

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – This bill may increase the sales tax in charter counties 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%

Charter County Transit Surtax

Section 212.055(1), F.S., authorizes charter counties which adopted a charter prior to January 1, 1984,³ and each county having a consolidated government, to levy the charter county transit system surtax, upon approval by majority of the electorate.

It has been reported by Polk County that in the Lakeland Area Mass Transit District (LAMTD) and Polk County Transit Services (PCTS), ridership has increased, yet available services have not been able to keep up. By 2010, Polk County expects Lakeland and Winter Haven to be reclassified as “urban” areas and will no longer be eligible for federal operating funds.

Effect of Proposed Changes

³ Currently there are 7 such charter counties eligible to levy, but only two are levying the tax, Duval and Miami-Dade.

HB 747 would allow all charter counties,⁴ such as Polk County, to implement the surtax upon approval by majority of the electorate. The bill also changes the designation of the surtax from transit to transportation and authorizes funds to be used for transit.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.055(1), F.S., to expand applicability of surtax and authorize use of funds for transit.

Section 2: Provides an effective date of June 1, 2008.

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:

The Revenue Estimating Conference adopted an indeterminate estimate. Should all eligible counties enact the maximum allowed rate, the impact statewide would be \$1,036.5 million in 2008-09, \$1,112.2 million in 2009-10, \$1,188.9 million in 2010-11, and \$1,270.9 million in 2011-12.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The sales tax in affected counties would increase by up to 1% if approved by the voters.

D. FISCAL COMMENTS:

There will likely be an indeterminate impact for each county to conduct the referendum.

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.⁵ See *Art. VII. §§ 1(a), 9(a), Fla. Const.* "A general law containing a

⁴ There are 12 charter counties, who adopted charters after January 1, 1984, not currently eligible: Alachua, Brevard, Charlotte, Clay, Columbia, Lee Leon, Orange, Osceola, Palm Beach, Polk and Seminole.

classification scheme is reasonable and not arbitrary if there is a reasonable relation between the classification and the purpose of the legislation.”⁶

In *Golden Nugget Group*, 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.⁷ 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.⁸ 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.⁹ 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.¹⁰

Charter counties, not just those with charters adopted prior to 1984, are experiencing transportation issues. Therefore, the expansion of the classification to include those counties appears reasonable.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida League of Cities is concerned with the distribution of funds raised under this section and that it is limited to charter counties.

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

⁵ 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)).

⁶ *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).

⁷ *See id.*

⁸ *See id.* at 520.

⁹ *See City of Miami v. McGrath*, 824 So. 2d 143, 152 (Fla. 2002).

¹⁰ *See id.*