

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 243 Charter County and Regional Transportation System Surtax  
**SPONSOR(S):** Government Accountability Committee; Transportation & Infrastructure Subcommittee; Avila, Perez and others  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 688

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Johnson	Vickers
2) Ways & Means Committee	14 Y, 6 N	Dugan	Langston
3) Government Accountability Committee	17 Y, 6 N, As CS	Johnson	Williamson

### SUMMARY ANALYSIS

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law. By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax. Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission. If voter approval is required, a majority of electors voting must approve the referendum. Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.

Certain counties are authorized to establish a sales surtax of up to one percent for specified transportation purposes. While 31 counties are eligible to levy the surtax, it is only levied in Duval and Miami-Dade Counties, both at the rate of one-half percent. Since its inception in 2003, Miami-Dade County has collected approximately \$2.9 billion in surtax proceeds. In Miami-Dade County, the county transfers surtax proceeds to the county's transit department, the county's public works department, and certain municipalities.

The bill requires an independent certified public accountant (CPA) to conduct a performance audit of a county or school district holding a referendum on or after a date certain to adopt or amend a discretionary sales surtax. The CPA must be procured by the Office of Program Policy Analysis and Government Accountability, which may use carryforward funds to procure and pay for the CPA's services. Such audit must be completed and the audit report and any accompanying documents must be made available on the official website of the county or school district at least 60 days before the referendum is held. Such information must remain on the website for two years from the date it was posted. The bill defines the term "performance audit."

Beginning July 1, 2019, the bill provides that the Charter County and Regional Transportation System Surtax proceeds collected in Miami-Dade County, to the extent not prohibited by contracts or bond covenants in effect, may only be used for the planning, design, engineering, or construction of a fixed guideway rapid transit system; the acquisition of rights-of-way for fixed guideway rapid transit systems or for the development of dedicated facilities for autonomous vehicles; the payment of principal and interest on bonds related to a fixed guideway rapid transit system or bus system; and as security to the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, or construction of fixed guideway rapid transit systems or bus systems. Municipalities in Miami-Dade County may use surtax proceeds for certain purposes related to roads, bridges, and transit systems within the municipality. The bill prohibits the use of surtax proceeds for salaries or other personnel expenses of a county or municipal transportation department.

The bill has a fiscal impact on both state and local governments. See Fiscal Comments section.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

###### Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.<sup>1</sup> By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.<sup>2</sup> These purposes include:

- Operating a transportation system in a charter county;<sup>3</sup>
- Financing local government infrastructure projects;<sup>4</sup>
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;<sup>5</sup>
- Providing medical care for indigent persons;<sup>6</sup>
- Funding trauma centers;<sup>7</sup>
- Operating, maintaining, and administering a county public general hospital;<sup>8</sup>
- Constructing and renovating schools;<sup>9</sup>
- Providing emergency fire rescue services and facilities;<sup>10</sup> and
- Funding pension liability shortfalls.<sup>11</sup>

The 56 counties and 19 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.7 billion in revenue in fiscal year 2018-19.<sup>12</sup>

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.<sup>13</sup> If voter approval is required, a majority of electors voting must approve the referendum.<sup>14</sup> Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.<sup>15</sup>

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<sup>1</sup> Article VII, s. 1(a), Fla. Const.

<sup>2</sup> Sections 212.054 and 212.055, F.S.

<sup>3</sup> Section 212.055(1), F.S.

<sup>4</sup> Section 212.055(2), F.S.

<sup>5</sup> Section 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.

<sup>6</sup> Section 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).

<sup>7</sup> Section 212.055(4)(b), F.S.

<sup>8</sup> Section 212.055(5), F.S.

<sup>9</sup> Section 212.055(6), F.S.

<sup>10</sup> Section 212.055(8), F.S.

<sup>11</sup> Section 212.055(9), F.S.

<sup>12</sup> *2018 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220; available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last viewed Feb. 8, 2018).

<sup>13</sup> See generally s. 212.055, F.S.; but see s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).

<sup>14</sup> Section 212.055, F.S.

<sup>15</sup> E.g. s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time “set at the discretion of the governing body”); but see s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a “regularly scheduled election”).

The surtaxes are collected by the Department of Revenue (DOR) using the same procedures utilized for the administration, collection, and enforcement of the general state sales tax.<sup>16</sup> DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of three percent or administrative costs solely and directly attributable to the surtax, whichever is less. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.<sup>17</sup>

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.<sup>18</sup> The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.<sup>19</sup> If the county or school district fails to provide timely notice, the effective date of the change is delayed by one year.<sup>20</sup> Counties and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.<sup>21</sup>

#### History of Charter County and Regional Transportation System Surtax

Created in 1976 as the Charter County Transit System Surtax, the surtax originally authorized counties with charters adopted before June 1, 1976, to levy a one-percent sales surtax subject to voter approval in a countywide referendum. Proceeds from the surtax were restricted to costs associated with developing and constructing fixed guideway and rapid transit systems.<sup>22</sup>

In 1999, the Legislature authorized surtax proceeds to be applied to as many or as few of the statutorily authorized purposes in whatever combination the county's governing body deemed appropriate.<sup>23</sup> In 2002, the Legislature authorized any county with a charter adopted prior to January 1, 1984, to levy the surtax.<sup>24</sup> In 2003, the Legislature expanded the number of uses for surtax proceeds.<sup>25</sup> In 2004, the Legislature authorized all charter counties eligible to levy the surtax to use up to 25 percent of the proceeds for non-transit purposes,<sup>26</sup> which was previously limited to Miami-Dade County.

In 2009, the surtax was renamed the Charter County Transportation System Surtax and an additional 13 counties were made or deemed eligible to assess the surtax. In 2009, surtax proceeds were also allowed to be remitted to transit authorities. Additionally, the Legislature required interlocal agreements specifying the distribution of surtax proceeds with one or more municipalities to be revised no less than every five years to reflect recent municipal incorporations.<sup>27</sup>

In 2010, the surtax was renamed the Charter County and Regional Transportation System Surtax and eligibility was extended to counties within or under an interlocal agreement with a regional transportation or transit authority. Additionally, surtax proceeds could be spent to plan, develop, construct, expand, operate, and maintain on-demand transportation services.<sup>28</sup>

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<sup>16</sup> Section 212.054(4)(a), F.S.

<sup>17</sup> Section 212.054(4)(b), F.S.

<sup>18</sup> Section 212.054(5), F.S.

<sup>19</sup> Section 212.054(7)(a), F.S.

<sup>20</sup> Section 212.054(7)(a), F.S.

<sup>21</sup> Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

<sup>22</sup> Chapter 76-284, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>23</sup> Chapter 99-385, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>24</sup> Chapter 2002-20, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>25</sup> Chapter 2003-254, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>26</sup> Chapter 2004-66, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>27</sup> Chapter 2009-146, L.O.F.; 2017 Florida Tax Handbook, pp. 226-227.

<sup>28</sup> Chapter 2010-225, L.O.F.; 2017 Florida Tax Handbook p. 227.

Based on current statutory criteria, 31 counties are eligible to levy the surtax.<sup>29</sup> However, only Duval and Miami-Dade Counties levy the surtax, both at a rate of one-half percent.<sup>30</sup> Duval County began levying the tax in 1989, and Miami-Dade County began levying the tax in 2003.<sup>31</sup>

### Miami-Dade County

Section 125.011(1), F.S., defines a county as:

[A]ny 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, 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.

The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe County,<sup>32</sup> Dade County,<sup>33</sup> and Hillsborough County.<sup>34</sup> Of these, only Miami-Dade County operates under a home-rule charter, adopted on May 21, 1957, under this constitutional provision.<sup>35</sup> Therefore, Miami-Dade County is the only county that meets the definition in s. 125.011(1), F.S.

In 2002, Miami-Dade County adopted a resolution calling for a special election for a one-half cent Charter County and Transit System Surtax with the following ballot language:

Shall the county implement the People’s Transportation Plan including: plans to build rapid transit lines to West Dade, Kendall, Florida City, Miami Beach and North Dade; expanding bus service; adding 635 buses; improving traffic signalization to reduce traffic backups; improving major neighborhood roads and highways, including drainage; and funding to municipalities for road and transportation projects by levying a ½ percent sales surtax whose proceeds will be overseen by the Citizen’s Independent Transportation Trust?

### 2002 Charter County Transit Surtax Law

In 2002, Miami-Dade County passed a referendum authorizing the Charter County Transit Surtax<sup>36</sup> and began levying the surtax in 2003. As written in 2002, s. 212.055(1)(d), F.S., provided Charter County Transit System Surtax proceeds could be applied to as many or as few of the purposes provided below, in whatever combination the county commission deemed appropriate:

- For the development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, and related costs of a fixed guideway rapid transit system;
- Remitted to an expressway or transportation authority for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges; and

<sup>29</sup> The counties eligible to levy the surtax are Alachua, Bay, Brevard, Broward, Citrus, Clay, Columbia, Duval, Escambia, Franklin, Gulf, Hernando, Hillsborough, Lee, Leon, Manatee, Miami-Dade, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Santa Rosa, Sarasota, Seminole, Volusia, Wakulla, and Walton. 2017 Florida Tax Handbook, p. 227.

<sup>30</sup> 2017 Florida Tax Handbook, p. 227.

<sup>31</sup> 2003 Florida Tax Handbook, p. 154.

<sup>32</sup> FLA. CONST. art. VIII, s. 6, n. 2.

<sup>33</sup> FLA. CONST. art. VIII, s. 6, n. 3.

<sup>34</sup> FLA. CONST. art. VIII, s. 6, n. 4.

<sup>35</sup> Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/charter-county-information> (Last visited November 17, 2017).

<sup>36</sup> <https://www.miamidade.gov/elections/results/ele02309/RACE054.HTML> (Last visited July 27, 2017).

- In Miami-Dade County, for the development, construction, operation, and maintenance of the county's roads and bridges; for the expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses.

### Current Charter County and Regional Transportation Surtax Law

Subsequent to 2002, the Legislature amended the authorized uses of surtax proceeds, including allowing proceeds to be used for on-demand transportation services,<sup>37</sup> allowing funds to be remitted to the transit authority for certain purposes related to bus systems, and expanding the use of funds limited to Miami-Dade County to all counties. Additionally, the Legislature authorized surtax proceeds to be used by the county for various functions relating to roads and bridges, bus and fixed-guideway systems, on-demand transportation services, and certain bond issuances. The statute currently authorizes counties to enter into interlocal agreements to distribute tax proceeds to a municipality, or an expressway or transportation authority, for authorized purposes. These interlocal agreements are revised no less than once every five years in order to incorporate new municipalities.<sup>38</sup>

### Administration of the Surtax in Miami-Dade County

Miami-Dade County's Citizen's Independent Transportation Trust (CITT) is a 15-member body overseeing the surtax-funded People's Transportation Plan (PTP).<sup>39</sup> In part, the CITT's powers and duties include:

- Monitoring, overseeing, reviewing, auditing, and investigating implementation of the transportation and transit projects listed in any levy by the county under s. 212.055, F.S.;
- Assuring compliance with any limitations imposed in the levy on the expenditure of surtax proceeds; and
- Filing a quarterly report regarding the implementation of the projects funded by surtax proceeds.<sup>40</sup>

The ordinance creating Miami-Dade County's surtax requires the distribution of 20 percent of surtax proceeds to municipalities on a pro rata basis for local transportation and transit projects.<sup>41</sup> Municipalities must apply at least 20 percent of their share of surtax proceeds to transit and are required to submit their transportation plans to the county.<sup>42</sup>

Since its inception in 2003, through September 2017, Miami-Dade County received approximately \$2.9 billion in surtax revenues, with approximately \$1.9 billion transferred to Miami-Dade Transit, \$616 million to municipalities, and \$206 million to public works.<sup>43</sup>

### **Effect of Proposed Changes**

For any referendum held on or after the effective date of the bill to adopt or amend a discretionary sales surtax, the bill requires an independent certified public accountant (CPA)<sup>44</sup> to conduct a performance audit of the county or school district holding the referendum. The CPA must be procured

<sup>37</sup> Section 212.055(1)(e), F.S., defines "on-demand transportation services" as transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

<sup>38</sup> Section 212.055(1)(d), F.S.

<sup>39</sup> <http://www.miamidade.gov/citt/> (Last visited October 19, 2017).

<sup>40</sup> <http://www.miamidade.gov/citt/about-citt.asp> (Last visited October 24, 2017).

<sup>41</sup> Due to the incorporation of new municipalities since the inception of the surtax, the current allocation to municipalities is approximately 23 percent of surtax revenues.

<sup>42</sup> <http://www.miamidade.gov/citt/about-municipal-program.asp> (Last visited October 30, 2017).

<sup>43</sup> <http://www.miamidade.gov/citt/library/finance/2017/ptp-cash-analysis.pdf> (Last visited February 14, 2018).

<sup>44</sup> Certified public accountants are licensed pursuant to Ch. 473, F.S.

by the Office of Program Policy Analysis and Government Accountability (OPPAGA), which may use carryforward funds to procure and pay for the CPA's services. The performance audit must be completed and the audit report, including any findings, recommendations, or other accompanying documents must be made available on the official website of the county or school district at least 60 days before the referendum is held. The audit report and accompanying documents must remain on the website for two years from the date it was posted.

The bill defines the term "performance audit" to mean an examination of the county or school district conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:

- The economy, efficiency, or effectiveness of the county or school district;
- The structure or design of the county government or school district to accomplish its goals and objectives;
- Alternative methods of providing county or school district services or products;
- Goals, objectives, and performance measures used by the county or school district to monitor and report program accomplishments;
- The accuracy or adequacy of public documents, reports, or requests prepared by the county or school district; and
- Compliance of the county or school district with appropriate policies, rules, or laws.

Beginning July 1, 2019, and to the extent not prohibited by contracts or bond covenants in effect on July 1, 2019, the bill requires Miami-Dade County to use the Charter County and Regional Transportation Surtax proceeds only for the following purposes:

- The planning, design, engineering, or construction of fixed guideway rapid transit systems.
- The acquisition of rights-of-way for fixed guideway rapid transit system or dedicated facilities for autonomous vehicles provided the owner of the right-of-way is a willing seller.
- The payment of principal and interest on bonds previously issued related to fixed guideway rapid transit systems or bus systems.
- As security by the governing body of Miami-Dade County to refinance existing bonds or to issue new bonds for the planning, design, engineering, or construction of fixed guideway rapid transit systems or bus systems.

Effective July 1, 2019, the bill allows each municipality in Miami-Dade County to use such surtax proceeds to plan, develop, construct, operate, and maintain roads or bridges in the municipality and to pay the principal and interest on bonds issued to construct roads or bridges. The governing body of the municipality may also pledge the proceeds for bonds issued to refinance existing bonds or new bonds issued to construct such roads or bridges. Additionally, each such municipality may use surtax proceeds for transit systems within the municipality.

The bill prohibits the use of the Charter County and Regional Transportation Surtax proceeds for salaries or other personnel expenses of the county or municipal transportation department.

The bill removes redundant provisions in s. 212.055(1)(d), F.S.

The bill directs the Division of Law Revision and Information to replace "the effective date of this act" wherever it occurs in the bill with the date the bill becomes a law.

#### B. SECTION DIRECTORY:

Section 1 amends s. 212.055, F.S., relating to discretionary sales surtaxes.

Section 2 provides a direction to the Division of Law Revision and Information.

Section 3 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill requires performance audits of counties or school districts prior to them adopting or amending a discretionary sales surtax to conduct a performance audit by an independent CPA. The CPA is procured and paid for by OPPAGA using carryforward funds. To the extent that OPPAGA is requested to procure and pay for the performance audits, OPPAGA will be utilizing its carryforward funds. However, the number of performance audits requested in any given year is unknown at this time.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill changes the statutorily authorized use of Charter County and Regional Transportation Surtax revenues in Miami-Dade County and limits the use to capital costs associated with transit. To the extent surtax revenues are being used for another purpose, the bill may negatively impact expenditures for those purposes.

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

None.

### D. FISCAL COMMENTS:

While the bill does not change the tax rate, it revises the authorized uses for surtax proceeds. The bill limits the use of surtax revenues to capital costs related to public transit. To the extent surtax proceeds are allocated to other uses, Miami-Dade County may have to reduce those expenditures or find funds from other sources.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 6, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised the authorized uses for the Charter County and Regional Transportation System Surtax in Miami-Dade County.

On February 13, 2018, the Government Accountability Committee adopted a proposed committee substitute with one amendment and reported the bill favorably as a committee substitute. The proposed committee substitute, as amended, differs from CS/HB 243 as reported favorably by the Ways & Means Committee in the following manner:

- Clarified that changes to the Charter County and Regional Transportation System surtax provisions are effective July 1, 2019, and authorized municipalities in Miami-Dade County to use surtax proceeds for certain purposes.
- Required a performance audit of a county or school district to be conducted by an independent CPA, procured and paid for by OPPAGA, prior to a county or school district adopting or amending a discretionary sales surtax. Required the performance audit to be completed and the audit report posted on the official website of the county or school district at least 60 days before the referendum is held and to maintain such information on the website for a two years from the date it is posted.
- Defined the term “performance audit.”
- Provided direction to the Division of Law Revision and Information.

This analysis is drafted to the committee substitute as reported favorably by the Government Accountability Committee.