

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Reduce Government?

HB 237 authorizes certain authorities or municipalities to impose, subject to referendum, a per-vehicle 20 percent surcharge for the sale, lease or rental of space at parking facilities open to the public. The municipal governing authority imposing the surcharge is authorized to use from 20 to 40 percent of the proceeds to improve transportation, including, but not limited to, street, sidewalk, roadway, landscape, transit, and streetscape beautification and improvements. To the extent that the bill may create new revenue streams for these programs, it does not tend to reduce government.

Lower Taxes?

HB 237 authorizes a municipal governing authority that imposes the surcharge to use from 60 to 80 percent of the proceeds to reduce the municipality's ad valorem tax millage or to reduce or eliminate non-ad valorem assessments. The bill should reduce ad valorem taxes imposed on property owners while increasing use fees imposed against those who use public parking facilities. So, while property owners will experience lower taxes, those who use public parking facilities will pay more in taxes.

B. EFFECT OF PROPOSED CHANGES:

The bill creates s. 212.035, F.S., providing authority, subject to referendum approval, 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 parking facilities within the municipality that are open for use to the general public.

Qualifying municipalities:

- 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
- are located in a county with a population of more than 500,000.

The bill:

- excludes airports, seaports and county administration buildings and projects from the imposition and collection of the surcharge¹;
- clarifies that the authority of the new s. 212.035, F.S., is not cumulative with similar authority found in s. 218.503(5)a, F.S.; and

¹ This exception results from, and is consistent with, the settlement of a class action suit resulting from the City of Miami's imposition and collection of the surcharge pursuant to s. 218.503(5)(a), F.S.

- Sets the maximum surcharge at 15 percent of the amount charged for the sale, lease, or rental space at parking facilities open for use by the public.

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. However, if the municipality has previously used proceeds from a surcharge imposed under s. 218.503(5)(b), F.S., to reduce their ad valorem millage or non-ad valorem assessments, this requirement does not apply. The bill does not specify how this portion of the funds are to be used under such circumstances.
- 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.

Any municipality imposing this surcharge must administer the surcharge locally pursuant to the powers and duties enumerated for the local administration of the tourist development tax in s. 125.0104, F.S. The municipality's referendum approving the surcharge must also provide the tax brackets applicable to transactions subject to the surcharge.

The revenue raising authority created by this bill does not expire.

The bill takes effect upon becoming law.

Background

The 1999 Legislature amended s. 218.503, F.S.², 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.

In similar fashion to the present bill, the 1999 enactment limited the use of the proceeds.

The City of Miami implemented this surcharge by ordinance in July, 1999. The authority to levy the surcharge expires on July 1, 2006.

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.³

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.⁴ 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

² Chapter 1999-251, s. 132, L.O.F.

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

⁴ *McGrath*, 824 So.2d at 146.

Court found that the statute constituted a special law authorizing the imposition of non-ad valorem taxes in violation of the Florida Constitution.⁵

In response to this case, the Florida Legislature passed Chapter 2001-354, L.O.F., which amended s.218.503(5)(1), 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 two years* to impose the surtax.

C. SECTION DIRECTORY:

Section 1. Creates s. 212.035, F.S., providing authority for certain municipalities to impose and collect a per-vehicle surcharge for the sale, lease, or rental of space at parking facilities within the municipality that are open for use to the general public; provides limitation on uses of funds and exclusion of certain facilities; requires local collection and administration of the surcharge.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Not applicable.
2. Expenditures: Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Indeterminate. Five municipalities may take advantage of the discretionary authority provided by this bill. If all five municipalities were to implement this surcharge, it would generate \$1.4 million in 2003-04. As this authority is discretionary, the fiscal impact on local government revenues is indeterminate. The municipalities are: City of Hialeah, City of Miami, City of Jacksonville, City of Tampa and City of St. Petersburg.⁶ The City of Miami imposes a similar surcharge pursuant to the authority of s. 218.503(5)a, F.S.
2. Expenditures: Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not: require a cities or counties to expend funds or to take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; reduce the percentage of state tax shared with counties or municipalities.

⁵ *McGrath*, 824 So.2d at 150.

⁶ Impact Conference, Revenue Estimating Conference, 2/21/03.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No grant or exercise of rulemaking authority is necessary to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The original bill as filed appears to provide a second authorization for certain municipalities to impose the same surcharge. Thus, any municipality that meets the criteria of s. 218.503(5)a, F.S., as it was amended in 2001 by SB 54-B (ch. 2001-354), would also be able to impose a second surcharge, again for up to 20% of a similar nature, assuming they met the criteria set out in this bill.

For example, s. 218.503(5)a, F.S., authorizes a surcharge of up to 20% of "the gross revenues of the sale, lease, or rental of space at parking facilities..." The current bill authorizes a surcharge of up to 20% of "the amount charged for the sale, lease, or rental of space at parking facilities..."

An argument could be made that a municipality fitting the criteria of 216.503(5)a, F.S., could also meet the criteria of the proposed new provision, 212.035, F.S. In such an instance, that municipality could impose a surcharge of up to 20% under both provisions independently resulting in a cumulative surcharge of up to 40%.

Adoption of the Substitute Amendment by the Committee on Local Government & Veterans' Affairs resolved this drafting issue.

Other Comments

According to a representative of Miami-Dade County, the amendments adopted by the Committee on Local Government & Veterans' Affairs were satisfactory to the County and the City of Miami,⁷

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Committee on Local Government and Veterans' Affairs

The Sponsor offered two amendments which were favorably recommended by the Local Affairs Subcommittee to the Committee on Local Government & Veterans' Affairs (Committee). The amendments were adopted by the committee at their meeting on 3/6/03.

Amendment No. 2, a Substitute Amendment for Amendment No. 1, changes the original bill to:

- Exclude airports, seaports and county administration buildings and projects from the imposition and collection of the surcharge; and
- Clarify that the authority of the new s. 212.035, F.S., is not cumulative with similar authority found in s. 218.503(5)a, F.S.

Amendment No. 3, decreases the maximum surcharge from 20 to 15 percent.

Committee on Transportation

⁷ Jess McCarty, Assistant County Attorney, Miami-Dade County, 3/5/03.

On March 18, 2003, the Committee on Transportation adopted one amendment and reported the bill favorably as amended with a committee substitute. The amendment requires the municipality imposing the surcharge to collect and administer the surcharge locally pursuant to statutes governing the local collection and administration of the tourist development tax. In addition, the amendment requires an authorizing referendum to specify tax brackets applicable to transactions subject to the surcharge.

Committee on Finance and Tax

On April 2, 2003, the Committee on Finance and Tax adopted one amendment and reported the bill favorably as amended. The amendment states that if a municipality has previously reduced their ad valorem levy or non-ad valorem assessments using the proceeds from a surcharge levied under section 218.503(5)(b), F.S., they are not required to use 60 to 80 percent of the proceeds from this surcharge to reduce those assessments. The amendment does not specify how the funds are to be used in lieu of providing such a reduction.