

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 Ethics and Elections

BILL: CS/SB 278

INTRODUCER: Ethics and Elections Committee and Senator Steube

SUBJECT: Local Tax Referenda

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 278 requires local governments to hold a referendum during a general election or primary election to adopt or amend local option discretionary sales surtaxes under s. 212.055, F.S. If the referendum is held in the primary election, the referendum must receive an affirmative vote from 60% of those voting on the referendum for passage. If the referendum is held in the general election, the referendum must receive an affirmative vote from 50% of those voting on the referendum for passage.

CS/SB 278 takes effect July 1, 2019.

II. Present Situation:

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation to the state, except for ad valorem taxes on real estate and tangible personal property, unless otherwise provided by general law.¹ Counties have limited authority to levy discretionary sales surtaxes on transactions subject to state sales tax.^{2,3} The Legislature has prescribed authorized uses for the local option discretionary sales surtax revenues, which include:

¹ Art. VII, s. 1(a), Fla. Const.

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

³ Surtaxes only apply to the first \$5,000 of a taxable transaction pursuant to s. 212.054(2)(b)1, F.S.

- Operating a transportation system in a charter county;⁴
- Financing local government infrastructure projects;⁵
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;⁶
- Providing medical care for indigent persons;⁷
- Funding trauma centers;⁸
- Operating, maintaining, and administering a county public general hospital;⁹
- Constructing and renovating schools;¹⁰
- Providing emergency fire rescue services and facilities; and¹¹
- Funding pension liability shortfalls.¹²

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.¹³ 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 the lesser of three percent or administrative costs solely and directly attributable to the surtax. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.¹⁴

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.¹⁵ 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.¹⁶ If the county or school district fails to provide timely notice, the effective date of the change is delayed by one year.¹⁷ 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 1.¹⁸

⁴ Section 212.055(1), F.S.

⁵ Section 212.055(2), F.S.

⁶ Section 212.055(3), F.S.

⁷ 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)

⁸ Section 212.055(4)(b), F.S.

⁹ Section 212.055(5), F.S.

¹⁰ Section 212.055(6), F.S.

¹¹ Section 212.055(8), F.S.

¹² Section 212.055(9), F.S.

¹³ Section 212.054(4)(a), F.S.

¹⁴ Section 212.054(4)(b), F.S.

¹⁵ Section 212.054(5), F.S.

¹⁶ Section 212.054(7)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

The forty-nine counties and fifteen school districts levying one or more discretionary sales surtaxes are projected to realize \$2.2 billion in revenue in fiscal year 2016-17.¹⁹ 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 2016-17.²⁰

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.²¹ For those requiring voter approval, the referendum must be approved by a majority of electors voting.²² Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.²³

Referendum Process

The Florida Election Code states the general requirements for a referendum.²⁴ 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.²⁵ The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.²⁶ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.²⁷ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.²⁸

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.²⁹ A “general election” is 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.³⁰ A “primary election” is 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.³¹

¹⁹ 2016 Florida Tax Handbook, Office of Economic and Demographic Research, p. 216.

²⁰ 2016 Local Government Financial Information Handbook, Office of Economic and Demographic Research, p. 150.

²¹ 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).

²² Section 212.055, F.S.

²³ 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”).

²⁴ Section 101.161, F.S.

²⁵ Section 101.161(1), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

²⁹ Section 97.021(11), F.S.

³⁰ Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(15), F.S.).

³¹ Section 97.021(29), F.S.

III. Effect of Proposed Changes:

CS/SB 278 requires local governments to hold a referendum during a primary election or a general election to adopt or amend local option discretionary sales surtaxes under s. 212.055, F.S. For purposes of this committee substitute, the definitions recited in the present situation section of this analysis for the terms “primary election” and “general election” apply. If the referendum is held in the primary election, the referendum must receive an affirmative vote from 60% of those voting on the referendum for passage. If the referendum is held in the general election, the referendum must receive an affirmative vote from 50% of those voting on the referendum for passage.

The Constitution Revision Commission will likely be placing constitutional amendments on the 2018 general election ballot. The last Constitution Revision Commission placed 13 items on the ballot at the ensuing general election. In order to prevent an unusually large general election ballot in 2018 ballot, the effective date will occur after the 2018 general election. The committee substitute is effective July 1, 2019.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By requiring any discretionary sales surtax referendum to be placed on the primary or general election ballot, the committee substitute may reduce costs to local governments by not requiring them to expend funds if they were required to call a special election for approval of a discretionary sales surtax.

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections on March 22, 2017:

The Committee Substitute differs from the original in that it:

- Allows a local option discretionary sales surtaxes referendum to be conducted at either a primary or general election;
- Specifies that, if put on the ballot at the primary election, the vote required to pass a local option discretionary sales surtaxes conducted at a primary election is 60% of the voters who are voting on the referendum; and
- Changes the effective date to July 1, 2019, so that local option discretionary sales surtaxes are not added to the 2018 general election ballot with the Constitution Revision Commission proposals.

- B. **Amendments:**

None.