

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 209 Emergency Fire Rescue Services and Facilities Surtax
SPONSOR(S): Finance & Tax Committee; Local Government Affairs Subcommittee; Articles
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	13 Y, 0 N, As CS	Darden	Miller
2) Finance & Tax Committee	15 Y, 0 N, As CS	Wolfgang	Langston
3) Local & Federal Affairs Committee		Darden	Kiner

SUMMARY ANALYSIS

Current law, s. 212.055(8), F.S., enables counties to adopt a discretionary sales surtax of up to one percent to help fund emergency fire and rescue services, subject to approval by a majority of the qualified electors in a referendum. The county must have an interlocal agreement with a majority of emergency fire rescue service providers within the county as a prerequisite to conducting the referendum on enacting an Emergency Fire Rescue Services and Facilities Surtax. Only service providers who are signatories to the interlocal agreement are entitled to the revenue generated by the sales surtax. Distribution of surtax revenues to each service provider depends either on the actual amounts collected within each participating jurisdiction or, if the county contains any special fire control districts, the proportion of each participating jurisdiction's expenditures for fire control and emergency services to the total of all such expenditures for all participating jurisdictions. Any local government entity that receives surtax revenues is required to reduce its ad valorem tax levy or non-ad valorem assessment in the following fiscal years by the amount the entity expects to receive in surtax revenues. If more surtax revenues are received than were expected, the proceeds must be applied as a rebate to the final millage.

The bill amends the distribution formula for counties that have adopted an Emergency Fire Rescue Services and Facilities Surtax. The bill removes the requirement for the county government to enter into an interlocal agreement as a prerequisite for holding a referendum on the surtax. If the surtax is approved by referendum, the proceeds would instead be distributed to all local government entities providing emergency fire rescue services in the county. The bill amends the procedure for distributing revenue generated by the surtax, creating a uniform system of proportional allocation, with a pro rata distribution based on average annual spending of ad valorem and non-ad valorem assessment revenue on fire rescue services in the 5 fiscal years preceding the year that the surtax takes effect by all entities in the county providing fire services. The bill returns any surplus surtax revenues to the county if it cannot be applied to reduce ad valorem or non ad valorem assessments levied by the entity. The county must reduce its millage rates to offset the surplus surtax proceeds.

On Friday, February 6, 2015, the Revenue Estimating Impact Conference estimated that the provisions of a similar bill would have a zero or indeterminate positive fiscal impact on county and municipal government revenue.

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Budgeting and Fire Prevention and Emergency Medical Treatment

Counties,¹ cities, and fire districts² currently bear the primary responsibility for providing fire protection and prevention. Oftentimes, the county, city, or a special district also provides or financially supports emergency medical services. Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or unless granted authority by the Legislature.³ However, cities and counties have broad home rule authority, and, by state law, counties have limited authority to levy a sales surtax on the transactions subject to state sales tax.⁴ Generally, fire services are funded using ad valorem taxes or non-ad valorem assessments. There is currently a surtax available for local governments to support emergency fire rescue services,⁵ but there are no local governments levying the surtax at this time.

Therefore, funds for fire services are generally included in the normal local government budget process. Each year, taxing authorities propose a budget, advertise and hold public hearings, and consider public input before setting a final budget and millage rates. This is commonly called the Truth in Millage or TRIM process.

There are some statewide limits on how much a millage rate can increase relative to the roll-back rate. A roll-back rate is the rate at which the current tax base would produce the same taxes levied as the previous year. When a tax base increases, maintaining the same millage rate represents an increase in taxes. Millage rates are typically different for every taxing authority, depending on the budget of each.

Local government budget and millages are set according to a process described in s. 200.065, F.S. The county fiscal year is from October 1 through September 30 each year. Local governments hold a hearing(s) to adopt their final budgets and millage rates between September 18 and October 3 of each year.⁶ Ad valorem taxes and most non-ad valorem assessments are paid annually between November 1 and April 1.

Emergency Fire Rescue Services Surtax

If not already imposing two discretionary sales surtaxes of indefinite duration, a county may pass an ordinance to levy a sales surtax of up to one percent for Emergency Fire Rescue Services and Facilities.⁷ The surtax may be used to fund “emergency fire rescue services,” which includes fire prevention and extinguishing, protection of life and property from natural or intentionally-created fires, and providing emergency medical treatment.⁸

Authorization for the Emergency Fire Rescue Services and Facilities Surtax was added in 2009.⁹ To levy the surtax, the county must pass an ordinance, which becomes effective upon approval by a

¹ S. 125.01, F.S.

² Ch. 191, F.S.; ch. 189, F.S.

³ Fla. Const. art. VII, s. 1(a); Fla. Const. art. VII, 9(a).

⁴ S. 212.054, F.S.; s. 212.055, F.S.

⁵ S. 212.055(8), F.S.

⁶ S. 200.065, F.S.

⁷ S. 212.055(8)(a), F.S.

⁸ *Id.*

⁹ The Emergency Fire Rescue Services and Facilities Surtax was authorized initially by Ch. 2009-182, Laws of Florida.

majority of the qualified electors in a referendum.¹⁰ Since the passage of the statute, no county has levied the surtax.¹¹

The proceeds of the surtax are distributed according to an interlocal agreement between the county and local government entities¹² providing fire services in the county.¹³ The formula to be used for distribution is stated in s. 212.055(8)(d), F.S., which states the interlocal agreement shall only specify:

- The amount of surtax to be distributed to each participating government entity based on the actual amounts collected within the jurisdiction of that entity, as determined by Department of Revenue population allocations, or;
- If the county has one or more special fire control districts, the amount of surtax to be distributed to each participating municipality and fire control district, as based on those entities' proportional spending on fire control and emergency rescue services from both ad valorem taxes and non-ad valorem assessments in the preceding five years.¹⁴

The Department of Revenue may retain an administrative fee, and the county may also charge an administrative fee equal to the lesser of actual costs or two percent of the sales surtax collected.¹⁵ If a multicounty independent special district provides emergency fire rescue services inside a portion of the county, the county may not levy the Emergency Fire Rescue Services and Facilities Surtax inside the boundaries of that district.¹⁶ The existence of the interlocal agreement is a prerequisite for holding a referendum to approve the ordinance.¹⁷

The interlocal agreement must include a majority of service providers within the county.¹⁸ If a local government entity providing fire control services is not part of the interlocal agreement, it is not entitled to any proceeds from the surtax.¹⁹

If one local government entity provides personnel or equipment to another on a long-term basis, the entity receiving personnel or equipment must agree to the distribution of its share of the surtax to the providing entity. The amount of this distribution cannot exceed the providing entity's costs for furnishing the services to the receiving entity.²⁰

When collections of the surtax begin, the county and participating local governments must reduce ad valorem taxes and non-ad valorem assessments used to pay for fire control and emergency rescue services by the estimated amount of revenue provided by the surtax.²¹ Surtax collections begin on the January 1 following a successful referendum.²² The Department of Revenue distributes surtax revenues each month.²³

If the revenue collected from the surtax is higher than the estimated amount, the surplus must be used to reduce ad valorem taxes the following year.²⁴ The statute requires such excess collections to be applied as a "rebate to the final millage."²⁵ From the context of the statute, this provision appears to

¹⁰ S. 212.055(8)(b), F.S.

¹¹ Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook*, 193.

¹² Municipalities, dependent special districts, independent special districts, and/or municipal service taxing units.

¹³ S. 212.055(8)(c), F.S.

¹⁴ S. 212.055(8)(d), F.S. This provision does not apply, however, if the county and one or more participating local governments have an interlocal agreement prohibiting one or more other jurisdictions from providing pre-hospital medical treatment inside the prohibited jurisdiction's boundaries, or if the county has issued a certificate of public convenience and necessity or its equivalent to a county department or dependent special district of the county. S. 212.055(8)(h), F.S.

¹⁵ *Id.*

¹⁶ S. 212.055(8)(j), F.S..

¹⁷ S. 212.055(8)(b), F.S.

¹⁸ S. 212.055(8)(d), F.S.

¹⁹ S. 212.055(8)(g), F.S.

²⁰ S. 212.055(8)(d), F.S.

²¹ S. 212.055(8)(e), F.S.

²² S. 212.055(8)(i), F.S.

²³ S. 212.054(b), F.S.

²⁴ S. 212.055(8)(f), F.S.

²⁵ *Id.*

state a procedure for the taxing authority to provide taxpayers with the required reduction of ad valorem taxes, rather than create an additional type of reimbursement amount.

The use of surtax proceeds does not relieve counties and participating local governments from the provisions of Chapter 200, F.S. or any other provision of law establishing millage caps or limiting undesignated budget reserves.²⁶

Effect of Proposed Changes

The bill removes the requirement for an interlocal agreement between the county and participating local government entities as a prerequisite to a referendum for imposition of an Emergency Fire Rescue Services and Facilities Surtax. If the county passed an ordinance to levy the surtax, subsequently approved by the electors in a referendum, all local government entities providing fire control and emergency rescue services within the county would share in the proceeds of the surtax based on the amended statutory formula. The bill provides for distributing the revenue generated from the surtax to local government entities in proportion to their average annual expenditures from ad valorem taxes and non-ad valorem assessments on fire control and emergency fire rescue services over the 5 fiscal years preceding the year that the surtax takes effect. The county will revise the proportionate distributions if the entity changes its service area. This formula would apply to all counties levying the surtax regardless of whether the county contained a special fire control district.

Since an interlocal agreement would no longer be required for the distribution of surtax revenues, the bill removes other references to such agreements. Local government entities still would be entitled to a share of the surtax proceeds when providing personnel and equipment on a long-term basis to another entity in the county. Local government entities also still would be required to reduce ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue by the estimated amount of surtax revenue. These provisions, however, would apply to each local government entity (including the county) providing fire services in the county.²⁷ The bill returns any surplus surtax revenues to the county if it cannot be applied to reduce ad valorem or non-ad valorem assessments levied by the entity. The county must reduce its millage rates to offset the surplus surtax proceeds.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.055(8), F.S., to remove a requirement for an interlocal agreement between counties and local government entities providing fire rescue service, and to adjust the distribution formula for revenues collected by the surtax.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²⁶ *Id.*

²⁷ The removal of the interlocal agreement requirement erases the distinction between participating and non-participating service providers.

1. Revenues:

On Friday, February 6, 2015, the Revenue Estimating Impact Conference estimated that the provisions of this bill would have a zero or indeterminate positive fiscal impact on county and municipal government revenue.²⁸

2. Expenditures:

Counties implementing the surtax would incur the cost of holding a referendum and other implementation expenses, offset in part by an administrative fee not to exceed two percent of the surtax collected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and businesses in counties implementing the surtax would face higher sales taxes, but would receive a reduction in ad valorem taxes and non-ad valorem assessments.

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:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Finance and Tax Committee adopted two amendments and reported the bill favorably as a committee substitute.

The first amendment clarified what happens if the entity receiving surtax proceeds had already reduced the millage to zero. Because the entity can't reduce the assessments further, the money would go back to the county to be applied against the county's assessments.

The second amendment freezes the proportional distribution at what it would be in the first year of levying the assessment. The county will revise the proportionate distributions if the entity changes its service area.

On February 17, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment restored deleted language concerning the

²⁸ *Id.*

procedure for providing taxpayers with the required additional reduction in ad valorem taxes due to actual surtax collections.

This analysis has been updated to reflect the bill as amended.