

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 and school districts 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 and 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%

Constitutional Amendments by Citizen Initiative

The Florida Constitution is called “the charter of the liberties”⁴⁵ through which Floridians vest their political power in three branches of state government, subject to certain limitations. It may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative.⁴⁶ Any citizen initiative must embrace only one subject,⁴⁷ unless it concerns limiting the power of government to raise revenue, but proposals originating from the other sources are not so limited.⁴⁸

The Florida Constitution requires the sponsor of an amendment proposed by citizen initiative to obtain a specified number of signatures on a petition to place the proposal on the ballot.⁴⁹ The petition must contain the signatures of a number of voters equal to 8 percent of the votes cast in the state in the preceding presidential election as well as 8 percent of the vote cast in that election in each of at least half of the congressional districts of the state.⁵⁰ The number of signatures required for placement on the 2018 ballot was 766,200 with a specified number of that total required to come from at least 14 of the state’s congressional districts.⁵¹

Prior to gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must first register as a Florida political committee.⁵² The sponsor then must gather the required number of signatures and after obtaining the signatures, present each signature to the appropriate supervisor of elections (supervisor) where the signee resides.⁵³ The supervisor must check⁵⁴ each signature to ensure the:

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 See *Browning v. Florida Hometown Democracy, Inc.*, PAC, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).

⁴⁶ Art. XI, Fla. Const.

⁴⁷ Art. XI, s. 3, Fla. Const.

⁴⁸ Art. XI, ss. 1, 2, 4, 6, Fla. Const.

⁴⁹ Art. XI, s. 3, Fla. Const.

⁵⁰ *Id.*

⁵¹ FLORIDA DEPARTMENT OF STATE, *2018 Initiative Petition Handbook*, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited May 20, 2019).

⁵² Ss. 100.371(2) and 106.03, F.S.

⁵³ S. 100.371(3), F.S.

⁵⁴ The sponsor is required to pay the supervisor the sum of 10 cents per signature checked or the actual cost of checking the signatures, whichever is less. S. 99.097(4), F.S.

- Elector's original signature is recorded.
- Date is correctly recorded.
- Elector is a qualified and registered Florida voter.
- Form on which the signature is recorded contains the elector's name, address, city, county, and voter registration number or date of birth.⁵⁵

The supervisors then submit their total numbers of valid signatures to the Secretary of State (Secretary).⁵⁶ Once a sponsor obtains verified signatures equal to 10 percent of the statewide requirement in at least 25 percent of Florida's congressional districts,⁵⁷ the Secretary sends the petition to the:

- Financial Impact Estimating Conference (FIEC)⁵⁸ to complete an analysis on the proposed amendment's fiscal impact within 45 days.
- Attorney General, who in turn petitions the Florida Supreme Court for an advisory opinion as to whether the proposed amendment complies with the single-subject requirement and other legal requirements.⁵⁹

The FIEC is tasked with completing two documents: a financial impact statement and an initiative financial information statement.⁶⁰ The financial impact statement is placed on the ballot to inform voters whether the proposed amendment will increase or decrease costs or revenues and if so, to what extent.⁶¹ The lengthier initiative financial information statement is available on the websites of the Secretary and the Office of Economic and Demographic Research.⁶² Each supervisor must include in the publication and mailing of sample ballots the internet addresses where the FIEC's full information statements can be viewed.⁶³ A summary of the information statements is also available at each polling place, the main office of the supervisor, and on the supervisor's website.⁶⁴

If the Secretary determines that the sponsor has collected the required number of verified signatures by February 1 of the election year,⁶⁵ he or she assigns an amendment number and certifies the proposed amendment's ballot position.⁶⁶ When the amendment is printed on the ballot, the ballot must also include:

- A ballot summary of up to 75 words summarizing the amendment's purpose.
- A ballot title including a caption of up to 15 words describing the amendment.
- The financial impact statement prepared by the FIEC.⁶⁷

⁵⁵ *Id.*

⁵⁶ S. 100.371(4), F.S.

⁵⁷ For the 2018 and 2020 elections, the number is 76,632 and must come from at least seven congressional districts. FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited May 20, 2019).

⁵⁸ The Florida Constitution provides that the legislature must provide by general law for the provision of a statement to public regarding the probable financial impact of any amendment proposed by initiative. Art. XI, s. 5(c), Fla. Const. The legislature created the FIEC to review, analyze, and estimate the fiscal impact of constitutional amendments proposed by citizen initiative. It consists of four persons: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research or a designee; one professional Senate staffer; and one professional House staffer. S. 100.371(5)(c)1., F.S.

⁵⁹ S. 16.061, F.S.; FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Apr. 11, 2019); art. IV, s. 10, Fla. Const.; art. XI, s. 3, Fla. Const.; *Advisory Opinion to the Attorney General re Rights of Electricity Consumers Regarding Solar Energy Choice*, 188 So. 3d 822 (Fla. 2016) (outlining the scope of the Supreme Court's analysis when determining whether to approve a constitutional amendment for placement on the ballot).

⁶⁰ S. 100.371(5), F.S.

⁶¹ Ss. 100.371(5)(c) and 101.161(1), F.S.

⁶² S. 100.371(5)(e)5., F.S.

⁶³ Ss. 100.371(5)(e)5. and 101.20, F.S.

⁶⁴ S. 100.371(5)(e), F.S.

⁶⁵ Art. XI, s. 5(b), Fla. Const.

⁶⁶ Ss. 100.371(4) and 101.161, F.S.

⁶⁷ S. 101.161(1), F.S.

At the general election, if at least 60 percent of the qualified electors voting on the amendment vote yes,⁶⁸ the proposed amendment is incorporated into the Florida Constitution.⁶⁹ The amendment becomes effective on the first Tuesday after the first Monday in January following the election or on a different date if specified in the amendment.⁷⁰

Effect of the Bill

Discretionary Sales Surtax Referenda

Effective January 1, 2020, the bill requires any referendum to adopt or amend a discretionary sales surtax be held at a general election.⁷¹

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 provide OPPAGA with a copy of the final ordinance or resolution calling for the referendum at least 180 days before the referendum is held. 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. However, the bill requires OPPAGA to procure the certified public accountant to conduct the performance audit within 60 days of receiving the final resolution or ordinance. 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.

For any proposal to adopt the Charter County and Regional Transportation System surtax by initiative, the bill requires the petition sponsor, at least 180 days before the proposed referendum, to:

- Provide a copy of the proposed resolution or ordinance to OPPAGA; and
- File the initiative petition, including the required signatures, with the supervisor. The supervisor must verify the signatures and retain the signature forms.

Failure of an initiative sponsor to comply with these requirements renders any referendum held void.

Initiative Sponsors and Paid Petition Circulators

The bill requires a paid petition circulator of a constitutional amendment proposed through the citizen initiative process to register with the Secretary before collecting signatures. The paid petition circulator must provide to the Secretary:

- His or her name, permanent address, temporary address, and date of birth.
- A Florida address where the circulator will accept service of process.
- A statement that the circulator consents to the jurisdiction of Florida courts.
- Any information required by the Secretary to verify the circulator's identity or address.

In addition, a paid petition circulator must provide an affidavit with each petition form gathered. The affidavit must include the circulator's name and permanent address and a signed statement verifying, under penalties of perjury, that the petition was signed in the circulator's presence.

⁶⁸ Art. XI, s. 5(e), Fla. Const.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ 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.

The bill requires petition forms to be submitted to the supervisor within 30 days of signature. The date when the elector signs the petition is presumed to be the date of collection. The sponsor incurs a fine of \$50 for each petition form submitted to the supervisor more than 30 days after the elector signed the petition. The sponsor incurs a fine of \$500 for each petition form not submitted to the supervisor at all. If the sponsor acted willfully, the fines are raised to \$250 and \$1,000 per petition, respectively. The sponsor can avoid fines if it shows that failure to deliver the petitions was due to force majeure or impossibility of performance. If the Secretary believes these provisions have been violated, the Secretary may refer the matter to the Attorney General for enforcement.

The Division of Elections (division) within the Department of State or the supervisor must provide petition forms to registered paid petition circulators that contain information identifying the paid petition circulator. The division must maintain a database of registered paid petition circulators and petition forms assigned to each, updating the database daily with respect to petition forms. The supervisor must provide to the division information relating to petition forms assigned to and received from paid petition circulators.

The bill requires the division to promulgate a complaint form for any elector who claims his or her signature was forged or misrepresented or whose petition form was not delivered to the supervisor. The division must also adopt rules to ensure the integrity of the petition form gathering process, including a requirement that a sponsor of an initiative petition be able to account for all petition forms used by its agents.

The bill creates the following misdemeanors:

- Compensating an initiative petition circulator based on the number of petitions gathered is punishable as a first-degree misdemeanor; and
- Failure of a paid petition circulator to register with the Secretary before collecting petition forms is punishable as a second-degree misdemeanor.

Financial Impact Estimating Conference

The bill allows the FIEC an extra 30 days to complete its analysis after receiving a proposed amendment, with the time being tolled when the Legislature is in session, and an extra 75 words for its financial impact statement.

The FIEC must include in its analysis an estimation of the proposed amendment's impact on the state budget and the state and local economy. If the financial impact statement estimates that the proposed amendment will cause increased costs, decreased revenues, a negative impact on the economy, or an indeterminate fiscal impact, the ballot must include a statement indicating such effect in bold font. The supervisor must include a copy of the FIEC's financial information summaries in the publication or mailing for sample ballots.

The bill requires the Coordinator of the Office of Economic and Demographic Research, upon receipt of a proposed revision or amendment, to contact the sponsor to request an official list of all persons authorized to speak on its behalf to the FIEC.

Effective Date for Constitutional Amendment Initiative Provisions

The bill's prohibition on the payment of petition circulators based on the number of petitions collected is effective upon the bill becoming a law, and the other provisions are effective 30 days thereafter. The changes apply to all initiative amendments proposed for the 2020 ballot and each ballot thereafter; however, nothing in the bill affects the validity of a petition gathered or a contract entered into before the bill's effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

The bill requires the FIEC to include in its estimations the economic impact of a proposed amendment on the state budget and state and local economy, which may have an indeterminate negative fiscal impact on state government.

The bill requires the division or the supervisor to provide petition forms containing identifying information to registered paid petition circulators. The division must also maintain a database of registered paid petition circulators and petition forms assigned to each, and update the database daily with respect to petition forms. These requirements may have an indeterminate negative fiscal impact on the state and local governments.