



County Attorney's Office  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

**TO:** Frank B. Abbate, County Manager

**THRU:** Morris Richardson, County Attorney 

**FROM:** Heather A. Balsler, Assistant County Attorney 

**SUBJ:** Citizen Efficiency and Effectiveness Recommendation #2024039

**DATE:** 04/01/2024

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CEER #2024039 was received by the County from Sandra Sullivan, affiliated with the group WAVESaction LLC.

**Citizen Statement:**

The issue is having separate infrastructure taxes in County. As I read the legal opinion ONLY ONE INFRASTRUCTURE SALES TAX IS ALLOWED. This legal opinion says that Brevard is allowed one Infrastructure Salestax - meaning that the current Lagoon and School Board 1/2 cent sales tax would have to be combined into one 1 cent sales tax. (Legal issue as should have been one tax) - see legal opinion and links below that explicitly reference school board tax having to be part of a County infrastructure sales tax!

<https://www.myfloridalegal.com/print/pdf/node/2440#:~:text=on%20the%20ba%20lot.-,2.,surtaxes%20of%200.5%20percent%20each.> "2. Section 212.055(2), Florida Statutes, authorizes the governing body in each county to levy a surtax of either 0.5 percent or 1 percent. It does not authorize the imposition of separate surtaxes of 0.5 percent each."

<https://www.myfloridalegal.com/print/pdf/node/2440#:~:text=on%20the%20ba%20lot.-,2.,surtaxes%20of%200.5%20percent%20each.> 2(c) Pursuant to s. 212.054(4), the proceeds of the surtax levied under this subsection shall be distributed to the county and the municipalities within such county in which the surtax was collected, according to: 1. An interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, which agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population; or 2. If there is no interlocal agreement, according to the formula provided in s. 218.62.

<https://www.flsenate.gov/laws/statutes/2021/212.055>

[http://www.leg.state.fl.us/STATUTES/index.cfm?App\\_mode=Display\\_Statute&U](http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&U)

[RL=0200-0299/0212/Sections/0212.055.html](https://www.flsenate.gov/Subjects/0200-0299/0212/Sections/0212.055.html) (c) Pursuant to s. 212.054(4), the proceeds of the surtax levied under this subsection shall be distributed to the county and the municipalities within such county in which the surtax was collected, according to: 1. An interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, which agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population; or 2. If there is no interlocal agreement, according to the formula provided in s. 218.62.

**Citizen Recommendation:**

As part of the legal issues identified, plan to eliminate the School Board 1/2 cent sales tax as there are more pressing infrastructure needs in Brevard and this tax has been renewed twice already. "A renewal of the current surtax would not collect any additional monies from those spending on taxable items in Brevard County but would continue the current half-cent sales surtax through 2026." <https://spacecoastdaily.com/2020/09/brevard-public-schools-sales-surtax-up-for-renewal-on-nov-3rd-ballot-will-sunset-on-dec-31/>

**Staff Analysis:**

Section 212.055, Florida Statutes, entitled "Discretionary sales surtaxes; legislative intent; authorization and use of proceeds" authorizes discretionary sales surtaxes.

Section 212.055(2), Florida Statutes, entitled the "Local Government Infrastructure Surtax" specifically states that the "governing authority in each county," i.e., the Brevard County Board of County Commissioners, may levy a discretionary sales surtax of 0.5 percent or 1 percent.

Section 212.055(6), Florida Statutes, entitled the "School Capital Outlay Surtax" specifically states that the school board of each county may levy a discretionary sales surtax at a rate that may not exceed 0.5 percent. Section 212.055(6)(d) further states that surtax revenues collected by the Department of Revenue shall be distributed to the school board.

On July 31, 2014, the School Board of Brevard County, acting as the governing body of the School District of Brevard County, Florida, passed Resolution 2014-01, finding:

Section 212.055(6) of the Florida Statutes authorizes the levy of a one-half cent school capital outlay surtax for the purposes of funding school projects in capital

outlay, school security and technology needs, upon approval by a majority vote of the electors of Brevard County. Proceeds will be used for critical improvements to school facilities, school security and technology needs.

On November 4, 2014, the one-half cent school capital outlay surtax was approved by a majority vote of the electors of Brevard County, and the levy of the tax was for the period of January 1, 2015 to December 31, 2020.

On November 3, 2020, a majority of the electors of Brevard County voted to “extend the existing half-cent surtax approved by voters in 2014, to upgrade aging schools in Brevard County with critical school facility renewal projects, school security and technology modernizations that keep schools safe and conducive to learning...for six years.”

The Brevard County School Board’s half-cent surtax is a school capital outlay surtax levied pursuant to Section 212.055(6), Florida Statutes and it has been extended, or renewed, once. The School Board’s half-cent surtax is not a local government infrastructure surtax. Further, pursuant to Section 212.055(6)(d), Florida Statutes, the school capital outlay surtax revenue collected by the Florida Department of Revenue is distributed to the Brevard County School Board, the governing body of the School District of Brevard County. Moreover, under subsection 2.9.3.1 of the Brevard County Home Rule Charter, the Brevard County Board of County Commissioners does not have any power of review of the budget of the School District.

In conclusion, the premise of this citizen recommendation is that the Brevard County School Board’s half-cent school capital outlay surtax is an unauthorized second local government infrastructure surtax adopted pursuant to Section 212.055(2), Florida Statutes. The School Board’s half-cent school capital outlay surtax is separately authorized by Section 212.055(6), Florida Statutes, and the Board of County Commissioners is without jurisdiction to “eliminate” such surtax as recommended.

**Staff Recommended Action:**

It is recommended that the Board of County Commissioners reject CEER #2024039.

Recommendation Details

Contact Information

**Full Name:** Sandra I Sullivan **Email Address:** s2sully@gmail.com  
**Mailing Address:** 165 Dorset Lane **Alt Email Address:** sandra@sandrasullivan.com  
South Patrick Shores fl 32937 **Phone Number** 954-224-8624

**Group/Organization** WAVESaction LLC

Recommendation Information

**Recommendation Title:** Infrastructure Surtax  
**Areas Affected:** Infrastructure

**Department:** BOARD OF COUNTY COMMISSIONERS

**Problem Description:**

The issue is having separate infrastructure taxes in County. As I read the legal opinion ONLY ONE INFRASTRUCTURE SALES TAX IS ALLOWED. This legal opinion says that Brevard is allowed one Infrastructure Salestax - meaning that the current Lagoon and School Board 1/2 cent sales tax would have to be combined into one 1 cent sales tax. (Legal issue as should have been one tax) - see legal opinion and links below that explicitly reference school board tax having to be part of a County infrastructure sales tax!

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"2. Section 212.055(2), Florida Statutes, authorizes the governing body in each county to levy a surtax of either 0.5 percent or 1 percent. It does not authorize the imposition of separate surtaxes of 0.5 percent each." <https://www.myfloridalegal.com/print/pdf/node/2440#:~:text=on%20the%20ballot,-2.,surtaxes%20of%200.5%20percent%20each>.

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**Recommendation Description**

**Attachments**

There are no attachments for this recommendation.

Administrative Action

Evaluation

Recommendation Timeline

User	Status	Date	Remarks
CEER WebUser	Citizen Submitted	Dec 30, 2023	
Karen Conde	Department Assigned	Jan 3, 2024	COUNTY ATTORNEY Assigned

Awaiting action from department director

2024039 - Links Contained Within Citizen CEER Submission

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