

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 Community Affairs

BILL: CS/SB 786

INTRODUCER: Community Affairs Committee and Senator Latvala

SUBJECT: Discretionary Sales Surtaxes

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	White	Yeatman	CA	Fav/CS
3.			TR	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 786 allows a county to use the proceeds and interest from a duly adopted local government infrastructure surtax for operational and maintenance expenses related to infrastructure, provided such use is approved by a majority of the electors of the county voting in a referendum on the surtax. Infrastructure, under the bill, would include relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

This bill also authorizes a new discretionary sales surtax of up to one half of one percent for homeless services and facilities within the county through the adoption of an ordinance passed by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax.

The bill has an effective date of July 1, 2014.

II. Present Situation:

Local Discretionary Sales Surtaxes

In addition to the six percent state sales tax, the Florida Statutes authorize counties to charge discretionary sales surtaxes,¹ which must be specifically designated by statute.² Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes, which are the:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.³

Discretionary sales surtax applies to transactions when:

- The selling dealer delivers taxable goods or taxable service in or into a county with a surtax.
- The event for which an admission is charged is located in a county with a surtax. Tax is due at the rate in the county where the event takes place.
- The consumer of electric power or energy is located in a county with a surtax.
- The sale of prepaid calling arrangements occurs in a county with a surtax.
- The location or delivery of tangible personal property covered by a service warranty is within a surtax county. The person receiving consideration for the issuance of a service warranty from the agreement holder must collect surtax at the rate imposed by that county.
- The commercial real property that is leased or rented, or upon which a license for use is granted, is in a county with a surtax.
- The rental of living or sleeping accommodations (transient rentals) occurs in a county with a surtax.
- A registered dealer owing use tax on purchases or leases is in a county with a surtax.

Amount of Local Discretionary Sales Surtax, and Limitations

The amount of discretionary sales surtax depends on the county where the taxable goods or services are sold, or delivered. DOR lists the rates imposed on Form DR-15DSS.⁴ The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax.⁵ Charlotte and Hernando counties have local government sales surtaxes that are set to expire in December of 2014. Currently, the maximum surtax of 1.5 percent is imposed in nine counties.⁶

¹ The local discretionary sales surtax may also be known as a local option county sales tax. A surtax is an “additional tax imposed on something being taxed or on the primary tax itself.” BLACK’S LAW DICTIONARY 704 (3rd ed. 2006).

² Sections 212.054, 212.055, F.S.

³ Section 212.055(1)-(8), F.S.

⁴ New rates become effective January 1st each year. The form is updated yearly in November. See DOR, *Discretionary Sales Surtax Information for Calendar Year 2014* (Form DR-15DSS), available at http://dor.myflorida.com/dor/forms/current/dr15dss_1113.pdf (last visited Mar. 12, 2014).

⁵ Currently, twelve counties do not impose a discretionary surtax. *Id.*

⁶ *Id.* The following counties have a 1.5% surtax rate in 2014: Calhoun, Escambia, Gadsden, Jackson, Leon, Liberty, Madison, Monroe, and Walton.

Discretionary sales surtax applies to the first \$5,000 for transactions related to any item of tangible personal property.⁷ Tangible personal property is defined as “personal property that you can see, weigh, measure, or touch or is in any manner perceptible to the senses, including electric power or energy.”⁸ The \$5,000 cap does not apply to:

- Sales of admissions;
- Sales of warranties;
- Sales and uses of services;
- Charges for prepaid calling arrangements;
- Leases, rental, and licenses to use real property or transient accommodations;
- Leases or renting of parking or storage space for motor vehicles in parking lots or garages;
- Docking or storage space in boat docks and marinas; and
- Tie-down or storage space for aircraft.⁹

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax (surtax) is one of the surtaxes authorized by s. 212.055, F.S., which may be levied by the governing authority in each county after a favorable vote of the electorate through a local referendum.¹⁰ The sales tax rate may be 0.5 percent or 1.0 percent.¹¹ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population.¹²

Proceeds and accrued interest may be expended:¹³

- By school districts to finance, plan, and construct infrastructure;¹⁴
- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to commercial or residential property owners who make energy efficiency improvements, provided a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county or municipal solid waste landfills.

Proceeds and accrued interest may not be used for the operational expenses of infrastructure.¹⁵ The Attorney General (AG) has considered whether land improvement or design expenses could properly be purchased with the proceeds of this surtax. The AG determined that such items as fencing, swings, lumber for bleachers and lighting fixtures, and the materials for landscape design and tree and shrubbery planting would not be appropriate expenditures of surtax proceeds

⁷ Section 212.054(2)(b), F.S.

⁸ DOR, *Florida's Discretionary Sales Surtax*, available at <http://dor.myflorida.com/dor/forms/current/gt800019.pdf> (last visited Mar. 12, 2014).

⁹ Section 212.054(2)-(3), F.S.

¹⁰ Section 212.055(2)(a)1., F.S.

¹¹ However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent.

¹² Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

¹³ Section 212.055(2)(d), F.S.

¹⁴ Infrastructure is defined in Section 212.055(2)(d)1.a-e, F.S.

¹⁵ Except in certain circumstances involving landfill maintenance associated with closure, or county bond indebtedness.

because they are more in the nature of day-to-day operational expenses.¹⁶ However, land improvement or design expenses that occur in conjunction with a fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities, or an expenditure for such things as materials for landscape design may be purchased with the proceeds of the surtax when a new public facility is being built or an existing public facility is being improved. In 2012, the AG issued an opinion determining that a city would be authorized to use these surtax funds for a beach erosion control project, involving both the construction of fixtures and fixed equipment and also the studies, design, and planning involved in the construction of such capital projects.¹⁷

Seventeen counties currently levy the surtax. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Fifteen counties levy the surtax at the rate of 1 percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, and Wakulla. During the 2013-14 fiscal year, these counties received combined county revenues of \$618,621,561. During the 2014-15 fiscal year, these counties are expected to receive combined county revenues of \$650,171,261.¹⁸

The Homeless Population in Florida

According to the *2013 Report* prepared by the Florida Council on Homelessness, homelessness is a significant and growing concern in this state. The report noted that:

- Florida has the third largest homeless population in the nation and 8.7 percent of the nation's homeless people live in this state.
- Since 2007, Florida has registered the largest increase of homeless people.
- Approximately 7,107 more residents were homeless in 2012 than in 2007, an increase of 14.8 percent in the state while the national average decreased by 5.7 percent.
- Families with children is the fastest growing demographic of the homeless population.
- In the 2011-2012 school year, the state's school districts identified 63,685 students as homeless children and youth, which represents a 12 percent increase from the previous school year.
- Of the children and youth identified as homeless, 6,798 or 11 percent were classified as "unaccompanied youth," or not in the physical custody of a parent or guardian.¹⁹

The Council on Homelessness and the State Office on Homelessness

The Council on Homelessness (council) and the State Office on Homelessness (SOH) were created in 2001 within the Department of Children and Families (DCF).²⁰ The council comprises

¹⁶ Op. Att'y Gen. Fla. 94-79 (1994).

¹⁷ Op. Att'y Gen. Fla. 2012-19 (2012).

¹⁸ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (2014).

¹⁹ Florida Council on Homelessness, *Council on Homelessness: 2013 Report*, www.myflfamilies.com/service-programs/homelessness. (June 30, 2013). Some of the data in the report was drawn from the *2012 Annual Homeless Assessment Report, Volume I*, issued by the U.S. Department of Housing and Urban Development.

²⁰ Chapter 2001-98, Laws of Fla.

17 representatives of state agencies, counties, homeless advocacy organizations, and volunteers.²¹ The council is to develop policy and advise the SOH.²²

The SOH coordinates state agency responses to homelessness, serves as a single point of contact on homeless issues in the state, and administers state-funded grant programs that support the activities of the 27 local homeless coalitions.²³ The SOH administers all homelessness grants through lead agencies. The lead agency has the responsibility for continuum of care plans that help communities or regions envision, plan, and implement comprehensive and long-term solutions to the problem of homelessness.²⁴ Lead agencies are also authorized applicants for the Challenge Grant and the Homeless Housing Assistance Grant.

Emergency Financial Assistance Program

The Emergency Financial Assistance Program (EFA) is a grant program that provides support to families with at least one minor child, currently without shelter, or facing the loss of shelter because of the following:²⁵

- Nonpayment of rent or mortgage resulting in eviction or notice of eviction;
- Household disaster that renders the home uninhabitable; or
- Other emergency situations defined in rule.

Families may receive up to \$400 during one period of 30 consecutive days in any 12 consecutive months.²⁶ DCF serves approximately 2,000 families a year under EFA.

Homeless Housing Assistance Grants

This state grant program provides homeless housing assistance grants up to \$750,000 annually to lead agencies to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.²⁷ Administrative costs are capped at five percent of the funds awarded.²⁸

Challenge Grant

This program provides grants of up to \$500,000 to lead agencies who have developed and implemented a local homeless assistance continuum of care plan. The plan must detail how outreach, emergency shelter, support services, and permanent shelter will be provided in the area.²⁹ The state currently has 28 local homeless continuum of care planning areas that receive state grants. Currently, state law does not provide for a limit on the use of grant funds for administrative costs incurred by lead agencies.

²¹ Section 420.622, F.S.

²² *Id.*

²³ *Id.*

²⁴ Section 420.642, F.S.

²⁵ Section 414.16, F.S.

²⁶ Rule 65A-33.011, F.A.C.

²⁷ Section 420.622, F.S.

²⁸ *Id.*

²⁹ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 212.055(2)(d), F.S., to allow for the use of the proceeds or interest accrued from the levy of a local government infrastructure surtax for the maintenance expenses of infrastructure, if the local government ordinance authorizes such use and it is approved by a referendum. The bill also expands the definition of infrastructure to include fixed capital outlays for relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

The bill creates s. 212.055(9), F.S., to add a ninth discretionary sales surtax, known as the Homeless Services and Facilities Surtax, authorizing a county to levy up to 0.5 percent for homeless services and facilities within the county. The bill:

- Defines the terms “homeless facilities” and “homeless services;”
- Requires the surtax be adopted by county ordinance and approved by a majority of electors of the county voting in a referendum held for such purpose;
- Requires that the referendum be placed on the ballot of a regularly scheduled election;
- Requires the governing body of the county to place on the ballot a statement that includes a brief description of the purposes to be funded by the surtax;
- Requires the statement placed on the ballot to conform to requirements set forth in Section 101.161, F.S.; and
- Requires the ordinance to include a plan for the provision of services to qualified homeless residents.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If a county ordinance is approved to levy the Homeless Services and Facilities Surtax, sales tax would increase by up to 0.5 percent.

C. Government Sector Impact:

The bill would allow local governments that levy the Local Government Infrastructure Surtax to expend proceeds and interest on the maintenance expenses of infrastructure, for relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

The bill has not yet been reviewed by the Revenue Estimating Conference to determine the revenue impact on state and local government, if any.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 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.)

CS by Community Affairs on March 19, 2014:

- Allows the use of proceeds and interest from the surtax for maintenance expenses of infrastructure, if approved by referendum; and
- Expands the definition of infrastructure to include fixed capital outlays for relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

B. Amendments:

None.