

ch. 202, F.S.¹ The local discretionary rate varies from county to county, depending on the levies authorized within each jurisdiction. Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sale and use tax.

The seven types of discretionary sales surtax are: charter county transit system surtax, local government infrastructure surtax, small county surtax, indigent care and trauma center surtax, county public hospital surtax, school capital outlay surtax, and voter-approved indigent care surtax.²

Local Discretionary Sales Surtaxes – Administration

The Department of Revenue is charged with administering, collecting, and enforcing local discretionary sales surtaxes, which must be enacted by an ordinance adopted by the governing body of the county levying the surtax. No initial levy or rate increase or decrease may take effect on a date other than January 1, and no levy may terminate on a date other than December 31.³ Not later than 10 days after the adoption of a levy by ordinance or a referendum, but no later than the November 16th prior to the January 1 effective date, the governing body must notify the department of the imposition of the levy. Failure to comply will result in a one-year delay in the effective date of the levy.⁴

The proceeds of each county's discretionary sales surtax collections are transferred to the Discretionary Sales Surtax Clearing Trust Fund, and a separate account within the trust fund must be established for each county imposing the surtax.⁵ The department is authorized to take an administrative cost deduction of not more than 3 percent of the total surtax revenues generated by all levying counties, and administrative costs are prorated among the counties that levy the tax based on the amount collected in each county. The department may use the deduction exclusively for administrative costs solely and directly related to the surtax.⁶

III. Effect of Proposed Changes:

The bill amends s. 212.055, F.S., to authorize the governing authority of a county to adopt an ordinance imposing a new discretionary sales surtax of up to 1 percent for emergency fire rescue services and facilities. The term "emergency fire rescue services" includes preventing and extinguishing fires, protecting and saving life and property from fires or natural or intentional acts or disaster, enforcing fire prevention codes and laws pertaining to the fire prevention and control, and providing prehospital emergency medical treatment.

¹ Information in this portion of the bill analysis is obtained from the *2008 Local Government Financial Information Handbook* prepared by the Legislative Committee on Intergovernmental Relations, 153-173 (Sept. 2008), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih08.pdf>.

² Section 212.055, F.S.

³ Section 212.054(5), F.S.

⁴ Section 212.054(7), F.S.

⁵ Section 212.054(4)(b), F.S.

⁶ *Id.*

If the surtax is authorized, the county governing authority must develop an interlocal agreement to be executed with participating jurisdictions – including municipalities, dependent special districts, independent special districts, or municipal service taxing units providing emergency fire and rescue services within the county. The interlocal agreement must include a majority of the service providers in the county.

Further, once a county governing authority has adopted an ordinance, and after an interlocal agreement has been entered into, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The surtax will take effect if approved by a majority of the electors of the county voting in the referendum. The interlocal agreement is a condition precedent to holding the referendum.

After the levy of the surtax has been approved by referendum, the following conditions must be met:

- The Department of Revenue must administer, collect, and enforce the surtax as required under s. 212.054(4), F.S.;
- The surtax, less the department's costs of administration, must be distributed by the county to the participating jurisdictions. The county imposing the surtax may charge an administrative fee for receiving and distributing the surtax, provided that the fee equals the costs incurred and does not exceed 2 percent of the surtax collected;
- The appropriate portions of proceeds must be distributed to the participating jurisdictions under the interlocal agreement;
- The interlocal agreement shall only specify:
 - That surtax proceeds shall be:
 - Distributed to all parties to the interlocal agreement based on the actual surtax amounts collected within each participating jurisdiction as determined by the Department of Revenue's population allocation; or
 - If a county has special fire control and rescue districts within its boundaries, distributed among the county and each participating municipality or district based on each entity's expenditure of ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue services in each of the immediately preceding 5 years in proportion to the total expenditures for all participating entities; and
 - That a service provider who provides services on a long-term basis to another jurisdiction is entitled to compensation for services from the requesting jurisdiction's share of surtax proceeds.

After the surtax is in effect and collections have begun, a county and any participating jurisdiction entering into an interlocal agreement must reduce the ad valorem tax levy or any non-ad valorem assessments for fire control and emergency rescue services in the next and subsequent budgets by the estimated amount of surtax revenues.

The use of surtax proceeds does not relieve any local government from complying with the provisions of ch. 200, F.S., and any related provisions of law that establish millage caps or limit undesignated budget reserves and procedures for establishing rollback rates for ad valorem taxes and budget adoption. In any year that surtax collections exceed the estimated collections, the

surplus shall be used to further reduce ad valorem taxes in the next year. These proceeds shall be applied as a rebate to the final millage, after the TRIM notice is completed in accordance with this provision.

Municipalities, special fire control and rescue districts, and contract service providers that do not enter into an interlocal agreement are not eligible to receive a portion of the surtax proceeds collected and are not required to reduce ad valorem taxes or non-ad valorem assessments.

The provisions for distribution of surtax proceeds specified in this act do not apply if:

- A jurisdiction is prohibited, by an interlocal agreement, from providing the same level of service for prehospital emergency medical treatment within the prohibited participating jurisdiction's boundaries; or
- The county has issued a certificate of public convenience and necessity or its equivalent to a county department or dependent special districts of the county.

Following approval of the levy in a referendum, surtax collections must be initiated on January 1 of the year following a successful referendum in order to coincide with s. 212.054(5), F.S.

The bill provides an effective date of July 1, 2009.

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:

This bill allows for the imposition of a discretionary sales surtax of up to 1 percent if an ordinance is adopted by a county governing authority and the levy of the tax is approved by a majority of the voters in the county voting in a referendum. Subsequent to approval, ad valorem taxes and non-ad valorem assessments for emergency fire rescue services must be reduced by the amount of the tax collected.

B. Private Sector Impact:

Residents of a county where the referendum is approved will see a reduction in ad valorem taxes and non-ad valorem assessments for emergency fire rescue services and will pay a higher sales tax rate.

C. Government Sector Impact:

The Department of Revenue reported non-recurring operating expenses of \$243,860 to administer provisions of this legislation, assuming that all 67 counties would adopt the surtax within the state's 2009-2010 fiscal year, including:

- Approximate cost of printing and mailing of a tax information publication to all sale and use tax dealers of \$237,860;
- Minimal impact on the SUNTAX Project Office⁷ to implement the bill in the form of 60 contract hours (\$6,000) and 120 in-house hours to accommodate the necessary modifications, which include adjusting the distribution programs; modifying the SUNTAX Business Warehouse distribution reporting; new posting, analysis and testing; and other business rules definitions, coding, configuration, and testing.⁸

The bill authorizes the department, once a sales surtax is implemented, to exact an administrative deduction from the proceeds of the tax.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 212.055, F.S., provides for several restrictions on the levy of surtaxes in excess of combined rates:

- A county may not levy the local government infrastructure, small county, indigent care and trauma center, and county public hospital surtaxes in excess of a combined rate of 1 percent (ss. 212.055(2)(h) and (3)(f), F.S.).
- A county may not levy the local government infrastructure, small county, and county public hospital surtaxes in excess of a combined rate of 1 percent (s. 212.055(5)(f), F.S.).
- A county may not levy the voter-approved indigent care, local government infrastructure, and small county surtaxes in excess of a combined rate of 1 percent, except that a county with a publicly supported medical school within its jurisdiction or a county with a population of fewer than 50,000 residents may levy a combined rate of not more than 1.5 percent (s. 212.055(7)(f), F.S.).

⁷ The SUNTAX project is the Department of Revenue's unified tax accounting computer system.

⁸ Fla. Dept. of Revenue, *Fiscal Impact Analysis – 2009 Session, SB 1000*, Feb. 19, 2009 (on file with the Committee on Judiciary).

The emergency fire rescue services and facilities surtax proposed under this bill is not included in these restrictions.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 6, 2009:

Through its principal changes, the committee substitute:

- Eliminates the requirement for a county imposing the surtax to designate an Interlocal Agreement Facilitator, and instead directs the governing body of the county to develop and execute the required interlocal agreement;
- Specifies that the administrative fee a county may charge for receiving and distributing the surtax is based on the amount of actual costs incurred but may not exceed 2 percent of surtax collections; and
- Specifies that a jurisdiction that does not participate in the surtax interlocal agreement is not required to reduce ad valorem taxes or non-ad valorem assessments.

CS by Military Affairs and Domestic Security on March 26, 2009:

The committee substitute:

- Substitutes an Interlocal Agreement Facilitator designated by the county in place of the regional service provider and deletes the requirement that the regional service provider be the county government or unit of local government that funds emergency fire rescue service through ad valorem taxes;
- Deletes the requirement that any county with a population of 1 million or greater must enter into an interlocal agreement with county municipalities. Instead the interlocal agreement shall only include a majority of the service providers in the county;
- Clarifies that a service provider who provides services on a long-term basis to another jurisdiction is entitled to compensation; and
- Provides that any excess collected surtax proceeds be applied as a rebate to the final millage in the next fiscal year.

B. Amendments:

None.