

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 731 Local Tax Referenda Requirements

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Temple

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 4 N, As CS	Roy	Darden
2) Ways & Means Committee	14 Y, 7 N	LaTorre	Aldridge
3) State Affairs Committee	14 Y, 5 N	Roy	Williamson

SUMMARY ANALYSIS

Counties and municipalities have authority to levy a variety of optional taxes conditioned upon approval of a majority of electors voting in a referendum held at a general election, with the exception of those approving school district millage which may be held at any time.

The bill provides that a referendum to reenact an expiring tax must be held at a general election, and may be held only once during the 48-month period preceding the effective date of the referendum, for the following affected taxes:

- Tourist development tax.
- Areas of critical state concern tourist impact tax.
- Discretionary sales surtaxes.

The bill provides that a referendum to adopt, amend, or reenact an expiring tax must be held at a general election, and only once during the 48-month period preceding the effective date of the referendum, for the following taxes:

- County transportation motor fuel tax.
- Local option fuel taxes.

The bill also requires that a referendum be held at a general election, and only once during the 48-month period preceding the effective date of the referendum, in the following instances:

- To permit an increase in millage for a children's services independent special district tax.
- To temporarily levy a millage in excess of the statutory limits.
- To levy a school district millage.

The bill also removes the provision that an election to approve an ad valorem tax millage for district school boards may not be held if one such election was held within the same 12-month period.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Counties and municipalities have authority to levy a variety of optional taxes conditioned upon approval of a majority of electors voting in a referendum held at a general election, with the exception of those approving school district millage which may be held at any time.

Tourist Development Tax¹

A tourist development tax is a county tax on consideration paid on residential rentals of six months or less.² The tax funds tourism-related uses specified in the authorizing statute. The ordinance levying and imposing the tax must be approved in a referendum held at a general election by a majority of the electors voting in such election in the county or by a majority of the electors voting in the subcounty special tax district affected by the tax.³

Areas of Critical State Concern Tourist Impact Tax⁴

An area of critical state concern tourist impact tax is a tax on the consideration paid on residential rentals of six months or less imposed by a county creating a land authority pursuant to the state laws regulating land use planning in areas of critical state concern.⁵ The tax is distributed to the land authority for use in the area of critical state concern pursuant to the land authority's responsibilities⁶ and to the governing body of the county to offset ad valorem taxes lost due to public acquisitions provided for in the act establishing the areas of critical state concern.⁷ The tax may not take effect until approval of a referenda by a majority of the voters residing in the affected jurisdiction. The referendum must be held in conjunction with a general election⁸

Children's Services Independent Special District Tax

The children's services independent special district tax is an ad valorem tax not to exceed 0.5 mills of assessed valuation of all property subject to county ad valorem taxes, assessed in a county having an independent special district to fund children's services in the county. The ad valorem tax must be approved initially by a majority vote of county voters in a general election.⁹

Temporary Excess Ad Valorem Millage

A temporary excess ad valorem millage is a tax in excess of the 10-mill limit,¹⁰ imposed for a period not to exceed two years in a county, dependent special district, or municipality. The levy must be approved in a general election by a majority vote of the county, district, or municipal voters.¹¹

¹ S. 125.0104, F.S.

² S. 125.0104(3)(a), F.S.

³ S. 125.0104(6)(a), F.S.

⁴ S. 125.0108, F.S.

⁵ Ss. 125.0108(b)(1) and 380.05 to 380.0685, F.S.

⁶ S. 380.0666, F.S.

⁷ Ch. 86-170, Laws of Fla.

⁸ S. 125.0108(5), F.S.

⁹ S. 125.901(1), F.S. (The revenues collected fund the services authorized in s. 125.901, F.S.)

¹⁰ Ss. 200.071 and 200.081, F.S.

¹¹ Ss. 200.091 and 200.101, F.S.

Discretionary Sales Surtaxes

Counties have limited authority to levy a discretionary sales surtaxes for specific purposes on transactions subject to state sales tax.¹² These purposes include:

- Operating a transportation system in a charter county;¹³
- Financing local government infrastructure projects;¹⁴
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;¹⁵
- Providing medical care for indigent persons;¹⁶
- Funding trauma centers;¹⁷
- Operating, maintaining, and administering a county public general hospital;¹⁸
- Constructing and renovating schools;¹⁹
- Providing emergency fire rescue services and facilities; and²⁰
- Funding pension liability shortfalls.²¹

A referendum to adopt or amend a discretionary sales surtax must be held at a general election.²² Current law does not specify when a referendum to extend an existing discretionary sales surtax at the same rate must occur.

County Transportation Motor Fuel Tax

The county transportation motor fuel tax is a local option, 1 cent per gallon fuel tax for specified transportation expenditures.²³ The tax is identified as “the ninth cent fuel tax”²⁴ and may be levied by any county by extraordinary vote of the membership of the governing body or subject to a referendum held at a general election.²⁵

Local Option Fuel Taxes²⁶

With regard to local option fuel taxes, two different taxes²⁷ may be levied, each up to 6 cents per gallon on motor fuels. These taxes may be levied by ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum held at a general election.²⁸

School District Millage

School district millage is ad valorem tax levied for specified periods including millage supplementing the minimal local taxes required by the education code. One tax may be used for school operational purposes²⁹ or the other for any lawful school district purpose.³⁰ A school district can levy school district

¹² Ss. 212.054 and 212.055, F.S.

¹³ S. 212.055(1), F.S.

¹⁴ S. 212.055(2), F.S.

¹⁵ S. 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.

¹⁶ S. 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).

¹⁷ S. 212.055(4)(b), F.S.

¹⁸ S. 212.055(5), F.S.

¹⁹ S. 212.055(6), F.S.

²⁰ S. 212.055(8), F.S.

²¹ S. 212.055(9), F.S.

²² S. 212.055(10), F.S.

²³ Ss. 336.021(1)(a) and 336.025(7), F.S.

²⁴ S. 336.021(2)(a), F.S.

²⁵ S. 336.021(4)(a)2, F.S.

²⁶ S. 336.025, F.S.

²⁷ S. 336.025(1)(a) and (b), F.S.

²⁸ S. 336.025(1)(b) and (3)(a), F.S.

²⁹ S. 1011.71(9), F.S.

³⁰ S. 1011.73, F.S.

millage for school operational purposes by referendum held at a general or special election, but an additional millage levied for other lawful school district purposes must be held at a general election.³¹

Effects of Proposed Changes

The bill provides that a referendum to reenact an expiring tax must be held at a general election, and only once during the 48-month period preceding the effective date of the referendum, for the following taxes:

- Tourist development tax.
- Areas of critical state concern tourist impact tax.
- Discretionary sales surtaxes.

The bill provides that a referendum to adopt, amend, or reenact an expiring tax must be held at a general election, and only once during the 48-month period preceding the effective date of the referendum, for the following taxes:

- County transportation motor fuel tax.
- Local option fuel taxes.

The bill also requires that a referendum be held at a general election, and only once during the 48-month period preceding the effective date of the referendum, in the following instances:

- To permit an increase in millage for a children's services independent special district tax.
- To temporarily levy a millage in excess of the statutory limits.
- To levy a school district millage.

The bill removes the provision providing that an election to approve an ad valorem tax millage for district school boards may not be held if one such election was held within the same 12-month period.

B. SECTION DIRECTORY:

- Section 1: Amends s. 125.0104, F.S., relating to tourist development tax.
- Section 2: Amends s. 125.0108, F.S., relating to tourist impact tax in areas of critical state concern.
- Section 3: Amends s. 125.901, F.S., relating to children's services.
- Section 4: Amends s. 200.091, F.S., relating to referendums to increase millage for county purposes.
- Section 5: Amends s. 200.101, F.S., relating to referendums for millage in excess of limits.
- Section 6: Amends s. 212.055, F.S., relating to discretionary sales surtaxes.
- Section 7: Amends s. 336.021, F.S., relating to nine-cent fuel tax on motor and diesel fuel.
- Section 8: Amends s. 336.025, F.S., relating to local option fuel tax on motor and diesel fuel.
- Section 9: Amends s. 1011.73, F.S., relating to school district millage elections.
- Section 10: Provides an effective date of July 1, 2023.

³¹ Ss. 1011.71(9) and 1011.73(3), F.S.
STORAGE NAME: h0731e.SAC
DATE: 4/11/2023

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities. While the bill limits the flexibility that counties and municipalities have for scheduling a referendum, this does not appear to “reduce the authority” they have to raise revenues. In addition, the provisions of the bill related to the scheduling of referenda appear to be “election laws,” which are exempt from the mandate provisions of s. 18, Art. VII, Fl. Const.³²

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 20, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided that a

³² Art. VII, s. 18(d) Fla. Const.
STORAGE NAME: h0731e.SAC
DATE: 4/11/2023

referendum may only be held once during the 48-month period preceding the effective date of the referendum.

The analysis is drafted to the committee substitute adopted by the Local Administration, Federal Affairs & Special Districts Subcommittee.