

By Representative Smith

1 A bill to be entitled
2 An act relating to discretionary sales
3 surtaxes; amending s. 212.054, F.S., which
4 provides general administrative provisions for
5 the levy of discretionary sales surtaxes by
6 counties; providing for application of those
7 administrative, collection, enforcement, and
8 penalty provisions to levy by a municipality;
9 amending s. 212.055, F.S.; authorizing levy of
10 the local government infrastructure surtax by
11 municipalities; providing for application of
12 provisions requiring referendum approval and
13 restricting use of the proceeds; providing for
14 distribution of the proceeds; prohibiting levy
15 by a municipality located in a county which
16 levies local option sales surtaxes in excess of
17 a specified rate; providing for repeal of a
18 municipality's local government infrastructure
19 surtax if the county subsequently levies the
20 surtax at an equal or higher rate; amending s.
21 212.0596, F.S., relating to responsibility of
22 dealers making mail order sales to collect
23 local option surtaxes, to include surtaxes
24 levied by municipalities; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 212.054, Florida Statutes, 1996
30 Supplement, is amended to read:

31

1 212.054 Discretionary sales surtax; limitations,
2 administration, and collection.--

3 (1) No general excise tax on sales shall be levied by
4 the governing body of any county or municipality unless
5 specifically authorized in s. 212.055. Any general excise tax
6 on sales authorized pursuant to said section shall be
7 administered and collected exclusively as provided in this
8 section.

9 (2)(a) The tax imposed by the governing body of any
10 county or municipality authorized to so levy pursuant to s.
11 212.055 shall be a discretionary surtax on all transactions
12 occurring in the county or municipality which transactions are
13 subject to the state tax imposed on sales, use, services,
14 rentals, admissions, and other transactions by this part. The
15 surtax, if levied, shall be computed as the applicable rate or
16 rates authorized pursuant to s. 212.055 times the amount of
17 taxable sales and taxable purchases representing such
18 transactions. If the surtax is levied on the sale of an item
19 of tangible personal property or on the sale of a service, the
20 surtax shall be computed by multiplying the rate imposed by
21 the county or municipality within which the sale occurs by the
22 amount of the taxable sale. The sale of an item of tangible
23 personal property or the sale of a service is not subject to
24 the surtax if the property, the service, or the tangible
25 personal property representing the service is delivered within
26 a county or municipality that does not impose a discretionary
27 sales surtax.

28 (b) However:

29 1. The tax on any sales amount above \$5,000 on any
30 item of tangible personal property and on long-distance
31 telephone service shall not be subject to the surtax. For

1 purposes of administering the \$5,000 limitation on an item of
2 tangible personal property, if two or more taxable items of
3 tangible personal property are sold to the same purchaser at
4 the same time and, under generally accepted business practice
5 or industry standards or usage, are normally sold in bulk or
6 are items that, when assembled, comprise a working unit or
7 part of a working unit, such items must be considered a single
8 item for purposes of the \$5,000 limitation when supported by a
9 charge ticket, sales slip, invoice, or other tangible evidence
10 of a single sale or rental. The limitation provided in this
11 subparagraph does not apply to the sale of any other service.

12 2. In the case of utility, telecommunication, or
13 television system program services billed on or after the
14 effective date of any such surtax, the entire amount of the
15 tax for utility, telecommunication, or television system
16 program services shall be subject to the surtax. In the case
17 of utility, telecommunication, or television system program
18 services billed after the last day the surtax is in effect,
19 the entire amount of the tax on said items shall not be
20 subject to the surtax.

21 3. In the case of written contracts which are signed
22 prior to the effective date of any such surtax for the
23 construction of improvements to real property or for
24 remodeling of existing structures, the surtax shall be paid by
25 the contractor responsible for the performance of the
26 contract. However, the contractor may apply for one refund of
27 any such surtax paid on materials necessary for the completion
28 of the contract. Any application for refund shall be made no
29 later than 15 months following initial imposition of the
30 surtax in that county or municipality. The application for
31 refund shall be in the manner prescribed by the department by

1 rule. A complete application shall include proof of the
2 written contract and of payment of the surtax. The
3 application shall contain a sworn statement, signed by the
4 applicant or its representative, attesting to the validity of
5 the application. The department shall, within 30 days after
6 approval of a complete application, certify to the county or
7 municipality information necessary for issuance of a refund to
8 the applicant. Counties and municipalities are hereby
9 authorized to issue refunds for this purpose and shall set
10 aside from the proceeds of the surtax a sum sufficient to pay
11 any refund lawfully due. Any person who fraudulently obtains
12 or attempts to obtain a refund pursuant to this subparagraph,
13 in addition to being liable for repayment of any refund
14 fraudulently obtained plus a mandatory penalty of 100 percent
15 of the refund, is guilty of a felony of the third degree,
16 punishable as provided in s. 775.082, s. 775.083, or s.
17 775.084.

18 (3) For the purpose of this section, a transaction
19 shall be deemed to have occurred in a county or municipality
20 imposing the surtax when:

21 (a)1. The sale includes an item of tangible personal
22 property, a service, or tangible personal property
23 representing a service, and the item of tangible personal
24 property, the service, or the tangible personal property
25 representing the service is delivered within the county or
26 municipality. If there is no reasonable evidence of delivery
27 of a service, the sale of a service is deemed to occur in the
28 county or municipality in which the purchaser accepts the bill
29 of sale.

30 2. However, a dealer selling tangible personal
31 property, or delivering a service or tangible personal

1 property representing a service, into a county or municipality
2 which, before November 9 of any year, adopts or revises any
3 surtax authorized in s. 212.055, from outside such a county or
4 municipality, is not required to collect the surtax at the new
5 or revised rate on such transaction until February 1 of the
6 year following the year of the adoption or revision of the
7 surtax. However, if the surtax is adopted or revised between
8 November 9 and December 31 of any year, such dealer is not
9 required to collect such surtax at the new or revised rate
10 until February 1 of the year after the subsequent year. The
11 department shall notify all dealers of all surtax rates in
12 effect on November 9 no later than February 1 of the
13 subsequent year.

14 3. The sale of any motor vehicle or mobile home of a
15 class or type which is required to be registered in this state
16 or in any other state shall be deemed to have occurred only in
17 the county or municipality identified as the residence address
18 of the purchaser on the registration or title document for
19 such property.

20 (b) The event for which an admission is charged is
21 located in the county or municipality.

22 (c) The consumer of utility or television system
23 program services is located in the county or municipality, or
24 the telecommunication services are provided to a location
25 within the county or municipality.

26 (d)1. The user of any aircraft or boat of a class or
27 type which is required to be registered, licensed, titled, or
28 documented in this state or by the United States Government
29 imported into the county or municipality for use, consumption,
30 distribution, or storage to be used or consumed in the county
31 or municipality is located in the county or municipality.

1 2. However, it shall be presumed that such items used
2 outside the county or municipality for 6 months or longer
3 before being imported into the county or municipality were not
4 purchased for use in the county or municipality, except as
5 provided in s. 212.06(8)(b).

6 3. This paragraph does not apply to the use or
7 consumption of items upon which a like tax of equal or greater
8 amount has been lawfully imposed and paid outside the county
9 or municipality.

10 (e) The purchaser of any motor vehicle or mobile home
11 of a class or type which is required to be registered in this
12 state is a resident of the taxing county or municipality as
13 determined by the address appearing on or to be reflected on
14 the registration document for such property.

15 (f)1. Any motor vehicle or mobile home of a class or
16 type which is required to be registered in this state is
17 imported from another state into the taxing county or
18 municipality by a user residing therein for the purpose of
19 use, consumption, distribution, or storage in the taxing
20 county or municipality.

21 2. However, it shall be presumed that such items used
22 outside the taxing county or municipality for 6 months or
23 longer before being imported into the county or municipality
24 were not purchased for use in the county or municipality.

25 (g) The real property which is leased or rented is
26 located in the county or municipality.

27 (h) The transient rental transaction occurs in the
28 county or municipality.

29 (i) The delivery of any aircraft or boat of a class or
30 type which is required to be registered, licensed, titled, or
31 documented in this state or by the United States Government is

1 to a location in the county or municipality. However, this
2 paragraph does not apply to the use or consumption of items
3 upon which a like tax of equal or greater amount has been
4 lawfully imposed and paid outside the county or municipality.

5 (j) The dealer owing a use tax on purchases or leases
6 is located in the county or municipality.

7 (k) The delivery of tangible personal property other
8 than that described in paragraph (d), paragraph (e), or
9 paragraph (f) is made to a location outside the county or
10 municipality, but the property is brought into the county or
11 municipality within 6 months after delivery, in which event,
12 the owner must pay the surtax as a use tax.

13 (l) The coin-operated amusement or vending machine is
14 located in the county or municipality.

15 (m) The florist taking the original order to sell
16 tangible personal property is located in the county or
17 municipality, notwithstanding any other provision of this
18 section.

19 (4)(a) The department shall administer, collect, and
20 enforce the tax authorized under s. 212.055 pursuant to the
21 same procedures used in the administration, collection, and
22 enforcement of the general state sales tax imposed under the
23 provisions of this chapter, except as provided in this
24 section. The provisions of this chapter regarding interest
25 and penalties on delinquent taxes shall apply to the surtax.
26 Discretionary sales surtaxes shall not be included in the
27 computation of estimated taxes pursuant to s. 212.11.
28 Notwithstanding any other provision of law, a dealer need not
29 separately state the amount of the surtax on the charge
30 ticket, sales slip, invoice, or other tangible evidence of
31 sale. For the purposes of this section and s. 212.055, the

1 "proceeds" of any surtax means all funds collected and
2 received by the department pursuant to a specific
3 authorization and levy under s. 212.055, including any
4 interest and penalties on delinquent surtaxes.
5 (b) The proceeds of a discretionary sales surtax
6 collected by the selling dealer located in a county or
7 municipality which imposes the surtax shall be returned, less
8 the cost of administration, to the county or municipality
9 where the selling dealer is located. The proceeds shall be
10 transferred to the Discretionary Sales Surtax Clearing Trust
11 Fund. A separate account shall be established in such trust
12 fund for each county or municipality imposing a discretionary
13 surtax. The amount deducted for the costs of administration
14 shall not exceed 3 percent of the total revenue generated for
15 all counties or municipalities levying a surtax authorized in
16 s. 212.055. The amount deducted for the costs of
17 administration shall be used only for those costs which are
18 solely and directly attributable to the surtax. The total
19 cost of administration shall be prorated among those counties
20 or municipalities levying the surtax on the basis of the
21 amount collected for a particular county or municipality to
22 the total amount collected for all counties or municipalities.
23 No later than March 1 of each year, the department shall
24 submit a written report which details the expenses and amounts
25 deducted for the costs of administration to the President of
26 the Senate, the Speaker of the House of Representatives, and
27 the governing authority of each county or municipality levying
28 a surtax. The department shall distribute the moneys in the
29 trust fund each month to the appropriate counties and
30 municipalities, unless otherwise provided in s. 212.055.
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1 (c)1. Any dealer located in a county or municipality
2 that does not impose a discretionary sales surtax but who
3 collects the surtax due to sales of tangible personal property
4 or services delivered outside the county or municipality shall
5 remit monthly the proceeds of the surtax to the department to
6 be deposited into an account in the Discretionary Sales Surtax
7 Clearing Trust Fund which is separate from the county and
8 municipality surtax collection accounts. The department shall
9 distribute funds in this account using a distribution factor
10 determined for each county or municipality that levies a
11 surtax and multiplied by the amount of funds in the account
12 and available for distribution. The distribution factor for
13 each county or municipality equals the product of:

14 a. The county's or the municipality's latest official
15 population determined pursuant to s. 186.901;

16 b. The county's or the municipality's rate of surtax;
17 and

18 c. The number of months the county or municipality has
19 levied a surtax during the most recent distribution period;

20
21 divided by the sum of all such products of the counties or
22 municipalities levying the surtax during the most recent
23 distribution period.

24 2. The department shall compute distribution factors
25 for eligible counties and municipalities once each quarter and
26 make appropriate quarterly distributions.

27 3. A county or municipality that fails to timely
28 provide the information required by this section to the
29 department authorizes the department, by such action, to use
30 the best information available to it in distributing surtax
31 revenues to the county or municipality. If this information

1 is unavailable to the department, the department may partially
2 or entirely disqualify the county or municipality from
3 receiving surtax revenues under this paragraph. A county or
4 municipality that fails to provide timely information waives
5 its right to challenge the department's determination of the
6 county's or municipality's share, if any, of revenues provided
7 under this paragraph.

8 (5) No discretionary sales surtax shall take effect on
9 a date other than January 1. No discretionary sales surtax
10 shall terminate on a day other than the last day of a calendar
11 quarter.

12 (6) The governing body of any county or municipality
13 levying a discretionary sales surtax shall enact an ordinance
14 levying the surtax in accordance with the procedures described
15 in s. 125.66(2) or s. 166.041 and shall notify the department
16 within 10 days after adoption of the ordinance. The notice
17 shall include the time period during which the surtax will be
18 in effect, the rate, a copy of the ordinance, and such other
19 information as the department may prescribe by rule.
20 Notification and final adoption of the surtax shall occur no
21 later than 45 days prior to initial imposition of the surtax.

22 (7) With respect to any motor vehicle or mobile home
23 of a class or type which is required to be registered in this
24 state, the tax due on a transaction occurring in the taxing
25 county or municipality as herein provided shall be collected
26 from the purchaser or user incident to the titling and
27 registration of such property, irrespective of whether such
28 titling or registration occurs in the taxing county or
29 municipality.

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1 Section 2. The introductory paragraph and subsection
2 (2) of section 212.055, Florida Statutes, 1996 Supplement, are
3 amended to read:

4 212.055 Discretionary sales surtaxes; legislative
5 intent; authorization and use of proceeds.--It is the
6 legislative intent that any authorization for imposition of a
7 discretionary sales surtax shall be published in the Florida
8 Statutes as a subsection of this section, irrespective of the
9 duration of the levy. Each enactment shall specify the types
10 of counties or municipalities authorized to levy; the rate or
11 rates which may be imposed; the maximum length of time the
12 surtax may be imposed, if any; the procedure which must be
13 followed to secure voter approval, if required; the purpose
14 for which the proceeds may be expended; and such other
15 requirements as the Legislature may provide. Taxable
16 transactions and administrative procedures shall be as
17 provided in s. 212.054.

18 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

19 (a)1. The governing authority in each county or
20 municipality may levy a discretionary sales surtax of 0.5
21 percent or 1 percent. The levy of the surtax shall be
22 pursuant to ordinance enacted by a majority of the members of
23 the county or municipal governing authority and approved by a
24 majority of the electors of the county or municipality voting
25 in a referendum on the surtax. If the governing bodies of the
26 municipalities representing a majority of a ~~the~~ county's
27 population adopt uniform resolutions establishing the rate of
28 the surtax and calling for a referendum on levy of the surtax
29 by the county, the levy of the surtax shall be placed on the
30 ballot and shall take effect if approved by a majority of the
31 electors of the county voting in the referendum on the surtax.

1 and the governing bodies of the municipalities representing a
2 majority of the county's municipal population; or

3 2. If there is no interlocal agreement, according to
4 the formula provided in s. 218.62.

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6 Any change in the distribution formula must take effect on the
7 first day of any month that begins at least 60 days after
8 written notification of that change has been made to the
9 department.

10 (d) Pursuant to s. 212.054(4), the proceeds of the
11 surtax levied by a municipality under this subsection shall be
12 distributed to the municipality in which the surtax was
13 collected.

14 (e)~~(d)~~1. The proceeds of the surtax authorized by this
15 subsection and any interest accrued thereto shall be expended
16 by the school district or within the county and municipalities
17 within the county, or within the municipality, or, in the case
18 of a negotiated joint county agreement, within another county,
19 to finance, plan, and construct infrastructure and to acquire
20 land for public recreation or conservation or protection of
21 natural resources and to finance the closure of county-owned
22 or municipally owned solid waste landfills that are already
23 closed or are required to close by order of the Department of
24 Environmental Protection. Any use of such proceeds or interest
25 for purposes of landfill closure prior to July 1, 1993, is
26 ratified. Neither the proceeds nor any interest accrued
27 thereto shall be used for operational expenses of any
28 infrastructure, except that any county with a population of
29 less than 50,000 that is required to close a landfill by order
30 of the Department of Environmental Protection may use the
31 proceeds or any interest accrued thereto for long-term

1 maintenance costs associated with landfill closure. Counties,
2 as defined in s. 125.011(1), may, in addition, use the
3 proceeds to retire or service indebtedness incurred for bonds
4 issued prior to July 1, 1987, for infrastructure purposes.

5 2. For the purposes of this paragraph,
6 "infrastructure" means:

7 a. Any fixed capital expenditure or fixed capital
8 outlay associated with the construction, reconstruction, or
9 improvement of public facilities which have a life expectancy
10 of 5 or more years and any land acquisition, land improvement,
11 design, and engineering costs related thereto.

12 b. A fire department vehicle, an emergency medical
13 service vehicle, a sheriff's office vehicle, a police
14 department vehicle, or any other vehicle, and such equipment
15 necessary to outfit the vehicle for its official use or
16 equipment that has a life expectancy of at least 5 years.

17 (f)~~(e)~~ School districts, counties, and municipalities
18 receiving proceeds under the provisions of this subsection may
19 pledge such proceeds for the purpose of servicing new bond
20 indebtedness incurred pursuant to law. Local governments may
21 use the services of the Division of Bond Finance of the State
22 Board of Administration pursuant to the State Bond Act to
23 issue any bonds through the provisions of this subsection. In
24 no case may a jurisdiction issue bonds pursuant to this
25 subsection more frequently than once per year. Counties and
26 municipalities may join together for the issuance of bonds
27 authorized by this subsection.

28 (g)~~(f)~~ Counties and municipalities shall not use the
29 surtax proceeds to supplant or replace user fees or to reduce
30 ad valorem taxes existing prior to the levy of the surtax
31 authorized by this subsection.

1 (h)~~(g)~~ Notwithstanding s. 212.054(5), the surtax must
2 take effect on the first day of a month, as fixed by the
3 ordinance adopted pursuant to paragraph (a), and may not take
4 effect until at least 60 days after the date that the
5 referendum approving the levy is held.

6 (i)~~(h)~~1. Notwithstanding paragraph(e)~~(d)~~, a county
7 that has a population of 50,000 or less on April 1, 1992, or
8 any county designated as an area of critical state concern on
9 the effective date of this act, and that imposed the surtax
10 before July 1, 1992, may use the proceeds and interest of the
11 surtax for any public purpose if:

12 a. The debt service obligations for any year are met;

13 b. The county's comprehensive plan has been determined
14 to be in compliance with part II of chapter 163; and

15 c. The county has adopted an amendment to the surtax
16 ordinance pursuant to the procedure provided in s. 125.66
17 authorizing additional uses of the surtax proceeds and
18 interest.

19 2. A municipality located within a county that has a
20 population of 50,000 or less on April 1, 1992, or within a
21 county designated as an area of critical state concern on the
22 effective date of this act, and that imposed the surtax before
23 July 1, 1992, may not use the proceeds and interest of the
24 surtax for any purpose other than an infrastructure purpose
25 authorized in paragraph(e)~~(d)~~ unless the municipality's
26 comprehensive plan has been determined to be in compliance
27 with part II of chapter 163 and the municipality has adopted
28 an amendment to its surtax ordinance or resolution pursuant to
29 the procedure provided in s. 166.041 authorizing additional
30 uses of the surtax proceeds and interest. Such municipality
31

1 may expend the surtax proceeds and interest for any public
2 purpose authorized in the amendment.

3 3. Those counties designated as an area of critical
4 state concern which qualify to use the surtax for any public
5 purpose may use only up to 10 percent of the surtax proceeds
6 for any public purpose other than for infrastructure purposes
7 authorized by this section.

8 ~~(j)(i)~~ Notwithstanding paragraph ~~(e)(d)~~, a county
9 levying the surtax in which 40 percent or more of the just
10 value of real property is exempt or immune from ad valorem
11 taxation, and the municipalities within such a county, or a
12 municipality levying the surtax in which 40 percent or more of
13 the just value of real property is exempt or immune from ad
14 valorem taxation, may use the proceeds and interest of the
15 surtax for operation and maintenance of parks and recreation
16 programs and facilities established with the proceeds of the
17 surtax.

18 ~~(k)(j)~~ Notwithstanding any other provision of this
19 section, a county shall not levy local option sales surtaxes
20 authorized in this subsection and subsections (3), (4), (5),
21 and (6) in excess of a combined rate of 1 percent.
22 Notwithstanding any other provision of this section, a
23 municipality shall not levy the local option sales surtax
24 authorized in this subsection if the county in which the
25 municipality is located levies local option sales surtaxes
26 authorized in this subsection and subsections (3), (4), (5),
27 and (6) in excess of a combined rate of 1 percent. If a
28 municipality has levied the local option sales surtax
29 authorized in this subsection and the county in which the
30 municipality is located subsequently levies the local option
31 sales surtax authorized in this subsection at a rate equal to

1 or greater than the rate levied by the municipality, then the
2 surtax levied by the municipality shall be automatically
3 repealed upon the first day the county surtax takes effect.

4 Section 3. Subsection (6) of section 212.0596, Florida
5 Statutes, is amended to read:

6 212.0596 Taxation of mail order sales.--

7 (6) Notwithstanding other provisions of law, a dealer
8 who makes a mail order sale in this state is exempt from
9 collecting and remitting any local option surtax on the sale,
10 unless the dealer is located in a county or municipality that
11 imposes a surtax within the meaning of s. 212.054(3)(a), the
12 order is placed through the dealer's location in such county
13 or municipality, and the property purchased is delivered into
14 such county or municipality or into another county or
15 municipality in this state that levies the surtax, in which
16 case the provisions of s. 212.054(3)(a) are applicable.

17 Section 4. This act shall take effect July 1, 1997.

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20 HOUSE SUMMARY

21 Authorizes municipalities to levy a local government
22 infrastructure surtax subject to the same administrative,
23 collection, enforcement, and proceeds use requirements
24 presently applicable to levy of the surtax by counties.
25 Prohibits levy by a municipality located in a county
26 which levies local option surtaxes in excess of a total
27 rate of 1 percent, and provides for repeal of a
28 municipality's surtax if the county subsequently levies
29 the surtax at an equal or higher rate.
30
31