

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 732

SPONSOR: Senator Horne

SUBJECT: Local Government Infrastructure Surtax

DATE: February 24, 1999                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Fournier</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill authorizes charter counties, in addition to counties as defined in s. 125.011(1), F.S. (Dade County), to use the proceeds of the local government infrastructure surtax, and interest earned thereon, to retire or service bonded indebtedness incurred prior to July 1, 1987, for infrastructure purposes, and to refund such bonds issued after July 1, 1987. The bill also ratifies the use of local government infrastructure surtax proceeds for these purposes prior to July 1, 1999.

This bill amends section 212.055, Florida Statutes, 1998 Supplement.

**II. Present Situation:**

**The Local Government Infrastructure Surtax**

Chapter 87-239, L.O.F., known as the “Local Government Infrastructure Commitment Act,” authorized county governments to levy a sales tax of up to 1 percent on all taxable transactions under ch. 212, F.S. In order for local governments to levy this sales tax, voter approval must be expressed in a referendum. Municipalities representing a majority of the county’s population may place the required referendum on the ballot through the adoption of uniform resolutions requesting the imposition of the tax. There is an exemption provided for the sales amount above \$5,000 on any item and long-distance telephone service.

Section 212.055(2), F.S., authorizes the levy of the tax at a rate of 0.5 percent or 1 percent. If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the ordinance did not limit the time period of the levy, the surtax may not be levied for more than 15 years.

Proceeds of the tax are distributed by the Department of Revenue to the county and municipalities within the county according to an interlocal agreement between the county and municipalities, which may include a school district, or by the formula established in s. 218.62, F.S., for

distribution of the Half-Cent Sales Tax. Expenditure of the tax proceeds is limited to the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation or conservation or protection of natural resources; and
- To finance the closure of local government owned solid waste land fills that are already closed or are required to be closed by order of the Department of Environmental Protection.

Counties and municipalities are prohibited from using the surtax proceeds to supplement user fees or to reduce existing ad valorem taxes.

Chapter 92-309, L.O.F., also amended s. 212.055, F.S., 1998 Supplement, to limit the combined rate, in varying combinations, of the Small County Surtax, the Local Government Infrastructure Surtax, the Indigent Care Surtax, the County Public Hospital Surtax, and the Small County Indigent Care Surtax to 1 percent. In addition, it removed the restriction on use of the Local Government Infrastructure Surtax proceeds and interest in certain cases. Specifically, counties with a total population of 50,000 or less (and municipalities located therein) on April 1, 1992, were given the authority to use the proceeds for “any public purpose” so long as the following conditions were met:

- The county imposed the surtax before July 1, 1992;
- The county met its annual debt obligations; and
- The county’s comprehensive plan had been found in compliance with part II of ch. 163, F.S.

Chapter 96-240, L.O.F., authorized Monroe County to use up to 10 percent of the tax proceeds for any public purpose under certain circumstances. In addition, this act also authorized any county in which 40 percent or more of the just value of real property is exempt or immune from ad valorem taxation to use the proceeds for the operation and maintenance of parks and recreation programs and facilities.

All counties are eligible to levy the Local Government Infrastructure Surtax, but only 29 counties imposed this surtax during fiscal year 1996-97.

### **Use of the Surtax to Retire Bonded Indebtedness**

Paragraph (2)(d) of s. 212.055, F.S., 1998 Supplement, specifically authorizes counties, as defined in s. 125.011(1), F.S., to use the surtax proceeds to retire or service bond indebtedness incurred for bonds issued prior to July 1, 1987, (the effective date of the act) for infrastructure purposes. This provision specifically limits that use of the surtax proceeds to Dade County. Other local governments which have sought to use the surtax proceeds to retire bonded indebtedness incurred prior to the effective date of the act, or the local referendum approving the levy, have been denied that use. *See* 1988 *Fla. Atty. Gen. Op.* 59 (Sumter County is prohibited from using these proceeds to refund or pay off a bond indebtedness incurred prior to enactment of the statute); and 1990 *Fla. Atty. Gen. Op.* 96 (the City of Dunedin may not use surtax proceeds to

service debt incurred prior to referendum approval of the surtax, although debt was incurred *after* the effective date of the act).

In 1994, the Legislature enacted a special law exception to the general law provisions restricting the use of the Local Government Infrastructure Surtax proceeds. Chapter 94-459, L.O.F., authorizes Clay County to use the surtax proceeds to retire or service bond indebtedness incurred prior to July 1, 1987, and subsequently refunded, for the purpose of financing infrastructure. In that same year, the Legislature also enacted ch. 94-487, L.O.F., authorizing Alachua County, and municipalities located therein, to use the surtax proceeds for the operation and maintenance of parks and recreation programs as well as facilities originally established with surtax proceeds. In addition, the law allowed the use of the proceeds for the establishment of one or more trust funds to provide a permanent endowment for the additional uses.

In 1996, the First District Court of Appeal upheld a declaratory judgment striking ch. 94-487, L.O.F., (the Alachua County special act) as an unconstitutional special act in violation of Section 11 of Article III of the State Constitution. *Alachua County v. Adams*, 677 So.2d 396 (Fla. 1st DCA 1996); *aff'd* 702 So.2d 1253 (Fla. 1997). Section 11(a), Art. III, State Constitution, provides, in pertinent part, "There shall be no special law or general law of local application pertaining to . . . (2) assessment or collection of taxes for state or county purposes." The court rejected the county's argument that the act was valid as it only affected the power to spend tax revenues, not the power to tax. *Id.* at 398.

The following counties are charter counties: Alachua, Brevard, Broward, Charlotte, Clay, Dade, Duval, Hillsborough, Lee, Orange, Osceola, Palm Beach, Pinellas, Sarasota, Seminole and Volusia.

### III. Effect of Proposed Changes:

The bill authorizes charter counties, in addition to counties as defined in s. 125.011(1), F.S. (Dade County), to use the proceeds of the local government infrastructure surtax, and interest earned thereon, to retire or service bonded indebtedness incurred prior to July 1, 1987, for infrastructure purposes, and to refund such bonds issued after July 1, 1987. The bill also ratifies the use of local government infrastructure surtax proceeds for these purposes prior to July 1, 1999.

**Section 1** amends paragraph (2)(d) of s. 212.055, F.S., 1998 Supplement, to include "charter counties" along with those counties eligible to use the surtax proceeds to retire or service bonded indebtedness incurred prior to the effective date of the act. The bill also amends this paragraph by authorizing interest accrued on the surtax proceeds, in addition to the proceeds themselves, to be expended in this manner. Finally, this provision bill expands the use of the proceeds to include refunding bonds issued subsequent to the effective date of the act, in addition to servicing bonds issued prior to the effective date.

**Section 2** is intended to ratify any use of the surtax proceeds or interest accrued thereon, for purposes of retiring or servicing bonded indebtedness incurred before July 1, 1987, or for refunding bonds issued after July 1, 1987, by a county prior to July 1, 1999.

**Section 3** provides an effective date of July 1, 1999.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

A new use for proceeds from the local government infrastructure surtax is authorized for charter counties.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.