

ADD ON

AGENDA	
Section	Public Hearing
Item No.	IV D



Meeting Date
November 1, 2015

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Amendment to Ordinance 2016-15 regarding the infrastructure surtax to support the Save Our Indian River Lagoon Project Plan.
DEPT/OFFICE:	County Attorney's Office Scott Knox, 321-633-2090, scott.knox@brevardfl.gov

Requested Action:
 It is requested that the Board of County Commissioners consider an amendment to Ordinance 2016-15 regarding the infrastructure surtax to support the Save Our Indian River Lagoon Project Plan.

Summary Explanation & Background:
 Florida's Department of Revenue, having reviewed Ordinance 2016-15 as adopted by the Board on August 23, 2016, requested clarification that the levy of the tax begins on January 1, 2017.

LEGISLATIVE INTENT: Accordingly, the County Attorney's Office is requesting that Sections 15 and 20 of the ordinance be amended to include the following language indicating that the levy of the ½ cent surtax will commence on January 1, 2017, to incorporate the relevant collection date timing provisions of the applicable state sales tax law.

The proposed ordinance title and body of the proposed ordinance are attached.

Clerk to the Board Instructions: Return Board Approval Letter to Department

Exhibits Attached: proposed Amended Ordinance

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager		Assistant County Manager			Department Director / Extension Scott Knox, County Attorney, 321-633-2090		
Stockton Whitten		Assistant County Manager					



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

November 2, 2016

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item IV.D., Amendment to Ordinance No. 16-15 Regarding Infrastructure Surtax to Support the Save Our Indian River Lagoon Project Plan

The Board of County Commissioners, in regular session on November 1, 2016, adopted Ordinance No. 16-24, amending Ordinance No. 16-15, regarding the infrastructure surtax to support the Save Our Indian River Lagoon Project Plan. Enclosed is a certified copy of the Ordinance.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Natural Resources Management Director

ORDINANCE NO. 2016-24

AN ORDINANCE AMENDING ORDINANCE 2016-15 OF BREVARD COUNTY, FLORIDA, RELATING TO THE LEVYING OF A PUBLIC INFRASTRUCTURE SURTAX FOR THE PURPOSES OF FUNDING THE SAVE OUR INDIAN RIVER LAGOON PROJECT PLAN; CLARIFYING THE COMMENCEMENT DATE OF LEVY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Revenue, having reviewed Ordinance 2016-15, and informed the county that the ordinance comports with section 212.055, Florida Statutes, but r requesting a clarification regarding the commencement date for the levy of the proposed ½ surtax contemplated therein; and

WHEREAS, the Board of County Commissioners of Brevard County finds that such clarification is prudent and best serves the public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Amendment to Ordinance 2016-15, Sections 15 and 20.

A. Section 15 of Ordinance 2016-15 is hereby amended to read as follows:

SECTION 15. LEVY OF ½ SALES TAX FOR INDIAN RIVER LAGOON RESTORATION

As authorized under section 212.055(2), Florida Statutes, there is hereby levied a ½ cent infrastructure sales surtax to be collected, deposited and expended for Indian River Lagoon improvements, projects and programs, after the levy commencement date specified in section 20 of this ordinance.

B. Section 20 of Ordinance 2016-15 of the Code of Ordinances of Brevard County, Florida, is hereby amended to read as follows:

Officially filed with the Secretary of State 11/1/16

SECTION 20. EFFECTIVE DATE. This Ordinance shall take effect upon November 8, 2016 if the ½ cent sales tax is approved by a majority of the electors of the county voting in the referendum on that date. However, the Ordinance shall not be implemented until such time as a) the Supervisor of Elections has consented to obtaining and making registration books available in accordance with Section 100.151, Florida Statutes; b) election results demonstrate an affirmative vote of the majority of the electors has approved the Save Our Indian River Lagoon ½ cent sales tax and c) prior to November 8, 2016 the governing bodies representing at least 50% of the municipal population in Brevard County have approved an interlocal agreement consistent with the distribution of all proceeds to the trust fund created by this ordinance, provided the levy of the ½ cent surtax provided for in section 15 will commence on January 1, 2017.

Section 2. **Severability.** If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

Section 3. **Inclusion in Code.** It is intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida, and that the sections of this ordinances may be renumbered or re-lettered and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. **Conflicting Provisions.** In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code or regulation, the more restrictive shall apply.

Section 5. **Effective Date.** This ordinance shall take effect upon filing a copy of this ordinance with the Department of State by the Clerk of the Board of County Commissioners.

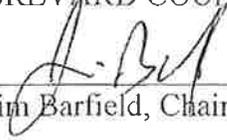
ENACTED this 1 day of Nov . , 2016.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA



Jim Barfield, Chair

As approved by the Board on November 1, 2016



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

November 1, 2016

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Ms. Deborah Thomas, Administrative Assistant

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2016-24, which was filed in this office on November 1, 2016.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

**NOTICE OF PUBLIC HEARING
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

Pursuant to the provisions of Section 125.66, Florida Statutes, notice is hereby given that the Brevard County Board of County Commissioners shall hold a public hearing at 9:00AM or a soon thereafter as the item may come up, on November 1, 2016, to consider adoption of an ordinance amending Ordinance 2016-15 relating to the levying of a public infrastructure surtax for the purposes of funding the save our Indian River Lagoon project plan. The title of the Ordinance to be considered by the Board of County Commissioners of Brevard County, Florida, on that date reads as follows:

ORDINANCE NO. 2016-__

AN ORDINANCE AMENDING ORDINANCE 2016-15 OF BREVARD COUNTY, FLORIDA, RELATING TO THE LEVYING OF A PUBLIC INFRASTRUCTURE SURTAX FOR THE PURPOSES OF FUNDING THE SAVE OUR INDIAN RIVER LAGOON PROJECT PLAN; CLARIFYING THE COMMENCEMENT DATE OF LEVY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Interested parties may appear at the November 1, 2016 meeting and be heard with respect to the proposed ordinance.

A copy of the ordinance may be inspected at the following locations:

Office of Clerk to the Board of County Commissioners, Titusville, Florida
North Brevard Library, Titusville, Florida
Central Brevard Library, Cocoa, Florida
Melbourne Library, Melbourne, Florida
Micco Library, Micco, Florida

A copy of the ordinance may also be viewed online at:
<http://www.brevardcounty.us/CountyManager/DraftOrdinances>.

Pursuant to Section 286.0105 Florida Statutes, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she will need to ensure that a verbatim record of the proceedings is made, at his or her own expense, which record includes the testimony and evidence upon which any such appeal is to be based. Such person may provide a court reporter, stenographer, or a tape recorder for such verbatim record.

In accordance with the Americans Disabilities Act, persons needing a special accommodation or an interpreter to participate in the proceedings, please notify the department sponsoring the meeting/hearing, or the County Manager's Office, (321) 633-

2010, at least 48 hours in advance. TDD: 1-800-955-8771. Assisted Listening System receivers are available for the hearing impaired, & can be obtained from the Sound Technician at the meeting.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Bright House Networks channel 499, Comcast Cable Communications channel 51 in North Brevard and channel 13 in South Brevard, and AT&T U-verse channel 99. SCGTV will also replay this meeting during the coming month. Check the SCGTV website for daily program updates <http://www.scgtv.org>.

Excerpt from V.I.D.2 October 4, 2016
meeting minutes.

projects, but it can't be used to scoop out all of that muck.

Barfield: Mr. Knox.

Knox: I would beg to differ with you. The Department of Revenue, when it reviewed the Ordinance, it said we needed to insert the language about the date that it takes effect. Also, it indicated they have reviewed the Ordinance and said that they didn't have a problem with it, and they're responsible for interpreting that Ordinance.

This is an incorrect stmt.

Fisher: But, you know, as you go do that, you don't want to confuse the public, you know, and so, Commissioner Infantini, Mr. Knox has made a, determined from the Department of Revenue and all that, that you can use it for de-muck. We're going to use it for de-muck, we can legally do that, and, and, and, that's what happens, you say things up here and sometimes people think that, you know, you're an expert on it; and I'm going to take the Department of Revenue and Mr. Knox's opinion on it. And so, don't confuse the public in saying we're going to tax them and then not spend it for what we say we're going to spend it for, because we are going to use it for de-mucking if it gets approved, and it's their choice.

see attached from DOR

Infantini: I have no doubt we'll do it, I just do not believe that it is legally permissible, otherwise it would have permitted to be added to the language of the Statute, and right now it clearly says, in my opinion, and I'm not an attorney, but it's still an opinion until you go to court, it's just an opinion. So, if anybody challenges this and the use of it, I do believe it will fail.

Barfield: Moving forward. You know, that's good that you said that was your opinion, because we can have our own opinion, we just can't have our own facts. So, with that, let's move on with this. Do I have a motion?

Smith: So moved.

Barfield: Second?

Fisher: Second.

Barfield: Motion by Commissioner Smith, second by Commissioner Fisher. All in favor say Aye.

Fisher, Barfield, Smith, Anderson: Aye.

Barfield: All opposed?

Infantini: Nay.

Barfield: Passes 4:1.

RE: sales tax amendment



John Crotty <CrottyJ@dor.state.fl.us>

Today, 3:06 PM

Mannier, Linda <linda.mannier@brevardfl.gov>; Infantini, Trudie <trudie.infantini@brevardfl.gov>; Helton, Lori <lori.helton@brevardfl.gov>

Reply all | v

The Department of Revenue only reviews ordinances and drafts of tax levy ordinances to ensure that they are able to administer the tax collections if the tax passes. We do not consider the purpose of the levy in our review.

From: Mannier, Linda [mailto:linda.mannier@brevardfl.gov]

Sent: Thursday, October 20, 2016 3:03 PM

To: John Crotty <CrottyJ@dor.state.fl.us>

Cc: Infantini, Trudie <trudie.infantini@brevardfl.gov>; Helton, Lori <lori.helton@brevardfl.gov>; Roopnarine, Chalisa <Chalisa.Roopnarine@brevardfl.gov>

Subject: sales tax amendment

Dear Mr. Crotty,

Good afternoon, I want to thank you for speaking with me yesterday regarding the Department of Revenue's (DOR) role in reviewing Brevard County's sales tax ordinance language.

I wanted to make certain I understood correctly that it is not the DOR's responsibility to verify the legality of the language in the ordinance/referendum. My understanding is that the role of the DOR is as the administrator of the taxes and must ensure the correct dates and rates are included in the ordinance. Thus, the communication with Brevard County Attorney's Office was regarding adding the date of implementation as January 1, 2017 and not to establish the legal authority to use the tax to demuck the lagoon and the ballot language states.

Commissioner Infantini is respectfully requesting a written explanation of the DOR's role in reviewing Brevard County's Ordinance for the 1/2 Cent Infrastructure Sales Surtax being placed on the November 8, 2016 ballot. Specifically, does the DOR do anything more than verify the requirements for administration of the collection of tax?

Thank you in advance for your continued assistance.

Sincerely,

Linda Mannier

Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, please contact the Florida Department of State, Office of Public Access, at (850) 487-6395 or visit our website at <http://www.floridapublicaccess.com>"

Mannier, Linda

From: Knox, Scott L
Sent: Tuesday, October 18, 2016 3:07 PM
To: Mannier, Linda
Cc: Ray, Brittany; Cummings, Cathleen; Berrios, Cristina
Subject: RE: infrastructure sales tax PRR
Attachments: RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl2.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl3.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl4.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl5.pdf; RE: Brevard County's Sales Tax [unsecure]

Follow Up Flag: Follow up
Flag Status: Flagged

Linda:

Attached are all emails we have pertaining to the IRL Ordinance and interlocal agreement. You will note the first email in the string references a call between Cristina Berrios and Mr. Crotty at DOR. The only problem raised by DOR during its review was the effective date of the ½ cent sales tax levy and the levy date set forth in the interlocal agreement. They did not raise any issue about demucking as an eligible expenditure. At the October 4 meeting, I was privy to the problem raised by Mr. Crotty in the telephone conversation with Ms. Berrios where the ordinance levy date was discussed, so at that Oct. 4 meeting I indicated that DOR did not have a problem with the demucking issue. The DOR email does not mention demucking at all.

Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(321) 633-2090

The State of Florida has a broad public records law and a request made under the authority of that Public Records law may require the disclosure and copying of any email sent to this office unless exempt, privileged or confidential under state law .

From: Mannier, Linda
Sent: Tuesday, October 18, 2016 3:02 PM
To: Knox, Scott L
Cc: Infantini, Trudie
Subject: RE: infrastructure sales tax

Thanks, Scott.

Linda Mannier
Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

From: Knox, Scott L
Sent: Tuesday, October 18, 2016 2:55 PM
To: Mannier, Linda
Subject: RE: infrastructure sales tax

Sorry Linda, I got sidetracked. I will get right on it.

Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
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Sent: Tuesday, October 18, 2016 2:54 PM
To: Knox, Scott L
Cc: Infantini, Trudie
Subject: FW: infrastructure sales tax

Scott,
The Commissioner is still waiting for this information and she asked me to resend her request.
Thank you,
Linda

Linda Mannier
Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

From: Mannier, Linda
Sent: Tuesday, October 11, 2016 10:14 AM
To: Knox, Scott L
Cc: Infantini, Trudie
Subject: infrastructure sales tax

Scott,

Per Commissioner Infantini's request, please forward the communication your office received from the Department of Revenue stating that demucking is a lawful and permitted use of the Infrastructure Sales Tax, per current Florida Statutes.

Thank you,
Linda

Linda Mannier
Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.

Mannier, Linda

From: Knox, Scott L
Sent: Wednesday, October 19, 2016 3:52 PM
To: Mannier, Linda
Subject: RE: infrastructure sales tax PRR

Linda:

The answer is none. After the referendum, if the tax is approved, the tax goes into effect on January 1, 2017. The tax will then be collected by retail vendors and the vendors will then send the proceeds collected to DOR for distribution to the local government(s) in the manner prescribed by the interlocal agreement.

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From: Mannier, Linda
Sent: Wednesday, October 19, 2016 1:03 PM
To: Knox, Scott L
Cc: Infantini, Trudie
Subject: RE: infrastructure sales tax PRR

Hi Scott – quick question: What is the DOR's role in the placement of the sales tax referendum on the ballot?
Thanks,
Linda

Linda Mannier
Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

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Thank you,
Linda

Linda Mannier

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District 3 Commission Office
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Melbourne, Florida 32901
(321)952-6300

COUNTY OF PALM BEACH V. STATE

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ENGLAND, Justice.

This case is an appeal from a judgment of the Palm Beach County Circuit Court declaring invalid a \$50 million bond issue approved by the voters of Palm Beach County. We have jurisdiction pursuant to Article V, Section 3(b)(2) of the Florida Constitution.

The trial judge below construed the resolution by which the Palm Beach County Commission proposed the bond issue as authorizing the use of the proceeds for the unconstitutional purpose of maintaining beaches and parks, and declared the issue invalid for that reason. He also found that Chapter 75-471, Laws of Florida, could not cure the complete failure of the county to publish notice of the bond election in the manner required by Section 100.211, Florida Statutes (1973), because this curative legislation also authorized the use of the bond proceeds for the maintenance of beaches and parks. We reverse.

There is no question but that the manner in which the officials of Palm Beach County conducted the election proceedings surrounding this bond issue was deplorable. Infirmity after infirmity crept into the bonding process, and ill-considered and equally careless attempts were made to cure the defects. Nonetheless, the present posture of the matter is that we are obliged to accept or reject that which the voters of the county overwhelmingly approved. Based on the law presently in existence in this state, we can fulfill the voters' expectations by validating the bonds, with a limiting construction placed on the use of the word "maintenance".

Article VII, Section 12 of the Florida Constitution, limits the power of counties to issue bonds to the two purposes of financing or refinancing capital projects, and to refund outstanding bonds at a lower interest cost. Bonds cannot be issued for the purpose of non-capital expenditures, such as payment of daily maintenance expenses. In this case, the County Commission passed a resolution which stated in relevant part that the bond proceeds would be used to finance "the cost of the acquisition, maintenance and preservation of beaches, parks, bicycle trails, parking facilities, access strips and facilities appertenant (sic) thereto. . . ." If it were clear that references to "maintenance" were intended to mean constitutionally prohibited non-capital expenditures, we would have no choice but to affirm the judgment of the trial court. It is far from clear, however. County Commissioners are presumed to have acted in accordance with their duty to uphold the Constitution of this state, and this Court is bound to avoid constitutional questions concerning a statute by severing objectionable phraseology where necessary. In the context of the resolution the term "maintenance" is not so clear and unambiguous that all would agree it means operating as opposed to capital expenses. It reasonably can be read to mean "capital maintenance", such as replacing fallen trees or eroded beaches. When such ambiguity exists, intent is the touchstone. Before us, the Commission has avowed its intention to use the bond proceeds only for constitutionally proper capital projects, and after the election it adopted a resolution

validating the election which omitted the word "maintenance". We accept the averments of the Commission, cognizant of the fact that if any attempt is made to use bond proceeds in an improper manner an action for injunctive relief would lie.

Cf. City of Miami v. Kayfetz, 92 So.2d 798 (Fla. 1957).

State v. Calhoun County, 126 Fla. 376, 170 So. 883 (1936).

Weiss v. Leonardy, 160 Fla. 570, 36 So.2d 184 (1948).

Williams v. Town of Dunnellon, 125 Fla. 114, 169 So. 631 (1936).

As regards the failure to comply with the notice requirements of Section 100.211, this Court has very clearly stated that after-the-fact validating legislation is perfectly proper to cure procedural defects. In this case the Legislature in Chapter 75-471 declared the election valid because notice had been given through the mailing of a sample ballot to all registered voters in the county. While such substituted notice would not constitute substantial compliance with Section 100.211, the facts of this case present no grounds for the overruling of established precedent. Our construction of the term "maintenance" as used by the Commission is also applicable to the use of that word by the Legislature. We therefore find that the failure to give statutory notice was cured by subsequent legislative validation.

Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967) (curative legislation abrogating a prior legislative mandate setting the percentage of freeholders required to petition for an election); *State v. County of Sarasota*, 155 So.2d 543 (Fla. 1963) (curative legislation directed at defects in statutory publication of notice requirements).

Chapter 75-471 provides:

"All acts and proceedings in connection with the election held in Palm Beach County on November 5, 1974, including the failure to publish notice of such election as required by s. 100.211, Florida Statutes, since notice of such election was in fact given by the mailing of sample ballots to all registered voters, to authorize the issuance of bonds of Palm Beach County, for the purpose of providing funds for financing the costs of acquisition and maintenance of beaches and parks are hereby ratified, validated, and confirmed and said election is declared to be legal and valid in all respects."

For the reasons stated, the judgment of the Palm Beach County Circuit Court is reversed and this case is remanded for further proceedings not inconsistent with this decision.

It is so ordered.

OVERTON, C.J., and ADKINS, SUNDBERG and HATCHETT, JJ., concur.

BOYD, J., dissents with an opinion with which ROBERTS, J., concurs.

BOYD, Justice (dissenting).

I cannot agree with the majority that validity was breathed into the bond issue by Chapter 75-471, Laws of Florida.

Article VII, Section 12 of the Florida Constitution does not include maintenance within the purposes to which it limits local bonds. County Commission Resolution 74-783, which called for the bond issue, states that the funds from sale of bonds shall be used "for the purpose of financing the cost of the acquisition, maintenance and preservation of beaches, parks, bicycle trails, parking facilities, access strips and facilities appertenant [sic] thereto for the residents of Palm Beach County." Minutes of the meeting indicate the Commission, in adopting the above resolution, intended that portions of the money be used for maintenance purposes. The question presented to the voters did not state directly that the proceeds from bond sales would be used for maintenance, but stated the bonds would be issued pursuant to the resolution. Reference to the resolution constituted an indirect inclusion in the question before the voters of maintenance as an expenditure of the bond proceeds. The Legislature, in the enactment of the special curative statute, Chapter 75-471, referred to the bonds as providing funds for financing the costs of acquisition and *maintenance* of beaches and parks.

It is clear to me that the voters must have thought proceeds from the bonds would be used for the unconstitutional purpose of maintenance and that the Legislature's attempt to breathe validity into the bond issue was likewise unconstitutional.

Aside from the constitutional problems, other errors were committed in the bond process. Resolution 74-783 directed that the clerk should publish notice of the bond election to be held on November 5, 1974, once each week for four consecutive weeks, the first publication to be not less than thirty days prior to the date of the election as required by Section 100.211, Florida Statutes (1973). No such notice was ever published.

The learned circuit judge found that county officials and the news media at all levels informed the residents of the County of the coming bond election, including the mailing of one sample ballot to each home having one or more registered voters. Nevertheless, the court found that complete failure of statutory notice constituted a fatal and incurable defect in the bond issue rendering it invalid.

The trial court relied heavily upon *1st Tax Dist. No. 1 of Duval County v. State, Florida, et al.*, 123 So.2d 315 (Fla. 1960), where only one publication of notice of a bond election was made. This Court held the bond issue invalid because of failure to comply with the statutory requirement of four weekly notices. The trial court's decision is buttressed by *State ex rel. Pope v. Shields*, 140 So.2d 144 (Fla. 1st DCA 1962), where the Court held that publication of notice of a town incorporation election in three issues of a weekly newspaper did not constitute substantial compliance with a Special Act of the Legislature which provided for the election procedure and called for notice to be published once a week in a local newspaper for four consecutive weeks.

Appellant relies upon *State v. County of Sarasota*, 155 So.2d 543 (Fla. 1963), where this Court held a bond issue valid based upon substantial compliance with the same statutory notice requirements at issue here.

"The publication in question was first made thirty-five days before the election and was made once each week for five weeks before the election, the first two weeks of the period of publication and the last three weeks. In fact, in the last three weeks, publication was made every day for fifteen days. However, on account of a cause which the publisher has not been able to determine, one publication of the formal notice was not made during the week of March 4." at 545.

That case is not at all similar to this case. Here statutory notice was not published once. Instead the election was publicized by public officials and the news media. To permit statutory notice to be substituted by other types of notice gives rise to an impossible task as to what forms and degrees will be sufficient to constitute substantial compliance. Most informed citizens expect legal notices to appear as items so designated in newspapers of general circulation. Thus, as the majority recognizes, the efforts of the County officials did not constitute substantial compliance with statutory requirements.

The entire bonding process was riddled with errors. Approval of this bond issue lowers the standards for the issuance of bonds to such an extent that from now on it will be difficult to disapprove bond issues regardless of how defective and regardless of obvious constitutional violations.

I dissent from the opinion of the majority and I would affirm the order of dismissal by the Circuit Court.

ROBERTS, J., concurs.

Select Year:

The 2016 Florida Statutes

Title XIV

Chapter 212

[View Entire Chapter](#)

TAXATION AND FINANCE TAX ON SALES, USE, AND OTHER TRANSACTIONS

212.055 **Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.**—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. [212.054](#).

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

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed

guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

(e) As used in this subsection, the term "on-demand transportation services" means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(a)1. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax shall be placed on the ballot and shall take effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

2. If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance, or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of such surtax may be extended only by approval of a majority of the electors of the county voting in a referendum on the surtax.

(b) A statement which includes a brief general description of the projects to be funded by the surtax and which conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing authority of any county which enacts an ordinance calling for a referendum on the levy of the surtax or in which the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions calling for a referendum on the surtax. The following question shall be placed on the ballot:

FOR the	-cent sales tax
AGAINST the	-cent sales tax

(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.

Any change in the distribution formula must take effect on the first day of any month that begins at least 60 days after written notification of that change has been made to the department.

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights

claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. [125.011](#), and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. [163.3164\(38\)](#), s. [163.3221\(13\)](#), or s. [189.012\(5\)](#), regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. [29.008](#).

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. [252.38](#). Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. [206.9951](#); and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within

the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

(e) School districts, counties, and municipalities receiving proceeds under the provisions of this subsection may pledge such proceeds for the purpose of servicing new bond indebtedness incurred pursuant to law. Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through the provisions of this subsection. Counties and municipalities may join together for the issuance of bonds authorized by this subsection.

(f)1. Notwithstanding paragraph (d), a county that has a population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may use the proceeds and interest of the surtax for any public purpose if:

- a. The debt service obligations for any year are met;
- b. The county's comprehensive plan has been determined to be in compliance with part II of chapter 163; and
- c. The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s.

125.66 authorizing additional uses of the surtax proceeds and interest.

2. A municipality located within a county that has a population of 50,000 or less on April 1, 1992, or within a county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may not use the proceeds and interest of the surtax for any purpose other than an infrastructure purpose authorized in paragraph (d) unless the municipality's comprehensive plan has been determined to be in compliance with part II of chapter 163 and the municipality has adopted an amendment to its surtax ordinance or resolution pursuant to the procedure provided in s. 166.041 authorizing additional uses of the surtax proceeds and interest. Such municipality may expend the surtax proceeds and interest for any public purpose authorized in the amendment.

3. Those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section. A county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes for 20 years following removal of the designation, notwithstanding subparagraph (a)2. After expiration of the 20-year period, a county may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure if the county adopts an ordinance providing for such continued use of the surtax proceeds.

(g) Notwithstanding paragraph (d), a county having a population greater than 75,000 in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which an infrastructure surtax referendum is placed before the voters, and the municipalities within such a county, may use the proceeds and interest of the surtax for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax throughout the duration of the surtax levy or while interest earnings accruing from the proceeds of the surtax are available for such use, whichever period is longer.

(h) Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this subsection and subsections (3), (4), and (5) in excess of a combined rate of 1 percent.

(3) SMALL COUNTY SURTAX. —

(a) The governing authority in each county that has a population of 50,000 or less on April 1, 1992, may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by an extraordinary vote of the members of the county governing authority if the surtax revenues are expended for operating purposes. If the surtax revenues are expended for the purpose of servicing bond indebtedness, the surtax shall be approved by a majority of the electors of the county voting in a referendum on the surtax.

Mannier, Linda

From: Infantini, Trudie
Sent: Friday, August 19, 2016 3:51 PM
To: Knox, Scott L
Cc: Mannier, Linda; Helton, Lori
Subject: RE: Response to your question re use of 1/2 cent sales tax for de-mucking

Scott,
Thank you for getting back to me. I didn't want to put something out to a vote that was not legally permissible.
Trudie



**TRUDIE INFANTINI, CPA
DISTRICT 3 COUNTY COMMISSIONER
1311 E. NEW HAVEN AVENUE
MELBOURNE, FL 32901
321-952-6300**

From: Knox, Scott L
Sent: Thursday, August 18, 2016 3:36 PM
To: Infantini, Trudie
Cc: Barfield, Jim; Fisher, Robin; Anderson, Andy; Smith, Curt; Alward, Elizabeth M; Newell, Marcia; Stern, Danielle; Woodard, Patrick; Whitten, Stockton E; Barker, Virginia H; Bentley, Eden; Berrios, Cristina; Nelson, Shelley J
Subject: Response to your question re use of 1/2 cent sales tax for de-mucking

Trudie:

You have asked for case law and any other law supporting my opinion that the ½ cent local government infrastructure sales surtax can be used for de-mucking the Indian River Lagoon. In essence, you are asking whether expenditures on de-mucking would constitute capital expenditures for the purposes of the applicable sales tax statute, section 212.055(2), Fla. Stat.

The applicable case law is the Florida Supreme Court decision in *County of Palm Beach v. State*, 342 So. 2d 56 (Fla. 1976), the holding from which is set forth below. In that case the court framed the issue as follows:

Bond Issue Lawsuit

"Article VII, Section 12 of the Florida Constitution, limits the power of counties to issue bonds to the two purposes of financing or refinancing capital projects, and to refund outstanding bonds at a lower interest cost. Bonds cannot be issued for the purpose of non-capital expenditures, such as payment of

We can likely bond for lagoon — just not against the Infrastructure Surtax. And not for demucking.

daily maintenance expenses. In this case, the County Commission passed a resolution which stated in relevant part that the bond proceeds would be used to finance "the cost of the acquisition, maintenance and preservation of beaches, parks, bicycle trails, parking facilities, access strips and facilities appertenant (sic) thereto . . ."

*Beaches - not the ocean
Lagoon is beach equivalent*

Article VII, Section 12 of the Florida Constitution states: "Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only: (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds..." The term "capital projects" is not defined in the Florida Constitution.

The issue, therefore, was whether the bonds were valid under the state constitution because the bond resolution passed by the County Commission authorized the use of bond proceeds for "maintenance" of beaches, parks...and facilities appurtenant thereto". That is, the issue was whether "maintenance" constituted a "capital project" which is the only purpose for which bonds could legally be issued under the Art. VII, Section 12—which does not define the term "capital project".

What is the definition?
In overturning a lower court decision finding the bonds violated the "capital project" requirement, the Court held the term "maintenance" as used in the bond resolution necessarily meant "capital maintenance" because the constitutional provision limited bond financing to "capital projects". In other words, the court found that "capital maintenance" constitutes a "capital project." In so doing, the Court gave two examples of what it meant by "capital maintenance—beach re-nourishment and replacement of fallen trees. Here is what the opinion said about "capital maintenance":

"If it were clear that references to "maintenance" were intended to mean constitutionally prohibited non-capital expenditures, we would have no choice but to affirm the judgment of the trial court. It is far from clear, however. County Commissioners are presumed to have acted in accordance with their duty to uphold the Constitution of this state, and this Court is bound to avoid constitutional questions concerning a statute by severing objectionable phraseology where necessary. In the context of the resolution the term "maintenance" is not so clear and unambiguous that all would agree it means operating as opposed to capital expenses. It reasonably can be read to mean "capital maintenance", such as replacing fallen trees or eroded beaches." County of Palm Beach v. State, 342 So. 2d 56 (Fla. 1976)

Sand on beach & trees on land not same as demucking lagoon - IMHO

In short, the Florida Supreme Court precedent includes "capital maintenance" as a species of "capital project" within the meaning of the Constitution. Thus a "capital expenditure" or a "capital outlay" (undefined terms) for the improvement of infrastructure—defined in section 212.055(2)(d)1. Fla. Stat as "improvement of public facilities that have a life expectancy of 5 or more years"—would include expenditures on "capital maintenance". Indeed, the interpretation that capital maintenance is also a capital project that would require capital expenditures is evidenced by Bond Counsel's statement in the email below that "most CPA firms treat significant canal dredging and the like as capital and we have financed those costs in the past so this likely should not be a problem."

Apart from the Florida Supreme Court and Bond Counsel views, the sales tax statute itself would clearly include de-mucking within the term "public facility," the improvement costs for which can be paid with the ½ cent sales tax. In section 212.055(2)(d)1.a. "Public facilities" is defined as including the definition of that term as it appears in section 163.3221(13), Fla. Stat., which statute reads: "Public facilities means major capital

improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and **recreational**, and health systems and facilities..."

Restating the statutory definition as applied solely to **recreational** capital improvements, the sales tax statute definition of "**public facilities**" means major recreational capital improvements--which necessarily include dredging muck for the restoration of the Indian River Lagoon because the lagoon is unquestionably used for recreational purposes. *et? fisher a dock boat*

A recreation facility cannot be used for private purpose or fiscal gain. I.E. - business.
That de-mucking of the Indian River Lagoon by dredging is both capital maintenance and a major recreational capital improvement, as opposed to recurring maintenance, is made clear by the Save Our Lagoon Project Plan which proposes that the bulk of the projected \$340 million in sales tax revenue will go toward *We have*
1) dredging and removing 50+ years of accumulated and environmentally destructive "muck" located in *De-mucked before* various parts of the lagoon; 2) the construction of natural water filtration projects; and 3) the construction of stormwater capital improvements to improve water quality by reducing stormwater runoff that would contribute to future muck accumulation. Within the 10 year period during which the sales tax is levied, de-mucking, shoreline natural filtration projects and stormwater projects are not expected to reoccur in any area of the lagoon in which they are completed.

If there is any lingering doubt about whether "capital expenditures" of sales tax revenues for "major recreational capital improvements" constituting "public facilities", as defined in section 212.055(2) Fla. Stat. can include the cost of de-mucking to restore the recreational viability of the Indian River Lagoon, I would refer you to chapter 259, Fla. Stat. which addresses the state policy "protecting air, land, and water quality; promoting water resource development to meet the needs of natural systems and citizens of this state; promoting restoration activities on public lands; and providing lands for natural resource-based recreation..." and expresses "the Legislature's intent that lands acquired for conservation and recreation purposes be managed in such a way as to **protect or restore their natural resource values**, and provide the greatest benefit, including public access, to the citizens of this state."

See Statute

★ The definition of the term "capital improvement or capital expenditure" in chapter 259 sheds light on what the Legislature was referring to when it used the undefined term "capital expenditure" in section 212.055(2)(d)(1)a. and the undefined term "capital improvements" which is incorporated into 212.055(2)(d)1.a as part of the 163.3221(13) definition of "public facilities" [The phrase "capital improvements" is not defined in 163.3221(13)]. For conservation and recreation purposes, section 259.03(3) defines "capital improvements" as follows:

F.S. 259.03 "Land acquisition for conservation or recreation"
259.03(3) "Capital improvement" or "capital project expenditure" means those activities relating to the acquisition, **restoration**, public access, and **recreational uses** of such lands, **water areas**, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities' signs, firelanes, access roads, and trails; or any other activities that serve to **restore**, conserve, protect, or provide public access, **recreational opportunities**, or necessary services for land or **water areas**.

Clearly, the Legislature contemplated that, as applied to conservation and recreation lands (which clearly includes submerged lands), "capital improvements" for which "capital project expenditures" can be made include "any activities that serve to **restore, conserve, protect** or provide access to **recreational opportunities for water areas**" (submerged lands).

It should also be noted that, under subsection 212.055(2)(g) Fla. Stat. (set forth in the email string below) any operational maintenance costs for SOLPP stormwater projects, natural filtration projects or other lagoon restoration projects financed by the ½ cent sales tax can also be paid from the ½ cent sales tax, as well as the cost of property owner education programs designed to raise property owner's awareness of steps they can take to prevent re-introduction of lawn fertilizers, clippings and other polluted stormwater runoff into the lagoon, all of which have been contributors to the existing muck problem created over the past 50+ years.

Below is the email string between Bond Counsel and myself. I would also point out that the findings section of the proposed lagoon referendum/sales tax Ordinance address the issue you have raised in great detail, including a state agency's very broad interpretation of the highlighted language found in 212.055(2)(g) (set forth below).

RE: Indian River

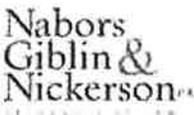
Miller, Steve <smiller@ngn-tampa.com>

Sent: Mon 8/15/2016 5:25 PM

To: Knox, Scott L

Cc: Wilson, Shannon L; Cummings, Cathleen; Bentley, Eden

I figured you guys had looked into this already. We just didn't know what the remediation/capital improvement might entail. In addition to the state law issue, under the federal tax laws, proceeds of tax-exempt debt must be used for capital expenditures. Federal tax authority generally defers to the issuing entity's own accounting treatment of the expenditure. To that end, if the County intends to issued tax-exempt bonds for any of these costs we would need to see how the County's accountants would treat such expenditures – capital or non-capital. Most CPA firms treat significant canal dredging and the like as capital and we have financed those costs in the past so this likely should not be a problem but we probably will want to discuss with finance at some point.



Steven E. Miller, Esq.
Nabors, Giblin & Nickerson, P.A.
2502 Rocky Point Drive, Suite 1060
Tampa, Florida 33607
Phone 813/281-2222
Fax 813/281-0129
smiller@ngn-tampa.com

Spoke w) Mark Peterson
Found 1700 → Grant
cost center 343935 - NR Stormwater
2016 61 423,000
State Grant for muck dredging
"NON-CAPITAL"

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From: Knox, Scott L [<mailto:Scott.Knox@brevardfl.gov>]
Sent: Monday, August 15, 2016 5:12 PM
To: Miller, Steve

Operating expense
Accounting treatment
"non capital?"

Cc: Wilson, Shannon L; Cummings, Cathleen; Bentley, Eden
Subject: RE: Indian River

sand on beach
totally different
than what lagoon is used for.

I am familiar with the statute, Steve. And as you know, the Supreme Court has indicated that infrastructure includes capital maintenance. It is my opinion that removing 50 years of accumulated muck in identified pockets within the Indian River (constituting 70% of the project cost) qualifies as "capital maintenance" on a recreation facility-- like replacement of sand on an eroded beach or replacement of fallen trees in a park. A recreation facility constitutes a public facility within the meaning of the statutory definition, particularly in Brevard where there are about 100+ parks abutting the lagoon and three causeways crossing the lagoon with which passive (and active) recreation activities in the lagoon are or can be associated in Brevard County alone.

More importantly, there is a rarely used section of the sales surtax law that authorizes the use of surtax funds for operations and maintenance of parks and recreation programs, as well as facilities established with the proceeds of the surtax. Because Brevard County, perhaps uniquely among the 67 counties (likely due to the county's unique charter cap) qualifies under the ratio established in that statute, I have concluded the statute also authorizes operations and maintenance of recreation programs associated with the Lagoon.

Subsection 212.055(2)(g):

(g) Notwithstanding paragraph (d), a county having a population greater than 75,000 in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which an infrastructure surtax referendum is placed before the voters, and the municipalities within such a county, may use the proceeds and interest of the surtax for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax throughout the duration of the surtax levy or while interest earnings accruing from the proceeds of the surtax are available for such use, whichever period is longer.

County of Palm Beach v. State, 342 So. 2d 56 (Fla. 1976) - Bond Issue lawsuit -
"If it were clear that references to "maintenance" were intended to mean constitutionally prohibited non-capital expenditures, we would have no choice but to affirm the judgment of the trial court. It is far from clear, however. County Commissioners are presumed to have acted in accordance with their duty to uphold the Constitution of this state, and this Court is bound to avoid constitutional questions concerning a statute by severing objectionable phraseology where necessary. In the context of the resolution the term "maintenance" is not so clear and unambiguous that all would agree it means operating as opposed to capital expenses. It reasonably can be read to mean "capital maintenance", such as replacing fallen trees or eroded beaches."

fallen trees + sand are tangible items to be replaced

Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(321) 633-2090

NOT THE SAME AS
Demucking

The State of Florida has a broad public records law and a request made under the authority of that Public Records law may require the disclosure and copying of any email sent to this office unless exempt, privileged or confidential under state law.

From: Wilson, Shannon L
Sent: Monday, August 15, 2016 10:33 AM
To: Knox, Scott L
Cc: Miller, Steve; Cummings, Cathleen
Subject: FW: Indian River

Scott,

You are far more involved in this and in a better position to answer Steve's questions.

Shannon L. Wilson
Deputy County Attorney
2725 Judge Fran Jamieson Way
Suite 308
Viera, FL 32940
(321) 633-2090

From: Miller, Steve [<mailto:smiller@ngn-tampa.com>]
Sent: Monday, August 15, 2016 10:23 AM
To: Wilson, Shannon L
Subject: Indian River

I saw the article noting that the County intends to put an infrastructure sales surtax on the ballot for remediating the Indian River Lagoon. Do you know what kind of capital improvements are to be financed with the surtax? As you know, the statute requires the surtax proceeds to be used for "infrastructure" as defined in the statute. The definition means fixed capital expenditures or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities that have a life expectancy of 5 years or more.



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From: Infantini, Trudie
Sent: Wednesday, August 17, 2016 2:32 PM
To: Lewis, Sally A; Mannier, Linda; Helton, Lori; Knox, Scott L; dberman@floridatoday.com
Subject: Re: 2nd changes to the 8-23-16 Advanced Agenda

Dear Scott,

I am very concerned about the forward motion of this agenda item. Please provide me the AGO, the case law, the anything you have supporting the use of the referendum proceeds to be used for de-mucking the lagoon. I genuinely believe this is not a permitted use and we are defrauding the public but I will stand corrected if presented with persuasive supporting documentation.

Thanks for getting right on this,
Trudie

Trudie Infantini, CPA
District 3 County Commissioner
1311 E. New Haven Avenue
Melbourne, FL 32901

From: Lewis, Sally A
Sent: Wednesday, August 17, 2016 2:06:19 PM
To: Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff
Cc: Christine Mulligan; Deborah Thomas (deborah.thomas@brevardclerk.us); Donna Scott; Kimberly Powell (kimberly.powell@brevardclerk.us); Tammy Rowe (Tammy.Rowe@brevardclerk.us)
Subject: 2nd changes to the 8-23-16 Advanced Agenda

Attached are the 2nd changes to the advanced agenda.
Also, please note – Delete BCR # 20160612 from Item II D 1. This has already been approved by the Board.
Thank you,
Sally

Sally Lewis
2725 Judge Fran Jamieson Way
Viera, Fl. 32940
321-633-2010
Sally.lewis@brevardcounty.us
Sally.lewis@brevardfl.gov

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Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(321) 633-2090

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From: Infantini, Trudie
Sent: Wednesday, August 17, 2016 2:32 PM
To: Lewis, Sally A; Mannier, Linda; Helton, Lori; Knox, Scott L; dberman@floridatoday.com
Subject: Re: 2nd changes to the 8-23-16 Advanced Agenda

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**MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**

3:30 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on August 16, 2016 at 3:45 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

Attendee Name	Title	Status	Arrived
Robin Fisher	Commissioner District 1	Excused	
Jim Barfield	Chairman/Commissioner District 2	Excused	
Trudie Infantini	Commissioner District 3	Present	
Curt Smith	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	Commissioner District 5	Present	

INVOCATION

The invocation was given by Commissioner Smith.

PLEDGE OF ALLEGIANCE

Commissioner Smith led the assembly in the Pledge of Allegiance.

ITEM II., COMMISSIONER TRUDIE INFANTINI REPORT, RE BALLOT LANGUAGE FOR NOVEMBER 8, 2016, REFERENDUM FOR THE ONE-HALF CENT INFRASTRUCTURE SALES TAX TO FUND IMPLEMENTATION OF SAVE OUR LAGOON PROJECT PLAN

Commissioner Infantini stated at the last Board of County Commissioners meeting an Ordinance was passed for ballot language on November 8, 2016, Referendum for one-half cent infrastructure sales tax to fund implementation of the Save Our Lagoon Project Plan; she provided the Board with a package and she had tried to present during the last Board meeting that perhaps it was not a lawful use of the one-half cent sales tax; she stated extra research has turned up that it is not a permitted use; and the half-cent sales tax cannot be used for demucking. She advised that ballot language has to be to the Supervisor of Elections, the Monday before the next Tuesday Board meeting; there is not another Board meeting beforehand to decide this; Florida Statute 212.055 was referenced in the Ordinance and does not permit what the Statute says being allowed to use the half-cent sales tax for; it is not specifically enumerated and it cannot be used for that; and in order to overcome that objection, Senator Thad Altman presented a Senate bill to attach and make it so that demucking could be used if it was used for ecological and beneficial muck removal; Debbie Mayfield, Florida House Representative for District 54, submitted a similar bill in the House so that muck removal would be added to Florida Statute Chapter 212; however, the provided package shows those denied; and the Senate bill died in appropriations and the House bill died in finance, and tax. She advised demucking is not one of the permitted uses of a Florida Statute; she mentioned Scott Knox, County Attorney, has made a mistake by saying as long as the County fell within the Statute of having a population greater than 75,000, it could be used for maintenance of a capital project, but he did not finish telling the rest of the paragraph; and the rest of the paragraph says that it can be used for maintenance of a project that is put together using the sales tax. She went on to state if the Lagoon was built using the sales tax, the sales tax cannot be used to demuck it; she does not want to present something to the voters to be put on the ballot to vote for and then all are disappointed thinking the County is going to do something; she would rather present to them the stuff that they can do, rather than stuff they cannot do; she thinks the language and the amount required for this one-half cent sales tax needs to be changed; and right now \$300 million is being asked for and \$2 million is for demucking. She suggested to rescind it or reduce how much is going to be collected, and change the ballot language; and she stated the ballot language says it is for removing muck and reducing pollution.

Vice Chairman Smith inquired what Commissioner Infantini is proposing. Commissioner Infantini responded this could wait and be done again at the Board meeting on August 23; but Lori Scott, Supervisor of Elections, needs to have her ballot language in and she may want to know that this cannot go to the voters as is.

Stockton Whitten, County Manager, stated that he and Attorney Knox talked about this issue; Attorney Knox has done the research and is the legal advisor; he has conferred to the County's Bond Council who is confident with his opinion; nevertheless, this will be on the August 23, 2016, Agenda to adopt the ordinance; and he thinks Commissioner Infantini's points are most appropriately presented.

Commissioner Infantini pointed out that there is an Attorney General Opinion (AGO) and it was believed that Tourist Tax could not be used; but Tourist Tax can be used for the Lagoon cleanup, and two other counties are actually doing the same.

Vice Chairman Smith inquired if they had a referendum to vote on to do that. Commissioner Infantini replied no; she stated it is an actual permitted use of the Tourist Tax dollars; and the Tourist Development Council's plan will need to be changed.

Christine LePore, Assistant County Attorney, advised it is her understanding that this issue will be addressed on Tuesday, August 23.

Commissioner Infantini advised this is the Board of County Commissioners holding a special meeting and she will be making a motion.

Commissioner Anderson stated he is not voting on anything until he talks to the other Commissioners in an open and public forum.

Motion by Commissioner Infantini to pull ballot language for November 8, 2016, Referendum of the One-Half Cent Infrastructure Sales Tax to Fund Implementation of the Save Our Lagoon Project Plan until the language is revised, reflecting accuracy of what is permitted to use. Motion failed due to the lack of a seconder.

Vice Chairman Smith expressed his thanks to Commissioner Infantini for bringing this to the Board's attention; and he stated he is looking forward to finding out where to go from here.

ITEM III., PUBLIC COMMENT

David Isnardi, Melbourne-Tillman Water Control District Board Member, advised that he appreciates the Board waiting until Tuesday, August 23 for the public and properly noticing; he has spoken to the other Commissioners, but has not had the chance to speak to Vice Chairman Smith about Melbourne-Tillman being one of the best and most efficiently ran government bodies the Board has even seen; he has worked 14 years hard being a Melbourne-Tillman board member and he is very passionate to ensure the western diversion happens, due to being critical; when efforts fail, the water gets polluted; and in order to continue there has been no budget increase seen since 2007. He went on to state they have been dealing with a lot less over the years; the reserve is coming down and with one major event, there will be no reserve; the most critical thing done is to move the water out of here, which is the basic core function of government; the dollars are needed and no one is doing it better than they are, because they are doing it for less; and when caring about the Lagoon, this is one way to show it.

PUBLIC HEARING, RE: STATEMENT OF PROPOSED RATES FOR THE MELBOURNE-TILLMAN WATER CONTROL DISTRICT FOR FY 2016-2017

Vice Chairman Smith called for the public hearing to consider statement of proposed user fee rates for the Melbourne-Tillman Water Control District for Fiscal Year 2016-2017.

Dan Anderson, District Manager of Melbourne-Tillman Water Control District, introduced the Melbourne-Tillman Water Control District Members who were present. He stated Melbourne-Tillman in April 2016 adopted a tentative budget for submittal to Brevard County for Fiscal Year 2016-2017; and he acknowledged the County Budget Office for its assistance in working with the budget. He advised the Board this budget is being presented with an increase of user fee rate structure; the proposed increase would generate approximately \$173,000; and he pointed out the Melbourne-Tillman Water Control District has been very proactive in water quality within the District canal system before it discharges into the Indian River through Turkey Creek. He stated the increase will fund water quality projects through additional weirs structures to cleanup substations within weirs aquatic vegetation harvesting; and the District is requesting the Board's approval for the adoption user fee rates for FY 2016-2017 as follows: 1) Residential Rates from \$19.13 to \$21.04; 2) Commercial Rates from \$37.14 to \$40.85; and 3) Agricultural Rates from \$6.69 to \$7.36.

Vice Chairman Smith inquired what the increase percentage is. Mr. Anderson responded 10 percent.

Excerpt from V.I.D.2 October 4, 2016
meeting minutes.

projects, but it can't be used to scoop out all of that muck.

Barfield: Mr. Knox.

Knox: I would beg to differ with you. The Department of Revenue, when it reviewed the Ordinance, it said we needed to insert the language about the date that it takes effect. Also, it indicated they have reviewed the Ordinance and said that they didn't have a problem with it, and they're responsible for interpreting that Ordinance.

This is an incorrect stmt.

Fisher: But, you know, as you go do that, you don't want to confuse the public, you know, and so, Commissioner Infantini, Mr. Knox has made a, determined from the Department of Revenue and all that, that you can use it for de-muck. We're going to use it for de-muck, we can legally do that, and, and, and, that's what happens, you say things up here and sometimes people think that, you know, you're an expert on it; and I'm going to take the Department of Revenue and Mr. Knox's opinion on it. And so, don't confuse the public in saying we're going to tax them and then not spend it for what we say we're going to spend it for, because we are going to use it for de-mucking if it gets approved, and it's their choice.

see attached from DOR

Infantini: I have no doubt we'll do it, I just do not believe that it is legally permissible, otherwise it would have permitted to be added to the language of the Statute, and right now it clearly says, in my opinion, and I'm not an attorney, but it's still an opinion until you go to court, it's just an opinion. So, if anybody challenges this and the use of it, I do believe it will fail.

Barfield: Moving forward. You know, that's good that you said that was your opinion, because we can have our own opinion, we just can't have our own facts. So, with that, let's move on with this. Do I have a motion?

Smith: So moved.

Barfield: Second?

Fisher: Second.

Barfield: Motion by Commissioner Smith, second by Commissioner Fisher. All in favor say Aye.

Fisher, Barfield, Smith, Anderson: Aye.

Barfield: All opposed?

Infantini: Nay.

Barfield: Passes 4:1.

RE: sales tax amendment



John Crotty <CrottyJ@dor.state.fl.us>

Today, 3:06 PM

Reply all | v

Mannier, Linda <linda.mannier@brevardfl.gov>; Infantini, Trudie <trudie.infantini@brevardfl.gov>; Helton, Lori <lori.helton@brevardfl.gov>

The Department of Revenue only reviews ordinances and drafts of tax levy ordinances to ensure that they are able to administer the tax collections if the tax passes. We do not consider the purpose of the levy in our review.

From: Mannier, Linda [mailto:linda.mannier@brevardfl.gov]

Sent: Thursday, October 20, 2016 3:03 PM

To: John Crotty <CrottyJ@dor.state.fl.us>

Cc: Infantini, Trudie <trudie.infantini@brevardfl.gov>; Helton, Lori <lori.helton@brevardfl.gov>; Roopnarine, Chalisa <Chalisa.Roopnarine@brevardfl.gov>

Subject: sales tax amendment

Dear Mr. Crotty,

Good afternoon, I want to thank you for speaking with me yesterday regarding the Department of Revenue's (DOR) role in reviewing Brevard County's sales tax ordinance language.

I wanted to make certain I understood correctly that it is not the DOR's responsibility to verify the legality of the language in the ordinance/referendum. My understanding is that the role of the DOR is as the administrator of the taxes and must ensure the correct dates and rates are included in the ordinance. Thus, the communication with Brevard County Attorney's Office was regarding adding the date of implementation as January 1, 2017 and not to establish the legal authority to use the tax to demuck the lagoon and the ballot language states.

Commissioner Infantini is respectfully requesting a written explanation of the DOR's role in reviewing Brevard County's Ordinance for the ½ Cent Infrastructure Sales Surtax being placed on the November 8, 2016 ballot. Specifically, does the DOR do anything more than verify the requirements for administration of the collection of tax?

Thank you in advance for your continued assistance.

Sincerely,

Linda Mannier

Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

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Mannier, Linda

From: Knox, Scott L
Sent: Tuesday, October 18, 2016 3:07 PM
To: Mannier, Linda
Cc: Ray, Brittany; Cummings, Cathleen; Berrios, Cristina
Subject: RE: infrastructure sales tax PRR
Attachments: RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl2.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl3.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl4.pdf; RE_ Brevard County's Sales Tax {unsecure} - Cristina.Berrios@brevardfl5.pdf; RE: Brevard County's Sales Tax [unsecure]

Follow Up Flag: Follow up
Flag Status: Flagged

Linda:

Attached are all emails we have pertaining to the IRL Ordinance and interlocal agreement. You will note the first email in the string references a call between Cristina Berrios and Mr. Crotty at DOR. The only problem raised by DOR during its review was the effective date of the ½ cent sales tax levy and the levy date set forth in the interlocal agreement. They did not raise any issue about demucking as an eligible expenditure. At the October 4 meeting, I was privy to the problem raised by Mr. Crotty in the telephone conversation with Ms. Berrios where the ordinance levy date was discussed, so at that Oct. 4 meeting I indicated that DOR did not have a problem with the demucking issue. The DOR email does not mention demucking at all.

Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(321) 633-2090

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From: Mannier, Linda
Sent: Tuesday, October 18, 2016 3:02 PM
To: Knox, Scott L
Cc: Infantini, Trudie
Subject: RE: infrastructure sales tax

Thanks, Scott.

Linda Mannier
Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

From: Knox, Scott L
Sent: Tuesday, October 18, 2016 2:55 PM
To: Mannier, Linda
Subject: RE: infrastructure sales tax

Sorry Linda, I got sidetracked. I will get right on it.

Scott L. Knox, Brevard County Attorney
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Scott,
The Commissioner is still waiting for this information and she asked me to resend her request.
Thank you,
Linda

Linda Mannier
Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

From: Mannier, Linda
Sent: Tuesday, October 11, 2016 10:14 AM
To: Knox, Scott L
Cc: Infantini, Trudie
Subject: infrastructure sales tax

Scott,

Per Commissioner Infantini's request, please forward the communication your office received from the Department of Revenue stating that demucking is a lawful and permitted use of the Infrastructure Sales Tax, per current Florida Statutes.

Thank you,
Linda

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District 3 Commission Office
1311 E. New Haven Ave.

Mannier, Linda

From: Knox, Scott L
Sent: Wednesday, October 19, 2016 3:52 PM
To: Mannier, Linda
Subject: RE: infrastructure sales tax PRR

Linda:

The answer is none. After the referendum, if the tax is approved, the tax goes into effect on January 1, 2017. The tax will then be collected by retail vendors and the vendors will then send the proceeds collected to DOR for distribution to the local government(s) in the manner prescribed by the interlocal agreement.

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Cc: Infantini, Trudie
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Hi Scott – quick question: What is the DOR's role in the placement of the sales tax referendum on the ballot?

Thanks,

Linda

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Chief Legislative Aide
District 3 Commission Office
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(321)952-6300

COUNTY OF PALM BEACH V. STATE

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ENGLAND, Justice.

This case is an appeal from a judgment of the Palm Beach County Circuit Court declaring invalid a \$50 million bond issue approved by the voters of Palm Beach County. We have jurisdiction pursuant to Article V, Section 3(b)(2) of the Florida Constitution.

The trial judge below construed the resolution by which the Palm Beach County Commission proposed the bond issue as authorizing the use of the proceeds for the unconstitutional purpose of maintaining beaches and parks, and declared the issue invalid for that reason. He also found that Chapter 75-471, Laws of Florida, could not cure the complete failure of the county to publish notice of the bond election in the manner required by Section 100.211, Florida Statutes (1973), because this curative legislation also authorized the use of the bond proceeds for the maintenance of beaches and parks. We reverse.

There is no question but that the manner in which the officials of Palm Beach County conducted the election proceedings surrounding this bond issue was deplorable. Infirmity after infirmity crept into the bonding process, and ill-considered and equally careless attempts were made to cure the defects. Nonetheless, the present posture of the matter is that we are obliged to accept or reject that which the voters of the county overwhelmingly approved. Based on the law presently in existence in this state, we can fulfill the voters' expectations by validating the bonds, with a limiting construction placed on the use of the word "maintenance".

Article VII, Section 12 of the Florida Constitution, limits the power of counties to issue bonds to the two purposes of financing or refinancing capital projects, and to refund outstanding bonds at a lower interest cost. Bonds cannot be issued for the purpose of non-capital expenditures, such as payment of daily maintenance expenses. In this case, the County Commission passed a resolution which stated in relevant part that the bond proceeds would be used to finance "the cost of the acquisition, maintenance and preservation of beaches, parks, bicycle trails, parking facilities, access strips and facilities appertenant (sic) thereto. . . ." If it were clear that references to "maintenance" were intended to mean constitutionally prohibited non-capital expenditures, we would have no choice but to affirm the judgment of the trial court. It is far from clear, however. County Commissioners are presumed to have acted in accordance with their duty to uphold the Constitution of this state, and this Court is bound to avoid constitutional questions concerning a statute by severing objectionable phraseology where necessary. In the context of the resolution the term "maintenance" is not so clear and unambiguous that all would agree it means operating as opposed to capital expenses. It reasonably can be read to mean "capital maintenance", such as replacing fallen trees or eroded beaches. When such ambiguity exists, intent is the touchstone. Before us, the Commission has avowed its intention to use the bond proceeds only for constitutionally proper capital projects, and after the election it adopted a resolution

validating the election which omitted the word "maintenance". We accept the averments of the Commission, cognizant of the fact that if any attempt is made to use bond proceeds in an improper manner an action for injunctive relief would lie.

Cf. City of Miami v. Kayfetz, 92 So.2d 798 (Fla. 1957).

State v. Calhoun County, 126 Fla. 376, 170 So. 883 (1936).

Weiss v. Leonardy, 160 Fla. 570, 36 So.2d 184 (1948).

Williams v. Town of Dunnellon, 125 Fla. 114, 169 So. 631 (1936).

As regards the failure to comply with the notice requirements of Section 100.211, this Court has very clearly stated that after-the-fact validating legislation is perfectly proper to cure procedural defects. In this case the Legislature in Chapter 75-471 declared the election valid because notice had been given through the mailing of a sample ballot to all registered voters in the county. While such substituted notice would not constitute substantial compliance with Section 100.211, the facts of this case present no grounds for the overruling of established precedent. Our construction of the term "maintenance" as used by the Commission is also applicable to the use of that word by the Legislature. We therefore find that the failure to give statutory notice was cured by subsequent legislative validation.

Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967) (curative legislation abrogating a prior legislative mandate setting the percentage of freeholders required to petition for an election); *State v. County of Sarasota*, 155 So.2d 543 (Fla. 1963) (curative legislation directed at defects in statutory publication of notice requirements).

Chapter 75-471 provides:

"All acts and proceedings in connection with the election held in Palm Beach County on November 5, 1974, including the failure to publish notice of such election as required by s. 100.211, Florida Statutes, since notice of such election was in fact given by the mailing of sample ballots to all registered voters, to authorize the issuance of bonds of Palm Beach County, for the purpose of providing funds for financing the costs of acquisition and maintenance of beaches and parks are hereby ratified, validated, and confirmed and said election is declared to be legal and valid in all respects."

For the reasons stated, the judgment of the Palm Beach County Circuit Court is reversed and this case is remanded for further proceedings not inconsistent with this decision.

It is so ordered.

OVERTON, C.J., and ADKINS, SUNDBERG and HATCHETT, JJ., concur.

BOYD, J., dissents with an opinion with which ROBERTS, J., concurs.

BOYD, Justice (dissenting).

I cannot agree with the majority that validity was breathed into the bond issue by Chapter 75-471, Laws of Florida.

Article VII, Section 12 of the Florida Constitution does not include maintenance within the purposes to which it limits local bonds. County Commission Resolution 74-783, which called for the bond issue, states that the funds from sale of bonds shall be used "for the purpose of financing the cost of the acquisition, maintenance and preservation of beaches, parks, bicycle trails, parking facilities, access strips and facilities appertenant [sic] thereto for the residents of Palm Beach County." Minutes of the meeting indicate the Commission, in adopting the above resolution, intended that portions of the money be used for maintenance purposes. The question presented to the voters did not state directly that the proceeds from bond sales would be used for maintenance, but stated the bonds would be issued pursuant to the resolution. Reference to the resolution constituted an indirect inclusion in the question before the voters of maintenance as an expenditure of the bond proceeds. The Legislature, in the enactment of the special curative statute, Chapter 75-471, referred to the bonds as providing funds for financing the costs of acquisition and *maintenance* of beaches and parks.

It is clear to me that the voters must have thought proceeds from the bonds would be used for the unconstitutional purpose of maintenance and that the Legislature's attempt to breathe validity into the bond issue was likewise unconstitutional.

Aside from the constitutional problems, other errors were committed in the bond process. Resolution 74-783 directed that the clerk should publish notice of the bond election to be held on November 5, 1974, once each week for four consecutive weeks, the first publication to be not less than thirty days prior to the date of the election as required by Section 100.211, Florida Statutes (1973). No such notice was ever published.

The learned circuit judge found that county officials and the news media at all levels informed the residents of the County of the coming bond election, including the mailing of one sample ballot to each home having one or more registered voters. Nevertheless, the court found that complete failure of statutory notice constituted a fatal and incurable defect in the bond issue rendering it invalid.

The trial court relied heavily upon *1st Tax Dist. No. 1 of Duval County v. State, Florida, et al.*, 123 So.2d 315 (Fla. 1960), where only one publication of notice of a bond election was made. This Court held the bond issue invalid because of failure to comply with the statutory requirement of four weekly notices. The trial court's decision is buttressed by *State ex rel. Pope v. Shields*, 140 So.2d 144 (Fla. 1st DCA 1962), where the Court held that publication of notice of a town incorporation election in three issues of a weekly newspaper did not constitute substantial compliance with a Special Act of the Legislature which provided for the election procedure and called for notice to be published once a week in a local newspaper for four consecutive weeks.

Appellant relies upon *State v. County of Sarasota*, 155 So.2d 543 (Fla. 1963), where this Court held a bond issue valid based upon substantial compliance with the same statutory notice requirements at issue here.

"The publication in question was first made thirty-five days before the election and was made once each week for five weeks before the election, the first two weeks of the period of publication and the last three weeks. In fact, in the last three weeks, publication was made every day for fifteen days. However, on account of a cause which the publisher has not been able to determine, one publication of the formal notice was not made during the week of March 4." at 545.

That case is not at all similar to this case. Here statutory notice was not published once. Instead the election was publicized by public officials and the news media. To permit statutory notice to be substituted by other types of notice gives rise to an impossible task as to what forms and degrees will be sufficient to constitute substantial compliance. Most informed citizens expect legal notices to appear as items so designated in newspapers of general circulation. Thus, as the majority recognizes, the efforts of the County officials did not constitute substantial compliance with statutory requirements.

The entire bonding process was riddled with errors. Approval of this bond issue lowers the standards for the issuance of bonds to such an extent that from now on it will be difficult to disapprove bond issues regardless of how defective and regardless of obvious constitutional violations.

I dissent from the opinion of the majority and I would affirm the order of dismissal by the Circuit Court.

ROBERTS, J., concurs.

Select Year:

The 2016 Florida Statutes

[Title XIV](#)[Chapter 212](#)[View Entire Chapter](#)

TAXATION AND FINANCE TAX ON SALES, USE, AND OTHER TRANSACTIONS

212.055 **Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.**—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. [212.054](#).

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

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;
2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;
3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and
4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed

guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

(e) As used in this subsection, the term "on-demand transportation services" means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(a)1. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax shall be placed on the ballot and shall take effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

2. If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance, or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of such surtax may be extended only by approval of a majority of the electors of the county voting in a referendum on the surtax.

(b) A statement which includes a brief general description of the projects to be funded by the surtax and which conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing authority of any county which enacts an ordinance calling for a referendum on the levy of the surtax or in which the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions calling for a referendum on the surtax. The following question shall be placed on the ballot:

- FOR the _____ -cent sales tax
- AGAINST the _____ -cent sales tax

(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.

Any change in the distribution formula must take effect on the first day of any month that begins at least 60 days after written notification of that change has been made to the department.

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights

claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. [125.011](#), and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. [163.3164\(38\)](#), s. [163.3221\(13\)](#), or s. [189.012\(5\)](#), regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. [29.008](#).

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. [252.38](#). Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. [206.9951](#); and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within

the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

(e) School districts, counties, and municipalities receiving proceeds under the provisions of this subsection may pledge such proceeds for the purpose of servicing new bond indebtedness incurred pursuant to law. Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through the provisions of this subsection. Counties and municipalities may join together for the issuance of bonds authorized by this subsection.

(f)1. Notwithstanding paragraph (d), a county that has a population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may use the proceeds and interest of the surtax for any public purpose if:

- a. The debt service obligations for any year are met;
- b. The county's comprehensive plan has been determined to be in compliance with part II of chapter 163; and
- c. The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s.

125.66 authorizing additional uses of the surtax proceeds and interest.

2. A municipality located within a county that has a population of 50,000 or less on April 1, 1992, or within a county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may not use the proceeds and interest of the surtax for any purpose other than an infrastructure purpose authorized in paragraph (d) unless the municipality's comprehensive plan has been determined to be in compliance with part II of chapter 163 and the municipality has adopted an amendment to its surtax ordinance or resolution pursuant to the procedure provided in s. 166.041 authorizing additional uses of the surtax proceeds and interest. Such municipality may expend the surtax proceeds and interest for any public purpose authorized in the amendment.

3. Those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section. A county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes for 20 years following removal of the designation, notwithstanding subparagraph (a)2. After expiration of the 20-year period, a county may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure if the county adopts an ordinance providing for such continued use of the surtax proceeds.

(g) Notwithstanding paragraph (d), a county having a population greater than 75,000 in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which an infrastructure surtax referendum is placed before the voters, and the municipalities within such a county, may use the proceeds and interest of the surtax for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax throughout the duration of the surtax levy or while interest earnings accruing from the proceeds of the surtax are available for such use, whichever period is longer.

(h) Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this subsection and subsections (3), (4), and (5) in excess of a combined rate of 1 percent.

(3) SMALL COUNTY SURTAX.—

(a) The governing authority in each county that has a population of 50,000 or less on April 1, 1992, may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by an extraordinary vote of the members of the county governing authority if the surtax revenues are expended for operating purposes. If the surtax revenues are expended for the purpose of servicing bond indebtedness, the surtax shall be approved by a majority of the electors of the county voting in a referendum on the surtax.

Mannier, Linda

From: Infantini, Trudie
Sent: Friday, August 19, 2016 3:51 PM
To: Knox, Scott L
Cc: Mannier, Linda; Helton, Lori
Subject: RE: Response to your question re use of 1/2 cent sales tax for de-mucking

Scott,
Thank you for getting back to me. I didn't want to put something out to a vote that was not legally permissible.
Trudie



TRUDIE INFANTINI, CPA
DISTRICT 3 COUNTY COMMISSIONER
1311 E. NEW HAVEN AVENUE
MELBOURNE, FL 32901
321-952-6300

From: Knox, Scott L
Sent: Thursday, August 18, 2016 3:36 PM
To: Infantini, Trudie
Cc: Barfield, Jim; Fisher, Robin; Anderson, Andy; Smith, Curt; Alward, Elizabeth M; Newell, Marcia; Stern, Danielle; Woodard, Patrick; Whitten, Stockton E; Barker, Virginia H; Bentley, Eden; Berrios, Cristina; Nelson, Shelley J
Subject: Response to your question re use of 1/2 cent sales tax for de-mucking

Trudie:

You have asked for case law and any other law supporting my opinion that the ½ cent local government infrastructure sales surtax can be used for de-mucking the Indian River Lagoon. In essence, you are asking whether expenditures on de-mucking would constitute capital expenditures for the purposes of the applicable sales tax statute, section 212.055(2), Fla. Stat.

The applicable case law is the Florida Supreme Court decision in *County of Palm Beach v. State*, 342 So. 2d 56 (Fla. 1976), the holding from which is set forth below. In that case the court framed the issue as follows:

Bond Issue Lawsuit

"Article VII, Section 12 of the Florida Constitution, limits the power of counties to issue bonds to the two purposes of financing or refinancing capital projects, and to refund outstanding bonds at a lower interest cost. Bonds cannot be issued for the purpose of non-capital expenditures, such as payment of

We can likely bond for lagoon — just not against the Infrastructure Surtax. And not for demucking.

daily maintenance expenses. In this case, the County Commission passed a resolution which stated in relevant part that the bond proceeds would be used to finance "the cost of the acquisition, maintenance and preservation of beaches, parks, bicycle trails, parking facilities, access strips and facilities appertenant (sic) thereto . . ."

*Beaches - not the ocean
Lagoon is BEACH equivalent*

Article VII, Section 12 of the Florida Constitution states: "Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only: (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds..." The term "capital projects" is not defined in the Florida Constitution.

The issue, therefore, was whether the bonds were valid under the state constitution because the bond resolution passed by the County Commission authorized the use of bond proceeds for "maintenance" of beaches, parks...and facilities appurtenant thereto". That is, the issue was whether "maintenance" constituted a "capital project" which is the only purpose for which bonds could legally be issued under the Art. VII, Section 12—which does not define the term "capital project".

What are the other examples?
In overturning a lower court decision finding the bonds violated the "capital project" requirement, the Court held the term "maintenance" as used in the bond resolution necessarily meant "capital maintenance" because the constitutional provision limited bond financing to "capital projects". In other words, the court found that "capital maintenance" constitutes a "capital project." In so doing, the Court gave two examples of what it meant by "capital maintenance—beach re-nourishment and replacement of fallen trees. Here is what the opinion said about "capital maintenance":

"If it were clear that references to "maintenance" were intended to mean constitutionally prohibited non-capital expenditures, we would have no choice but to affirm the judgment of the trial court. It is far from clear, however. County Commissioners are presumed to have acted in accordance with their duty to uphold the Constitution of this state, and this Court is bound to avoid constitutional questions concerning a statute by severing objectionable phraseology where necessary. In the context of the resolution the term "maintenance" is not so clear and unambiguous that all would agree it means operating as opposed to capital expenses. It reasonably can be read to mean "capital maintenance", such as replacing fallen trees or eroded beaches." County of Palm Beach v. State, 342 So. 2d 56 (Fla. 1976)

Sand on beach & trees on land not same as demucking lagoon - IMHO

In short, the Florida Supreme Court precedent includes "capital maintenance" as a species of "capital project" within the meaning of the Constitution. Thus a "capital expenditure" or a "capital outlay" (undefined terms) for the improvement of infrastructure—defined in section 212.055(2)(d)1. Fla. Stat as "improvement of public facilities that have a life expectancy of 5 or more years"—would include expenditures on "capital maintenance". Indeed, the interpretation that capital maintenance is also a capital project that would require capital expenditures is evidenced by Bond Counsel's statement in the email below that "most CPA firms treat significant canal dredging and the like as capital and we have financed those costs in the past so this likely should not be a problem."

Apart from the Florida Supreme Court and Bond Counsel views, the sales tax statute itself would clearly include de-mucking within the term "public facility," the improvement costs for which can be paid with the ½ cent sales tax. In section 212.055(2)(d)1.a. "Public facilities" is defined as including the definition of that term as it appears in section 163.3221(13), Fla. Stat., which statute reads: "Public facilities means major capital

improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and **recreational**, and health systems and facilities..."

Restating the statutory definition as applied solely to **recreational** capital improvements, the sales tax statute definition of "**public facilities**" means major recreational capital improvements--which necessarily include dredging muck for the restoration of the Indian River Lagoon because the lagoon is unquestionably used for recreational purposes. *et; fisher a dock boat*

A recreation facility cannot be used for private purpose or fiscal gain. I.E. - business.
That de-mucking of the Indian River Lagoon by dredging is both capital maintenance and a major recreational capital improvement, as opposed to recurring maintenance, is made clear by the Save Our Lagoon Project Plan which proposes that the bulk of the projected \$340 million in sales tax revenue will go toward 1) dredging and removing 50+ years of accumulated and environmentally destructive "muck" located in various parts of the lagoon; 2) the construction of natural water filtration projects; and 3) the construction of stormwater capital improvements to improve water quality by reducing stormwater runoff that would contribute to future muck accumulation. Within the 10 year period during which the sales tax is levied, de-mucking, shoreline natural filtration projects and stormwater projects are not expected to reoccur in any area of the lagoon in which they are completed. *We have De-mucked before*

If there is any lingering doubt about whether "capital expenditures" of sales tax revenues for "major recreational capital improvements" constituting "public facilities", as defined in section 212.055(2) Fla. Stat. can include the cost of de-mucking to restore the recreational viability of the Indian River Lagoon, I would refer you to chapter 259, Fla. Stat. which addresses the state policy "protecting air, land, and water quality; promoting water resource development to meet the needs of natural systems and citizens of this state; promoting restoration activities on public lands; and providing lands for natural resource-based recreation..." and expresses "the Legislature's intent that lands acquired for conservation and recreation purposes be managed in such a way as to protect or **restore their natural resource values**, and provide the greatest benefit, including public access, to the citizens of this state."

See Statute

The definition of the term "capital improvement or capital expenditure" in chapter 259 sheds light on what the Legislature was referring to when it used the undefined term "capital expenditure" in section 212.055(2)(d)(1)a. and the undefined term "capital improvements" which is incorporated into 212.055(2)(d)1.a as part of the 163.3221(13) definition of "public facilities" [The phrase "capital improvements" is not defined in 163.3221(13)]. For conservation and recreation purposes, section 259.03(3) defines "capital improvements" as follows:

F.S. 259.03 "Land acquisition for conservation or recreation"

259.03(3) "Capital improvement" or "capital project expenditure" means those activities relating to the acquisition, **restoration**, public access, and **recreational uses** of such lands, **water areas**, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities' signs, firelanes, access roads, and trails; or any other activities that serve to **restore**, conserve, protect, or provide public access, **recreational opportunities**, or necessary services for land or **water areas**.

Clearly, the Legislature contemplated that, as applied to conservation and recreation lands (which clearly includes submerged lands), "capital improvements" for which "capital project expenditures" can be made include "any activities that serve to **restore, conserve, protect** or provide access to **recreational opportunities for waters areas**" (submerged lands).

It should also be noted that, under subsection 212.055(2)(g) Fla. Stat. (set forth in the email string below) any operational maintenance costs for SOLPP stormwater projects, natural filtration projects or other lagoon restoration projects financed by the ½ cent sales tax can also be paid from the ½ cent sales tax, as well as the cost of property owner education programs designed to raise property owner's awareness of steps they can take to prevent re-introduction of lawn fertilizers, clippings and other polluted stormwater runoff into the lagoon, all of which have been contributors to the existing muck problem created over the past 50+ years.

Below is the email string between Bond Counsel and myself. I would also point out that the findings section of the proposed lagoon referendum/sales tax Ordinance address the issue you have raised in great detail, including a state agency's very broad interpretation of the highlighted language found in 212.055(2)(g) (set forth below).

RE: Indian River

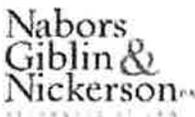
Miller, Steve <smiller@ngn-tampa.com>

Sent: Mon 8/15/2016 5:25 PM

To: Knox, Scott L

Cc: Wilson, Shannon L; Cummings, Cathleen; Bentley, Eden

I figured you guys had looked into this already. We just didn't know what the remediation/capital improvement might entail. In addition to the state law issue, under the federal tax laws, proceeds of tax-exempt debt must be used for capital expenditures. Federal tax authority generally defers to the issuing entity's own accounting treatment of the expenditure. To that end, if the County intends to issued tax-exempt bonds for any of these costs we would need to see how the County's accountants would treat such expenditures – capital or non-capital. Most CPA firms treat significant canal dredging and the like as capital and we have financed those costs in the past so this likely should not be a problem but we probably will want to discuss with finance at some point.



Steven E. Miller, Esq.
Nabors, Giblin & Nickerson, P.A.
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Tampa, Florida 33607
Phone 813/281-2222
Fax 813/281-0129
smiller@ngn-tampa.com

Spoke w/
Mark Peterson
Found 1700 → Grant
cost center 343935 - NR Stormwater
2016 let 423,000
State grant for
muck dredging
"NON-CAPITAL"

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From: Knox, Scott L [<mailto:Scott.Knox@brevardfl.gov>]
Sent: Monday, August 15, 2016 5:12 PM
To: Miller, Steve

operating expense
Accounting treatment:
"non capital?"

Cc: Wilson, Shannon L; Cummings, Cathleen; Bentley, Eden
Subject: RE: Indian River

*Sand on beach
totally different
than what lagoon is used for.*

I am familiar with the statute, Steve. And as you know, the Supreme Court has indicated that infrastructure includes capital maintenance. It is my opinion that removing 50 years of accumulated muck in identified pockets within the Indian River (constituting 70% of the project cost) qualifies as "capital maintenance" on a recreation facility-- like replacement of sand on an eroded beach or replacement of fallen trees in a park. A recreation facility constitutes a public facility within the meaning of the statutory definition, particularly in Brevard where there are about 100+ parks abutting the lagoon and three causeways crossing the lagoon with which passive (and active) recreation activities in the lagoon are or can be associated in Brevard County alone.

More importantly, there is a rarely used section of the sales surtax law that authorizes the use of surtax funds for operations and maintenance of parks and recreation programs, as well as facilities established with the proceeds of the surtax. Because Brevard County, perhaps uniquely among the 67 counties (likely due to the county's unique charter cap) qualifies under the ratio established in that statute, I have concluded the statute also authorizes operations and maintenance of recreation programs associated with the Lagoon.

Subsection 212.055(2)(g):

(g) Notwithstanding paragraph (d), a county having a population greater than 75,000 in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which an infrastructure surtax referendum is placed before the voters, and the municipalities within such a county, may use the proceeds and interest of the surtax for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax throughout the duration of the surtax levy or while interest earnings accruing from the proceeds of the surtax are available for such use, whichever period is longer.

County of Palm Beach v. State, 342 So. 2d 56 (Fla. 1976) - *Bond Issue lawsuit -*
"If it were clear that references to "maintenance" were intended to mean constitutionally prohibited non-capital expenditures, we would have no choice but to affirm the judgment of the trial court. It is far from clear, however. County Commissioners are presumed to have acted in accordance with their duty to uphold the Constitution of this state, and this Court is bound to avoid constitutional questions concerning a statute by severing objectionable phraseology where necessary. In the context of the resolution the term "maintenance" is not so clear and unambiguous that all would agree it means operating as opposed to capital expenses. It reasonably can be read to mean "capital maintenance", such as replacing fallen trees or eroded beaches."

fallen trees + sand are tangible items to be replaced

Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(321) 633-2090

*NOT THE SAME AS
Demurring*

The State of Florida has a broad public records law and a request made under the authority of that Public Records law may require the disclosure and copying of any email sent to this office unless exempt, privileged or confidential under state law .

From: Wilson, Shannon L
Sent: Monday, August 15, 2016 10:33 AM
To: Knox, Scott L
Cc: Miller, Steve; Cummings, Cathleen
Subject: FW: Indian River

Scott,

You are far more involved in this and in a better position to answer Steve's questions.

Shannon L. Wilson
Deputy County Attorney
2725 Judge Fran Jamieson Way
Suite 308
Viera, FL 32940
(321) 633-2090

From: Miller, Steve [<mailto:smiller@ngn-tampa.com>]
Sent: Monday, August 15, 2016 10:23 AM
To: Wilson, Shannon L
Subject: Indian River

I saw the article noting that the County intends to put an infrastructure sales surtax on the ballot for remediating the Indian River Lagoon. Do you know what kind of capital improvements are to be financed with the surtax? As you know, the statute requires the surtax proceeds to be used for "infrastructure" as defined in the statute. The definition means fixed capital expenditures or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities that have a life expectancy of 5 years or more.



Steven E. Miller, Esq.
Nabors, Giblin & Nickerson, P.A.
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Tampa, Florida 33607
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smiller@ngn-tampa.com

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Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(321) 633-2090

The State of Florida has a broad public records law and a request made under the authority of that Public Records law may require the disclosure and copying of any email sent to this office unless exempt, privileged or confidential under state law .

From: Infantini, Trudie
Sent: Wednesday, August 17, 2016 2:32 PM
To: Lewis, Sally A; Mannier, Linda; Helton, Lori; Knox, Scott L; dberman@floridatoday.com
Subject: Re: 2nd changes to the 8-23-16 Advanced Agenda

Dear Scott,

I am very concerned about the forward motion of this agenda item. Please provide me the AGO, the case law, the anything you have supporting the use of the referendum proceeds to be used for de-mucking the lagoon. I genuinely believe this is not a permitted use and we are defrauding the public but I will stand corrected if presented with persuasive supporting documentation.

Thanks for getting right on this,
Trudie

Trudie Infantini, CPA
District 3 County Commissioner
1311 E. New Haven Avenue
Melbourne, FL 32901

From: Lewis, Sally A
Sent: Wednesday, August 17, 2016 2:06:19 PM
To: Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff
Cc: Christine Mulligan; Deborah Thomas (deborah.thomas@brevardclerk.us); Donna Scott; Kimberly Powell (kimberly.powell@brevardclerk.us); Tammy Rowe (Tammy.Rowe@brevardclerk.us)
Subject: 2nd changes to the 8-23-16 Advanced Agenda

Attached are the 2nd changes to the advanced agenda.
Also, please note – Delete BCR # 20160612 from Item II D 1. This has already been approved by the Board.
Thank you,
Sally

Sally Lewis
2725 Judge Fran Jamieson Way
Viera, Fl. 32940
321-633-2070
Sally.lewis@brevardcounty.us
Sally.lewis@brevardfl.gov

Under Florida law, all correspondence sent to the County Manager's Office, which is not exempt or confidential pursuant to Chapter 119 of the Florida Statutes, is public record. If you do not want the public record contents of your e-mail or your e-mail address to be provided to the public in response to a public records request, please do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
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**MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**

3:30 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on August 16, 2016 at 3:45 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

Attendee Name	Title	Status	Arrived
Robin Fisher	Commissioner District 1	Excused	
Jim Barfield	Chairman/Commissioner District 2	Excused	
Trudie Infantini	Commissioner District 3	Present	
Curt Smith	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	Commissioner District 5	Present	

INVOCATION

The invocation was given by Commissioner Smith.

PLEDGE OF ALLEGIANCE

Commissioner Smith led the assembly in the Pledge of Allegiance.

ITEM II., COMMISSIONER TRUDIE INFANTINI REPORT, RE BALLOT LANGUAGE FOR NOVEMBER 8, 2016, REFERENDUM FOR THE ONE-HALF CENT INFRASTRUCTURE SALES TAX TO FUND IMPLEMENTATION OF SAVE OUR LAGOON PROJECT PLAN

Commissioner Infantini stated at the last Board of County Commissioners meeting an Ordinance was passed for ballot language on November 8, 2016, Referendum for one-half cent infrastructure sales tax to fund implementation of the Save Our Lagoon Project Plan; she provided the Board with a package and she had tried to present during the last Board meeting that perhaps it was not a lawful use of the one-half cent sales tax; she stated extra research has turned up that it is not a permitted use; and the half-cent sales tax cannot be used for demucking. She advised that ballot language has to be to the Supervisor of Elections, the Monday before the next Tuesday Board meeting; there is not another Board meeting beforehand to decide this; Florida Statute 212.055 was referenced in the Ordinance and does not permit what the Statute says being allowed to use the half-cent sales tax for; it is not specifically enumerated and it cannot be used for that; and in order to overcome that objection, Senator Thad Altman presented a Senate bill to attach and make it so that demucking could be used if it was used for ecological and beneficial muck removal; Debbie Mayfield, Florida House Representative for District 54, submitted a similar bill in the House so that muck removal would be added to Florida Statute Chapter 212; however, the provided package shows those denied; and the Senate bill died in appropriations and the House bill died in finance, and tax. She advised demucking is not one of the permitted uses of a Florida Statute; she mentioned Scott Knox, County Attorney, has made a mistake by saying as long as the County fell within the Statute of having a population greater than 75,000, it could be used for maintenance of a capital project, but he did not finish telling the rest of the paragraph; and the rest of the paragraph says that it can be used for maintenance of a project that is put together using the sales tax. She went on to state if the Lagoon was built using the sales tax, the sales tax cannot be used to demuck it; she does not want to present something to the voters to be put on the ballot to vote for and then all are disappointed thinking the County is going to do something; she would rather present to them the stuff that they can do, rather than stuff they cannot do; she thinks the language and the amount required for this one-half cent sales tax needs to be changed; and right now \$300 million is being asked for and \$2 million is for demucking. She suggested to rescind it or reduce how much is going to be collected, and change the ballot language; and she stated the ballot language says it is for removing muck and reducing pollution.

Vice Chairman Smith inquired what Commissioner Infantini is proposing. Commissioner Infantini responded this could wait and be done again at the Board meeting on August 23; but Lori Scott, Supervisor of Elections, needs to have her ballot language in and she may want to know that this cannot go to the voters as is.

Stockton Whitten, County Manager, stated that he and Attorney Knox talked about this issue; Attorney Knox has done the research and is the legal advisor; he has conferred to the County's Bond Council who is confident with his opinion; nevertheless, this will be on the August 23, 2016, Agenda to adopt the ordinance; and he thinks Commissioner Infantini's points are most appropriately presented.

Commissioner Infantini pointed out that there is an Attorney General Opinion (AGO) and it was believed that Tourist Tax could not be used; but Tourist Tax can be used for the Lagoon cleanup, and two other counties are actually doing the same.

Vice Chairman Smith inquired if they had a referendum to vote on to do that. Commissioner Infantini replied no; she stated it is an actual permitted use of the Tourist Tax dollars; and the Tourist Development Council's plan will need to be changed.

Christine LePore, Assistant County Attorney, advised it is her understanding that this issue will be addressed on Tuesday, August 23.

Commissioner Infantini advised this is the Board of County Commissioners holding a special meeting and she will be making a motion.

Commissioner Anderson stated he is not voting on anything until he talks to the other Commissioners in an open and public forum.

Motion by Commissioner Infantini to pull ballot language for November 8, 2016, Referendum of the One-Half Cent Infrastructure Sales Tax to Fund Implementation of the Save Our Lagoon Project Plan until the language is revised, reflecting accuracy of what is permitted to use. Motion failed due to the lack of a seconder.

Vice Chairman Smith expressed his thanks to Commissioner Infantini for bringing this to the Board's attention; and he stated he is looking forward to finding out where to go from here.

ITEM III., PUBLIC COMMENT

David Isnardi, Melbourne-Tillman Water Control District Board Member, advised that he appreciates the Board waiting until Tuesday, August 23 for the public and properly noticing; he has spoken to the other Commissioners, but has not had the chance to speak to Vice Chairman Smith about Melbourne-Tillman being one of the best and most efficiently ran government bodies the Board has even seen; he has worked 14 years hard being a Melbourne-Tillman board member and he is very passionate to ensure the western diversion happens, due to being critical; when efforts fail, the water gets polluted; and in order to continue there has been no budget increase seen since 2007. He went on to state they have been dealing with a lot less over the years; the reserve is coming down and with one major event, there will be no reserve; the most critical thing done is to move the water out of here, which is the basic core function of government; the dollars are needed and no one is doing it better than they are, because they are doing it for less; and when caring about the Lagoon, this is one way to show it.

PUBLIC HEARING, RE: STATEMENT OF PROPOSED RATES FOR THE MELBOURNE-TILLMAN WATER CONTROL DISTRICT FOR FY 2016-2017

Vice Chairman Smith called for the public hearing to consider statement of proposed user fee rates for the Melbourne-Tillman Water Control District for Fiscal Year 2016-2017.

Dan Anderson, District Manager of Melbourne-Tillman Water Control District, introduced the Melbourne-Tillman Water Control District Members who were present. He stated Melbourne-Tillman in April 2016 adopted a tentative budget for submittal to Brevard County for Fiscal Year 2016-2017; and he acknowledged the County Budget Office for its assistance in working with the budget. He advised the Board this budget is being presented with an increase of user fee rate structure; the proposed increase would generate approximately \$173,000; and he pointed out the Melbourne-Tillman Water Control District has been very proactive in water quality within the District canal system before it discharges into the Indian River through Turkey Creek. He stated the increase will fund water quality projects through additional weirs structures to cleanup substations within weirs aquatic vegetation harvesting; and the District is requesting the Board's approval for the adoption user fee rates for FY 2016-2017 as follows: 1) Residential Rates from \$19.13 to \$21.04; 2) Commercial Rates from \$37.14 to \$40.85; and 3) Agricultural Rates from \$6.69 to \$7.36.

Vice Chairman Smith inquired what the increase percentage is. Mr. Anderson responded 10 percent.