

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 317 Local Tax Referenda

SPONSOR(S): Government Accountability Committee; Local, Federal & Veterans Affairs Subcommittee; Ingoglia

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 2 N, As CS	Darden	Miller
2) Ways & Means Committee	18 Y, 0 N	Dugan	Langston
3) Government Accountability Committee	17 Y, 3 N, As CS	Darden	Williamson

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 with limited authority to levy discretionary sales surtaxes for specific purposes on transactions subject to state sales tax. With some exceptions, discretionary sales surtaxes generally are subject to approval by a majority of the qualified electors in a referendum.

Fifty-six counties and 19 school districts levy at least one local discretionary sales surtax. These surtaxes will generate an estimated \$2.3 billion in revenue during fiscal year 2017-18.

The bill requires any referendum to levy a discretionary sales surtax to be held during a general election. Such a referendum will still require approval by a majority of the electors voting on the question.

The Revenue Estimating Conference determined the bill has no fiscal impact. See Fiscal Analysis Section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.¹ By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.² These purposes include:

- Operating a transportation system in a charter county;³
- Financing local government infrastructure projects;⁴
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;⁵
- Providing medical care for indigent persons;⁶
- Funding trauma centers;⁷
- Operating, maintaining, and administering a county public general hospital;⁸
- Constructing and renovating schools;⁹
- Providing emergency fire rescue services and facilities; and¹⁰
- Funding pension liability shortfalls.¹¹

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.¹² DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of 3 percent or administrative costs solely and directly attributable to the surtax, whichever is less. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.¹³

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.¹⁴ 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. 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.¹⁵ If the county or school district fails to provide timely notice, the effective date of the change is delayed by one year.¹⁶ Counties and school districts are also required to

¹ Article VII, s. 1(a), Fla. Const.

² Section 212.054, F.S.; s. 212.055, F.S.

³ Section 212.055(1), F.S.

⁴ Section 212.055(2), F.S.

⁵ Section 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.

⁶ 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).

⁷ Section 212.055(4)(b), F.S.

⁸ Section 212.055(5), F.S.

⁹ Section 212.055(6), F.S.

¹⁰ Section 212.055(8), F.S.

¹¹ Section 212.055(9), F.S.

¹² Section 212.054(4)(a), F.S.

¹³ Section 212.054(4)(b), F.S.

¹⁴ Section 212.054(5), F.S.

¹⁵ Section 212.054(7)(a), F.S.

¹⁶ Section 212.054(7)(a), F.S.

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 1.¹⁷

The 56 counties and 19 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.3 billion in revenue in fiscal year 2017-18.¹⁸ If all counties and school districts levied discretionary sales surtaxes at the maximum possible rate, they would be projected to raise \$11.68 billion in revenue in fiscal year 2016-17.¹⁹

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.²⁰ If voter approval is required, a majority of electors voting must approve the referendum.²¹ Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.²²

Referendum Process

The Florida Election Code states the general requirements for a referendum.²³ 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.²⁴ The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.²⁵ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.²⁶ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.²⁷

Five types of elections exist under the Florida Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.²⁸ A “general election” is defined as an election 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.²⁹ A “primary election” is defined as an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office.³⁰ Historically, voter turnout during general elections is higher than during primary elections.³¹

¹⁷ Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

¹⁸ *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220; DOR Discretionary Sales Surtax Information for Calendar Year 2017, available at: http://floridarevenue.com/Forms_library/current/dr15dssyear2017.pdf (last viewed Oct. 23, 2017).

¹⁹ *2016 Local Government Financial Information Handbook*, Office of Economic and Demographic Research, p. 150.

²⁰ See generally s. 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).

²¹ Section 212.055, F.S.

²² 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”).

²³ Section 101.161, F.S.

²⁴ Section 101.161(1), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

²⁸ Section 97.021(12), F.S.

²⁹ Article VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.)

³⁰ Section s. 97.021(29), F.S.

³¹ Department of State, Division of Elections, Data and Statistics, Election Data, Voter Turnout, available at: <http://dos.myflorida.com/elections/data-statistics/elections-data/voter-turnout/> (last viewed Nov. 13, 2017).

Proposed Changes

The bill provides that any referendum to adopt or amend a discretionary sales surtax must be approved during a general election, as defined in s. 97.021, F.S. Such a referendum will still require approval by a majority of the electors voting on the question.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.055, F.S., establishing thresholds for local government discretionary sales surtax referenda.

Section 2: Provides an effective date of July 1, 2018.

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:

On December 1, 2017, the Revenue Estimating Conference determined the bill has no revenue impact. The bill does not directly impact current baseline revenue forecasts because they are based on current law and current administration and do not contain assumptions regarding future discretionary sales surtax enactments. However, future revenue impacts from proposed adoptions of or amendments to discretionary sales surtaxes that could pass under current statutory authority may not occur because of the existence of the changes proposed by the bill.

2. Expenditures:

By requiring any discretionary sales surtax referendum to occur on the day of the general or primary 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 requiring voter approval of a referendum to adopt a discretionary sales surtax to occur during a general election represents a reduction in 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 methods for adopting a discretionary sales surtax, then the provisions of this bill requiring a referendum to occur during a general election when a referendum may currently be held during a general, primary, or special election, may be considered a mandate requiring a two-thirds vote of the Legislature, even though a surtax may continue to be approved by a simple majority vote if approved at a general election.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2018, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment required discretionary sales surtax referenda to be held during a general election and removed the authorization to hold such a referenda at a primary election and the associated vote threshold.

On November 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a provision requiring the governing body of a municipality to approve any ad valorem tax increase by at least 60 percent of the members voting. The amendment also required discretionary sales surtax referenda to be held during either a primary or general election. The amendment required approval by at least 60 percent of the electors voting if the referendum is held during a primary election.

This analysis is drafted to the committee substitute as passed by the Government Accountability Committee.