



BOARD OF COUNTY COMMISSIONERS

County Attorney's Office  
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**Inter-Office Memo**

**TO:** Morris Richardson, County Attorney  
**FROM:** Heather A. Balsler, Assistant County Attorney  
**SUBJECT:** Local Government Infrastructure Surtax Adoption or Reenactment, and Section 212.055(11) "Performance Audit"  
**DATE:** January 9, 2026

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Question: May the Local Government Infrastructure Surtax, a half-cent discretionary sales surtax enacted pursuant to Section 212.055(2), Florida Statutes, and currently used to fund the Save Our Indian River Lagoon Project Plan (SOIRLPP), also be used to fund other infrastructure needs in addition to the SOIRLPP?

Short Answer: Yes, however the surtax would probably be considered a new surtax, not a renewal. Section 212.055(11), Florida Statutes, requires a performance audit for programs proposed to be funded with the tax, unless the referendum is a renewal, i.e. adopting "the same discretionary surtax that was in place during the month of December immediately before the date of the referendum (December 2025).

Applicable Law and Analysis:

Section 212.055(2), Florida Statutes, authorizes a county to levy a discretionary sales surtax of 0.5 or 1 percent, pursuant to an ordinance enacted by the majority of the county governing body, and approved by a majority of county electors voting in a referendum on the surtax. A statement including a "brief general description of projects to be funded" by the tax shall be placed on the ballot when the referendum takes place.

On November 8, 2016 a majority of Brevard County qualified electors voted in favor of a 0.5 cent tax being expended on the Save Our Indian River Lagoon Project Plan, aiming to restore the Indian River Lagoon through financing, planning, constructing, maintaining, and operating capital improvements and capital maintenance projects and programs designed to improve water quality, fish, wildlife, and marine habitat, remove muck and reduce pollution.

This tax was approved for a period of ten (10) years and was approved exclusively as funding the aforementioned lagoon related projects.

There is no express prohibition in Section 212.055(2), Florida Statutes, against including additional projects not related to the original Indian River Lagoon projects. However, those new projects must naturally be included in the referendum in the “brief general description of projects to be funded”, and new projects would probably change the character of the surtax from a renewal to a new proposed tax and thus trigger Section 212.055(11), Florida Statutes, which imposes additional requirements on the adoption of a new discretionary surtax.

Section 212.055(11)(a), Florida Statutes, states that in order to adopt a surtax under this section, “an independent certified public accountant licensed pursuant to chapter 473 shall conduct a performance audit of the program associated with the proposed surtax.”

Section 212.055(11)(c), Florida Statutes further defines a “performance audit” as follows:

...an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:

1. The economy, efficiency, or effectiveness of the program.
2. The structure or design of the program to accomplish its goals and objectives.
3. Alternative methods of providing program services or products.
4. Goals, objectives, and performance measures used by the program to monitor and report program accomplishments.
5. The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program.
6. Compliance of the program with appropriate policies, rules, and laws.

Section 212.055(11)(b), Florida Statutes, provides the strict timeline for the performance audit process that must be completed before placing the referendum on the ballot. First, 180 days before the referendum is held, or by May 7, 2026, the county “shall provide a copy of the... ordinance to the (state of Florida) Office of Program Policy Analysis and Government Accountability (OPPAGA).” This of course means that the proposed surtax ordinance must have been drafted, advertised, heard, and enacted by the majority of the Board of County Commissioners before May 7, 2026. Second, within 60 days of receiving the ordinance, the OPPAGA shall procure the certified public accountant services. Third, at least 60 days before the referendum is held, or by September 4, 2026, the performance audit must

be completed and “the audit report, including any findings, recommendations, or other accompanying documents, must be made available on the official website of the county....”

Section 212.055(11)(a)-(c), Florida Statutes, describes the performance audit requirements and procedure, however, pursuant to Section 212.055(11)(d), Florida Statutes, “this subsection does not apply to a referendum held to adopt the same discretionary surtax that was in place during the month of December immediately before the date of the referendum” or December 2025.

Conclusion: In summary, reading Section 212.055(2), Florida Statutes, and Section 212.055(11), Florida Statutes, together, if additional infrastructure needs, other than those infrastructure needs aimed to restore the Indian River Lagoon, are placed on a referendum for voters to approve or not, that proposed surtax is essentially not the same as the surtax already in place “during the month of December immediately preceding the date of the referendum” and must have followed the performance audit process in order to be placed on the ballot before qualified Brevard County electors in November 2026.