

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1183 CS  
SPONSOR(S): Russell  
TIED BILLS:

Hernando County Special Election Validation  
IDEN./SIM. BILLS: SB 2838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N	Camechis	Hamby
2) Finance & Tax Committee	6 Y, 0 N, w/CS	Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

On March 9, 2004, voters in Hernando County approved, at a special election referendum, the levy of a half-cent local option discretionary surtax for purposes of constructing school facilities. Public notice prior to the referendum was not provided, however, in accordance with statutory requirements. The county began to collect the surtax after voters approved the levy, but the county has been unable to expend proceeds due to the inconsistency with statutory notice requirements.

This bill ratifies, validates, and confirms all acts and proceedings taken in connection with the special election held in Hernando County on March 9, 2004, including, but not limited to, any acts in connection with the notice of the election to authorize the levy of the one-half-cent local option sales tax on tangible personal property sold in Hernando County for the purpose of providing funds to finance the cost of new facilities consisting of new schools, equipment, and such improvements associated with such schools within the county. The bill also declares the special election valid and legal in all respects.

According to the Economic Impact Statement, this bill does not increase projected revenues of the half-cent local option sales tax approved by voters on March 9, 2004.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any of the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

##### School Capital Outlay Surtax Generally

Section 212.055(6), F.S., authorizes the school board in each county to levy, pursuant to resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent. The resolution must include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax; the statement must conform to the referendum requirements of s. 101.161, F.S., and must be placed on the ballot by the governing body of the county.

The resolution providing for the imposition of the surtax must describe a plan for use of the surtax proceeds for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of 5 or more years, and any land acquisition, land improvement, design, and engineering costs related thereto. Additionally, the plan must include the costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the school district. Surtax revenues may be used for the purpose of servicing bond indebtedness to finance projects authorized by general law, and any interest accrued thereto may be held in trust to finance such projects. Neither the proceeds of the surtax nor any interest accrued thereto may be used for operational expenses.

Any school board imposing the surtax must implement a freeze on noncapital local school property taxes, at the millage rate imposed in the year prior to the implementation of the surtax, for a period of at least 3 years from the date of imposition of the surtax. This provision does not apply to existing debt service or taxes authorized in the General Appropriations Act.

##### Special Election Notice Requirements

Section 100.342, F.S., provides that, in any special election or referendum not otherwise provided for, there must be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be. The publication must be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held. If there is no newspaper of general circulation in the county, district, or municipality, the notice must be posted in no less than five places within the territorial limits of the county, district, or municipality.

The Florida Supreme Court has recognized that “[s]pecial elections, and particularly those which might result in requiring the exercise of the power of taxation, must be conducted in substantial compliance with constitutional and statutory requirements.”<sup>1</sup> Moreover, in contrast to a general election, the date of a special referendum is determined by a local governing body with the authority to call it, and “the voters cannot be expected to have or take notice thereof unless notice is given.

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<sup>1</sup> Special Tax School District of Duval County v. State, 123 So.2d 316, 322 (Fla. 1960).

Accordingly, a requirement for publication...must be considered as mandatory and its performance essential to the validity of the election.”<sup>2</sup> Additionally, as the statute requires notice as a prerequisite to the issuance of bonds, “such publication is not merely formal and directory; and the required publication cannot be dispensed with upon the theory that it does not appear that the electors were misled by the failure to make the publication for the statutory period.”<sup>3</sup>

However, the notice requirements for a special referendum are procedural in nature and “after-the-fact validating legislation is perfectly proper to cure procedural defects.”<sup>4</sup>

In fact, “[e]ven when the [Florida] Supreme Court has prepared an opinion holding an issue of bonds to be invalid...a special act passed as a curative statute pending the appeal has been controlling in sustaining the ultimate validity of the bonds.”<sup>5</sup>

The complete failure to publish notice of a bond election may be cured with the passage of curative legislation.<sup>6</sup>

### Hernando County School Board Levy of the Surtax

On November 4, 2003, the Hernando County School Board (district) adopted Resolution 04-004 (“Resolution”) that ordered and provided for the holding of a referendum for the purpose of determining whether voters approve the levy of a one-half percent sales surtax in order to finance new schools in the district.

The Resolution directed the Superintendent of the district to place a notice of the referendum in a newspaper of general circulation published in the district at least 30 days prior to the referendum and at least four times, once in the fifth week and once a week thereafter for each consecutive week prior to the week in which the referendum is deemed held. The Resolution required the notice of referendum to be substantially in the same form provided in the Resolution.

Due to apparent miscommunications between the district and the county commission, the notices required by the Resolution were not provided prior to the referendum; however, according to the district, the surtax levy was discussed prior to the referendum in 71 newspaper articles prior to the referendum, during 17 meetings with various community groups, during 6 public hearings of the district; and in the sample ballot mailed to all voters in the county. At the referendum, 15,905 voters approved the referendum, while 12,945 disapproved, out of a total of 102,389 registered voters.

### EFFECT OF PROPOSED CHANGES

The bill ratifies, validates, and confirms all acts and proceedings previously taken in connection with the special election held in Hernando County on March 9, 2004, including, but not limited to, any acts in connection with the notice of the election to authorize the levy of the one-half-cent local option sales tax on tangible personal property sold in Hernando County for the purpose of providing funds to finance the cost of new facilities consisting of new schools, equipment, and such improvements associated with schools within the county. The bill also declares the special election valid and legal in all respects.

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<sup>2</sup> State v. Shields, 140 So.2d 144, 147 (Fla. 1962).

<sup>3</sup> City of Miami v. Romfh, 63So. 440,442 (Fla. 1913).

<sup>4</sup> County of Palm Beach v. State, 342 So.2d 56,58 (Fla. 1976)(*citing*, Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967).

<sup>5</sup> Coon, 203 So.2d at 498 (*citing*, State v. Florida Inland Nav. Dist., 122 So. 249 (1929)

<sup>6</sup> County of Palm Beach v. State, 342 So.2d 56, 58 (Fla. 1976)(*citing*, Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967).

C. SECTION DIRECTORY:

Section 1. Validates, ratifies, and confirms all acts in connection with the levy of the local option sales tax, and declares the special election valid and legal.

Section 2. Provides for severability.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? March 10, 2006

WHERE? Hernando Times, Brooksville, Florida, Hernando County, Florida

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None

B. RULE-MAKING AUTHORITY: Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 2003, the Legislature enacted ch. 2003-390, L.O.F., to validate all acts and proceedings taken in connection with a special election held May, 2002 in Manatee County, Florida. The election authorized the levy of one half-cent local option sales tax in Manatee County for the purpose of providing funds for certain capital improvements and educational facilities within the school district. The bill provided a declaration that the special election was valid and legal and approve the issuance of sales tax revenue bonds.

The March 8, 2006, Department of Revenue bill analysis included the following statement:

This bill states that the special election authorized a 0.5 percent levy of a local option sales tax on tangible personal property sold in Hernando County. Section 212.054(2)(a), F.S., provides that any surtax authorized in Section 212.055, F.S., shall be a discretionary surtax on all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, etc. Additionally, according to the resolution, the special election authorized the school capital outlay surtax and does not limit it to tangible personal property sold in Hernando

County. Therefore, on page 1, lines 19-20, insert “discretionary sales surtax,” and strike “sales tax on tangible personal property sold.”

This issue was not addressed in the Local Government Council.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 17, 2006, the Finance and Tax Committee adopted one amendment to the bill. The amendment corrected the issue raised by the Department of Revenue and described in III. c., above.