

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: SB 1100

INTRODUCER: Senator Brandes

SUBJECT: Local Tax Referenda

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Pre-meeting
2.			FT	
3.			FP	

I. Summary:

SB 1100 requires that each of the eight local discretionary sales surtaxes be approved by at least 60 percent of the electors voting in a referendum held on the day of a general election before going into effect. Current law requires only a majority of the electors voting in the referendum before going into effect, and the time at which the referendum is held is usually determined by the governing body.

The bill also prohibits a county or school district from using state or county funds and from using county or school district materials or publications to promote or advertise proposed surtax referenda for local discretionary sales surtaxes. However, a county or school district may use funds in this manner if the county or school district uses funds specifically appropriated for the purpose of promoting or advertising a proposed surtax.

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 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.;

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

² *Id.*

- 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 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

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.*

⁶ Section 212.055(1)(a), F.S.

⁷ Section 212.055(1)(c), F.S.

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 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

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.

¹⁵ Section 212.055(5), F.S.

¹⁶ Section 212.055(5)(b), F.S.

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

Expenditures by Local Governments

Section 106.113(2), F.S. provides that

A local government²⁵ or a person acting on behalf of local government may not expend or authorize the expenditure of, and a person or group may not accept, public funds²⁶ for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors. This subsection does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information.

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.*

²⁵ Local government is defined to include a county, municipality, school district or other political subdivision in this state. Section 106.113(1)(a)1., F.S.

²⁶ Public funds is defined as all moneys under the jurisdiction or control of the local government. Section 106.113(1)(b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 212.055, F.S., requiring that each of the eight local discretionary sales surtaxes be approved by at least 60 percent of the electors voting in a referendum held on the day of a general election. The term “day of general election” is defined to mean the day that a general election, as defined in s. 97.021, F.S., is held, which as provided in s. 5, Art. VI of the State Constitution may be suspended or delayed due to a state of emergency or impending emergency.

The section also provides that except for the use of county or school district funds appropriated specifically for the purpose of promoting or advertising a proposed surtax, a county or school district may not expend state or county funds or use county or school district materials or publications to promote or advertise a proposed surtax referendum to the electors of the county for any of the local discretionary sales surtaxes.

Section 2 provides an effective date of July 1, 2016.

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.²⁷ Therefore, it appears as if the bill will require a two-thirds vote of the Legislature.

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.

²⁷ Joint House and Senate Local Mandates Guidelines, March 21, 1991.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be an inconsistency between s. 212.055(1)(a), F.S., and the changes made to s. 212.055(1)(c), F.S. Section 212.055(1)(a), F.S., requires a majority of the county electorate to approve of the charter county and regional transportation system surtax, whereas amended s. 212.055(1)(c), F.S., provides that the proposal to adopt a discretionary sales surtax must be approved by at least 60 percent of the county electorate.

Newly created s. 212.055(9), F.S., may conflict with s. 106.113, F.S. Section 212.055(9), F.S., authorizes a county or school district to expend state or county funds to promote or advertise a proposed surtax referendum to the electors of the county if the county or district has specifically appropriated funds for the purpose of promoting or advertising the proposed surtax. However, s. 106.113, F.S., prohibits a local government from expending, or authorizing the expenditure of, public funds for a political advertisement or electioneering communication concerning an issue, referendum, or amendment that is subject to a vote of the electors.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.