

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 723 Discretionary Sales Surtaxes

**SPONSOR(S):** Rooney, Jr. and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 786

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Finance & Tax Subcommittee	18 Y, 0 N, As CS	Flieger	Langston
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

**SUMMARY ANALYSIS**

The bill creates s. 212.055(2)(i), F.S., to allow for the use of the proceeds or interest accrued from the levy of a Local Government Infrastructure Surtax for the maintenance expenses of transportation infrastructure, if the local government ordinance authorizing such use is approved by a referendum.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.<sup>1</sup> The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax does not apply to sales price above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

The eight discretionary sales surtaxes and their maximum rates are:

- Charter County and Regional Transportation System Surtax, 1 percent
- Emergency Fire Rescue Services and Facilities Surtax, 1 percent
- Local Government Infrastructure Surtax, 1 percent
- Small County Surtax, 1 percent
- Indigent Care and Trauma Center Surtax, 0.5 percent
- County Public Hospital Surtax, 0.5 percent
- School Capital Outlay Surtax, 0.5 percent
- Voter-Approved Indigent Care Surtax, 1 percent

Every county is eligible to levy the School Capital Outlay and Local Government Infrastructure Surtaxes, the others have varying requirements. Section 212.055, F.S., further provides caps on the combined rates. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility. Currently, the highest surtax imposed is 1.5 percent in several counties;<sup>2</sup> however, the theoretical maximum combined rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county.<sup>3</sup>

Section 212.054, F.S., requires that any increase or decrease in a discretionary sales surtax must take effect on January 1.

The Local Government Infrastructure Surtax is one of the surtaxes authorized by s. 212.055, F.S., which may be levied by the governing authority in each county after a favorable vote of the electorate through a local referendum.<sup>4</sup> The rate imposed may be 0.5 percent or 1.0 percent.<sup>5</sup> Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population.<sup>6</sup>

Proceeds and accrued interest may be expended for any of the following purposes:<sup>7</sup>

- By school districts to finance, plan, and construct infrastructure;<sup>8</sup>

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<sup>1</sup> The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

<sup>2</sup> See DOR Form DR-15 DSS, "Discretionary Sales Surtax Information", available at <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf> (last visited 1/31/2013).

<sup>3</sup> See pg. 216-217 of the REC's [2013 Florida Tax Handbook](http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2013.pdf), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2013.pdf> (last visited 1/9/14)

<sup>4</sup> Section 212.055(2)(a)1., F.S.

<sup>5</sup> However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent.

<sup>6</sup> Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

<sup>7</sup> Section 212.055(2)(d), F.S.

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**DATE:** 3/27/2014

- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to commercial or residential property owners who make energy efficiency improvements, provided a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county or municipal solid waste landfills.

Proceeds and accrued interest may not be used for the operational expenses of infrastructure.<sup>9</sup> The Attorney General (AG) has considered whether land improvement or design expenses could properly be purchased with the proceeds of this surtax. The AG determined that such items as fencing, swings, lumber for bleachers and lighting fixtures, and the materials for landscape design and tree and shrubbery planting would not be appropriate expenditures of surtax proceeds because they are more in the nature of day-to-day operational expenses.<sup>10</sup> However, land improvement or design expenses that occur in conjunction with a fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities, or an expenditure for such things as materials for landscape design may be purchased with the proceeds of the surtax when a new public facility is being built or an existing public facility is being improved. In 2012, the AG issued an opinion determining that a city would be authorized to use these surtax funds for a beach erosion control project, involving the construction of fixtures and fixed equipment and also the studies, design, and planning involved in the construction of such capital projects.<sup>11</sup>

Seventeen counties currently levy the surtax. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Fifteen counties levy the surtax at the rate of 1 percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, and Wakulla. During the 2014-15 fiscal year, these counties are expected to receive combined county revenues of \$650,171,261.<sup>12</sup> Any county is not allowed to levy a combination of the Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax in excess of a combined rate of 1 percent.

### **Proposed Changes**

The bill creates s. 212.055(2)(i), F.S., to allow for the use of the proceeds or interest accrued from the levy of a Local Government Infrastructure Surtax for the maintenance expenses of transportation infrastructure, if the local government ordinance authorizing such use is approved by a referendum.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 212.055, revising the permissible uses of a surtax

Section 2. Providing an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

<sup>8</sup> Infrastructure is defined in Section 212.055(2)(d)1.a-e, F.S.

<sup>9</sup> Except in certain circumstances involving landfill maintenance associated with closure, or county bond indebtedness.

<sup>10</sup> Op. Att’y Gen. Fla. 94-79 (1994).

<sup>11</sup> Op. Att’y Gen. Fla. 2012-19 (2012).

<sup>12</sup> Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (2014).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of 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 26, 2014, the Finance and Tax Subcommittee adopted a strike-all amendment that removed a proposed new local option surtax. This analysis is drafted to the committee substitute.