

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/HB 243 Discretionary Sales Surtax  
**SPONSOR(S):** Government Accountability Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Johnson	Williamson

### SUMMARY ANALYSIS

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law. By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax. Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission. If voter approval is required, a majority of electors voting must approve the referendum. Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.

Certain counties are authorized to establish a sales surtax of up to one percent for specified transportation purposes. While 31 counties are eligible to levy the surtax, it is only levied in Duval and Miami-Dade Counties, both at the rate of one-half percent. Since its inception in 2003, Miami-Dade County has collected approximately \$2.6 billion in surtax proceeds. In Miami-Dade County, the county transfers surtax proceeds to the county's transit department, the county's public works department, and certain municipalities.

The bill requires a county or school district seeking to adopt or amend a discretionary sales surtax to conduct a performance audit and make the audit available to the public before adopting an ordinance or a resolution authorizing a referendum. The term "performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies and including an examination of certain issues. The bill requires such a performance audit to be available on the official website of the county or school district for a period of 30 days before adopting an ordinance or a resolution authorizing a referendum, and to remain on the website for a period of two years from the date it was posted.

The bill also amends the Charter County and Regional Transportation System Surtax providing that in Miami-Dade County, to the extent not prohibited by contracts or bond covenants in effect on July 1, 2019, surtax proceeds must be used for the following purposes:

- The planning, design, engineering, or construction of a fixed guideway rapid transit system.
- The acquisition of rights-of-way for fixed guideway rapid transit systems or for the development of dedicated facilities for autonomous vehicles.
- The payment of principal and interest on bonds related to a fixed guideway rapid transit system or bus system.
- As security to the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, or construction of fixed guideway rapid transit systems or bus systems.

Municipalities in Miami-Dade County may use surtax proceeds for certain purposes related to roads, bridges, and transit systems within the municipality.

The bill prohibits the use of surtax proceeds for salaries or other personnel expenses of a county or municipal transportation department.

The bill does not have a fiscal impact on state government, but may have a fiscal impact on local governments. See Fiscal Comments section.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** pcs0243.GAC

**DATE:** 2/9/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

###### Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.<sup>1</sup> By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.<sup>2</sup> These purposes include:

- Operating a transportation system in a charter county;<sup>3</sup>
- Financing local government infrastructure projects;<sup>4</sup>
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;<sup>5</sup>
- Providing medical care for indigent persons;<sup>6</sup>
- Funding trauma centers;<sup>7</sup>
- Operating, maintaining, and administering a county public general hospital;<sup>8</sup>
- Constructing and renovating schools;<sup>9</sup>
- Providing emergency fire rescue services and facilities;<sup>10</sup> and
- Funding pension liability shortfalls.<sup>11</sup>

The 56 counties and 19 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.7 billion in revenue in fiscal year 2018-19.<sup>12</sup>

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.<sup>13</sup> If voter approval is required, a majority of electors voting must approve the referendum.<sup>14</sup> Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.<sup>15</sup>

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<sup>1</sup> Article VII, s. 1(a), Fla. Const.

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

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

<sup>4</sup> Section 212.055(2), F.S.

<sup>5</sup> Section 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.

<sup>6</sup> Section 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).

<sup>7</sup> Section 212.055(4)(b), F.S.

<sup>8</sup> Section 212.055(5), F.S.

<sup>9</sup> Section 212.055(6), F.S.

<sup>10</sup> Section 212.055(8), F.S.

<sup>11</sup> Section 212.055(9), F.S.

<sup>12</sup> *2018 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220; available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last viewed Feb. 8, 2018).

<sup>13</sup> See generally s. 212.055, F.S.; but see s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).

<sup>14</sup> Section 212.055, F.S.

<sup>15</sup> E.g. s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time “set at the discretion of the governing body”); but see s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a “regularly scheduled election”).

The surtaxes are collected by the Department of Revenue (DOR) using the same procedures utilized for the administration, collection, and enforcement of the general state sales tax.<sup>16</sup> DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of three percent or administrative costs solely and directly attributable to the surtax, whichever is less. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.<sup>17</sup>

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.<sup>18</sup> The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.<sup>19</sup> If the county or school district fails to provide timely notice, the effective date of the change is delayed by one year.<sup>20</sup> Counties and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.<sup>21</sup>

#### History of Charter County and Regional Transportation System Surtax

Created in 1976 as the Charter County Transit System Surtax, the surtax originally authorized counties with charters adopted before June 1, 1976, to levy a one-percent sales surtax subject to voter approval in a countywide referendum. Proceeds from the surtax were restricted to costs associated with developing and constructing fixed guideway and rapid transit systems.<sup>22</sup>

In 1999, the Legislature authorized surtax proceeds to be applied to as many or as few of the statutorily authorized purposes in whatever combination the county's governing body deemed appropriate.<sup>23</sup> In 2002, the Legislature authorized any county with a charter adopted prior to January 1, 1984, to levy the surtax.<sup>24</sup> In 2003, the Legislature expanded the number of uses for surtax proceeds.<sup>25</sup> In 2004, the Legislature authorized all charter counties eligible to levy the surtax to use up to 25 percent of the proceeds for non-transit purposes,<sup>26</sup> which was previously limited to Miami-Dade County.

In 2009, the surtax was renamed the Charter County Transportation System Surtax and an additional 13 counties were made or deemed eligible to assess the surtax. In 2009, surtax proceeds were also allowed to be remitted to transit authorities. Additionally, the Legislature required interlocal agreements specifying the distribution of surtax proceeds with one or more municipalities to be revised no less than every five years to reflect recent municipal incorporations.<sup>27</sup>

In 2010, the surtax was renamed the Charter County and Regional Transportation System Surtax and eligibility was extended to counties within or under an interlocal agreement with a regional transportation or transit authority. Additionally, surtax proceeds could be spent to plan, develop, construct, expand, operate, and maintain on-demand transportation services.<sup>28</sup>

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<sup>16</sup> Section 212.054(4)(a), F.S.

<sup>17</sup> Section 212.054(4)(b), F.S.

<sup>18</sup> Section 212.054(5), F.S.

<sup>19</sup> Section 212.054(7)(a), F.S.

<sup>20</sup> Section 212.054(7)(a), F.S.

<sup>21</sup> Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

<sup>22</sup> Chapter 76-284, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>23</sup> Chapter 99-385, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>24</sup> Chapter 2002-20, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>25</sup> Chapter 2003-254, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>26</sup> Chapter 2004-66, L.O.F.; 2017 Florida Tax Handbook, p. 226.

<sup>27</sup> Chapter 2009-146, L.O.F.; 2017 Florida Tax Handbook, pp. 226-227.

<sup>28</sup> Chapter 2010-225, L.O.F.; 2017 Florida Tax Handbook p. 227.

Based on current statutory criteria, 31 counties are eligible to levy the surtax.<sup>29</sup> However, only Duval and Miami-Dade Counties levy the surtax, both at a rate of one-half percent.<sup>30</sup> Duval County began levying the tax in 1989, and Miami-Dade County began levying the tax in 2003.<sup>31</sup>

### Miami-Dade County

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

[A]ny 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 by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe County,<sup>32</sup> Dade County,<sup>33</sup> and Hillsborough County.<sup>34</sup> Of these, only Miami-Dade County operates under a home-rule charter, adopted on May 21, 1957, under this constitutional provision.<sup>35</sup> Therefore, Miami-Dade County is the only county that meets the definition in s. 125.011(1), F.S.

In 2002, Miami-Dade County adopted a resolution calling for a special election for a one-half cent Charter County and Transit System Surtax with the following ballot language:

Shall the county implement the People’s Transportation Plan including: plans to build rapid transit lines to West Dade, Kendall, Florida City, Miami Beach and North Dade; expanding bus service; adding 635 buses; improving traffic signalization to reduce traffic backups; improving major neighborhood roads and highways, including drainage; and funding to municipalities for road and transportation projects by levying a ½ percent sales surtax whose proceeds will be overseen by the Citizen’s Independent Transportation Trust?

### 2002 Charter County Transit Surtax Law

In 2002, Miami-Dade County passed a referendum authorizing the Charter County Transit Surtax<sup>36</sup> and began levying the surtax in 2003. As written in 2002, s. 212.055(1)(d), F.S., provided Charter County Transit System Surtax proceeds could be applied to as many or as few of the purposes provided below, in whatever combination the county commission deemed appropriate:

- For the development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, and related costs of a fixed guideway rapid transit system;
- Remitted to an expressway or transportation authority for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges; and

<sup>29</sup> The counties eligible to levy the surtax are Alachua, Bay, Brevard, Broward, Citrus, Clay, Columbia, Duval, Escambia, Franklin, Gulf, Hernando, Hillsborough, Lee, Leon, Manatee, Miami-Dade, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Santa Rosa, Sarasota, Seminole, Volusia, Wakulla, and Walton. 2017 Florida Tax Handbook, p. 227.

<sup>30</sup> 2017 Florida Tax Handbook, p. 227.

<sup>31</sup> 2003 Florida Tax Handbook, p. 154.

<sup>32</sup> FLA. CONST. art. VIII, s. 6, n. 2.

<sup>33</sup> FLA. CONST. art. VIII, s. 6, n. 3.

<sup>34</sup> FLA. CONST. art. VIII, s. 6, n. 4.

<sup>35</sup> Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/charter-county-information> (Last visited November 17, 2017).

<sup>36</sup> <https://www.miamidade.gov/elections/results/ele02309/RACE054.HTML> (Last visited July 27, 2017).

- In Miami-Dade County, for the development, construction, operation, and maintenance of the county's roads and bridges; for the expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses.

#### Current Charter County and Regional Transportation Surtax Law

Subsequent to 2002, the Legislature amended the authorized uses of surtax proceeds, including allowing proceeds to be used for on-demand transportation services,<sup>37</sup> allowing funds to be remitted to the transit authority for certain purposes related to bus systems, and expanding the use of funds limited to Miami-Dade County to all counties. Additionally, the Legislature authorized surtax proceeds to be used by the county for various functions relating to roads and bridges, bus and fixed-guideway systems, on-demand transportation services, and certain bond issuances. The statute currently authorizes counties to enter into interlocal agreements to distribute tax proceeds to a municipality, or an expressway or transportation authority, for authorized purposes. These interlocal agreements are revised no less than once every five years in order to incorporate new municipalities.<sup>38</sup>

#### Administration of the Surtax in Miami-Dade County

Miami-Dade County's Citizen's Independent Transportation Trust (CITT) is a 15-member body overseeing the surtax-funded People's Transportation Plan (PTP).<sup>39</sup> In part, the CITT's powers and duties include:

- Monitoring, overseeing, reviewing, auditing, and investigating implementation of the transportation and transit projects listed in any levy by the county under s. 212.055, F.S.;
- Assuring compliance with any limitations imposed in the levy on the expenditure of surtax proceeds; and
- Filing a quarterly report regarding the implementation of the projects funded by surtax proceeds.<sup>40</sup>

The ordinance creating Miami-Dade County's surtax requires the distribution of 20 percent of surtax proceeds to municipalities on a pro rata basis for local transportation and transit projects. Municipalities must apply at least 20 percent of their share of surtax proceeds to transit and are required to submit their transportation plans to the county.<sup>41</sup>

Since its inception in 2003, through September 2016, Miami-Dade County received approximately \$2.6 billion in surtax revenues, with approximately \$1.8 billion transferred to Miami-Dade Transit, \$563 million to municipalities, and \$186 million to public works.<sup>42</sup>

#### **Effect of Proposed Changes**

The bill requires a county or school district seeking to adopt or amend a discretionary sales surtax to conduct a performance audit, as defined in s. 11.45, F.S., and make the audit available to the public before adopting an ordinance or a resolution authorizing a referendum. The term "performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in

<sup>37</sup> Section 212.055(1)(e), F.S., defines "on-demand transportation services" as transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

<sup>38</sup> Section 212.055(1)(d), F.S.

<sup>39</sup> <http://www.miamidade.gov/citt/> (Last visited October 19, 2017).

<sup>40</sup> <http://www.miamidade.gov/citt/about-citt.asp> (Last visited October 24, 2017).

<sup>41</sup> <http://www.miamidade.gov/citt/about-municipal-program.asp> (Last visited October 30, 2017).

<sup>42</sup> <http://www.miamidade.gov/citt/library/finance/2017/ptp-cash-analysis.pdf> (Last visited October 30, 2017).

accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies and including an examination of issues related to:

- Economy, efficiency, or effectiveness of the program;
- Structure or design of the program to accomplish its goals and objectives;
- Adequacy of the program to meet the needs identified by the Legislature or governing body;
- Alternative methods of providing program services or products;
- Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments;
- The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies; and
- Compliance of the program with appropriate policies, rules, or laws.

The bill requires such a performance audit to be available on the official website of the county or school district for a period of 30 days before adopting an ordinance or a resolution authorizing a referendum. The performance audit must remain available on the website for a period of two years from the date it was posted.

The bill provides that to the extent not prohibited by contracts or bond covenants in effect on July 1, 2019, Miami-Dade County must use Charter County and Regional Transportation Surtax proceeds for the following purposes:

- The planning, design, engineering, or construction of fixed guideway rapid transit systems.
- The acquisition of rights-of-way for fixed guideway rapid transit system or dedicated facilities for autonomous vehicles provided the owner of the right-of-way is a willing seller.
- The payment of principal and interest on bonds previously issued related to fixed guideway rapid transit systems or bus systems.
- As security by the governing body of Miami-Dade County to refinance existing bonds or to issue new bonds for the planning, design, engineering, or construction of fixed guideway rapid transit systems or bus systems.

The bill stipulates that for municipalities in Miami-Dade County, surtax proceeds may be used for the planning, development, construction, operation, and maintenance of roads and bridges; and for the payment of principal and interest on bonds issued for the road and bridge construction. Additionally, these proceeds may be pledged by the municipality for bonds issued to refinance existing bonds or new bonds issued for the construction of roads and bridges. Finally, each municipality may use surtax proceeds for transit systems within the municipality.

The bill prohibits the county or any of its municipalities from using surtax proceeds for salaries or other personnel expenses of the county or municipal transportation department.

The bill also removes redundant provisions in s. 212.055(1)(d), F.S.

## B. SECTION DIRECTORY:

Section 1 amends s. 212.055, F.S., relating to discretionary sales surtaxes.

Section 2 provides an effective date of upon becoming a 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:

None.

2. Expenditures:

The bill requires a performance audit of the county or school district before the county or school district may adopt an ordinance or a resolution authorizing a referendum to adopt or amend a local government discretionary sales surtax. As such, if a county or school district elects to adopt an ordinance or resolution authorizing a referendum for such a sales surtax, there may be costs associated with the performance audit. In addition, the bill changes the statutorily authorized use of Charter County and Regional Transportation Surtax revenues in Miami-Dade County and limits the use to capital costs associated with transit. To the extent surtax revenues are being used for another purpose, the bill may negatively impact expenditures for those purposes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

While the bill does not change the tax rate, it revises the authorized uses for surtax proceeds. The bill limits the use of surtax revenues to capital costs related to public transit. To the extent surtax proceeds are allocated to other uses, Miami-Dade County may have to reduce those expenditures or find funds from other sources.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.