

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 139 Local Tax Referenda

SPONSOR(S): Government Accountability Committee; Ways & Means Committee; Ingoglia; Avila and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	15 Y, 0 N	Darden	Miller
2) Ways & Means Committee	15 Y, 2 N, As CS	Dugan	Langston
3) Government Accountability Committee	20 Y, 0 N, As CS	Darden	Williamson

SUMMARY ANALYSIS

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law. Section 212.055, F.S., provides counties limited authority to levy discretionary sales surtaxes for specific purposes on transactions subject to state sales tax. With some exceptions, discretionary sales surtaxes generally are subject to approval by a majority of the qualified electors in a referendum.

Fifty-six counties and 18 school districts across the state levy at least one local discretionary sales surtax. These surtaxes will generate an estimated \$2.3 billion in revenue during fiscal year 2017-18.

The bill requires any referendum to levy a discretionary sales surtax to be held during a general election or a primary election. If the referendum is held during a general election, the referendum must be approved by a majority of electors voting on the ballot question. If the referendum is held during a primary election, the referendum must be approved by a majority of electors voting on the ballot question if the surtax is revenue neutral and by at least 60 percent of electors voting on the ballot question if the surtax is not revenue neutral.

The bill defines a "revenue neutral" discretionary sales surtax as one offset by a concurrent reduction in ad valorem taxes, discretionary sales surtax, or other taxes of equal or greater value.

The bill establishes notice requirements for a county or school district proposing to levy a revenue neutral discretionary sales surtax and prohibits the county or school district from increasing the tax concurrently reduced for three years.

The bill does not have a fiscal impact on the state. It may reduce local government expenditures to the extent local governments would otherwise expend funds to call a special election for approval of a discretionary sales surtax.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law.¹ By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.² These purposes include:

- Operating a transportation system in a charter county;³
- Financing local government infrastructure projects;⁴
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;⁵
- Providing medical care for indigent persons;⁶
- Funding trauma centers;⁷
- Operating, maintaining, and administering a county public general hospital;⁸
- Constructing and renovating schools;⁹
- Providing emergency fire rescue services and facilities; and¹⁰
- Funding pension liability shortfalls.¹¹

The surtax is collected by the Department of Revenue (DOR) using the same procedures utilized for the administration, collection, and enforcement of the general state sales tax.¹² 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 3 percent or administrative costs solely and directly attributable to the surtax, whichever is less. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.¹³

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.¹⁴ 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.¹⁵ If the county or school district fails to provide timely notice, the

¹ Article VII, s. 1(a), Fla. Const.

² Section 212.054, F.S.; s. 212.055, F.S.

³ Section 212.055(1), F.S.

⁴ Section 212.055(2), F.S.

⁵ Section 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.

⁶ Section 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).

⁷ Section 212.055(4)(b), F.S.

⁸ Section 212.055(5), F.S.

⁹ Section 212.055(6), F.S.

¹⁰ Section 212.055(8), F.S.

¹¹ Section 212.055(9), F.S.

¹² Section 212.054(4)(a), F.S.

¹³ Section 212.054(4)(b), F.S.

¹⁴ Section 212.054(5), F.S.

¹⁵ Section 212.054(7)(a), F.S.

effective date of the change is delayed by one year.¹⁶ 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 to occur after October 1.¹⁷

The 56 counties and 18 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.3 billion in revenue in fiscal year 2017-18.¹⁸ If all counties and school districts levied discretionary sales surtaxes at the maximum possible rate, they would be projected to raise \$11.68 billion in revenue in fiscal year 2016-17.¹⁹

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.²⁰ For those requiring voter approval, the referendum must be approved by a majority of electors voting.²¹ Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.²²

Referendum Process

The Florida Election Code states the general requirements for a referendum.²³ 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.²⁴ The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.²⁵ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.²⁶ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.²⁷

Five types of elections exist under the Florida Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.²⁸ A “general election” is defined as an election 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.²⁹ A “primary election” is defined as an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office.³⁰

¹⁶ Section 212.054(7)(a), F.S.

¹⁷ Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

¹⁸ *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220; DOR Discretionary Sales Surtax Information for Calendar Year 2017, available at: http://floridarevenue.com/Forms_library/current/dr15dssyear2017.pdf (last viewed March 30, 2017).

¹⁹ *2016 Local Government Financial Information Handbook*, Office of Economic and Demographic Research, p. 150.

²⁰ *See generally* s. 212.055, F.S.; *but see* 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).

²¹ Section 212.055, F.S.

²² *E.g.* s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time “set at the discretion of the governing body”); *but see* s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a “regularly scheduled election”).

²³ Section 101.161, F.S.

²⁴ Section 101.161(1), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See* s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

²⁸ Section 97.021(12), F.S.

²⁹ Article VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.)

³⁰ Section s. 97.021(29), F.S.

Proposed Changes

The bill requires any referendum to levy a discretionary sales surtax to be held during a general election or a primary election.

If the referendum is held during a general election, the referendum must be approved by a majority of the electors voting on the ballot question. If the referendum is held during a primary election, the referendum must be approved by a majority of the electors voting on the ballot question if the surtax is revenue neutral, and at least 60 percent of the electors voting if the surtax is not revenue neutral.

For purposes of this bill, the terms “primary election” and “general election” have the same meaning as defined in s. 97.021, F.S. The bill also defines “revenue neutral” as a concurrent reduction in ad valorem taxes, discretionary sales surtax, or other taxes greater than or equal to the amount of revenue the discretionary sales surtax is projected to generate in its first full year of collection.

The bill requires a county or school district proposing to levy a “revenue neutral” surtax to publish a notice in a newspaper of general circulation in the county at least 30 days before the referendum. The notice must be published at least twice, once in the fifth week and once in the third week before the week in which the referendum is scheduled to be held. If there is no newspaper of general circulation, the notice must be posted in no fewer than five places within the county.

The bill prohibits a county or school district from increasing the concurrently reduced tax for three years.

B. SECTION DIRECTORY:

Section 1: Amends 212.055, F.S., relating to discretionary sales surtaxes.

Section 2: Provides an effective date of July 1, 2018.

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:

By requiring any discretionary sales surtax referendum to occur on the day of the general or primary election, this bill reduces local government expenditures to the extent local governments would otherwise expend funds to call a special election for approval of a discretionary sales surtax.

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. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 5, 2017, the Ways & Means Committee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute allows a local option discretionary sales surtax referendum to be conducted at a primary election and requires approval by 60 percent of electors voting on the ballot question in such referendum to take effect. The amendment also changed the effective date of the committee substitute from July 1, 2017, to July 1, 2018.

On April 19, 2017, the Government Accountability Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment allowed a discretionary sales surtax referendum to be held at a primary election and approved by a majority of electors voting on ballot question if the surtax is revenue neutral. The amendment defined the term "revenue neutral," established notice requirements, and prohibited a county or school district from increasing the tax which served as the revenue offset for three years.

The analysis is drafted to the committee substitute as approved by the Government Accountability Committee.