

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 336

INTRODUCER: Rules Committee; Finance and Tax Committee; and Senator Brandes

SUBJECT: Local Tax Referenda

DATE: April 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<b>Fav/CS</b>
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 336 mandates that a referendum to adopt or amend a local government discretionary sales surtax be held *only* at a general election. The bill also requires:

- A county, school district, or petition sponsor to provide a copy of the ordinance or resolution to the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) at least 180 days before the referendum.
- OPPAGA to procure, within 30 days after receiving the ordinance or resolution, the certified public accountant who will conduct the performance audit.

In addition to the requirements above, and at least 180 days before a proposed referendum, a petition sponsor of an initiative to adopt a *charter county and regional transportation system surtax* must:

- Obtain an independent legal opinion verifying that the proposed referendum complies with state law.
- File the initiative petition and its required valid signatures with the supervisor of elections.

Any referendum vote on a sales surtax is void if: 1) A county, school board, or petition sponsor (not OPPAGA) fails to comply with the above provisions; or, 2) the requisite performance audit of *any* proposed surtax is not completed at least 60 days before the referendum, and the results made available on the county or school district's official website.

The bill takes effect January 1, 2020.

## II. Present Situation:

### Discretionary Sales Surtaxes

In addition to the state sales and use tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.,] and communications services as defined in ch. 202”<sup>1</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered. Discretionary sales surtax rates currently levied vary from 0.5 percent to 2.5 percent.<sup>2</sup>

The Legislature has authorized the following local option discretionary sales surtaxes:

- Charter County and Regional Transportation System Surtax, for operating a transportation system in a charter county, a county which is consolidated with that of one or more municipalities, or a county that is within or under an interlocal agreement with a regional transportation or transit authority.
- Local Government Infrastructure Surtax, for financing local government infrastructure projects.
- Small County Surtax, providing additional revenue for counties having fewer than 50,000 residents as of April 1, 1992.
- Indigent Care and Trauma Center Surtax, for providing medical care for indigent persons (in non-consolidated counties having a population of at least 800,000) and funding trauma centers (in non-consolidated counties having a population less than 800,000).
- County Public Hospital Surtax, for operating, maintaining, and administering a county public general hospital in a county as defined in s. 125.011(1), F.S. (i.e., Miami-Dade County).
- School Capital Outlay Surtax, for constructing and renovating schools.
- Voter-Approved Indigent Care Surtax, for providing medical care for indigent persons in counties with a population less than 800,000.
- Emergency Fire Rescue Services and Facilities Surtax, for providing emergency fire rescue services and facilities.
- Pension Liability Surtax, for funding pension liability shortfalls.<sup>3</sup>

Local discretionary sales surtaxes are collected by the Department of Revenue (DOR) using the same procedures used for the administration, collection, and enforcement of the general state sales tax.<sup>4</sup> 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 the lesser of three percent or administrative costs solely and directly attributable to the surtax. Each

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<sup>1</sup> Section 212.054, F.S.

<sup>2</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2019 Local Discretionary Sales Surtax Rates in Florida’s Counties, 225-226 (2019), available at: <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf>, (last visited April 11, 2019).

<sup>3</sup> See section 212.055, F.S.

<sup>4</sup> Section 212.054(4)(a), F.S.

county is liable for its prorated share of administrative costs, based on its prorated share of the amount collected statewide.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.<sup>8</sup> Counties and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is scheduled to occur on or after October 1.<sup>9</sup> If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.<sup>10</sup>

The 56 counties and 19 school districts levying one or more discretionary sales surtaxes were projected to realize \$3.38 billion in revenue in Fiscal Year 2018-19.<sup>11</sup>

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.<sup>12</sup> If voter approval is required, a majority of electors voting must approve the referendum.<sup>13</sup>

### **Charter County and Regional Transportation System Surtax**

Any county that has adopted a home rule charter, any county government that has consolidated with one or more municipalities, and any county that is within or under an interlocal agreement with a regional transportation or transit authority created under chs. 343 or 349, F.S., may levy this surtax at a rate of up to 1 percent, subject to approval by a majority vote of the county's electorate or a charter amendment approved by a majority vote of the county's electorate.<sup>14</sup>

Based on these criteria, 31 counties (i.e., Alachua, Bay, Brevard, Broward, Charlotte, Citrus, Clay, Columbia, Duval, Escambia, Franklin, Gulf, Hernando, Hillsborough, Lee, Leon, Manatee, Miami-Dade, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Santa Rosa, Sarasota, Seminole, Volusia, Wakulla, and Walton) are eligible to levy the surtax. Currently,

<sup>5</sup> Section 212.054(4)(b), F.S.

<sup>6</sup> Section 212.054(5), F.S.

<sup>7</sup> Section 212.054(7)(a), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

<sup>10</sup> *Id.*

<sup>11</sup> Office of Economic and Demographic Research, *2018 Local Government Financial Information Handbook* p. 148 (Sep. 2018), available at <http://edr.state.fl.us/Content/local-government/reports/lgfih18.pdf> (last visited April 11, 2019).

<sup>12</sup> See s. 212.055, F.S.; and 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.

<sup>13</sup> Section 212.055, F.S.

<sup>14</sup> Section 212.055(1), F.S. See also *supra* note 2. The timing for placing the referendum on the ballot is set at the discretion of the governing body.

only four of the 31 eligible counties levy this surtax at the following percentages: Broward (1.0), Duval (0.5), Hillsborough (1.0), and Miami-Dade (0.5).<sup>15</sup>

Generally, the surtax proceeds are used for the development, construction, operation, and maintenance of fixed guideway rapid transit systems; bus systems; on-demand transportation services; and roads and bridges.<sup>16</sup> Counties eligible to levy the surtax may also use up to 25 percent of the proceeds for nontransit purposes.<sup>17</sup>

Collections for the Charter County and Regional Transportation System Surtax are estimated to produce \$342.4 million in Fiscal Year 2018-2019.<sup>18</sup>

### **Discretionary Sales Surtax Performance Audits**

Chapter 2018-118, s. 35, L.O.F., required that for all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit by an independent certified public accountant must be conducted.<sup>19</sup> Section 212.055(10)(a), F.S., defines this audit as:

an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies, including the effectiveness of the program, the structure and design of the program, alternative methods of achieving the goals of the program, performance measures that may be used to track program accomplishments, the accuracy and adequacy of public documents, and reports related to the program, and compliance of the program with applicable policies, rules, and laws.

OPPAGA must procure the certified public accountant to conduct the performance audit.<sup>20</sup> The results of the performance audit, including any findings, recommendations, or other accompanying documents must be made available on the website of the county or school district at least 60 days prior to the referendum and must be maintained on the website for at least 2 years.<sup>21</sup>

### **Referendum Process**

The Florida Election Code provides the general requirements for a referendum.<sup>22</sup> 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.<sup>23</sup> The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.<sup>24</sup>

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<sup>15</sup> See *supra* note 2.

<sup>16</sup> Section 212.055(1)(d), F.S.

<sup>17</sup> Section 212.055(1)(d)3., F.S.

<sup>18</sup> See *supra* note 2.

<sup>19</sup> Section 212.055(10)(a), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 212.055(10)(b), F.S.

<sup>22</sup> Section 101.161, F.S.

<sup>23</sup> Section 101.161(1), F.S.

<sup>24</sup> *Id.*

The ballot summary and title must be included in the resolution or ordinance calling for the referendum.<sup>25</sup> For some discretionary sales surtaxes, the form of the ballot question is specified by the statute authorizing the tax.<sup>26</sup>

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.<sup>27</sup> A “general election” is 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.<sup>28</sup>

### **Initiative Petition Procedures for Placement of the Ballot**

Section 100.371, F.S., governs how constitutional amendments proposed by initiative are placed on the ballot for the general election. Under s. 100.371(3), F.S., each initiative petition signature is dated and valid for a period of two years following the date.<sup>29</sup> The sponsor must submit dated forms to the appropriate supervisor of elections for verification and the supervisor must verify signatures within 30 days of receipt of the petition forms and payment of a required fee.<sup>30</sup> The supervisor can verify that a signature is valid only if it meets certain requirements. Signature forms must be retained for one year or until notified by the Division of Elections.

### **Written Legal Opinions**

In general, a legal opinion is a document in which an official such as a state attorney general, a city solicitor, or a private attorney renders her or his understanding of the law as applied to the assumed facts.<sup>31</sup> It may or may not serve as protection to one acting on it, depending on the nature of it and the law governing such opinions. Legal opinions are occasionally formally addressed to clients but substantively intended to benefit (or, at least, also benefit) third parties who are explicitly permitted to rely on them.<sup>32</sup> Third parties commonly require these opinions as a condition precedent to closing business transactions.<sup>33</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 212.055, F.S., to require that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. This will limit the timing and frequency of these referenda to even-year November elections.

The bill also requires a petition sponsor of a charter county and regional transportation system discretionary surtax proposal to, at least 180 days before the proposed referendum:

<sup>25</sup> *Id.*

<sup>26</sup> *See e.g.*, s. 212.055(4)(a)2, (4)(b)1., F.S. (ballot question for discretionary sales surtax for indigent care and trauma center).

<sup>27</sup> Section 97.021(12), F.S.

<sup>28</sup> FLA. CONST. Art. VI, s. 5(a). *See also* s. 97.021(16), F.S.

<sup>29</sup> *See* s. 100.371(3), F.S., for the remainder of the information presented in this section of the bill analysis.

<sup>30</sup> *See* s. 99.097(4), F.S., regarding the fee for checking signatures and grounds for having such fees waived.

<sup>31</sup> *See* BLACK’S LAW DICTIONARY (6<sup>th</sup> ed. 1990).

<sup>32</sup> *See* Steven L. Schwarcz, *The Limits of Lawyering: Legal Opinions in Structured Finance*, Texas Law Review, vol. 84, no.1, 2005.

<sup>33</sup> *Id.*

- Obtain an independent written legal opinion from an attorney who is a member in good standing of The Florida Bar, verifying that the proposed referendum complies with state law, and provide the proposed referendum and legal opinion to the governing body of the county which will make both documents available on its official website.
- Provide a copy of the final resolution or ordinance of the proposed referendum to OPPAGA, which will then procure the certified public accountant for the required performance audit within 30 days after receiving notification.
- File the initiative petition and its required valid signatures with the supervisor of elections who will verify signatures and retain signature forms in the same manner as required for initiatives under s. 100.371(3), F.S.

The failure of an initiative sponsor to comply with the requirements above renders any referendum held void.

In addition, the bill requires the county or school district for which a discretionary sales surtax referendum is to be held to provide a copy of the final resolution or ordinance of the proposed referendum to OPPAGA 180 days before the proposed referendum for purposes of a performance audit. Within 30 days of receiving such notification, OPPAGA must procure the certified public accountant needed for the required performance audit.

Failure to comply with the 180-day notification of OPPAGA or a required completion of the performance audit 60 days before the referendum is held renders any such referendum to adopt a discretionary sales surtax void.

**Section 2** provides an effective date of January 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote of the membership, 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 bill requires that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. While the bill limits the flexibility that counties and municipalities have for scheduling a referendum, it does not limit the authority they have to raise revenues. Therefore, the bill does not appear to be a mandate.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not reviewed this bill. However, the REC determined that Senate Bill 336, which provides that all referenda to adopt or amend a local option discretionary sales surtax must be held at a general election, would not affect state or local government revenues. Further, the Office of Program Policy Analysis and Government Accountability (OPPAGA) has determined that the tasks assigned in Senate Bill 1040, which forms the basis of the substantive amendment incorporated into this bill,<sup>34</sup> can be completed using existing resources.<sup>35</sup>

B. Private Sector Impact:

Petition sponsors of initiatives to adopt a charter county and regional transportation system surtax will incur costs related to the required legal opinion and possibly incur costs for fees to check petition signatures.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The current November 16 deadline for notifying DOR of the imposition of a pending local option discretionary sales surtax could prove challenging in some cases; county canvassing boards may not be able to formally certify sales tax referenda election results until after this deadline — depending on the speed and efficiency of the county's vote count/recount process and *what calendar day* the General Election falls on in November (first TUE after the first MON; varies from year-to-year). If the deadline is not met for any reason, imposition of the sales surtax could be delayed for a year.

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<sup>34</sup> Amendment No. 164680 by Lee, adopted at Florida Senate Rules Committee (Apr. 17, 2019).

<sup>35</sup> OPPAGA, 2019 Bill Analysis, SB1040\_OPP 2019-03-04 (March 4, 2019), available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28224> (last accessed Apr. 18, 2019).

**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/CS by Rules on April 17, 2019:**

The committee substitute:

- Adds additional requirements and timelines that must be met by a petition sponsor of an initiative to adopt a *charter county and regional transportation system surtax*; failure to meet any of these requirements/timelines voids any referendum vote.
- Establishes additional timelines with respect to the mandatory *performance audit* of the program associated with the proposed local surtax, and renders any referendum vote void for failure to meet certain deadlines.
- Changes the effective date of the act from “July 1, 2019” to January 1, 2020.

**CS by Finance and Tax on March 20, 2019:**

The CS changes the effective date of the act from “upon becoming law” to July 1, 2019.

- B. **Amendments:**

None.