

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 Committee on Education

BILL: CS/SB 1718

INTRODUCER: Community Affairs Committee and Senator Flores and others

SUBJECT: Discretionary Sales Surtaxes

DATE: April 1, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Toman | Yeatman | CA | Fav/CS |
| 2. | Harkey | Klebacha | ED | Favorable |
| 3. | | | AFT | |
| 4. | | | AP | |
| 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:

CS/SB 1718 authorizes a new discretionary sales surtax known as the Florida College Surtax. Under the bill, a county as defined in section 125.011(1), Florida Statutes, may levy a voter-approved discretionary sales surtax of up to 0.5 percent for the benefit of a Florida College System institution. The bill also establishes procedures and requirements for surtax deposits, investments and usage. An independent oversight board approves college funding allocation plans. Any approved surtax expires after 5 years.

This bill takes effect upon becoming law.

This bill amends section 212.055 of the Florida Statutes.

II. Present Situation:

Local Discretionary Sales Surtax

A “surtax” is an extra tax or charge.¹ Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions and on communications services, defined in ch. 202, F.S.² The eight surtaxes are:

- the charter county and regional transportation system surtax,
- the local government infrastructure surtax,
- the small county surtax,
- the county public hospital surtax,
- the school capital outlay surtax,
- the voter-approved indigent care surtax,
- the emergency fire rescue services and facilities surtax, and
- the indigent care and trauma center surtax.

The maximum discretionary sales surtax that any county can levy depends upon the county’s eligibility for the taxes listed in s. 212.055, F.S. Currently, the maximum surtax actually imposed is 1.5 percent in several counties;³ however, the theoretical maximum rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county. In general, the levy of a particular tax is subject to county voter approval.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state tax. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

Miami-Dade currently imposes two local discretionary surtaxes: the Charter County Transit System Surtax at a 0.5 percent rate and the County Public Hospital Surtax at a 0.5 percent rate.⁴

Postsecondary Educational Institutions

Section 1000.21, F.S., provides system-wide definitions as used in the Florida K-20 Education Code. There are 28 postsecondary educational institutions in the Florida College System

¹ Black’s Law Dictionary (9th ed., 2009), tax.

² The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

³ See Florida Department of Revenue, *Discretionary Sales Surtax Information: Calendar Year 2013*, available at <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf>.

⁴ Florida Department of Revenue, *History of Local Sales Tax and Current Rates by County* (last updated January 1, 2013) available at https://revenue.law.state.fl.us/LawLibraryDocuments/2012/12/OTH-111189_History%20of%20sales%20tax,%201-01-13.pdf#search.

designated as Florida College System institutions.⁵ Among them is Miami Dade College, which serves Miami-Dade County.

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.⁶

III. Effect of Proposed Changes:

This bill amends s. 212.055, F.S., to add a ninth discretionary sales surtax, known as the Florida College Surtax, authorizing a county as defined in s. 125.011(1), F.S., to levy up to 0.5 percent for the benefit of a Florida College System institution (institution) located in the county. The surtax requires an ordinance conditioned upon approval by a majority of county electors voting in a referendum.

- ❖ The ordinance must outline a plan for permissible uses of surtax proceeds developed by the institution's board of trustees. Proceeds must be set aside and invested as permitted by law, with the principal and income used for purposes including but not limited to academic workforce training programs, capital expenditures and infrastructure projects, and campus fixed capital costs.

The expense of a referendum called for by the institution can only be paid with private source or college auxiliary funds and any referendum must be preceded by 30 days' notice. Referendum ballot guidelines are specified and include a question format currently utilized for other discretionary surtax referenda. Proceeds from the surtax must be deposited into a Florida Prime⁷ account managed by the Florida State Board of Administration.

⁵ Prior to the 2011, these institutions were known as "Florida colleges" or "community colleges." See Chapter 2011-5, s. 7, Laws of Fla.

⁶ This discussion is drawn from Florida Senate Policy and Steering Committee on Ways and Means, *CS/SB 1576 Analysis: Discretionary Sales Surtax* (April 10, 2009) (on file with the Senate Committee on Community Affairs).

⁷ Florida Prime is the state's Local Government Surplus Funds Trust Fund.

Upon approval of a referendum, an independent oversight review board is charged with approving surtax proceeds expenditures. All expenditures must be outlined by the institution in an annual allocation spending plan. Various appointments to the seven-member board are made by the trustees of the institution, the county legislative delegation, the Greater Miami Chamber of Commerce, the United Way of Miami-Dade County and the Beacon Council.⁸ Oversight board member terms are four years in length.

An institution's annual apportionment of state funds may not be reduced because the institution has received Florida College Surtax funds. Any discretionary sales surtax approved by voters expires after 5 years.

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:

This bill may be constitutionally challenged under Art. III, s. 11(a)(2), State Constitution, by alleging that the proposed legislation is a special law or general law of local application relating to taxes. Art. III, s. 11(a)(2), State Constitution, prohibits a special law or general law of local application pertaining to the assessment or collection of taxes. Pursuant to Art. VII, s. 9(a), 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.”⁹ A general law may contain classifications, and the legislature has wide discretion in making such classifications, if they are reasonable.¹⁰ 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.¹¹

⁸ Beacon Council is Miami-Dade County's official economic development partnership.

⁹ 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).

¹⁰ *Id.*

¹¹ See *City of Miami v. McGrath*, 824 So. 2d 143, 150-151 (Fla. 2002).

When a classification is made by the Legislature in the enactment of general laws, the presumption is in favor of the classification's reasonableness.¹²

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 to levy the bill's newly created surtax 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.¹³ Similarly, this bill defines authorized counties in a manner that is identical to the 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.¹⁴ 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.¹⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

Miami Dade College would be the recipient of sales surtax proceeds if the county approves an ordinance and Miami-Dade County voters approve the ordinance.

VI. Technical Deficiencies:

To address Department of Revenue (DOR) implementation concerns (see Related Issues section) the department recommended replacing line 83 of the bill with the following:¹⁶
surtax must be transferred by the Department of Revenue into a.

¹² See *Metropolitan Dade County*, *supra* note 1, at 519.

¹³ See *id* at 19-20.

¹⁴ See *Golden Nugget Group v. Metropolitan Dade County*, 464 So. 2d 535, 537 (Fla. 1985).

¹⁵ *City of Miami v. McGrath*, 824 So. 2d at 152.

¹⁶ Florida Department of Revenue, 2013 Bill Analysis, *SB 1718: Discretionary Sales Surtaxes* (Mar.8, 2013) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=1383> (last visited Mar. 15, 2013).

VII. Related Issues:

According to a DOR analysis of the bill, the department cannot make deposits directly into a Florida Prime Account.¹⁷ Instead, DOR would have to generate a check to the State Board of Administration for these proceeds. A possible remedy for this issue is provided in the Technical Deficiencies section..

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 Community Affairs on March 20, 2013:

- Removes student scholarships and financial aid and land acquisition from the stated permissible uses of surtax funds.
- Revises who appoints the oversight board.
- Reduces board terms of service to 4 years.
- Limits the surtax to a length of 5 years.

- B. **Amendments:**

None.

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

¹⁷ *Id.*