

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 1297 Discretionary Sales Surtaxes

**SPONSOR(S):** Finance & Tax Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge	Langston

**SUMMARY ANALYSIS**

The bill provides that a county, upon approval by a majority vote of the electors of the county, may levy a pension liability discretionary sales surtax to fund underfunded defined benefit plans or systems at a rate not to exceed 0.5 percent. A 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 surtax may be imposed only if:

- The employees, including police officers and firefighters, who enter employment on or after the date that the local government meets the requirements for enacting the pension liability surtax, are prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds.
- The local government provides a uniform retirement benefit to employees, regardless of position held, who enter employment on or after the date that the local government meets the requirements for enacting the pension liability surtax.
- The elected local government officers do not accrue service credit towards their retirement benefit for the period beginning on the date that the local government meets the requirements for enacting the pension liability surtax and ending on the date such surtax is no longer collected.
- 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.

The Revenue Estimating Conference has not estimated the potential revenue impact of the bill on state and local government. However, staff estimates the revenue impact of the bill is zero on state government and positive indeterminate on local government because it requires future county governing board action and voter approval.

The bill has an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Local Discretionary Sales Surtaxes

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 1.5 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.

##### 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 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>

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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/Forms\\_library/current/dr15dssr15.pdf](http://dor.myflorida.com/Forms_library/current/dr15dssr15.pdf) (last visited 1/24/2016).

<sup>3</sup> See pp. 158-159 of the REC's 2013 Florida Tax Handbook, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih15.pdf> (last visited 1/24/16)

<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.

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>
- 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.

Eighteen counties currently levy the surtax. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Sixteen 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, Seminole, and Wakulla. During the 2016-17 fiscal year, these counties are expected to receive combined county revenues of \$748,024,282.<sup>9</sup> Counties are 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.

### 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 benefits.”<sup>10</sup> The part establishes minimum standards for the operation and funding of public employee retirement systems and plans.<sup>11</sup> 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.”<sup>12</sup> Each retirement system or plan under part VII must have regularly scheduled actuarial reports prepared and certified by an enrolled actuary.<sup>13</sup> The actuarial report must include, but is not limited to, the following:<sup>14</sup>

- 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.
- The mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System, including the projection scale for mortality improvement. Appropriate risk and collar adjustments must be made based on plan demographics. The tables must be used for assumptions for preretirement and postretirement mortality.

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

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

<sup>9</sup> Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (2016).

<sup>10</sup> Section 112.61, F.S.

<sup>11</sup> Section 112.61, F.S.

<sup>12</sup> Section 112.62, F.S.

<sup>13</sup> Section 112.63(1), F.S.

<sup>14</sup> Section 112.63(1), F.S.

- 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 the act.

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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

## **Effect of the Proposed Changes**

### Local Discretionary Sales Surtaxes

The bill 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 only impose the surtax if:

- The employees, including police officers and firefighters, who enter employment on or after the date that the local government meets the requirements for enacting the pension liability surtax, are prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds.
- The local government provides a uniform retirement benefit to employees, regardless of position held, who enter employment on or after the date that the local government meets the requirements for enacting the pension liability surtax.
- The elected local government officers do not accrue service credit towards their retirement benefit for the period beginning on the date that the local government meets the requirements for enacting the pension liability surtax and ending on the date such surtax is no longer collected.
- 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.

The bill provides that 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.

The bill provides that pursuant to s. 212.054(4), F.S., the proceeds of the surtax collected under the newly created s. 212.055(9), F.S., less an administrative fee that may be retained by the DOR, shall be

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<sup>15</sup> Section 112.62, F.S.

<sup>16</sup> Section 112.63, F.S.

<sup>17</sup> Section 112.64, F.S.

distributed by the DOR to the local government. The local government shall distribute the proceeds it receives from the DOR, less an administrative fee not to exceed 2 percent of the surtax collected, to an eligible defined benefit retirement plan or system, except the Florida Retirement System. 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 pension liability surtax proceeds may only be used to reduce or amortize the unfunded actuarial liability of the defined benefit retirement plan or system. A defined benefit retirement plan or system may no longer receive the surtax proceeds once the plan or system reaches or exceeds 100 percent of actuarial funding. If the local government makes advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system which are secured by future revenues associated with the surtax, the local government may fully reimburse itself from the surtax proceeds for such payments.

The bill provides that, notwithstanding s. 212.054(5), F.S., a pension liability surtax imposed pursuant to this subsection shall terminate for any defined benefit retirement plan or system when the actuarial funding level of that plan or system reaches or exceeds 100 percent.

#### Actuarial Soundness of Retirement Systems

The bill 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 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 bill also amends s. 112.64, F.S., providing that the payroll of all employees in classifications 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.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 112.64, F.S., specifying the how the proceeds of the newly created pension liability surtax shall be recognized and amending how the unfunded liability amortization schedule must be adjusted.

**Section 2.** Creates s. 212.055(9), F.S., allowing a pension liability discretionary sales surtax under specified conditions.

**Section 3.** The bill has an effective date of July 1, 2016.

## 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:

The Revenue Estimating Conference has not estimated the potential revenue impact of the bill on local government. However, staff estimates the revenue impact of the bill is positive indeterminate because it requires future county governing board action and voter approval.

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 an action requiring the expenditure of funds; reduce the authority that counties and 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**