

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1864
 INTRODUCER: Senator Altman
 SUBJECT: Energy Conservation
 DATE: March 30, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/1 amendment
2.	_____	_____	CU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for a portion of the proceeds of the local government infrastructure surtax to be used to provide financial assistance to residential property owners who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property. The bill also defines the terms “renewable energy devices” and “energy efficiency improvement” for purposes of this Act.

This bill substantially amends section 212.055 of the Florida Statutes.

II. Present Situation:¹

Local Discretionary Sales Surtax

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

¹ The information in this section was obtained from Fla. H.R. Subcomm. on Energy and Utilities, HB 1281 (2011) Staff Analysis 2-5 (on file with Comm.) *citing* the 2011 FLORIDA TAX HANDBOOK.

² Florida Revenue Estimating Conference, 2011 FLORIDA TAX HANDBOOK, at 203.

applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.³ The local discretionary sales surtax rate varies from county to county depending on the particular levies authorized in that jurisdiction.

There are eight different types of local discretionary sales surtaxes currently authorized in law:⁴

- 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.

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.⁵ 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, 1993.⁶

All counties are eligible to levy this surtax.⁷ 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.⁸ 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%

³ Section 212.054(2)(b)1., F.S.

⁴ See s. 212.055(1)-(8), F.S.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 2011 FLORIDA TAX HANDBOOK, at 208-209.

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.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities⁹ 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

⁹ 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.

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.¹⁰
- 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.¹¹

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.¹² 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.¹³

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.

¹⁰ 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.

¹¹ 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-paragraph.

¹² Section 212.055(2)(d)2., F.S.

¹³ Section 212.055(2)(f)1., F.S.

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.

III. Effect of Proposed Changes:

This bill provides for a portion of the proceeds of the local government infrastructure surtax to be used to provide financial assistance to residential property owners who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property.

The bill defines the term “renewable energy devices” to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy or energy derived from geothermal deposits:

- Solar energy collectors.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
- Windmills.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The bill defines the term “energy efficiency improvements” to mean any energy conservation and efficiency improvement that reduces consumption through conservation or 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;
- Building modifications to increase the use of daylight;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

This bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill will allow a portion of the proceeds of the local government infrastructure surtax to be used to provide financial assistance to residential property owners who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property.

B. Private Sector Impact:

Residential property owners who make energy efficiency improvements or install renewable energy devices may receive financial assistance as a result of this bill.

C. Government Sector Impact:

A local government choosing to expend funds under this Act would be required to amend its ordinance pursuant to s. 125.66, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 826332 by Community Affairs on April 11, 2011:

This amendment authorizes a municipality to collect special assessments to pay the additional costs of renewable energy that are in excess of a public utility's full avoided costs, pursuant to an agreement with the public utility.