

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 66

INTRODUCER: Senators Flores and Margolis

SUBJECT: Discretionary Sales Surtaxes

DATE: February 18, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Letarte</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Pre-Meeting</b>
3.	_____	_____	<u>AFT</u>	_____
4.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 66 authorizes a new discretionary sales surtax under s. 212.055, F. S., which is titled the “Higher Education Surtax.” The bill allows a county, as defined in s. 125.011(1), F.S., to levy a voter-approved sales surtax of up to 0.5 percent for the benefit of a Florida College System (FCS) institution and a state university located in the county. The FCS institution and state university are to receive 90 percent and 10 percent, respectively, of the surtax proceeds. Currently, Miami-Dade County is the only county eligible to levy this surtax. The bill also establishes procedures and requirements for surtax deposits, investments, and usage. An oversight board will review and then accept or amend the expenditures of the surtax proceeds. An approved Higher Education Surtax expires after five years.

The bill takes effect upon becoming law.

**II. Present Situation:**

**Local Discretionary Sales Surtax**

A “surtax” is an “additional tax imposed on something being taxed or on the primary tax itself.”<sup>1</sup> The Florida Statutes authorize Florida counties to charge a discretionary sales surtax if the surtax is specifically designated as a subsection of s. 212.055, F.S.<sup>2</sup>

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes, which are the:

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<sup>1</sup> *Black’s Law Dictionary* 704 (3d ed. 2006).

<sup>2</sup> Sections 212.054, 212.055, F.S.

- Charter County and Regional Transportation System Surtax,
- Local Government Infrastructure Surtax,
- Small County Surtax,
- Indigent Care and Trauma Center Surtax,
- County Public Hospital Surtax,
- School Capital Outlay Surtax,
- Voter-Approved Indigent Care Surtax, and
- Emergency Fire Rescue Services and Facilities Surtax.<sup>3</sup>

Currently, the maximum surtax actually imposed is 1.5 percent in several counties.<sup>4</sup> The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered, and is levied in addition to the state tax.<sup>5</sup> 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.<sup>6</sup> Discretionary sales surtax applies to the first \$5,000 on any item of tangible personal property.<sup>7</sup> The \$5,000 cap does not apply to:

- sales of admissions,
- sales of warranties,
- sales and uses of services,
- charges for prepaid calling arrangements,
- leases, rentals, and licenses to use real property or transient accommodations,
- leases or renting of parking or storage space for motor vehicles in parking lots or garages,
- docking or storage space in boat docks and marinas, and
- tie-down or storage space for aircraft.<sup>8</sup>

Miami-Dade County currently imposes two local discretionary surtaxes: the Charter County Transit System Surtax at a 0.5 percent rate and the County Public Hospital Surtax at a 0.5 percent rate.<sup>9</sup>

### **Postsecondary Education Institutions**

Section 1000.21, F.S., provides system-wide definitions used within the Florida K-20 Education Code. There are 28 postsecondary educational institutions designated as FCS institutions.<sup>10</sup>

<sup>3</sup> Section 212.055(1)-(8), F.S.

<sup>4</sup> Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2014*, available at [http://dor.myflorida.com/dor/forms/current/dr15dss\\_1113.pdf](http://dor.myflorida.com/dor/forms/current/dr15dss_1113.pdf) (listing the following counties as having a 1.5% surtax rate in 2014: Calhoun, Escambia, Gadsden, Jackson, Leon, Liberty, Madison, Monroe, and Walton).

<sup>5</sup> Florida Department of Revenue, *Florida's Discretionary Sales Surtax*, available at <http://dor.myflorida.com/dor/forms/current/gt800019.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* This surtax applies to the “sale, use, lease rental, or license to use any item of tangible personal property,” and tangible personal property is “personal property that you can see, weigh, measure, or touch or is in any manner perceptible to the senses, including electric power or energy.” *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Office of Economic and Demographic Research, *2013 Local Discretionary Sales Surtax Rates in Florida's Counties*, available at <http://edr.state.fl.us/content/local-government/data/county-municipal/2013LDSSrates.pdf>.

<sup>10</sup> Section 1000.21(3), F.S.

Among the FCS institutions is Miami Dade College, which is the only FCS institution listed as serving Miami-Dade County. There are 12 state universities<sup>11</sup> and Florida International University is the only state university located in Miami-Dade County.<sup>12</sup>

### Home-Rule Charter Counties

Section 125.011(1), F.S., defines a 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, referenced in the definition above, in the State Constitutions of 1885 and 1968 are the city of Key West and Monroe County,<sup>13</sup> Dade County,<sup>14</sup> and Hillsborough County.<sup>15</sup> Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.<sup>16</sup>

Therefore, Miami-Dade County is the only county that comports with the description contained in s. 125.011(1), F.S., of a “county operating under a home rule charter” adopted under constitutional authority and which “by resolution of its board of county commissioners, elects the powers” conferred by that statutory section. General laws used by Miami-Dade County, and only Miami-Dade County, have survived various legal challenges claiming that such general laws are, in actuality, special laws.<sup>17</sup>

<sup>11</sup> Section 1000.21(6), F.S.

<sup>12</sup> Florida International University, *Campuses*, <http://www.fiu.edu/about-us/campuses/index.html> (last visited Feb. 10, 2014).

<sup>13</sup> Art. VIII, s. 6, n. 2, Fla. Const.

<sup>14</sup> Art. VIII, s. 6, n. 3, Fla. Const.

<sup>15</sup> Art. VIII, s. 6, n. 4, Fla. Const.

<sup>16</sup> Miami-Dade County Florida, *The Home Rule Amendment and Charter*, available at <http://www.miamidade.gov/charter/library/charter.pdf>; see Hillsborough County Florida, *Home Rule Charter*, <http://www.hillsboroughcounty.org/DocumentCenter/Home/View/376>, Creation: Section 1.01 Chartered County (last visited Feb. 10, 2014) (providing that the county is chartered under Article VIII, Section 1 of the Florida Constitution as opposed to Article VIII, Section 6 of the Florida Constitution); Monroe County Florida, *County Commission*, <http://www.monroecounty-fl.gov/index.aspx?NID=27> (last visited Feb. 10, 2014) (citing Article VIII, Section 1 of the Florida Constitution stating “[e]xcept when otherwise provided by county charter, the governing body of each county shall be a [b]oard of [c]ounty [c]ommissioners composed of five [or seven] members serving staggered terms of four years.” on the page titled “County Commission” and displaying five “Commission Members”); see also Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/about-floridas-counties/charter-county-information> (last visited Feb. 10, 2014) (listing the twenty chartered counties in Florida, which does not include Monroe).

<sup>17</sup> *Metropolitan Dade County v. Golden Nugget Group*, 448 So.515 (Fla. 3<sup>rd</sup> DCA 1984), *aff’d*, 464 So.2d 535 (Fla. 1985); *Homestead Hospital v. Miami-Dade County*, 829 So.2d259 (Fla. 3<sup>rd</sup> DCA 1992).

### Previous Tax in Miami-Dade County for the Benefit of Miami Dade College

A referendum in September 1992 authorized Miami-Dade County to levy an ad valorem tax of  $\frac{3}{4}$  of a mill, exceeding the constitutional millage limitation, for a two-year period.<sup>18</sup> The proceeds of the tax were “for the purpose of maintenance, improvement, and expansion of occupational, vocational, and educational programs at the College.”<sup>19</sup> The designated purpose of the proceeds that would benefit Miami-Dade from the surtax in this bill is similar to the purpose of the proceeds from the 1992 referendum.<sup>20</sup> The proceeds of the 1992 referendum were approximately \$94 million and were deposited into the College’s quasi-endowment fund.<sup>21</sup> As of June 30, 2011, the College noted a total of \$86.1 million in quasi-endowment investments.<sup>22</sup>

### III. Effect of Proposed Changes:

SB 66 amends s. 212.055, F.S., to add a ninth discretionary sales surtax, known as the Higher Education Surtax, authorizing a county as defined in s. 125.011(1), F.S., to levy up to 0.5 percent for the benefit of a FCS institution and a state university located in the county. The surtax requires an ordinance conditioned upon approval by a majority of county electors voting in a referendum.

The ordinance must outline a plan, developed by each of the institutions’ board of trustees, for using the surtax proceeds for the benefit of the FCS institution and state university. Proceeds of the surtax must be set aside and invested as allowed by law, with the principal and income to be used for purposes including, but not limited to, maintenance, improvement, and expansion of academic and workforce training programs, teaching enhancements, capital expenditures and infrastructure projects, and fixed capital costs. A state university may use the surtax proceeds for land acquisition for parcels that are contiguous with its existing main campus.

The bill states that costs associated with the referendum shall only be paid with funds from private sources or with college auxiliary funds and may not be paid with student fees or moneys an institution receives from the state. Referendum ballot guidelines are specified and include a question format currently utilized for other discretionary surtax referenda. Ninety percent of the proceeds from the surtax must be deposited into a Florida Prime account managed by the State Board of Administration for use by the FCS institution, and 10 percent of the surtax proceeds must be deposited into a Florida Prime account managed by the State Board of Administration for use by the state university.

Upon approval of the referendum, an oversight board is charged with accepting or amending expenditures of the surtax proceeds. Each institution must prepare annual plans specifying how the board of trustees intends to allocate the surtax proceeds. Appointment requirements are

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<sup>18</sup> State of Florida Auditor General, *Miami Dade College: Financial Audit for the Fiscal Year Ended June 30, 2011*, 27 (2012), available at <https://www.mdc.edu/businessaffairs/Papers/Documents/MDC%20AFR%202010-11%202012-155.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Infra* Part III. (providing that the portion of proceeds received by Miami-Dade College would be used for, but not limited to, maintenance, improvement, and expansion of academic workforce training programs, teaching enhancements, capital expenditures and infrastructure projects, and fixed capital costs).

<sup>21</sup> State of Florida Auditor General, *supra* note 18 at 27.

<sup>22</sup> *Id.*

outlined for the seven-member board and members serve a four-year term and may be reappointed.

Annual apportionment of state funds to an FCS institution or a state university may not be reduced because the institution or university has received surtax funds. A discretionary sales surtax approved by voters expires after five years.

The bill takes effect upon becoming law.

#### 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:

Article III, s. 11(a)(2) of the Florida Constitution states that there “shall be no special law or general law of local application pertaining to: . . . assessment or collection of taxes for state or county purposes.”

A specific law, as defined by the Florida Supreme Court, is a law that is “relating to or designed to operate on, particular persons or things, or one that purports to operate on classified persons or things when classification is not permissible or the classification adopted is illegal.”<sup>23</sup>

In contrast, a general law “operates universally throughout the state, uniformly upon subjects as they may exist throughout the state, or uniformly within a permissible classification.”<sup>24</sup> The Legislature has wide discretion in creating classifications provided the classifications are reasonable.<sup>25</sup> A classification by the Legislature carries a presumption of reasonableness.<sup>26</sup>

<sup>23</sup> *Village of Wellington v. Palm Beach Cnty.*, 941 So. 2d 595, 599 (Fla. 4<sup>th</sup> DCA 2006) (citing *Schrader v. Fla. Keys Aqueduct Auth.*, 840 So. 2d 1050 (Fla. 2003)).

<sup>24</sup> *Id.* (citing *Martin Mem'l Med. Ctr., Inc. v. Tenet Healthsystem Hosp. Inc.*, 875 So. 2d 797 (Fla. 1<sup>st</sup> DCA 2004)).

Additionally, a general law is “[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 class.” *Carter v. Norman*, 38 So. 2d 30, 32 (Fla. 1948).

<sup>25</sup> *Metro. Dade Cnty. v. Golden Nugget Grp.*, 448 So. 2d 515, 519 (Fla. 3<sup>d</sup> DCA 1984), *aff'd*, 464 So. 2d 535 (Fla 1985).

<sup>26</sup> *Id.* at 520.

This bill authorizes counties, as defined in s. 125.011(1), F.S., to levy a non-ad valorem surtax. Three counties are potentially eligible to levy the bill's surtax in the future; however, only Miami-Dade County is currently eligible to levy the surtax.<sup>27</sup> However, "the [Florida Supreme] Court never addressed the question as to whether the classification based on a home-rule charter was an impermissible closed class because it potentially applied to only three counties."<sup>28</sup> Although the specific definition of "county" from s. 125.011(1), F.S., has been previously used to identify the same three counties,<sup>29</sup> the Court focused on a shared characteristic of the counties and not on the home-rule charter aspect of the specific definition of "county."<sup>30</sup> The affected counties in *Metropolitan Dade County* shared a characteristic of having substantial tourist-oriented economies, which the Florida Supreme Court determined was a reasonable classification because the purpose of the tax at issue was to construct or improve convention centers for promoting tourism.<sup>31</sup>

Section 125.011(1), F.S., is referenced in 13 chapters of Florida Statutes a total of 26 times. Legal challenges claiming that these general laws are, in actuality, special laws have failed.<sup>32</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Sales tax would increase in Miami-Dade County if an ordinance is approved to levy the Higher Education Surtax up to 0.5 percent. The Higher Education Surtax expires five years after the effective date of the surtax.

### C. Government Sector Impact:

The Office of Economic and Demographic Research has stated that "[i]f Miami-Dade were to levy this tax, it would generate \$234.7 m[illion] annually."<sup>33</sup>

<sup>27</sup> See *City of Miami v. McGrath*, 824 So. 2d 143, 152 (Fla. 2002) (noting that Dade, Hillsborough, and Monroe Counties potentially meet the statutory definition of "county" as defined in section 125.011(1), Florida Statutes, but that only Dade County had adopted a home-rule charter) (citing *Golden Nugget Grp. v. Metro. Dade Cnty.*, 464 So. 2d 535, 536 (Fla. 1985)).

<sup>28</sup> *Id.*

<sup>29</sup> *Golden Nugget Grp.*, 464 So. 2d at 536-537.

<sup>30</sup> *City of Miami*, 824 So. 2d at 152; *Golden Nugget Grp.*, 464 So. 2d at 537.

<sup>31</sup> *Id.*

<sup>32</sup> *Metropolitan Dade County v. Golden Nugget Group*, 448 So.515 (Fla. 3<sup>rd</sup> DCA 1984), *aff'd*, 464 So.2d 535 (Fla. 1985); *Homestead Hospital v. Miami-Dade County*, 829 So.2d259 (Fla. 3<sup>rd</sup> DCA 1992).

<sup>33</sup> Office of Economic and Demographic Research, *Revenue Estimating Conference: Impact Conference*, <http://edr.state.fl.us/Content/conferences/revenueimpact/index.cfm> (select "2014 Session Index of Issues and Links to Backup Materials," select the link for "Discretionary Surtax Florida College System" under the "Issue" column) (last visited Feb. 10, 2014).

Miami Dade College and Florida International University would receive surtax proceeds if an ordinance is approved to levy the Higher Education Surtax. The Higher Education Surtax expires five years after the effective date of the surtax.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 212.055 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.