

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: SPB 7048

SPONSOR: Community Affairs Committee

SUBJECT: Local Government

DATE: February 3, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This proposed committee bill revises the Local Government Comprehensive Plan Certification Program to change the focus of the program from recognizing a limited number of local governments, who have implemented exemplary planning practices, to a more accessible program that provides regulatory incentives for a local government with a demonstrated record of effectively implementing and enforcing its comprehensive plan.

This bill also addresses infrastructure funding. It revises the requirements to levy the infrastructure sales surtax of 0.5 or 1 percent to allow the governing body of a county to levy the tax by a majority vote of the governing body. It allows a county to levy the school capital outlay surtax at a rate not to exceed 0.5 percent by a majority vote of the governing body of the county, in addition to the levy by referendum. The bill also allows a county to levy a 1-cent to 5-cent local option motor fuel tax by majority vote, in addition to the levy referendum.

In addition, the bill allows a county to levy a real estate transfer surtax on certain documents if the county does not increase the rate of any impact fee imposed pursuant to the act beyond the rate imposed on January 1, 2003. The rate of the surtax may not exceed 5 cents on each \$100 or fractional part thereof. The grantor of the real estate shall pay the surtax. The levy of the surtax is subject to a referendum or an extraordinary vote of the governing board of the county. The bill specifies procedures relevant to the levy of the surtax and collecting such surtax.

This bill substantially amends sections 163.3246, 212.055, 336.025 of the Florida Statutes, and creates section 201.032, Florida Statutes.

II. Present Situation:

Since 1972, the Legislature has enacted a series of statutes to implement a coordinated system of state, regional, and local planning. However, stakeholder groups would like to see further revisions. Committee staff held two workshops focusing on four key areas relative to growth management: public participation in the growth management process, certainty for development interests on where growth will be promoted and encouraged, infrastructure funding, and legislative changes to the development-of-regional-impact (DRI) program.

Based on staff research and input from the workshops, staff has outlined options for the committee to consider relating to the Local Government Comprehensive Plan Certification program and infrastructure funding. In general, the infrastructure funding options reflect a consensus that additional funding should be made available through increased flexibility for implementing certain local option sales taxes.

Local Government Comprehensive Plan Certification Program

In 2002, the Legislature enacted s. 163.3246, F.S., the local government comprehensive plan certification program. The purpose of the program is the creation of a certification process for a local government to identify a geographic area in which it plans to direct growth and to require less state and regional oversight of the comprehensive plan amendment process if that local government has a demonstrated record of enforcing its comprehensive plan and has shown a commitment to exemplary planning practices. Local governments must meet additional statutory criteria under s. 163.3246(2), F.S., to be eligible for certification under the program. If the local government meets the eligibility criteria, the DCA will certify all or part of the local government by written agreement. The DCA is authorized to enter up to eight new certification agreements each fiscal year.

Response to this program has been mixed. The first application period for this program ran from January 6 through February 4, 2003, with Lakeland, Miramar, Naples, Orlando, and Sarasota submitting applications. Lakeland and Orlando met the program's requirements and have entered into an agreement with DCA. The City of Miramar was recently notified that it will be certified but must complete a work plan. The City of Naples withdrew its application. Sarasota did not meet the certification requirements. There were no applicants in the 2004 cycle. According to some local governments, the problems with this program relate to measurable goals or criteria and the time involved in becoming certified.

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax¹ may be levied at a rate of 0.5 or 1 percent by ordinance if enacted by a majority of the county's governing body and approved in a countywide referendum. Alternatively, the municipalities representing a majority of the county's population may adopt uniform resolutions calling for a countywide referendum. A county with a population that exceeds 50,000 may spend the proceeds to: finance, plan and construct infrastructure; acquire lands for public recreation or conservation or protection of natural resources; and, finance the closure of local government-owned solid waste landfills that are closed or are required to close by the Department of Environmental Protection. A county with a population of

¹ Section 212.055(2), F.S.

less than 50,000 as of April 1, 1992, may use the proceeds for any public purpose provided that certain conditions are met. A county may not combine the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care/Trauma Center Surtax, County Public Hospital Surtax, and the Voter Approved Indigent Care Surtax in excess of a combined rate of 1 percent.

All counties are eligible to levy the Local Government Infrastructure Surtax. Currently, 20 counties are levying the Local Government Infrastructure Sales Surtax at 1 percent, and 3 counties are levying it at the rate of 0.5 percent. Twenty counties are levying the Small County Surtax at the rate of 1 percent.² The proceeds of this surtax are distributed according to the terms of an interlocal agreement between the governing bodies of the county and the municipalities representing a majority of the county's municipal population or a school board with the consent of the county and the municipalities. If there is no interlocal agreement, the proceeds are distributed according to a statutory formula.

School Capital Outlay Surtax

The school districts may levy a School Capital Outlay Surtax up to 0.5 percent pursuant to a resolution that requires the approval of a majority of voters in a countywide referendum. Proceeds from this surtax must be expended on school-related capital projects, technology implementation, or the bond financing of those projects. The resolution must provide a plan for the use of the surtax. A school board implementing the tax must freeze the non-capital local school property taxes, at the rate imposed in the year prior to implementation of the surtax, for at least 3 years. Any school district is eligible to impose this surtax by resolution subject to voter approval. To date, Bay, Escambia, Flagler, Gulf, Hernando, Jackson, Leon, Manatee, Monroe, Orange, Polk, St. Lucie, Santa Rosa, and Volusia counties have levied this surtax.³

County Local Option Motor Fuel Tax

Section 336.025(1)(b), F.S., authorizes counties to impose a Local Option Fuel Tax, from 1 to 5 cents, by ordinance if approved by a majority plus one vote of the county commission or by referendum. Prior to levying this local option tax, the county may, through an interlocal agreement, establish a distribution formula for dividing the tax proceeds between the county and eligible municipalities. If a distribution formula is not established prior to the effective date of the tax, the proceeds will be distributed as provided by statute.

Counties and municipalities must spend any proceeds from the County Local Option Motor Fuel Tax on transportation expenditures necessary to meet the requirements of the capital improvements element in the applicable comprehensive plan; to remedy local transportation problems; and for critical expenditures needed to build comprehensive roadway networks. Such expenditures include the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads, but these funds cannot be expended on routine road maintenance. To date, 17 counties have levied this tax. Of those counties, 14 counties are levying the maximum 5-cent tax.⁴

² See Local Discretionary Sales Surtax Rates in Florida's Counties for 2004, Local Government Financial Information Handbook, Legislative Committee on Intergovernmental Relations, pg. 182-83 (Dec. 2003).

³ See *id.*

⁴ See 2004 Florida Tax Handbook, pg. 170.

Documentary Stamp Tax

Taxes on documentation of the recording or transfer of certain intangibles are levied by 39 states and the District of Columbia. Although most of these states levy documents recording taxes only on real estate, many, including Florida, have a more general tax levied on the transfer of deeds. In Florida, the documentary stamp tax levied under ch. 201, F.S., is actually two taxes imposed on different bases at different tax rates. Section 201.02, F.S., imposes the tax on deeds and other documents related to real property at the rate of 70 cents per \$100.⁵ Sections 201.07 and 201.08, F.S., impose the tax on certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements at a tax of 35 cents per \$100.⁶

Revenue from the documentary stamp tax is divided between the General Revenue Fund and various trust funds, primarily to acquire and manage public lands or support affordable housing. In FY 2003/04, the state will collect an estimated \$2.1 billion in documentary stamp tax revenue, with \$881 million going to the General Revenue Trust Fund.

Florida first enacted a documentary stamp tax in 1931, at the rate of 10 cents per \$100 of consideration. In 1957, the tax on documents relating to realty (mainly deeds) was raised to 20 cents, and the tax has been assessed at two separate rates on deeds and notes ever since. Major rate increases occurred in 1957, 1963, 1979, 1981, 1985, 1987, 1990, 1991, and 1992. In 1983, the Legislature authorized Miami-Dade County to levy a discretionary surtax on deeds of up to 45 cents for each \$100 except for deeds on single family residences.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3246, F.S., which governs the Local Government Comprehensive Plan Certification Program. These revisions change the focus of the program from recognizing a limited number of local governments, who have implemented exemplary planning practices, to a more accessible program that allows a local government with a demonstrated record of effectively implementing and enforcing its comprehensive plan to have less state oversight. A local government must submit the following with its application:

- A map of the certification area which designates an area appropriate for urban growth within a 10-year planning timeframe;
- A visioning plan, with enhanced public participation, to address certain issues;
- A record of effectively adopting, implementing, and enforcing its comprehensive plan;
- Demonstration of its technical, financial, and administrative expertise to implement its comprehensive plan without state oversight;
- Comments from regional and state agencies on the appropriateness of the certification area;

⁵ It is estimated that in FY 2004/05, the value of 1 cent levy for each \$100 of consideration on deeds will generate \$14.1 million. *See* 2004 FLORIDA TAX HANDBOOK, p. 50.

⁶ It is estimated that in FY 2004/05, the value of 1 cent levy for each \$100 of consideration on corporate shares, bonds, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements will generate \$21.1 million. *See* 2004 FLORIDA TAX HANDBOOK, p. 50.

- Demonstration of a commitment to change any land development regulations that restrict compact development and adopt codes that encourage desirable patterns of compact development;
- Demonstration of effective intergovernmental coordination in order to address the extrajurisdictional impacts of development in the certification area; and,
- Local mitigation strategies and programs to improve disaster preparedness if the applicant is a county. A municipality seeking certification must show it has participated in the working group developing the local mitigation strategies; and,
- Copies of the applicable local comprehensive plan, land development regulations, interlocal agreements, and other relevant information supporting the eligibility criteria.

Portions of local governments located within an area of critical state concern cannot be included in the certification area.

The Department of Community Affairs (department), referred to in the bill as the “state land planning agency,” must provide an initial response to the application within 90 days after receiving it. If the local government meets the eligibility criteria, the department will certify the local government by written agreement which is subject to final agency action. The bill also provides with rulemaking authority for the program. It allows the department to revoke the local government’s certification if it does not substantially comply with the terms of the agreement.

After a local government is certified, plan amendments within the certification are not subject to review by the department. However, an affected person, as defined by s. 163.3184(1)(a), F.S., may still challenge the compliance of an adopted plan amendment within the certification area. An application for development approval is exempt from development-of-regional-impact review. Certain types of amendments, as listed in subsection (10)(b), are still subject to plan amendment review by the department. The bill also provides for review of a local government’s certification as part of the evaluation and appraisal report process. The failure to adopt an evaluation and appraisal report or plan amendments based on the report shall be considered cause for revoking a local government’s certification. Finally, the bill requires the Office of Program Policy Analysis and Government Accountability to evaluate the certification program by December 1, 2007.

Section 2 amends s. 212.055, F.S., to allow the governing body of a county to levy the infrastructure sales surtax of 0.5 or 1 percent by a majority vote of the governing body. The bill maintains the language that currently allows the county to levy the surtax if requested by the municipalities representing a majority of the county’s population have adopted uniform resolutions and the levy is approved by referendum.

The bill allows the county to levy the school capital outlay surtax at a rate not to exceed 0.5 percent by a majority vote of the governing body of the county. It also maintains the language that allows the levy of this surtax by referendum.

Section 3 amends s. 336.025, F.S. to allow a county to levy a 1-cent to 5-cent local option motor fuel tax by majority vote. It maintains language that allows the levy of this local option tax if approved by referendum.

Section 4 creates s. 201.032, F.S., to allow counties to impose a real estate transfer surtax (tax) on deeds, under specified conditions.

Subsection (1) provides that subject to the restrictions in subsections (9) and (10), the governing authority of a county may levy a tax on deeds, as are taxed under s. 201.02, at a rate not exceeding 5 cents on \$100 of consideration. The seller is responsible to pay the tax.

Subsection (2) provides that the tax may be levied pursuant to an ordinance approved in a referendum or enacted by an extraordinary vote of the governing authority of the county. However, a public hearing on the issue must be held at least 2 weeks before the formal adoption of the ordinance.

Subsection (3) requires the county to notify the Department of Revenue (DOR) within 10 days after final adoption by ordinance or referendum of an imposition, termination, or rate change of the tax. The notice must specify the period during which the surtax will be in effect and the rate of the tax and must include a copy of the ordinance, and any other information as the department may require by rule. Failure to timely provide such notification to the department will result in the delay of the effective date of the tax for a period of 1 year. A surtax or an increase or decrease in the rate of the surtax must take effect on January 1 and must terminate on December 31.

Subsection (4) provides that if the tax is conditioned to take effect upon referendum approval, the county governing authority must place on the ballot a statement that includes a brief general description of the projects to be funded by the tax and that conforms to the requirements of s. 101.161, and this subsection.

Subsection (5) restricts the use of tax proceeds to the provision of infrastructure necessary to implement adopted local government comprehensive plans. "Infrastructure" is defined as "any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto."

Subsection (6) allows the tax proceeds to be pledged to pay principal and interest on bonds issued for the provision of this infrastructure. The county must continue to levy the surtax as long as any bonds are outstanding.

Subsection (7) requires DOR to administer the surtax pursuant to s. 201.11, F.S. Section 201.15, F.S., which subjects tax proceeds to the General Revenue Service Charge, does not apply to this tax. In addition, DOR may retain up to 1 percent of the tax proceeds to pay the department's cost of collection and enforcement.

Subsection (8) restricts using tax proceeds for operating costs. In addition, a county that levies a surtax must, within 90 days after the close of its fiscal year, submit to the Department of Financial Services a financial report that contains information showing the use of the tax proceeds.

Subsection (9) provides that if a county does not impose an impact fee and chooses to levy the tax authorized by this section, the county may not levy any impact fee until the ordinance imposing this tax has been rescinded and all obligations against which the surtax revenues have been pledged are satisfied.

Similarly, subsection (10) provides that if a county imposes this tax, the county may not increase the rate of any impact fee imposed as of January 1, 2003, and may not impose an additional impact fee until the ordinance imposing this tax has been rescinded and all obligations against which the surtax revenues have been pledged are satisfied.

Subsection (11) requires DOR to adopt forms to be used when the surtax is paid. At the time of recording, the clerk of the court must collect and remit the surtax proceed to the Department of Revenue for distribution to the county levying the surtax. The clerk is authorized to retain 1 percent of the surtax paid as a service charge.

Subsection (12) authorizes DOR to adopt emergency rules to implement and enforce the provisions of this act. These emergency rules will remain in effect until the adoption of permanent rules.

Subsection (13) provides that the surtax does not apply to a deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage if the property is or was their marital home. Furthermore, any surtaxes paid pursuant to this section must be refunded in those cases in which a deed, transfer, or conveyance occurred 1 year before a dissolution of marriage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

If all counties levied the real estate transfer surtax on deeds authorized by this bill, \$70.5 million could be raised statewide.

Also, this bill lowers the threshold for the levy of three local option taxes.

B. Private Sector Impact:

The conveyance of an interest in real property following July 1, 2005 is subject to the real estate transfer surtax authorized in this bill. In order to levy this surtax, the county must not increase its impact fee beyond the rate imposed on January 1, 2003. Thus, new construction in a county that levies the surtax will not be subject to increased impact fees.

C. Government Sector Impact:

The DOR will be required to administer the collection of the surtax, which will require adoption of forms to be used when the surtax is paid. The respective Clerks of Court must collect and remit the surtax proceeds to DOR for distribution to the county levying the surtax. DOR and the respective Clerks of Court are authorized to retain service charges to offset the costs of their responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
