

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 08, 2010 [] **Consent** [X] **Regular**
[] **Workshop** [] **Public Hearing**

Submitted by: ADMINISTRATION

I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board direction on the implementation of a discretionary sales surtax to offset ad-valorem tax levies and non-ad valorem assessments for emergency fire rescue service by the amount of the estimated surtax.

Summary: Counties are authorized to impose a discretionary sales surtax up to 1% for emergency fire rescue services and facilities under certain circumstances, if approved by referendum. A majority of the twelve (12) fire rescue providers within the County must execute an interlocal agreement regarding distribution of the surtax proceeds in order for the Board to adopt an ordinance to request voter approval of the surtax. Pursuant to Board direction, staff prepared an ordinance to place the surtax referendum on the primary election ballot on August 24, 2010; however, the necessary Interlocal agreements will not be approved by the municipalities in time to meet the Supervisor of Elections deadline for the primary election.

Staff has identified the following issues requiring further Board direction:

- **Referendum at General Election**

Staff is requesting direction whether to proceed with the necessary Interlocal agreements and ordinance to place the surtax referendum on the general election ballot on November 2, 2010. To meet the Supervisor of Elections' deadline for ballot language submission for the general election, the BCC meeting dates recommended by staff for adoption of the ordinance are:

June 15, 2010 -- preliminary reading of the ordinance

July 20, 2010 -- final adoption of the ordinance.

The ordinance must be advertised twice during the 30 day period prior to the referendum. The submission deadline to the Supervisor of Elections for ballot language is noon, August 20, 2010 for the November 2, 2010 general election.

- Surtax Percentage

Staff requests direction on whether to include the entire 1% surtax, or some other percentage (e.g. one-half percent), in the Interlocal agreement, ordinance and voter referendum. Current projections indicate the 1% surtax would generate approximately \$188 million countywide. A 0.5% surtax would generate approximately half that amount.

- **Sunset Provision**

Staff is requesting direction on whether to include a sunset provision to expire the surtax after four (4) years. Should the Board desire to extend the surtax beyond the sunset date, a new referendum and vote by the electors would be required in the 2014 general or primary election.

Based on issues raised by municipalities, staff has requested, and is waiting for, further Department of Revenue clarification on two questions:

1. Whether the expenditure distribution methodology is available to a County that has an MSTU rather than a special fire district?
2. Whether distribution of the surtax proceeds based on expenditures of non-ad valorem assessments for fire-rescue services includes expenditures from all non-ad valorem revenue sources, including fees and interest, rather than just special assessments?

Background and Policy Issues:

To date, four (4) cities have adopted resolutions opposing the surtax. The County has not yet received any signed provider agreements from jurisdictions providing emergency fire rescue services within the County.

(Background continued on page 3)

Attachments:

- ## 1. Interlocal Agreement

Recommended By:

Balutem 6/3/10

Approved By:

County Administrator _____ Date 6/4/10

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* See below				
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____
Object _____ Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

- * Any surtax distributed to the Fire Rescue MSTU, as a Participating Jurisdiction, must reduce ad valorem taxes for fire control and emergency rescue services.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

- * Revenue neutral: Implementation of surtax should result in corresponding decrease in ad valorem tax.

meb 6/3/10 [Signature] 6/3/10
OFMB

[Signature] 6/4/10
Contract Dev. and Control

B. Legal Sufficiency:

[Signature] 6/4/10
Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background (continued from page 1)

If approved, surtax collections shall be initiated on January 1 of the year following a successful referendum. The County shall distribute the surtax proceeds it receives from the State, less the County's administrative costs not to exceed 2% of the surtax collected, to the participating service provider jurisdictions based on the proportion of each entity's expenditures of ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue services in each of the immediately preceding five (5) fiscal years to the total of the expenditures for all participating entities. Any provider that does not enter into an agreement will not be entitled to surtax revenues. This revenue will be included in the surtax proceeds to be proportionately distributed to those providers that did enter into agreements. Any participating provider that receives surtax revenue must reduce ad valorem taxes or any non-ad valorem assessment for fire control and emergency rescue services in its next and subsequent budgets by the amount of estimated revenue provided by the surtax.

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH
COUNTY, FLORIDA WHOSE ADDRESS IS 301 NORTH
OLIVE AVENUE, WEST PALM BEACH, FL 33401, AND
_____, WHOSE ADDRESS IS
_____, REGARDING THE
LEVYING OF A ONE PERCENT SALES SURTAX FOR
EMERGENCY FIRE RESCUE SERVICES AND
FACILITIES**

THIS AGREEMENT is made by and between **PALM BEACH COUNTY, FLORIDA,**
a political subdivision of the state ("County"), and the
_____, a municipal corporation (the "Municipality")
(this Agreement hereinafter referred to as the "Interlocal Agreement").

RECITALS

WHEREAS, Palm Beach County wishes to levy a one percent sales surtax for emergency fire rescue services and facilities pursuant to section 212.055(8), Florida Statutes; and

WHEREAS, this Interlocal Agreement will satisfy the requirement of section 212.055(8)(b), which requires an interlocal agreement as a condition precedent to holding a county wide referendum on the question of approval of the ordinance adopting the levy of the one percent sales surtax; and

WHEREAS, the Municipality shall receive a portion of the proceeds from the one percent sales surtax, less an administrative fee for receiving and distributing the surtax in the amount of the actual costs incurred, not to exceed 2 percent of the surtax collected; and

WHEREAS, pursuant to section 212.055(8)(d) the County must develop and execute an interlocal agreement with participating jurisdictions, which must include a majority of the fire-rescue service providers in the County, in order to conduct a referendum and levy a surtax; and

WHEREAS, the parties recognize that the identity and number of participating jurisdictions receiving a portion of the surtax proceeds may vary from time to time, for example, if additional fire-rescue service providers enter into the surtax interlocal agreement with the County or if a participating service provider is no longer eligible to participate; and

WHEREAS, it is in the mutual interest of Palm Beach County and the Municipality to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental fire rescue activities and services within Palm Beach County; and

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental

organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, Palm Beach County and the Municipality find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

NOW, THEREFORE, in consideration of the recitals, agreements and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Recitals and Authority. The foregoing recitals are true and correct and by this reference are incorporated as a material part of this Interlocal Agreement. This Interlocal Agreement is entered into pursuant to the provision of Florida law, including but not limited to Chapters 125, 163, 166, 189, and 212, Florida Statutes, and the Florida Constitution.

SECTION 2. Distribution of Surtax Proceeds. The County shall distribute the surtax proceeds, less the County's administrative costs, to the Municipality based on the proportion of the Municipality's expenditures of ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue services in each of the immediately preceding five (5) fiscal years to the total of the expenditures for all participating entities.

By April 30th of each year, the Municipality shall attest to its expenditures for fire control and emergency rescue services by submitting to the County certain information and reports, as specified by the County, certified by the Municipality's chief executive officer or chief financial officer. Expenditure amounts shall be documented by an official financial report or entity approved allocation plan, and shall be subject to audit by the County. Adjustments to surtax distributions resulting from changes necessary to correct audit findings will be made in subsequent distributions.

SECTION 3. Default. A default by either party under this Interlocal Agreement shall entitle the other party to all remedies available at law or in equity, which may include, but not be limited to, damages, injunctive relief and specific performance. Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party not less than five (5) days from the date of receipt of such notice to cure monetary defaults and fifteen (15) days to cure other defaults.

SECTION 4. Enforcement. In the event that either party seeks to enforce this Interlocal Agreement by court proceedings or otherwise, then each party shall be responsible for its own fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings.

SECTION 5. Controlling Law. This Interlocal Agreement shall be construed and governed in accordance with the laws of the State of Florida.

SECTION 6. Severability. In the event any term or provision of this Interlocal Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such

provision shall be construed or deleted as such authority determines, and the remainder of this Interlocal Agreement shall be construed to be in full force and effect.

SECTION 7. Amendment. This Interlocal Agreement shall not be modified or amended except by written agreement duly executed by the parties hereto.

SECTION 8. Interpretation. This Interlocal Agreement has been negotiated fully between the parties as an arms length transaction. Both parties participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any party. No provision of this Interlocal Agreement shall be construed to create any third-party beneficiary or to provide any rights to any person or entity not a party to this Interlocal Agreement.

SECTION 9. Time of the Essence. The parties each agree that time is of the essence of this Interlocal Agreement.

SECTION 10. Notice. Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Interlocal Agreement, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Palm Beach
County: _____

With copy to: _____

To Municipality: _____

With copy to: _____

Except as otherwise provided in this Interlocal Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00

p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Interlocal Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 11. Effective Date. This Interlocal Agreement and the rights conferred herein shall become effective upon filing with the Clerk of the Circuit Court of Palm Beach County, Florida, in accordance with the requirements of Section 163.01(11), Florida Statutes. Unless the parties mutually amend this Interlocal Agreement to provide for an earlier termination date, this Interlocal Agreement shall remain in effect for as long as the Palm Beach County Emergency Fire Rescue Services and Facilities Surtax Ordinance, as may be amended from time to time, is maintained in effect, and the County is authorized to distribute the surtax proceeds and the Municipality is authorized to receive the surtax proceeds, in accordance with law.

SECTION 12. Nondiscrimination. The parties agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, or gender identity or expression, be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Interlocal Agreement.

SECTION 13. Annual Appropriation. Each party's performance and obligation to pay under this Interlocal Agreement is contingent upon an annual budgetary appropriation by its respective governing body for each fiscal year.

IN WITNESS WHEREOF the undersigned set their hands as of the ____ day _____, 2010.

ATTEST:
SHARON R. BOCK,
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Fire-Rescue

By: _____
Financial Management & Budget

ATTEST:

Print Name of Municipality

By: _____
Municipality's Clerk

By: _____

Print Name & Title of Authorized Signatory

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Municipality's Attorney