

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 5 Discretionary Sales Surtaxes

SPONSOR(S): State Affairs Committee, Local, Federal & Veterans Affairs Subcommittee, DiCeglie and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	9 Y, 3 N, As CS	Darden	Miller
2) Ways & Means Committee	12 Y, 5 N	Aldridge	Langston
3) State Affairs Committee	14 Y, 7 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. Current law provides counties with 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 voting in a referendum. A performance audit is required before any discretionary sales surtax referendum and the results of the audit must be made available on the website of the county or school district for at least 60 days before the referendum is held.

Sixty-six of Florida's 67 counties have at least one local discretionary sales surtax levied by either the county or the school board. These surtaxes will generate an estimated \$4.27 billion in revenue during fiscal year 2019-20.

The bill requires any referendum to levy a discretionary sales surtax be held at a general election and requires approval by two-thirds of the electors voting on the ballot measure.

Upon adoption of an ordinance or resolution by a county or school district to hold a discretionary sales surtax referendum on or after January 1, 2020, the bill requires the county or school district holding a referendum to notify the Office of Program Policy Analysis and Government Accountability (OPPAGA) of the proposed referendum and provide a copy of the final ordinance or resolution calling for the referendum at least 180 days before the referendum is held. The bill declares void any discretionary sales surtax referendum if the county or school district fails to provide notice to OPPAGA or fails to publish the results of the performance audit.

If the proposal to adopt a discretionary sales surtax is by initiative, the bill requires the petition sponsor, at least 180 days before the proposed referendum, to:

- Provide a copy of the proposed referendum to the governing body of the county for posting on the county's website;
- Notify OPPAGA of the proposed referendum; and
- File the initiative petition, including the required signatures, with the supervisor of elections.

The bill provides that the failure of an initiative sponsor to comply with these requirements renders any referendum held void.

The bill may reduce local government expenditures by requiring a discretionary sales surtax referendum to be held at a general election. See Fiscal Impact on Local Governments for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.¹ Current law provides counties with 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 sales 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 Art. VII, s. 1(a), Fla. Const.

² Ss. 212.054, 212.055, F.S.

³ S. 212.055(1), F.S.

⁴ S. 212.055(2), F.S.

⁵ S. 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 S. 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 S. 212.055(4)(b), F.S.

⁸ S. 212.055(5), F.S.

⁹ S. 212.055(6), F.S.

¹⁰ S. 212.055(8), F.S.

¹¹ S. 212.055(9), F.S.

¹² S. 212.054(4)(a), F.S.

¹³ S. 212.054(4)(b), F.S.

¹⁴ S. 212.054(5), F.S.

¹⁵ S. 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

Sixty-six of Florida's 67 counties have at least one local discretionary sales surtax levied by either the county or the school board.¹⁸ Only Citrus County does not have a discretionary sales surtax. These surtaxes will generate an estimated \$4.27 billion in revenue during fiscal year 2019-20.¹⁹

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 If voter approval is required, a majority of electors voting must approve the referendum.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

For all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit by an independent certified public accountant must be conducted.²³ The Office of Program Policy Analysis and Government Accountability (OPPAGA) is responsible for both selecting the accountant and paying for the accountant's services. The results of the performance audit, including any findings, recommendations, or other accompanying documents, must be made available on the website of the county or school district at least 60 days prior to the referendum and must be maintained on the website for at least 2 years.²⁴

Referendum Process

The Florida Election Code provides the general requirements for a referendum.²⁵ 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.²⁶ The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.²⁷ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.²⁸ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.²⁹

¹⁶ S. 212.054(7)(a), F.S.

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

¹⁸ Florida Department of Revenue Form DR-15DSS, r. 11/18. Available at <http://floridarevenue.com/Documents/DR-15DSS%20R.%2011-18%20FINAL%2011-19-2018.pdf> (last visited Mar. 9, 2019)

¹⁹ *Revenue Estimating Conference, Monthly Estimates Conference, December 2018*, available at <http://edr.state.fl.us/Content/conferences/monthlyrevenueestimates/index.cfm> (last visited Mar. 9, 2019).

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 S. 212.055(10)(a), F.S. A "performance audit" means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies, including the effectiveness of the program, the structure and design of the program, alternative methods of achieving the goals of the program, performance measures that may be used to track program accomplishments, the accuracy and adequacy of public documents, and reports related to the program, and compliance of the program with applicable policies, rules, and laws. S. 212.055(10)(c), F.S.

²⁴ S. 212.055(10)(b), F.S.

²⁵ S. 101.161, F.S.

²⁶ S. 101.161(1), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

Five types of elections exist under the Florida Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.³⁰ Historically, voter turnout during a general election is higher than during other elections.³¹

2018 Discretionary Sales Surtax Referenda

During the 2018 Primary Election, voters in two counties approved extensions of existing discretionary sales surtaxes and voters in a third county approved a new discretionary sales surtax:

County	New / Reauthorization	Surtax	Rate	Expiration Date	Voter Approval	Voter Turnout
Bay ³²	Reauthorization	School Capital Outlay	0.5%	12/31/2030	65.5%	24.8%
Calhoun ³³	Reauthorization	School Capital Outlay	0.5%	12/31/2028	69.4%	29.2%
Washington ³⁴	New	School Capital Outlay	0.5%	12/31/2028	57.8%	29.7%

During the 2018 General Election, voters in eight counties approved new discretionary sales surtaxes and voters in an additional county approved an extension of an existing discretionary sales surtax:

County	New / Reauthorization	Surtax	Rate	Expiration Date	Voter Approval	Voter Turnout
Alachua ³⁵	New	School Capital Outlay	0.5%	12/31/2030	68.05%	64.2%
Broward ³⁶	New	Charter County and Regional Transportation System	1%	12/31/2048	59.9%	60.9%
Collier ³⁷	New	Local Government Infrastructure	1%	12/31/2025	50.9%	73.5%
Hillsborough ³⁸	New	Charter County and Regional Transportation System	1%	12/31/2048	57.3%	61.5%
Hillsborough ³⁹	New	School Capital Outlay	0.5%	12/31/2028	56.4%	61.5%
Lee ⁴⁰	New	School Capital	0.5%	12/31/2028	51.5%	65.6%

³⁰ S. 97.021(12), F.S.

³¹ Department of State, Division of Elections, Data and Statistics, Election Data, Voter Turnout, available at: <http://dos.myflorida.com/elections/data-statistics/elections-data/voter-turnout/> (last viewed Feb. 26, 2019).

³² Bay County Supervisor of Elections, *2018 Primary Election Official Results*, <https://enr.electionsfl.org/BAY/1896/Summary/> (last visited Mar. 13, 2019).

³³ Calhoun County Supervisor of Elections, *2018 Primary Election Official Results*, <https://enr.electionsfl.org/CAL/Summary/1931/> (last visited Mar. 13, 2019).

³⁴ Washington County Supervisor of Elections, *2018 Primary Election Official Results*, <https://enr.electionsfl.org/WAS/1934/Summary/> (last visited Mar. 13, 2019).

³⁵ Alachua County Supervisor of Elections, *Official Recount Results November 6, 2018 General Election*, https://www.votealachua.com/Portals/Alachua/Documents/Election_Results/20181106_GeneralAndRecount_Summary.pdf (last visited Mar. 13, 2019).

³⁶ Broward County Supervisor of Elections, *2018 General Election*, <https://enr.electionsfl.org/BRO/Summary/1985/> (last visited Mar. 13, 2019).

³⁷ Collier County Supervisor of Elections, *2018 General Election*, <https://enr.electionsfl.org/CLL/1994/Summary/> (last visited Mar. 13, 2019).

³⁸ Hillsborough County Supervisor of Elections, *2018 General Election*, <https://enr.electionsfl.org/HIL/Summary/1974/> (last visited Mar. 13, 2019).

³⁹ *Id.*

County	New / Reauthorization	Surtax	Rate	Expiration Date	Voter Approval	Voter Turnout
		Outlay				
Martin ⁴¹	New	School Capital Outlay	0.5%	12/31/2025	57.2%	68.9%
Okaloosa ⁴²	New	Local Government Infrastructure	0.5%	12/31/2028	62.7%	62.5%
Polk ⁴³	Reauthorization	School Capital Outlay	0.5%	12/31/2033	68.4%	59.3%
St. Lucie ⁴⁴	New	Local Government Infrastructure	0.5%	12/31/2028	55.8%	61.7%

Proposed Changes

The bill requires any referendum to adopt or amend a discretionary sales surtax be held at a general election⁴⁵ and requires approval of two-thirds of the qualified electors voting on the ballot question for passage.

Upon adoption of an ordinance or a resolution by a county or school district to hold a discretionary sales surtax referendum on or after January 1, 2020, the bill requires the county or school district to notify OPPAGA of the proposed referendum and provide OPPAGA a copy of the final ordinance or resolution calling for the referendum at least 180 days before the date of the proposed referendum. The bill maintains the requirement that OPPAGA select and pay for a certified public accountant to conduct a performance audit of the program associated with the proposed surtax and the requirement that the performance audit be completed and made available on the county or school district website at least 60 days prior to the referendum. The bill declares void any discretionary sales surtax referendum if the county or school district fails to provide notice to OPPAGA or fails to publish the results of the performance audit on its website at least 60 days before the referendum is held.

If the proposal to adopt a discretionary sales surtax is by initiative, the bill requires the petition sponsor, at least 180 days before the proposed referendum, to:

- Provide a copy of the proposed referendum to the governing body of the county for posting on the county's website;
- Notify OPPAGA of the proposed referendum; and
- File the initiative petition, including the required signatures, with the supervisor of elections and the supervisor must verify the signatures and retain the signature forms.

The bill requires OPPAGA to select and pay for a certified public accountant to conduct a performance audit of the program associated with the proposed surtax.

The bill provides that the failure of an initiative sponsor to comply with these requirements renders any referendum held void.

⁴⁰ Lee County Supervisor of Elections, *Official Election Results Summary for the 2018 General Election November 6, 2018*, https://lee.electionsfl.org/Portals/Lee/Results/EL45A_2018_GENERAL.pdf (last visited Mar. 13, 2019).

⁴¹ Martin County Supervisor of Election, *2018 General Election*, <https://results.enr.clarityelections.com/FL/Martin/92448/Web02.222263/#/> (last visited Mar. 13, 2019).

⁴² Okaloosa County Supervisor of Elections, *2018 General Election*, <https://enr.electionsfl.org/OKA/Summary/2006/> (last visited Mar. 13, 2019).

⁴³ Polk County Supervisor of Elections, *2018 General Election*, <https://enr.electionsfl.org/POL/Summary/1805/> (last visited Mar. 13, 2019).

⁴⁴ TCPalm, *Florida general election 2018: St. Lucie County general election results for Nov. 6, 2018*, <https://www.tcpalm.com/story/news/politics/elections/2018/11/06/st-lucie-county-2018-general-election-results/1147110002/> (last visited Mar. 13, 2019).

⁴⁵ S. 97.021, F.S., defines the term “general election” to mean an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

B. SECTION DIRECTORY:

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

Section 2: Provides that revisions to performance audit requirements apply to referenda to adopt a discretionary sales surtax occurring on or after January 1, 2020.

Section 3: Provides an effective date of upon becoming a law.

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:

See FISCAL COMMENTS

2. Expenditures:

By requiring that any discretionary sales surtax referendum occur on the day of the general election, this bill may reduce local government expenditures to the extent local governments would have otherwise expended funds to call a special election solely for approval of a discretionary sales surtax.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Future local government adoption of local option sales surtaxes that would otherwise occur under current law may not occur because of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Subsection 18(b), art. 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.

It is unclear whether requiring a referendum to adopt a discretionary sales surtax to occur during a general election, and whether requiring approval of two-thirds of qualified electors voting in the referendum, represents a reduction in revenue raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) is to determine whether the amount of potential revenue available to counties and municipalities was reduced, then this bill does not reduce that potential and

the requirement for a two-thirds vote is not applicable. However, if the purpose of subsection 18(b) is to consider the methods for adopting a discretionary sales surtax, then the provisions of this bill (requiring a referendum to occur during a general election with approval by two-thirds of the qualified electors voting in the referendum, when currently a referendum may be held during a general, primary, or special election and approved by a majority vote) may be considered a mandate requiring a two-thirds vote of the Legislature.

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 March 5, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill in that it:

- Required a county or school district holding a discretionary sales surtax referendum to inform OPPAGA at least 180 days before the referendum is held;
- Required OPPAGA to procure a certified public accountant within 30 days of receiving the notification from the county or school district;
- Declared that any referendum by a county or school district which fails to meet performance audit requirements is void; and
- Provided similar requirements for discretionary sales surtax referenda proposed by initiative.

On March 28, 2019, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that a school district must notify OPPAGA upon adoption of a resolution to hold a discretionary sales surtax referendum;
- Required a county or school district to submit a copy of the final ordinance or resolution it adopted to OPPAGA; and
- Removed the 30-day period for OPPAGA to procure a certified public accountant to conduct the performance audit.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.