

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: SB 346

INTRODUCER: Senator Altman

SUBJECT: Local Government Infrastructure Surtax

DATE: November 30, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 346 provides that a county may levy a discretionary sales surtax of 0.5 percent or 1 percent for the purpose of funding capital restoration of natural water bodies for public use, including tributaries, canals, stormwater conveyance systems, and channels connected to natural water bodies. The proceeds and interest from the surtax, or from the bonds pledging the surtax, may be used only for dredging operations related to ecologically beneficial muck removal. The surtax must be enacted by ordinance and approved by a referendum.

The bill does not increase or decrease government revenue.

II. Present Situation:

Local Discretionary Sales Surtaxes

In addition to the 6 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, including the Local Government Infrastructure Surtax.

A discretionary sales surtax applies to transactions if:³

- 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.

¹ A 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 and 212.055, F.S.

³ Florida Department of Revenue, *Florida’s Discretionary Sales Surtax*, 2, http://dor.myflorida.com/Forms_library/current/gt800019.pdf (last visited Oct. 28, 2015).

- 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 county with a surtax. 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 located in a county with a surtax.

Local Government Infrastructure Surtax

The Local Government Infrastructure 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 majority vote of the electorate through a local referendum.⁴ The surtax may be levied at 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 county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, or if there is no interlocal agreement, according to the formula in s. 218.62, F.S.⁶

The proceeds of the surtax must be expended only to:

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or
- Finance the closure of county-owned or municipally-owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.⁷

Counties are also authorized to use surtax proceeds for other purposes under certain circumstances. Proceeds and accrued interest may not be used for the operational expenses of infrastructure.⁸ 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 because they are more in the nature of day-to-day operational expenses.⁹

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. Section 212.055(2)(h), F.S.

⁶ 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.

⁷ Section 212.055(2)(d), F.S.

⁸ Except in certain circumstances involving landfill maintenance associated with closure, or county bond indebtedness.

⁹ Op. Att'y Gen. Fla. 94-79 (1994).

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.¹⁰

While all counties are authorized to levy the surtax, only 18 counties currently do so. 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 2015-2016 fiscal year, these counties are expected to receive combined county revenues of \$691,831,985.¹¹ Because 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, Flagler and Miami-Dade are eligible to levy the surtax in the amount of 0.5 percent. Only an additional 19 counties are eligible to levy the surtax in the amount of 1 percent.

III. Effect of Proposed Changes:

The bill amends s. 212.055, F.S., to provide that the governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent for the purpose of funding capital restoration of natural water bodies for public use. Proceeds and interest from the surtax, or from the bonds pledging the surtax for such use, may be spent only for dredging operations related to ecologically beneficial muck removal. The surtax must be enacted by ordinance and approved by a referendum.

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Op. Att’y Gen. Fla. 2012-19 (2012).

¹¹ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, pg. 226 (2015).

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

The bill does not directly increase government revenue.

B. Private Sector Impact:

The bill does not directly impact the private sector, but if a county approves the surtax by referendum, it will increase the tax rate on transactions in the county.

C. Government Sector Impact:

The bill does not provide additional taxing authority, but allows counties to use surtax proceeds for an additional purpose.

In their analysis of a similar bill from 2015, SB 198, the Department of Revenue determined there would be no impact on the department.

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.)

None.

B. Amendments:

None.