

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 777 Local Tax Referenda Requirements

**SPONSOR(S):** Public Integrity & Elections Committee, Robinson, W. and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Elections Committee	18 Y, 0 N, As CS	Rubottom	Rubottom
2) Ways & Means Committee	17 Y, 0 N	LaTorre	Aldridge
3) State Affairs Committee		Leshko	Williamson

### SUMMARY ANALYSIS

Counties and municipalities have authority to levy a variety of optional taxes conditioned upon approval of a majority of electors voting in a referendum. Presently, a number of such taxes may be approved in special elections. The referenda approving such taxes are held at elections called by the applicable local governing body. Such elections may be special elections or may be held in conjunction with other local elections, primary elections or general elections.

The bill requires referenda authorizing certain optional local taxes to be held at a general election. The affected taxes are as follows:

- Tourist development tax.
- Areas of critical state concern tourist impact tax.
- Children's services independent special district tax.
- County temporary excess ad valorem millage.
- Municipal temporary excess ad valorem millage.
- County transportation motor fuel tax.
- Local option fuel tax.
- School district millage.

The bill does not appear to have a fiscal impact on the state, but may have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Counties and municipalities have authority to levy a variety of optional taxes conditioned upon approval of a majority of electors voting in a referendum. Presently, a number of such taxes may be approved in special elections. The referenda approving such taxes are held at elections called by the applicable local governing body. Such elections may be special elections or may be held in conjunction with other local elections, primary elections or general elections.<sup>1</sup>

##### Tourist Development Tax<sup>2</sup>

A tourist development tax is a county tax on consideration paid on residential rentals of six months or less. The tax funds tourism-related uses specified in the authorizing statute. The initiation of the tax must be approved by a referendum of voters living in the jurisdiction in which the tax is imposed. The original tax may be repealed by a referendum initiated by a petition signed by 15 percent of voters<sup>3</sup> subject to the interest of the holders of any revenue bonds repayment of which is secured by the tax. Once the tax is in place, additional taxes<sup>4</sup> may be levied by a vote of the county commissioners.

##### Areas of Critical State Concern Tourist Impact Tax<sup>5</sup>

An area of critical state concern tourist impact tax is a tax on the consideration paid on residential rentals of six months or less imposed by a county creating a land authority pursuant to the state laws regulating land use planning in areas of critical state concern.<sup>6</sup> The tax is distributed to the land authority for use in the area of critical state concern pursuant to the land authority's responsibilities<sup>7</sup> and to the governing body of the county to offset ad valorem taxes lost due to public acquisitions provided for in the act establishing the areas of critical state concern.<sup>8</sup> The tax may not take effect until approval of a referenda by a majority of the voters residing in the affected jurisdiction. The referendum must be held in conjunction with a general or special election.<sup>9</sup>

##### Children's Services Independent Special District Tax

The children's services independent special district tax is an ad valorem tax not to exceed 0.5 mills of assessed valuation of all property subject to county ad valorem taxes, assessed in a county having an independent special district to fund children's services in the county. The ad valorem tax must be approved initially by a majority vote of county voters.<sup>10</sup>

##### Temporary Excess Ad Valorem Millage

A temporary excess ad valorem millage is a tax in excess of the 10-mill limit,<sup>11</sup> imposed for a period not to exceed two years in a county, dependent special district, or municipality. The levy must be approved by a majority vote of the county, district, or municipal voters.<sup>12</sup>

##### County Transportation Motor Fuel Tax<sup>13</sup>

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<sup>1</sup> S. 5(a), Art. IV, Fl. Const. Ss. 100.151, 100.342, 100.351, F.S.

<sup>2</sup> S. 125.0104, F.S.

<sup>3</sup> S. 125.0104(6)(d), F.S.

<sup>4</sup> S. 125.0104(3)(l), (m), and (n), F.S. Two of the three additional taxes require extraordinary votes for enactment.

<sup>5</sup> S. 125.0108, F.S.

<sup>6</sup> Ss. 380.05 to 380.0685, F.S.

<sup>7</sup> S. 380.0666, F.S.

<sup>8</sup> Ch. 86-170, Laws of Fla.

<sup>9</sup> S. 125.0108(5), F.S.

<sup>10</sup> S. 125.901(1), F.S. (The revenues collected fund the services authorized in s. 125.901, F.S.)

<sup>11</sup> Ss. 200.071 and 200.081, F.S.

<sup>12</sup> Ss. 200.091 and 200.101, F.S.

<sup>13</sup> Ss. 206.41(1)(d), 206.87(1)(b), and 336.021, F.S.

The county transportation motor fuel tax is a local option, 1 cent per gallon fuel tax for specified<sup>14</sup> transportation expenditures. The tax is identified as “the ninth cent fuel tax”<sup>15</sup> and may be levied by any county by extraordinary vote of the membership of the governing body or subject to a referendum.<sup>16</sup>

#### Local Option Fuel Taxes<sup>17</sup>

With regard to local option fuel taxes, two different taxes<sup>18</sup> may be levied, each up to 6 cents per gallon on motor fuels. They may be levied by ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.<sup>19</sup>

#### School District Millage<sup>20</sup>

School district millage is ad valorem tax levied for specified periods including millage supplementing the minimal local taxes required by the education code. One tax may be used for school operational purposes<sup>21</sup> or the other for any lawful school district purpose.<sup>22</sup>

### **Effect of Proposed Changes**

The bill requires a referenda approving each of the above local taxes to be held at a general election only. With respect to the tourist development tax, the bill affects the referenda called to initiate the tax<sup>23</sup> but does not appear to affect the election timing of the referenda authorized to repeal the tax.<sup>24</sup>

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 125.0104, F.S., relating to tourist development taxes.

Section 2 amends s. 125.0108, F.S., relating to tourist impact taxes.

Section 3 amends s. 125.901, F.S., relating to children's services independent special district property taxes.

Section 4 amends s. 200.091, F.S., relating to increases in county ad valorem tax millage.

Section 5 amends s. 200.101, F.S., relating to increases in municipal ad valorem tax millage.

Section 6 amends s. 336.021, F.S., relating to the ninth-cent fuel tax.

Section 7 amends s. 336.025, F.S., relating to local option fuel taxes.

Section 8 amends s. 1011.73, F.S., relating to school district millage.

Section 9 provides an effective date of July 1, 2022.

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<sup>14</sup> Ss. 336.021(1)(a) and 336.025(7), F.S.

<sup>15</sup> S. 336.021(2)(a), F.S.

<sup>16</sup> S. 336.021(1)(a), F.S.

<sup>17</sup> S. 336.025, F.S.

<sup>18</sup> S. 336.025(1)(a) and (b), F.S.

<sup>19</sup> S. 336.025(1)(b) and (3)(a), F.S.

<sup>20</sup> S. 1011.73, F.S.

<sup>21</sup> Ss. 1011.71(9) and 1011.73(2), F.S.

<sup>22</sup> S. 9(a), Art. VII, Fl. Const. S. 1011.73(1), F.S.

<sup>23</sup> S. 125.0104(6)(a) and (b), F.S.

<sup>24</sup> S. 125.0104(6)(d), F.S.

## 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:

None.

2. Expenditures:

By requiring that local option tax referenda 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 such local option taxes.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities. While the bill limits the flexibility that counties and municipalities have for scheduling a referendum, this does not appear to “reduce the authority” they have to raise revenues. In addition, the provisions of the bill related to the scheduling of referenda appear to be “election laws,” which are exempt from the mandate provisions of s. 18, Art. VII, Fl. Const.<sup>25</sup>

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

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<sup>25</sup> S. 18(d), Art. VII, Fl. Const.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 12, 2022, the Public Integrity & Elections Committee considered HB 777, adopted one amendment and reported the bill favorably as a committee substitute. The amendment deleted Section 6 of the original bill which amended s. 255.0992, F.S. to conform language in a procurement law referencing referenda approving charter county and regional transportation system sales surtaxes to changes made in previous law.

This analysis is drafted to the committee substitute as approved by the Public Integrity & Elections Committee.