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DATE: February 20, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE
ANALYSIS**

BILL #: HB 1003
RELATING TO: Municipal Discretionary Sales Surtax
SPONSOR(S): Representative Meadows

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE YEAS 5 NAYS 4
 - (2) FISCAL POLICY AND RESOURCES
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends s. 212.055, F.S, to authorize the largest municipality in a county with a population of more than 1 million to levy, by referendum, up to 0.5 percent in discretionary sales surtax. The cities of West Palm Beach, Fort Lauderdale, and Miami would qualify to levy the proposed tax.

The bill amends ss. 202.19 and 202.20, F.S, to authorize the largest municipality in a county with a population of more than 1 million to levy a local communications services tax. Section 202.19, F.S., is reenacted, effective January 1, 2004, to include changes relating to the local communications services tax and to provide municipal discretionary surtax conversion rates for said tax.

The bill amends s. 212.0596, F.S., relating to taxation of mail order sales, to apply the mail order provisions that govern the imposition of discretionary sales surtaxes on dealers located in a Florida county to dealers located in municipalities authorized to impose the tax.

With the exception of the reenactment of s. 202.19(5), F.S., relating to the local communications services tax, the act would take effect upon becoming a law.

The Revenue Impact Conference has not reviewed this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill authorizes new taxes in certain municipalities if approved by referendum.

B. PRESENT SITUATION:

Discretionary Sales Surtax

Sections 212.054 and 212.055, F.S., currently limit, exclusively to counties, the authority to levy a number of discretionary sales surtaxes. These surtaxes may be levied only if authorized by general law, and many are limited to local governments meeting specific requirements. Among the discretionary sales surtaxes available to every county is the Local Government Infrastructure Surtax, which may be levied, by referendum, by a county governing authority at a rate of 0.5 to 1.0 percent (Section 212.055(2), F.S.). Broward, Miami-Dade, and Palm Beach Counties do not impose the Local Government Infrastructure Surtax.¹

Local Communications Services Tax

Current law provides that any discretionary sales surtax imposed by a county or school board under s. 212.055, F.S., is also imposed as a local communications services tax. Conversion rates to be used by each county or school board in determining the rate of its local communications services tax are found in s. 202.20(3), F.S.

Taxation of Mail Order Sales

Section 212.0596, F.S., provides that dealers who make mail order sales in Florida do not have to collect the discretionary sales surtax unless the dealer is located in a county that imposes the tax, the order is placed through the dealer's location in the county, or the purchased item is delivered to a county where the dealer is located or to another county that imposes a surtax.

¹See Department of Revenue *Florida Tax Handbook, 2001*, p. 148.

C. EFFECT OF PROPOSED CHANGES:

Municipal Discretionary Sales Surtax

This bill extends to certain municipalities the authority to levy, by referendum, a discretionary sales surtax of up to 0.5 percent to be used for infrastructure needs, acquisition of land for public recreation, conservation, and protection of natural resources, and for economic development projects. Tax proceeds are to be distributed to the municipality in which the surtax is collected. Sports arenas and stadiums are excluded from the list of projects eligible for funding from surtax proceeds. The proposed tax cannot be levied more than 15 years. The municipal authorization does not interfere with a county's authorization to levy a local government infrastructure surtax of up to 1 percent under s. 212.055(2), F.S. Not all municipalities are authorized to levy the tax, only the largest municipalities in counties with populations in excess of 1 million. Currently, the cities of West Palm Beach, Fort Lauderdale, and Miami would qualify.

Local Communications Services Tax

The bill authorizes the largest municipality in a county with a population of more than 1 million to levy a local communications services tax. The bill amends subsection (3) of s. 202.20, F.S., to authorize municipalities to use the conversion rates previously used only by counties and school boards in determining local communications services tax rates. The bill reenacts the proposed changes to s. 202.19, F.S., effective January 1, 2004.

Taxation on Mail Order Sales

Provisions under chapter 212, F.S., that govern the imposition of discretionary sales surtax on dealers located in a county would be applied to dealers located in municipalities authorized by this bill to impose such tax.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 212.054, F.S., relating to local discretionary sales surtaxes. Prohibits the governing body of a municipality (currently, only the governing body of a county) from levying a general excise tax unless specifically authorized in s. 212.055, F.S. Specifies that a tax imposed by the governing body of any county or municipality pursuant to s. 212.055, F.S., shall be a discretionary surtax on all transactions occurring in the county or municipality that are subject to taxes under chapter 212, F.S., sales and use tax, and chapter 202, communications services tax. Specifies the sale of an item of tangible personal property or the sale of a service is not subject to the discretionary surtax if the transaction occurred in a county or municipality that does not impose a discretionary sales surtax.

Prescribes the manner in which contractors may apply for a refund of the county or municipal discretionary surtax on materials needed to complete improvements to real property or remodeling of existing structures. Authorizes counties and municipalities to issue refunds of the discretionary sales surtax for this purpose and requires them to set aside from the surtax proceeds sufficient moneys to pay refunds.

With respect to partial sales tax exemptions authorized for vessels, railroads, or motor vehicle common carriers, specifies the discretionary sales surtax shall be imposed by the county or municipality at the same rate provided in s. 212.08, F.S., and shall be prorated by the taxing county or municipality to establish apportionment relating to intracounty or intramunicipality movement.

Stipulates what comprises a taxable transaction with respect to the county or municipal discretionary sales surtax. Requires the Department of Revenue to treat the discretionary sales surtax like the general state sales tax with respect to its administration, collection, and enforcement.

Authorizes discretionary sales surtaxes to be returned, less an administrative fee, to the county or municipality where the selling dealer is located. Requires counties and municipalities imposing a discretionary surtax to establish a separate account for proceeds within the Discretionary Sales Surtax Clearing Trust Fund.

Prescribes the method the Department of Revenue is to use to prorate its administrative costs among counties and municipalities that impose the discretionary surtax. Directs the department to distribute such moneys monthly to the appropriate counties and municipalities unless otherwise directed under s. 212.055, F.S.

Requires a dealer who is located in a county or municipality that does not impose a discretionary sales surtax but who collects the tax due to sales of tangible personal property or services delivered outside the county or municipality to remit monthly the proceeds of the surtax to the Department of Revenue for deposit into a separate account in the Discretionary Sales Surtax Clearing Trust Fund. Prescribes the formula for the department's distribution of moneys in the account. Specifies that the distribution factor for each county or municipality equals the product of:

- The county's or municipality's latest official population determined under s. 186.901, F.S.;
- The county's or municipality's rate of surtax; and
- The number of months the county or municipality has levied a surtax during the most recent distribution period;

divided by the sum of all such products of the counties and municipalities levying the surtax during the most recent distribution period. Requires the department to calculate distribution factors and distribute moneys quarterly.

Requires the governing body of any municipality levying a discretionary sales surtax to enact a nonemergency ordinance levying the surtax in accordance with the procedures described in s. 166.041, F.S. cite) Requires the levying county or municipality to notify the Department of Revenue within 10 days after the final adoption of the applicable ordinance or resolution, but no later than November 16 prior to the effective date.

Section 2 creates a subsection (8) of s. 212.055, F.S., discretionary sales surtaxes, authorizing a surtax for the largest municipality in certain counties. Authorizes the governing authority of the largest municipality in a county with a population greater than 1 million persons to levy a discretionary sales surtax of up to 0.5 percent. Specifies that the levying of such surtax shall be pursuant to an ordinance enacted by a majority of the members of the governing authority and shall be approved by a majority of the electors of the municipality by referendum. Authorizes the municipality to levy the surtax a maximum of 15 years and may be extended only by a majority of the municipality's electors voting in referendum.

For purposes of the new subsection (8), defines "largest" as the most populous in accordance with the latest United States Bureau of Census data, as updated annually under s. 186.901, F.S. Requires determination of county population to be based on the latest United States Bureau of Census Data, as updated annually under s. 186.901, F.S. Specifies that the date for determining if a county has a population in excess of 1 million persons and the date for determining if a

municipality is the largest in a county shall be the same as that on which the municipality enacts the enabling ordinance for the discretionary sales surtax.

Prescribes information to be contained in a ballot statement, including a brief description of the projects to be funded by the surtax.

Requires municipality surtax proceeds to be distributed to the municipality in which the surtax was collected. Authorizes the levying municipality to spend the surtax proceeds, and any accrued interest, to finance, plan, and construct infrastructure, and to use the proceeds as collateral for bonds or other indebtedness issued to finance or refinance infrastructure projects.

Defines "infrastructure" as :

- Any fixed capital expenditure, or fixed capital outlay, associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years;
- Any related land acquisition, land improvement, design, and engineering costs; or
- A fire department vehicle, emergency service vehicle, police department vehicle, or any other vehicle, and any equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of 5 or more years.
- The term does not include sports arenas or stadiums.

Authorizes expenditure of proceeds, and any accrued interest, on acquisition of land for public recreation, conservation, or protection of natural resources. Authorizes proceeds to be used as collateral for bonds of other indebtedness to finance or refinance such projects.

Allows the municipality to set aside 15 percent or less of the proceeds for economic development projects of a general public purpose targeted to improve the local economy, including the funding of operational costs and incentives related to such economic development. Requires the ballot statement to indicate the municipality's intention to allocate proceeds for economic development purposes.

Section 3 amends s. 202.19(5), F.S., authorization to impose local communications services tax, providing that a discretionary sales surtax levied by a county, municipality, or school board under s. 212.055, F.S., is imposed as a local communications services tax at a rate determined in accordance with s. 202.20(3), F.S.

Section 4 provides that s. 202.19(5), F.S., relating to the local communications services tax, shall be reenacted effective January 1, 2004, as amended by the bill to authorize municipalities to impose a local communications services tax.

Section 5 amends s. 202.20(3), F.S., establishing conversion rates for municipalities that impose the local communications services tax. Provides that conversion rates under existing law for local school boards and counties shall apply to municipalities.

Section 6 amends s. 212.0596, F.S., taxation of mail order sales. Specifies that dealers located in a municipality that imposes a discretionary sales surtax shall treat mail order transactions in the same manner as transactions affected by a county's surtax.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The Department of Revenue advises that HB 1003 will have an operational impact on the agency although it did not specify to what extent.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Impact Conference has not reviewed this bill. It is expected that imposition of discretionary sales surtaxes by qualifying cities would augment revenues that are dedicated to those cities' infrastructure, recreation, conservation, and economic development needs.

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Residents of West Palm Beach, Fort Lauderdale, and Miami, and persons engaging in taxable transactions in those municipalities could pay up to 0.5 percent in a municipal discretionary sales surtax and a local communications services tax in addition to other taxes currently imposed.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of counties and municipalities to raise total aggregate revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill is not expected to reduce the total aggregate percent of state sales tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill does not authorize the Department of Revenue to adopt rules to implement the act.

C. OTHER COMMENTS:

The Department of Revenue expects taxpayers in areas of the state affected by the bill to experience some difficulty in determining the amount of surtax that must be collected. The agency contends there could be confusion about the local jurisdiction in which a taxable event occurs.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 13, 2002, meeting the Committee on Economic Development and International Trade adopted one amendment to HB 1003 before voting to temporarily postpone the bill. The amendment removed language that allowed municipalities to use discretionary sales surtax proceeds to acquire land for public recreation, conservation, and protection of natural resources or to collateralize bonds for such purposes. At its February 20, 2002, meeting the committee adopted a second amendment to HB 1003 which specifies that any surtax levied by a municipality pursuant to the bill cannot be imposed as a local communications services tax under chapter 202, F.S.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE:

Prepared by:

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