

**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 Committee on Finance and Tax

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BILL: SB 844

INTRODUCER: Senator Yarborough

SUBJECT: Sales Tax Exemption for Renewable Natural Gas Machinery and Equipment

DATE: March 13, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 844 exempts from the sales and use tax machinery and equipment used at a fixed location for the production, storage, transportation, compression, or blending of renewable natural gas.

The bill provides that purchasers of machinery and equipment qualifying for the exemption must furnish the vendor with an affidavit stating that the item to be exempted will be used for purposes specified in the exemption, unless the purchaser has self-accrual authority. The bill incorporates existing penalties for submitting a fraudulent claim.

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$1.5 million in Fiscal Year 2023-2024, with a recurring impact of \$700,000. The bill will reduce local revenues by \$400,000 in Fiscal Year 2023-2024, with a recurring impact of \$200,000.

The bill takes effect July 1, 2023.

**II. Present Situation:**

**Florida Sales and Use Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services, and a 5.5 percent sales and use tax on the rental of commercial real estate.<sup>4</sup> Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and

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<sup>1</sup> Section 212.05(1)(a)1.a., F.S.

<sup>2</sup> Section 212.04(1)(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

<sup>4</sup> Section 212.031, F.S.

credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>5</sup>

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.<sup>6</sup> A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”<sup>7</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 1.5 percent.<sup>8</sup>

Current law exempts from the sales and use tax purchases of machinery and equipment used at a fixed locations for specific purposes. For example, machinery and equipment used in the production of electrical or steam energy, to increase the output of new or expanding businesses performing spaceport activities, and for machinery and equipment used under federal procurement contracts.<sup>9</sup> Most recently, machinery and equipment necessary to produce electrical or steam energy resulting from the burning of hydrogen or green hydrogen was exempted, as well as machinery and equipment necessary to produce green hydrogen.<sup>10</sup>

In general, the purchase of exempt machinery or equipment requires the purchaser to either obtain a temporary tax exemption certificate from the Department of Revenue (DOR), provide an affidavit to the seller detailing the exempt use of the item, or be issued by the DOR a refund after purchase was made.

Currently, there is no sales and use tax exemption for machinery and equipment used for the production, storage, transportation, compression or blending of renewable natural gas.

### **Renewable Natural Gas**

Renewable natural gas is essentially made from biogas (the gaseous product of the decomposition of organic matter) that has been processed to purity standards and can be used as transportation fuel or liquefied natural gas. However, to fuel vehicles, the biogas must be processed to a higher purity standard resulting in the renewable gas having a higher content of methane than raw biogas, which makes it comparable to conventional natural gas. This makes the renewable natural gas suitable in applications that require pipeline-quality gas such as vehicles.<sup>11</sup>

Three main sources of biogas are landfills, livestock operations and wastewater treatment sites. In landfills, the digestion process takes place in the ground rather than in an anaerobic digester,

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<sup>5</sup> Section 212.07(2), F.S.

<sup>6</sup> Section 212.055, F.S.

<sup>7</sup> Section 212.054(2)(a), F.S.

<sup>8</sup> Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2023*, at [https://floridarevenue.com/Forms\\_library/current/dr15dss.pdf](https://floridarevenue.com/Forms_library/current/dr15dss.pdf) (last visited March 8, 2023).

<sup>9</sup> See s. 212.08(5), F.S.

<sup>10</sup> Section 212.08(7)(ppp), F.S.

<sup>11</sup> United States Department of Energy, Alternative Fuels Data Center, *Renewable Natural Gas Production*, at [https://afdc.energy.gov/fuels/natural\\_gas\\_renewable.html](https://afdc.energy.gov/fuels/natural_gas_renewable.html). (last visited March 3, 2023).

which is a series of processes in which microorganisms break down biodegradable material in the absence of oxygen.<sup>12</sup> As of 2021, there were 548 operational landfill gas projects in the country. At livestock operations, animal manure is collected and run through an anaerobic digester to stabilize and optimize methane production. The result is biogas that can be processed into renewable natural gas and used to fuel gas vehicles or produce electricity. As of 2022, there are 331 livestock farms utilizing anaerobic digester systems in the country, including three in Florida.<sup>13</sup> At wastewater treatment plants, biogas is produced by digesting the solids removed in the wastewater treatment process. Approximately 1,300 wastewater treatment plants in the country have anaerobic digesters.<sup>14</sup>

### III. Effect of Proposed Changes:

The bill exempts from the sales and use tax machinery and equipment used at a fixed location for the production, storage, transportation, compression, or blending of renewable natural gas.

The bill defines “renewable natural gas” as an anaerobically generated biogas, landfill, gas, or wastewater treatment gas refined to a methane content of 90 percent or greater, which may be used as transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline. The bill specifies that any reference to natural gas in Ch. 212, F.S., includes renewable natural gas.

The bill provides that purchasers of machinery and equipment qualifying for this exemption must furnish the vendor with an affidavit stating that the item or items to be exempted are for the production, storage, transportation, compression, or blending of renewable natural gas. Purchasers with self-accrual authority<sup>15</sup> are not required to provide an affidavit; however, the purchaser must maintain all documentation necessary to prove the exempt status of purchases.

A person furnishing a false affidavit to the vendor in order to evade payment of the sales tax is liable for payment of the tax plus a mandatory penalty of 200 percent of the tax. A violation of this section is a third degree felony.<sup>16</sup>

The bill provides rulemaking authority to the Department of Revenue.

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<sup>12</sup> Id.

<sup>13</sup> United States Environmental Protection Agency, *Livestock Anaerobic Digester Database*, at <https://www.epa.gov/agstar/livestock-anaerobic-digester-database> (last visited March 7, 2023).

<sup>14</sup> See supra note 11.

<sup>15</sup> Section 212.183, F.S. The Department of Revenue is authorized to provide by rule for self-accrual of the sales tax under one or more of the following seven circumstances: where authorized by law for holders of direct pay permits; where tangible personal property is subject to tax on a prorated basis, and the proration factor is based upon characteristics of the purchaser; where the taxable status of types of tangible personal property will be known only upon use; for commercial renters where the purchaser rents from a number of independent property owners who, apart from rentals to the purchaser in question, would otherwise not be obligated to register as dealers; where the purchaser makes purchases in excess of \$10 million per year of tangible personal property in any county; when the purchaser makes purchases of promotional materials defined in s. 212.06(11), F.S., and at the time of purchase, the purchaser does not know whether the materials will be exported outside the state; and for commercial rentals where the purchaser, who is required to remit sales tax electronically pursuant to s. 213.755, F.S., rents from a number of independent property owners.

<sup>16</sup> Section 212.085, F.S. A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

The bill takes effect July 1, 2023.

#### 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, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the 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 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>17,18</sup> which is \$2.3 million or less for Fiscal Year 2023-2024.<sup>19</sup>

The Revenue Estimating Conference determined that the bill will reduce the authority that counties have to raise revenue from the local option sales tax by \$200,000 in Fiscal Year 2023-2024. Therefore, the mandates provision may not apply.

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

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

##### E. Other Constitutional Issues:

None identified.

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<sup>17</sup> FLA. CONST. art. VII, s. 18(d).

<sup>18</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$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 March 7, 2023).

<sup>19</sup> Based on the Demographic Estimating Conference's estimated population adopted on July 18, 2022. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/archives/220718demographic.pdf> (last visited March 7, 2023).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$1.5 million in Fiscal Year 2023-2024, with a recurring impact of \$700,000. The bill will reduce local revenues by \$400,000 in Fiscal Year 2023-2024, with a recurring impact of \$200,000.

**B. Private Sector Impact:**

The private sector will experience reduced costs associated with machinery and equipment used for the production, storage, transportation, compression, or blending of renewable natural gas due to the sales and use tax exemption provided in this legislation.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 212.08 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.