

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 926

INTRODUCER: Senator Broxson

SUBJECT: Natural Gas Fuel Taxes

DATE: February 19, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	<b>Favorable</b>
2.	Gross	Diez-Arguelles	AFT	<b>Pre-meeting</b>
3.			AP	

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**I. Summary:**

SB 926 delays the imposition of the tax on natural gas fuel used in motor vehicles from January 1, 2019, to January 1, 2024.

The bill also:

- Delays the expiration of a \$200 penalty for each month a person acts as a natural gas retailer without a valid natural gas fuel retailer license from December 31, 2018, to December 31, 2023.
- Delays the effective date of the penalty of 25 percent of the tax that is assessed on the total purchases made during the person’s unlicensed period until January 1, 2024.
- Delays the date on which natural gas fuel retailers are required to begin filing related monthly reports with the DOR from February 2019 to February 2024.

The Revenue Estimating Conference estimates that this bill will reduce General Revenue Fund receipts by an insignificant amount in Fiscal Year 2018-2019 and \$100,000 each year thereafter; reduce the State Transportation Trust Fund by \$100,000 in Fiscal Year 2018-2019 and \$400,000 each year thereafter; reduce local government’s tax receipts by \$100,000 in Fiscal Year 2018-19 and \$200,000 each year thereafter.

The bill takes effect July 1, 2018.

**II. Present Situation:**

Due to increased domestic exploration and production, the supply of natural gas<sup>1</sup> in the U.S. and in Florida is expanding. While Florida consumes less natural gas than some other states,

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<sup>1</sup> Section 206.9951(2), F.S., currently defines “natural gas fuel” to mean “any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23). This term includes, but is not

consumption has grown significantly. Florida ranks 15th in the nation in natural gas consumption.<sup>2</sup> According to a recent report discussing a survey conducted by the Office of Program Policy Analysis & Government Accountability, “suppliers and consumers indicated that they expect their businesses to continue to grow, both in the total number of vehicles served and in gallons of natural gas fuel sold.”

Because of the benefits of natural gas (e.g., lower fuel costs, environmental benefits, and lower maintenance costs),<sup>3</sup> some states have undertaken efforts to incentivize the use of natural gas fuel. One such effort in Florida exempts from tax natural gas fuel until January 1, 2019.

## **Taxation of Natural Gas Fuel**

### ***Pre-2014***

Before 2014, natural gas used as a motor fuel was defined and regulated in Florida law as an “alternative fuel.” Section 206.877, F.S., required owners or operators of motor vehicles licensed in this state and powered by alternative fuels to pay an annual decal fee on each such motor vehicle in accordance with a specified rate schedule, which were in lieu of the diesel fuel taxes imposed by s. 206.87(1)(a)-(d), F.S.<sup>4</sup> In addition, the sale of alternative fuel was subject to sales tax imposed under ch. 212, F.S.<sup>5</sup>

Section 206.89, F.S., prohibited a person, with certain exceptions, from acting as a retailer of alternative fuel unless that person held a valid retailer-of-alternative-fuel license issued by DOR, and any person acting as such who did not hold a license was subject to a penalty of 25 percent of the tax that is assessed on total purchases during the unlicensed period. Every person who operated as a retailer of alternative fuel, with certain exceptions, was required to report monthly to DOR and pay tax on all fuel purchases.

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

- One-half of the proceeds to the State Transportation Trust Fund (STTF).
- 50 percent of the remainder to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25 percent of the remainder to the Revenue Sharing Trust Fund for Municipalities.

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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. The term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.” Section 206.9951(4), F.S., currently defines “natural gasoline” to mean “a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.”

<sup>2</sup> Office of Program Policy Analysis & Government Accountability, Florida Legislature, *Use of Natural Gas Fuels to Operate Motor Vehicles Is Increasing in Florida*, Report No. 17-10, 5, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1710rpt.pdf> (last visited Feb. 14, 2018).

<sup>3</sup> For more details on the benefits of natural gas fuel, see the final bill analysis for CS/CS/HB 579 (2013), available at <http://www.flsenate.gov/Session/Bill/2013/579/Analyses/h0579f.RAC.PDF> (last visited Feb. 14, 2018).

<sup>4</sup> See *supra* note 2, at 4. The cost for the annual decals ranged between \$199.10 and \$380.10 per motor vehicle, depending on the size and weight of the vehicle.

<sup>5</sup> Section 212.08(4), F.S.

- 25 percent of the remainder to the counties for specified public transportation purposes, distributed in accordance with s. 206.60(1), F.S.

### ***Current Law***

In 2013, CS/CS/HB 579 established a fuel tax rate structure for motor vehicles powered by natural gas and repealed the decal fee imposed on “alternative fuel” vehicles.<sup>6</sup> The bill also provided an exemption from the new rate structure until December 31, 2018. This legislation also exempted from the sales and use tax natural gas and natural gas fuel when placed into the fuel system of a motor vehicle.<sup>7</sup>

Beginning January 1, 2019, the following taxes are imposed on natural gas fuel:

- 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<sup>8</sup> of natural gas fuel, which is designated as the “ninth-cent fuel tax.”
- An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the “local option fuel tax.”
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the “State Comprehensive Enhanced Transportation System (SCETS) Tax,” at a rate determined by statute.<sup>9</sup>
- 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 by statute.<sup>10</sup>

Section 206.997, F.S., provides that revenues from the natural gas fuel tax will be deposited into the State Alternative Fuel User Fee Clearing Trust Fund to be distributed as follows:

- The revenues from the SCETS tax and fuel sales tax will be transferred to the STTF.
- The revenues from the excise tax will be distributed as follows:
  - 50 percent shall be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
  - 25 percent shall be transferred to the Revenue Sharing Trust Fund for Municipalities.
  - 25 percent shall be distributed to the counties for specified public transportation purposes, in accordance with s. 206.60(1), F.S.

<sup>6</sup> The bill created a new Part V of Ch. 206, F.S., consisting of ss. 206.9951 – 206.998, entitled ‘NATURAL GAS FUEL.’ It repealed various provisions, including ss. 206.877 and 206.89, F.S.; and it amended and relocated various provisions to the new Part V. *See supra* note 4 for a detailed analysis of the bill.

<sup>7</sup> *See* s. 212.08(4)(a)2., F.S.

<sup>8</sup> “Motor fuel equivalent gallon” is defined in s. 206.9951(1), F.S., to mean the volume of natural gas fuel it takes to equal the energy content of one gallon of motor fuel. Section 206.9955, F.S., currently defines the motor fuel equivalent gallon for compressed natural gas, liquefied natural gas, and liquefied petroleum gas.

<sup>9</sup> Paragraph (d) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to 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 rate of **5.8 cents per gallon** by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

<sup>10</sup> Paragraph (e) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to determine the tax rate applicable to the sale of natural gas fuel, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1. The tax rate is to be calculated by adjusting the initially established tax rate of **9.2 cents per gallon** by the percentage change in the average of the Consumer Price Index for the most recent 12-month period ending September 30.

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

In addition, among other provisions relating to natural gas fuel, current law:

- Provides that until December 31, 2018, any person acting as a natural gas retailer without such a license must pay a penalty of \$200 for each month of operation during the unlicensed period.<sup>11</sup>
- Imposes the penalty of 25 percent of the tax that is assessed on total purchases during an unlicensed period beginning January 1, 2019.<sup>12</sup>
- Requires natural gas fuel retailers to submit an electronic, monthly report to DOR, beginning with February 2019 and monthly thereafter, showing information on inventory, purchases, nontaxable disposals, table uses, and taxable sales in gallons of natural gas fuel for the preceding month, with certain exceptions and a specified deduction for services rendered and expenses incurred in complying with the reporting requirements.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 206.9952(3), F.S., to:

- Delay the date of expiration of the \$200 penalty for each month a person acts as a natural gas retailer without a valid natural gas fuel retailer license from December 31, 2018, to December 31, 2023.
- Delay the effective date of the penalty of 25 percent of the tax that is assessed on the total purchases made during the person's unlicensed period until January 1, 2024.

**Section 2** amends s. 206.9955, F.S., to delay the effective date of the imposition of the tax on natural gas fuel from January 1, 2019, to January 1, 2024, thereby providing the exemption for natural gas fuel used in a motor vehicle for an additional five years.

**Section 3** amends s. 206.996, F.S., to delay the date on which natural gas fuel retailers are required to begin filing related monthly reports with the DOR from February 2019 to February 2024.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of s. 18, Art. VII, Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so

<sup>11</sup> Section 206.9952(3)(a), F.S.

<sup>12</sup> Section 206.9952(3)(b), F.S.

<sup>13</sup> Section 206.996, F.S.

would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>14</sup> which for Fiscal Year 2017-2018, is \$2.05 million or less.<sup>15</sup>

The Revenue Estimating Conference estimates the reduction to local government's tax receipts is \$100,000 in Fiscal Year 2018-19. Therefore this bill has an insignificant fiscal impact and may not require a two-thirds vote of the membership in each house.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference estimates that this bill will reduce General Revenue Fund receipts by an insignificant amount in Fiscal Year 2018-2019 and \$100,000 each year thereafter; reduce the State Transportation Trust Fund by \$100,000 in Fiscal Year 2018-2019 and \$400,000 each year thereafter; reduce local government's tax receipts by \$100,000 in Fiscal Year 2018-19 and \$200,000 each year thereafter.

**B. Private Sector Impact:**

The imposition of the specified natural gas fuel taxes is delayed until January 1, 2024, resulting in an indeterminate positive fiscal impact to owners or operators of natural gas fueled vehicles who would otherwise be subject to the taxes beginning January 1, 2019.

**C. Government Sector Impact:**

The imposition of the specified natural gas fuel taxes is delayed until January 1, 2024, resulting in delayed collection of revenues from the taxes in an indeterminate amount. Under current law, these revenues would have been distributed to the STTF, the State Board of Administration, and local governments beginning in 2019.

**VI. Technical Deficiencies:**

None.

<sup>14</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>. (Last visited February 7, 2018.)

<sup>15</sup> Based on the Demographic Estimating Conference's population adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf>. (Last visited February 7, 2018).

**VII. Related Issues:**

Current law imposes the SCETS tax at a rate of 5.8 cents per gallon and the “fuels sales tax” at a rate of 9.2 cents per gallon, which are adjusted annually by the change in the Consumer Price Index (CPI). The calculation of the annual adjustment set forth in current law appears incomplete and could contribute to uncertainty in determining a new tax rate each year.

The calculation of the SCETS tax, for example, adjusts the initially established tax rate of 5.8 cents by the percentage change in the average of the CPI for the most recent 12-month period ending September 30. Current law does not clearly define what base year to use, which is a necessary component to derive the change (growth) in the CPI over a period of time. Since the base year is undefined, it is unknown if the period of time in which to begin is when the bill took effect, January 1, 2014, or when the tax imposition becomes effective, January 1, 2019.

Additionally, current law may be interpreted such that the calculation would adjust the tax rate each year by a one-year average change in the CPI, thus contributing to adjustments that do not encapsulate growth over a period of time.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 206.9952, 206.9955, and 206.996.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.