

# 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 64-C

SPONSOR: Senator Silver and Senator Garcia

SUBJECT: Parking Surcharge

DATE: December 3, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Johansen	FT	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill ratifies any municipal ordinance imposing a parking surcharge in accordance with s. 218.503(5), Florida Statutes, before its amendment by Senate Bill 54-B in 2001 Special Session "B" of the Florida Legislature.

**II. Present Situation:**

Chapter 218, part V, F.S., is known as the Local Government Financial Emergencies Act. The purpose of this act is to preserve and protect the fiscal solvency of local governments; to assist local governments in meeting their financial obligations and providing their essential services without interruption; and to assist local governments through the improvements of local financial management procedures.

Section 218.503 (1), F.S., states that a local government is in a state of a financial emergency when any of the following conditions occur:

- there has been a failure, within the same fiscal year, to pay short-term loans from banks or to make bond debt service payments when due;
- there has been a failure to transfer at the appropriate time, due to lack of funds, taxes withheld on the income of employees or employer and employee contributions for Federal Social Security or any pension or retirement benefits owed to former employees;
- there has been a failure to pay for one pay period, due to lack of funds, wages and salaries owed to employees or retirement benefits owed to former employees;
- there has been an unreserved to total fund balance or retained earnings deficit for which sufficient resources of the local government are not available to cover the deficit for 2 successive years; or

- there has been noncompliance with the local government retirement system as related to actuarial conditions provided by law.

A local government must notify the Governor and Joint Legislative Auditing Committee when one or more of the previous conditions has occurred or will occur. Additionally, any state agency may notify the Governor and Legislative Auditing Committee if any of the previous conditions has occurred or will occur.

The Governor has the authority in s. 218.503, F.S., to implement measures to resolve the financial emergency. Such measures include:

- requiring approval of the local government's budget by the Governor;
- authorizing a loan;
- prohibiting further debt;
- reviewing records and reports;
- providing technical assistance and consulting with the local officials regarding steps to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements;
- establishing an oversight board; and
- requiring and approving a recovery plan.

The City of Miami faced a \$68 million deficit in the city's FY 1997 budget. The interim city Manager drafted the Strategic Financial Recovery Plan (November 15, 1996) that provided comments and recommendations on how the city's financial health could be restored and strengthened. He commented that Miami fell into a \$68 million deficit over the past several years by:

“ . . . consuming reserves; exhausting enterprise funds; consuming unrestricted funds; depending on one-time revenue sources; and finally by inappropriately consuming self insurance and pension bond revenues, all of which went to support general operating requirements.”

His recommendations included increasing recurring revenues, specifically solid waste fees, and implementing cost containment measures. The city commission did not adopt any substantial recurring revenues at several meetings in November 1996.

On December 2, 1996, the newly appointed City Manager notified the Governor that the city was in a state of a financial emergency. The Governor responded by issuing Executive Order 96-391, creating a Financial Emergency Oversight Board to monitor the financial affairs of the city with respect to the financial emergency.

The order also required the board to prepare an Intergovernmental Cooperation Agreement (ICA) to be entered into by the state and the city commission on or before December 23, 1996. Major elements of the ICA include: a Financial Recovery Plan for FY 1997; Five Year Plans; Approval of the City's Budget and Spending; Contractual Obligations; Estimating Conference; Fiscal Sufficiency Advisory Board; and Compliance with the ICA.

- The ICA also specifies that the duration of the board is to extend for the period of three years after the city has produced two successive years of balanced operation, and none of the conditions exist that are set forth in s. 218.503(1), F.S. Miami has satisfied these conditions for the past two years. Consequently, the board is expected to be abolished by January, 2002.

### **Surcharge on Public Parking Facilities**

Chapter 99-251, L.O.F., amended s. 218.503, F.S., to provide Miami with an additional revenue source. Specifically, this provision provides that a municipality with a population of 300,000 or more on April 1, 1999, and that has within the two previous fiscal years been declared in a state of a financial emergency, pursuant to s. 218.503, F.S., may adopt, by a majority of its membership, an ordinance to impose a surcharge of up to 20 percent on the sale, lease, or rental of public parking facility space within the municipality. The surcharge is to be collected when the parking fee is collected.

Subsection (5)(b) specifies that the proceeds of the surcharge may be used for the following purposes:

- No less than 60 percent and no more than 80 percent of the surcharge proceeds must be used by the governing authority to reduce its ad valorem tax millage rate or to reduce or eliminate non-ad valorem assessments; and
- A portion of the balance of the surcharge proceeds must be used by the governing authority to increase its budget reserves; however, the governing authority must not reduce the amount it allocates for budget reserves from other sources below the amount allocated for reserves in the fiscal year prior to the year in which the surcharge is initially imposed. When a 15-percent budget reserve is achieved, based on the average gross revenue for the most recent 3 prior fiscal years, the remaining proceeds must be used for the payment of annual debt service related to outstanding obligations backed or secured by a covenant to budget and appropriate from non-ad valorem revenues.

The City of Miami implemented this surcharge in July, 1999 and is the only city that is currently eligible to levy this surcharge. The authority to levy this surcharge expires on July 1, 2006.

The constitutionality of the surcharged was challenged. In McGrath v. City of Miami 789 So.2d 1168, Fla.App. 3 Dist.,2001, an appeal from the Circuit Court for Miami-Dade County, an opinion was filed on July 11, 2001, reversing an original opinion of the trial court. The opinion read:

Appellant, Patrick McGrath III, and intervenors/appellants, Miami-Dade County and Laureen Varga, appeal from a final declaratory judgment which granted summary judgment in favor of the appellee, City of Miami ("City"), finding an ordinance to be validly enacted and upholding the constitutionality of a parking tax statute. We reverse. In 1999, the Florida Legislature enacted Section 218.503(5), Florida Statutes (2000) ("statute"), which provides for a parking tax and states in pertinent part that:

The governing authority of any municipality with a resident population of 300,000 or more on April 1, 1999, and which has been declared in a state of financial emergency pursuant to this section within the previous two fiscal years may impose a discretionary per vehicle surcharge of up to 20 percent on the gross revenues of the sale, lease, or rental of space at parking facilities within the municipality that are open for use to the general public.

The statute was implemented by the City in July of 1999 when it passed and adopted ordinance No. 11813 ("ordinance"). Thereafter, the appellants/taxpayers challenged the constitutionality of the statute. Under the Florida Constitution, a municipality may not impose any non-ad valorem tax, such as the parking tax at issue here, except as authorized by general law. See Art. VII, §§ 1(a) and 9(a), Fla. Const. Thus, in order to be constitutional, the statute must be a general law as opposed to a special law. See City of Tampa v. Birdsong, 261 So. 2d 1 (Fla. 1972). A general law is one that operates uniformly among a class of entities while a special law relates to particular entities. See Dept. of Business Regulation v. Classic Mile, Inc., 541 So. 2d 1155 (Fla. 1989). The statute here constitutes a special law because by anchoring the 300,000 population classification to the specific date of April 1, 1999, it does not operate uniformly among all cities that reach the 300,000 population threshold as is required of a general law. Cities that reach the population threshold after April 1, 1999 are forever excluded from the class. See Fort v. Dekle, 190 So. 542 (Fla. 1939); Walker v. Pendarvis, 132 So. 2d 186 (Fla. 1961); Ocala Breeders' Sales Company, Inc. v. Florida Gaming Centers, Inc., 731 So. 2d 21 (Fla. 1st DCA 1999).

Since a statute which constitutes a special law cannot impose a non-ad valorem tax, the statute is unconstitutional. See Alachua County v. Adams, 702 So. 2d 1253 (Fla. 1997). Accordingly, the trial court erred in finding the ordinance was validly enacted and in granting summary judgment for the City. Therefore, the case must be reversed and the cause remanded to grant summary judgment in favor of the appellants/taxpayers.

As a result of this opinion, the City of Miami continued to collect the surcharge, but has isolated the revenue until a statutory fix can be implemented.

During Special Session 2001 B, the Legislature passed SB 54-B, which amended s. 218.503(5)(a), F.S., authorizing the governing authority of any municipality having a resident population of 300,000 or more on or after April 1, 1999, which has been declared in a state of financial emergency pursuant to s. 218.503(5), to impose the discretionary parking surcharge. The bill was intended to eliminate the problem identified by the Third District Court of Appeal, and allow the City of Miami to continue to collect the 20 percent parking surcharge.

Senator Ron Silver made the following "Statement of Intent Regarding SB 54-B" as published in the October 25, 2001 Journal of the Senate:

“It is the intent of the Legislature that this act is merely a clarification of existing law as passed in the 1999 regular session of the Legislature. The use of proceeds of interest collected and expended pursuant to s. 218.503(5), Florida Statutes, prior to the effective date of this act is ratified. All acts and proceedings, including enforcement procedures, taken in connection with a parking surcharge imposed by a municipality before the date this act becomes a law are ratified, validated and confirmed.”

Senate Bill 54-B was approved by the Governor on November 30, 2001. The question has come up that since legislative intent was not included in SB 54-B, that it is necessary to adopt such intent language in order to clarify that the Legislature intended to ratify the use of parking surcharge proceeds collected and expended before passage of SB 54-B.

### **III. Effect of Proposed Changes:**

The bill ratifies any municipal ordinance imposing a parking surcharge in accordance with s. 218.503(5), Florida Statutes, before its amendment by Senate Bill 54-B in 2001 Special Session “B” of the Florida Legislature.

The bill shall 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:**

None.

#### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill assures that the City of Miami may use the proceeds of the parking surcharge collected prior to November 30, 2001, the date SB 54-B became law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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