

CHAPTER 2016-146

Committee Substitute for House Bill No. 1297

An act relating to discretionary sales surtaxes; amending s. 112.64, F.S.; authorizing a county to apply proceeds of a pension liability surtax toward reducing the unfunded liability of a defined benefit retirement plan or system; specifying the method of determining the amortization schedule if a surtax is approved; amending s. 212.055, F.S.; authorizing a county to levy a pension liability surtax by ordinance if certain conditions are met; prescribing the form of the ballot statement; requiring the Department of Revenue to distribute the surtax proceeds, less administrative fees; specifying the manner in which a local government may use the surtax proceeds; prescribing requirements for the ordinance that provides for the imposition of the surtax; specifying conditions under which the surtax terminates; limiting the combined rate of specified discretionary sales surtaxes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 112.64, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

112.64 Administration of funds; amortization of unfunded liability.—

(6)(a) Notwithstanding any other provision of this part, the proceeds of a pension liability surtax imposed by a county pursuant to s. 212.055, 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.

(b) 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.

Section 2. Subsection (9) is added to section 212.055, Florida Statutes, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(9) PENSION LIABILITY SURTAX.—

(a) The governing body of a county may levy a pension liability surtax to fund an underfunded defined benefit retirement plan or system, 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 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:

1. An employee, including a police officer or firefighter, who enters employment on or after the date when the local government certifies that the defined benefit retirement plan or system formerly available to such an employee has been closed may not enroll in a defined benefit retirement plan or system that will receive surtax proceeds.

2. The local government and the collective bargaining representative for the members of the underfunded defined benefit retirement plan or system or, if there is no representative, a majority of the members of the plan or system, mutually consent to requiring each member to make an employee retirement contribution of at least 10 percent of each member's salary for each pay period beginning with the first pay period after the plan or system is closed.

3. The pension board of trustees for the underfunded defined benefit retirement plan or system, if such board exists, is prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits.

4. The county currently levies a local government infrastructure surtax pursuant to subsection (2) which is scheduled to terminate and is not subject to renewal.

5. The pension liability surtax does not take effect until the local government infrastructure surtax described in subparagraph 4. is terminated.

(b) A referendum to adopt a pension liability surtax must meet the requirements of s. 101.161 and must include a brief and general description of the purposes for which the surtax proceeds will be used.

(c) Pursuant to s. 212.054(4), the proceeds of the surtax collected under this subsection, less an administrative fee that may be retained by the department, shall be distributed by the department to the local government.

(d) The local government may use the pension liability surtax proceeds in the following manner:

1. If the proceeds of the pension liability surtax have been actuarially recognized as provided in s. 112.64(6), the local government must distribute the proceeds to an eligible defined benefit retirement plan or system, not including the Florida Retirement System.

2. If the proceeds of the pension liability surtax have not been actuarially recognized, the local government is authorized to distribute the proceeds to an eligible defined benefit retirement plan or system, not including the Florida Retirement System, to pledge the proceeds of the surtax to repay debts incurred for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system, and to reimburse itself from the proceeds of the surtax for any borrowing costs associated with such debts.

(e) The ordinance providing for the imposition of the pension liability surtax must specify how the proceeds will be used:

1. The ordinance 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 if the proceeds of the pension liability surtax are actuarially recognized as provided in s. 112.64(6).

2. The ordinance must 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 of the pension liability surtax are not actuarially recognized as provided in s. 112.64(6).

(f) A pension liability surtax imposed pursuant to this subsection 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 most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding.

(g) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2), (3), (4), and (5) in excess of a combined rate of 1 percent.

Section 3. This act shall take effect July 1, 2016.

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.