

The Supreme Court stated that under the Florida Constitution, a municipality may not impose any non-ad valorem tax except as authorized by general law. Thus, in order to be constitutional, the statute must be a general law as opposed to a special law. A general law is one that operates uniformly among a class of entities while a special law relates to particular entities.

The court noted that the statute could have applied to only three municipalities: Miami, Tampa and Jacksonville.³ The court held that the statute, by limiting its application to only those counties with populations of more than 300,000 on April 1, 1999, was tantamount to restricting the statute to those particular municipalities that met this population threshold on that particular date. On this basis, the court found that the statute constituted a special law authorizing the imposition of non-ad valorem taxes in violation of the Florida Constitution.⁴

In response to the trial court's ruling, the Legislature amended s. 218.503(5)(a), F.S., to authorize the governing authority of any municipality having a resident population of 300,000 or more on *or after* April 1, 1999. In addition, the law deleted the requirement that such cities be in a state of financial emergency *within the previous 2 fiscal years* to impose the surtax.⁵

Pursuant to s. 218.503(5)(a), F.S., as amended in 2001, the city of Miami continues to impose this surcharge. The authority to levy the surcharge expires on July 1, 2006.

III. Effect of Proposed Changes:

Section 1 creates s. 212.035, F.S., to provide, subject to referendum approval, authority for certain municipalities to impose and collect a per-vehicle surcharge of up to 15 percent of the amount charged for the sale, lease, or rental of space at certain parking facilities within the municipality that are open for use to the general public. Parking facilities at airports, seaports and county administration buildings and projects are exempt from the surcharge.

To qualify, municipalities must:

- Have a resident population of 200,000 or more;
- Have more than 20 percent of the municipality's real property exempt from ad valorem taxes; and
- Be located in a county with a population of more than 500,000.

Additionally, the bill provides for limitations on the use of the proceeds of the surcharge. The proceeds may only be used for the following purposes:

- Between 60 and 80 percent shall be used to reduce the municipality's ad valorem tax millage or to reduce or eliminate non-ad valorem assessments; and
- Between 20 and 40 percent shall be used to improve transportation including, but not limited to, street, sidewalk, roadway, landscape, transit, and streetscape beautification improvements.

³ *McGrath*, 824 So.2d at 146.

⁴ *McGrath*, 824 So.2d at 150.

⁵ Ch. 2001-354, L.O.F.

The CS clarifies that the authority to impose the surcharge under this section is not cumulative with similar authority found in s. 218.503(5)(a), F.S.

Finally, this CS requires that the surcharge be administered locally, not by the Department of Revenue.

Section 2 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

As this authority is discretionary, the fiscal impact on local government revenues is indeterminate. Five municipalities will qualify to impose this tax: Hialeah, Jacksonville, Tampa, St. Petersburg, and Miami. However, the City of Miami currently imposes a similar surcharge, which expires in 2006, pursuant to the authority of s. 218.503(5)(a), F.S.

B. Private Sector Impact:

In the event that the qualified cities impose the tax, users of parking facilities will be liable for paying the tax.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
