

CITY COUNCIL RESEARCH DIVISION
LEGISLATIVE SUMMARY

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Bill Type and Number: 2019-598

Introducer/Sponsor(s): Council President at the request of the Office of General Counsel

Date of Introduction: August 13, 2019

Committee(s) of Reference: R

Date of Analysis: August 14, 2019

Type of Action: Resolution requesting Attorney General's Opinion

Bill Summary: This bill is a resolution which requests an Attorney General Opinion in a matter related to 212.055(6) Florida Statutes:

(6) *SCHOOL CAPITAL OUTLAY SURTAX.*—

(a) *The school board in each county may levy, pursuant to resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.*

(b) *The resolution shall include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax. The statement shall conform to the requirements of s. 101.161 and shall be placed on the ballot by the governing body of the county. The following question shall be placed on the ballot:*

FOR THE *CENTS TAX*

AGAINST THE *CENTS TAX*

(c) *The resolution providing for the imposition of the surtax shall set forth a plan for use of the surtax proceeds for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of 5 or more years, and any land acquisition, land improvement, design, and engineering costs related thereto. Additionally, the plan shall include the costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the school district. Surtax revenues may be used for the purpose of servicing bond indebtedness to finance projects authorized by this subsection, and any interest accrued thereto may be held in trust to finance such projects. Neither the proceeds of the surtax nor any interest accrued thereto shall be used for operational expenses.*

(d) *Surtax revenues collected by the Department of Revenue pursuant to this subsection shall be distributed to the school board imposing the surtax in accordance with law.*

This resolution also addresses the authorization for a discretionary sales surtax for capital expenditures. Emergency passage is requested because legislation requesting action on the referendum is pending before Council.

The following questions are being posed to the Attorney General of Florida through this resolution:

- Whether the School Board may call a special election.
- Whether the School Board may call a referendum election.
- Whether the City Council has the discretion to select the date of the referendum election.
- Whether the City Council has the discretion to reject a School Board request to call a special election to place a School Capital Surtax on the ballot.

- Whether the City Council has the discretion to refuse to place a School Capital Surtax on any ballot.
- Whether a court has the power to order the Council to call a special election to hold a referendum on a School Capital Surtax.
- Whether a court has the power to order the Council to place a School Capital Surtax on any ballot.

Background Information: On May 7, 2019 the Duval County School Board passed a resolution requesting the City Council, as governing body of the county, to direct the Supervisor of Elections to hold a county-wide special election on November 5, 2019. On August 13, 2019 the General Counsel issued a binding legal opinion which stated that the City Council cannot be mandated to approve a tax and that it cannot be mandated to approve a referendum for a tax. According to the General Counsel, while it is the School Board that initiates the surtax proposition by approving a resolution that levies it, authorizes the statement and enacts a plan to carry it out, it is the Council that approves the referendum, as well as the timing as to when that ballot measure happens. This emergency resolution will be immediately delivered to the Attorney General requesting her opinion on this issue.

General Counsel Binding Legal Opinion 19-03 states that:

- The School Board may not call a special election.
- The School Board may not call a referendum election.
- The City Council has the discretion to select the date of the referendum election.
- The City Council has the discretion to reject a School Board request to call a special election to place a School Capital Surtax on the ballot.
- The City Council has the discretion to refuse to place a School Capital Surtax on any ballot.
- A court does not have the power to order the Council to call a special election to hold a referendum on a School Capital Surtax.
- A court does not have the power to order the Council to place a School Capital Surtax on any ballot.

Policy Impact Area: School Capital Outlay Surtax Referendum

Fiscal Impact: No direct cost to the City

Analyst: Hampsey