

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7104

INTRODUCER: For consideration by the Finance and Tax Committee

SUBJECT: Taxation Transparency

DATE: April 3, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Diez-Arguelles</u>	<u>Diez-Arguelles</u>	_____	<u>Pre-meeting</u>

I. Summary:

SPB 7104 renames select state government levies as taxes or surtaxes and requires local governments to rename select local government levies as taxes under specific circumstances.

For local government levies, the bill requires that any new impositions or rate increases, or proposed impositions or rate increases, of certain levies imposed by local governments be titled as and represented to the public as “taxes”.

The bill expressly provides that it does not affect, amend or alter a county’s or municipality’s home rule authority under the State Constitution or other provisions of law to impose the affected local government levies. Similarly, it provides that a special district’s authority to levy special assessments under other provisions of law is not affected, amended or altered by the bill.

The bill appropriates \$105,280 in nonrecurring General Revenue Funds to the Department of Highway Safety and Motor Vehicles for programming costs and staffing costs to implement the provisions of the bill. The bill also appropriates \$26,355 in nonrecurring General Revenue Funds to the Agency for Health Care Administration to implement the provisions of the bill.

The effective date of the bill is January 1, 2020.

II. Present Situation:

Governments obtain revenues necessary to fund their operations from a variety of sources. The sources of revenue include taxes, various fees and assessments, charges for goods or services, fines and penalties, gifts, grants, intergovernmental transfers, and bond proceeds. The nature of these revenues and the purposes for which such revenue may be used varies.

Governmental sources of revenue share some common attributes. They are all sources of revenue available to governments to be spent for their operations. There are also important legal and practical differences between these revenue sources and the purposes for which the revenues

they produce can be used. For example, some revenue sources are used to pay for governmental goods or services that are either unrelated or only distantly related to the activity, person, or entity being charged. Other revenue sources provide some direct benefit to the person being charged.

State Government Revenues

Approximately 55 percent¹ of state revenues are levies variously titled as taxes, surtaxes, fees, charges, surcharges, assessments, contributions, and similar other descriptions. Among these levies are:

- Cigarette and Other Tobacco Surcharges.
- Business Filing Fees.
- The Rental Car Surcharge.
- Waste Tire and Lead-Acid Battery Fees.
- The Motor Vehicle “Initial Registration Fee.”
- Hospital and Health Care Entity Assessments.
- Select Auto Title & Lien Fees.
- Select Driver License Fees.
- Select Motor Vehicle Registration Surcharges.

Cigarette and Other Tobacco Surcharges

Chapter 210, F.S., governs the assessment of taxes and surcharges on cigarettes and other tobacco products manufactured in, or imported into, Florida, to be sold in Florida.² Currently, a basic pack of cigarettes is subject to an excise tax in Florida at a rate of \$0.339 cents per pack of 20 standard cigarettes; the rate varies proportionately for non-standard cigarettes or packs.³ Additionally, a \$1.00 surcharge per pack of common size cigarettes is imposed, with rates varying proportionately for cigarettes and packs of non-standard size.⁴ For other tobacco products, the excise tax rate is 25 percent of the wholesale price,⁵ with an additional surcharge of 60 percent of the wholesale price.⁶

The revenues from the surcharges on cigarettes and other tobacco products are distributed as follows:

- Eight percent to the General Revenue Fund, to cover the cost of the General Revenue Service Charge.
- 92 percent to the Health Care Trust Fund within the Agency for Health Care Administration.⁷

¹ Derived from information found in Office of Economic and Demographic Research, The Florida Legislature, *Long-Term Revenue Analysis FY 1970-71 Through FY 2027-28, Volume 34*, Appendix B, Based on the Conference Series (Nov. 5, 2018, through Dec. 21, 2018), available at: <http://edr.state.fl.us/Content/conferences/longtermrevenue/2018longtermrevenueanalysis.pdf> (last visited Mar. 29, 2019).

² Section 210.30(1), F.S.

³ Section 210.02(1) and (3), F.S.

⁴ Section 210.011(1) and (3), F.S.

⁵ Section 210.30(1) and (2), F.S.

⁶ Section 210.276(1) and (2), F.S.

⁷ In accordance with s. 408.16(4), F.S., revenues received from the cigarette and other tobacco products surcharges are deposited in the Health Care Trust Fund to be used by the Agency for Health Care Administration in the

In Fiscal Year 2019-2020, the surcharges on cigarettes and other tobacco products are estimated to generate \$816.3 million. The excise taxes on cigarettes and other tobacco products are estimated to generate \$288.2 million in Fiscal Year 2019-2020.⁸

Business Filing Fees

Florida law⁹ requires certain documents to be filed with the Division of Corporations of the Department of State in order for a business to be organized as a corporation, partnership, or other commercial entity. Some of the documents that a business must file include an annual report, its initial filings, such as articles of incorporation or organization and registered agent designation, and filings related to certain business transactions, such as a certificate or articles of merger and amendments of articles of incorporation. There is a great deal of variation in the cost associated with filing these forms depending on the form and the type of business entity filing the form. The following are business filing fees organized by type of business entity:

Corporations for Profit¹⁰ - In order to organize as a corporation for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent (recipient of service of process) at a cost of \$35 for a total of \$70 in startup costs. Each year the corporation must file an annual report by May 1. The annual report fee is \$61.25. In addition to the annual report fee, the corporation must annually remit a supplemental corporate fee in the amount of \$88.75.¹¹ The annual fees total \$150. Most other corporation filings cost \$35.

Limited Liability Companies¹² - In order to organize as a limited liability company (LLC), the person wishing to organize must file articles of organization at a cost of \$100 and registration of a designated agent at a cost of \$25, for a total of \$125 in startup costs. The cost for the annual report is \$50. The total annual fees, including the supplemental corporate fee, are \$138.75. Most other filings cost \$25.

Corporations Not for Profit¹³ - In order to organize as a corporation not for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent at a cost of \$35, for a total of \$70 in startup costs. The cost of the annual report is \$61.25. Corporations not for profit are not subject to the supplemental corporate fee. Most other filings cost \$35.

Limited Partnerships¹⁴ - In order to organize as a limited partnership, the partners wishing to organize must file a certificate of limited partnership at a cost of \$965, and designation of a registered agent at a cost of \$35, for a total startup cost of \$1,000. The annual report fee is

performance of its functions and duties as provided by law, subject to the fiscal and budgetary provision of general law and the General Appropriations Act.

⁸ Office of Economic and Demographic Research, The Florida Legislature, *Tobacco Tax and Surcharge Conference*, (Feb. 21, 2019) available at <http://edr.state.fl.us/content/conferences/tobaccotaxsurcharge/TobaccoTaxSummary.pdf> (last visited Mar. 29, 2019).

⁹ See e.g., ss. 607.0122, 607.193, 605.0213, 609.02, 617.0122, 620.1109, 620.81055, and 679.525, F.S.

¹⁰ Section 607.0122, F.S.

¹¹ Section 607.193(1), F.S.

¹² Section 605.0213, F.S.

¹³ Section 617.0122, F.S.

¹⁴ Section 620.1109, F.S.

\$411.25. The total annual fee, including the supplemental corporate fee, is \$500. Most other filings cost \$52.50.

General Partnerships¹⁵ - In order to organize as a general partnership, the partners wishing to organize must file a partnership registration statement at a cost of \$50. They do not need to register a designated agent. In the event that it is organized as a limited liability partnership, it must file an annual report at a cost of \$25. General partnerships are not subject to the supplemental corporate fee. Most other fees are \$25.

In Fiscal Year 2019-2020, business filing fees are estimated to generate \$383.2 million,¹⁶ all of which is deposited in the General Revenue Fund.

Rental Car Surcharge

A \$2.00 per day rental car surcharge applies to the first 30 days, or portion of a day, a motor vehicle is continuously leased or rented in Florida to one person, even when the vehicle is licensed outside of Florida.¹⁷

A \$1.00 per usage rental car surcharge applies to the use of a motor vehicle by a member of a car-sharing service for a period of less than 24 hours.¹⁸ If the member uses the motor vehicle for 24 hours or more in a single usage, the \$2.00 per day surcharge applies.

The rental car surcharge is imposed on the lease or rental of, or use under a car-sharing service membership of, motor vehicles designed to accommodate less than nine passengers. The surcharge does not apply to the lease or rental of motorcycles, mopeds, trucks, trailers, recreational vehicles, or van conversions.¹⁹ The lease or rental is exempt from the surcharge when the purchaser issues a sales tax exemption certificate to lease or rent the motor vehicle exempt from sales tax.

The revenues from the rental car surcharge are distributed as follows:

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

In Fiscal Year 2019-2020, the rental car surcharge is estimated to generate \$145.6 million.²⁰

¹⁵ Section 620.81055, F.S.

¹⁶ Office of Economic and Demographic Research, The Florida Legislature, *Long-Term Revenue Analysis FY 1970-71 Through FY 2027-28, Volume 34*, Appendix B, Based on the Conference Series (Nov. 5, 2018, through Dec. 21, 2018), available at: <http://edr.state.fl.us/Content/conferences/longtermrevenue/2018longtermrevenueanalysis.pdf> (last visited Mar. 29, 2019).

¹⁷ Section 212.0606(1), F.S.

¹⁸ Section 212.0606(2), F.S.

¹⁹ See Section 681.102(14) and 212.0606(2), F.S.

²⁰ Office of Economic and Demographic Research, The Florida Legislature, *Revenues to State Transportation Trust Fund*, (Mar. 5, 2019), available at <http://edr.state.fl.us/Content/conferences/transportation/Transresults.pdf> (last visited Mar. 29, 2019).

Waste Tire and Lead-Acid Battery Fees

A \$1.50 fee is imposed on the sale of new or remanufactured batteries for use in motor vehicles (on-road or off-road), vessels, or aircraft. The fee is due whether the battery is sold separately or as a component part of the vehicle, vessel, or aircraft.²¹ The fee is not imposed on the sale of a battery for resale.

A \$1.00 fee is imposed on the retail sale of each new motor vehicle tire, whether a tire is sold separately or as a component part of a vehicle.²² The fee must be separately stated on the sales invoice and included in the total amount subject to sales tax.

A "new tire" is one that has never been used on or off the roads of Florida. This does not include recaps. A "motor vehicle" is one that transports people or cargo, such as automobiles, motorcycles, trucks, trailers, semi-trailers, and truck tractors. It also includes vehicles that operate on and off the roads of Florida, such as golf carts, all-terrain vehicles, and travel trailers.

These fees are imposed on dealers making retail sales of new and remanufactured lead-acid batteries, and new motor vehicle tires; including those sold to governmental entities or to nonprofit organizations, when the sales are made in Florida.

The waste tire fee is deposited into the Solid Waste Management Trust Fund used for solid waste management regulation and research, mosquito control, litter prevention, and small county solid waste management grants. The lead-acid battery fee is deposited in the Water Quality Assurance Trust Fund which helps fund a wide variety of water quality regulatory activities.

These fees are estimated to generate \$34.9 million in Fiscal Year 2019-2020.²³

Motor Vehicle Initial Registration Fee

The motor vehicle initial registration fee is a \$225 fee that is imposed on the initial application for registration of private vehicles and light trucks in Florida.²⁴ It does not apply when the vehicle being registered is replacing a vehicle already registered in Florida in the same category of vehicle.

The revenues from the motor vehicle initial registration fee are distributed as follows:

- State Transportation Trust Fund (44.5 percent).
- General Revenue (41.2 percent).
- Highway Safety Operating Trust Fund (4.25 percent).

²¹ Section 403.7185(1), F.S.

²² Section 403.718(1), F.S.

²³ Based off of the lead-acid battery fee reported as \$11.6 million for 2017-2018 and the estimate for the waste tire fee for 2019-2020 of \$23.3 million. Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 93 (2019), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited Mar. 29, 2019).

²⁴ Section 320.072(1), F.S.

The motor vehicle initial registration fee is estimated to generate \$272.2 million in Fiscal Year 2019-2020.²⁵

Hospital and Health Care Entity Assessments

Annual assessments are imposed on net operating revenues of hospitals at the rate of 1.5 percent for inpatient services²⁶ and 1.0 percent for outpatient services.²⁷ Florida statutes provide that annual assessments are imposed at the rate of 1.0 percent on net operating revenues of ambulatory surgical centers and clinical laboratories.²⁸ However, the annual assessments on net operating revenues of ambulatory surgical centers and clinical laboratories have been found to be unconstitutional and are not collected.²⁹

Revenue generated from hospital and health care entity assessments are deposited in the Public Medical Assistance Trust Fund,³⁰ used to help fund the state's share of Medicaid spending. These assessments are estimated to generate \$636.4 million in Fiscal Year 2019-2020.³¹

Select Auto Title & Lien Fees³²

Fees are imposed when motor vehicles are titled in Florida. For each original certificate of title and for each duplicate copy, the fee is \$70; except for motor vehicles for hire³³, which are \$49. An additional \$10 fee is imposed on each original certificate of title issued for a motor vehicle previously registered outside Florida. There is also a \$4.25 service charge for the transfer of any certificate of title and a \$2.00 fee for assignment by a lien holder, memorandum certificates, and noting a lien and its satisfaction. There is a \$1.25 service charge for the recordation or notation of a lien which is not in connection with the purchase of a vehicle. A service fee of \$2.50, to be deposited into the Highway Safety Operating Trust Fund, is charged for shipping and handling for each paper title mailed by the department. The department has a separate title office which may be used by private citizens and licensed motor vehicle dealers to receive expedited service on title transfers, title issuances, duplicate titles, and recordation of liens, and certificates of repossession. A fee of \$10 for motor vehicles and mobile homes and \$5 for vessels is charged for this service, which is in addition to the fees imposed by s. 319.32, F.S. The fee, after deducting the \$1 odometer fee amount referenced by s. 319.324, F.S., and \$3.50 to be retained by the processing agency, shall be deposited into the General Revenue Fund. An additional service charge of not more than \$0.50 may be imposed by any tax collector when any of the above mentioned transactions occur at any tax collector's branch office. Application for title must be made within 30 days of acquisition, subject to a \$20 late fee penalty.

²⁵ Office of Economic and Demographic Research, The Florida Legislature, *Highway Safety Fees*, (Feb. 28, 2019), available at <http://edr.state.fl.us/Content/conferences/highwaysafetyfees/highwaysafetyresults.pdf> (last visited Mar. 29, 2019).

²⁶ Section 395.701(2)(a), F.S.

²⁷ Section 395.701(2)(b), F.S.

²⁸ Section 395.7015(2)(a), F.S.

²⁹ *Agency for Health Care Admin. v. Hameroff*, 816 So. 2d 1145 (Fla. 1st DCA 2002).

³⁰ Section 395.7015(4), F.S.

³¹ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 93 (2019), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited Mar. 29, 2019).

³² Section 319.32, F.S.

³³ Section 319.32(1) and the definition of vehicles for hire under s. 320.08(6), F.S.

The \$70 fee is distributed between the State Transportation Trust Fund and the General Revenue Fund, excluding \$1 that is deposited into the Highway Safety Operating Trust Fund to fund the DHSMV's efforts to prevent and detect odometer fraud.³⁴ The DHSMV or the tax collector who processes the application retains the \$4.25 service charge.³⁵

Auto title and lien fees are estimated to generate \$479.3 million in Fiscal Year 2019-2020.³⁶

Select Driver License Fees³⁷

Driver license fees are collected from individuals who apply for the following types of licenses (originals, renewals, and replacements): Learners, Class E operators, Class E with motorcycle endorsement, Class E motorcycle only license, and Class A, B, and C commercial driver licenses with or without endorsements. In addition, fees are collected for delinquent renewals, and reinstatements following suspensions, revocations, disqualifications, and cancellations.

Proceeds from driver's license fees are distributed to General Revenue, the Highway Safety Operating Trust Fund, and the Tax Collector office which collected the fees. The specific breakdown varies by individual fee.

Driver license fees are estimated to generate \$398.8 million in Fiscal Year 2019-2020.³⁸

Select Motor Vehicle Registration Surcharges

There are numerous "surcharges" that are related to motor vehicle registration and are normally paid in connection with annual registration taxes, in addition to the base registration tax. These include:

- \$1.20 registration surcharge on each annual motor vehicle registration except for mobile homes (\$1 of each surcharge goes to the State Transportation Trust Fund).³⁹
- \$2.80 motor vehicle license plate replacement fee on each annual motor vehicle registration except for mobile homes.⁴⁰
- \$0.10 on each motor vehicle and on each moped for the Emergency Medical Trust Fund.⁴¹

³⁴ Sections 319.32(5) and 319.324, F.S.; Section 319.32(5), F.S., provides that \$47 of each fee collected for an original or duplicate certificate of title is deposited into the State Transportation Trust Fund, which may receive up to \$200 million in any Fiscal Year. The remainder of the fee and any fees in excess of the \$200 million are deposited into the General Revenue Fund.

³⁵ Section 319.32(2)(b), F.S.

³⁶ Office of Economic and Demographic Research, The Florida Legislature, *Long-Term Revenue Analysis FY 1970-71 Through FY 2027-28, Volume 34*, Appendix B, Based on the Conference Series (Nov. 5, 2018, through Dec. 21, 2018), available at: <http://edr.state.fl.us/Content/conferences/longtermrevenue/2018longtermrevenueanalysis.pdf> (last visited Mar. 29, 2019).

³⁷ Section 322.21, F.S.

³⁸ Office of Economic and Demographic Research, The Florida Legislature, *Long-Term Revenue Analysis FY 1970-71 Through FY 2027-28, Volume 34*, Appendix B, Based on the Conference Series (Nov. 5, 2018, through Dec. 21, 2018), available at: <http://edr.state.fl.us/Content/conferences/longtermrevenue/2018longtermrevenueanalysis.pdf> (last visited Mar. 29, 2019).

³⁹ Section 320.0804, F.S.

⁴⁰ Section 320.06(1)(b), F.S.

⁴¹ Section 320.0801(1), F.S.

- \$1.00 surcharge on each annual motor vehicle registration except for mobile homes for the Grants and Donation Trust Fund in the Department of Juvenile Justice.⁴²
- \$1.00 surcharge on each annual motor vehicle registration except mobile homes for the State Agency Law Enforcement Radio Systems Trust Fund.⁴³
- \$0.50 fee on every license registration for the Florida Real Time Vehicle Information System.⁴⁴
- \$1.00 air pollution surcharge for the Air Pollution Control Trust Fund.⁴⁵
- \$0.50 retro-reflection materials fee.⁴⁶
- \$1.00 mobile home surcharge to be collected only on mobile home registrations for the Florida Mobile Home Relocation Trust Fund.⁴⁷
- \$1.00 surcharge for replacement of a transportation disadvantaged permit.⁴⁸

Except as otherwise indicated above, revenues from these fees are deposited into the Highway Safety Operating Trust Fund.

These motor vehicle registration surcharges are estimated to generate \$242.9 million in Fiscal Year 2019-2020.⁴⁹

Local Government Revenues

The Florida Constitution and statutes give counties⁵⁰ and municipalities⁵¹ home rule authority to raise revenue for their governmental purposes, without specific authorization from the Legislature, as long as they are not inconsistent with general law. The constitution also authorizes counties, school districts and municipalities to levy ad valorem taxes, within prescribed limits. The constitution, however, reserves for the Legislature all other power to tax.⁵² Local governments may not levy taxes, other than ad valorem taxes, except as authorized by general law.⁵³ Among the home rule revenue sources available to counties and municipalities are:

- Special Assessments and non-ad valorem assessments.
- Impact Fees and Mobility Fees.
- Franchise Fees.
- Other charges to pay the cost of regulatory activities.

⁴² Section 320.08046, F.S.

⁴³ Section 320.0802, F.S.

⁴⁴ Section 320.03(5), F.S.

⁴⁵ Section 320.03(6), F.S.

⁴⁶ Section 320.06(3)(b), F.S.

⁴⁷ Section 320.08015(1), F.S.

⁴⁸ Section 320.0848(2)(d), F.S.

⁴⁹ Derived from workpapers supporting the Florida Revenue Estimating Conference, *Highway Safety Fees Conference* (Nov. 2018).

⁵⁰ FLA. CONST. art. VIII, ss. 1(f) and (g), and s. 125.01, F.S.

⁵¹ FLA. CONST. art. VIII, s. 2(b), and s. 166.021, F.S.

⁵² FLA. CONST. art. VII, s. 1(a).

⁵³ FLA. CONST. art. VII, s. 1(a).

Special Assessments and Non-Ad Valorem Assessments

Special assessments are levies against property to pay for an improvement or service that provides a special benefit to the property or properties in question. They are imposed upon the theory that when a local improvement or service enhances the value of neighboring property, that property should pay for the improvement or service in proportion to the benefit it receives.⁵⁴ This contrasts with the common concept of a tax, as an enforced burden imposed on the theory of a state's right to compel all citizens and property therein to contribute to the payment of general government expenses without a return or special benefit to the property.⁵⁵ Although this distinction may not be important to the person required to pay the special assessment or tax, it is important when determining a local government's power to levy the assessment. As discussed above, counties and municipalities have home rule revenue raising authority with respect to special assessments, but must have general law authorization to enact a tax.

Considerable litigation has ensued over the years attempting to determine when a special assessment is a valid levy under home rule authority and not an unauthorized tax. The general rule that has developed is that a special assessment must satisfy a two-pronged test: (1) the improvement or services at issue must provide a special benefit to assessed property; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.⁵⁶ Generally, special assessments are collected on the annual ad valorem tax bill. Under this statutory collection procedure, the special assessment is characterized as a “non-ad valorem assessment.”⁵⁷

In Fiscal Year 2017-2018, counties, municipalities, and special districts collected a total of \$3,275.1 million in special assessments/non-ad valorem assessments.⁵⁸

Impact Fees and Mobility Fees

Impact Fees - Section 163.31801(2), F.S., provides in part that “[t]he Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.” Impact fees are levies imposed against new development to provide for the cost of infrastructure made necessary by that growth. Impact fees must meet a “dual rational nexus test” to be valid. The dual rational nexus test established in case law⁵⁹ provides that the amount of impact fees charged must bear a reasonable relationship to the cost of providing public facilities necessitated by new development; and the impact fees collected must be earmarked and spent to construct public facilities reasonably benefiting the development paying the fee.

⁵⁴ *Blake v. City of Tampa*, 115 Fla. 348, 354, 156 So. 97, 99 (1934).

⁵⁵ *Blake v. City of Tampa*, 115 Fla. 348, 354, 156 So. 97, 99 (1934).

⁵⁶ *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992), modified sub nom. *Collier Cty. v. State*, 733 So. 2d 1012 (Fla. 1999), and holding modified by *Sarasota Cty. v. Sarasota Church of Christ, Inc.*, 667 So. 2d 180 (Fla. 1995).

⁵⁷ Section 197.3632(1)(d), F.S.

⁵⁸ Office of Economic and Demographic Research, The Florida Legislature, *Local Government Data*, available at: <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm> (last visited Mar. 29, 2019).

⁵⁹ See, e.g., *St. Johns Cty. v. Ne. Fla. Builders Ass'n, Inc.*, 583 So. 2d 635, 637 (Fla. 1991).

Mobility Fees⁶⁰ - Historically, the use of transportation impact fees has been limited to infrastructure investments, with most local governments using the fees to fund roadway capital improvements, such as roadway widening or other capacity improvements. A mobility fee is a specific type of impact fee that funds transportation system demands resulting from new development that allows local governments to assess the proportionate cost of transportation improvements needed to serve the demand generated by development. Mobility fee programs have allowed local governments to expand from a narrow focus on roadway improvements to broader funding mechanisms designed to promote the implementation of a full range of multimodal mobility improvements. Mobility fees must meet the dual rational nexus test described above.⁶¹

In Fiscal Year 2016-2017, total collections of impact fees by counties and municipalities was \$908.9 million.⁶²

Franchise Fees

Franchise fees are levies, usually imposed upon a utility, for the grant of a franchise and for the privilege of using a local government's rights-of-way to conduct utility business. Unlike other governmental levies, franchise fees are bargained for in exchange for specific property rights that may be relinquished by local governments.⁶³ Franchise fees constitute a consideration paid by the utility for its franchise.⁶⁴ Franchise fee revenues are not restricted and are often used for local government general fund purposes.

Franchise fees collected by counties and municipalities in Fiscal Year 2016-2017 totaled \$907.4 million.⁶⁵

Charges to Pay the Cost of Regulatory Activities

Charges to pay the cost of regulatory activities are imposed pursuant to a local government's police powers in the exercise of its sovereign functions. Generally, this category can include charges such as permit fees and inspection fees. Florida case law has determined that in order for such regulatory fees to be valid levies under local government home rule authority, the fees cannot exceed the cost of the regulatory activity and are generally required to be applied solely to pay the cost of the regulatory activity for which they are imposed.

⁶⁰ Florida Department of Transportation has created a guidebook titled "*USING MOBILITY FEES TO FUND TRANSIT IMPROVEMENTS*." It is the source for much of the discussion here regarding mobility fees, available at: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content/transit/pages/finalmobilityfeeguidebook111816.pdf?sfvrsn=8186dfe3_0 (last visited Mar. 29, 2019).

⁶¹ Section 163.3180(5)(i), F.S.

⁶² Office of Economic and Demographic Research, The Florida Legislature, *Local Government Data*, available at: <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm> (last visited Mar. 29, 2019).

⁶³ *City of Plant City v. Mayo*, 337 So. 2d 966, 973 (Fla. 1976).

⁶⁴ *City of Hialeah Gardens v. Dade Cty.*, 348 So. 2d 1174, 1180 (Fla. Dist. Ct. App. 1977).

⁶⁵ Office of Economic and Demographic Research, The Florida Legislature, *Local Government Data*, available at: <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm> (last visited Mar. 29, 2019).

III. Effect of Proposed Changes:

State Government Revenue

The bill renames select state and local levies as taxes or surtaxes, instead of their current titles as fees, surcharges, assessments or similar terms. It does not affect the actual legal nature of such levies.⁶⁶

The bill renames the following state revenues as taxes or surtaxes:

- Cigarette and Other Tobacco Surcharges.
- Various Business Filing Fees.
- Rental Car Surcharge.
- Waste Tire and Lead-Acid Battery Fees.
- Motor Vehicle Initial Registration Fee.
- Hospital Annual Assessments.
- Select Auto Title & Lien Fees.
- Select Driver License Fees.
- Select Motor Vehicle Registration Surcharges.

The bill also repeals the annual assessments on net operating revenues of ambulatory surgical centers imposed under s. 395.7015, F.S., that were found to be unconstitutional and are no longer collected.⁶⁷

Local Government Revenue

The bill requires any new impositions or rate increases, or proposed impositions or rate increases, in the following levies by counties, municipalities or special districts to be titled as and represented to the public as “taxes” as follows:

- A new or increased special assessment or a non-ad valorem assessment must be titled and represented to the public as a “special benefit tax.”
- A new or increased impact fee or mobility fee must be titled and represented to the public as a “development impact tax.”
- A new or increased franchise fee must be titled and represented to the public as a “franchise tax.”
- A new or increased charge to pay the cost of regulation must be titled and represented to the public as a tax in a manner reasonably consistent with the type of regulation and charge in question.

The bill expressly provides that it does not affect, amend or alter a county or municipality’s home rule authority under the State constitution or other provisions of law to impose the affected

⁶⁶ See *City of De Land v. Fla. Pub. Serv. Co.*, 119 Fla. 819, 823, (1935) (“What controls our judgment in cases...involving the attempted imposition of taxes of the character here...is the underlying reality of the tax ordinance rather than the form or label of the challenged tax.”); *City of Gainesville v. State*, 863 So. 2d 138, 144-45 (Fla. 2003) (when determining whether a charge is an assessment or fee, the name of the charge is only one factor to consider among a list of factors).

⁶⁷ See *Agency for Health Care Admin. v. Hameroff*, 816 So. 2d 1145 (Fla. 1st DCA 2002).

local government levies, and it is the Legislature's intent only that such levies be renamed and represented to the public as taxes. Similarly, it provides that a special district's authority to levy special assessments under other provisions of law is not affected, amended or altered by the bill.

Section by Section Analysis:

Section 1. Amends s. 39.8298, F.S., to make a conforming change.

Section 2. Amends s. 72.011, F.S., to make a conforming change.

Section 3. Creates s. 125.01(8), F.S., to require any new imposition of, or increase in the rate or amount of, certain levies by a municipality to be titled and represented to the public as taxes. The requirement also applies to proposed impositions or increases. This change does not affect, amend or alter the municipality's home rule authority.

Section 4. Creates s. 166.021(10), F.S., to require any new imposition of, or increase in the rate or amount of, certain levies by a county to be titled and represented to the public as taxes. The requirement also applies to proposed impositions or increases. This change does not affect, amend or alter the county's home rule authority.

Section 5. Creates s. 189.011(4), F.S., to require any new imposition of, or increase in the rate or amount of, certain levies by a special district to be titled and represented to the public as taxes. The requirement also applies to proposed impositions or increases.

Section 6. Amends s. 207.004(1) and (5), F.S., to rename a \$45 temporary fuel-use permit fee as a tax and rename a \$4 driveway permit fee a tax.

Section 7. Amends s. 210.01(18) and (19), F.S., to rename the cigarette tax surcharge a surtax; provides clarifying language.

Section 8. Amends s. 210.011, F.S., to rename the cigarette tax surcharge a surtax.

Section 9. Amends s. 210.04(9), F.S., to rename the cigarette tax surcharge a surtax.

Section 10. Amends s. 210.1801, F.S., to rename the cigarette tax surcharge a surtax; provides clarifying language.

Section 11. Amends s. 210.276, F.S., to rename the cigarette tax surcharge a surtax.

Section 12. Amends s. 212.0601(4), F.S., to provide a conforming change.

Section 13. Amends s. 212.0606, F.S., to rename the rental car surcharge a surtax.

Section 14. Amends s. 213.05, F.S., to make conforming changes.

Section 15. Amends s. 213.053(1), (8) and (15), F.S., to make conforming changes.

Section 16. Amends s. 213.24(2) and (3), F.S., to make conforming changes.

Section 17. Amends s. 282.709(3), F.S., to make conforming changes.

Section 18. Amends s. 316.2124, F.S., to rename a \$2.50 surcharge for motorized disability access vehicles a surtax and to make conforming changes.

Section 19. Amends s. 316.545(4), F.S., to make conforming changes.

Section 20. Amends s. 316.550(6), F.S., to rename a \$5 minimum permit fee a tax and to rename an annualized fee for blanket permits a tax.

Section 21. Amends s. 317.0004, F.S., to make conforming changes.

Section 22. Amends s. 317.0006(2), to rename a \$10 fee related to title transfers a tax.

Section 23. Amends s. 317.0007(1) and (6), F.S., to rename a \$29 fee for off-highway vehicle title applications a tax.

Section 24. Amends s. 317.0008(1) and (2), F.S., to rename a \$15 duplicate certificate of title fee a tax.

Section 25. Amends s. 317.0010, F.S., to make conforming changes.

Section 26. Amends s. 317.011(3), F.S., to make conforming changes.

Section 27. Amends s. 317.0014(6), F.S., to make conforming changes.

Section 28. Amends s. 317.0016, F.S., to make conforming changes.

Section 29. Amends s. 318.15(2), F.S., to make conforming changes.

Section 30. Amends s. 319.14(10), F.S., to rename a \$40 fee for low-speed vehicle conversion to a golf cart a tax.

Section 31. Amends s. 319.23(1) and (6), F.S., to rename a \$20 application fee for a certificate of title a tax and to make conforming changes.

Section 32. Amends s. 319.24(6), F.S., to make conforming changes.

Section 33. Amends s. 319.25(2), F.S.; to make conforming changes.

Section 34. Amends s. 319.27(4), F.S., to make conforming changes.

Section 35. Amends s. 319.28(1) and (2), F.S., to make conforming changes.

Section 36. Amends s. 319.29(1) and (3), F.S., to make conforming changes.

Section 37. Amends s. 319.30(8) and (9), F.S., to make conforming changes.

Section 38. Amends s. 319.32, F.S., to rename the \$70 original certificate of title fee a tax; to rename the \$49 motor vehicle for hire original certificate of title fee a tax; to rename a \$2 fee for noting a lien on a title certificate a tax; to rename a \$40 initial examination fee a tax; to rename a \$10 fee for certificates of title issued for a vehicle previously registered outside this state a tax; to rename a \$7 fee for each lien placed on a motor vehicle by the state child support enforcement program a tax; to make conforming changes.

Section 39. Amends s. 319.323, F.S., to make conforming changes.

Section 40. Amends s. 320.01(23), F.S., to make conforming changes.

Section 41. Amends s. 320.02(17), F.S., to make conforming changes.

Section 42. Amends s. 320.03(5), (6), (9) and (10), F.S., to rename a 50 cents fee on International Registration Plan license registrations related to the Florida Real Time Vehicle Information System a tax; to rename a \$1 nonrefundable air pollution fee a tax; to rename a \$1.50 nonrefundable registration fee for transportation disadvantaged a tax and to make conforming changes.

Section 43. Amends s. 320.055(5), F.S., to make conforming changes.

Section 44. Amends s. 320.06(1) and (3), F.S., to rename the \$28 license plate replacement fee a tax; to rename a 50 cents retroreflection material fee a tax and to make conforming changes.

Section 45. Amends s. 320.0607(3), (4), and (5), F.S., to rename a \$28 application fee a tax and to make conforming changes.

Section 46. Amends s. 320.0609(2), (5), and (8), F.S., to rename a \$4.50 license plate transfer fee a tax and to make conforming changes.

Section 47. Amends s. 320.0655(3), F.S., to make conforming changes.

Section 48. Amends s. 320.0657(2), F.S., to rename a \$2 annual fleet management fee a tax; to rename a \$1.50 license plate manufacturing fee a tax; to rename a \$10 per vehicle fee related to fleet size increases a tax; to make conforming changes.

Section 49. Amends s. 320.0659(2), F.S., to make conforming changes.

Section 50. Amends s. 320.07(2) and (3), F.S., to make conforming changes.

Section 51. Amends s. 320.0705, F.S., to rename a \$2.50 semiannual registration fee a tax and to make conforming changes.

Section 52. Amends s. 320.071(2), F.S., to make conforming changes.

Section 53. Amends s. 320.0715(2) and (3), F.S., to rename a \$5 special temporary permit fee a tax; to rename a \$3 temporary operational permit fee a tax; and to make conforming changes.

Section 54. Amends s. 320.072(1), (2), (3), and (5), F.S., to rename the \$225 initial registration fee a tax and to make conforming changes.

Section 55. Amends s. 320.08(4) and (5), F.S., to rename a \$324 license plate fee a tax and to make conforming changes.

Section 56. Amends s. 320.0801(2), F.S., to rename a \$10 additional license surcharge on commercial motor vehicles having a gross vehicle weight of 10,000 pounds or more a surtax and to make conforming changes.

Section 57. Amends s. 320.08015, F.S., to rename a \$1 mobile home license tax surcharge a surtax.

Section 58. Amends s. 320.0802, F.S., to rename a \$2 State Agency Law Enforcement Radio System Trust Fund license tax surcharge a surtax.

Section 59. Amends s. 320.0804, F.S., F.S., to rename a \$2 license tax surcharge a surtax.

Section 60. Amends s. 320.08046, F.S., to rename a \$1 juvenile justice license tax surcharge a surtax.

Section 61. Amends s. 320.08053(2), F.S., to make conforming changes.

Section 62. Amends s. 320.08056(3), F.S., to make conforming changes.

Section 63. Amends s. 320.06068(3), F.S., to make conforming changes.

Section 64. Amends s. 320.0807(1) through (6), F.S., to make conforming changes.

Section 65. Amends s. 320.081(3) and (5), F.S., to make conforming changes.

Section 66. Amends s. 320.0815(2), F.S., to rename a \$3 "RP" series sticker fee a tax.

Section 67. Amends s. 320.0821(1), F.S., to make conforming changes.

Section 68. Amends s. 320.0846, to make conforming changes.

Section 69. Amends s. 320.0848(1) through (4), to rename disabled parking permit fees as taxes.

Section 70. Amends s. 320.086(1) and (2), F.S., to make conforming changes.

Section 71. Amends s. 320.089(2), F.S., to make conforming changes.

Section 72. Amends s. 320.0891(5), F.S., to make conforming changes.

Section 73. Amends s. 320.102, F.S., to make conforming changes.

Section 74. Amends s. 320.13(3), F.S., to rename a \$4.50 dealer and manufacturer license plate transfer fee a tax.

Section 75. Amends s. 320.131(1) and (2), F.S., rename a \$2 temporary tag fee a tax.

Section 76. Amends s. 320.1325, F.S., to rename a \$40, 90-day temporary registration plate fee a tax and to make conforming changes.

Section 77. Amends s. 320.18(1), F.S., to make conforming changes.

Section 78. Amends s. 320.27, F.S., to make conforming changes.

Section 79. Amends s. 320.39(2), F.S., to make conforming changes.

Section 80. Amends s. 320.781(2), F.S., to rename a \$1 mobile home and recreational vehicle protection fee a tax.

Section 81. Amends s. 322.051(1), (3), and (8), F.S., to rename an application fee a fee a tax and to make conforming changes.

Section 82. Amends s. 322.12(2), F.S., to make conforming changes.

Section 83. Amends s. 322.135(1), F.S., to make conforming changes.

Section 84. Amends s. 322.14(1), F.S., to make conforming changes.

Section 85. Amends s. 322.142(1) and (2), F.S., to make conforming changes.

Section 86. Amends s. 322.17(1) and (2), F.S., to make conforming changes.

Section 87. Amends s. 322.18(4) and (8), F.S., to make conforming changes.

Section 88. Amends s. 322.21(1), (4), (5), (7) and (8), F.S., to rename original and renewal Class E and commercial driver license fees as taxes; to rename the hazardous-materials endorsement fee a tax; to rename reinstatement fees that follows a suspension or revocation renaming as taxes; to rename a \$130 fee for refusal to submit to a breath, blood, or urine test a tax; to rename a \$180 fee for certain unsuccessful challenges or a revocation or suspension as a tax; to make conforming changes.

Section 89. Amends s. 322.22(1), F.S., to make conforming changes.

Section 90. Amends s. 322.251(4) and (7), F.S., to rename a \$10 reinstatement fee a tax and to make conforming changes.

Section 91. Amends s. 322.29(1), F.S., to rename a \$60 reinstatement fee a tax and to make conforming changes.

Section 92. Amends s. 376.307(4), F.S., to make conforming changes.

Section 93. Amends s. 395.003(2), F.S., to make conforming changes.

Section 94. Amends s. 395.701(2) through (5), F.S., to rename the annual assessments on net operating revenues for inpatient and outpatient services to fund public medical assistance as taxes and to make conforming changes.

Section 95. Repeals s. 395.7015, F.S., to repeal the one percent annual assessments on the net operating revenues of certain health care entities as taxes and to make conforming changes.

Section 96. Amends s. 395.7016, F.S., to make conforming changes.

Section 97. Amends s. 403.718, F.S., to rename the waste tire fee a surtax and to make conforming changes.

Section 98. Amends s. 403.7185, F.S., to rename the lead-acid battery fee as a surtax and to make conforming changes.

Section 99. Amends s. 408.07(19), F.S., to make conforming changes.

Section 100. Amends s. 427.0159(1), F.S., to make conforming changes.

Section 101. Amends s. 605.0113(4), F.S., to make conforming changes.

Section 102. Amends s. 605.0118(3), F.S., to make conforming changes.

Section 103. Amends s. 605.0206(1), F.S., to make conforming changes.

Section 104. Amends s. 605.0209(5), F.S., to make conforming changes.

Section 105. Amends s. 605.0211(1) and (2), F.S., to make conforming changes.

Section 106. Amends s. 605.0212(6), F.S., to make conforming changes.

Section 107. Amends s. 605.0213, F.S., rename limited liability company business filing fees as taxes and to make conforming changes.

Section 108. Amends s. 605.0707(3), F.S., to make conforming changes.

Section 109. Amends s. 605.0714(1), F.S., to make conforming changes.

Section 110. Amends s. 605.0715(1), (2), and (3), F.S., to make conforming changes.

Section 111. Amends s. 605.0902(1), F.S., to make conforming changes.

Section 112. Amends s. 605.0903(1), F.S., to make conforming changes.

Section 113. Amends s. 605.0904(7), F.S., to make conforming changes.

Section 114. Amends s. 605.0908(1), F.S., to make conforming changes.

Section 115. Amends s. 605.0909(1), (2), and (3), F.S., to make conforming changes.

Section 116. Amends s. 607.0122, F.S., to rename corporation business filing fees as taxes and to make conforming changes.

Section 117. Amends s. 607.0124(4), F.S., to make conforming changes.

Section 118. Amends s. 607.0125(5), F.S., to make conforming changes.

Section 119. Amends s. 607.0128(2), F.S., to make conforming changes.

Section 120. Amends s. 607.0501(4), F.S., to make conforming changes.

Section 121. Amends s. 607.0502(5), F.S., to make conforming changes.

Section 122. Amends s. 607.1420(1), F.S., to make conforming changes.

Section 123. Amends s. 607.1422(1), F.S., to make conforming changes.

Section 124. Amends s. 607.1502(4), F.S., to make conforming changes.

Section 125. Amends s. 607.15315(1), F.S., to make conforming changes.

Section 126. Amends s. 607.193, F.S., to rename the \$88.75 supplemental corporate fee a tax and to make conforming changes.

Section 127. Amends s. 609.02, F.S., to rename a \$350 declaration of trust filing fee a tax.

Section 128. Amends s. 609.03, F.S., to make conforming changes.

Section 129. Amends s. 609.08(9), F.S., to rename a \$350 articles of merger fee a tax.

Section 130. Amends s. 610.104(11) and (12), F.S., to rename a \$10,000 application fee to provide cable or video service a tax.

Section 131. Amends s. 617.01201(9), F.S., to make conforming changes.

Section 132. Amends s. 617.0122, F.S., to rename not for profit corporation business filing fees as taxes.

Section 133. Amends s. 617.0124(4), F.S., to make conforming changes.

Section 134. Amends s. 617.0128(2), F.S., to make conforming changes.

Section 135. Amends s. 617.0501(4), F.S., to make conforming changes.

Section 136. Amends s. 617.0502(5), F.S., to make conforming changes.

Section 137. Amends s. 617.1420(1), F.S., to make conforming changes.

Section 138. Amends s. 617.1422(1), F.S., to make conforming changes.

Section 139. Amends s. 617.1533(1), F.S., to make conforming changes.

Section 140. Amends s. 617.1623(1), F.S., to make conforming changes.

Section 141. Amends s. 617.1807, F.S., to make conforming changes.

Section 142. Amends s. 617.2006(4), F.S., to make conforming changes.

Section 143. Amends s. 617.2102, F.S., to make conforming changes.

Section 144. Amends s. 620.1109, F.S., to rename limited partnership business filing fees as taxes.

Section 145. Amends s. 620.1206(1), F.S., to make conforming changes.

Section 146. Amends s. 620.1207(4), F.S., to make conforming changes.

Section 147. Amends s. 620.1209(1) and (2), F.S., to make conforming changes.

Section 148. Amends s. 620.1809(1), F.S., to make conforming changes.

Section 149. Amends s. 620.1810(1), F.S., to make conforming changes.

Section 150. Amends s. 620.1904, F.S., to make conforming changes.

Section 151. Amends s. 620.1906(1), F.S., to make conforming changes.

Section 152. Amends s. 620.1909(1), F.S., to make conforming changes.

Section 153. Amends s. 620.81054(4), F.S., to make conforming changes.

Section 154. Amends s. 620.81055(1), F.S., to rename partnership business filing fees as taxes.

Section 155. Amends 620.9003(3), F.S., to make conforming changes.

Section 156. Amends s. 658.23(1) and (3), F.S., to make conforming changes.

Section 157. Amends s. 1003.48(4), F.S., to rename a 50 cents driver education license fee a tax and to make conforming changes.

Section 158. Provides the Department of Revenue emergency rulemaking authority to implement the provisions of the act.

Section 159. Provides appropriations.

Section 160. Provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill appropriates \$105,280 in nonrecurring General Revenue Fund to the Department of Highway Safety and Motor Vehicles for programming costs and staffing costs to implement the provisions of the bill relevant to the agency. The bill also appropriates

\$26,355 in nonrecurring General Revenue Funds to the Agency for Health Care Administration for system updates to implement the provisions of the bill relevant to the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.8298, 72.011, 125.01, 166.021, 189.011, 207.004, 210.01, 210.011, 210.04, 210.1801, 210.276, 212.0601, 212.0606, 213.05, 213.053, 213.24, 282.709, 316.2124, 316.545, 316.550, 317.0004, 317.0006, 317.0007, 317.0008, 317.0010, 317.0011, 317.0014, 317.0016, 318.15, 319.14, 319.23, 319.24, 319.25, 319.27, 319.28, 319.29, 319.30, 319.32, 319.323, 320.01, 320.02, 320.03, 320.055, 320.06, 320.0607, 320.0609, 320.0655, 320.0657, 320.0659, 320.07, 320.0705, 320.071, 320.0715, 320.072, 320.08, 320.081, 320.0801, 320.08015, 320.0802, 320.0804, 320.08046, 320.08053, 320.08056, 320.08068, 320.0807, 320.0815, 320.0821, 320.0846, 320.0848, 320.086, 320.089, 320.0891, 320.102, 320.13, 320.131, 320.1325, 320.18, 320.27, 320.39, 320.781, 322.051, 322.12, 322.135, 322.14, 322.142, 322.17, 322.18, 322.21, 322.22, 322.251, 322.29, 376.307, 395.003, 395.701, 395.7016, 403.718, 403.7185, 408.07, 427.0159, 605.0113, 605.0118, 605.0206, 605.0209, 605.0211, 605.0212, 605.0213, 605.0707, 605.0714, 605.0715, 605.0902, 605.0903, 605.0904, 605.0908, 605.0909, 607.0122, 607.0124, 607.0125, 607.0128, 607.0501, 607.0502, 607.1420, 607.1422, 607.1502, 607.15315, 607.193, 609.02, 609.03, 609.08, 610.104, 617.01201, 617.0122, 617.0124, 617.0128, 617.0501, 617.0502, 617.1420, 617.1422, 617.1533, 617.1623, 617.1807, 617.2006, 617.2102, 620.1109, 620.1206, 620.1207, 620.1209, 620.1809, 620.1810, 620.1904, 620.1906, 620.1909, 620.81054, 620.81055, 620.9003, 658.23, and 1003.48.

This bill repeals section 395.7015 of the Florida Statutes.

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.