

The Florida Senate
PROFESSIONAL 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: Higher Education Committee

BILL: SB 552

INTRODUCER: Senator Margolis

SUBJECT: Surtax/Charter Co./Community College

DATE: March 11, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>HE</u>	<u>Favorable</u>
2.	_____	_____	<u>GA</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>HA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes Miami-Dade County to levy a community college surtax, in an amount of up to 0.5 percent, subject to majority voter approval. Regarding payment for special elections, this bill prohibits the use of student fees or state money, but approves the use of private donations or college auxiliary funds.

The ordinance that provides for the imposition of the surtax must include a brief description of the surtax purpose and conform to state law on ballot language.

This bill provides a description of permissible uses of the surtax proceeds and requires the ordinance to propose the plan for use of the proceeds.

The surtax is time limited to five years after its effective date, unless reapproved by the voters in Miami-Dade County.

The deposit and remittance of the proceeds from the surtax is provided for in the bill.

This bill specifies that any surtax proceeds are not to be considered in annually apportioning state funds for support of a community college under general law.

This bill substantially amends section 212.055 of the Florida Statutes.

II. Present Situation:

Discretionary Sales Surtaxes

Section 212.055, F.S., authorizes counties to levy specific discretionary sales surtaxes, subject to majority voter approval. The following county surtaxes are approved:

- Charter County Transit System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax; and
- Voter-Approved Indigent Care Surtax.

The caps placed on authorized levies range from 0.5 percent to 1 percent.

Constitutional Home Rule Charter

Section 125.011(1), F.S., defines a county as a county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, of Article VIII of the State Constitution of 1885, as preserved by s. 6(e) or Article VIII of the State Constitution of 1968.

Section 6(e) of Article VIII of the State Constitution specifically preserves these provisions that appeared in the State Constitution of 1885 and requires that they:

...remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article. All provisions of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted by the electors of Dade County pursuant to Article VIII, Section 11, of the State Constitution of 1885, as amended, shall be valid, and amendments to such charter shall be valid....

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 currently operates under a home rule charter, as adopted under this constitutional provision on May 21, 1957. The possibility exists for Key West/Monroe County and Hillsborough County to adopt charters subject to the conditions of the home rule provision of the State Constitution.

III. Effect of Proposed Changes:

This bill adds an eighth form of surtax to those authorized in s. 212.055, F.S. in the form of a community college surtax. This bill provides an additional source of revenue for Miami-Dade community college, capped at 0.5 percent. This surtax is subject to majority voter approval by electors in the county.

This bill precludes the use of student fees or state moneys from being used to fund a special election, and instead authorizes private funding or college auxiliary moneys.

A plan must be included in the ordinance, providing for permissible use of the surtax proceeds, including the following:

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

This surtax expires five years after the effective date of the surtax, unless reenacted by majority voter approval in a subsequent referendum.

This bill provides for deposit of the surtax in a special fund, and prompt remittance by the county to the board of trustees that administers or operates the community college.

Annual apportionments of state funds for community colleges through general law are not to be reduced based on receipt of funds from the surtax.

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 potentially be challenged under section 11(a)(2) or Article III, of the State Constitution, on the basis that the proposed legislation is a special law, or a general law of local application relating to taxes. Section 9(a) of Article III, of the State Constitution prohibits a special law, or a general law of local application pertaining to the assessment

or collection of taxes. Pursuant to section 9(a), of Article VII, of the State Constitution, counties may levy non-ad valorem taxes as authorized under general law.

As provided in *Metropolitan Dade County v. Golden Nugget Group*, the court has defined a general law as:

...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

For a classification to meet the requirements of a general law, the classification:

- May not simply be a descriptive technique used to identify particular subdivisions to which the statute applies;
- Must operate uniformly among similarly situated subdivisions; and
- May not be arbitrary.²

When a classification is made by the Legislature in the enactment of general laws, the court generally attaches a presumption in favor of the classification's reasonableness.³ Reasonableness is demonstrated where there is a reasonable relationship between the classification and the purpose of the legislation.⁴

Although Miami-Dade County singularly qualifies for the surtax currently, it is possible for Monroe and Hillsborough Counties to be eligible in the future. This bill defines authorized counties in a manner identical to the classification scheme upheld in *Metropolitan Dade County v. Golden Nugget Group*. That case involved an act which authorized counties, as defined in s. 125.011(1), F.S., to levy certain convention development taxes. Again, Miami Dade County uniquely qualified, although Monroe and Hillsborough Counties had the potential to qualify in the future. The asserted purpose for the classification in that case was convention facility improvement in areas heavily dependent on tourism.⁵ This bill does not identify a purpose for the classification, and it is uncertain what purpose would be proposed, and whether a court would declare that is reasonable if challenged.

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

¹ 448 So.2d 515, 519 (Fla. 3d DCA 1984), *aff'd*, 464 So.2d 535 (Fla. 1985).

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

³ *Metropolitan Dade County*, 448 So.2d at 519.

⁴ *Id.* at 520.

⁵ *Id.*

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:

Sales tax would increase in Miami Dade County if the county approves an ordinance for a community college surtax, and county voters support the tax.

C. Government Sector Impact:

This bill provides an additional source of revenue for Miami-Dade community college, capped at 0.5 percent. On January 19, 2007, the Consensus Estimating Conference adopted a proposed estimate of \$196 million from the proceeds collected for the current fiscal year, based on a 0.5 percent surtax. This number increases to \$205.4 million for fiscal year 2008-2009.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
