

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1297 Discretionary Sales Surtaxes
SPONSOR(S): State Affairs Committee; Cummings and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	15 Y, 1 N	Aldridge	Langston
2) State Affairs Committee	16 Y, 2 N, As CS	Moore	Camechis

SUMMARY ANALYSIS

The bill provides that a county, upon approval by a majority vote of the electors of the county, may levy a pension liability discretionary sales surtax, at a rate not to exceed 0.5 percent, to fund underfunded defined benefit plans or systems. A county may not impose a Pension Liability Surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The surtax may be imposed only if:

- An employee who enters employment on or after a specified date is prohibited from enrolling in a defined benefit retirement plan or system that will receive surtax proceeds.
- The county currently levies a Local Government Infrastructure Surtax that is scheduled to terminate and is not subject to renewal.
- The Pension Liability Surtax does not take effect until the Local Government Infrastructure Surtax is terminated.

The bill prohibits a county from levying a combined rate in excess of one percent for the Pension Liability Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax.

The Revenue Estimating Conference has not estimated the potential revenue impact of the bill on state and local government. However, staff estimates the revenue impact of the bill is zero on state government and positive indeterminate on local governments. The impact is indeterminate because it requires future county governing board action and voter approval.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Discretionary Sales Surtaxes

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.¹ A discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax does not apply to the sales price above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

The eight authorized discretionary sales surtaxes and their maximum rates are:

- Charter County and Regional Transportation System Surtax, 1 percent
- Emergency Fire Rescue Services and Facilities Surtax, 1 percent
- Local Government Infrastructure Surtax, 1 percent
- Small County Surtax, 1 percent
- Indigent Care and Trauma Center Surtax, 0.5 percent
- County Public Hospital Surtax, 0.5 percent
- School Capital Outlay Surtax, 0.5 percent
- Voter-Approved Indigent Care Surtax, 1 percent

Every county is eligible to levy the School Capital Outlay Surtax and Local Government Infrastructure Surtax; the other surtaxes have varying requirements. Section 212.055, F.S., further provides caps on the combined rates. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility. Several counties have imposed a combined surtax rate of 1.5 percent, which is currently the highest combined rate.² However, the theoretical maximum combined rate ranges from 1.5 percent to 3.5 percent, depending on the specifics of each individual county.³

Section 212.054, F.S., requires any increase or decrease in a discretionary sales surtax to take effect on January 1.

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax is one of the surtaxes authorized by s. 212.055, F.S., and may be levied by the governing authority in each county after a favorable vote of the electorate through a local referendum.⁴ The rate imposed may be 0.5 percent or 1.0 percent.⁵ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the

¹ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

² See Department of Revenue Form DR-15 DSS, "Discretionary Sales Surtax Information," available at http://dor.myflorida.com/Forms_library/current/dr15dssr15.pdf (last visited Feb. 4, 2016).

³ See Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 158-59 (2016), available at <http://edr.state.fl.us/Content/local-government/reports/lgfih15.pdf>.

⁴ Section 212.055(2)(a)1., F.S.

⁵ 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.

county's governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population.⁶

Proceeds and accrued interest may be expended for any of the following purposes:⁷

- By school districts to finance, plan, and construct infrastructure;⁸
- 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.

Eighteen counties currently levy the surtax. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Sixteen 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, Seminole, and Wakulla. During the 2016-17 fiscal year, these counties are expected to receive combined county revenues of \$748,024,282.⁹ Counties are not allowed to levy a combination of the Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax in excess of a combined rate of 1 percent.

Retirement Plans

Retirement plans are classified as either defined benefit or defined contribution plans. A defined benefit plan promises a specified monthly benefit at retirement. The plan may state this promised benefit as an exact dollar amount, such as \$100 per month at retirement. Alternatively, it may calculate a benefit through a plan formula that considers such factors as salary and service; for example, 1 percent of average salary for the last 5 years of employment for every year of service with an employer.¹⁰

A defined contribution plan does not promise a specific amount of benefits at retirement. In these plans, the employee or the employer (or both) contribute to the employee's individual account under the plan, sometimes at a set rate, such as 5 percent of earnings annually. These contributions generally are invested on the employee's behalf. The employee will ultimately receive the balance in his or her account, which is based on contributions plus or minus investment gains or losses. The value of the account will fluctuate due to the changes in the value of the investments. Examples of defined contribution plans include 401(k) plans, 403(b) plans, employee stock ownership plans, and profit-sharing plans.¹¹

Actuarial Soundness of Retirement Systems

Part VII of Chapter 112, F.S., governs the actuarial soundness of governmental retirement systems.¹² The intent of this part is to ensure that governmental retirement systems or plans are "managed,

⁶ Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county's governing authority and the governing bodies of the municipalities.

⁷ Section 212.055(2)(d), F.S.

⁸ Infrastructure is defined in ss. 212.055(2)(d)1.a-e, F.S.

⁹ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (2016), available at <http://edr.state.fl.us/Content/local-government/reports/lgfi15.pdf>.

¹⁰ United States Department of Labor, *Types of Retirement Plans*, <http://www.dol.gov/general/topic/retirement/typesofplans> (last visited Feb. 5, 2016).

¹¹ *Id.*

¹² Section 112.625(1), F.S., defines a "retirement system or plan" as any employee pension benefit plan supported in whole or in part by public funds, provided such plan is not:

(a) An employee benefit plan described in s. 4(a) of the Employee Retirement Income Security Act of 1974, which is not exempt under s. 4(b)(1) of such act;

(b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(c) A coverage agreement entered into pursuant to s. 218 of the Social Security Act;

(d) An individual retirement account or an individual retirement annuity within the meaning of s. 408, or a retirement bond within the meaning of s. 409, of the Internal Revenue Code of 1954;

(e) A plan described in s. 401(d) of the Internal Revenue Code of 1954; or

administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits.”¹³ The part establishes minimum standards for the operation and funding of public employee retirement systems and plans.¹⁴ The provisions of part VII are applicable to “any and all units, agencies, branches, departments, boards, and institutions of state, county, special district, and municipal governments which participate in, operate, or administer a retirement system or plan for public employees, funded in whole or in part by public funds.”¹⁵ Each retirement system or plan under part VII must have regularly scheduled actuarial reports prepared and certified by an enrolled actuary.¹⁶ The actuarial report must include, but is not limited to, the following:¹⁷

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system, which must include a valuation of present assets, based on statement value, and prospective assets and liabilities of the system and the extent of unfunded accrued liabilities, if any.
- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability.
- A description and explanation of actuarial assumptions.
- A schedule illustrating the amortization of unfunded liabilities, if any.
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports.
- The mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System, including the projection scale for mortality improvement. Appropriate risk and collar adjustments must be made based on plan demographics. The tables must be used for assumptions for preretirement and postretirement mortality.
- A statement by the enrolled actuary that the report is complete and accurate and that in his or her opinion the techniques and assumptions used are reasonable and meet the requirements and intent of the act.

Section 112.64, F.S., governs the amortization of unfunded liability for such retirement systems or plans. For those plans in existence on October 1, 1980, the total contributions to the retirement system or plan must be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, this requirement does not permit a retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.¹⁸ For a retirement system or plan that comes into existence after October 1, 1980, the unfunded liability, if any, must be amortized within 40 years of the first plan year.¹⁹ The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses must be amortized within 30 plan years.²⁰

Effect of the Proposed Changes

Local Discretionary Sales Surtaxes

The bill amends s. 212.055, F.S., authorizing the governing body of a county to levy a Pension Liability Surtax, at a rate that may not exceed 0.5 percent, to fund underfunded defined benefit retirement plans or systems, pursuant to an ordinance conditioned to take effect upon approval by a majority vote of the electors of the county voting in a referendum. The county may not impose a Pension Liability Surtax

(f) An individual account consisting of an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954.

¹³ Section 112.61, F.S.

¹⁴ *Id.*

¹⁵ Section 112.62, F.S.

¹⁶ Section 112.63(1), F.S.

¹⁷ *Id.*

¹⁸ Section 112.62, F.S.

¹⁹ Section 112.63, F.S.

²⁰ Section 112.64, F.S.

unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63, F.S., must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may only impose the surtax if:

- An employee, including a police officer or firefighter, who enters employment on or after the date when the local government certifies that the defined benefit retirement plan or system formerly available to such an employee has been closed is prohibited from enrolling in a defined benefit retirement plan or system that will receive surtax proceeds.
- The county currently levies a Local Government Infrastructure Surtax pursuant to s. 212.055(2), F.S., which is scheduled to terminate and is not subject to renewal.
- The Pension Liability Surtax does not take effect until the Local Government Infrastructure Surtax is terminated.

The bill specifies that a referendum to adopt a Pension Liability Surtax must meet the requirements of s. 101.161, F.S., and must include a brief and general description of the purposes for which the surtax proceeds will be used. Section 101.161, F.S., requires the public measure to include a ballot summary that is printed in clear and unambiguous language on the ballot. The ballot summary must be an explanatory statement of the chief purpose of the measure and may not exceed 75 words in length.

The bill provides that pursuant to s. 212.054(4), F.S., the proceeds of the surtax collected under the newly created s. 212.055(9), F.S., less an administrative fee that may be retained by the Department of Revenue (DOR), must be distributed by the DOR to the local government. The local government may use the proceeds in the following manner:

- If the proceeds of the Pension Liability Surtax have been actuarially recognized, the local government must distribute the proceeds to an eligible defined benefit retirement plan or system, not including the Florida Retirement System.
- If the proceeds of the Pension Liability Surtax have not been actuarially recognized, the local government is authorized to distribute the proceeds to an eligible defined benefit plan or system, not including the Florida Retirement System, to pledge the proceeds of the surtax to repay debts incurred for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system, and to reimburse itself from the proceeds of the surtax for any borrowing costs associated with such debts.

The bill requires an ordinance providing for the imposition of the Pension Liability Surtax to specify how the proceeds will be used. The ordinance must:

- Specify the method of determining the percentage of the proceeds, and the frequency of such payments, distributed to each eligible defined benefit retirement plan or system if the proceeds of the Pension Liability Surtax are actuarially recognized.
- Specify the local government's intention to incur debt for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system if the proceeds of the Pension Liability Surtax are not actuarially recognized.

The bill specifies that, notwithstanding s. 212.054(5), F.S., a Pension Liability Surtax must terminate on December 31 of the year in which the actuarial funding level is expected to reach or exceed 100 percent for the defined benefit retirement plan or system for which the surtax was levied or on December 31, 2060, whichever occurs first. The most recent actuarial report submitted to the Department of Management Services must be used to establish the level of actuarial funding.

The bill prohibits a county from levying a combined rate in excess of one percent for the Pension Liability Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax.

Actuarial Soundness of Retirement Systems

The bill amends s. 112.64, F.S., to provide that the proceeds of a Pension Liability Surtax imposed by a county pursuant to s. 212.055, F.S., which is levied for the purpose of funding or amortizing the

unfunded liability of a defined benefit retirement plan or system, excluding the Florida Retirement System, must be actuarially recognized. The bill specifies that the county must apply the present value of the total projected proceeds of the surtax to reduce the unfunded liability or to amortize it as part of the county's annual required contribution, beginning with the fiscal year immediately following approval of the Pension Liability Surtax. The unfunded liability amortization schedule must be adjusted beginning with the fiscal year immediately following approval of the Pension Liability Surtax and amortized over a period of 30 years.

The bill also amends s. 112.64, F.S., to provide that the payroll of all employees covered by a closed retirement plan or system that receives funds from the Pension Liability Surtax must be included in determining the unfunded liability amortization schedule for the closed plan, regardless of the plan in which the employees currently participate, and the payroll growth assumption must be adjusted to reflect the payroll of those employees when calculating the amortization of the unfunded liability.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.64, F.S., specifying how the proceeds of the newly created Pension Liability Surtax must be recognized and amending how the unfunded liability amortization schedule must be adjusted.

Section 2. Creates s. 212.055(9), F.S., allowing a pension liability discretionary sales surtax under specified conditions.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the potential revenue impact of the bill on local government. However, staff estimates the revenue impact of the bill is positive indeterminate. The impact is indeterminate because imposing the surtax requires future county governing board action and voter approval.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 10, 2016, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Clarified the administration of the Pension Liability Surtax;
- Explicitly authorized a local government to borrow against surtax proceeds to make advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system;
- Required the Pension Liability Surtax to terminate on December 31, 2060, even if the actuarial funding level for the defined benefit retirement plan or system for which the surtax was levied does not reach or exceed 100 percent; and
- Prohibited a county from levying a combined rate in excess of one percent for the Pension Liability Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent and Trauma Center Surtax, and the County Public Hospital Surtax.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.