

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

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 20 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
- decreases the maximum surcharge from 20 to 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.
- 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 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

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.

² Chapter 1999-251, s. 132, L.O.F.

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

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.

Section 2: Provides an effective date.

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. It appears that five municipalities may take advantage of the discretionary authority provided by this bill. 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 imposed a

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.

⁵ *McGrath*, 824 So.2d at 150.

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

similar surcharge pursuant to the authority of s. 218.503(5)a, F.S. Information regarding revenues collected was requested, but has not yet been received from the City of Miami.

2. Expenditures: Indeterminate for the reasons cited in paragraph II.B.1, above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate for the reasons cited in paragraph II.B.1, above.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The 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

The Sponsor offered two amendments which were favorably recommended by the Local Affairs Subcommittee to the Committee on Local Government & Veterans' Affairs (Committee). The amendment 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.

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