

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 365 Discretionary Sales Surtaxes  
**SPONSOR(S):** Economic Development & Community Affairs Policy Council, Military & Local Affairs Policy Committee, Hooper and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1000

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Military & Local Affairs Policy Committee	11 Y, 1 N, As CS	Noriega	Hoagland
1)	Economic Development & Community Affairs Policy Council	10 Y, 4 N, As CS	Noriega	Tinker
2)	Finance & Tax Council			
3)				
4)				
5)				

**SUMMARY ANALYSIS**

Current law allows counties to levy seven discretionary sales surtaxes and codifies all authorizations to impose these surtaxes. This bill authorizes certain counties to levy, by ordinance, an eighth discretionary sales surtax of up to 1 percent for emergency fire rescue services and facilities if such surtax is approved by a majority of the electors of the county voting in a referendum held for such purpose.

This proposed surtax is called the “Emergency Fire Rescue Services and Facilities Surtax,” and may be imposed by counties that adopt an ordinance, enter into an interlocal agreement, and hold a referendum for approval.

This bill also provides a distribution formula for the discretionary surtax proceeds from the county to the participating jurisdictions that have entered into an interlocal agreement with the county. Once the surtax takes effect and collections have begun, this bill requires the county and any participating jurisdictions to reduce ad valorem and non-ad valorem taxes levied for fire control and emergency rescue services in the next and subsequent budgets by the estimated amount of surtax revenues.

The Revenue Estimating Conference has determined that the provisions of this bill would have no revenue impact on state government and an indeterminate positive fiscal impact on local governments.

The Department of Revenue has indicated that this bill would have an implementation cost to the state of approximately \$243,860 in fiscal year 2009-10.

This bill has an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Article VII, section 9 of the Florida Constitution generally limits the annual millage rates that may be levied by counties and municipalities to 10 mills (or 1 percent) of ad valorem tax on the taxable value of property within their jurisdiction.<sup>1</sup>

Section 212.055, F.S., allows counties to levy seven different types of local discretionary sales surtaxes (also referred to as "local option taxes"). These surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S.<sup>2</sup>

##### Local Discretionary Sales Surtaxes<sup>3</sup>

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

The seven local discretionary sales surtaxes are as follows:

- Charter County Transit System;
- Local Government Infrastructure;
- Small County;
- Indigent Care and Trauma Center;

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<sup>1</sup> A rate of one mill may be expressed as follows: 1 mill = 0.1 cent or \$0.001; \$1 per \$1,000; or 0.1%.

<sup>2</sup> Section 212.054(2), F.S.

<sup>3</sup> Most of the information in this section is from the "2008 Local Government Financial Information Handbook," prepared by the Legislative Committee on Intergovernmental Relations, September 2008, pp. 153-173.

- County Public Hospital;
- School Capital Outlay; and
- Voter-Approved Indigent Care.

Not all counties are eligible to impose each of these seven surtaxes. Also, while the array of levies for discretionary sales surtaxes varies from county to county, the maximum potential county levy rate for these surtaxes is currently 2 percent, which currently applies to seven charter counties in Florida.<sup>4</sup>

The following table summarizes the seven current local discretionary surtaxes, along with other relevant information about their associated levies:

<u>Local Discretionary Tax</u>	<u>Authorized Rate of Maximum Levy</u>	<u>Number of Counties Authorized</u>	<u>Number of Counties Levying</u>
Charter County Transit System	Up to 1 percent (for charter counties only)	7	2
Local Government Infrastructure	0.5 percent <u>or</u> 1 percent	67	20
Small County	0.5 percent <u>or</u> 1 percent	31	28
Indigent Care and Trauma Center	Up to 0.5 percent	65	1
County Public Hospital	0.5 percent	1	1
School Capital Outlay	Up to 0.5 percent	67	15
Voter-Approved Indigent Care	Up to 0.5 percent <u>or</u> up to 1 percent	60	3

At present, some local governments use ad valorem taxes to fund emergency fire rescue services and facilities. Other local governments fund emergency fire rescue services and facilities through special assessments or various service charges or fees.

The Department of Revenue’s Role

Section 212.054, F.S., provides for the distribution of the proceeds from discretionary sales surtaxes. The Department of Revenue (DOR) is charged with administering, collecting, and enforcing local discretionary sales surtaxes,<sup>5</sup> which must be enacted by an ordinance adopted by the governing body of the county levying

<sup>4</sup> Section 212.055, F.S., provides that the charter counties eligible to levy the Charter County Transit System Surtax are those counties that adopted a charter prior to January 1, 1984, and those that are consolidated with one or more municipalities. The seven counties that meet these requirements are as follows: Broward, Duval, Hillsborough, Miami-Dade, Pinellas, Sarasota, and Volusia. The 13 charter counties not eligible to levy this tax are as follows: Alachua, Brevard, Charlotte, Clay, Columbia, Lee, Leon, Orange, Osceola, Palm Beach, Polk, Seminole, and Wakulla.

<sup>5</sup> Section 212.054(4)(a), F.S.

the surtax.<sup>6</sup> 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 day other than December 31.<sup>7</sup>

The governing body of any county or school board that levies a surtax must notify the DOR within 10 days after the final adoption by ordinance or referendum of an imposition, termination, or rate change. The DOR must receive this notice no later than November 16 prior to the January 1 effective date. In addition, the notice must specify the rate as well as the time period during which the surtax will be in effect and must include a copy of the ordinance and such other information required by departmental rule. Failure to timely provide such notification to the DOR will result in the delay of the effective date for a period of one year.<sup>8</sup>

Section 212.054(4)(b), F.S., provides that the proceeds of each county's discretionary sales surtax collections must be 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. DOR is authorized to take an administrative cost deduction of not more than 3 percent of the total surtax revenues generated by all levying counties. This administrative cost deduction must be used only for those costs solely and directly attributable to the surtax, and these costs must be prorated among those counties levying the surtax on the basis of the amount collected for a particular county to the total amount collected for all counties.

The proceeds of a discretionary sales surtax are distributed at the county level and not at the jurisdictional level.

### **Proposed Changes**

This bill creates section 212.055(8), F.S., to add an eighth local discretionary sales surtax called the "Emergency Fire Rescue Services and Facilities Surtax." This surtax would be levied in place of ad valorem millage currently used to fund emergency fire rescue services. Therefore, any ad valorem and non-ad valorem taxes used to provide emergency fire rescue services must be reduced by the amount of the tax collected.

The bill defines "emergency fire and rescue services" as those services that include, but are not limited to:

- Preventing and extinguishing fires;
- Protecting and saving life and property from fires, natural or intentional acts, or disasters;
- Enforcing municipal, county, or state fire prevention codes and laws pertaining to preventing and controlling fires; and
- Providing prehospital emergency medical treatment.

This bill also authorizes the governing authority of each county to levy, by ordinance, a discretionary sales surtax of up to 1 percent for emergency fire rescue services provided the following conditions are met:

- Once a county governing authority has adopted an ordinance authorizing the surtax, and an interlocal agreement has been approved by a majority of the service providers in the county, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance;
- The referendum must be placed on the ballot of a regularly scheduled election;
- The ordinance must take effect if approved by a majority of the electors of the county voting in a referendum held for such purpose;

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<sup>6</sup> Section 125.66(2), F.S.

<sup>7</sup> Section 212.054(5), F.S.

<sup>8</sup> Section 212.054(7)(a), F.S.

- The ballot for the referendum must conform to the requirements of s. 101.161, F.S.;
- DOR must administer, collect, and enforce the surtax as required under s. 212.054(4), F.S.;
- The surtax, less DOR's administration costs, must be distributed by the county to the participating jurisdictions that have entered into an interlocal agreement with the county under s. 212.054(4), F.S.;
- The county may also charge an administrative fee not to exceed 2 percent for receiving and distributing the surtax in the amount of the actual costs incurred collected under s. 212.054(4), F.S.;
- The county governing authority must develop an interlocal agreement with participating jurisdictions, which are the governing bodies of the municipalities, dependent special districts, independent special districts, or municipal service taxing units that provide emergency fire and rescue services within such county;
- The interlocal agreement must specify only that:
  - The amount of the surtax proceeds to be distributed by the county to each participating jurisdiction is based on the actual amounts collected within each participating jurisdiction as determined by DOR's population allocations in accordance with s. 218.62, F.S.;<sup>9</sup> or
  - If a county has special fire control and rescue districts within its boundaries, the county must distribute the surtax proceeds among the county and the participating municipalities or special fire control districts and rescue districts based on the proportion of each entity's expenditure of ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue services for each of the immediately preceding 5 fiscal years to the total of such expenditures for all participating entities; and
- Each participating jurisdiction must agree that if a participating jurisdiction is requested to provide personnel or equipment to any other service provider on a long-term basis, pursuant to an interlocal agreement, the jurisdiction providing the service is entitled to payment from the requesting service provider's share of the surtax proceeds for all costs of such equipment or personnel.

This bill also requires that, once the surtax takes effect and collections have begun, a county and any participating jurisdiction entering into an interlocal agreement must reduce the ad valorem tax levy and any non-ad valorem assessment for fire control and emergency rescue services in the next and subsequent budgets by the estimated amount of surtax revenues.

Also, the bill provides that the use of the surtax proceeds does not relieve any local government of the obligation to comply with the provisions of ch. 200, F.S.,<sup>10</sup> and any related provision of law that establishes millage caps or limits undesignated budget reserves and procedures for establishing rollback rates<sup>11</sup> for ad valorem taxes and budget adoption. In addition, this bill requires that any surtax collections exceeding projected collections in any fiscal year be used to further reduce ad valorem taxes in the next fiscal year. These proceeds must be applied as a rebate to the final millage after the Truth in Millage (TRIM) Notice is completed in accordance with the provisions of this bill.<sup>12</sup>

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<sup>9</sup> Section 218.62, F.S., provides for "Distribution formulas" pertaining to political subdivisions.

<sup>10</sup> Chapter 200, F.S., addresses the "Determination of millage."

<sup>11</sup> The "rolled back rate" is the tax rate that will produce the same amount of tax revenue for the current year that was produced the previous year, after making allowances for some tax base changes. See s. 200.065(1), F.S.

<sup>12</sup> Section 200.069, F.S., requires property appraisers to prepare and deliver a notice of proposed property taxes and non-ad valorem assessments to each taxpayer listed on the current year's assessment roll.<sup>12</sup> This notice is commonly referred to as the Truth in Millage (TRIM) notice, which is generally the only acceptable means of providing notice to taxpayers, and is sent on behalf of all taxing authorities and local governing boards levying both ad valorem taxes and non-ad valorem assessments.

Municipalities, special fire control and rescue districts, and contract service providers that do not enter into an interlocal agreement are not entitled to receive a share of the surtax proceeds collected, and are not required to reduce ad valorem taxes or non-ad valorem assessments as a result of this bill. Following approval of the levy in a referendum, surtax collections must be initiated on January 1 of the year following a successful referendum to comply with the provisions of s. 212.054(5), F.S.

Under this bill, the provision allowing for distribution based on DOR's revenue distribution methodology and the requirement that a jurisdiction providing the service is entitled to payment from the requesting service provider's share of the surtax proceeds for all costs of equipment or personnel, do not apply if:

- There is an interlocal agreement with the county and one or more participating jurisdictions that prohibits one or more jurisdictions from providing the same level of service for prehospital emergency medical treatment within the prohibited participating jurisdictions' boundaries; or
- The county has issued a certificate of public convenience and necessity or its equivalent to a county department or dependent special district of the county.

Most of the discretionary sales surtaxes levied under s. 212.055, F.S., have limitations on the percentage of total surtaxes that can be levied by a county. For example, each of the surtaxes levied under ss. 212.055(2)-212.055(5), F.S., is limited to a total combined discretionary sales surtax rate of 1 percent. This bill does not contain a similar limitation on the percentage of total surtaxes that a local government can impose if it chooses to levy the Emergency Fire Rescue Services and Facilities Surtax. Thus, under the provisions of this bill, the maximum potential county levy rate for discretionary surtaxes could increase to 3 percent in some areas of the state.

This bill has an effective date of July 1, 2009.

**B. SECTION DIRECTORY:**

Section 1: creates s. 212.055(8), F.S., relating to the "Emergency Fire Rescue Services and Facilities Surtax."

Section 2: provides an effective date of July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Taking into account the number of sales and use tax dealers in Florida and the assumption that all 67 counties would adopt the surtax in fiscal year 2009-10, DOR reported non-recurring operating expenses of approximately \$243,860 to administer provisions of the bill. This cost can be broken down as follows:

- \$237,860 to print and mail a tax information publication to all sales and use tax dealers in Florida; and

- \$6,000 for 60 contract hours, in addition to 120 in-house hours, so that the SUNTAX Project Office<sup>13</sup> can accommodate the necessary modifications to implement this bill. These modifications include:
  - Adjusting the distribution program;
  - Modifying the SUNTAX Business Warehouse distribution reporting program;
  - New posting, analysis and testing; and
  - Other business rules definitions, coding, configuration and testing.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference has determined that the provisions of this bill would have an indeterminate positive fiscal impact on local governments.

2. Expenditures:

Counties considering the imposition of this surtax may incur costs to hold the referendum and to implement the provisions of this bill.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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

The provision allowing local governments to reduce ad valorem taxes in the next fiscal year when actual collections exceed projected collections would provide property tax savings to homeowners. This reduction would be reflected as a rebate to the final millage on a homeowner's TRIM Notice.

**D. FISCAL COMMENTS:**

According to the Professional Firefighters & Paramedics of Palm Beach County, who are proponents of this legislation, the bill provides for an alternative funding source for fire and emergency medical services, thereby stabilizing the revenue base. For example, a county that assesses this proposed surtax would lower its ad valorem tax only to the extent that it uses ad valorem taxes to fund fire rescue, so the provisions of this bill would be revenue neutral. Also, the Professional Firefighters & Paramedics of Palm Beach County state that the provisions of this legislation in no way limit a county's ability to levy taxes up to 10 mills. In other words, a county wishing to levy a full 10 mills of ad valorem tax may do so after it begins to collect the surtax to fund services and capital improvements other than fire rescue.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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<sup>13</sup> The SUNTAX project is DOR's unified tax accounting computer system.

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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2009, the Military & Local Affairs Policy Committee proposed a committee substitute for HB 365. This proposed committee substitute was reported favorably with no additional amendments.

On April 14, 2009, the Economic Development & Community Affairs Policy Council adopted a strike-all amendment and reported the bill favorably as a council substitute. This strike-all amendment:

- Removed references to the “interlocal agreement facilitator;”
- Required that the referendum must be placed on the ballot of a regularly scheduled election; and
- Removed language regarding municipal service taxing units from the interlocal agreement requirements.

This analysis reflects the strike-all amendment adopted by the Economic Development & Community Affairs Policy Council.