

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1842

SPONSOR: Comprehensive Planning Committee and Senator Diaz de la Portilla

SUBJECT: Municipal Parking Facility Space Surcharges

DATE: April 17, 2003      REVISED: 04/22/03 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/3 amendments</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This committee substitute (CS) provides qualifying municipalities, subject to referendum approval, authority to impose a per-vehicle surcharge for the sale, lease or rental of space at certain parking facilities, within the municipality, that are open for use to the general public. Funds generated from the surcharge are to be used for reduction of ad valorem millage, reduction or elimination of non-ad valorem assessments, and improvements to transportation services.

This bill creates s. 212.035 of the Florida Statutes.

**II. Present Situation:**

The 1999 Legislature amended s. 218.503, F.S.,<sup>1</sup> to provide any municipality with a resident population of 300,000 or more on April 1, 1999, and which has been declared in a state of financial emergency within the previous two years, the authority to impose a discretionary per-vehicle surcharge of up to 20 percent on the gross revenues of the sale, lease, or rental of space at parking facilities with the municipality that are open for use to the general public.

The City of Miami implemented this surcharge by ordinance in July, 1999.

The constitutionality of the surcharge was subsequently challenged and upheld in the Circuit Court for Miami-Dade County. On appeal, the appellate court reversed and the Florida Supreme Court concurred with the appellate reversal finding the statute unconstitutional.<sup>2</sup>

<sup>1</sup> Chapter 1999-251, s. 132, L.O.F.

<sup>2</sup> *McGrath v. City of Miami*, 789 So.2d 1168 (Fla. 3<sup>rd</sup> DCA 2001); and *City of Miami v. McGrath*, 824 So.2d 143 (Fla. 2002).

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

Pursuant to s. 218.503(5)(a), F.S., as amended in 2001, the city of Miami continues to impose this surcharge. Since 1999, the City of Miami has collected \$43 million in surcharge revenue. 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 unless the municipality has used the proceeds from the surcharge to reduce the municipality's ad valorem tax millage or to reduce non-ad valorem assessments under s. 218.503(5)(b); and

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<sup>3</sup> *McGrath*, 824 So.2d at 146.

<sup>4</sup> *McGrath*, 824 So.2d at 150.

<sup>5</sup> Ch. 2001-354, L.O.F.

- 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.

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.

Since 1999, the City of Miami has collected \$43 million in parking surcharge revenue, approximately \$11 million per year. The CS lowers the cap on the surcharge from 20 percent to 15 percent of the amount charged for the sale, lease, or rental of the parking space. According to a representative of the City of Miami, this reduction in the cap will reduce annual revenues to between \$8 million and \$9 million per year.

##### **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:**

Because the bill requires a referendum prior to enactment, there will be additional, indeterminate costs for the election. The City of Miami may contract with the Miami-Dade County Supervisor of Elections for conduct of the election or conduct it on its own. Associated costs will be borne by the city.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Finance and Taxation:

Technical amendment changing the statutory site from s. 212.035, to s. 166.271 (WITH TITLE AMENDMENT)

#2 by Finance and Taxation:

Provides that parking surcharge revenues shall be used in downtown/urban core areas and provides a description of the downtown/urban core.

#3 by Finance and Taxation:

The bill requires the municipality imposing the surcharge to administer it locally pursuant to the provisions of s. 125.0104, Tourist Development Tax. The amendment removes the requirement that the municipality must administer the surcharge in the same manner as the Tourist Development Tax.