

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2264
 SPONSOR: Senator Smith
 SUBJECT: Discretionary Sales Surtaxes
 DATE: March 6, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Favorable
2.	_____	_____	FT	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill restricts counties with a population of 75,000 or less, if otherwise qualified, from using the proceeds of the local government infrastructure surtax (surtax) for the operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax. In addition, it amends the qualification criteria and clarifies the extent of the authority to use the proceeds for these purposes.

The changes made by this bill will allow Alachua County to qualify to use surtax proceeds for this purpose.

This bill amends section 212.055 of the Florida Statutes.

II. Present Situation:

Local Discretionary Sales Surtaxes

Section 212.054(1), F.S., currently limits, exclusively to counties, the authority to levy the discretionary sales surtaxes authorized in and subject to the specifications in s. 212.055, F.S.

Section 212.055, F.S., authorizes counties to impose seven local discretionary sales surtaxes (taxes) on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, and admissions. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax is not subject to any sales amount above \$5,000 on any item of tangible personal property and on long distance telephone service. This \$5,000 cap does not apply to the sale of any other service. The Department of Revenue (DOR) is responsible to administer, collect, and enforce all sales taxes. Collections received by DOR are returned monthly to the county imposing the tax.

The tax rates, duration levied, method of imposition, and proceeds uses are individually specified in s. 212.055, F.S. TABLE 1 identifies the seven taxes, the rate limits, and the number of counties authorized to impose and the number imposing the tax. The maximum combined rate for the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax, is 1%. In counties with a publicly supported medical school levying the Voter-Approved Indigent Care Surtax, the combined rate is 1.5 percent. The maximum combined rate for counties authorized to levy the Charter County Transit System Surtax is 2.5%. The School Capital Outlay Surtax is capped at 0.5%, and is not included in these tax rate caps.

TAX	AUTHORIZED LEVY (%)	# OF COUNTIES AUTHORIZED TO LEVY TAX	# OF COUNTIES LEVYING TAX
Charter County Transit System Surtax	up to 1%	7	2
Local Government Infrastructure Surtax	0.5% or 1%	67	25
Small County Surtax	0.5% or 1%	31	20
Indigent Care & Trauma Center Surtax	up to 0.5%	5	1
County Public Hospital Surtax	0.5% (Miami-Dade County)	1	1
School Capital Outlay Surtax	up to 0.5%	67	13
Voter-Approved Indigent Care Surtax	0.5% or 1%	61	0

(Source: Legislative Committee on Intergovernmental Relations, 11/2003)

Local Government Infrastructure Surtax

Section 212.055(2), F.S., authorizes the governing board in each county, upon approval by referendum, to impose the Local Government Infrastructure Sales Surtax (surtax) at a rate of 0.5 percent or 1 percent. In addition, the governing bodies of the municipalities representing a majority of the county's population may adopt uniform resolutions establishing the rate of the surtax, and upon county-wide referendum approval, may impose the surtax.

The referendum ballot must include a brief general description of the projects to be funded by the surtax. In addition, surtax proceeds must be distributed between the county and municipalities

within the county according to an interlocal agreement or the distribution formula for the Half-Cent Sales Tax proceeds as specified in s. 218.62. With limited exceptions, proceeds from the surtax may only be used to finance, plan, and construct infrastructure.¹ However, subsection (2)(g) provides that

“...a 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, may use the proceeds and interest of the surtax for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax.”

Preliminary research indicates twenty-six counties qualify, under the property tax qualification, to use surtax proceeds for this purpose. However, none of these counties are likely to qualify to use surtax proceeds for this purpose. Seventeen of these counties levy the Small County Surtax at 1%, and are thereby precluded from levying the Local Government Infrastructure Sales Surtax. The nine remaining counties levy the Local Government Infrastructure Sales Surtax at 1 percent. If the proceeds from this tax are pledged for debt service, or use of the proceeds are restricted by the referendum ballot, they would be unable to use proceeds from the surtax for this authorized use.

Twenty-five of these counties have a population of less than 75,000. Only Escambia County has a population of 75,000 or more.²

Non-Taxed Property

Article VII, s. 4 of the State Constitution requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted to mean fair market value.³ However, the Florida Constitution grants property tax relief in the form of valuation differentials,⁴ assessment limitations,⁵ and exemptions,⁶ which includes homestead exemptions.⁷

¹ “Infrastructure” is defined in subparagraph (2)(d)2. as “...any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto...” and “...a fire department vehicle, an emergency medical service vehicle, a sheriff’s office vehicle, a police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

² When initially enacted, it was anticipated that four counties with populations of over 75,000 persons (Alachua, Escambia, Leon and Marion) would qualify to use surtax proceeds for this purpose.

³ See *Walter v. Schuler*, 176 So.2d 81.

⁴ Article VII, s. 4 of the State Constitution authorizes valuation differentials, which are based on character or use of property, such as agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for non-commercial recreational purposes. This section also provides that tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.

⁵ Article VII, Section 4(c) of the State Constitution authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner’s spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the “Granny Flats” assessment limitation. The statutes also provide for differential treatment of specific property, to include pollution control devices and building renovations for the physically handicapped.

⁶ Article VII, s. 3 of the State Constitution, provides authority for the following property tax exemptions:

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.⁸ The courts have further ruled that this immunity extends to property of school districts⁹ and certain special districts.¹⁰

In tax year 2002, the combination of property immune from taxation and the various forms of “tax breaks” had the effect of reducing the taxable value of property in this state by 28 percent.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 212.055(2)(g), F.S., to prohibit counties with a population of 75,000 or less, if otherwise qualified, from using the proceeds of the local government infrastructure surtax for the operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax.

In addition, it changes the property tax threshold, thereby allowing Alachua County to qualify to use surtax proceeds for this purpose.¹² Specifically, the threshold is changed from “40 percent or more of the just value of real property is exempt or immune from ad valorem taxation...” to “the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which an infrastructure surtax referendum is placed before the voters...” This new threshold excludes property subject to assessment limitations (homestead property subject to the “Save Our Homes” and “Granny Flat” assessment

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- All property owned by a municipality and used exclusively by it for municipal or public purposes;
 - Portions of property use predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;
 - Household goods and personal effects, not less than one thousand dollars;
 - Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than five hundred dollars, as provided in general law;
 - Property used for community and economic development, by local option and as defined by general law;
 - Certain renewable energy source devices and real property on which the device is installed and operated; and
 - Historic properties, by local option and as defined by general law.

The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

⁷ Article VII, s. 6(a-d) of the State Constitution provides for a \$25,000 homestead exemption. Article VII, s. 6(e) authorizes the Legislature to provide renters who are permanent residents ad valorem tax relief on all ad valorem tax levies. This \$25,000 exemption is implemented in s. 196.1975(9)(a) and 196.1977, F.S., for certain units in non-profit homes for the aged and certain proprietary continuing care facilities. Article VII, s. 6(f) of the Florida Constitution, authorizes the Legislature to allow counties or municipalities, by ordinance, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to resident homeowners who are 65 years of age whose household income, as defined by general law, does not exceed \$20,000, adjusted for inflation.

⁸ See *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utilities Commission v. Milligan*, 229 So.2d 262 (Fls. Dist.Ct. Appl. 1969); and *Dickinson v. City of Tallahassee*, 325 So.2d 1 (Fla. 1975).

⁹ *Dickinson v. City of Tallahassee*, 325 So.2d 1 (Fla. 1975).

¹⁰ *Sarasota-Manatee Airport Auth. V. Mikos*, 605 So.2d 132 (Fla. Dist. Ct. App. 1992).

¹¹ Out of \$1,236 billion in just (or market) value, \$347 billion was not taxed. See LCIR database @ <http://fcn.state.fl.us/lcir/dataAto?Z.html>.

¹² While Escambia and Leon Counties would qualify under the new property tax threshold, they both currently levy the Infrastructure Surtax at 1 percent and have likely committed, as specified in the referendum ballot, those tax proceeds to other uses.

limitations), as well as property that is exempt and immune from taxation,¹³ as is provided in current law.

In addition, it clarifies the qualification criteria to state that if the county meets the property tax qualification criteria in the year the surtax is approved by referendum, the county (and qualified municipalities within the county) may continue to use the tax proceeds for this purpose “throughout the duration of the surtax levy or while interest earning accruing from the proceeds of the surtax are available for such use, whichever period is longer.” This expanded use of surtax proceeds would be subject to any limitation on the use of surtax proceeds specified on the ballot when the imposition of the surtax was approved by referendum.

Section 2 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill restricts counties with a population of 75,000 or less, if otherwise qualified, from using the proceeds of the local government infrastructure surtax for the operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax. In addition, it amends the qualification criteria and clarifies the extent of the authority to use the proceeds for these purposes.

This change allows Alachua County to qualify to use surtax proceeds for this purpose.

It appears that only Gulf County is effectively impacted by the population threshold imposed by this bill. Gulf County does not levy a local option tax and would otherwise qualify under the property tax threshold. The remaining counties with populations under 75,000 either do not qualify under the property tax threshold, or currently levy the Small County Surtax at 1 percent or the Local Infrastructure Surtax and have likely committed tax proceeds to other projects.

¹³ According to DOR, it includes the value of property not taxed due to valuation differentials, such as agricultural land.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
