

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 909                     Surtax Proceeds/Parks & Recreation  
**SPONSOR(S):** Jennings  
**TIED BILLS:**                                 **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>9 Y, 0 N</u>	<u>Grayson</u>	<u>Cutchins</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
3) <u>Finance &amp; Tax</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
4) <u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5) <u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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**SUMMARY ANALYSIS**

This bill changes the eligibility criterion for a county to use the Local Government Infrastructure Surtax proceeds for the operation and maintenance of certain parks and recreational programs and facilities.

The bill changes the criterion to extend eligibility to any county in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes. This change accounts for the increase in the difference between the market value of property and the taxable value of property (assessment differential) resulting from the Save Our Homes provision of the State Constitution. One effect of that provision has been the loss of this eligibility to some counties originally intended to benefit from the allowable use of the surtax proceeds.

The bill appears to make a change in expenditure of funds, does not appear to produce new revenues, and therefore does not appear to have a fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Effect of HB 909

This bill changes the eligibility criterion for a county to use the Local Government Infrastructure Surtax proceeds for the operation and maintenance of certain parks and recreational programs and facilities.

##### HB 909 – Background

Currently, counties (and under certain conditions municipalities) may levy a Local Government Infrastructure Surtax on sales (surtax), the proceeds of which are used for certain infrastructure needs. However, in certain eligible counties (and the municipalities within those counties) the surtax proceeds may additionally be used for the operation and maintenance of parks and recreational programs and facilities established with the surtax proceeds. The eligibility criterion for this “operational and maintenance use” of the surtax proceeds applies to any county (and the municipalities within such county) in which 40% or more of the just value of real property is exempt or immune from ad valorem taxation. “Just value” of property is defined as the actual market value of property.<sup>1</sup> “Just value” is distinguished from “taxable value” which means the assessed value of property minus the amount of any applicable exemption provided under Art. VII, ss. 3 or 6, State Constitution, and chapter 196, FS.

As a result of the Save Our Homes provision of the State Constitution, certain property value is non-taxable but not technically considered “exempt or immune” from ad valorem taxation. Additionally, the Save Our Homes provision has resulted in an increase in the “assessment differential” or the difference between the “just (market) value” and the “taxable value” of real property. The increase in the assessment differential has grown to such an extent as to cause some previously eligible counties to lose their eligibility.

So, rather than continuing to focus on the amount of exempt or immune property within a county, this bill changes the existing “operational and maintenance use” eligibility criterion to apply to any county in which the taxable value of real property is less than 60% of the just value of real property for ad valorem tax purposes. This changes the criteria’s focus to the percentage of real property that is taxable rather than that which is not taxable.

According to a representative of Alachua County<sup>2</sup>, the “operational and maintenance use” of the surtax proceeds was enacted in 1996 at the request of Alachua County, the City of Gainesville and other cities within the County in order to fully fund a proposed county-wide recreation initiative. In the intervening years and as a result of continually increasing property “just value” and the Save Our Homes provision,

<sup>1</sup> *Black’s Law Dictionary*, 6<sup>th</sup> Ed., West Publishing Co., 1990.

<sup>2</sup> Richard Mills, Legislative Affairs Director, Alachua County, 2/26/04.

Alachua County is no longer eligible to benefit from the “operational and maintenance use” of the surtax proceeds. The bill is now needed to return eligibility to Alachua County and other similarly situated counties. The Alachua County representative believes that the bill will extend eligibility to four counties at this time: Alachua, Escambia, Marion and Leon Counties.

### Local Government Infrastructure Surtax - Background

The Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the county's governing body and approved by voters in a countywide referendum. Generally, the proceeds must be expended 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 landfills that are already closed or are required to close by order of the Department of Environmental Protection. Additional spending authority exists for select counties.

Chapter 2003-254, Laws of Florida, (CS for SB 1176) eliminates the restrictions on the use of surtax proceeds to supplant or replace user fees or to reduce ad valorem taxes. This change became effective on July 1, 2003.

Chapter 2003-402, Laws of Florida, (HB 113A) expands the allowable uses of the surtax proceeds to include the construction, lease, or maintenance of, provision of utilities or security for, those court facilities as defined in s. 29.008, F.S. This change becomes effective on July 1, 2004.

This surtax is one of several surtaxes subject to a combined rate limitation. Nearly all counties eligible to levy this surtax shall not levy it along with the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent; however, an exception exists. Please refer to the discussion of the Voter Approved Indigent Care Surtax for additional information.

In 1994, two counties were provided exceptions to general law provisions restricting the use of these proceeds. The Board of County Commissioners of Alachua County and the governing bodies of the municipalities within the county were authorized to use the surtax proceeds for the operation and maintenance of parks and recreation programs as well as facilities originally established with surtax proceeds.<sup>3</sup> In addition, the law allowed the use of the proceeds for the establishment of one or more trust funds providing a permanent endowment for the additional uses. However, the Act was later declared an unlawful special act of the Legislature.<sup>4</sup>

In 1996, the Legislature authorized any county in which 40 percent or more of the just value of real property is exempt or immune from ad valorem taxation (and the municipalities within such a county) to use the proceeds and accrued interest for operation and maintenance of parks and recreation programs and facilities established with the surtax proceeds.<sup>5</sup> However, because of the Save our Homes provision of the Florida Constitution, and classified use valuation, property may be non-taxable but not technically considered "exempt or immune".

#### C. SECTION DIRECTORY:

Section 1. Amends s. 212.055(2)(g), F.S., revising eligibility criterion for county and municipal for the use of surtax proceeds for the operation and maintenance of parks and recreational facilities.

Section 2. Provides an effective date of upon becoming law.

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<sup>3</sup> Ch. 94-487, s. 1, L.O.F.

<sup>4</sup> *Alachua County v. Adams*, 677 So.2d 396 (Fla. 1st DCA 1996).

<sup>5</sup> Ch. 96-240, s. 1, L.O.F.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None. The bill provides only a change in expenditures.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Alachua County<sup>6</sup>:

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<sup>6</sup> Information provided by Richard Mills, Legislative Affairs Director, Alachua County, 3/2/04.

The 1996 Legislature passed legislation (codified as Chapter 96~240, Laws of Florida) that authorized any county in which 40 percent or more of the just value of real property is exempt or immune from ad Valorem taxation (and the municipalities within such a county) to use the proceeds and accrued interest for operation and maintenance of parks and recreation programs at facilities established with the surtax proceeds. This measure was done at the request of Alachua County, the City of Gainesville and the other participating cities in the county in order to fully fund a proposed county-wide recreation initiative. The legislative intent was to allow this additional use of local option sales tax dollars for those medium-sized counties (populations between 75,000 and 500,000) with relatively low ratios of taxable to just value.

Currently, under State definitions, some portions of the just value of property that are not taxable are not technically considered to be "exempt" or "immune". Most notably, the "Real Property Assessment Differential of Capped Parcels" (commonly known as the "Save Our Homes" tax cap) portion of the just value, while untaxable, is not considered to be specifically "exempt" or "immune". Since 1996 when this legislation was passed, the growth in this "capped" portion of the property value (as a percentage of the total just value) has risen dramatically. As a result, while Alachua County's percentage of just value that is taxable has remained below 60%, the county no longer qualifies for the additional use because of a technicality. To rectify the situation and to better reflect the 1996 legislative intent the following changes are requested:

- Change the criteria to look at the percentage of property that is taxable rather than what is not taxable;
- Provide language clarifying that this additional use of the proceeds can be throughout the life of the tax (including the period of time after the duration of the tax when tax proceed interest may be utilized) if a county qualifies for the additional use based on the property value profile for the year when the tax is approved in a referendum.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Subcommittee on Local Affairs at its March 11, 2004, meeting favorably recommended one amendment. The amendment removes lines 26 – 33 of the bill as filed and inserts language that conforms the bill to the Senate companion. Specifically, the amendment:

- Adds a threshold of a population greater than 75,000 for the operational and maintenance use of the surtax proceeds.
- Ties the effect of the amendment to “the tax year in which an infrastructure surtax referendum is placed before the voters”.
- Limits the operational and maintenance use of the surtax proceeds to “throughout the duration of the surtax levy or while interest earnings accruing from the proceeds of the surtax are available for such use, which ever period is greater”.