

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 Community Affairs

BILL: CS/SB 1100

INTRODUCER: Community Affairs Committee and Senator Brandes

SUBJECT: Local Tax Referenda

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.			FT	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1100 standardizes the time at which a referendum to adopt or amend a discretionary sales surtax may be held and adjusts the voter approval threshold necessary for the adoption or amendment of such surtax in certain circumstances. A referendum for a discretionary sales surtax may only be held at a general election, a presidential preference primary election, or a primary election. The bill prohibits a local government from holding a referendum to levy a discretionary sales surtax at a special election.

If the referendum is held on the day of the general election, a majority of the voters voting must approve the discretionary sales surtax before it may go into effect. If the referendum is held during a primary or a presidential preference primary election, at least 60 percent of the voters voting must approve the discretionary sales surtax before it may go into effect.

Current law requires only a majority of the voters voting in the referendum before going into effect, and the time at which the referendum is held is usually determined by the governing body.

II. Present Situation:

Local Discretionary Sales Surtaxes

Eight different types of local discretionary sales surtaxes (also referred to as local option sales taxes) are currently authorized in law and represent potential revenue sources for county and municipal governments and school districts.¹ The local discretionary sales surtaxes apply to all

¹ Florida Revenue Estimating Conference, *Florida Tax Handbook*, pg. 215 (2016).

transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions authorized pursuant to ch. 212, F.S., and communications services as defined for the purposes of ch. 202, F.S.²

The eight types of local discretionary sales surtaxes are:

- The Charter County and Regional Transportation System Surtax in s. 212.055(1), F.S.;
- The Local Government Infrastructure Surtax in s. 212.055(2), F.S.;
- The Small County Surtax in s. 212.055(3), F.S.;
- The Indigent Care and Trauma Center Surtax in s. 212.055(4), F.S.;
- The County Public Hospital Surtax in s. 212.055(5), F.S.;
- The School Capital Outlay Surtax in s. 212.055(6), F.S.;
- The Voter-Approved Indigent Care Surtax in s. 212.055(7), F.S.; and
- The Emergency Fire Rescue Services and Facilities Surtax in s. 212.055(8), F.S.

A discretionary sales surtax applies to transactions if:³

- The selling dealer delivers taxable goods or taxable service in or into a county with a surtax.
- The event for which an admission is charged is located in a county with a surtax. Tax is due at the rate in the county where the event takes place.
- The consumer of electric power or energy is located in a county with a surtax.
- The sale of prepaid calling arrangements occurs in a county with a surtax.
- The location or delivery of tangible personal property covered by a service warranty is within a county with a surtax. The person receiving consideration for the issuance of a service warranty from the agreement holder must collect surtax at the rate imposed by that county.
- The commercial real property that is leased or rented, or upon which a license for use is granted, is in a county with a surtax.
- The rental of living or sleeping accommodations (transient rentals) occurs in a county with a surtax.
- A registered dealer owing use tax on purchases or leases is located in a county with a surtax.

The 49 counties and 15 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.15 billion in revenue in fiscal year 2015-16.⁴ 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 2015-16.⁵

Method and Time for Approval by the Electorate for Local Discretionary Sales Surtaxes

Charter County and Regional Transportation System Surtax

Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under ch. 343 or

² *Id.*

³ Florida Department of Revenue, *Florida's Discretionary Sales Surtax*, 2, http://dor.myflorida.com/Forms_library/current/gt800019.pdf (last visited Feb. 10, 2016).

⁴ Office of Economic and Demographic Research, *2015 Local Government Financial Information Handbook*, p. 152.

⁵ *Id.*

ch. 349, F.S., may levy a discretionary sales surtax, subject to approval by a majority vote of the county's electorate or by a charter amendment approved by a majority vote of the county's electorate.⁶ The vote is held "...at a time to be set at the discretion of the governing body."⁷

Local Government Infrastructure Surtax

The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent.⁸ The levy of the surtax is pursuant to ordinance enacted by a majority vote of the county's governing body and approved by a majority of the electors of the county voting in a referendum on the surtax.⁹ If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax shall be placed on the ballot and shall take effect if approved by a majority of the electors of the county voting in the referendum on the surtax.¹⁰

Small County Surtax

If surtax revenues are being used for operating purposes, the surtax may be enacted by an extraordinary vote of the members of the county governing authority.¹¹ If the surtax revenues are expended for the purpose of servicing bond indebtedness, the surtax must be approved by a majority of the electors of the county voting in a referendum on the surtax.¹²

Indigent Care and Trauma Center Surtax

The governing body in each county the government of which is not consolidated with that of one or more municipalities, which has a population of at least 800,000 residents and is not authorized to levy the county public hospital surtax, may levy, pursuant to an ordinance either approved by an extraordinary vote of the governing body or 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.¹³

The governing body in each county of the government of which is not consolidated with that of one or more municipalities and which has a population of less than 800,000 residents, may levy, by ordinance subject to approval by a majority of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.25 percent.¹⁴

County Public Hospital Surtax

Any county as defined in s. 125.011(1), F.S., may levy the surtax authorized pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a

⁶ Section 212.055(1)(a), F.S.

⁷ Section 212.055(1)(c), F.S.

⁸ Section 212.055(2)(a)1., F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 212.055(3)(a), F.S.

¹² *Id.*

¹³ Section 212.055(4)(a)1., F.S.

¹⁴ Section 212.055(4)(b), F.S.

referendum.¹⁵ The proposal to adopt the surtax shall be placed on the ballot in accordance with law “at a time to be set at the discretion of the governing body.”¹⁶

School Capital Outlay Surtax

The school board in each county may levy this discretionary sales surtax, pursuant to resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting a referendum.¹⁷

Voter-Approved Indigent Care Surtax

The governing body in each county that has a population of fewer than 800,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum.¹⁸ The surtax may be levied at a rate not to exceed 0.5 percent, except that if a publicly supported medical school is located in the county the rate shall not exceed 1 percent.¹⁹

The governing body of any county that has a population of fewer than 50,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by a majority vote of the electors voting in a referendum.²⁰ The surtax may be levied at a rate not to exceed 1 percent.²¹

Emergency Fire Rescue Services and Facilities Surtax

Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance.²² The ordinance will take effect if approved by a majority of the electors of the county voting in a referendum held for such purpose.²³ The referendum shall be placed on the ballot of a regularly scheduled election.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 212.055, F.S., to standardize the time at which a referendum to adopt or amend a discretionary sales surtax may be held and to adjust the voter approval threshold necessary for the adoption or amendment of such surtax in certain circumstances. A referendum for a discretionary sales surtax may only be held at a general election as defined by s. 97.021, F.S., a presidential preference primary election as defined in s. 103.101, F.S., or a primary election as defined in s. 97.021, F.S. The bill prohibits a local government from holding a referendum to levy a discretionary sales surtax at a special election.

¹⁵ Section 212.055(5), F.S.

¹⁶ Section 212.055(5)(b), F.S.

¹⁷ Section 212.055(6)(a), F.S.

¹⁸ Section 212.055(7)(a)1., F.S.

¹⁹ *Id.*

²⁰ Section 212.055(7)(a)2., F.S.

²¹ *Id.*

²² Section 212.055(8)(b), F.S.

²³ *Id.*

²⁴ *Id.*

If the referendum is held on the day of the general election, a majority of the voters voting must approve the discretionary sales surtax before it may go into effect. If the referendum is held during a primary or presidential preference primary election, at least 60 percent of the voters voting must approve the discretionary sales surtax before it may go into effect.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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. The term “authority” applies to increasing the required percentage of voter approval to adopt a discretionary sales surtax.²⁵ Although the bill increases the required percentage of voter approval in certain circumstances, the local government may avoid the increased threshold by holding its referendum at a general election. As such, the two-thirds vote may not be required.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

²⁵ Joint House and Senate Local Mandates Guidelines, March 21, 1991.

VII. Related Issues:

There may be an inconsistency between s. 212.055(1)(a), F.S., and the other changes made by the bill to s. 212.055, F.S. Section 212.055(1)(a), F.S., requires a majority of the county electorate to approve the charter county and regional transportation system surtax. For each of the other seven discretionary sales surtaxes, the phrase “a majority of” was removed, and a reference to subsection (9) was inserted. A similar change may be needed for s. 212.055(1)(a), F.S.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

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 February 16, 2016:**

- Standardizes the time at which a referendum to adopt or amend a discretionary sales surtax may be held and adjusts the voter approval threshold necessary for the adoption or amendment of such surtax in certain circumstances.
- Provides that a referendum for a discretionary sales surtax may only be held at a general election, a presidential preference primary election, or a primary election.
- Prohibits a local government from holding a referendum to levy a discretionary sales surtax at a special election.
- Provides that a majority of the voters voting must approve the discretionary sales surtax before it may go into effect if the referendum is held on the day of the general election.
- Provides that at least 60 percent of the voters voting must approve the discretionary sales surtax before it may go into effect if the referendum is held during a primary or presidential preference primary election.
- Changes the effective date from July 1, 2016, to July 1, 2017.

B. Amendments:

None.