

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.)

Prepared By: Education Committee

BILL: SB 2464

INTRODUCER: Senator Margolis

SUBJECT: Discretionary Sales Surtax

DATE: April 14, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Matthews</u>	<u>ED</u>	Favorable
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>GE</u>	_____
4.	_____	_____	<u>EA</u>	_____
5.	_____	_____	<u>WM</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The bill allows Miami-Dade County to levy a voter-approved discretionary sales surtax for Miami Dade College. The bill:

- Requires notice of the referendum;
- Provides for a maximum rate of the surtax;
- Prohibits the use of certain funds to pay the expenses of an election relating to the surtax;
- Provides requirements for the ordinance that imposes the surtax;
- Establishes purposes for which the proceeds of the surtax may be used;
- Provides for investment of the proceeds;
- Provides for automatic expiration of such a surtax unless it is reenacted by ordinance;
- Provides for the proceeds to be deposited in a separate fund and promptly disbursed to a board of trustees.

This bill amends section 212.055, Florida Statutes.

II. Present Situation:

Discretionary Sales Surtaxes

Section 212.055, F.S., authorizes counties to impose seven local discretionary sales surtaxes (taxes) on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, and admissions. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax is not subject to any sales amount above \$5,000 on any item of tangible personal property and on long

distance telephone service. This \$5,000 cap does not apply to the sale of any other service. The Department of Revenue is responsible for administering, collecting, and enforcing all sales taxes. Collections received by the department are returned monthly to the county imposing the tax.

The tax rates, duration levied, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. Table 1 identifies the seven taxes, the rate limits, the number of counties authorized to impose, and the number of counties imposing the tax. The maximum combined rate for the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax, is one percent. In counties with a publicly supported medical school levying the Voter-Approved Indigent Care Surtax, the combined rate is 1.5 percent. The maximum combined rate for counties authorized to levy the Charter County Transit System Surtax is 2.5 percent. The School Capital Outlay Surtax is capped at 0.5 percent, and is not included in these tax rate caps.

TABLE 1			
Local Discretionary Sales Surtaxes			
Tax	Authorized Levy %	Number of Counties Authorized to Levy Tax	Number of Counties Levying Tax
Charter County Transit System Surtax	up to 1%	7	2
Local Government Infrastructure Surtax	0.5% or 1%	67	21
Small County Surtax	0.5% or 1%	31	25
Indigent Care and Trauma Center Surtax	up to 0.5%	5	1
County Public Hospital Surtax	0.5% (Miami-Dade County)	1	1
School Capital Outlay Surtax	up to 0.5%	67	16
Voter-Approved Indigent Care Surtax	0.5% or 1%	60	2

Source: 2006 Florida Tax Handbook, Including Fiscal Impact of Potential Changes

Home-Rule Charter Counties

Section 125.011(1), F.S., defines *county* as:

any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

The local governments authorized to operate under a home rule charter in the State Constitutions of 1885 and 1968 are the city of Key West and Monroe County, Dade County, and Hillsborough County. Of these, only Miami-Dade County operates under a home-rule charter, which was adopted under this constitutional provision on May 21, 1957. In the future it would be possible for Key West/Monroe County and Hillsborough County to adopt charters under the authorization in the Constitution. To do so, the city of Key West and Monroe County would have to consolidate and adopt a home-rule charter. Hillsborough County would have to abolish the charter it adopted in 1985 under the Optional Charter County Law in Part IV of ch. 125, F.S., and adopt in its place a charter as authorized under the Constitution.

III. Effect of Proposed Changes:

This bill amends s. 212.055, F.S., to authorize, Miami-Dade County to levy a surtax of 0.5 percent pursuant to an ordinance conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. If the county, at the request of a community college, calls a special election, the expense of the election may not be paid with student fees or moneys that the community college receives from the state, but the expense may be paid with funds received from private sources or with college auxiliary funds. There must be at least 30 days' notice of the special election as provided by s. 100.342, F.S.

The bill limits the use of the proceeds from a surtax to a community college as defined in s. 1000.21, F.S., and requires that each community college must be constituted and governed as provided under ss. 1001.63 and 1004.67, F.S. Thus, to receive funds from the surtax proceeds, a community college would have to be one of the 28 state community colleges, governed by a board of trustees, and constituted as a political subdivision of the state.

The ordinance that provides for the imposition of the surtax must include a statement that provides a brief and general description of the purposes for which proceeds of the surtax may be used. The statement must conform to the requirements for constitutional referenda on ballots under s. 101.161, F.S., and must be placed on the ballot by the county governing body.

The ordinance must set forth a plan for use of the surtax proceeds for the benefit of the community college by its board of trustees. The plan must provide for the permissible uses of the surtax proceeds, including:

- The maintenance, improvement, and expansion of a broad range of academic and workforce training programs;
- Teaching enhancements;
- Student scholarships and other financial aid;
- Capital expenditures and infrastructure projects;
- Fixed capital costs associated with the construction, reconstruction, renovation, maintenance, or improvement of facilities and campuses which has a useful life expectancy of at least 5 years;
- Deferred maintenance;
- Land acquisition, land improvement, design, and engineering costs related thereto; and
- The expansion and enhancement of services, programs, and facilities at all community college sites within the county.

The proceeds of the surtax must be set aside and invested as permitted by law, with the principal and income to be used for the purposes listed in the bill as the board of trustees for the community college directs.

A discretionary sales surtax imposed under the authorization in this bill will expire five years after the effective date of the surtax unless reenacted by ordinance subject to approval by a majority of the electors of the county voting in a subsequent referendum. Proceeds from the surtax must be:

- Deposited by the county in a special fund that is set aside from other county funds and used only for the operation, maintenance, and administration of the community college within that county; and
- Remitted promptly by the county to the board of trustees that administers or operates the community college.

The annual apportionment of state funds for the support of a community college under any provision of general law may not be reduced because that community college has received funds pursuant to a sales tax levied under this bill. The bill requires that the provisions of the bill must be liberally construed in order to effect its purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Prohibited Special Laws

This bill may be constitutionally challenged under Article III, section 11(a)(2) of the State Constitution, by alleging that the proposed legislation is a special law or general law of local application relating to taxes. Article III, section 11(a)(2) of the State Constitution prohibits a special law or general law of local application pertaining to the assessment or collection of taxes. Pursuant to Article VII, section 9(a) of the State Constitution, counties may levy non-ad valorem taxes as authorized under general law. The courts have defined a general law to mean “[a] statute relating to subdivisions of the state or to subjects, persons or things of a class, based upon proper distinctions and

differences that inhere in or are peculiar or appropriate to the classification.”¹ A general law may contain classifications, and the legislature has wide discretion in making such classifications, if they are reasonable.² In order for a classification to meet the requirements of a general law, the classification: (1) may not be simply a descriptive technique used to identify particular subdivisions to which the statute applies, (2) must operate uniformly among similar situated subdivisions, and (3) may not be arbitrary.³ When a classification is made by the Legislature in the enactment of general laws, the presumption is in favor of the classification’s reasonableness.⁴

This bill authorizes counties, as defined in s. 125.011(1), F.S., to levy a non-ad valorem surtax under certain circumstances. Three counties are potentially eligible in the future; however, only Miami-Dade County is currently eligible to levy the surtax. In *Metropolitan Dade County v. Golden Nugget Group*, the court found, in pertinent part, that an act, which authorized counties, as defined in s. 125.011(1), F.S., to levy a convention development tax on specified rentals or leases, was not a general law of local application notwithstanding that only Miami Dade County was authorized to levy the tax.⁵ Similarly, this bill defines authorized counties in a manner that is identical to the classification scheme upheld in *Metropolitan Dade County v. Golden Nugget Group*. However, the court noted in that case that the classification was reasonable because the affected counties each have substantial tourist-oriented economies and the tax’s purpose was to construct or improve convention centers for promoting tourism.⁶ Accordingly, the court has not addressed whether the classification based on a home-rule charter was an impermissible closed class because it potentially applied to only three counties.⁷

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Miami Dade County has levied discretionary sales surtaxes of 0.5 percent for the charter county transit system surtax and 0.5 percent for the county public hospital surtax. If the voters of Miami-Dade County approved the referendum authorized by this bill, the sales tax in the county would increase by 0.5 percent, making the total sales tax in the county 7.5 percent.

B. Private Sector Impact:

The sales tax would increase in Miami-Dade County if the county approves an ordinance and Miami-Dade County voters approved the ordinance.

¹ See *Metropolitan Dade County v. Golden Nugget Group*, 448 So.2d 515, 519 (Fla. 3rd DCA 1984), *aff’d*, 464 So.2d 535 (Fla. 1985).

² *Id.*

³ See *City of Miami v. McGrath*, 824 So.2d 143, 150-151 (Fla. 2002).

⁴ See *Metropolitan Dade County*, *supra* note 1, at 519.

⁵ See *id.* at 19-20.

⁶ See *Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535, 537 (Fla. 1985).

⁷ *City of Miami v. McGrath*, 824 So.2d at 152.

C. Government Sector Impact:

If the bill passed, if Miami-Dade County placed the referendum on the ballot, and if the voters approved the surtax, Miami Dade College would be the recipient of the sales surtax proceeds. For the current fiscal year, the proceeds from 0.5 percent sales surtax in Miami-Dade County would be \$178.1 million.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

⁸Florida Department of Revenue. Office of Tax Research.

VIII. Summary of Amendments:

None.

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