

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 1040

INTRODUCER: Senator Lee

SUBJECT: Discretionary Sales Surtaxes

DATE: March 23, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 1040 establishes additional requirements for the adoption of discretionary sales surtaxes. Specifically, the petition sponsor of an initiative to adopt a charter county and regional transportation system surtax is required to complete the following actions 180 days before a proposed referendum: 1) obtain an independent legal opinion verifying the referendum’s statutory compliance; 2) notify the Office of Program Policy Analysis and Government Accountability (OPPAGA); and 3) file the initiative petition and its required valid signatures with the supervisor of elections. The 180-day notification to OPPAGA prior to referendum is also required of counties and school districts for all performance audits of discretionary sales surtaxes.

Failure to comply with the above provisions renders a discretionary sales surtax referendum void. Provisions of the bill apply to referenda to adopt discretionary sales surtaxes held on or after 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, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.”¹ The discretionary sales surtax is based on the tax rate imposed by the county where the

¹ Section 212.054, F.S.

taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary from 0.5 percent to 2.0 percent.²

The Department of Revenue (DOR) administers, collects, and enforces county discretionary sales surtaxes pursuant to the same procedures used in the administration, collection, and enforcement of the state sales tax.³ DOR then remits to the appropriate county the surtax proceeds less an administration fee not to exceed 3 percent.⁴

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.⁵ If voter approval is required, a majority of electors voting must approve the referendum.⁶

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.⁷

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, 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).⁸

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.⁹ Counties eligible to levy the surtax may also use up to 25 percent of the proceeds for nontransit purposes.¹⁰

² Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2019 Local Discretionary Sales Surtax Rates in Florida's Counties, 225-226 (2019) <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf>, available at (last visited Mar. 23, 2019).

³ Section 212.054(4)(a), F.S.

⁴ Section 212.054(4)(b) and (c), F.S.

⁵ 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.

⁶ Section 212.055, F.S.

⁷ 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.

⁸ See *supra* note 2.

⁹ Section 212.055(1)(d), F.S.

¹⁰ Section 212.055(1)(d)3., F.S.

Collections for the Charter County and Regional Transportation System Surtax are estimated to produce \$342.4 million in Fiscal Year 2018-2019.¹¹

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.¹² 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 is responsible for both selecting the accountant and paying for the accountant's services.¹³ 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.¹⁴

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 when made and is valid for a period of two years following the date.¹⁵ 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.¹⁶ 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.¹⁷ 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

¹¹ See *supra* note 2.

¹² Section 212.055(10)(a), F.S.

¹³ *Id.*

¹⁴ S. 212.055(10)(b), F.S.

¹⁵ See s. 100.371(3), F.S., for the remainder of the information presented in this section of the bill analysis.

¹⁶ See s. 99.097(4), F.S., regarding the fee for checking signatures and grounds for having such fees waived.

¹⁷ See BLACK'S LAW DICTIONARY (6th ed. 1990).

addressed to clients but substantively intended to benefit (or, at least, also benefit) third parties who are explicitly permitted to rely on them.¹⁸ Third parties commonly require these opinions as a condition precedent to closing business transactions.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 212.055(1), F.S., to provide requirements of a petition sponsor if a charter county and regional transportation system discretionary surtax proposal is to be adopted by initiative. Specifically, at least 180 days before the proposed referendum, the petition sponsor must do the following:

- 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;
- Notify OPPAGA of the proposed referendum; which will then procure the certified public accountant for the required discretionary sales surtax performance audit; and
- 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.

Section 212.055(10), F.S., is also amended to require the county or school district for which a discretionary sales surtax referendum is to be held to notify 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. The 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 creates an undesignated section of law specifying that the provisions of this act apply to referenda to adopt discretionary sales surtaxes held on or after January 1, 2020.

Section 3 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ See Steven L. Schwarcz, *The Limits of Lawyering: Legal Opinions in Structured Finance*, Texas Law Review, vol. 84, no.1, 2005.

¹⁹ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

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:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
