

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 1576

INTRODUCER: Higher Education Committee and Senator Villalobos and others

SUBJECT: Discretionary Sales Surtax

DATE: March 16, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	Fav/CS
2.	ODonnell	McKee	FT	Favorable
3.			EA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill authorizes a home rule charter county to levy a voter-approved discretionary sales surtax of up to 0.5 percent for the benefit of public community colleges. Miami-Dade County is the only county operating under a home rule charter. The bill:

- Requires notice of the referendum;
- Prohibits the use of certain funds to pay the expenses of an election relating to the surtax;
- Provides requirements for the ordinance that imposes the surtax;
- Establishes purposes for which the proceeds of the surtax may be used;
- Provides for investment of the proceeds;
- Provides for automatic expiration of such a surtax after 5 years unless reenacted; and
- Provides for the proceeds to be deposited in a separate fund and promptly disbursed to a board of trustees.
- Prohibits the reduction of state funds because the college has received surtax funds.

The Revenue Estimating Conference has not reviewed the current bill. The Conference did review SB552 (2007) authorizing a 0.5 percent discretionary surtax and determined that the annualized revenue impact for Miami-Dade County would be \$196 million. That estimate, if

made today, would be reduced due to the intervening decline in economic activity. The bill does not have a state revenue impact.

This bill amends s. 212.055, Florida Statutes.

II. Present Situation:

Discretionary Sales Surtax

Section 212.055, F.S., authorizes qualifying counties and other special local governmental entities to levy various surtaxes. Seven different types of local discretionary sales surtaxes (also known as local option taxes) are authorized. The local discretionary sales surtaxes authorized by this section apply to all transactions subject to the sales and use tax imposed pursuant to Chapter 212, F.S.

Section 212.055, F.S., specifies the rate of each surtax that may be imposed, the manner in which a each surtax proposal may be adopted and the use of the funds collected. Local discretionary tax rates vary from county to county. Miami-Dade currently imposes two local option taxes: the Charter County Transit System Surtax, s. 212.055(1), F.S., at a 0.5% rate and the County Public Hospital Surtax, s. 112.055(4), F.S., at a 0.5% rate.¹

The local surtax applies to the first \$5,000 of the sales price for most items. Procedures for administration and collection of the surtax are established in s. 212.054, F.S. Any discretionary sales surtax must take effect only on January 1 and terminate on December 31.²

Home-Rule Charter Counties

Section 125.011(1), F.S., defines a county as: any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, if the county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

The local governments authorized to operate under a home rule charter in the State Constitutions of 1885 and 1968 are the city of Key West and Monroe County, Dade County, and Hillsborough County. Of these, only Miami-Dade County operates under a home-rule charter, which was adopted under this constitutional provision on May 21, 1957. In the future it would be possible for Key West/Monroe County and Hillsborough County to adopt charters under the authorization in the Constitution. To do so, the city of Key West and Monroe County would have to consolidate and adopt a home-rule charter. Hillsborough County would have to abolish the charter it adopted in 1985 under the Optional Charter County Law in Part IV of ch. 125, F.S., and adopt in its place a charter as authorized under the Constitution.

Community College Funding

General appropriations are provided to each college in a lump sum. Each college is appropriated money to run various programs and authorized to decide how to use the money for that program.

¹ <http://www.floridalcir.gov/UserContent/docs/File/reports/impact08.pdf> at page 125.

² s. 212.054(5), F.S.

The primary source for funding operations is state General Revenue (\$1 billion FY 2007-08). Funding is also provided from lottery proceeds (\$115 million FY 2007-08). The balance of operating funding is made up of student tuition (\$530 million FY 2007-08), fees and other local college funds.³

2008 Referendum on a Local Option Sales Tax for Community Colleges

In 2008, Florida voters defeated a proposed constitutional amendment that would have required the Legislature to authorize counties to levy a local option sales tax to supplement community college funding. There were 3,210,481 votes for and 4,161,731 against the proposed amendment.⁴

III. Effect of Proposed Changes:

This bill authorizes a home rule charter county, as defined in s. 125.011(1), F.S., to levy a surtax for the benefit of a public community college. The surtax is capped at 0.5 percent and can be used for any purpose to benefit the community college. The bill establishes procedures for the establishment of the levy, including approval by the voters in a referendum. The levy is for five years but may be extended in subsequent voter approved referenda. Proceeds from the levy may be invested.

Proceeds of the surtax may be used by the community college's board of trustees for purposes that include, but are not limited to: the maintenance, improvement, and expansion of a broad range of academic and workforce training programs; teaching enhancements; financial aid; capital expenditures and infrastructure projects; fixed capital costs for construction, maintenance, or improvement of facilities; land acquisition and land improvement; and the expansion and enhancement of services, programs, and facilities at all community college sites within the county.

The county must set aside surtax proceeds in a fund separate and promptly remit the proceeds to the community college board of trustees (BOT). The bill states that the annual apportionment of state funds for the support of a community college under any provision of general law may not be reduced because that college receives proceeds of the surtax.

Miami-Dade County is the only county currently operating under a home rule charter. It should be noted that Miami Dade County was the only county in which the voters approved the proposed constitutional amendment to authorize a county to levy a local options sales tax to community colleges.⁵

³ <http://www.fldoe.org/arm/cctcmis/pubs/factbook/fb2008/fb2008.pdf>

⁴ <http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/4/2008>

⁵ Miami Dade County voters approved the measure with approximately 61 percent in favor (448,604 in favor compared to 285,949 opposed). See <http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/4/2008>. The statewide vote was 43.5 percent in favor and 56.5 opposed, thus the amendment was defeated.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Prohibited Special Laws

This bill may be constitutionally challenged under Article III, section 11(a)(2) of the State Constitution, by alleging that the proposed legislation is a special law or general law of local application relating to taxes. Article III, section 11(a)(2) of the State Constitution prohibits a special law or general law of local application pertaining to the assessment or collection of taxes. Pursuant to Article VII, section 9(a) of the State Constitution, counties may levy non-ad valorem taxes as authorized under general law. The courts have defined a general law to mean “[a] statute relating to subdivisions of the state or to subjects, persons or things of a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the classification.”⁶ A general law may contain classifications, and the legislature has wide discretion in making such classifications, if they are reasonable.⁷ In order for a classification to meet the requirements of a general law, the classification: (1) may not be simply a descriptive technique used to identify particular subdivisions to which the statute applies, (2) must operate uniformly among similar situated subdivisions, and (3) may not be arbitrary.⁸ When a classification is made by the Legislature in the enactment of general laws, the presumption is in favor of the classification’s reasonableness.⁹

This bill authorizes counties, as defined in s. 125.011(1), F.S., to levy a non-ad valorem surtax under certain circumstances. Three counties are potentially eligible in the future; however, only Miami-Dade County is currently eligible to levy the surtax. In *Metropolitan Dade County v. Golden Nugget Group*, the court found, in pertinent part, that an act, which authorized counties, as defined in s. 125.011(1), F.S., to levy a convention development tax on specified rentals or leases, was not a general law of local application notwithstanding that only Miami Dade County was authorized to levy the tax.¹⁰ Similarly, this bill defines authorized counties in a manner that is identical to the

⁶ See *Metropolitan Dade County v. Golden Nugget Group*, 448 So.2d 515, 519 (Fla. 3rd DCA 1984), *aff’d*, 464 So.2d 535 (Fla. 1985).

⁷ *Id.*

⁸ See *City of Miami v. McGrath*, 824 So.2d 143, 150-151 (Fla. 2002).

⁹ See *Metropolitan Dade County*, *supra* note 1, at 519.

¹⁰ See *id* at 19-20.

classification scheme upheld in *Metropolitan Dade County v. Golden Nugget Group*. However, the court noted in that case that the classification was reasonable because the affected counties each have substantial tourist-oriented economies and the tax's purpose was to construct or improve convention centers for promoting tourism.¹¹ Accordingly, the court has not addressed whether the classification based on a home-rule charter was an impermissible closed class because it potentially applied to only three counties.¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed the current bill. The Conference did review SB552 (2007) authorizing a 0.5 percent discretionary surtax and determined that the annualized revenue impact for Miami-Dade County would be \$196 million. That estimate, if made today, would be reduced due to the intervening decline in economic activity. The bill does not have a state revenue impact.

B. Private Sector Impact:

The sales tax would increase in Miami-Dade County if the county approves an ordinance and Miami-Dade County voters approved the ordinance.

C. Government Sector Impact:

If the bill passed, if Miami-Dade County placed the referendum on the ballot, and if the voters approved the surtax, Miami Dade College would be the recipient of the sales surtax proceeds.

If the proposed sales tax had been levied at the maximum 0.5 percent for the 2008-2009 local fiscal year (October 1, 2008 to September 30, 2009) it would have generated approximately \$104.7 million for Miami-Dade College.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide for the voters to indicate if they are for or against the surtax. Section 212.055, F.S. does provide for such language. On page 3, line 62, the following could be added to provide the voters to indicate their response to the referendum”

The following shall be placed on the ballot:

¹¹ See *Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535, 537 (Fla. 1985).

¹² *City of Miami v. McGrath*, 824 So.2d at 152.

¹³ Legislative Committee on Intergovernmental Relations

FOR THE CENTS TAX
AGAINST THE CENTS TAX

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Higher Education on March 4, 2009:

The Committee Substitute removes unnecessary wording and makes the list of possible uses of the tax more specific.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
