

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 Finance and Tax

BILL: CS/SB 1194

INTRODUCER: Community Affairs Committee and Senator Boyd

SUBJECT: Local Tax Referenda Requirements

DATE: January 26, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Covin</u>	<u>Babin</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1194 requires referenda authorizing certain optional local taxes to be held at a general election. The affected taxes are the:

- Tourist Development Tax.
- Tourist Impact Tax.
- Property Tax levied by a children's services independent special district.
- Property Taxes levied temporarily for county or municipal purposes.
- Ninth Cent Fuel Tax.
- Local Option Fuel Taxes.
- Optional Property Tax levied by school districts.

Presently, the referenda approving the above local taxes are held at elections called by the applicable local governing body. Such elections may be special elections or may be held in conjunction with other local elections, primary elections, or general elections.

The bill does not affect state or local revenue.

The bill takes effect July 1, 2022.

II. Present Situation:

Local Option Taxes

Counties and municipalities have authority to levy a variety of optional taxes conditioned upon approval of a majority of electors voting in a referendum. Presently, the referenda approving the local taxes contemplated by the bill are held at elections called by the applicable local governing body. Such elections may be special elections or may be held in conjunction with other local elections, primary elections, or general elections.¹ The taxes addressed in the bill are described below.

Tourist Development Tax

The Local Option Tourist Development Act² authorizes counties to levy five separate taxes on transient rental³ transactions (“tourist development taxes” or “TDTs”). Depending on a county’s eligibility to levy such taxes, the maximum tax rate varies from a minimum of 3 percent to a maximum of 6 percent:

- The original TDT may be levied at the rate of 1 or 2 percent.^{4,5}
- An additional 1 percent tax may be levied by counties that have previously levied a TDT at the 1 or 2 percent rate for at least three years.⁶
- A high tourism impact tax may be levied at an additional 1 percent.⁷
- A professional sports franchise facility tax may be levied up to an additional 1 percent.⁸
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.⁹

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum,¹⁰ and additional TDT levies must be authorized by a vote of the county’s governing authority or by voter approval of a countywide referendum.¹¹

¹ FLA. CONST. art. IV, s. 5(a). Sections 100.151, 100.342, and 100.351, F.S.

² Section 125.0104, F.S.

³ Section 125.0104(3)(a)1., F.S. considers “transient rental” to be the rental or lease of any accommodation for a term of 6 months or less.

⁴ Section 125.0104(3)(c), F.S. Sixty-two counties levy the original tourist development tax, all at a rate of 2 percent. Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, *available at* <http://edr.state.fl.us/Content/local-government/data/county-municipal/> (last visited Jan. 21, 2022).

⁵ During Fiscal Year 2021-22, the 62 counties currently levying this tax will realize an estimated \$445 million in revenue. Office of Economic & Demographic Research (EDR), 2021 Local Financial Information Handbook at 239, *available at* <http://edr.state.fl.us/Content/local-government/reports/lghih21.pdf> (last visited Jan. 21, 2022).

⁶ Section 125.0104(3)(d), F.S. Fifty-six of the eligible 59 counties levy this tax, with an estimated 2021-22 state fiscal year collection of \$185 million. *Id at 259.*

⁷ Section 125.0104(3)(m), F.S. Eight of the nine eligible counties levy this tax, with an estimated 2021-22 state fiscal year collection of \$102 million. *Id at 265.*

⁸ Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the 67 eligible counties levy this additional tax, with an estimated 2021-22 state fiscal year collection of \$205 million. *Id at 263.*

⁹ Section 125.0104(3)(n) F.S. Thirty-one of the eligible 65 counties levy the additional professional sports franchise facility tax, with an estimated 2021-22 state fiscal year collection of \$150 million. *Id at 269.*

¹⁰ Section 125.0104(6), F.S.

¹¹ Section 125.0104(3)(d), F.S.

Tourist Impact Tax; Areas of Critical State Concern

Counties containing a designated area of critical state concern¹² are authorized to create land authorities by ordinance¹³ to “equitably deal with the challenges of implementing comprehensive land use plans developed pursuant to the area of critical state concern program, which challenges are often complicated by the environmental sensitivity of such areas.”¹⁴

Any county creating a land authority may levy by ordinance, in the area or areas within said county designated as an area of critical state concern, a tourist impact tax.¹⁵ However, if the area or areas of critical state concern are greater than 50 percent of the land area of the county, the tax may be levied throughout the entire county.¹⁶ The tax is not effective until land development regulations and a local comprehensive plan that meet the requirements of ch. 380, F.S., have become effective and the tax is approved by referendum.¹⁷ The referendum must have approval of a majority vote of qualified electors held by the governing board of the county in conjunction with a general or special election.¹⁸

The county is authorized to levy a 1 percent tax of each dollar on transient rental facilities within the applicable area.¹⁹ The funds are used to buy property in the area of critical state concern and to offset the loss of ad valorem (property) taxes due to those land acquisitions.²⁰ Designated areas of critical state concern include the Big Cypress Area (mainly in Collier County), the Green Swamp Area in Central Florida, the Florida Keys Area in South Florida, and the Apalachicola Bay Area in Franklin County.²¹

Property Tax; Children’s Services Independent Special District

In 1986, the Legislature authorized Florida counties to create children’s services councils as countywide special districts to fund children’s services throughout the county.²² The county governing body must obtain approval, by a majority vote of those electors voting on the question, to levy ad valorem taxes to fund children’s services. The levy may not exceed .5

¹² The Areas of Critical State Concern Program, which was created by the Florida Environmental Land and Water Management Act of 1972, is intended to “protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources.” Florida Department of Economic Opportunity, *Areas of Critical State Concern Program*, <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Jan. 21, 2022).

¹³ Section 380.0663(1), F.S.

¹⁴ Section 380.0661(1), F.S.

¹⁵ Section 125.0108(1)(a), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 125.0108(5), F.S.

¹⁹ Section 125.0108(1)(d), F.S.

²⁰ Florida Department of Revenue, *Local Option Taxes, Tourist Impact Tax*, available at: https://floridarevenue.com/taxes/taxesfees/pages/local_option.aspx (last visited Jan. 7, 2022)

²¹ *Id.*

²² Chapter 86-197, Laws of Fla.; s. 125.901(1), F.S.

mills.²³ Ten counties currently have children's services councils organized as independent special districts.²⁴

Children's services councils may exercise the following powers and functions:

- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies that operate for the benefit of children, with the exception of the public school system;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services;
- Lease or buy necessary real estate, equipment, and personal property; and
- Employ and provide benefits for needed personnel.²⁵

County, Municipal, and School District Voted Millage

Local governments, including counties, school districts, and municipalities, have the constitutional authority to levy ad valorem taxes. Special districts may also be given this authority by law.²⁶

Governing bodies of counties, municipalities, and other taxing authorities are responsible for determining the millage (tax) rate for the real property for which they are levying the tax.²⁷

The millage rate is the amount of property tax charged per \$1,000 of taxable property value.²⁸ County and municipal millages are set forth in four categories:

- General county and municipal nonvoted millage set by the respective governing body;
- County and municipal debt service millage;
- County and municipal voted millage set by the respective governing body as authorized by a vote of the electors; and
- County and municipal dependent special district millage.²⁹

County and municipality ad valorem millage is limited to 10 mills, except as approved by voters.³⁰ County and municipal millage may be increased for periods not exceeding 2 years, provided such levy has been approved by majority vote of the qualified electors in the county or municipality voting in an election called by the governing body for that purpose.³¹

The referendum to levy voted millage above 10 mills must specify the amount of millage sought to be levied and the purpose for which the proceeds will be expended.³²

²³ Section 125.901(3)(b), F.S.

²⁴ Florida Department of Economic Opportunity, Division of Community Development, Official List of Special Districts Online, available at <http://specialdistrictreports.floridajobs.org/webreports/sumfunctionlist.aspx> (last visited Jan. 21, 2022)

²⁵ Section 125.901(2), F.S.

²⁶ FLA. CONST. art VII, s. 9.

²⁷ Section 200.065, F.S.

²⁸ Sumter County Florida, County Millage Rate Information, available at <https://www.sumtercountyfl.gov/865/County-Millage-Rate-Information> (last visited Jan. 21, 2022)

²⁹ Section 200.001(1) and (2), F.S.

³⁰ Sections 200.071 and 200.081, F.S.

³¹ Sections 200.091 and 200.101, F.S.

³² *Id.*

General law provides specific requirements on school district millage elections, as needed to fund education in a county as allowed under s. 9, Art. VII of the State Constitution.³³ Funds from voted millages may be temporary up to two years, or temporary up to four years, and are supplemental to nonvoted millages levied by the school district. A district school board must direct the county commissioners to call an election at which the voters in the school district approve an ad valorem tax millage.³⁴ Such election may be held at any time, except that not more than one such election shall be held during any 12-month period.³⁵ A district school board may propose an election for a single millage or two millages, with one for operating expenses and another for a local capital improvement reserve fund. When two millage figures are proposed, each millage must be voted on separately.³⁶

Local Option Fuel Taxes

Counties may levy a ninth-cent fuel tax (1 cent on every net gallon of motor and diesel fuel sold within a county) if approved by extraordinary vote of its governing board or by voter referendum.³⁷

Counties also may levy other local option fuel taxes which include a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold within a county, and a tax of 1 to 5 cents on every net gallon of motor fuel (excluding diesel) sold within a county.³⁸ The latter tax on motor fuel may be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.³⁹

All impositions of the ninth-cent fuel tax or the local option fuel tax must be levied before October 1 of each year to be effective January 1 of the following year.⁴⁰ The Department of Revenue administers, collects, enforces, and distributes local option fuel taxes. The funds are used for transportation expenditures.⁴¹

General Elections

A general election is an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.⁴²

III. Effect of Proposed Changes:

Section 1 amends s. 125.0104, F.S., to require that a referendum relating to local tourist development taxes be held at a general election, as defined in s. 97.021, F.S.

³³ Section 1011.73, F.S.

³⁴ Section 1011.73(1)-(2), F.S.

³⁵ *Id.*

³⁶ Section 1011.73(4)(a), F.S.

³⁷ Section 336.021(1)(a), F.S.

³⁸ Section 336.025, F.S.

³⁹ Section 336.025(1)(b), F.S.

⁴⁰ Section 336.025(1)(a)-(b), F.S.

⁴¹ Florida Department of Revenue, *Local Option Taxes, Local Option Fuel Taxes*, available at https://floridarevenue.com/taxes/taxesfees/pages/local_option.aspx (last visited Jan. 21, 2022)

⁴² Section 97.021(17), F.S.

Section 2 amends s. 125.0108, F.S., to require that a referendum to levy the tourist impact tax in an area of critical state concern be held at a general election, as defined in s. 97.021, F.S.

Section 3 amends s. 125.901, F.S., to require a county to gain approval to levy ad valorem taxes for a children's services independent special district at a general election, as defined in s. 97.021, F.S.

Section 4 amends s. 200.091, F.S., relating to county voted millage increases, to require a referendum be held at a general election, as defined in s. 97.021, F.S.

Section 5 amends s. 200.101, F.S., relating to municipal voted millage increases, to require a referendum be held at a general election, as defined in s. 97.021, F.S.

Section 6 amends s. 336.021, F.S., to require a referendum to levy the ninth-cent fuel tax on motor fuel and diesel fuel be held at a general election, as defined in s. 97.021, F.S.

Section 7 amends s. 336.025, F.S., relating to local option fuel taxes to require a referendum be held at a general election, as defined in s. 97.021, F.S.

Section 8 amends s. 1011.73, F.S., relating to school district millage elections to require a referendum be held at a general election, as defined in s. 97.021, F.S.

Section 9 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state tax shared with them. The bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, section 18 of the Florida Constitution.

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 provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise a state tax or fee. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The timing of certain tax changes may vary due to the requirement that elections be held at the general election. The bill does not affect state or local revenue.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By moving certain local referenda to the general election ballot, there may be efficiency realized in the election processes of local governments. While the bill has no direct impact on local government revenue, there may be an indirect impact on revenue due to the shift in timing of revenue collected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 125.0104, 125.0108, 125.901, 200.091, 200.101, 336.021, 336.025, and 1011.73

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

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

CS by Community Affairs on January 18, 2022:

The committee substitute removed unnecessary conforming language relating to a referendum to approve Charter County and Regional Transportation System Sales Surtaxes to a 2019 law requiring that such referenda be held at general elections.

B. Amendments:

None.