

**STORAGE NAME:** h0267a.ei.doc  
**DATE:** December 4, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
EDUCATION INNOVATION  
ANALYSIS**

**BILL #:** HB 267  
**RELATING TO:** Straw Ballot/Sales Tax Increase  
**SPONSOR(S):** Representative(s) Richardson  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) EDUCATION INNOVATION YEAS 5 NAYS 8
  - (2) RULES, ETHICS & ELECTIONS
  - (3) FISCAL POLICY & RESOURCES
  - (4) COUNCIL FOR LIFELONG LEARNING
  - (5)
- 

**I. SUMMARY:**

Current law provides for a six percent tax on sales, use, and other transactions. Current law also specifies the types of discretionary sales surtaxes that certain counties may levy. Forty-nine counties in the state currently levy discretionary sales surtaxes.

HB 267 requires a "straw ballot referendum" in all counties of the state in the November 5, 2002 general election to elicit the views of Floridians regarding a 0.5 percent increase in the rate of tax on sales, use, and other transactions.

HB 267 requires that the entire proceeds from the 0.5 percent increase be allocated to qualified school districts and be used for instructional personnel salaries and benefits, for certain special programs, and for maintenance and operations costs. The bill specifies that the revenues generated from the tax increase must be allocated in the following manner:

- 60 percent to increase salaries and benefits of public school instructional personnel;
- 20 percent for special programs to reduce class size, to provide for teacher development, and to provide for tutoring, dropout prevention, and similar programs; and
- 20 percent for maintenance and operations of schools.

HB 267 also provides that after five years the tax increase must be reviewed by the Department of Education, the district school superintendents, and the local communities. After ten years, the tax increase must be automatically repealed and reviewed by the Legislature.

According to the Department of Revenue, no operational impact will occur from implementing this bill because the bill only provides for a "straw ballot referendum" on a sales tax increase. However, if the referendum is approved by a supermajority vote and the Legislature does implement a sales tax increase, then there will be an operational impact.

According to the Committee on Fiscal Policy & Resources, the six percent sales tax generated approximately \$15.9 billion during the 2000-2001 fiscal year. Raising the sales tax rate from the current

**STORAGE NAME:** h0267a.ei.doc

**DATE:** December 4, 2001

**PAGE:** 2

6 percent rate to 6.5 percent may generate an estimated \$1.4 billion in additional revenue during the next fiscal year.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

This bill does not appear to support the principle of lower taxes because it proposes raising the tax on sales, use, and other transactions by 0.5 percent.

B. PRESENT SITUATION:

**Sales and Use Tax**

Chapter 212, F.S., provides for the tax on sales, use, and other transactions. Pursuant to s. 212.05, F.S., every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the items or services taxable under Chapter 212, F.S., or who stores for use or consumption any item or article of tangible personal property and who leases or rents such property is exercising a taxable privilege. According to s. 212.05(1)(a), F.S., the tax rate on the retail price of each item or article of tangible personal property when sold at retail in this state is six percent. In addition, s. 212.05(1)(b), F.S., provides for a six percent tax on the cost price of any item of tangible personal property that is not sold, but used in this state.

**Discretionary Sales Surtaxes**

Provisions in s. 212.055, F.S., specify the following types of discretionary sales surtaxes that certain counties may levy:

1. Charter County Transit System Surtax (up to 1 percent);
2. Local Government Infrastructure Surtax (0.5 percent to 1 percent);
3. Small County Surtax (0.5 percent to 1.0 percent);
4. Indigent Care and Trauma Center Surtax (may not exceed 0.5 percent);
5. County Public Hospital Surtax (the rate must be 0.5 percent);
6. School Capital Outlay Surtax (may not exceed 0.5 percent); and
7. Voter-Approved Indigent Care Surtax (may not exceed 0.5 percent).

The levy of the surtax must be pursuant to an ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax.

According to the Department of Revenue, 49 counties in the state currently levy discretionary sales surtaxes. Of the 49 counties in the state that currently levy discretionary sales surtaxes, five (5) counties levy discretionary sales surtaxes that total 0.5 percent (Gulf, Hernando, Miami-Dade, St. Lucie, and Santa Rosa), 41 counties levy discretionary sales surtaxes that total 1.0 percent (Baker, Bay, Bradford, Calhoun, Charlotte, Clay, Columbia, De Soto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Highlands, Hillsborough, Holmes, Indian River,

Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Martin, Nassau, Okeechobee, Osceola, Pinellas, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, and Washington), and three (3) counties levy discretionary sales surtaxes that total 1.5 percent (Escambia, Jackson, and Monroe).

### **Local Government Infrastructure Surtax**

Section 212.055(2), F.S., provides for the Local Government Infrastructure Surtax. The governing authority in each county may levy this 0.5 percent or 1.0 percent tax after a favorable vote of the electorate through a local referendum.

Provisions in s. 212.055(2), F.S., specify that a county may distribute proceeds of the revenues generated from the local government infrastructure sales surtax to its school district for any fixed capital expenditure or fixed capital outlay costs associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of five or more years, and any land acquisition, land improvement, design, and engineering costs associated with such facilities.

According to the SMART Schools Clearinghouse, 10 counties have held local referendums in the last 10 years in order to assess a local government infrastructure sales surtax that is used to raise capital outlay revenues. Seven counties have approved local referendums in order to assess a local government infrastructure sales surtax that is used to raise capital outlay revenues. In the 2000-2001 fiscal year, five counties (Hillsborough, Pinellas, Clay, Osceola, and Sarasota) levied a local government infrastructure surtax that provided \$36.9 million in revenue to local school districts. The assessment of the local government infrastructure sales surtax will generate \$1.4 billion (at the end of the life of the surtax) in order to fund school district capital outlay needs.

### **School Capital Outlay Surtax**

According to s. 212.055(6), F.S., the school board in each county may levy, pursuant to a resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, the discretionary school capital outlay surtax at a rate not to exceed 0.5 percent. The resolution must include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax.

According to the SMART Schools Clearinghouse, 14 school districts have held local referendums in order to assess the school capital outlay surtax that is used to raise capital outlay revenues. Seven school districts have approved local referendums in order to assess a 0.5 percent school capital outlay surtax. During the 2000-2001 fiscal year, the seven districts that levied 0.5 percent sales surtaxes generated \$71.5 million in revenue. The assessment of the school capital outlay surtax will generate \$307.1 million (at the end of the life of the surtax) in order to fund school district capital outlay needs.

Pursuant to s. 212.055(6), F.S., the school capital outlay surtax can be used for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses that have a useful life expectancy of five or more years, and any land acquisition, land improvement, design, and engineering costs associated with such facilities and campuses.

### **Total Potential Funds for Public School Operations**

According to the *The Florida House of Representatives, Public School Funding: The Florida Education Finance Program, Final Conference Report on Senate Bill 2000, May 4, 2001*, the total potential funds appropriated for public school operations during the 2001-2002 fiscal year is \$12.6 billion. This amount represents an increase of \$739 million or 6.27 percent from the previous fiscal year. Additionally, this total potential amount for public school operations is composed of \$7.7 billion of state funds and \$4.9 billion of local funds.

### **District Required Local Effort**

Current law (s. 236.081(4), F.S.) specifies that the Legislature must prescribe the aggregate required local effort for all school districts collectively as an item in the General Appropriations Act (GAA) for each fiscal year. The amount that each district must provide annually toward the cost of the Florida Education Finance Program (FEFP) must be calculated as follows:

Based on data from local property appraisers, the Department of Revenue annually certifies to the Commissioner of Education its most recent estimate of the taxable value for school purposes in each school district, and the total for all school districts in the state for the calendar year. The commissioner must then compute a millage rate, rounded to the nearest one one-thousandth of a mill, which, when applied to the 95 percent of the estimated total taxable value for school purposes, would generate the prescribed aggregate required local effort for the year for all districts. The commissioner must certify the millage rate to each district as the minimum millage rate necessary to provide the required local effort for the FEFP for that year.

For the 2001-2002 fiscal year, the required local effort millage for the 2001-2002 fiscal year is 5.940 mills which generates approximately \$4.4 billion in local effort revenue. (*The Florida House of Representatives, Public School Funding: The Florida Education Finance Program, Final Conference Report on Senate Bill 2000, May 4, 2001*).

### **District Discretionary Local Effort**

In addition to the required local effort that school districts must generate, the 2001-2002 GAA authorizes each school district to levy the following maximum nonvoted discretionary millage rates: 0.510 mills, and an additional levy, not to exceed 0.250 mills, that raises an amount not to exceed \$50 per full-time equivalent student. According to *The Florida House of Representatives, Public School Funding: The Florida Education Finance Program, Final Conference Report on Senate Bill 2000, May 4, 2001*, school districts generate an additional \$500.4 million by levying the aforementioned maximum nonvoted discretionary millage rates.

### **Dollars to the Classroom**

The Dollars to the Classroom Act policy provides for the Legislature to establish minimum district academic performance standards. Districts that do not meet minimum academic performance standards are required to increase the percentage of their total current operating funds spent for classroom instruction. The 2001-2002 General Appropriations Act established four district performance standards:

1. the state median elementary school grade,
2. the state median middle school grade,
3. the state median high school grade, or
4. the state average nonpromotion rate.

Every district that is below the state median in any level of school performance or above the state median in nonpromotion rate, must increase the district's expenditures directly into the classroom. The district must increase the expenditure to the classroom one percent over the prior year for each area in which the district is deficient. Provisions in s. 236.08102(3)(a), F.S., require the Department of Education (DOE) to calculate each district's total kindergarten through grade twelve operating expenditures, dollars to the classroom, as prescribed in the most recent issuance of the DOE's *Financial and Program Cost Accounting and Reporting for Florida Schools* publication.

### **Supplemental Academic Instruction**

The SAI fund was created to address the school districts' requests for more flexibility and to provide additional resources to districts to help students gain at least a year's worth of knowledge for each year in school. According to s. 236.08104(2), F.S., these funds must be used only to provide supplemental instruction to students enrolled in a K-12 program. Supplemental instruction strategies may include, but are not limited to:

- Modified curriculum,
- Reading instruction,
- After-school instruction,
- Tutoring,
- Mentoring,
- Class size reduction,
- Extended school year,
- Intensive skills development in summer school, and
- Other methods for improving student achievement.

The 1999 Legislature created the Supplemental Academic Instruction (SAI) Fund as part of the A+ Education Plan in Ch. 99-398, L.O.F. Pursuant to s. 236.08104, F.S., funds for supplemental academic instruction must be allocated annually to each school district in the amount provided in the General Appropriations Act (GAA). These funds are in addition to funds appropriated on the basis of full-time equivalent student (FTE) membership in the Florida Education Finance Program (FEFP) and must be included in the total potential funds of each district. In the 2001-2002 GAA, the Legislature appropriated \$676.7 million for supplemental academic instruction (Specific Appropriation 118).

### **Excellent Teaching Program**

In 1998, the Legislature created the Excellent Teaching Program as a supplement to state certification (s. 236.08106, F.S.). Pursuant to s. 236.08106(1), F.S., the program provides incentives for classroom teachers to seek national certification through the National Board for Professional Teaching Standards (NBPTS).

According to s. 236.08106(2), F.S., the Excellent Teaching Program provides a subsidy of 90 percent of the NBPTS fee, \$2,300 as of June 2001, for Florida teachers who seek NBPTS certification. In addition, a one-time portfolio preparation fee of \$150 fee is also paid. Florida teachers who receive NBPTS certification are eligible to receive an annual bonus of ten percent of the prior fiscal year's statewide average salary for classroom teachers, approximately \$3,800 for every year of the ten year life of the certificate. An additional ten percent bonus can be earned for NBPTS certified teachers who mentor and provide other services to non-NBPTS teachers.

According to the 2001-2002 General Appropriations Act, the Legislature appropriated \$31.4 million for the Excellent Teaching Program (Specific Appropriation 127).

### **The Florida Teachers Lead Program Stipend**

According to s. 231.67(1), F.S., funds appropriated for the Florida Teachers Lead Program are provided to purchase classroom materials and supplies used in the instruction of students in kindergarten through grade twelve of the public school system. Section 231.67(4), F.S., specifies that the funds provided in the Florida Teachers Lead Program Stipend must be provided to each teacher in addition to any other funds appropriated for public school operations. These funds are disbursed directly to each teacher from the school district. Pursuant to s. 231.67(5), F.S., any unused funds that are returned to the district school board must be deposited in the School Advisory Council account of the school at which the teacher returning the funds was employed at the time of the receipt of the funds.

Provisions in s. 231.67, F.S., specify that funding for the Florida Teachers Lead Program must be determined by the Legislature in the GAA. The Legislature appropriated approximately \$15.4 million for the Teacher Lead Program for the 2001-2002 fiscal year.

### **Teacher Recruitment and Retention**

As part of the Teacher Recruitment and Retention initiative, the 2001 Legislature appropriated \$152 million in the 2001-2002 GAA for school districts to provide teachers with a one-time retention bonus of \$850. Funds that remain after the \$850 bonuses are awarded may be used as scholarships for teachers, incentives to teach in high needs schools, or encouragement for people contemplating a career change to enter the teaching profession.

### **Merit Pay for Teachers**

The 1997 Legislature passed legislation that requires school boards to base a portion of each employee's compensation on performance (Ch. 97-212, L.O.F.). In 1999, the Legislature passed the A+ Education Plan (Ch. 99-398, L.O.F.) which contained provisions for improving teacher quality. This legislation established that teachers and administrators who demonstrate outstanding performance based upon student achievement criteria could annually earn a bonus of up to five percent of their base pay.

Pursuant to s. 231.29(3), F.S., the assessment procedure for instructional personnel and school administrators must be primarily based on the performance of students assigned to their classrooms or schools, as appropriate. An assessment must be conducted for each employee at least once a year. The assessment must be based upon sound educational principles and contemporary research in effective educational practices.

In the 2000 Legislative Session, the Legislature created the Mentor Teacher School Pilot Program (Ch. 2000-301, L.O.F.). Section 231.700(1), F.S., authorizes the Commissioner of Education to select a combination of elementary, middle, and high schools representing small, medium, and large districts to participate in the program. According to s. 231.700(2), F.S., the goals of this program are to:

- Provide teachers with multiple career paths;
- Establish broad salary ranges to provide flexibility and to reward performance and to negotiate salaries to attract teachers to hard-to-staff-schools and subjects;
- Provide ongoing professional development for teachers to learn and grow professionally that includes a daily block of time for associate teachers, teachers, and lead teachers to reflect and plan and to interact with a mentor teacher;
- Provide all eligible teachers with the opportunity for national certification; and
- Provide for a specified organizational pattern, such as clusters or teams of teachers for grade levels or subject areas comprised of associate teachers, teachers, and lead teachers who are supported by education paraprofessional learning guides and directed by a mentor teacher.

Section 231.700(3), F.S., specifies that schools chosen to participate in the program must offer a five tier teacher development system that includes:

1. **Educational paraprofessional learning guides** that hold an associate degree from an institution of higher learning and must demonstrate appropriate writing, speaking, and computations skills.
2. **Associate teachers** that hold a bachelor's degree from an institute of higher learning and a valid Florida teaching certificate.

3. **Teachers** that hold a bachelor's degree or higher from an institution of higher learning and a valid Florida teaching certificate, have a minimum of 3 years' full-time teaching experience, document satisfactory teaching performance, and document evidence of positive student learning gains;
4. **Lead teachers** that hold a bachelor's degree or higher from an institution of higher learning and a valid Florida professional teaching certificate, have a minimum of 3 years' full-time teaching experience, document exemplary teaching performance, document evidence of significant positive student learning gains, and provide intensive support for associate teachers and teachers.
5. **Mentor teachers** that hold a bachelor's degree or higher from an institution of higher learning and a valid Florida professional teaching certificate; have a minimum of 5 years' full-time teaching experience; document exemplary teaching performance; document evidence of significant positive student learning gains; hold a valid National Board for Professional Teaching Standards certificate; have been selected as a school, district, or state teacher of the year or hold an equivalent status as determined by the commissioner; and demonstrate expertise as a staff developer.

Pursuant to s. 231.700(2)(b), F.S., each mentor teacher must be eligible for a total annual salary incentive of up to twice the average district classroom teacher's salary. Fifty percent of the mentor teacher salary incentive must be based on increased student achievement of students assigned to the supervision of the mentor teacher.

The 2001 Legislature appropriated \$1.1 million to implement grants of \$150,000 for each of the Florida Mentor Teacher Program pilot projects for the 2001-2002 fiscal year (2001-2002 GAA).

### **Teacher Training**

The 2001 Legislature appropriated \$36 million in grants and aids for teacher training. These funds are provided for in-service training of instructional personnel and include funds required for salaries and benefits of:

1. Personnel directly administering the approved in-service training program;
2. School board employees while such personnel are conducting an approved in-service training program; and
3. Substitutes for personnel released to participate in an approved in-service training program or an in-service council activity (s. 236.081(3), F.S.).

These funds may also be used for direct operating expenses, excluding capital outlay, required for administering the approved in-service training program, including, but not limited to the following:

1. In-service training materials for approved in-service training activities;
2. Data processing for approved in-service training activities;
3. Telephone for the approved in-service training program;
4. Office supplies for the personnel administering the approved in-service training program;
5. Duplicating and printing for approved in-service training activities;
6. Fees and travel and per diem expenses for consultants used in conducting approved in-service training;
7. Travel and per diem expenses for school district personnel attending approved in-service conferences, workshops, or visitations to schools; and
8. Rental of facilities not owned by the school board for use in conducting an approved in-service training program (s. 236.081(3), F.S.).

### **Teacher Liability Insurance**



The 2001 Legislature established Florida educators professional liability insurance protection in s. 231.800, F.S. The educator professional liability insurance protects an insured from having to pay monetary damages or the cost of defense of actions resulting from claims arising out of occurrences in the course of activities in his or her professional capacity.

Pursuant to s. 231.800(2)(a), F.S., educator professional liability coverage is provided to all full-time instructional personnel. The coverage is also provided to part-time instructional personnel (s. 231.800(2)(b), F.S.), and all administrative personnel (s. 231.800(2)(c), F.S.) at a cost of approximately \$4 to \$8 per policy. The Legislature appropriated \$1.2 million for the educators professional liability insurance protection in Specific Appropriation 138A of the 2001-2002 General Appropriations Act.

**C. EFFECT OF PROPOSED CHANGES:**

HB 267 requires a "straw ballot referendum" in all counties of the state in the November 5, 2002 general election to elicit the views of Floridians regarding a 0.5 percent increase in the rate of tax on sales, use, and other transactions.

HB 267 requires that the entire proceeds from the 0.5 percent increase be allocated to qualified school districts and be used for instructional personnel salaries and benefits, for certain special programs, and for maintenance and operations costs. The bill specifies that the revenues generated from the tax increase must be allocated in the following manner:

- 60 percent to increase salaries and benefits of public school instructional personnel;
- 20 percent for special programs to reduce class size, to provide for teacher development, and to provide for tutoring, dropout prevention, and similar programs; and
- 20 percent for maintenance and operations of schools.

HB 267 also provides that after five years the tax increase must be reviewed by the Department of Education, the district school superintendents, and the local communities. After ten years, the tax increase must be automatically repealed and reviewed by the Legislature.

According to the Department of Revenue, no operational impact will occur from implementing this bill because the bill only provides for a "straw ballot referendum" on a sales tax increase. However, if the referendum is approved by a supermajority vote and the Legislature does implement a sales tax increase, then there will be an operational impact.

If the tax on sales, use, and other transactions is increased by 0.5 percent as a result of this bill, the sales tax in most counties in Florida will actually range from 7.0 percent to 8.0 percent, instead of fixed at 6.5 percent because 49 counties in the state currently levy discretionary sales surtaxes that total 0.5 percent to 1.5 percent.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Requires that on November 5, 2002, concurrent with the general election, all counties of the state must hold a "straw ballot referendum" to elicit the views of the public on a matter of vital interest to the State of Florida.

**Section 2:** Provides for a "straw ballot referendum" on increasing the tax on sales, use, and other transactions for educational purposes; proposes the question to the voters of Florida; and specifies how the proceeds from the tax increase is to be allocated.

**Section 3:** Provides the bill becomes effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill itself will not have a direct economic impact on the private sector; however, if the bill passes and the sales tax increase is approved on the straw ballot, the citizens of Florida and tourists will pay a 6.5 percent tax on sales, use, and other transactions in lieu of the 6 percent tax under current law.

D. FISCAL COMMENTS:

According to the Department of Revenue, no operational impact will occur from implementing this bill because the bill only provides for a "straw ballot referendum" on a sales tax increase. However, if the referendum is approved by a supermajority vote and the Legislature does implement a sales tax increase, then there will be an operational impact.

According to the Committee on Fiscal Policy & Resources, the current six percent sales tax generated approximately \$15.9 billion during the 2000-2001 fiscal year. Raising the sales tax rate from the current 6 percent rate to 6.5 percent may generate an estimated \$1.4 billion in additional revenue during the next fiscal year.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 1, Article III of the Florida Constitution, provides that the legislative power of the state shall be vested in the Legislature.

Cases such as *Mahon v. Sarasota County*, 177 So. 2<sup>nd</sup> 665 (Fla. 1965), state that the Legislature cannot delegate power to enact law or to declare what the law shall be—language which tends to support the majority view.

In Attorney General's Opinion 068-19 (1968), the Attorney General of Florida quotes at length from the Alabama decision, *In Re Opinions of the Justices*, No. 36, 166 So.706 (Ala. 1936), the following:

By the great weight of authority in America it is firmly held that an enactment to become the law of the state or not, as the result of a statewide election, called in the act, is a delegation of legislative power or an abrogation of the power conferred on the Legislature, a departure from the fundamental principles of representative government.

HB 267 may violate Section 1, Article III of the Florida Constitution, because it appears to delegate legislative power away from the Legislature. Further research into this matter is recommended.

B. RULE-MAKING AUTHORITY:

This bill does not grant additional rule-making authority.

C. OTHER COMMENTS:

**Whereas Clauses**

In general, whereas clauses are used only to express legislative intent and findings and are not used to create new policies, program, or laws. Whereas clauses do not become part of the official law and are considered to be explanatory and clarifying in nature only.

In terms of HB 267, only sections 1-3, if passed, will appear in law. Consequently, the general public may not be aware of the detailed purposes of the sales tax increase and the detailed manner in which proceeds from the tax increase are to be allocated.

Additionally, other whereas clauses in HB 267 assume that it is the Legislature's intent to recognize that Florida's teacher salaries are below the national average; that school districts are being forced to increase health insurance contributions at the expense of teacher salaries; that it, the Legislature, will raise the sales tax once the straw ballot question is approved; and so forth. It may be possible that these whereas clauses don't reflect the intent of the Legislature, but rather reflect the intent of the sponsor of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

**STORAGE NAME:** h0267a.ei.doc

**DATE:** December 4, 2001

**PAGE:** 12

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Staff Director:

---

Elsie J. Rogers

---

Daniel Furman