

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 185 Discretionary Sales Surtaxes
SPONSOR(S): Garcia, R and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u>4 Y, 1 N</u>	<u>Fudge</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>13 Y, 2 N</u>	<u>Fudge</u>	<u>Cooper</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Section 212.055, F.S., requires that any authorization for imposition of a discretionary sales surtax be published as a subsection of s. 212.055, F.S. Each enactment is required to specify the types of counties authorized to levy; the rate or rates which may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Currently there are seven discretionary surtaxes.

This bill would authorize Miami-Dade County, upon approval of the voters, to impose a community college surtax to benefit Miami Dade College.

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – This bill may increase the sales tax in Miami-Dade County if approved by the voters.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Discretionary sales surtaxes

Section 212.055, F.S., requires that any authorization for imposition of a discretionary sales surtax be published as a subsection of s. 212.055, F.S. Each enactment is required to specify the types of counties authorized to levy; the rate or rates which may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Currently there are seven discretionary surtaxes:

Tax	Authorized Rate of Levy
Charter County Transit System Surtax	up to 1%
Local Government Infrastructure Surtax	0.5% to 1%
Small County Surtax	0.5% to 1%
Indigent Care and Trauma Center Surtax	0.5% to 1%
County Public Hospital Surtax	0.5%
School Capital Outlay Surtax	up to 0.5%
Voter-Approved Indigent Care Surtax	0.5% to 1%

Home Rule Charter Counties

The bill authorizes a community college surtax for those counties defined in s. 125.011(1), F.S. 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. VII, 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.

Currently, only Miami-Dade County operates under a home-rule charter adopted in accordance with the Constitution.¹

¹ Monroe County and Hillsborough County are authorized to operate under a home rule charter, but have not adopted a charter under the authorization in the Constitution.

Effect of Proposed Changes

Miami-Dade County would be permitted to levy the surtax pursuant to an ordinance approved by referendum of a majority vote of the electors. The bill permits the community college to request that the county call a special election, but the community college must bear the expense of the election through funds received from private sources or college auxiliary funds. There must be at least 30 days notice of the election. The bill defines "community college" as those enumerated in s. 1000.21, F.S., of which only Miami Dade College is within Miami-Dade County.

The bill also requires that the ordinance set forth a plan for use of the surtax proceeds for the benefit of the community college for such items as: academic and workforce training programs, teaching enhancements, financial aid, capital expenditures and infrastructure projects.

Any discretionary surtax imposed under this bill would expire five years after the effective date of the surtax, unless the surtax is reenacted by ordinance subject to the approval by a majority of the electors at a referendum.

C. SECTION DIRECTORY:

Section 1: Amends s.212.055, F.S. to include a new section (8) authorizing the community college surtax.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

At this time an official estimate is not available. However, the unofficial estimate is that the surtax is estimated to raise approximately \$196M for FY 07-08.

2. Expenditures:

Should the county call the referendum, it would incur the costs related to holding the referendum. The bill specifies that Miami Dade College would bear the costs if it requested that the county call a special election.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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. The sales tax would increase in Miami-Dade County to 7.5%, if the county proposes an ordinance imposing the community college surtax which is then approved by the voters.

D. FISCAL COMMENTS:

The Florida Department of Revenue expressed concern that unlike sections 212.055(2), (3), (4), (6), and (7), this bill does not allow the voters to indicate if they are for or against this surtax. The Department suggested that the following be placed on the ballot.

FOR THE _____ CENTS TAX
AGAINST THE _____ CENTS TAX

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not: reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Constitution allows local governments to impose a non-ad valorem tax only as authorized by general law.² See Art. VII, §§ 1(a), 9(a), Fla. Const. "A general law containing a classification scheme is reasonable and not arbitrary if there is a reasonable relation between the classification and the purpose of the legislation."³

This bill permits counties as defined in s. 112.011(1), F.S., to levy the surtax. While Dade, Hillsborough, and Monroe Counties potentially meet the definition, only Miami-Dade County has adopted a home-rule charter and is thus authorized to levy the surtax. A similar issue was examined in *Golden Nugget Group*, in which the court found that an act which authorized counties as defined in s. 125.011(1), F.S., to levy a convention development tax was not a general law of local application even though only Miami Dade County was authorized to levy the tax.⁴ The court explained that when the Legislature makes a classification in the enactment of a general law, there is a presumption in favor the classification's reasonableness.⁵ The court did not address whether the classification based on home-rule charter was an impermissible closed class because it potentially applied to only three counties, but instead focused on a characteristic shared by the counties.⁶ The court explained that the classification was reasonable because the three counties potentially eligible for the tax had substantial tourist-oriented economies and the counties had developed or had plans to develop facilities to that would attract a growing number of convention tourists to improve the counties' tourist industry.⁷

² While article III, s. 11(a)(2) of the Florida Constitution prohibits special law or general laws of local application pertaining to assessment or collection of taxes for state or county purposes, it does not prohibit special or general act of local application that empower local government to levy or impose a tax. See *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 2d 515, 521 (Fla. 3d DCA 1984)(citing *Wilson v. Hillsborough County Aviation Authority*, 138 So. 2d 65 (Fla. 1962); *McMullen v. Pinellas County*, 90 Fla. 398, 106 So. 73 (1925)).

³ *Golden Nugget Group*, 448 So.2d 515, 520 (Fla. 3d DCA 1984) approved by *Golden Nugget Group v. Metropolitan Dade County*, 464 So. 2d 535 (Fla. 1985).

⁴ See *id.*

⁵ See *id.* at 520.

⁶ See *City of Miami v. McGrath*, 824 So. 2d 143, 152 (Fla. 2002).

⁷ See *id.*

The reasonableness of limiting the community college surtax to only home rule charter counties may be challenged because other community colleges in Florida may face the same economic challenges as Miami Dade College.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.