

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 787 Discretionary Sales Surtaxes

**SPONSOR(S):** Zapata and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1576

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	State & Community Colleges & Workforce Policy Committee	10 Y, 0 N	White	White
2)	Education Policy Council			
3)	Finance & Tax Council			
4)				
5)				

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**SUMMARY ANALYSIS**

The bill authorizes a home rule charter county to levy a discretionary sales surtax of up to 0.5 percent for the benefit of a public community college. Such surtax has to be approved by a majority of voters of the county voting in a referendum election. Currently, Miami-Dade County is the only county operating under a home rule charter. If the voters in that county approved the surtax, the surtax would be imposed for a period of five years and revenues would be distributed to the Board of Trustees of Miami Dade College to be expended for the operation, maintenance, and administration of the college.

The bill does not have a fiscal impact on state government. If the surtax authorized by the bill was approved by the voters, local revenues for the county's community college will increase. Please see FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for additional information.

The bill takes effect upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

**Discretionary sales surtaxes:** Section 212.055, F.S., requires that any authorization to impose a discretionary sales surtax be published as a subsection of s. 212.055, F.S. Each enactment is required to specify the types of counties authorized to impose the surtax; the rate or rates which 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 require. Procedures for the 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.<sup>1</sup> Currently, there are seven discretionary surtaxes authorized in law:

Tax	Authorized Rate of Levy
Charter County Transit System Surtax	Up to 1%
Local Government Infrastructure Surtax	0.5% or 1%
Small County Surtax	0.5% or 1%
Indigent Care and Trauma Center Surtax	Up to 0.5%
County Public Hospital Surtax	0.5%
School Capital Outlay Surtax	Up to 0.5%
Voter-Approved Indigent Care Surtax	0.5% to 1%

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<sup>1</sup> Section 212.054(5), F.S.

**Home Rule Charter Counties:** The bill authorizes a community college surtax for counties defined as follows:

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. VII, s. 6(e) of the Constitution of 1968, which 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.<sup>2</sup>

Currently, only Miami-Dade County operates under a home rule charter adopted in accordance with the Constitution.<sup>3</sup>

**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.<sup>4</sup>

### **Effect of Bill**

This bill authorizes a home rule charter county, as defined in s. 125.011(1), F.S., to levy a discretionary sales surtax for the benefit of a public community college. Currently, Miami-Dade County is the only county operating under a home rule charter. Such surtax must be approved by a majority of voters of the county voting in a referendum. If a special election for such referendum is called, at the request of the community college, election expenses may be paid with funds received from private sources or college auxiliary funds, but may not be paid with student fees or moneys. A voter-approved surtax lasts for five years, but may be extended by a majority of voters in a subsequent referendum.

The surtax is capped at 0.5 percent. Proceeds from the surtax may be invested and the principal and income 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 bill requires the county to set aside surtax proceeds in a fund separate from other county funds and to promptly remit surtax proceeds to the community college board of trustees (BOT). The bill specifies that the annual apportionment of state funds for a community college under any provision of general law may not be reduced if the college receives funds pursuant to the surtax authorized by the bill.

#### **B. SECTION DIRECTORY:**

**Section 1.:** Amends s. 212.055, F.S., to create a new subsection (8) authorizing the community college discretionary sales tax.

**Section 2.:** Provides that the act takes effect upon becoming a law.

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<sup>2</sup> Section 125.011(1), F.S.

<sup>3</sup> Monroe and Hillsborough Counties are authorized to operate under a home rule charter, but have not adopted a charter under the authorization in the Constitution.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If approved by the voters in Miami-Dade County, the discretionary sales surtax would increase revenues that would be utilized for the benefit of Miami Dade College. If the proposed surtax had been levied by Miami-Dade County 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 the college.<sup>5</sup>

2. Expenditures:

If the county calls for the referendum, it would incur the costs related to holding the election. If Miami Dade College requests a special election for the referendum, the bill specifies that the college may pay for the costs of the special election with funds received from private sources or college auxiliary funds.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Miami-Dade County has levied discretionary sales surtaxes of 0.5 percent for the charter county transit system surtax and 0.5 percent for the county public hospital surtax. The sales tax would increase in Miami-Dade County to 7.5%, if the voters approved the discretionary sales surtax authorized by the bill.<sup>6</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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 or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

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. Under Article VII, section 9(a) of the State Constitution, counties may levy non-ad valorem taxes as authorized under general law. The

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<sup>5</sup> Legislative Committee on Intergovernmental Relations

<sup>6</sup> Discretionary Sales Surtax Information as of November 4, 2008, Department of Revenue, *available at*

<http://dor.myflorida.com/dor/forms/2009/dr15dss.pdf>.

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.”<sup>7</sup> A general law may contain classifications, and the Legislature has wide discretion in making such classifications, if they are reasonable.<sup>8</sup> 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.<sup>9</sup> When a classification is made by the Legislature in the enactment of general laws, the presumption is in favor of the classification’s reasonableness.<sup>10</sup>

This bill permits counties as defined in s. 112.011(1), F.S., to levy the surtax. While Hillsborough and Monroe Counties could also potentially meet this definition, only Miami-Dade County has adopted a home-rule charter and is thus authorized to levy the surtax. A similar issue was examined in *Golden Nugget Group*, in which the court found that an act which authorized counties, as defined in s. 125.011(1), F.S., to levy a convention development tax. The court held that the statute was not a general law of local application although Miami Dade County in effect was the only county authorized to levy the tax.<sup>11</sup> The court explained that when the Legislature makes a classification in a general law, there is a presumption in favor the classification’s reasonableness.<sup>12</sup> The court did not address whether the classification based on home rule charter was an impermissible closed class, but instead focused on a characteristic shared by the counties.<sup>13</sup> The court explained that the classification was reasonable because the three counties potentially eligible for the tax had substantial tourist-oriented economies and the counties had developed or had plans to develop facilities to that would attract a growing number of convention tourists to improve the counties’ tourist industry.<sup>14</sup>

The reasonableness of limiting the community college surtax to only home rule charter counties may be challenged because other community colleges in Florida may face the same economic challenges as Miami Dade College.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>7</sup> *Metropolitan Dade County v. Golden Nugget Group*, 448 So.2d 515, 519 (Fla. 3rd DCA 1984), *aff’d*, 464 So.2d 535 (Fla. 1985).

<sup>8</sup> *Id.*

<sup>9</sup> *City of Miami*, 824 So.2d 143, 150-151 (Fla. 2002).

<sup>10</sup> *Metropolitan Dade County*, 448 So.2d at 519.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 520.

<sup>13</sup> *City of Miami*, 824 So. 2d at 152.

<sup>14</sup> *Id.*