

By Senator Klein

28-656-02

1 A bill to be entitled
2 An act relating to discretionary sales
3 surtaxes; amending ss. 212.054, 212.055, F.S.;
4 allowing the largest municipality in a county
5 having a specified minimum population to enact
6 a discretionary sales surtax; providing
7 procedures and limitations upon levying such a
8 surtax; providing for the administration and
9 collection of such a surtax; providing an
10 effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 212.054, Florida Statutes, is
15 amended to read:

16 212.054 Discretionary sales surtax; limitations,
17 administration, and collection.--

18 (1)(a) No general excise tax on sales shall be levied
19 by the governing body of any county or qualified municipality
20 unless specifically authorized in s. 212.055. Any general
21 excise tax on sales authorized pursuant to said section shall
22 be administered and collected exclusively as provided in this
23 section.

24 (b) As used in this section, the term "qualified
25 municipality" means the largest municipality in a county that
26 has a population in excess of 1 million persons as provided
27 for in s. 212.055(8).

28 (2)(a) The tax imposed by the governing body of any
29 county or qualified municipality authorized to so levy
30 pursuant to s. 212.055 shall be a discretionary surtax on all
31 transactions occurring in the county or qualified municipality

1 | which transactions are subject to the state tax imposed on
2 | sales, use, services, rentals, admissions, and other
3 | transactions by this chapter and communications services as
4 | defined for purposes of chapter 202. The surtax, if levied,
5 | shall be computed as the applicable rate or rates authorized
6 | pursuant to s. 212.055 times the amount of taxable sales and
7 | taxable purchases representing such transactions. If the
8 | surtax is levied on the sale of an item of tangible personal
9 | property or on the sale of a service, the surtax shall be
10 | computed by multiplying the rate imposed by the county or
11 | qualified municipality within which the sale occurs by the
12 | amount of the taxable sale. The sale of an item of tangible
13 | personal property or the sale of a service is not subject to
14 | the surtax if the property, the service, or the tangible
15 | personal property representing the service is delivered within
16 | a county that does not impose a discretionary sales surtax.

17 | (b) However:

18 | 1. The sales amount above \$5,000 on any item of
19 | tangible personal property shall not be subject to the surtax.
20 | However, charges for prepaid calling arrangements, as defined
21 | in s. 212.05(1)(e)1.a., shall be subject to the surtax. For
22 | purposes of administering the \$5,000 limitation on an item of
23 | tangible personal property, if two or more taxable items of
24 | tangible personal property are sold to the same purchaser at
25 | the same time and, under generally accepted business practice
26 | or industry standards or usage, are normally sold in bulk or
27 | are items that, when assembled, comprise a working unit or
28 | part of a working unit, such items must be considered a single
29 | item for purposes of the \$5,000 limitation when supported by a
30 | charge ticket, sales slip, invoice, or other tangible evidence
31 | of a single sale or rental.

1 2. In the case of utility services billed on or after
2 the effective date of any such surtax, the entire amount of
3 the charge for utility services shall be subject to the
4 surtax. In the case of utility services billed after the last
5 day the surtax is in effect, the entire amount of the charge
6 on said items shall not be subject to the surtax. The term
7 "utility service," as used in this section, does not include
8 any communications services as defined in chapter 202.

9 3. In the case of written contracts that ~~which~~ are
10 signed prior to the effective date of any such surtax for the
11 construction of improvements to real property or for
12 remodeling of existing structures, the surtax shall be paid by
13 the contractor responsible for the performance of the
14 contract. However, the contractor may apply for one refund of
15 any such surtax paid on materials necessary for the completion
16 of the contract. Any application for refund shall be made no
17 later than 15 months following initial imposition of the
18 surtax ~~in that county~~. The application for refund shall be in
19 the manner prescribed by the department by rule. A complete
20 application shall include proof of the written contract and of
21 payment of the surtax. The application shall contain a sworn
22 statement, signed by the applicant or its representative,
23 attesting to the validity of the application. The department
24 shall, within 30 days after approval of a complete
25 application, certify to the county information necessary for
26 issuance of a refund to the applicant. Each county or
27 qualified municipality may ~~Counties are hereby authorized to~~
28 issue refunds for this purpose and shall set aside from the
29 proceeds of the surtax a sum sufficient to pay any refund
30 lawfully due. Any person who fraudulently obtains or attempts
31 to obtain a refund pursuant to this subparagraph, in addition

1 to being liable for repayment of any refund fraudulently
2 obtained plus a mandatory penalty of 100 percent of the
3 refund, is guilty of a felony of the third degree, punishable
4 as provided in s. 775.082, s. 775.083, or s. 775.084.

5 4. In the case of any vessel, railroad, or motor
6 vehicle common carrier entitled to partial exemption from tax
7 imposed under this chapter pursuant to s. 212.08(4), (8), or
8 (9), the basis for imposition of surtax is ~~shall be~~ the same
9 as provided in s. 212.08 and the ratio must ~~shall~~ be applied
10 each month to total purchases in this state of property
11 qualified for proration which is delivered or sold in the
12 taxing county or qualified municipality to establish the
13 portion used and consumed in intracounty movement and subject
14 to surtax.

15 (3) For the purpose of this section, a transaction is
16 considered ~~shall be deemed~~ to have occurred in a county or
17 qualified municipality imposing the surtax when:

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

27 2. The sale of any motor vehicle or mobile home of a
28 class or type which is required to be registered in this state
29 or in any other state is considered ~~shall be deemed~~ to have
30 occurred only in the county or qualified municipality

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1 identified as the residence address of the purchaser on the
2 registration or title document for such property.

3 (b) The event for which an admission is charged is
4 located in the county or qualified municipality.

5 (c) The consumer of utility services is located in the
6 county or qualified municipality.

7 (d)1. The user of any aircraft or boat of a class or
8 type which is required to be registered, licensed, titled, or
9 documented in this state or by the United States Government
10 imported into the county or qualified municipality for use,
11 consumption, distribution, or storage to be used or consumed
12 in the county or qualified municipality is located in the
13 county or qualified municipality.

14 2. However, it shall be presumed that such items used
15 outside the county or qualified municipality for 6 months or
16 longer before being imported into the county or qualified
17 municipality were not purchased for use in the county or
18 qualified municipality, except as provided in s. 212.06(8)(b).

19 3. This paragraph does not apply to the use or
20 consumption of items upon which a like tax of equal or greater
21 amount has been lawfully imposed and paid outside the county
22 or qualified municipality.

23 (e) The purchaser of any motor vehicle or mobile home
24 of a class or type which is required to be registered in this
25 state is a resident of the taxing county or qualified
26 municipality as determined by the address appearing on or to
27 be reflected on the registration document for such property.

28 (f)1. Any motor vehicle or mobile home of a class or
29 type which is required to be registered in this state is
30 imported from another state into the taxing county or
31 qualified municipality by a user residing therein for the

1 purpose of use, consumption, distribution, or storage in the
2 taxing county or qualified municipality.

3 2. However, it shall be presumed that such items used
4 outside the taxing county or qualified municipality for 6
5 months or longer before being imported into the county or
6 qualified municipality were not purchased for use in the
7 county or qualified municipality.

8 (g) The real property which is leased or rented is
9 located in the county or qualified municipality.

10 (h) The transient rental transaction occurs in the
11 county or qualified municipality.

12 (i) The delivery of any aircraft or boat of a class or
13 type which is required to be registered, licensed, titled, or
14 documented in this state or by the United States Government is
15 to a location in the county or qualified municipality.
16 However, this paragraph does not apply to the use or
17 consumption of items upon which a like tax of equal or greater
18 amount has been lawfully imposed and paid outside the county.

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

21 (k) The delivery of tangible personal property other
22 than that described in paragraph (d), paragraph (e), or
23 paragraph (f) is made to a location outside the county or
24 qualified municipality, but the property is brought into the
25 county or qualified municipality within 6 months after
26 delivery, in which event, the owner must pay the surtax as a
27 use tax.

28 (l) The coin-operated amusement or vending machine is
29 located in the county or qualified municipality.

30 (m) The florist taking the original order to sell
31 tangible personal property is located in the county or

1 qualified municipality, notwithstanding any other provision of
2 this section.

3 (4)(a) The department shall administer, collect, and
4 enforce the tax authorized under s. 212.055 pursuant to the
5 same procedures used in the administration, collection, and
6 enforcement of the general state sales tax imposed under the
7 provisions of this chapter, except as provided in this
8 section. The provisions of this chapter regarding interest
9 and penalties on delinquent taxes shall apply to the surtax.
10 Discretionary sales surtaxes shall not be included in the
11 computation of estimated taxes pursuant to s. 212.11.

12 Notwithstanding any other provision of law, a dealer need not
13 separately state the amount of the surtax on the charge
14 ticket, sales slip, invoice, or other tangible evidence of
15 sale. For the purposes of this section and s. 212.055, the
16 "proceeds" of any surtax means all funds collected and
17 received by the department pursuant to a specific
18 authorization and levy under s. 212.055, including any
19 interest and penalties on delinquent surtaxes.

20 (b) The proceeds of a discretionary sales surtax
21 collected by the selling dealer located in a county or
22 qualified municipality which imposes the surtax shall be
23 returned, less the cost of administration, to the county or
24 qualified municipality where the selling dealer is located.
25 The proceeds shall be transferred to the Discretionary Sales
26 Surtax Clearing Trust Fund. A separate account shall be
27 established in such trust fund for each county or qualified
28 municipality imposing a discretionary surtax. The amount
29 deducted for the costs of administration shall not exceed 3
30 percent of the total revenue generated for all counties or
31 qualified municipalities levying a surtax authorized in s.

1 212.055. The amount deducted for the costs of administration
2 shall be used only for those costs which are solely and
3 directly attributable to the surtax. The total cost of
4 administration shall be prorated among those counties and
5 qualified municipalities levying the surtax on the basis of
6 the amount collected for a particular county or qualified
7 municipality to the total amount collected for all counties
8 and qualified municipalities. No later than March 1 of each
9 year, the department shall submit a written report that which
10 details the expenses and amounts deducted for the costs of
11 administration to the President of the Senate, the Speaker of
12 the House of Representatives, and the governing authority of
13 each county or qualified municipality levying a surtax. The
14 department shall distribute the moneys in the trust fund each
15 month to the appropriate counties and qualified
16 municipalities, unless otherwise provided in s. 212.055.

17 (c)1. Any dealer located in a county or qualified
18 municipality that does not impose a discretionary sales surtax
19 but who collects the surtax due to sales of tangible personal
20 property or services delivered outside the county or qualified
21 municipality shall remit monthly the proceeds of the surtax to
22 the department to be deposited into an account in the
23 Discretionary Sales Surtax Clearing Trust Fund which is
24 separate from the county or qualified municipality surtax
25 collection accounts. The department shall distribute funds in
26 this account using a distribution factor determined for each
27 county or qualified municipality that levies a surtax and
28 multiplied by the amount of funds in the account and available
29 for distribution. The distribution factor for each county or
30 qualified municipality equals the product of:

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1 a. The county's or qualified municipality's latest
2 official population determined pursuant to s. 186.901;

3 b. The county's or qualified municipality's rate of
4 surtax; and

5 c. The number of months the county or qualified
6 municipality has levied a surtax during the most recent
7 distribution period;

8
9 divided by the sum of all such products of the counties or
10 qualified municipalities levying the surtax during the most
11 recent distribution period.

12 2. The department shall compute distribution factors
13 for eligible counties or qualified municipalities once each
14 quarter and make appropriate quarterly distributions.

15 3. A county or qualified municipality that fails to
16 timely provide the information required by this section to the
17 department authorizes the department, by such action, to use
18 the best information available to it in distributing surtax
19 revenues to the county or qualified municipality. If this
20 information is unavailable to the department, the department
21 may partially or entirely disqualify the county or qualified
22 municipality from receiving surtax revenues under this
23 paragraph. A county or qualified municipality that fails to
24 provide timely information waives its right to challenge the
25 department's determination of the county's or qualified
26 municipality's share, if any, of revenues provided under this
27 paragraph.

28 (5) No discretionary sales surtax or increase or
29 decrease in the rate of any discretionary sales surtax shall
30 take effect on a date other than January 1. No discretionary
31 sales surtax shall terminate on a day other than December 31.

1 (6) The governing body of any county levying a
2 discretionary sales surtax shall enact an ordinance levying
3 the surtax in accordance with the procedures described in s.
4 125.66(2). The governing body of any qualified municipality
5 levying a discretionary sales surtax shall enact an ordinance
6 levying the surtax in accordance with the procedures described
7 in s. 166.041.

8 (7)(a) The governing body of any county or qualified
9 municipality levying a discretionary sales surtax or the
10 school board of any county levying the school capital outlay
11 surtax authorized by s. 212.055(6) shall notify the department
12 within 10 days after final adoption by ordinance or referendum
13 of an imposition, termination, or rate change of the surtax,
14 but no later than November 16 prior to the effective date.
15 The notice must specify the time period during which the
16 surtax will be in effect and the rate and must include a copy
17 of the ordinance and such other information as the department
18 requires by rule. Failure to timely provide such notification
19 to the department shall result in the delay of the effective
20 date for a period of 1 year.

21 (b) In addition to the notification required by
22 paragraph (a), the governing body of any county or qualified
23 municipality proposing to levy a discretionary sales surtax or
24 the school board of any county proposing to levy the school
25 capital outlay surtax authorized by s. 212.055(6) shall notify
26 the department by October 1 if the referendum or consideration
27 of the ordinance that would result in imposition, termination,
28 or rate change of the surtax is scheduled to occur on or after
29 October 1 of that year. Failure to timely provide such
30 notification to the department shall result in the delay of
31 the effective date for a period of 1 year.

1 (8) With respect to any motor vehicle or mobile home
2 of a class or type which is required to be registered in this
3 state, the tax due on a transaction occurring in the taxing
4 county or qualified municipality as herein provided shall be
5 collected from the purchaser or user incident to the titling
6 and registration of such property, irrespective of whether
7 such titling or registration occurs in the taxing county.

8 Section 2. Subsection (8) is added to section 212.055,
9 Florida Statutes, to read:

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

23 (8) INFRASTRUCTURE SURTAX IN LARGEST MUNICIPALITY OF
24 SPECIFIED COUNTIES.--

25 (a) The governing body of the largest municipality in
26 any county that has a population in excess of 1 million
27 persons may levy a discretionary sales surtax of up to 0.5
28 percent. The surtax must be levied pursuant to an ordinance
29 calling for a referendum on the levy of the surtax, which
30 ordinance must be enacted by a majority of the members of the
31 governing body and approved by a majority of the electors of

1 the municipality voting in a referendum on the surtax. The
2 surtax may not be levied for more than 15 years. The length of
3 time for which the surtax remains in effect may be extended
4 only by approval of a majority of the electors of the
5 municipality.

6 (b) As used in this paragraph, the term "largest"
7 means the most populous according to the latest U.S. Bureau of
8 the Census data, as updated annually in accordance with s.
9 186.901. The determination as to whether a county has a
10 population in excess of 1 million persons must be based upon
11 the latest U.S. Bureau of the Census data, as updated annually
12 in accordance with s. 186.901. The county population and the
13 identity of the largest municipality in the county must be
14 established as of the date on which the municipality enacts
15 the enabling ordinance under paragraph (a).

16 (c) A statement that includes a brief general
17 description of the projects to be funded by the surtax and
18 that conforms to the requirements of s. 101.161 must be placed
19 on the ballot by the governing body of any municipality that
20 enacts an ordinance under paragraph (a). The following
21 question must be placed on the ballot:

22
23FOR the-cent sales tax
24AGAINST the-cent sales tax
25

26 (d) Pursuant to s. 212.054(4), the proceeds of the
27 surtax levied under this subsection must be distributed to the
28 municipality in which the surtax was collected.

29 (e)1. The municipality shall spend the proceeds of the
30 surtax authorized by this subsection and any interest accrued
31 thereto to finance, plan, and construct infrastructure and to

1 acquire land for public recreation or conservation or
2 protection of natural resources and may use the proceeds and
3 interest as collateral pledged or hypothecated for bonds or
4 other indebtedness issued to finance or refinance such
5 projects.

6 2. As used in this paragraph, the term
7 "infrastructure" means:

8 a. Any fixed capital expenditure or fixed capital
9 outlay associated with the construction, reconstruction, or
10 improvement of public facilities that have a life expectancy
11 of 5 or more years and any land acquisition, land improvement,
12 design, and engineering costs related thereto; however, for
13 the purposes of this paragraph, a sports stadium or arena does
14 not constitute infrastructure.

15 b. A fire department vehicle, an emergency medical
16 service vehicle, a police department vehicle, or any other
17 vehicle, and the equipment necessary to outfit the vehicle for
18 its official use or equipment that has a life expectancy of at
19 least 5 years.

20 3. Notwithstanding any other provision of this
21 subsection, a discretionary sales surtax imposed under this
22 subsection may provide for an amount not to exceed 15 percent
23 of the proceeds of the local option sales surtax to be
24 allocated for deposit to a trust fund within the
25 municipality's accounts which has been created for the purpose
26 of funding economic development projects of a general public
27 purpose targeted to improve the local economy, including the
28 funding of operational costs and incentives related to such
29 economic development. The ballot statement must indicate the
30 intent to make an allocation under the authority of this
31 subparagraph.

