

REVENUE ESTIMATING CONFERENCE

Revenue Source: Discretionary Sales Surtax

Issue: Hillsborough County Local Option Surtax

Bill Number(s): CS/HB 7073; HB 5001; HB 5003

Entire Bill

Partial Bill: CS/HB 7073 Section 29; HB 5001 Sections 281-284; HB 5003 Section 102

Sponsor(s): Representative Leek, Representative McClain

Month/Year Impact Begins: 7/1/2024 for CS/HB 7073; upon becoming law for HB 5001 Sections 281-284 and HB 5003 Section 102

Date(s) Conference Reviewed: 05/22/2024

Section 1: Narrative

- a. Current Law:** In March 2021, the Florida Supreme Court held that a Hillsborough County voter-approved one-cent sales tax in a charter amendment under section 212.055(1), Florida Statutes, for a variety of specific transportation projects was unconstitutional.¹ No remedy was provided by the Court for the disposition of the previously collected surtax. Hillsborough County filed a motion for supplemental relief in Hillsborough County Circuit Court. The request was denied in March 2022, noting “avenues for distributing or using those funds is under consideration in the Legislature.”² Section 155 of Chapter 2022-156, Laws of Florida, specified that any funds associated with the lawsuit were to be transferred to Department of Revenue (DOR) to be deposited in a separate account in the Discretionary Sales Surtax Clearing Trust Fund. On July 7, 2022, the Hillsborough County Circuit Court issued a final judgement that ordered the Hillsborough County Clerk of the Court to collect and transfer all surtax revenues received under the invalid surtax to DOR.³ The Clerk of the Court for Hillsborough County transferred a total of \$569,782,843.94 to DOR by August 2022. A class action lawsuit was filed in Leon County shortly after the Supreme Court’s decision in 2021,⁴ which is pending final adjudication.
- b. Proposed Change:** Section 29 of CS/HB 7073 specifies that if a discretionary sales surtax has been collected, but not expended, any county, municipality, school board, or other entity that received funds from such surtax must transfer the surtax proceeds, along with any interest earned upon such proceeds, to DOR within 60 days from the date of the final adjudication. DOR must deposit all amounts received in a separate account in the Discretionary Sales Surtax Clearing Trust Fund to be held in reserve for appropriation in the General Appropriations Act that takes effect on the July 1 immediately following the transfer of such funds to DOR.

Contingent upon CS/HB 7073 becoming law and final approval of a settlement agreement by a court of competent jurisdiction, sections 281 through 284 of HB 5001 (Fiscal Year 2024-25 General Appropriations Act) specify a disposition of the funds held in reserve in the Discretionary Sales Surtax Clearing Trust Fund, along with any interest earned from such funds. Section 281 requires DOR to transfer \$256,402,280 to the State Transportation Trust Fund in Fiscal Year 2023-24 for the purposes of resurfacing the county road system or the city street system within Hillsborough County. Section 282 requires DOR to transfer \$170,934,853 to a Qualified Settlement Fund with a claims administrator specifically appointed by a court of competent jurisdiction 1) to reimburse for legal fees and expenses and other allowable costs; 2) to reimburse for costs related to providing notice of the settlement, including a website, to persons who paid the discretionary sales surtax that was found to be invalid; 3) for processing valid refund claims related to the discretionary sales surtax that was found to be invalid on or before December 31, 2024. Any unused funds remaining in the Qualified Settlement Fund after all authorized purposes are complete must be returned to DOR as provided in the settlement agreement. DOR shall deposit such funds in the separate account for Hillsborough County within the Discretionary Sales Surtax Clearing Trust Fund to implement the temporary suspension of surtaxes authorized in section 212.054(9)(b), Florida Statutes. Section 283 requires the Chief Financial Officer to transfer \$19,465,394 from the interest earnings in the General Revenue Fund associated with the Hillsborough County discretionary sales surtax proceeds to the separate account for Hillsborough County established within the Discretionary Sales Surtax Clearing Trust Fund. Section 284 provides an appropriation of \$161,911,105 in Fiscal Year 2024-25 for DOR to implement the temporary suspension of surtaxes authorized in section 212.054(9)(b), Florida Statutes.

To implement section 284 of HB 5001, section 102 of HB 5003 specifies that DOR shall retain interest earnings associated with

¹ *Robert Emerson, et al. vs. Hillsborough County, Florida, etc., et al.*, No. SC2019-1250 (Fla.) and *Stacy White vs. Hillsborough County, Florida, etc., et al.*, No. SC2019-1343 (Fla.).

² *Stacy White v. Hillsborough County*, Case No. 18-CA-011749 (13th Cir. 2018); Final Order Denying Defendants’ Post-Judgment Motion for Supplemental Relief; March 25, 2022.

³ *Stacy White v. Hillsborough County*, Case No. 18-CA-011749 (13th Cir. 2018); Final Judgment on Supplemental Relief Claim; July 7, 2022.

⁴ *Robert Emerson vs. Florida Department of Revenue and Hillsborough County* (2021 CA 000487, 2nd Cir. 2021).

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the funds held in the separate account for Hillsborough County established within the Discretionary Sales Surtax Clearing Trust Fund to be used to implement the temporary suspension of surtaxes authorized in s. 212.054(9)(b), Florida Statutes.

Section 2: Description of Data and Sources

CS/HB 7073 Staff Bill Analysis
 DFS Division of Treasury calculation of Interest Earnings

Section 3: Methodology (Include Assumptions and Attach Details)

Sections 281 through 284 of the Fiscal Year 2024-25 General Appropriations Act appropriate all \$589.2 million of the surtax revenues in the Discretionary Sales Surtax Clearing Trust Fund, including the \$19.5 million in interest earnings to be transferred from the unallocated General Revenue Fund, and as such, are considered to be expenditures rather than revenue adjustments.

Section 4: Proposed Fiscal Impact

GR	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2024-25			0.0	0.0		
2025-26			0.0	0.0		
2026-27			0.0	0.0		
2027-28			0.0	0.0		
2028-29			0.0	0.0		

TFs	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2024-25			0.0	0.0		
2025-26			0.0	0.0		
2026-27			0.0	0.0		
2027-28			0.0	0.0		
2028-29			0.0	0.0		

Revenue Distribution:

General Revenue Fund, State Transportation Trust Fund, Discretionary Sales Surtax Clearing Trust Fund

Section 5: Consensus Estimate (Adopted: 05/22/2024): The Conference adopted the proposed estimate.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2024-25	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2025-26	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2026-27	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2027-28	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2028-29	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0