

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 791 Local Tax Referenda  
**SPONSOR(S):** Local Government Affairs Subcommittee; Ingoglia  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	6 Y, 3 N, As CS	Darden	Miller
2) Finance & Tax Committee	13 Y, 2 N	Aldridge	Langston
3) Local & Federal Affairs Committee			

### SUMMARY ANALYSIS

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law. Section 212.055, F.S. provides counties limited authority to levy discretionary sales surtaxes for specific purposes on transactions subject to state sales tax. Discretionary sales surtaxes are generally subject to approval by a majority of the qualified electors in a referendum.

Forty-six counties and fifteen school districts across the state levy at least one local discretionary sales surtax. These surtaxes are estimated to generate \$2.2 billion in revenue during fiscal year 2016-17.

The bill requires any referendum to levy a discretionary sales surtax to be held on the day of the general election and approved by 60 percent of electors voting. The bill also prohibits a county or school district from spending funds to promote a surtax referendum, except for funds specifically appropriated for that purpose.

The Revenue Estimating Conference has not evaluated the bill. If the higher voter approval threshold required by the bill prevents some levies from being approved that would have been approved otherwise, then the revenue impact of the bill is negative to local governments. However, the extent to which that may happen is unknown. Additionally, the bill may reduce local government expenditures to the extent that costs currently incurred to hold a special election for approval of a discretionary sales surtax would be avoided under the provisions of the bill.

The bill provides an effective date of July 1, 2017.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Introduction

#### Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate 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:

- The operation of a transportation system by 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>
- The operation, maintenance, and administration of a county public general hospital;<sup>8</sup>
- School construction and renovation;<sup>9</sup> and
- Providing emergency fire rescue services and facilities.<sup>10</sup>

The surtax is 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>11</sup> DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund.<sup>12</sup> A separate account is established for each county imposing a discretionary surtax.<sup>13</sup> The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of the lesser of three percent or administrative costs solely and directly attributable to the surtax.<sup>14</sup> Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.<sup>15</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>16</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.<sup>17</sup> 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>18</sup> If the county or school district fails to provide timely notice, the

---

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

<sup>2</sup> Section 212.054, F.S.; s. 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.

<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(7), F.S.

<sup>11</sup> Section 212.054(4)(a), F.S.

<sup>12</sup> Section 212.054(4)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 212.054(5), F.S.

<sup>17</sup> Section 212.054(7)(a), F.S.

<sup>18</sup> *Id.*

effective date of the change is delayed by one year.<sup>19</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>20</sup>

The forty-nine counties and fifteen school districts levying one or more discretionary sales surtaxes are projected to realize \$2.2 billion in revenue in fiscal year 2016-17.<sup>21</sup> If all counties and school districts levied discretionary sales surtaxes at the maximum possible rate, they would be projected to raise \$10.87 billion in revenue in fiscal year 2015-16.<sup>22</sup>

Local discretionary sales surtaxes are generally approved by referendum.<sup>23</sup> The referendum must be approved by a majority of electors voting.<sup>24</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>25</sup>

### Referendum Process

The Florida Election Code sets forth the general requirements for a referendum.<sup>26</sup> The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a “yes” or “no” vote on the measure indicates approval or rejection, respectively.<sup>27</sup> The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.<sup>28</sup> The ballot summary and title must be included in the resolution or ordinance calling for the referendum.<sup>29</sup> For some discretionary sales surtaxes, the form of the ballot question is specified by statute.<sup>30</sup>

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.<sup>31</sup> A “general election” is held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.<sup>32</sup>

### Effect of Proposed Changes

The bill requires any referendum to levy a discretionary sales surtax to be approved by 60 percent of the electors voting and requires the referendum be held on the day of a general election. The bill also defines the term “day of a general election” as being the day that a general election, as defined in s. 97.021, F.S., is held. Section 97.021, F.S., defines “general election” as meaning “an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.”

---

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

<sup>20</sup> Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

<sup>21</sup> *2016 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 216.

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

<sup>23</sup> Section 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>24</sup> Section 212.055, F.S.

<sup>25</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”).

<sup>26</sup> Section 101.161, F.S.

<sup>27</sup> Section 101.161(1), F.S.

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

<sup>29</sup> *Id.*

<sup>30</sup> *See* s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

<sup>31</sup> Section 97.021(11), F.S.

<sup>32</sup> Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(15), F.S.)

The bill also prohibits a county or school district from spending state or county funds or using their materials or publications to promote or advertise the surtax referendum, except where funds are specifically appropriated for that purpose.

**B. SECTION DIRECTORY:**

Section 1: Amends 212.055, F.S., requiring discretionary sales surtax referendums to be held on the day of the general election and approved by 60 percent of electors voting.

Section 2: Provides an effective date of July 1, 2017.

**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 has not evaluated the bill. If the higher voter approval threshold required by the bill prevents some levies from being approved that would have been approved otherwise, then the revenue impact of the bill is negative to local governments. However, the extent to which that may happen is unknown.

2. Expenditures:

By requiring any discretionary sales surtax referendum to occur on the day of the general election, this bill reduces local government expenditures to the extent local governments would otherwise expend funds to call a special election for approval of a discretionary sales surtax.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Subsection 18(b) of article VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate. It is unclear whether increasing the required percentage of voter approval to adopt a discretionary sales surtax resulting from this bill represents a reduction of revenue raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) is to determine whether the amount of potential revenue available to counties and municipalities was reduced, then this bill does not reduce that potential and the requirement for a two-thirds vote is not applicable. However, if the purpose of subsection 18(b) is to look at the method for adopting a discretionary sales surtax, then

the provisions of this bill requiring a supermajority vote to adopt a millage rate that could currently be adopted by a majority vote may be considered a mandate requiring a two-thirds vote of the Legislature. There is no legal authority to guide the Legislature in making a determination regarding this issue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates s. 212.055(9), F.S., prohibiting the county or school district from using state funds and county funds, materials, and publications to “promote or advertise” the proposed surtax referendum, except where the county or school district has specifically appropriated funds for that purpose. It is unclear if this language is intended to prohibit the county or school district from using funds, materials, or publications to encourage a vote in the affirmative on the referendum, or to prohibit the county or school district from making voters aware of the referendum more generally. Section 106.113, F.S., currently prohibits local government entities from using public funds to advertise or for electioneering concerning referenda, with an exception for communications limited to factual information.

General elections only occur in even-numbered years.<sup>33</sup> Counties wishing to begin levying a discretionary sales surtax in an even numbered, or wishing to extend a discretionary sales surtax that expires at the end of an odd-numbered year will have to get voter approval sooner under the provisions of the bill than under current law.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changes the effective date of the bill to July 1, 2017.

This analysis is drawn to the bill as amended.

---

<sup>33</sup> Section 97.021(15), F.S.  
STORAGE NAME: h0791c.FTC  
DATE: 2/3/2016