

**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 Ethics and Elections

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BILL: SB 336

INTRODUCER: Senator Brandes

SUBJECT: Local Tax Referenda

DATE: January 31, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	<b>Pre-meeting</b>
2.	_____	_____	FT	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 336 provides that a referendum to adopt or amend a local option discretionary sales surtax must be held at a general election. The bill has no impact on state or local revenues or expenditures.

**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.<sup>1</sup> Counties have limited authority to levy discretionary sales surtaxes on transactions subject to state sales tax.<sup>2,3</sup> The Legislature has authorized the following local option discretionary sales surtaxes:

- Charter County and Regional Transportation System Surtax, for operating a transportation system in a charter county, a county which is consolidated with that of one or more municipalities, or a county that is within or under an interlocal agreement with a regional transportation or transit authority.<sup>4</sup>
- Local Government Infrastructure Surtax, for financing local government infrastructure projects.<sup>5</sup>
- Small County Surtax, providing additional revenue for counties having fewer than 50,000 residents as of April 1, 1992.<sup>6</sup>

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

<sup>2</sup> Sections 212.054 and 212.055, F.S.

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

<sup>4</sup> Section 212.055(1), F.S.

<sup>5</sup> Section 212.055(2), F.S.

<sup>6</sup> Section 212.055(3), F.S.

- Indigent Care and Trauma Center Surtax, for providing medical care for indigent persons (in non-consolidated counties having a population of at least 800,000) and funding trauma centers (in non-consolidated counties having a population less than 800,000).<sup>7</sup>
- County Public Hospital Surtax, for operating, maintaining, and administering a county public general hospital in a county as defined in s. 125.011(1), F.S. (i.e., Miami-Dade County).<sup>8</sup>
- School Capital Outlay Surtax, for constructing and renovating schools.<sup>9</sup>
- Voter-Approved Indigent Care Surtax, for providing medical care for indigent persons in counties with a population less than 800,000.<sup>10</sup>
- Emergency Fire Rescue Services and Facilities Surtax, for providing emergency fire rescue services and facilities.<sup>11</sup>
- Pension Liability Surtax for funding pension liability shortfalls.<sup>12</sup>

Local discretionary sales surtaxes are collected by the Department of Revenue (DOR) using the same procedures used for the administration, collection, and enforcement of the general state sales tax.<sup>13</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 three percent or administrative costs solely and directly attributable to the surtax. Each county is liable for its prorated share of administrative costs, based on its prorated share of the amount collected statewide.<sup>14</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>15</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>16</sup> If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.<sup>17</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 scheduled to occur on or after October 1.<sup>18</sup> If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.<sup>19</sup>

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<sup>7</sup> Section 212.055(4), F.S.

<sup>8</sup> Section 212.055(5), F.S.

<sup>9</sup> Section 212.055(6), F.S.

<sup>10</sup> Section 212.055(7), F.S.

<sup>11</sup> Section 212.055(8), F.S.

<sup>12</sup> Section 212.055(9), F.S.

<sup>13</sup> Section 212.054(4)(a), F.S.

<sup>14</sup> Section 212.054(4)(b), F.S.

<sup>15</sup> Section 212.054(5), F.S.

<sup>16</sup> Section 212.054(7)(a), F.S.

<sup>17</sup> *Id.*

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

<sup>19</sup> *Id.*

The 56 counties and 19 school districts levying one or more discretionary sales surtaxes were projected to realize \$3.38 billion in revenue in local fiscal year 2018-19.<sup>20</sup> If all counties and school districts levied discretionary sales surtaxes at the maximum possible rates, they would have been projected to raise \$14.32 billion in revenue in fiscal year 2018-19.<sup>21</sup>

Most local discretionary sales surtaxes may be approved only by referendum, while some may be approved by an extraordinary vote of the county commission.<sup>22</sup> For those requiring voter approval, the referendum must be approved by a majority of electors voting.<sup>23</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>24</sup>

### ***Performance Audit***

Legislation enacted in 2018 requires the completion of a performance audit prior to any referendum to adopt a local discretionary sales surtax.<sup>25</sup> For any referendum held on or after March 23, 2018, an independent certified public accountant (CPA) licensed pursuant to Chapter 473, F.S., must conduct a performance audit of the program associated with the surtax adoption proposed by the county or school district. The Florida Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA)<sup>26</sup> must procure the CPA and may use carryforward funds to pay for the CPA's services.<sup>27</sup>

The performance audit must be completed at least 60 days before the referendum is held. The audit report, including any findings, recommendations, or other accompanying documents, must be made available on the county or school district's official website and kept on the website for 2 years from the date posted.<sup>28</sup>

The term "performance audit" means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation of other appropriate authoritative bodies. At a minimum, the performance audit must address the following issues:

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<sup>20</sup> Office of Economic and Demographic Research, *2018 Local Government Financial Information Handbook* p. 148 (Sep. 2018), available at <http://edr.state.fl.us/Content/local-government/reports/lgfih18.pdf> (last visited Jan. 31, 2019).

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

<sup>22</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)(a)1., F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission in each county the government is not consolidated with that of one or more municipalities, which has a population of at least 800,000 residents), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission [Miami-Dade]).

<sup>23</sup> Section 212.055, F.S.

<sup>24</sup> See e.g. s. 212.055(1)(c), F.S. and s. 212.055(5)(b), F.S. (referendum for charter county and regional transportation system and county public hospital [Miami-Dade] surtax 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>25</sup> Chapter 2018-118, s. 35, LAWS OF FLA.

<sup>26</sup> OPPAGA provides data, evaluation research, and objective analyses to assist legislative budget and policy deliberations. OPPAGA conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee. See also ss. 1.01(18) and 11.51, F.S.

<sup>27</sup> Section 212.055(10)(a), F.S.

<sup>28</sup> Section 212.055(10)(b), F.S.

- The economy, efficiency, or effectiveness of the program;
- The structure or design of the program to accomplish its goals and objectives;
- Alternative methods of providing program services or products;
- Goals, objectives, and performance measures used by the program to monitor and report program accomplishments;
- The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program; and
- Compliance of the program with appropriate policies, rules, and laws.<sup>29</sup>

### Referendum Process

The Florida Election Code provides the general requirements for a referendum.<sup>30</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>31</sup> The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.<sup>32</sup> The ballot summary and title must be included in the resolution or ordinance calling for the referendum.<sup>33</sup> For some discretionary sales surtaxes, the form of the ballot question is specified by the statute authorizing the tax.<sup>34</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>35</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>36</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.055, F.S., to require that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. This will limit the timing and frequency of these referenda to even-year November elections.

**Section 2** provides that the act takes effect upon becoming a law.

### IV. Constitutional Issues:

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

Article VII, s. 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote of the membership, may not enact a general law if the

<sup>29</sup> Section 212.055(10)(c), F.S.

<sup>30</sup> Section 101.161, F.S.

<sup>31</sup> Section 101.161(1), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See e.g., s. 212.055(4)(a)2, (4)(b)1., F.S. (ballot question for discretionary sales surtax for indigent care and trauma center).

<sup>35</sup> Section 97.021(12), F.S.

<sup>36</sup> Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.).

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 released a memorandum to guide the House and Senate in the review of local government mandates. In the memorandum, the guidelines define the term “authority” to mean the power to levy a tax; the vote 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 that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. While the bill limits the flexibility that counties and municipalities have for scheduling a referendum, it does not limit the authority they have to raise revenues. Therefore, the bill does not appear to be a mandate.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill sponsor may wish to consider extending the November 16 deadline for notifying DOR of the imposition of a pending local option discretionary sales surtax, if possible; county canvassing boards may not be able to formally certify sales tax referenda election results until after the current deadline — depending on and the speed and efficiency of the county’s vote count/recount process and *what calendar day* the General Election falls on in November (first TUE after the first MON; varies from year-to-year).

**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.