

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 Committee on Finance and Tax

BILL: CS/CS/SB 1652

INTRODUCER: Finance and Tax Committee; Community Affairs Committee; and Senators Bradley and Bean

SUBJECT: Discretionary Sales Surtaxes

DATE: February 9, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1652 provides that a county may levy a pension liability surtax to fund underfunded defined benefit retirement plans or systems at a rate up to 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The pension liability surtax terminates at the end of the year when the actuarial funding level of the plan or system for which the tax was levied reaches or exceeds 100 percent, or December 31, 2060, whichever occurs earlier.

The county may levy the pension liability surtax only if:

- An employee who enters employment on or after the date that the local government closes an underfunded defined benefit retirement plan or system is prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds; and
- The county currently levies a local government infrastructure surtax which is scheduled to terminate and is not subject to renewal.

The Department of Revenue (DOR) is authorized to retain an administrative fee of up to two percent of the surtax proceeds. Proceeds of the tax must be distributed to an eligible defined benefit retirement plan or system if the proceeds have been actuarially recognized; if the proceeds have not been actuarially recognized the local government may borrow against the

anticipated revenue and use the proceeds to repay these debts, reimburse itself for borrowing costs, and make distributions to an eligible defined benefit retirement plan or system.

The bill limits to one percent the combined rate of the Pension Liability Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent and Trauma Center Surtax, and the County Public Hospital Surtax.

The surtax must be enacted by ordinance and approved by a majority of electors of the county voting in a referendum.

The Revenue Estimating Conference determined that the surtax authorized by this bill would most likely be levied by the City of Jacksonville, which currently levies a local government infrastructure surtax which is scheduled to terminate no later than December 31, 2030. Since the pension liability surtax must be approved by referendum and cannot take effect until the current local government infrastructure surtax is terminated, the bill's impact on local government revenue is zero or indeterminate, positive.

II. Present Situation:

Local Discretionary Sales Surtaxes

In addition to the six percent state sales tax, the Florida Statutes authorize counties to charge discretionary sales surtaxes,¹ which must be specifically designated by statute.² Eight different types of local discretionary sales surtaxes (also referred to as local option sales taxes) are currently authorized and represent potential revenue sources for county and municipal governments and school districts.³ 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 the purposes of ch. 202, F.S.⁴ Section 212.054, F.S., provides for the administration and collection of discretionary sales surtaxes; subsection (5) of that section provides that no discretionary sales surtax or increase or decrease in the rate of any such tax shall take effect on a date other than January 1, and no such tax shall terminate on a day other than December 31. Section 2.054(7)(a), F.S., requires the governing body of any county to notify DOR by October 1 of an ordinance that would result in the termination of the surtax on or after October 1 of that year. Failure to timely provide such notification results in the delay of the termination date by 1 year.

The eight types of local discretionary sales surtaxes are:

- The Charter County and Regional Transportation System Surtax in s. 212.055(1), F.S.;
- The Local Government Infrastructure Surtax in s. 212.055(2), F.S.;
- The Small County Surtax in s. 212.055(3), F.S.;
- The Indigent Care and Trauma Center Surtax in s. 212.055(4), F.S.;
- The County Public Hospital Surtax in s. 212.055(5), F.S.;

¹ A local discretionary sales surtax may also be known as a local option county sales tax. A surtax is an "additional tax imposed on something being taxed or on the primary tax itself." BLACK'S LAW DICTIONARY 704 (3rd ed. 2006).

² Sections 212.054 and 212.055, F.S.

³ Florida Revenue Estimating Conference, *Florida Tax Handbook*, pg. 215 (2016).

⁴ *Id.*

- School Capital Outlay Surtax in s. 212.055(6), F.S.;
- The Voter-Approved Indigent Care Surtax in s. 212.055(7), F.S.; and
- The Emergency Fire Rescue Services and Facilities Surtax in s. 212.055(8), F.S.

A discretionary sales surtax applies to transactions if:⁵

- The selling dealer delivers taxable goods or taxable service in or into a county with a surtax.
- The event for which an admission is charged is located in a county with a surtax. Tax is due at the rate in the county where the event takes place.
- The consumer of electric power or energy is located in a county with a surtax.
- The sale of prepaid calling arrangements occurs in a county with a surtax.
- The location or delivery of tangible personal property covered by a service warranty is within a county with a surtax. The person receiving consideration for the issuance of a service warranty from the agreement holder must collect surtax at the rate imposed by that county.
- The commercial real property that is leased or rented, or upon which a license for use is granted, is in a county with a surtax.
- The rental of living or sleeping accommodations (transient rentals) occurs in a county with a surtax.
- A registered dealer owing use tax on purchases or leases is located in a county with a surtax.

During the 2015-16 local fiscal year, the 49 county governments and 15 school districts levying one or more local discretionary sales surtaxes will realize an estimated \$2.15 billion in revenue.⁶

Local Government Infrastructure Surtax

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 majority vote of the electorate through a local referendum.⁷ The surtax may be levied at 0.5 percent or 1.0 percent.⁸ 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, or if there is no interlocal agreement, according to the formula in s. 218.62, F.S.⁹

The proceeds of the surtax must be expended only to:

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or

⁵ Florida Department of Revenue, *Florida's Discretionary Sales Surtax, 2*, available at http://dor.myflorida.com/Forms_library/current/gt800019.pdf (last visited Oct. 28, 2015).

⁶ Office of Economic and Demographic Research, *Local Government Financial Information Handbook*, at 152 (December 2015) available at <http://www.edr.state.fl.us/Content/local-government/reports/lghih15.pdf> (last visited Jan. 21, 2016).

⁷ Section 212.055(2)(a)1., F.S.

⁸ 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. Section 212.055(2)(h), F.S.

⁹ 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.

- 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.¹⁰

While all counties are authorized to levy the surtax, only 18 counties currently do so. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Sixteen counties levy the surtax at the rate of one percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, Seminole, and Wakulla. During the 2015-2016 Fiscal Year, these counties are expected to receive revenues of \$691,831,985.¹¹ All 18 counties that currently levy the tax are scheduled to terminate, with the latest termination date being Leon County on Dec. 31, 2039.¹²

The surtax may not be levied beyond the time established in the ordinance if the surtax was levied pursuant to a referendum held before July 1, 1993.¹³ 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.¹⁴ There is no state-mandated limit on the length of levy for those surtax ordinances enacted after July 1, 1993. The levy may only be extended by voter approval in a countywide referendum.¹⁵

Combined Tax Rate Caps for Discretionary Sales Surtaxes

Certain discretionary sales surtax levy combinations are subject to tax rate caps such that the combined rate of the surtaxes may not exceed one percent.¹⁶

Actuarial Soundness of Retirement Systems

Part VII of Chapter 112 of the Florida Statutes governs the Actuarial Soundness of Retirement Systems. The intent of this part is to ensure that governmental retirement systems or plans are “managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits.”¹⁷ The part establishes minimum standards for the operation and funding of public employee retirement systems and plans.¹⁸ The provisions of part VII are applicable to “any and all units, agencies, branches, departments, boards, and institutions of state, county, special district, and municipal governments which participate in, operate, or administer a retirement system or plan for public employees, funded in whole or in part by public funds.”¹⁹ Each retirement system or plan under part VII must have regularly scheduled actuarial

¹⁰ Section 212.055(2)(d), F.S.

¹¹ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, pg. 226 (2015).

¹² See Office of Economic and Demographic Research, *Local Government Financial Information Handbook*, at pgs. 154-155 (December 2015) available at <http://www.edr.state.fl.us/Content/local-government/reports/lghih15.pdf> (last visited Jan. 21, 2016).

¹³ Section 212.055(2)(a)2., F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See sections 212.055(2)(h), 212.055(3)(f), 212.055(4)(b)5., and 212.055(5)(f), F.S.

¹⁷ Section 112.61, F.S.

¹⁸ *Id.*

¹⁹ Section 112.62, F.S.

reports prepared and certified by an enrolled actuary.²⁰ The actuarial report must include, but is not limited to, the following:

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the system and the extent of unfunded accrued liabilities, if any.
- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability.
- A description and explanation of actuarial assumptions.
- A schedule illustrating the amortization of unfunded liabilities, if any.
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports.
- Effective January 1, 2016, the mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System.
- A statement by the enrolled actuary that the report is complete and accurate and that in his or her opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this act.²¹

Section 112.64, F.S., governs the amortization of unfunded liability for such retirement systems or plans. For those plans in existence on October 1, 1980, the total contributions to the retirement system or plan shall be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, nothing contained in this subsection permits any retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.²² For a retirement system or plan which comes into existence after October 1, 1980, the unfunded liability, if any, shall be amortized within 40 years of the first plan year.²³ The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses shall be amortized within 30 plan years.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 112.64, F.S., providing that the proceeds of a pension liability surtax imposed by a county pursuant to s. 212.055, F.S., which is levied for the purpose of funding or amortizing the unfunded liability of a defined benefit retirement plan or system, excluding the Florida Retirement System, shall be actuarially recognized, and the county shall apply the present value of the total projected proceeds of the surtax to reduce the unfunded liability or to amortize it as part of the county's annual required contribution, beginning with the fiscal year immediately following approval of the pension liability surtax. The unfunded liability

²⁰ Section 112.63(1), F.S.

²¹ *Id.*

²² Section 112.64(2), F.S.

²³ Section 112.64(3), F.S.

²⁴ Section 112.64(4), F.S.

amortization schedule must be adjusted beginning with the fiscal year immediately following approval of the pension liability surtax and amortized over a period of 30 years.

The payroll of all employees covered by a closed retirement plan or system that receives funds from the pension liability surtax must be included in determining the unfunded liability amortization schedule for the closed plan, regardless of the plan in which the employees currently participate, and the payroll growth assumption must be adjusted to reflect the payroll of those employees when calculating the amortization of the unfunded liability.

Section 2 amends s. 212.055, F.S., authorizing the governing body of a county to levy a pension liability surtax to fund underfunded defined benefit retirement plans or systems, pursuant to an ordinance conditioned to take effect upon approval by a majority vote of the electors of the county voting in a referendum, at a rate that may not exceed 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63, F.S., must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may impose the surtax only if:

- An employee, including a police officer or firefighter, who enters employment on or after the date that the local government closes an underfunded defined benefit retirement plan or system, is prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds.
- The county currently levies a local government infrastructure surtax pursuant to s. 212.055(2), F.S., which is scheduled to terminate and is not subject to renewal. The pension liability surtax does not take effect until the local government infrastructure surtax is terminated.

A referendum to adopt a pension liability surtax must meet the requirements of s. 101.161, F.S., and must include a brief and general description of the purposes for which the surtax proceeds will be used. Section 101.161, F.S., requires the public measure to include a ballot summary that is printed in clear and unambiguous language on the ballot. The ballot summary must be an explanatory statement of the chief purpose of the measure and may not exceed 75 words in length.²⁵ Furthermore, the Financial Impact Estimating Conference must prepare a separate financial impact statement concerning the measure in accordance with s. 100.371, F.S.²⁶

Pursuant to s. 212.054(4), F.S., the proceeds of the surtax collected under s. 212.055(9), F.S., less an administrative fee that may be retained by the DOR, shall be distributed by the DOR to the local government. The local government shall distribute the proceeds it receives from the DOR to an eligible defined benefit retirement plan or system, except the Florida Retirement System, if the proceeds have been actuarially recognized as provided for in s. 112.64(6), F.S. If the proceeds have not been actuarially recognized, the local government may distribute them to an eligible defined benefit retirement plan, pledge the proceeds to repay debts incurred for the purpose of making advanced payments toward the unfunded liability of an underfunded defined

²⁵ Section 101.161(1), F.S.

²⁶ *Id.*

benefit retirement plan or system, and to reimburse itself for any borrowing costs associated with such debts.

The ordinance providing for the imposition of the pension liability surtax must specify the method of determining the percentage of the proceeds, and the frequency of such payments, distributed to each eligible defined benefit retirement plan or system. The ordinance must also specify the local government's intention to incur debt for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system, if the proceeds are not actuarially recognized.

A pension liability surtax shall terminate on December 31 of the year in which the actuarial funding level is expected to reach or exceed 100 percent for the defined benefit retirement plan or system for which the surtax was levied, or December 31, 2060, whichever occurs first. The level of actuarial funding must be based upon the most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63, F.S.

The bill limits to one percent the combined rate of the Pension Liability Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent and Trauma Center Surtax, and the County Public Hospital Surtax.

Section 3 provides an effective date of July 1, 2016.

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:

The Revenue Estimating Conference determined that the surtax authorized by CS/CS/SB 1652 would most likely be levied by the City of Jacksonville, which currently has three substantially underfunded public pension funds²⁷ and has adopted a resolution urging the Florida Legislature to adopt such legislation.²⁸ Duval County currently levies a local

²⁷ Material provided by Thomas Griffin, registered lobbyist for the city of Jacksonville (on file with the Senate Finance and Tax Committee).

²⁸ Council of the City of Jacksonville, *Resolution 2016-17 in Support of Sales Surtax Extension* (on file with the Senate Finance and Tax Committee).

government infrastructure surtax which is scheduled to terminate no later than December 31, 2030.²⁹ Since the pension liability surtax must be approved by referendum and may not take effect until the current local government infrastructure surtax is terminated, the bill's impact on local government revenue is zero or indeterminate, positive.³⁰

B. Private Sector Impact:

The bill does not directly impact the private sector, but if a county approves the surtax by referendum, it will increase the tax rates on transactions in the county.

C. Government Sector Impact:

The bill provides additional taxing authority to certain counties.

The Department of Revenue has determined that the bill will have an insignificant fiscal impact on the department.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.64 and 212.055.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Finance and Tax on February 8, 2016:

The CS/CS makes several changes to clarify the administration of the pension liability surtax and explicitly authorizes the local government to borrow against surtax proceeds to make advanced payments toward the unfunded liability of an underfunded plan or system.

CS by Community Affairs on January 26, 2016:

Limits to one percent the combined rate of the Pension Liability surtax, the Local Government Infrastructure surtax, the Small County Surtax, the Indigent and Trauma Center surtax, and the County Public Hospital surtax.

²⁹ Office of Economic and Demographic Research, *2015 Local Government Financial Information Handbook*, p. 154.

³⁰ For the local fiscal year ending Sept. 30, 2016, a 0.5 percent surtax in Duval County would yield \$81,044,120.

³¹ Florida Department of Revenue, *Senate Bill 1652 Fiscal Analysis*, 3 (Jan. 13, 2016) (on file with the Senate Committee on Finance and Tax).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
