

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.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 698

INTRODUCER: Community Affairs Committee and Senator Ingoglia

SUBJECT: Local Tax Referenda Requirements

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 689 amends provisions related to several taxes that are approved by referendum. For referendums that do not state the election at which to hold the referendum, the bill requires that they be held at a general election. Furthermore, the bill requires that such referendums may be held only once within 48 months of the effective date of the referendum.

The bill pertains to the following taxes:

- Tourist development tax:
- Tourist impact tax:
- Local government discretionary sales surtax:
- Ninth-cent fuel tax:
- 1-5 cent local option fuel tax:
- Children’s Services Independent District millage.
- A temporary property tax levy in excess of 10 mills (section 4, amending s. 200.091, F.S., for counties, and section 5, amending s. 200.101, F.S.).
- District School Millage.

The bill will take effect July 1, 2023.

II. Present Situation:

Local Option Taxes

Counties and municipalities have authority to levy a variety of optional taxes conditioned upon approval of a majority of electors voting in a referendum. Presently, the referendums approving the local taxes contemplated by the bill are held at any general election, except those approving school district millage, which may be held at any time.¹ Current law is silent on the timing of referendums to reauthorize existing taxes, and permits referendums to occur at *any* general election. The taxes addressed in the bill are described below.

Tourist Development Tax

The Local Option Tourist Development Act² authorizes counties to levy five separate taxes on transient rental³ transactions (“tourist development taxes” or “TDTs”). Depending on a county’s eligibility to levy such taxes, the combined tax rate may vary but is limited to 6 percent:

- The original TDT may be levied at the rate of 1 or 2 percent.⁴
- An additional 1 percent tax may be levied by counties that have previously levied the original TDT for at least three years.⁵
- A high tourism impact tax may be levied at an additional 1 percent.⁶
- A professional sports franchise facility tax may be levied up to an additional 1 percent.⁷
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.⁸

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum,⁹ and additional TDT levies must be authorized by a vote of the county’s governing authority or by voter approval of a countywide referendum.¹⁰

¹ Sections 125.0104(6)(a), 125.0108(5), 125.901(1), 200.091, 200.101, 212.055(10), 336.021(4)(a)2., 336.021(1)(b), and 1011.73, F.S.

² Section 125.0104, F.S.

³ Section 125.0104(3)(a)1., F.S. considers “transient rental” to be the rental or lease of any accommodation for a term of 6 months or less.

⁴ Section 125.0104(3)(c), F.S. Sixty-two counties levy the original tourist development tax, all at a rate of 2 percent. Office of Economic & Demographic Research (EDR), Office of Economic & Demographic Research (EDR), *2022 Local Financial Information Handbook* at 247-48, available at <http://edr.state.fl.us/Content/local-government/reports/lghih22.pdf> (last visited April 15, 2023). During Fiscal Year 2022-23, the 62 counties currently levying this tax will realize an estimated \$612 million in revenue. *Id.* at 251

⁵ Section 125.0104(3)(d), F.S. Fifty-six of the eligible 59 counties levy this tax, with an estimated 2022-23 state fiscal year collection of \$250 million. *Supra n. 4* at 255.

⁶ Section 125.0104(3)(m), F.S. Nine eligible counties levy this tax, with an estimated 2022-23 state fiscal year collection of \$162 million. *Supra n. 4* at 261.

⁷ Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the 67 eligible counties levy this additional tax, with an estimated 2021-22 state fiscal year collection of \$285 million. *Supra n. 4* at 259.

⁸ Section 125.0104(3)(n) F.S. Thirty-one of the eligible 65 counties levy the additional professional sports franchise facility tax, with an estimated 2021-22 state fiscal year collection of \$150 million. *Id.* at 269.

⁹ Section 125.0104(6), F.S.

¹⁰ Section 125.0104(3)(d), F.S.

Tourist Impact Tax; Areas of Critical State Concern

Counties containing a designated area of critical state concern¹¹ are authorized to create land authorities by ordinance¹² to “equitably deal with the challenges of implementing comprehensive land use plans developed pursuant to the area of critical state concern program, which challenges are often complicated by the environmental sensitivity of such areas.”¹³

Any county creating a land authority may levy a tourist impact tax within the area or areas designated as an area of critical state concern.¹⁴ However, if the area or areas of critical state concern are greater than 50 percent of the land area of the county, the tax may be levied throughout the entire county.¹⁵ The tax must be levied by ordinance and takes effect after land development regulations and a local comprehensive plan that meet the requirements of ch. 380, F.S., take effect and the tax is approved by referendum held at a general election.¹⁶

The county is authorized to levy a 1 percent tax on each dollar on transient rental facilities within the applicable area.¹⁷ The funds are used to buy property in the area of critical state concern and to offset the loss of ad valorem (property) taxes due to those land acquisitions.¹⁸ Designated areas of critical state concern include the Big Cypress Area (mainly in Collier County), the Green Swamp Area in Central Florida, the Florida Keys Area in South Florida, and the Apalachicola Bay Area in Franklin County.¹⁹

Property Tax; Children’s Services Independent Special District

In 1986, the Legislature authorized Florida counties to create children’s services councils as countywide special districts to fund children’s services throughout the county.²⁰ The county governing body must obtain approval, by a majority vote of those electors voting on the question, to levy ad valorem taxes to fund children’s services. The levy may not exceed 0.5 mills.²¹

Ten counties currently have children’s services councils organized as independent special districts.²²

¹¹ The Areas of Critical State Concern Program, which was created by the Florida Environmental Land and Water Management Act of 1972, is intended to “protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources.” Florida Department of Economic Opportunity, *Areas of Critical State Concern Program*, April 15, 2023).

¹² Section 380.0663(1), F.S.

¹³ Section 380.0661(1), F.S.

¹⁴ Section 125.0108, F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 125.0108(1)(d), F.S.

¹⁸ *Supra* n. 4 at 267-68.

¹⁹ *Id.*

²⁰ Chapter 86-197, Laws of Fla.; s. 125.901(1), F.S.

²¹ Section 125.901(3)(b), F.S.

²² Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <https://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts>, Special Purpose Totals and Statutory Authority (PDF) (last visited April 14, 2023).

Children's services councils may exercise the following powers and functions:

- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies that operate for the benefit of children, with the exception of the public school system;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services;
- Lease or buy necessary real estate, equipment, and personal property; and
- Employ and provide benefits for needed personnel.²³

County, Municipal, and School District Voted Millage

Local governments, including counties, school districts, and municipalities, have the constitutional authority to levy ad valorem taxes. Special districts may also levy such tax when given authority by law.²⁴

Governing bodies of counties, municipalities, and other taxing authorities are responsible for determining the millage (tax) rate for the real property for which they are levying the tax.²⁵

A millage rate is the amount of property tax charged per \$1,000 of taxable property value. County and municipal millages are set forth in four categories:

- General county and municipal nonvoted millage set by the respective governing body;
- County and municipal debt service millage;
- County and municipal voted millage set by the respective governing body as authorized by a vote of the electors; and
- County and municipal dependent special district millage.²⁶

County and municipality ad valorem millage is limited to 10 mills, except as approved by voters.²⁷ County and municipal millage may exceed 10 mills for a period of up to 2 years, provided such levy has been approved by majority vote of the qualified electors in the county or municipality voting in a general.²⁸ The referendum to levy voted millage above 10 mills must specify the amount of millage sought to be levied and the purpose for which the proceeds will be expended.²⁹

General law provides specific requirements on school district millage elections, as needed to fund education in a county as allowed under Art. VII, s. 9 of the State Constitution.³⁰ These taxes are temporarily authorized for either two or four years, and are supplemental to nonvoted millages levied by the school district, which are set at the minimum millage rate necessary to provide for the school district.³¹ A district school board must direct the county commissioners to

²³ Section 125.901(2), F.S.

²⁴ FLA. CONST. art VII, s. 9.

²⁵ Section 200.065, F.S.

²⁶ Section 200.001(1) and (2), F.S.

²⁷ Sections 200.071 and 200.081, F.S.

²⁸ Sections 200.091 and 200.101, F.S.

²⁹ *Id.*

³⁰ Section 1011.71, F.S.

³¹ *Id.*

call an election at which the voters in the school district approve an ad valorem tax millage.³² Such election may be held at any time, except that not more than one such election shall be held during any 12-month period.³³ A district school board may propose an election for a single millage or two separate millages, with one for operating expenses and another for a local capital improvement reserve fund. When two millage figures are proposed, each millage must be voted on separately.³⁴

Discretionary Sales Surtax

Counties are authorized to levy a discretionary sales surtax on transactions subject to state sales tax for specific purposes.³⁵ These purposes include:

- Operating a regional transportation system;
- Financing local government infrastructure projects;
- Providing additional revenue for small counties;
- Providing medical care for indigent persons;
- Funding trauma centers;
- Operating, maintaining, and administering a county public general hospital;
- Constructing and renovating schools;
- Providing emergency fire rescue services and facilities; and
- Funding pension liability shortfalls.³⁶

A referendum to adopt or amend a discretionary sales surtax must be held at a general election.³⁷ Current law does not specify when a referendum to reenact an existing sales surtax must occur.

Local Option Fuel Taxes

Counties may levy a ninth-cent fuel tax (1 cent on every net gallon of motor sold within a county) if approved by extraordinary vote of its governing board or by voter referendum.³⁸ Beginning January 1, 1994, and as required by law, each county had levied within its jurisdiction the ninth-cent fuel tax on diesel fuel.³⁹

Counties also may levy local option fuel taxes which include a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold within a county, and a tax of 1 to 5 cents on every net gallon of motor fuel (excluding diesel) sold within a county.⁴⁰ The latter tax on motor fuel may be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.⁴¹ Beginning September 1, 1992, and as required by law,

³² Section 1011.73(1)-(2), F.S.

³³ *Id.*

³⁴ Section 1011.73(4)(a), F.S.

³⁵ Section 212.054, F.S.

³⁶ Section 212.055(1)-(9), F.S.

³⁷ Section 212.055(10), F.S.

³⁸ Section 336.021(1)(a), F.S.

³⁹ Chapter 90-351, L.O.F.

⁴⁰ Section 336.025, F.S.

⁴¹ Section 336.025(1)(b), F.S.

each county had levied within its jurisdiction the maximum 6 cents local option tax on diesel fuel.⁴²

All impositions of the ninth-cent fuel tax or the local option fuel tax must be levied before October 1 of each year to be effective January 1 of the following year.⁴³ The Department of Revenue administers, collects, enforces, and distributes local option fuel taxes. The funds are used for transportation expenditures.⁴⁴

General Elections

A general election is 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.⁴⁵

III. Effect of Proposed Changes:

The following taxes are amended by the bill to require their **reenactment** occur at a general election. The referendum to reenact may be held only once within a 48-month period immediately preceding the effective date of the referendum:

- Tourist development taxes (section 1, amending s. 125.0104, F.S.); and
- Tourist impact taxes (section 2, amending s. 125.0108, F.S.).

The following taxes are amended by the bill to explicitly require a referendum to **adopt, amend, or to reenact** the tax occur at a general election. The referendum may be held only once within a 48-month period immediately preceding the effective date of the referendum:

- Ninth-cent fuel tax (section 7, amending s. 336.021, F.S.); and
- 1-5 cent local option fuel tax (section 8, amending s. 336.025, F.S.).

The following taxes are amended by the bill to require a referendum be held only once within a 48-month period immediately preceding the effective date of the referendum:

- Permitting a county to temporarily levy millage in excess of 10 mills (section 4, amending s. 200.091, F.S.);
- Permitting a municipality to temporarily levy millage in excess of 10 mills (section 5, amending s. 200.101, F.S.); and
- Increasing the electorate approved millage levied by a children's services independent special district (section 3, amending s. 125.901, F.S.).

The bill explicitly requires the reenactment of local government discretionary sales surtax to be held at a general election. A referendum to adopt, amend, or reenact such tax may be held only once during the 48-month period immediately preceding the effective date of the referendum.

⁴² Chapter 90-351, L.O.F.

⁴³ Section 336.025(1)(a)-(b), F.S.

⁴⁴ *Supra*, n. 4 at 217-18.

⁴⁵ Section 97.021(17), F.S.

The bill requires district millage elections to be held at a general election. The referendum may be held only once during the 48-month period immediately preceding the effective date of the referendum.

The bill will take effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase a state tax or fee or repeal an exemption of credit. Thus, Art. VII, s. 19 of the Florida Constitution does not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not analyzed the bill. However, the REC did determine that proposed language similar to that under the bill would not result in a change in local government revenue.⁴⁶

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

⁴⁶ Revenue Estimating Conference, *Local tax Referenda, Proposed Language*, (April 7, 2023), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/pdf/page387-390.pdf> (last visited April 15, 2023).

VI. Technical Deficiencies:

The bill ties limits on elections to the effective date of referendums. Referendums are held to approve ordinances, which have effective dates, but it is not clear whether a referendum itself has an effective date.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 125.0108, 125.901, 200.091, 200.101, 212.055, 336.021, 336.025, and 1011.73.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 29, 2023:

The CS provides, for each tax the bill applies to, that a referendum to extend or increase millage must be held only once during the 48-month period preceding the effective date of the referendum, as opposed to being held at the general election immediately preceding such effective date.

- B. **Amendments:**

None.