



Finance and Tax Subcommittee

Thursday, January 16, 2014

12:00 p.m. – 2:00 p.m.

Morris Hall

MEETING PACKET

The Florida House of Representatives

Finance and Tax Subcommittee



Will Weatherford
Speaker

Ritch Workman
Chair

AGENDA

January 16, 2014
12:00 p.m. – 2:00 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. Consideration of the following bill(s):
HB 113 Discretionary Sales Surtaxes by Fresen
- IV. Presentation of the Department of Revenue's 2014 Legislative Concepts
- V. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 113 Discretionary Sales Surtaxes
SPONSOR(S): Fresen
TIED BILLS: IDEN./SIM. **BILLS:** SB 66

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger BF	Langston <i>BF</i>
2) Education Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill creates a ninth discretionary sales and use surtax in s. 212.055, F.S. This newly created "Higher Education Surtax" allows a county as defined in s. 125.011(1), F.S., to levy a surtax of up to 0.5 percent for the benefit of a Florida College System institution and a state university as defined by s. 1000.21, F.S., which is located within that county. To levy the surtax, a qualifying county must approve an ordinance via referendum subject to current law notification and ballot requirements.

Permissible uses of tax proceeds include, but are not limited to, expansion of academic and workforce training programs, teaching enhancements, and various types of fixed capital outlay.

The expense of holding the referendum, which may be held in a special election, may not be paid using student fees or state funding. The referendum must be paid only through funds received from private donors or with college auxiliary funds.

Should the referendum be successful, the surtax will last for 5 years. The funds raised by the surtax will be subject to oversight by a seven member board created by the bill.

The bill requires that 90 percent of the proceeds from the surtax be transferred to a Florida Prime account to be managed by the State Board of Administration (SBA) and used for the operation, maintenance, and administration of the Florida College System institution within that county and 10 percent of the proceeds from the surtax be transferred to a Florida Prime account to be managed by the SBA and used for the operation, maintenance, land acquisition, and administration of the state university within that county.

Currently, Miami-Dade is the only county in Florida whose charter satisfies the definition in s. 125.011(1), F.S. The only Florida College System institution and state university located within Miami-Dade County are Miami-Dade College and Florida International University, respectively. The bill prohibits any reduction in the annual apportionment of state funds allocated to support a Florida College System institution or a state university as a result of having received funds from a Higher Education Surtax.

The impact of the bill is indeterminate because it requires future county governing board action and voter approval. The bill has not been evaluated by the Revenue Estimating Conference. Finance and Tax committee staff estimate that, should it be approved, a 0.5 percent surtax in Miami-Dade County could raise \$224M in annual revenue.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.¹ The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax does not apply to sales price above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

The eight discretionary sales surtaxes and their maximum rates are:

- Charter County and Regional Transportation System Surtax, 1 percent
- Emergency Fire Rescue Services and Facilities Surtax, 1 percent
- Local Government Infrastructure Surtax, 1 percent
- Small County Surtax, 1 percent
- Indigent Care and Trauma Center Surtax, 0.5 percent
- County Public Hospital Surtax, 0.5 percent
- School Capital Outlay Surtax, 0.5 percent
- Voter-Approved Indigent Care Surtax, 1 percent

Every county is eligible to levy the School Capital Outlay and Local Government Infrastructure Surtaxes, the others have varying requirements. Section 212.055, F.S., further provides caps on the combined rates. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility. Currently, the highest surtax imposed is 1.5 percent in several counties;² however, the theoretical maximum combined rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county.³

Section 212.054, F.S., requires that any increase or decrease in a discretionary sales surtax must take effect on January 1.

Of the four discretionary sales surtaxes Miami-Dade may levy, the county currently levies a 0.5 percent Charter County and Regional Transportation Surtax and a 0.5 percent County Public Hospital Surtax.

Effect of the Proposed Changes

The bill creates a ninth discretionary surtax in s. 212.055, F.S. The "Higher Education Surtax" allows a county as defined in s. 125.011(1), F.S.,⁴ to levy a surtax of up to 0.5 percent for the benefit of a Florida College System institution and a state university as defined by s. 1000.21, F.S.,⁵ which is located within that county. Miami-Dade is the only county in Florida whose charter satisfies the definition in s. 125.011(1), F.S., though Hillsborough and Monroe County are authorized to operate under such a

¹ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

² See DOR Form DR-15 DSS, "Discretionary Sales Surtax Information", available at <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf> (last visited 1/31/2013).

³ See pg. 216-217 of the REC's 2013 Florida Tax Handbook, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2013.pdf> (last visited 1/9/14)

⁴ A 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."

⁵ <http://data.fldoe.org/workforce/contacts/default.cfm?action=showList&ListID=52> (last accessed 1/9/14)

charter. The qualifying institutions currently located within Miami-Dade are Miami-Dade College and Florida International University.

To levy the surtax, a qualifying county must approve an ordinance via referendum. The ordinance must set forth the permissible uses of the surtax proceeds, which may include, but are not limited to, expansion of academic and workforce training programs, teaching enhancements, and various types of fixed capital outlay. The expense of holding the referendum may not be paid using student fees or state funding; the referendum must be paid only through funds received from private donors or with college auxiliary funds. The surtax expires 5 years after enactment.

The bill provides that if the referendum is successful, a seven member oversight board shall be established to provide guidance and accountability for the expenditure of the revenue raised by the surtax. The board will annually meet to approve proposed spending plans. Members will be appointed to 4 year terms. The board shall be composed of:

- One member appointed by the board of directors of the chamber of commerce of the county in which the institutions are located,
- One member of the board of directors of the chapter of the United Way in the county in which the institutions are located appointed by the board of directors of that chapter of the United Way,
- One member appointed by the board of trustees of the state university who may not be a member of the board of trustees of the state university,
- Two members appointed by the board of trustees of the Florida College System institution who may not be members of the board of trustees of the Florida College System institution, and
- Two members appointed by the chair of the county legislative delegation.

The board of trustees of each the Florida College System institution and state university must annually prepare plans that specify how each board of trustees intends to allocate and expend the funds for the institution's upcoming fiscal year and submit such plan to the oversight board for approval.

The bill requires that 90 percent of the proceeds from the surtax must be transferred to a Florida Prime account to be managed by the State Board of Administration (SBA) and used for the operation, maintenance, and administration of the Florida College System institution and 10 percent of the proceeds from the surtax must be transferred to a Florida Prime account to be managed by the SBA and used for the operation, maintenance, land acquisition for parcels that are contiguous with its main campus, and administration of the state university.

The bill prohibits any reduction in the annual apportionment of state funds allocated to support a Florida College System institution or a state university as a result of having received funds from a Higher Education Surtax.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055, F.S., creating a ninth discretionary surtax.

Section 2. Provides an effective date.

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 impact of the bill is indeterminate because it requires future county governing board action and voter approval. The bill has not been evaluated by the Revenue Estimating Conference. Based on the estimated countywide distribution of a 1 percent surtax in the Office of Demographic Research 2013 Local Government Financial Information Handbook, Finance and Tax staff estimate that, should it be approved, a 0.5 percent surtax in Miami-Dade could raise \$224M in annual revenue.⁶

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to 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.

⁶ Office of Economic and Demographic Research, 2013 Local Government Financial Information Handbook, pg 163. Available at <http://edr.state.fl.us/Content/local-government/reports/lgfih13.pdf> (last accessed 1/9/14)

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to discretionary sales surtaxes;
 3 amending s. 212.055, F.S.; authorizing a county to
 4 levy a surtax up to a specified amount for the benefit
 5 of a Florida College System institution and a state
 6 university in the county pursuant to an ordinance
 7 conditioned to take effect upon approval in a
 8 referendum; requiring the ordinance to include a plan
 9 for the use of the proceeds; providing referendum
 10 requirements and procedures; requiring that the
 11 proceeds from the surtax be transferred into a
 12 specified account and managed in a specified manner;
 13 establishing an oversight board with specified duties,
 14 responsibilities, and requirements relating to the
 15 expenditure of surtax proceeds; providing for the
 16 appointment of members of the oversight board;
 17 requiring that the board of trustees of each
 18 institution receiving surtax proceeds prepare an
 19 annual plan for submission to the oversight board for
 20 approval; providing that state funding may not be
 21 reduced because an institution receives surtax funds;
 22 providing for the scheduled expiration of the surtax;
 23 providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:
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27 Section 1. Subsection (9) is added to section 212.055,
 28 Florida Statutes, to read:

29 212.055 Discretionary sales surtaxes; legislative intent;
 30 authorization and use of proceeds.—It is the legislative intent
 31 that any authorization for imposition of a discretionary sales
 32 surtax shall be published in the Florida Statutes as a
 33 subsection of this section, irrespective of the duration of the
 34 levy. Each enactment shall specify the types of counties
 35 authorized to levy; the rate or rates which may be imposed; the
 36 maximum length of time the surtax may be imposed, if any; the
 37 procedure which must be followed to secure voter approval, if
 38 required; the purpose for which the proceeds may be expended;
 39 and such other requirements as the Legislature may provide.
 40 Taxable transactions and administrative procedures shall be as
 41 provided in s. 212.054.

42 (9) HIGHER EDUCATION SURTAX.—A county as defined in s.
 43 125.011(1), pursuant to an ordinance that is conditioned to take
 44 effect only upon approval by a majority vote of the electors of
 45 the county voting in a referendum, may levy a surtax of up to
 46 0.5 percent for the benefit of a Florida College System
 47 institution and a state university as defined in s. 1000.21
 48 located in the county.

49 (a) The ordinance must set forth a plan for using the
 50 surtax proceeds for the benefit of the Florida College System
 51 institution and the state university by each of the
 52 institutions' boards of trustees. Such plans must provide for
 53 the permissible uses of the surtax proceeds, including, but not
 54 limited to, the maintenance, improvement, and expansion of
 55 academic and workforce training programs; teaching enhancements;
 56 capital expenditures and infrastructure projects; fixed capital

57 costs associated with the construction, reconstruction,
58 renovation, maintenance, or improvement of facilities and
59 campuses that have a useful life expectancy of at least 5 years;
60 deferred maintenance; land improvement, design, and engineering
61 costs related thereto; and the expansion and enhancement of
62 facilities at all institution sites within the county. The
63 proceeds from the surtax may be used by a state university for
64 land acquisition for parcels that are contiguous with its
65 existing main campus. The proceeds of the surtax must be set
66 aside and invested as permitted by law, with the principal and
67 income to be used for the purposes listed in this subsection as
68 administered by the board of trustees.

69 (b) The expense of holding the referendum may not be paid
70 with student fees or moneys that the institution receives from
71 the state, but shall be paid only with funds received from
72 private sources or with college auxiliary funds. The county must
73 provide at least 30 days' notice of the election as provided
74 under s. 100.342.

75 (c) The referendum providing for the imposition of the
76 surtax shall include a statement that provides a brief and
77 general description of the purposes for which the proceeds of
78 the surtax may be used, conform to the requirements of s.
79 101.161, and be placed on the ballot by the governing body of
80 the county. The following question shall be placed on the
81 ballot:

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83 FOR THE. . . .CENTS TAX
84 AGAINST THE. . . .CENTS TAX

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(d) Upon approval of the referendum, 90 percent of the proceeds from the surtax must be transferred by the department into a Florida Prime account managed by the State Board of Administration and used only for the operation, maintenance, and administration of the Florida College System institution within that county and 10 percent of the proceeds from the surtax must be transferred by the Department of Revenue into a Florida Prime account managed by the State Board of Administration and used only for the operation, maintenance, land acquisition, and administration of the state university.

(e) Upon approval of the referendum, an oversight board shall be established to review and accept or amend expenditures of the proceeds of the surtax and to review the plan prepared by the boards of trustees pursuant to paragraph (f). Annually, or as needed, the oversight board shall meet to approve each proposed spending plan.

1. The board shall be composed of seven members who are residents of the county and appointed as follows:

a. One member appointed by the board of directors of the chamber of commerce of the county in which the institutions are located.

b. One member of the board of directors of the chapter of the United Way in the county in which the institutions are located appointed by the board of directors of that chapter of the United Way.

c. One member appointed by the board of trustees of the state university who may not be a member of the board of

113 trustees of the state university.

114 d. Two members appointed by the board of trustees of the
 115 Florida College System institution who may not be members of the
 116 board of trustees of the Florida College System institution.

117 e. Two members appointed by the chair of the county
 118 legislative delegation.

119 2. Initial appointments to the oversight board shall be
 120 made by the respective entities within 60 days after the passage
 121 of the referendum. Each member shall be appointed for a 4-year
 122 term and may be reappointed. A vacancy on the board shall be
 123 filled for the unexpired portion of the term in the same manner
 124 as the original appointment.

125 (f) Consistent with the purposes set forth in the plan
 126 included in the ordinance under paragraph (a), the board of
 127 trustees of the Florida College System institution and the board
 128 of trustees of the state university shall annually prepare plans
 129 that specify how each board of trustees intends to allocate and
 130 expend the funds for the institutions' upcoming fiscal year and
 131 submit such plans to the oversight board for approval.

132 (g) The annual apportionment of state funds for the
 133 support of a state university and a Florida College System
 134 institution allocated under general law may not be reduced
 135 because the institutions have received funds pursuant to a sales
 136 surtax levied under this subsection.

137 (h) A surtax imposed under this subsection expires 5 years
 138 after the effective date of the surtax.

139 Section 2. This act shall take effect upon becoming a law.

**DEPARTMENT OF REVENUE
2014 TAX ADMINISTRATION
LEGISLATIVE CONCEPTS**

GENERAL TAX ADMINISTRATION

Corporate Income Tax "Piggyback"	1
Criminal Statute "Glitch" Language	1
Delinquent Taxpayers: Security Requirement for New Registrations	2
Floating Interest Rate for Reemployment Tax	2
*Extension of Employer Protest Period	3
Standard Rate for Non-Compliance with Audit Record Requests	3
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Clerks of the Court Remittances – Conforming Amendment	4
Increase Compromise Authority	4

PROPERTY TAX OVERSIGHT

*Classified Use Properties – Procedural Review	4
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*New Issue for 2014

GENERAL TAX ADMINISTRATION

CORPORATE INCOME TAX

CORPORATE INCOME TAX “PIGGYBACK”

STATUTORY REFERENCE: Section 220.03, Florida Statutes

CURRENT SITUATION: Florida uses portions of the Internal Revenue Code as the starting point in calculating Florida corporate income tax. Each year, the Legislature decides what portions of the new code should be adopted by Florida.

PROPOSED CHANGE: The proposal would adopt the 2014 version of the Internal Revenue Code.

SALES & USE TAX

CRIMINAL STATUTE GLITCH LANGUAGE

STATUTORY REFERENCE: Sections 212.07, 212.12 and 212.18, Florida Statutes

CURRENT SITUATION: Recent amendments to the criminal penalties imposed on registration and collection violations do not specifically state the level of offense. Additionally, including the registration violation and the failure to collect violation with the violation for filing of false or fraudulent returns may be confusing.

PROPOSED CHANGE: The proposal would specify that a person who willfully fails to register after receiving notice commits a third degree felony and will establish graduated offense degrees for failure to collect taxes after notice. This proposal would clarify these penalties by moving the “failure to register after notice” provision to s. 212.18, F.S., and moving the “failure to collect” provision to s. 212.07, F.S., which are the respective provisions of the statutes that deal with these issues. No new penalties are being created by this proposal.

**DELINQUENT TAXPAYERS:
SECURITY REQUIREMENTS FOR NEW REGISTRATIONS**

STATUTORY REFERENCE: Section 212.14, Florida Statutes

CURRENT SITUATION: Delinquent sales tax dealers are able to close down their business with tax liabilities, and to reopen under a new name. This allows the business operators who were in actual control of the business and responsible for non-payment to repeatedly fail to remit sales and use tax for successive businesses.

In these instances, Florida Statutes require businesses to provide a cash deposit, bond, or other security as a condition to register the new business. However, the current provision does not clearly apply to all of the individuals that were operating the prior business.

PROPOSED CHANGE: The proposed statutory revision would clearly authorize the Department to require security for individuals or entities that are responsible for prior delinquent tax accounts when they seek to register new businesses.

REEMPLOYMENT TAX

FLOATING INTEREST RATE FOR REEMPLOYMENT TAX

STATUTORY REFERENCE: Section 443.141, Florida Statutes

CURRENT SITUATION: Reemployment tax contributions or reimbursements that are unpaid on the due date bear an interest rate of one percent per month (an effective rate of 12 percent). Other taxes that are administered by the Department have an interest rate of prime plus four percent, not to exceed an effective rate of one percent per month. The interest rate is adjusted twice per year and is currently seven percent.

PROPOSED CHANGE: This proposal would reduce and make interest rate provisions for reemployment tax the same as other taxes administered by the Department.

EXTENSION OF EMPLOYER PROTEST PERIOD

STATUTORY REFERENCE: Section 443.141, Florida Statutes

CURRENT SITUATION: In 1996, the protest periods for reemployment tax rate notices and bills for benefit reimbursements were increased to 20 days. However the protest period for reemployment tax assessments was not increased and remains at 15 days.

PROPOSED CHANGE: This proposal would increase to 20 days the protest period for reemployment tax assessments. This will align the assessment protest period with other reemployment tax actions.

STANDARD RATE FOR NON-COMPLIANCE WITH AUDIT RECORD REQUESTS

STATUTORY REFERENCE: Section 443.131, Florida Statutes

CURRENT SITUATION: Florida law provides a standard reemployment tax (RT) rate. However, many businesses earn a lower, preferential rate if they are in compliance. When not in compliance, the law permits the rate to increase to the standard rate. However, this "non-compliance" treatment does not clearly apply to situations where the taxpayer is not complying with records requests during audits.

PROPOSED CHANGE: This proposal would permit employer's rates to increase to the standard rate when the business fails to comply with audit records requests. Once the requested records are provided, the earned rate will be restored.

ADMINISTRATION

"ZAPPERS"

STATUTORY REFERENCE: Section 213.295, Florida Statutes

CURRENT SITUATION: Automated sales suppression devices or "zappers" are software programs that falsify the records of electronic cash registers and other point-of-sale systems. This technology allows dealers to fraudulently create a virtual second set of records in order to evade state and federal taxes. In the case of sales tax this results in the theft of taxes collected from citizens.

PROPOSED CHANGE: This proposal would make it illegal to sell, purchase, install, transfer or possess sales suppression software or devices.

CLERKS OF THE COURT REMITTANCES – CONFORMING AMENDMENT

STATUTORY REFERENCE: Section 213.13, Florida Statutes

CURRENT SITUATION: In 2010, the Legislature changed the remittance date for funds collected by the Clerks of the Court from the 20th to the 10th day of the month immediately after the month in which the funds are collected. The provision in Section 213.13, Florida Statutes, regarding electronic remittance and distribution of funds by the Clerks of the Court was not updated in the legislation.

PROPOSED CHANGE: This proposal would amend Section 213.13, Florida Statutes, concerning electronic remittance and distribution of funds from the 20th to the 10th, to conform and be consistent with the 2010 legislation.

INCREASE COMPROMISE AUTHORITY

STATUTORY REFERENCE: Section 213.21, Florida Statutes

CURRENT SITUATION: The current statute allows the Executive Director to enter into a closing agreement compromising tax if there is a “doubt as to liability” or “doubt as to collectability” of the tax assessed. The statute limits the Department’s compromise authority to reduce the tax by \$250,000 or less.

PROPOSED CHANGE: This proposal would amend Section 213.21, Florida Statutes, to allow the Executive Director to compromise tax up to \$500,000.

PROPERTY TAX OVERSIGHT

CLASSIFIED USE PROPERTIES – PROCEDURAL REVIEW

STATUTORY REFERENCE: Section 195.096, Florida Statutes

CURRENT SITUATION: The Department is required by law to study the level of assessment of all classifications of property that comprise at least five percent of the assessed value in each county. Currently, there are only 22 predominantly rural counties where classified use properties such as agricultural, historical or high-water recharge properties are reviewed because of the five percent threshold.

PROPOSED CHANGE: The proposal would replace the requirement for a level of assessment review on classified use properties with a procedural review of property appraiser practices to ensure equity and uniformity.