 5 or more
 461 | years and any related land acquisition, land improvement,
 462 | design, and engineering costs.

463 | b. A fire department vehicle, an emergency medical service
 464 | vehicle, a sheriff's office vehicle, a police department
 465 | vehicle, or any other vehicle, and the equipment necessary to
 466 | outfit the vehicle for its official use or equipment that has a
 467 | life expectancy of at least 5 years.

468 | c. Any expenditure for the construction, lease, or
 469 | maintenance of, or provision of utilities or security for,
 470 | facilities, as defined in s. 29.008.

471 | d. Any fixed capital expenditure or fixed capital outlay
 472 | associated with the improvement of private facilities that have
 473 | a life expectancy of 5 or more years and that the owner agrees
 474 | to make available for use on a temporary basis as needed by a
 475 | local government as a public emergency shelter or a staging area
 476 | for emergency response equipment during an emergency officially

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477 declared by the state or by the local government under s.
 478 252.38. Such improvements are limited to those necessary to
 479 comply with current standards for public emergency evacuation
 480 shelters. The owner must enter into a written contract with the
 481 local government providing the improvement funding to make the
 482 private facility available to the public for purposes of
 483 emergency shelter at no cost to the local government for a
 484 minimum of 10 years after completion of the improvement, with
 485 the provision that the obligation will transfer to any
 486 subsequent owner until the end of the minimum period.

487 e. Any land acquisition expenditure for a residential
 488 housing project in which at least 30 percent of the units are
 489 affordable to individuals or families whose total annual
 490 household income does not exceed 120 percent of the area median
 491 income adjusted for household size, if the land is owned by a
 492 local government or by a special district that enters into a
 493 written agreement with the local government to provide such
 494 housing. The local government or special district may enter into
 495 a ground lease with a public or private person or entity for
 496 nominal or other consideration for the construction of the
 497 residential housing project on land acquired pursuant to this
 498 sub-subparagraph.

499 2. For the purposes of this paragraph, the term "energy
 500 efficiency improvement" means any energy conservation and
 501 efficiency improvement that reduces consumption through
 502 conservation or a more efficient use of electricity, natural
 503 gas, propane, or other forms of energy on the property,
 504 including, but not limited to, air sealing; installation of

505 insulation; installation of energy-efficient heating, cooling,
 506 or ventilation systems; installation of solar panels; building
 507 modifications to increase the use of daylight or shade;
 508 replacement of windows; installation of energy controls or
 509 energy recovery systems; installation of electric vehicle
 510 charging equipment; installation of systems for natural gas fuel
 511 as defined in s. 206.9951; and installation of efficient
 512 lighting equipment.

513 3. Notwithstanding any other provision of this subsection,
 514 a local government infrastructure surtax imposed or extended
 515 after July 1, 1998, may allocate up to 15 percent of the surtax
 516 proceeds for deposit into ~~in~~ a trust fund within the county's
 517 accounts created for the purpose of funding economic development
 518 projects having a general public purpose of improving local
 519 economies, including the funding of operational costs and
 520 incentives related to economic development. The ballot statement
 521 must indicate the intention to make an allocation under the
 522 authority of this subparagraph.

523 Section 16. Subsection (4) of section 212.08, Florida
 524 Statutes, is amended to read:

525 212.08 Sales, rental, use, consumption, distribution, and
 526 storage tax; specified exemptions.—The sale at retail, the
 527 rental, the use, the consumption, the distribution, and the
 528 storage to be used or consumed in this state of the following
 529 are hereby specifically exempt from the tax imposed by this
 530 chapter.

531 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

532 (a) Also exempt are:

533 1. Water delivered to the purchaser through pipes or
 534 conduits or delivered for irrigation purposes. The sale of
 535 drinking water in bottles, cans, or other containers, including
 536 water that contains minerals or carbonation in its natural state
 537 or water to which minerals have been added at a water treatment
 538 facility regulated by the Department of Environmental Protection
 539 or the Department of Health, is exempt. This exemption does not
 540 apply to the sale of drinking water in bottles, cans, or other
 541 containers if carbonation or flavorings, except those added at a
 542 water treatment facility, have been added. Water that has been
 543 enhanced by the addition of minerals and that does not contain
 544 any added carbonation or flavorings is also exempt.

545 2. All fuels used by a public or private utility,
 546 including any municipal corporation or rural electric
 547 cooperative association, in the generation of electric power or
 548 energy for sale. Fuel other than motor fuel and diesel fuel is
 549 taxable as provided in this chapter with the exception of fuel
 550 expressly exempt herein. Natural gas fuel as defined in s.
 551 206.9951(2) is exempt from the tax imposed by this chapter when
 552 placed into the fuel supply system of a motor vehicle. Motor
 553 fuels and diesel fuels are taxable as provided in chapter 206,
 554 with the exception of those motor fuels and diesel fuels used by
 555 railroad locomotives or vessels to transport persons or property
 556 in interstate or foreign commerce, which are taxable under this
 557 chapter only to the extent provided herein. The basis of the tax
 558 shall be the ratio of intrastate mileage to interstate or
 559 foreign mileage traveled by the carrier's railroad locomotives
 560 or vessels that were used in interstate or foreign commerce and

561 that had at least some Florida mileage during the previous
 562 fiscal year of the carrier, such ratio to be determined at the
 563 close of the fiscal year of the carrier. However, during the
 564 fiscal year in which the carrier begins its initial operations
 565 in this state, the carrier's mileage apportionment factor may be
 566 determined on the basis of an estimated ratio of anticipated
 567 miles in this state to anticipated total miles for that year,
 568 and subsequently, additional tax shall be paid on the motor fuel
 569 and diesel fuels, or a refund may be applied for, on the basis
 570 of the actual ratio of the carrier's railroad locomotives' or
 571 vessels' miles in this state to its total miles for that year.
 572 This ratio shall be applied each month to the total Florida
 573 purchases made in this state of motor and diesel fuels to
 574 establish that portion of the total used and consumed in
 575 intrastate movement and subject to tax under this chapter. The
 576 basis for imposition of any discretionary surtax shall be set
 577 forth in s. 212.054. Fuels used exclusively in intrastate
 578 commerce do not qualify for the proration of tax.

579 3. The transmission or wheeling of electricity.

580 (b) Alcoholic beverages and malt beverages are not exempt.
 581 The terms "alcoholic beverages" and "malt beverages" as used in
 582 this paragraph have the same meanings ascribed to them in ss.
 583 561.01(4) and 563.01, respectively. It is determined by the
 584 Legislature that the classification of alcoholic beverages made
 585 in this paragraph for the purpose of extending the tax imposed
 586 by this chapter is reasonable and just, and it is intended that
 587 such tax be separate from, and in addition to, any other tax
 588 imposed on alcoholic beverages.

PCS for HB 579

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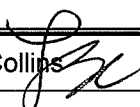
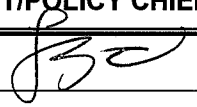
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Section 17. This act shall take effect January 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 633 Biodiesel Fuel
SPONSOR(S): Perry and others
TIED BILLS: IDEN./SIM. BILLS: SB 522

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

SUMMARY ANALYSIS

Currently, each biodiesel manufacturer in Florida, including municipalities, counties, and school districts who are manufacturing biodiesel for the sole use by the municipality, county, or school district, is required to meet the reporting, bonding, and licensing requirements prescribed for wholesalers pursuant to chapter 206, F.S.¹ An exemption from the diesel fuel excise tax and registration requirements for a biodiesel manufacturer was created in 2010 for a public or private secondary school that manufactures less than 1,000 gallons on an annual basis for use at the school, by its employees, or its students.²

The state imposes a tax on the sale, use, distribution, or consumption of motor and other fuels. Part II of chapter 206, F.S., addresses diesel fuel which is taxed differently than motor fuels. The tax imposed by this part is levied "for the purpose of providing revenue to be used by the state to defray in whole or in part the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways of this state and the cost and expense incurred in the administration and enforcement of this part and for no other purpose whatsoever."

The bill creates an exemption for municipalities, counties, and school districts that manufacture biodiesel fuel from certain reporting, bonding, and licensing requirements. The bill specifies that the exemption applies only when the biodiesel fuel is manufactured to be used solely by the municipality, county, or school district.

The bill requires municipalities, counties, and school districts that manufacture biodiesel fuel to file a return accounting for the biodiesel fuel manufactured and remit the appropriate taxes to the Department of Revenue (DOR).

The Revenue Estimating Conference, at its March 1, 2013, meeting determined that there will be a positive insignificant (less than \$50,000) impact on fuel taxes. It should affect both the State Transportation Trust Fund and local government.

¹ Section 206.02(5), F.S.

² Chapter 2010-195, L.O.F., and s. 206.874(7), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

"Biodiesel" is a product made from non-petroleum-based oils or fats suitable for use in diesel-powered engines.³ A "biodiesel manufacturer" is defined in s. 206.86(15), F.S., to mean "those industrial plants, regardless of capacity, where organic products are used in the production of biodiesel. This includes businesses that process or blend organic products that are marketed as biodiesel."

Currently, each biodiesel manufacturer in Florida, including municipalities, counties, and school districts who are manufacturing biodiesel for the sole use by the municipality, county, or school district, is required to meet the reporting, bonding, and licensing requirements prescribed for wholesalers pursuant to chapter 206, F.S.⁴ An exemption from the diesel fuel excise tax and registration requirements for a biodiesel manufacturer was created in 2010 for a public or private secondary school that manufactures less than 1,000 gallons on an annual basis for use at the school, by its employees, or its students.⁵

To obtain a wholesaler of motor fuel license, an application form must be filed with the Department of Revenue (DOR) under oath.⁶ While a bond must simultaneously be filed with the DOR,⁷ local governments are exempt from the bond requirement⁸ as well as a background check required of certain applicants. Each license must be renewed annually. Licensed fuel wholesalers, which includes local governments who manufacture biodiesel, must file a monthly return. Local government users of diesel fuel must also register with DOR and file a monthly report of acquisitions, inventory, and use of diesel fuel⁹ and pay 3 cents of the 4-cent excise tax plus all other taxes levied under s. 206.87(1), F.S.

The state imposes a tax on the sale, use, distribution, or consumption of motor and other fuels.¹⁰ Part II of chapter 206, F.S., addresses diesel fuel which is taxed differently. The tax imposed by this part is levied "for the purpose of providing revenue to be used by the state to defray in whole or in part the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways of this state and the cost and expense incurred in the administration and enforcement of this part and for no other purpose whatsoever."¹¹

According to the *Florida Senate Bill Analysis and Fiscal Impact Statement for the companion Senate Bill 522*, staff indicated that,

One local government reports that complying with the wholesale licensing and reporting requirements for the small volume of biodiesel manufactured for internal use is burdensome to the point that it has suspended its program.¹² That county's biodiesel manufacturing operation began in 2010 after it received a grant to purchase equipment to recycle waste vegetable oil as part of a fuel supply program that also was intended to achieve environmental benefits by keeping waste products out of the wastewater system. To have a diesel fuel manufacturing

³ Section 206.86(14), F.S.

⁴ Section 206.02(5), F.S.

⁵ Chapter 2010-195, L.O.F., and s. 206.874(7), F.S.

⁶ Section 206.02(4), F.S., and Rule 12B-5.060, F.A.C.

⁷ Section 206.02(6), F.S.

⁸ Section 206.05(1), F.S.

⁹ Section 206.874(4), F.S.

¹⁰ Chapter 206, F.S.

¹¹ Section 206.85, F.S.

¹² Oral conversation with Mark Sexton, Communications Coordinator, Alachua County Manager's Office (February 2013).

operation, the county was required to expend additional time and labor monthly to perform a more extensive review of diesel fuel purchased from commercial suppliers and internally produced biodiesel in order to file the monthly return required of fuel wholesalers. There are other counties and cities that have similar programs¹³ and they face the same challenges in complying with the reporting requirements of a wholesaler as well as a local government user.

Effects of Proposed Changes

HB 633 creates an exemption for municipalities, counties, and school districts that manufacture biodiesel fuel from certain reporting, bonding, and licensing requirements. The bill specifies that the exemption applies only when the biodiesel fuel is manufactured to be used solely by the municipality, county, or school district.

The bill requires municipalities, counties, and school districts that manufacture biodiesel fuel to file a return accounting for the biodiesel fuel manufactured and remit the appropriate taxes to the Department of Revenue (DOR).

B. SECTION DIRECTORY:

Section 1. Amends s. 206.02, F.S., exempting municipalities, counties, and school districts that manufacture biodiesel fuel from the reporting, bonding, and licensing requirements that apply to biodiesel manufacturers.

Section 2. Amends s. 206.874, F.S., requiring municipalities, counties, and school districts that manufacture biodiesel fuel to file certain monthly returns and remit certain taxes.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments section.

¹³ The Gainesville Sun, *From chicken wings and fries to powering county trucks*. See <http://www.gainesville.com/article/20130129/ARTICLES/130129540>.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Conference, at its March 1, 2013, meeting determined that there will be a positive insignificant (less than \$50,000) impact on fuel taxes. It should affect both the State Transportation Trust Fund and local government.

Local governments that manufacture biodiesel for use only by that municipality, county, or school district will be relieved of the time and labor needed to be expended to comply with licensing and reporting requirements of fuel wholesalers.

The DOR reports that implementation of this bill will present an insignificant operational impact.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to biodiesel fuel; amending s. 206.02,
 3 F.S.; exempting municipalities, counties, and school
 4 districts that manufacture biodiesel fuel from certain
 5 reporting, bonding, and licensing requirements;
 6 amending s. 206.874, F.S.; requiring municipalities,
 7 counties, and school districts that manufacture
 8 biodiesel fuel to file certain returns and remit
 9 certain taxes; providing an effective date.

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

12
 13 Section 1. Subsection (5) of section 206.02, Florida
 14 Statutes, is amended to read:

15 206.02 Application for license; temporary license;
 16 terminal suppliers, importers, exporters, blenders, biodiesel
 17 manufacturers, and wholesalers.—

18 (5) Each biodiesel manufacturer must meet the reporting,
 19 bonding, and licensing requirements ~~prescribed~~ for wholesalers
 20 under by this chapter. This subsection does not apply to a
 21 municipality, county, or school district that manufactures
 22 biodiesel fuel solely for the use by the municipality, county,
 23 or school district.

24 Section 2. Paragraph (b) of subsection (4) of section
 25 206.874, Florida Statutes, is amended to read:

26 206.874 Exemptions.—

27 (4)

28 (b) A municipality, county, or school district that

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29 | manufactures biodiesel fuel solely for the use by the
30 | municipality, county, or school district and local government
31 | users of diesel fuel are ~~shall be~~ required to file a return
32 | accounting for biodiesel fuel manufacturing, diesel fuel
33 | acquisitions, inventory, and use, and remit a tax equal to 3
34 | cents of the 4-cent tax required under s. 206.87(1)(a), plus the
35 | taxes required under s. 206.87(1)(b), (c), and (d) each month to
36 | the department.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 649 Public Records/Proprietary Confidential Business
SPONSOR(S): Energy & Utilities Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee		Keating <i>AK</i>	Collins <i>Jce</i>

SUMMARY ANALYSIS

The bill creates a new public record exemption for proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S., or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The bill provides that such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Further, the bill requires that such information be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity for the exemption. The statement provides that:

- The purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy.
- An electric utility, in performing a due diligence review of such projects, may need to obtain proprietary confidential business information, which may consist of trade secrets; internal auditing controls and reports; security measures, systems, or procedures; or other information relating to competitive interests.
- The disclosure of this information could injure the provider of the information in the marketplace, thus discouraging the provider from doing business with the electric utility and limiting the utility's opportunities to identify cost-effective projects, which may also impact costs to customers.

The bill has no fiscal impact on state or local governments.

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Information Provided to Electric Utilities Subject to the Public Records Law

Electric utilities, from time to time, seek or receive proposals from business entities concerning the development of projects related to the provision of electric service. Information received from these business entities by municipal electric utilities, which are subject to the requirements of Florida's public records law, is available to the public for inspection and copying. According to municipal electric utilities, this discourages some providers of new technologies from sharing information about opportunities to participate in projects for fear of harming their business by exposing competitively sensitive information.

Section 119.071, F.S., provides a list of general exemptions from the inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Section 119.0713, F.S., provides a list of exemptions specific to local governments. There is no current exemption for proprietary confidential business information held by a municipal electric utility in conjunction with a due diligence review of projects related to the provision of electric service.

Effect of Proposed Changes

The bill creates a new public record exemption for proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

electric project as defined in s. 163.01(3)(d), F.S.,³ or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The bill provides that such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Further, the bill requires that such information be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill defines “proprietary confidential business information” as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the providing entity or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

1. Trade secrets.
2. Internal auditing controls and reports of internal auditors.
3. Security measures, systems, or procedures.
4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

This definition is substantially similar to existing provisions of law defining proprietary confidential business information.⁴

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a finding that there is a public necessity for this exemption. This finding notes that the disclosure of proprietary confidential business information, as defined by the bill, could injure the provider of that information in the marketplace by giving its competitors insights into its financial status and strategic plans, thus putting the provider at a competitive disadvantage. The finding also states that, without this exemption, business entities might be unwilling to enter into discussions with an electric utility regarding the feasibility of future contracting, which may limit opportunities for the utility to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. This finding further states that disclosure of such proprietary confidential business information would also cause economic harm to ratepayers through reduced competition for the provision of vital electric utility services. The bill provides an additional finding that the public and private harm in disclosing such proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

³ Section 163.01(3)(d), F.S., defines an “electric project” as:

1. Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.
2. Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.
3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to in subparagraph 1. or subparagraph 2.

⁴ See, e.g., sections 364.183 (telecommunications), 366.093 (investor-owned electric and natural gas utilities), 367.156 (water and wastewater utilities), and 368.108, F.S. (natural gas transmission companies).

B. SECTION DIRECTORY:

Section 1. Amends s. 119.0713, F.S., relating to local government agency exemptions from inspection or copying of public records.

Section 2. Provides a legislative finding of public necessity for a public records exemption.

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:

The bill may expand opportunities for private sector entities to do business with municipal electric utilities by creating a public record exemption for proprietary confidential business information that a private sector entity would not otherwise wish to have disclosed.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This 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:

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote, of each house, of the members present and voting for passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for passage.

Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement justifying a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption and includes a public necessity statement, which provides that:

- The purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy.
- An electric utility, in performing a due diligence review of such projects, may need to obtain proprietary confidential business information, which may consist of trade secrets; internal auditing controls and reports; security measures, systems, or procedures; or other information relating to competitive interests.
- The disclosure of this information could injure the provider of the information in the marketplace, thus discouraging the provider from doing business with the electric utility and limiting the utility's opportunities to identify cost-effective projects, which may also impact costs to customers.

Article I, s. 24(c) of the Florida Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides that the purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. Based on the statement of public necessity, as summarized above, it appears that the exemption is no broader than necessary to accomplish its stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0713, F.S.; providing an exemption from public
 4 records requirements for specified proprietary
 5 confidential business information held by an electric
 6 utility that is subject to chapter 119, F.S., in
 7 conjunction with a due diligence review of an electric
 8 project or a project to improve the delivery, cost, or
 9 diversification of fuel or renewable energy resources;
 10 providing for the retention of such information for a
 11 specified time; providing for future review and repeal
 12 of the exemption; providing a statement of public
 13 necessity; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (4) is added to section 119.0713,
 18 Florida Statutes, to read:

19 119.0713 Local government agency exemptions from
 20 inspection or copying of public records.—

21 (4) (a) Proprietary confidential business information means
 22 information, regardless of form or characteristics, which is
 23 held by an electric utility that is subject to chapter 119, is
 24 intended to be and is treated by the entity that provided the
 25 information to the electric utility as private in that the
 26 disclosure of the information would cause harm to the providing
 27 entity or its business operations, and has not been disclosed
 28 unless disclosed pursuant to a statutory provision, an order of

29 a court or administrative body, or private agreement that
 30 provides that the information will not be released to the
 31 public. Proprietary confidential business information includes,
 32 but is not limited to:

- 33 1. Trade secrets.
- 34 2. Internal auditing controls and reports of internal
 35 auditors.
- 36 3. Security measures, systems, or procedures.
- 37 4. Information concerning bids or other contractual data,
 38 the disclosure of which would impair the efforts of the electric
 39 utility to contract for goods or services on favorable terms.
- 40 5. Information relating to competitive interests, the
 41 disclosure of which would impair the competitive business of the
 42 provider of the information.

43 (b) Proprietary confidential business information held by
 44 an electric utility that is subject to chapter 119 in
 45 conjunction with a due diligence review of an electric project
 46 as defined in s. 163.01(3)(d) or a project to improve the
 47 delivery, cost, or diversification of fuel or renewable energy
 48 resources is confidential and exempt from s. 119.07(1) and s.
 49 24(a), Art. I of the State Constitution.

50 (c) All proprietary confidential business information
 51 described in paragraph (b) shall be retained for one year after
 52 the due diligence review has been completed and the electric
 53 utility has decided whether or not to participate in the
 54 project.

55 (d) This subsection is subject to the Open Government
 56 Sunset Review Act in accordance with s. 119.15, and shall stand

57 | repealed on October 2, 2018, unless reviewed and saved from
58 | repeal through reenactment by the Legislature.

59 | Section 2. (1) The Legislature finds that it is a public
60 | necessity that proprietary confidential business information
61 | held by an electric utility that is subject to chapter 119,
62 | Florida Statutes, in conjunction with a due diligence review of
63 | an electric project as defined in s. 163.01(3)(d), Florida
64 | Statutes, or a project to improve the delivery, cost, or
65 | diversification of fuel or renewable energy resources be made
66 | confidential and exempt from public records requirements. The
67 | disclosure of such proprietary confidential business
68 | information, such as trade secrets, internal auditing controls
69 | and reports, security measures, systems, or procedures, or other
70 | information relating to competitive interests, could injure the
71 | provider in the marketplace by giving its competitors detailed
72 | insights into its financial status and strategic plans, thereby
73 | putting the provider at a competitive disadvantage. Without this
74 | exemption, providers might be unwilling to enter into
75 | discussions with the utility regarding the feasibility of future
76 | contracting. This could, in turn, limit opportunities the
77 | utility might otherwise have for finding cost-effective or
78 | strategic solutions for providing electric service or improving
79 | the delivery, cost, or diversification of fuel or renewable
80 | energy. This would put public providers of electric utility
81 | services at a competitive disadvantage by limiting their ability
82 | to optimize services to their customers and adversely affecting
83 | the customers of those utilities by depriving them of
84 | opportunities for rate reductions or other improvements in

85 | services.
 86 | (2) Proprietary confidential business information derives
 87 | actual or potential independent economic value from not being
 88 | generally known to, and not being readily ascertainable by
 89 | proper means by, other persons who can derive economic value
 90 | from its disclosure or use. A utility, in performing the
 91 | appropriate due diligence review of electric projects or
 92 | projects to improve the delivery, cost, or diversification of
 93 | fuel or renewable energy sources, may need to obtain proprietary
 94 | confidential business information. Without an exemption from
 95 | public records requirements for this information, it becomes a
 96 | public record when received by an electric utility and must be
 97 | disclosed upon request. Disclosure of any propriety confidential
 98 | business information under the public records law would destroy
 99 | the value of that property and cause economic harm not only to
 100 | the entity or person providing the information, but to the
 101 | ratepayers through reduced competition for the provision of
 102 | vital electric utility services.

103 | (3) In finding that the public records exemption created
 104 | by this act is a public necessity, the Legislature also finds
 105 | that the public and private harm in disclosing such proprietary
 106 | confidential business information significantly outweighs any
 107 | public benefit derived from disclosure of the information and
 108 | that the exemption created by this act will enhance the ability
 109 | of electric utilities to optimize their performance, thereby
 110 | benefiting the ratepayers.

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