

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1281 Energy Efficiency

SPONSOR(S): Energy & Utilities Subcommittee and Rehwinkel Vasilinda

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N, As CS	Whittier	Collins
2) Community & Military Affairs Subcommittee			
3) Finance & Tax Committee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. There are eight different types of local discretionary sales surtaxes currently authorized in law. This bill amends s. 212.055(2)(d), F.S., which provides specifications for which the Local Government Infrastructure Surtax may be used by counties.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

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

The bill adds the following to the above list of authorized uses of the surtax proceeds:

- To provide loans, grants, or rebates to residential property owners, with preference given to low-income elders, Florida veterans of the Armed Forces, and disabled adults, who make energy efficiency improvements to their residential property, if a local government ordinance authorizing such use is approved by referendum.

The bill defines "energy efficiency improvement" as any energy conservation and efficiency measure that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

The bill does not amend the percentage rate that local governments are authorized to levy for purposes of the Local Government Infrastructure Surtax. It does not have a negative fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1281a.ENUS

DATE: 4/1/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Energy Efficiency and Conservation

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida on a state and local level. In Chapter 2008-227, L.O.F., the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In Chapter 2008-191, L.O.F., the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.

In 2010, the Legislature found that, "In order to make [renewable energy improvements or energy conservation and efficiency improvements] more affordable and assist property owners who wish to undertake such improvements...there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance."¹

Local Discretionary Sales Surtaxes

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions authorized pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S. Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.² The surtax applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.³

There are eight different types of local discretionary sales surtaxes currently authorized in law:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

¹ Section 163.08(1)(b), F.S.

² 2011 *Florida Tax Handbook*, p. 203.

³ Section 212.054(2)(b)1., F.S.

Local Government Infrastructure Surtax

Section 212.055(2)(a)1., F.S., provides that 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 members of the county's governing body and approved by voters in a countywide referendum.⁴ If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.⁵

All counties are eligible to levy this surtax.⁶ During the 2011 calendar year, four counties will be levying at the 0.5 percent rate and 16 counties will be levying at the 1 percent rate.⁷

Specifically, the following counties will be levying this surtax during the 2011 calendar year:

County	Percentage
Charlotte	1%
Clay	1%
Duval	0.5%
Escambia	1%
Flagler	0.5%
Glades	1%
Highlands	1%
Hillsborough	0.5%
Indian River	1%
Lake	1%
Leon	1%
Martin	0.5%
Monroe	1%
Osceola	1%
Pasco	1%
Pinellas	1%
Putnam	1%
Sarasota	1%
Seminole	1%
Wakulla	1%

Source: 2011 Florida Tax Handbook, pp. 208-209.

The following chart estimates what these counties will collect for the current and upcoming fiscal year and provides historical collections for the Local Government Infrastructure Surtax:

Fiscal Year	Total Collections
2011-2012 estimate	\$655,565,230
2010-2011 estimate	\$612,677,785
2009-2010	\$593,680,024
2008-2009	\$629,887,765
2007-2008	\$658,207,195
2006-2007	\$685,978,662

Source: 2100 Florida Tax Handbook, p. 212.

⁴ In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.

⁵ 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 pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.

⁶ This surtax is one of several surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

⁷ 2011 Florida Tax Handbook, pp. 208-209.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities⁸ may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

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

For purposes of s. 212.055(2)(d), F.S., the term “infrastructure” means the following:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.
- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.
- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008, F.S.
- Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government.⁹
- Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing.¹⁰

Any Local Government Infrastructure Surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the proceeds to be deposited in a trust fund for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development.¹¹ This intention must be on the ballot statement.

A county with a total population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern that imposed the surtax before July 1, 1992, may use the proceeds and accrued interest of the surtax for any public purpose if the county satisfies all of the following criteria:

- The debt service obligations for any year are met;
- The county's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S.; and
- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the proceeds and accrued interest.¹²

⁸ Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

⁹ Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

¹⁰ The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

¹¹ Section 212.055(2)(d)2., F.S.

¹² Section 212.055(2)(f)1., F.S.

Pursuant to s. 125.66(2)(a), F.S., a board of county commissioners at any regular or special meeting may enact or amend any ordinance, if notice of intent to consider the ordinance is given at least 10 days prior to the meeting by publication in a newspaper of general circulation in the county. A copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners.

The notice of proposed enactment must state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where the proposed ordinance(s) may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Effects of Proposed Changes

The bill amends s. 212.055(2)(d), F.S., which provides specifications for which the Local Government Infrastructure Surtax may be used.

As listed in the Current Situation Section, school districts, counties and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

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- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

A local government choosing to expend funds under this new provision would be required to enact or amend its ordinance pursuant to s. 125.66, F.S., and have the ordinance approved by referendum in a subsequent election.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055, F.S., revising uses for local government infrastructure surtaxes.

Section 2. Provides an effective date of July 1, 2011.

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. The bill does not amend the percentage rate that local governments are authorized to levy for purposes of local option sales taxes.

2. Expenditures:

None. The bill does not amend the percentage rate that local governments are authorized to levy for purposes of local option sales taxes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provision may result in more homeowners choosing to make energy efficiency improvements to their real property, within counties that approve this particular use of Local Government Infrastructure Surtax proceeds.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 or 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/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Energy & Utilities Subcommittee adopted a strike-all amendment that made the following changes to the bill:

- Replaces “financial assistance” term with “loans, grants, and rebates;”
- Directs that preference for the loans, grants, and rebates be given to low-income elders, Florida veterans of the Armed Forces, and disabled adults;
- Removes “renewable energy devices” from types of eligible improvements and removed the corresponding definition within the bill;
- Requires that financial assistance be provided with proceeds from the surtax only if the ordinance is approved by referendum; and
- Expands the list of eligible measures within the definition of energy efficiency improvements.

The bill was passed, as amended, and reported out as a committee substitute.