

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 272

INTRODUCER: Senator Brandes

SUBJECT: Local Tax Referenda

DATE: October 23, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Pre-meeting</b>
2.			AFT	
3.			AP	
4.			RC	

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**I. Summary:**

SB 272 provides that a municipality may increase the millage rate of ad valorem taxes levied on real and tangible personal property within the municipality only by a vote of at least 60 percent of the governing body of the municipality which approves the increase.

Additionally, the bill provides that a referendum to adopt or amend a local option discretionary sales surtax which is held at any date other than a general election requires the approval of at least 60 percent of the electors voting. If the referendum is held at a general election, only a simple majority is required.

**II. Present Situation:**

**Ad Valorem Taxation Overview**

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the

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<sup>1</sup> Both real property and tangible personal property can be subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

property's "taxable value."<sup>3</sup> The millage rate (tax rate) is applied to the taxable value to determine the amount of tax due. Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The Florida Constitution requires ad valorem taxation to be at a uniform rate within each taxing unit.<sup>6</sup>

Local governments levied approximately \$29.7 billion in ad valorem taxes in Fiscal Year 2016-17.<sup>7</sup> Of the \$29.7 billion, school districts levied approximately \$12.3 billion in property taxes.<sup>8</sup>

### **Millage Rate Limitations**

Property tax rates, or millage rates, are set by each taxing authority and vary throughout the state. Millage rates are limited by both the Florida Constitution and by general law.

### ***Counties, Municipalities, and Schools***

The Florida Constitution limits counties, municipalities, and school districts to levies of 10 mills (or one percent).<sup>9</sup> By referendum, local voters may authorize counties, municipalities, and school districts to levy additional mills above the 10-mill limitation to repay bonds to finance capital projects and for other purposes for a period of no longer than two years.<sup>10</sup> Counties providing municipal services may also levy up to an additional 10 mills above the 10-mill county limitation within those areas receiving municipal-type services.<sup>11</sup>

### ***Special Districts***

Independent special district millage rates are limited by the law establishing the district and must be approved by the voters within the district. Dependent special district millage rates are included in the limitation applicable to the authority to which they are dependent. The Florida Constitution authorizes up to an additional 1 mill to be levied for water management purposes, except in northwest Florida where the limit is 0.05 mill.<sup>12</sup>

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<sup>3</sup> See s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> FLA. CONST. art. VII, s. 4.

<sup>6</sup> FLA. CONST. art. VII, s. 2.

<sup>7</sup> Florida Revenue Estimating Conference, *2017 Florida Tax Handbook*, 199, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (last visited Oct. 16, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> FLA. CONST. art. VII, s. 9. A rate of 1 mill equates to \$1 of tax per \$1,000 of taxable value, or 0.1 percent.

<sup>10</sup> FLA. CONST. art. VII, s. 9.

<sup>11</sup> FLA. CONST. art. VII, s. 9(b); s. 125.01(1)(q), F.S...

<sup>12</sup> FLA. CONST. art. VII, s. 9.

## The Rolled-Back Rate

Florida uses the concept of a “rolled-back rate” to alert taxpayers to ad valorem tax increases that are caused by property appreciation.<sup>13</sup> The “rolled-back rate” is the tax rate that will produce the same amount of tax revenue for the current year that was produced the previous year, after excluding certain assessment roll changes.<sup>14</sup> In an appreciating property market, the rolled-back rate is often less than the millage rate levied in the prior year. If a taxing jurisdiction levies a rate in excess of the rolled-back rate, it must advertise the tax rate as a tax increase.<sup>15</sup>

## Limits on Growth of Property Tax Levies

In 2007, the Legislature enacted statutory changes<sup>16</sup> that established a maximum millage rate and required most taxing authorities to reduce their millage rates.<sup>17</sup> Exceptions were made for certain fiscally limited governments and for certain types of activities. The legislation created a formula to determine the maximum millage rate that could be levied by a county, municipality, or special district governing board by simple majority vote. Exceeding the maximum requires an extraordinary vote of the governing board.

The maximum millage rate that most non-school taxing authorities can levy by simple majority vote is a rolled-back rate based on the amount of taxes which would have been levied in the prior year if the maximum millage rate had been applied in that year, adjusted by the change in Florida per capita personal income.<sup>18</sup> Local governments are allowed to override the prescribed rate reductions by extraordinary votes of their governing boards or by referenda of the electorate. A higher rate may be adopted only under the following conditions:

- A rate of not more than 110 percent of the rolled-back rate based on the previous year’s maximum millage rate, adjusted for change in per capita Florida personal income, may be adopted if approved by a two-thirds vote of the membership of the governing body of the taxing authority; or
- A rate in excess of 110 percent may be adopted if approved by a unanimous vote of the membership of the governing body of the taxing authority or by a three-fourths vote of the membership of the governing body if the governing body has nine or more members, or if the rate is approved by a referendum.<sup>19</sup>

In 2016, 36 counties and 70 municipalities had potential maximum rates calculated under the current statute that were in excess of the 10-mill constitutional limit for county or municipal purposes.<sup>20</sup> In the same year, of the 572 local governments subject to maximum millage rate voting requirements, 67 (11.7 percent) adopted a millage rate that required a two-thirds vote, and

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<sup>13</sup> See generally s. 200.065, F.S.

<sup>14</sup> Section 200.065(1), F.S.

<sup>15</sup> Section 200.065(3)(a) and (g), F.S.

<sup>16</sup> Chapter 2007-321, Laws of Fla.

<sup>17</sup> Section 200.065(5), F.S.

<sup>18</sup> Section 200.065(5), F.S. Calculation of Florida per capita personal income is to be provided by the Office of Economic and Demographic Research, per s. 200.001(8)(i), F.S.

<sup>19</sup> Section 200.065(5)(a), F.S.

<sup>20</sup> Department of Revenue, 2016 Maximum Millage Compliance Reports, *available at* <http://sdrftp03.dor.state.fl.us/MaximumMillageData/MillCapComp022117.pdf> (last visited Oct. 16, 2017).

7 (1.2 percent) adopted a millage rate that required a unanimous vote.<sup>21</sup> The remaining local governments levied a millage that required only a simple majority vote. The total taxes levied by these 572 (less one extreme outlier) were over 27 percent below the taxes that could have been levied by a simple majority vote.<sup>22</sup>

### 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.<sup>23</sup>

Counties have limited authority to levy discretionary sales surtaxes on transactions subject to state sales tax.<sup>24,25</sup> The Legislature has prescribed authorized uses for the local option discretionary sales surtax revenues, which include:

- Operating a transportation system in a charter county;<sup>26</sup>
- Financing local government infrastructure projects;<sup>27</sup>
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;<sup>28</sup>
- Providing medical care for indigent persons;<sup>29</sup>
- Funding trauma centers;<sup>30</sup>
- Operating, maintaining, and administering a county public general hospital;<sup>31</sup>
- Constructing and renovating schools;<sup>32</sup>
- Providing emergency fire rescue services and facilities;<sup>33</sup> and
- Funding pension liability shortfalls.<sup>34</sup>

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.<sup>35</sup> 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 3 percent or administrative costs solely and directly attributable to the surtax. Each county is

<sup>21</sup> *Id.*

<sup>22</sup> Department of Revenue, 2016 Comparison of Property Taxes Levied, *available at* <http://sdrftp03.dor.state.fl.us/MaximumMillageData/comp16.pdf> (last visited Oct. 16, 2017).

<sup>23</sup> Art. VII, s. 1(a), Fla. Const.

<sup>24</sup> Sections 212.054 and 212.055, F.S.

<sup>25</sup> Surtaxes only apply to the first \$5,000 of a taxable transaction pursuant to s. 212.054(2)(b)1, F.S.

<sup>26</sup> Section 212.055(1), F.S.

<sup>27</sup> Section 212.055(2), F.S.

<sup>28</sup> Section 212.055(3), F.S.

<sup>29</sup> 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).

<sup>30</sup> Section 212.055(4)(b), F.S.

<sup>31</sup> Section 212.055(5), F.S.

<sup>32</sup> Section 212.055(6), F.S.

<sup>33</sup> Section 212.055(8), F.S.

<sup>34</sup> Section 212.055(9), F.S.

<sup>35</sup> Section 212.054(4)(a), F.S.

liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.<sup>36</sup>

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.<sup>37</sup> 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.<sup>38</sup> If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.<sup>39</sup> 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.<sup>40</sup>

The 49 counties and 16 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.35 billion in revenue in fiscal year 2016-17.<sup>41</sup> 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.<sup>42</sup>

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.<sup>43</sup> For those requiring voter approval, the referendum must be approved by a majority of electors voting.<sup>44</sup> Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.<sup>45</sup>

### Referendum Process

The Florida Election Code states the general requirements for a referendum.<sup>46</sup> 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.<sup>47</sup> The

<sup>36</sup> Section 212.054(4)(b), F.S.

<sup>37</sup> Section 212.054(5), F.S.

<sup>38</sup> Section 212.054(7)(a), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

<sup>41</sup> *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (last visited Oct. 16, 2017).

<sup>42</sup> *2016 Local Government Financial Information Handbook*, Office of Economic and Demographic Research, p. 150, available at <http://edr.state.fl.us/Content/local-government/reports/lghih16.pdf> (last visited Oct. 16, 2017).

<sup>43</sup> *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).

<sup>44</sup> Section 212.055, F.S.

<sup>45</sup> *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”).

<sup>46</sup> Section 101.161, F.S.

<sup>47</sup> Section 101.161(1), F.S.

ballot summary should explain the chief purpose of the measure and may not exceed 75 words.<sup>48</sup> The ballot summary and title must be included in the resolution or ordinance calling for the referendum.<sup>49</sup> For some discretionary sales surtaxes, the form of the ballot question is specified by statute.<sup>50</sup>

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.<sup>51</sup> 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.<sup>52</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 166.211, F.S., to provide that a municipality may increase the millage rate of ad valorem taxes levied on real and tangible personal property within the municipality only by a vote of at least 60 percent of the governing body of the municipality which approves the increase.

**Section 2** amends s. 212.055, F.S., to provide that a referendum to adopt or amend a local government discretionary sales surtax under s. 212.055, F.S., which is held at any date other than a general election requires the approval of at least 60 percent of the electors voting on the ballot question. As in current law, a referendum to adopt or amend a local government discretionary sales surtax that is held at a general election requires the approval of a majority of the electors voting on the ballot question.

For purposes of the bill, the definition recited in the present situation section of this analysis for the term “general election” applies.

**Section 3** provides that the act takes effect July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Subsection 18(b) of article VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the *authority* that counties or municipalities have to raise revenues in the aggregate.

In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates. In the memo, the guidelines define the term “authority” to mean the power to levy a tax; the vote

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

<sup>51</sup> Section 97.021(11), F.S.

<sup>52</sup> Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.).

required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

The bill requires a vote of at least 60 percent of the governing body of a municipality in order to increase the millage rate of ad valorem taxes levied on real and tangible personal property within the municipality. Additionally, the bill requires a vote of at least 60 percent of the electors voting in a referendum to adopt or amend a local discretionary sales surtax at a date other than a general election. In both circumstances, the bill appears to reduce the “*authority*” that counties or municipalities have to raise revenues in the aggregate. The bill does not appear to qualify under any exemption or exception. If the bill qualifies as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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:

The impact on municipality property taxes is indeterminate. It may be negative to the extent that some government bodies of municipalities cannot achieve the 60 percent vote needed to increase the millage rate on ad valorem taxes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The title of the bill is “Local Tax Referenda.” Bill section 1 does not contemplate a referenda. As a result, the sponsor may want to consider amending the title to make it broader.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 166.211 and 212.055.

**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.

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

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