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CS/CS/HB 5, Engrossed 1

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1
 2 An act relating to ballot measures; amending s.
 3 212.055, F.S.; providing that a referendum to adopt or
 4 amend a local discretionary sales surtax must be held
 5 at a general election; requiring a petition sponsor of
 6 an initiative to adopt a charter county and regional
 7 transportation system surtax to comply with specified
 8 requirements within a specified timeframe before the
 9 proposed referendum; requiring a county to make the
 10 proposed referendum and a specified legal opinion
 11 available on its official website; requiring the
 12 Office of Program Policy Analysis and Government
 13 Accountability, upon receiving a certain notice, to
 14 procure a certified public accountant for a
 15 performance audit; requiring a supervisor of elections
 16 to verify petition signatures and retain signature
 17 forms in a specified manner; providing that an
 18 initiative sponsor's failure to comply with the
 19 specified requirements renders any referendum held
 20 void; revising requirements and procedures for
 21 counties, school districts, and the office relating to
 22 performance audits; providing that the failure to
 23 comply with certain requirements renders any
 24 referendum held to adopt a discretionary sales surtax
 25 void; amending s. 97.021, F.S.; providing definitions;

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26 | amending s. 100.371, F.S.; requiring a paid petition
 27 | circulator to register with the Secretary of State and
 28 | provide certain information; requiring petition forms
 29 | to be made available to sponsors; requiring the
 30 | secretary to maintain a specified database; requiring
 31 | supervisors of elections to provide specified
 32 | information to the division of elections; requiring
 33 | the division of elections to keep specified
 34 | information in a database; providing requirements for
 35 | gathering petition forms; providing for the imposition
 36 | of fines for failure to deliver petition forms within
 37 | a specified time period; providing for defenses;
 38 | allowing the Secretary of State to refer petition form
 39 | violations to the Attorney General for enforcement;
 40 | requiring the division to adopt rules; providing that
 41 | the date the elector signs a petition form is presumed
 42 | to be the date the sponsor collected the form;
 43 | revising the timeframe for and the information that
 44 | must be included in a Financial Impact Estimating
 45 | Conference analysis and financial impact statement;
 46 | revising information that the Financial Impact
 47 | Estimating Conference should include in an initiative
 48 | financial information statement; requiring the Office
 49 | of Economic and Demographic Research to request a list
 50 | of persons authorized to speak on behalf of a sponsor;

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51 expanding the word limit for a financial impact
 52 statement; requiring certain language to appear on the
 53 ballot in specified situations; requiring each
 54 supervisor to include certain summaries in certain
 55 publications or mailings; conforming a provision;
 56 creating s. 104.186, F.S.; prohibiting compensation
 57 for initiative petition circulators based on the
 58 number of petition forms gathered; providing
 59 penalties; creating s. 104.187, F.S.; providing
 60 penalties for failure to register as a petition
 61 circulator; providing applicability; providing
 62 effective dates.

63

64 Be It Enacted by the Legislature of the State of Florida:

65

66 Section 1. Effective January 1, 2020, present subsection
 67 (10) of section 212.055, Florida Statutes, is redesignated as
 68 subsection (11) and amended, a new subsection (10) is added to
 69 that section, and paragraph (c) of subsection (1), paragraph (b)
 70 of subsection (5), and paragraph (b) of subsection (8) are
 71 amended, to read:

72 212.055 Discretionary sales surtaxes; legislative intent;
 73 authorization and use of proceeds.—It is the legislative intent
 74 that any authorization for imposition of a discretionary sales
 75 surtax shall be published in the Florida Statutes as a

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76 subsection of this section, irrespective of the duration of the
77 levy. Each enactment shall specify the types of counties
78 authorized to levy; the rate or rates which may be imposed; the
79 maximum length of time the surtax may be imposed, if any; the
80 procedure which must be followed to secure voter approval, if
81 required; the purpose for which the proceeds may be expended;
82 and such other requirements as the Legislature may provide.
83 Taxable transactions and administrative procedures shall be as
84 provided in s. 212.054.

85 (1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM
86 SURTAX.—

87 (c)1. The proposal to adopt a discretionary sales surtax
88 as provided in this subsection and to create a trust fund within
89 the county accounts shall be placed on the ballot in accordance
90 with law and must be approved in a referendum held at a general
91 election in accordance with subsection (10) at a time to be set
92 at the discretion of the governing body.

93 2. If the proposal to adopt a surtax is by initiative, the
94 petition sponsor must, at least 180 days before the proposed
95 referendum, comply with all of the following:

96 a. Provide a copy of the final resolution or ordinance to
97 the Office of Program Policy Analysis and Government
98 Accountability. The Office of Program Policy Analysis and
99 Government Accountability shall procure a certified public
100 accountant in accordance with subsection (11) for the

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101 performance audit.

102 b. File the initiative petition and its required valid
 103 signatures with the supervisor of elections. The supervisor of
 104 elections shall verify signatures and retain signature forms in
 105 the same manner as required for initiatives under s.
 106 100.371(11).

107 3. The failure of an initiative sponsor to comply with the
 108 requirements of subparagraph 2. renders any referendum held
 109 void.

110 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined
 111 in s. 125.011(1) may levy the surtax authorized in this
 112 subsection pursuant to an ordinance either approved by
 113 extraordinary vote of the county commission or conditioned to
 114 take effect only upon approval by a majority vote of the
 115 electors of the county voting in a referendum. In a county as
 116 defined in s. 125.011(1), for the purposes of this subsection,
 117 "county public general hospital" means a general hospital as
 118 defined in s. 395.002 which is owned, operated, maintained, or
 119 governed by the county or its agency, authority, or public
 120 health trust.

121 (b) If the ordinance is conditioned on a referendum, the
 122 proposal to adopt the county public hospital surtax shall be
 123 placed on the ballot in accordance with subsection (10) ~~law at a~~
 124 ~~time to be set at the discretion of the governing body.~~ The
 125 referendum question on the ballot shall include a brief general

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126 description of the health care services to be funded by the
 127 surtax.

128 (8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

129 (b) Upon the adoption of the ordinance, the levy of the
 130 surtax must be placed on the ballot by the governing authority
 131 of the county enacting the ordinance. The ordinance will take
 132 effect if approved by a majority of the electors of the county
 133 voting in a referendum held for such purpose. The referendum
 134 shall be placed on the ballot of a general ~~regularly scheduled~~
 135 election. The ballot for the referendum must conform to the
 136 requirements of s. 101.161.

137 (10) DATES FOR REFERENDA.—A referendum to adopt or amend a
 138 local government discretionary sales surtax under this section
 139 must be held at a general election as defined in s. 97.021.

140 ~~(11)-(10)~~ PERFORMANCE AUDIT.—

141 ~~(a) For any referendum held on or after March 23, 2018,~~ To
 142 adopt a discretionary sales surtax under this section, an
 143 independent certified public accountant licensed pursuant to
 144 chapter 473 shall conduct a performance audit of the program
 145 associated with the proposed surtax ~~adoption proposed by the~~
 146 ~~county or school district.~~

147 (b)1. At least 180 days before the referendum is held, the
 148 county or school district shall provide a copy of the final
 149 resolution or ordinance to the Office of Program Policy Analysis
 150 and Government Accountability.

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151 2. Within 60 days after receiving the final resolution or
 152 ordinance, the Office of Program Policy Analysis and Government
 153 Accountability shall procure the certified public accountant and
 154 may use carryforward funds to pay for the services of the
 155 certified public accountant.

156 ~~3.(b)~~ At least 60 days before the referendum is held, the
 157 performance audit must ~~shall~~ be completed and the audit report,
 158 including any findings, recommendations, or other accompanying
 159 documents, must ~~shall~~ be made available on the official website
 160 of the county or school district.

161 4. The county or school district shall keep the
 162 information on its website for 2 years from the date it was
 163 posted.

164 5. The failure to comply with the requirements under
 165 subparagraph 1. or subparagraph 3. renders any referendum held
 166 to adopt a discretionary sales surtax void.

167 (c) For purposes of this subsection, the term "performance
 168 audit" means an examination of the program conducted according
 169 to applicable government auditing standards or auditing and
 170 evaluation standards of other appropriate authoritative bodies.
 171 At a minimum, a performance audit must include an examination of
 172 issues related to the following:

- 173 1. The economy, efficiency, or effectiveness of the
 174 program.
- 175 2. The structure or design of the program to accomplish

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176 its goals and objectives.

177 3. Alternative methods of providing program services or
178 products.

179 4. Goals, objectives, and performance measures used by the
180 program to monitor and report program accomplishments.

181 5. The accuracy or adequacy of public documents, reports,
182 and requests prepared by the county or school district which
183 relate to the program.

184 6. Compliance of the program with appropriate policies,
185 rules, and laws.

186 (d) This subsection does not apply to a referendum held to
187 adopt the same discretionary surtax that was in place during the
188 month of December immediately before the date of the referendum.

189 Section 2. Subsections (27) through (45) of s. 97.021,
190 F.S., are renumbered as subsections (28) through (46),
191 respectively, and new subsection (27) is added to that section,
192 to read:

193 97.021 Definitions.—For the purposes of this code, except
194 where the context clearly indicates otherwise, the term:

195 (27) "Petition circulator" means an entity or individual
196 who collects signatures for compensation for the purpose of
197 qualifying a proposed constitutional amendment for ballot
198 placement.

199 Section 3. Effective 30 days after the effective date of
200 this act, subsections (3) through (7) of section 100.371,

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201 Florida Statutes, are renumbered as subsections (11) through
 202 (15), respectively, present subsections (5) and (6) are amended,
 203 and new subsections (3) through (10) are added to that section,
 204 to read:

205 100.371 Initiatives; procedure for placement on ballot.—

206 (3) A person may not collect signatures or initiative
 207 petitions for compensation unless the person is registered as a
 208 petition circulator with the Secretary of State.

209 (4) An application for registration must be submitted in
 210 the format required by the Secretary of State and must include
 211 the following:

212 (a) The information required to be on the petition form
 213 under s. 101.161, including the ballot summary and title as
 214 approved by the Secretary of State.

215 (b) The applicant's name, permanent address, temporary
 216 address, if applicable, and date of birth.

217 (c) An address in this state at which the applicant will
 218 accept service of process related to disputes concerning the
 219 petition process, if the applicant is not a resident of this
 220 state.

221 (d) A statement that the applicant consents to the
 222 jurisdiction of the courts of this state in resolving disputes
 223 concerning the petition process.

224 (e) Any information required by the Secretary of State to
 225 verify the applicant's identity or address.

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226 (5) All petitions collected by a petition circulator must
 227 contain, in a format required by the Secretary of State, a
 228 completed Petition Circulator's Affidavit which includes:

229 (a) The circulator's name and permanent address;

230 (b) The following statement, which must be signed by the
 231 circulator:

232
 233 By my signature below, as petition circulator, I verify
 234 that the petition was signed in my presence. Under
 235 penalties of perjury, I declare that I have read the
 236 foregoing Petition Circulator's Affidavit and the facts
 237 stated in it are true.

238
 239 (6) The division or the supervisor of elections shall make
 240 petition forms available to registered petition circulators. All
 241 such forms must contain information identifying the petition
 242 circulator to which the forms are provided. The division shall
 243 maintain a database of all registered petition circulators and
 244 the petition forms assigned to each. Each supervisor of
 245 elections shall provide to the division information on petition
 246 forms assigned to and received from petition circulators. The
 247 information must be provided in a format and at times as
 248 required by the division by rule. The division must update
 249 information on petition forms daily and make the information
 250 publicly available.

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251 (7) (a) A sponsor that collects petition forms or uses a
 252 petition circulator to collect petition forms serves as a
 253 fiduciary to the elector signing the petition form, ensuring
 254 that any petition form entrusted to the petition circulator
 255 shall be promptly delivered to the supervisor of elections
 256 within 30 days after the elector signs the form. If a petition
 257 form collected by any petition circulator is not promptly
 258 delivered to the supervisor of elections, the sponsor is liable
 259 for the following fines:

260 1. A fine in the amount of \$50 for each petition form
 261 received by the supervisor of elections more than 30 days after
 262 the elector signed the petition form or the next business day,
 263 if the office is closed. A fine in the amount of \$250 for each
 264 petition form received if the sponsor or petition circulator
 265 acted willfully.

266 2. A fine in the amount of \$500 for each petition form
 267 collected by a petition circulator which is not submitted to the
 268 supervisor of elections. A fine in the amount of \$1,000 for any
 269 petition form not submitted if the sponsor or petition
 270 circulator acted willfully.

271 (b) A showing by the sponsor that the failure to deliver
 272 the petition form within the required timeframe is based upon
 273 force majeure or impossibility of performance is an affirmative
 274 defense to a violation of this subsection. The fines described
 275 in this subsection may be waived upon a showing that the failure

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276 | to deliver the petition form promptly is based upon force
 277 | majeure or impossibility of performance.

278 | (8) If the Secretary of State reasonably believes that a
 279 | person or entity has committed a violation of this section, the
 280 | secretary may refer the matter to the Attorney General for
 281 | enforcement. The Attorney General may institute a civil action
 282 | for a violation of this section or to prevent a violation of
 283 | this section. An action for relief may include a permanent or
 284 | temporary injunction, a restraining order, or any other
 285 | appropriate order.

286 | (9) The division shall adopt by rule a complaint form for
 287 | an elector who claims to have had his or her signature
 288 | misrepresented, forged, or not delivered to the supervisor. The
 289 | division shall also adopt rules to ensure the integrity of the
 290 | petition form gathering process, including rules requiring
 291 | sponsors to account for all petition forms used by their agents.
 292 | Such rules may require a sponsor or petition circulator to
 293 | provide identification information on each petition form as
 294 | determined by the department as needed to assist in the
 295 | accounting of petition forms.

296 | (10) The date on which an elector signs a petition form is
 297 | presumed to be the date on which the petition circulator
 298 | received or collected the petition form.

299 | (13)-(5)-(a) Within ~~75~~ 45 days after receipt of a proposed
 300 | revision or amendment to the State Constitution by initiative

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301 petition from the Secretary of State, the Financial Impact
302 Estimating Conference shall complete an analysis and financial
303 impact statement to be placed on the ballot of the estimated
304 increase or decrease in any revenues or costs to state or local
305 governments, estimated economic impact on the state and local
306 economy, and the overall impact to the state budget resulting
307 from the proposed initiative. The 75-day time limit is tolled
308 when the Legislature is in session. The Financial Impact
309 Estimating Conference shall submit the financial impact
310 statement to the Attorney General and Secretary of State.

311 (b) Immediately upon receipt of a proposed revision or
312 amendment from the Secretary of State, the Coordinator of the
313 Office of Economic and Demographic Research shall contact the
314 person identified as the sponsor to request an official list of
315 all persons authorized to speak on behalf of the named sponsor
316 and, if there is one, the sponsoring organization at meetings
317 held by the Financial Impact Estimating Conference. All other
318 persons shall be deemed interested parties or proponents or
319 opponents of the initiative. The Financial Impact Estimating
320 Conference shall provide an opportunity for any representatives
321 of the sponsor, interested parties, proponents, or opponents of
322 the initiative to submit information and may solicit information
323 or analysis from any other entities or agencies, including the
324 Office of Economic and Demographic Research.

325 (c) All meetings of the Financial Impact Estimating

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326 Conference shall be open to the public. The President of the
327 Senate and the Speaker of the House of Representatives, jointly,
328 shall be the sole judge for the interpretation, implementation,
329 and enforcement of this subsection.

330 1. The Financial Impact Estimating Conference is
331 established to review, analyze, and estimate the financial
332 impact of amendments to or revisions of the State Constitution
333 proposed by initiative. The Financial Impact Estimating
334 Conference shall consist of four principals: one person from the
335 Executive Office of the Governor; the coordinator of the Office
336 of Economic and Demographic Research, or his or her designee;
337 one person from the professional staff of the Senate; and one
338 person from the professional staff of the House of
339 Representatives. Each principal shall have appropriate fiscal
340 expertise in the subject matter of the initiative. A Financial
341 Impact Estimating Conference may be appointed for each
342 initiative.

343 2. Principals of the Financial Impact Estimating
344 Conference shall reach a consensus or majority concurrence on a
345 clear and unambiguous financial impact statement, no more than
346 150 ~~75~~ words in length, and immediately submit the statement to
347 the Attorney General. Nothing in this subsection prohibits the
348 Financial Impact Estimating Conference from setting forth a
349 range of potential impacts in the financial impact statement.
350 Any financial impact statement that a court finds not to be in

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351 accordance with this section shall be remanded solely to the
352 Financial Impact Estimating Conference for redrafting. The
353 Financial Impact Estimating Conference shall redraft the
354 financial impact statement within 15 days.

355 3. If the members of the Financial Impact Estimating
356 Conference are unable to agree on the statement required by this
357 subsection, or if the Supreme Court has rejected the initial
358 submission by the Financial Impact Estimating Conference and no
359 redraft has been approved by the Supreme Court by 5 p.m. on the
360 75th day before the election, the following statement shall
361 appear on the ballot pursuant to s. 101.161(1): "The financial
362 impact of this measure, if any, cannot be reasonably determined
363 at this time."

364 (d) The financial impact statement must be separately
365 contained and be set forth after the ballot summary as required
366 in s. 101.161(1). If the financial impact statement estimates
367 increased costs, decreased revenues, a negative impact on the
368 state or local economy, or an indeterminate impact for any of
369 these areas, the ballot must include a statement indicating such
370 estimated effect in bold font.

371 (e)1. Any financial impact statement that the Supreme
372 Court finds not to be in accordance with this subsection shall
373 be remanded solely to the Financial Impact Estimating Conference
374 for redrafting, provided the court's advisory opinion is
375 rendered at least 75 days before the election at which the

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376 question of ratifying the amendment will be presented. The
377 Financial Impact Estimating Conference shall prepare and adopt a
378 revised financial impact statement no later than 5 p.m. on the
379 15th day after the date of the court's opinion.

380 2. If, by 5 p.m. on the 75th day before the election, the
381 Supreme Court has not issued an advisory opinion on the initial
382 financial impact statement prepared by the Financial Impact
383 Estimating Conference for an initiative amendment that otherwise
384 meets the legal requirements for ballot placement, the financial
385 impact statement shall be deemed approved for placement on the
386 ballot.

387 3. In addition to the financial impact statement required
388 by this subsection, the Financial Impact Estimating Conference
389 shall draft an initiative financial information statement. The
390 initiative financial information statement should describe in
391 greater detail than the financial impact statement any projected
392 increase or decrease in revenues or costs that the state or
393 local governments would likely experience and the estimated
394 economic impact on the state and local economy if the ballot
395 measure were approved. If appropriate, the initiative financial
396 information statement may include both estimated dollar amounts
397 and a description placing the estimated dollar amounts into
398 context. The initiative financial information statement must
399 include both a summary of not more than 500 words and additional
400 detailed information that includes the assumptions that were

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401 made to develop the financial impacts, workpapers, and any other
 402 information deemed relevant by the Financial Impact Estimating
 403 Conference.

404 4. The Department of State shall have printed, and shall
 405 furnish to each supervisor of elections, a copy of the summary
 406 from the initiative financial information statements. The
 407 supervisors shall have the summary from the initiative financial
 408 information statements available at each polling place and at
 409 the main office of the supervisor of elections upon request.

410 5. The Secretary of State and the Office of Economic and
 411 Demographic Research shall make available on the Internet each
 412 initiative financial information statement in its entirety. In
 413 addition, each supervisor of elections whose office has a
 414 website shall post the summary from each initiative financial
 415 information statement on the website. Each supervisor shall
 416 include a copy of each summary from the initiative financial
 417 information statements and the Internet addresses for the
 418 information statements on the Secretary of State's and the
 419 Office of Economic and Demographic Research's websites in the
 420 publication or mailing required by s. 101.20.

421 ~~(14)-(6)~~ The Department of State may adopt rules in
 422 accordance with s. 120.54 to carry out the provisions of
 423 subsections (1)-(14) ~~(1)-(5)~~.

424 Section 4. Section 104.186, Florida Statutes, is created
 425 to read:

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426 104.186 Initiative petitions; violations.- A person who
 427 compensates a petition circulator as defined in s. 97.021 based
 428 on the number of petition forms gathered commits a misdemeanor
 429 of the first degree, punishable as provided in s. 775.082 or s.
 430 775.083. This section does not prohibit employment relationships
 431 that do not base payment on the number of signatures collected.

432 Section 5. Effective 30 days after the effective date of
 433 this act, section 104.187, Florida Statutes, is created to read:

434 104.187 Initiative petitions; registration.- A person who
 435 violates s. 100.371(3) commits a misdemeanor of the second
 436 degree, punishable as provided in s. 775.082 or 775.083.

437 Section 6. The provisions of this act apply to all
 438 revisions or amendments to the State Constitution by initiative
 439 that are proposed for the 2020 election ballot and each ballot
 440 thereafter; provided, however, that nothing in this act affects
 441 the validity of any petition form gathered before the effective
 442 date of this act or any contract entered into before the
 443 effective date of this act.

444 Section 7. Except as otherwise expressly provided in this
 445 act, this act shall take effect upon becoming a law.