



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, *County Attorney*

201 South Rosalind Avenue ■ 3rd Floor
Reply To: Post Office Box 1393
Orlando, FL 32802-1393
407-836-7320 ■ Fax 407-836-5888
<http://www.ocfl.net>

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
JUN 24 2014 KH/NA

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County Attorneys

Lila McHenry
Edward M. Chew

Assistant County Attorneys

Roberta Alfonso
Linda Brehmer Lanosa
Henry Brown
Anthony Cotter
Dana Crosby-Collier
P. Andrea DeLoach
Whitney E. Evers
Kathleen Furey-Tran
Wanzo Galloway, Jr.
Georgiana Holmes
Katherine W. Latorre
Peter A. Lichtman
Sawsan Mohiuddin
Scott Shevenell
William Turner

Legal Administrative Supervisor

Anna M. Caban

Paralegals

Kimberly Cundiff
Cathy Saravanja, CP
Maria Vargas, ACP

TO: Mayor Teresa Jacobs
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *HM*
Kate Latorre, Assistant County Attorney *Kr*
Contact: (407) 836-9651

DATE: June 13, 2014

RE: Consent Agenda – June 24, 2014
Direction to the Supervisor of Elections to conduct the referendum on the proposed sales surtax for school construction, renovation, technology retrofitting, and land acquisition

BACKGROUND:

The Orange County School Board approved a resolution on June 10, 2014 to renew the levy of the “half-cent” sales surtax for school construction, renovation, technology retrofitting, and land acquisition, subject to voter approval. The approved resolution was in the form attached hereto.

Section 7 of the School Board’s resolution requests that the Board of County Commissioners approve the August 26, 2014 date for the referendum election, and direct the Supervisor of Elections to place the question on the ballot for voter approval during the first primary election. Once the school board passes a resolution pursuant to section 212.055(6), Florida Statutes, levying a discretionary school capital-outlay surtax conditioned upon voter approval, this Board is required to place the question on the ballot.

The Board’s action does not constitute a decision in favor of the tax, but merely complies with the statutory mandate to transmit the question to the Supervisor of Elections. Specifically, section 212.055(6), Florida Statutes, provides that ballot question proposing the discretionary surtax “shall be placed on the ballot by the governing body of the county.”

Mayor Teresa Jacobs
and
County Commissioners
June 13, 2014
Page 2

ACTION REQUESTED:

Approval of the August 26, 2014 date for the referendum on the school sales surtax and authorization to direct the Supervisor of Elections to place the sales surtax question on the ballot and to conduct the referendum as part of the 2014 first primary election in accordance with state election laws.

Attachment

c: Ajit Lalchandani, County Administrator

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA

RESOLUTION NO. 2014-06-10

A RESOLUTION OF THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA CALLING FOR A REFERENDUM TO BE HELD ON AUGUST 26, 2014 FOR THE PURPOSE OF SUBMITTING TO THE DULY QUALIFIED ELECTORS OF ORANGE COUNTY, FLORIDA A QUESTION REGARDING THE RENEWAL BY THE ORANGE COUNTY SCHOOL BOARD OF THE DISCRETIONARY SALES SURTAX OF ONE-HALF CENT FOR THE PURPOSE OF FUNDING THE COSTS OF SCHOOL CONSTRUCTION, RENOVATION, TECHNOLOGY RETROFITTING AND LAND ACQUISITION, INCLUDING BOND INDEBTEDNESS, IF ANY, WITH CONTINUED OVERSIGHT BY AN INDEPENDENT COMMITTEE; AUTHORIZING CERTAIN INCIDENTAL ACTIONS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, lack of funding within the School District of Orange County, Florida (the "District") for the costs of construction, reconstruction and improvement of new and existing public school facilities, and for the cost of providing and retrofitting schools for technology implementation, including hardware and software, became more and more acute in 2002; and

WHEREAS, the School Board of Orange County, Florida (the "School Board") determined that there was a need for construction of new school facilities, renovation of exiting school facilities, installation of new computer technology and retrofitting of existing facilities for technology implementation; and

WHEREAS, Section 212.055(6), Florida Statutes, authorized the imposition by school boards of a one-half cent sales surtax on all taxable transactions to fund capital outlay projects and technology implementation, including the payment of bond indebtedness therefor, subject to approval by the electors of the county voting in a referendum; and

WHEREAS, in August 2002, 59.3% of the electors of Orange County, approved a one-half cent sales surtax, with an effective date of January 1, 2003; and,

WHEREAS, less than 50% of the sales tax was to be paid by Orange County residents; and,

WHEREAS, as a result of that sales surtax at least 90 schools have been or will be remodeled, renovated, replaced or improved; and,

WHEREAS, since 2002, the revenues devoted to capital improvements from the Florida Legislature have decreased dramatically; and,

WHEREAS, as a result of the Constitutional Class Size Amendment and a downturn in the economy the District experienced a negative fiscal impact of \$1.2 billion; and,

WHEREAS, that original 2002 surtax is set to expire on December 31, 2015; and,

WHEREAS, growth in the housing market has continued to significantly increase the student population in Orange County since 2002; and,

WHEREAS, there are still a number of schools in need of renovation, replacement or reconstruction from the original list; and,

WHEREAS, additional schools not on the original list are in need of renovation, replacement or reconstruction; and,

WHEREAS, attached to this Resolution is a plan (the "Plan") consistent with the provisions of Section 212.055(6)(c) Florida Statutes for the use of the proceeds of levy and collection of the surtax for capital outlay and technology implementation;

NOW, THEREFORE, BE IT RESOLVED BY THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA THAT:

Section 1. Tax Levy. The existing sales surtax levied and imposed within Orange County as a discretionary sales surtax on all taxable transactions of .5 percent (one-half cent) pursuant to the provisions of Section 212.055(6), Florida Statutes, and Section 212.054, Florida Statutes is hereby renewed for another 10 years.

Section 2. Term of Levy. The surtax levy shall commence January 1, 2016. The surtax levy shall remain in full force and effect from and after January 1, 2016 and ending December 31, 2025, unless repealed or reduced prior to that time by resolution of the School Board, which repeal or reduction may be effectuated without referendum, so long as there are no bonds or other obligations of the School Board outstanding that are payable from the proceeds of such levy.

Section 3. Administration. The surtax levied hereby shall be collected, administered and paid to the School Board by the Department of Revenue pursuant to the terms of Section 212.054, Florida Statutes and such other laws as may be applicable.

Section 4. Use of Revenues; Adoption of Plan. The proceeds of the levy and collection of the surtax and any interest accrued thereto shall be expended by the School Board in accordance with the Plan for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction or improvement of school facilities and campuses which have a useful life expectancy of five (5) or more years, and any land acquisition, land improvement, design and engineering costs related thereto, including the making of lease payments under lease purchase agreements pursuant to Sections 1001.42 and 1013.15 Florida Statutes, and for the costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the District as set forth in the Plan. Such proceeds and interest thereon may also be used for the purpose of servicing bond indebtedness to finance projects authorized above. A description of the capital outlay projects to be funded by the surtax is set forth in the Plan attached by reference in Exhibit A hereto, which is hereby adopted and made a part of this Resolution.

Section 5. Citizens' Construction Oversight and Value Engineering Committee. The existing Citizens' Construction Oversight and Value Engineering Committee ("COVE") shall continue to operate under the duly authorized bylaws and charter as approved by the Orange County School Board for the purpose of providing financial and construction oversight of the School Board's capital outlay program which includes this Plan. COVE shall also have the power to authorize and/or commission audits of the capital outlay program, as necessary. COVE shall consist of not less than seven (7) members nominated by the Superintendent and confirmed by the School Board, who shall have expertise in the fields of finance, audit, construction, maintenance and planning. No member of COVE shall be an employee of the School Board, or of an enterprise doing business with the School Board, nor shall any such member vote on any contract between the School Board and any enterprise which employs a relative of such member. The role of COVE, in overseeing the implementation of the Plan, shall constitute an integral part of the Plan and shall not be subject to repeal prior to completion of the Plan.

Section 6. Operational Expenses. Neither the proceeds of the surtax nor any interest accrued thereto shall be used for operational expenses.

Section 7. Referendum. The School Board hereby calls that a referendum be held throughout Orange County, Florida, on the last Tuesday of August, which is August 26, 2014, for the purpose of submitting to the duly qualified electors of Orange County the question of renewing the existing sales surtax. The School Board hereby requests that the Orange County Board of County Commissioners (i) approve the date for the referendum and (ii) direct the Orange County Supervisor of Elections to place on the ballot the statement[s] contained in the "Notice of Election" set forth in Section 8, herein, and to conduct said election pursuant to the provisions of Florida's Election Code.

Section 8. Notice of Election. In accordance with Florida law, not less than thirty (30) days' notice of said election shall be given by publication both in English and Spanish in a newspaper of general circulation throughout the District. Such publication shall be made at least twice, once in the fifth week and once in the third week prior to the week of August 26th, which notice shall be substantially in the following form together with such additional information as the Supervisor of Elections of Orange County, Florida shall require:

NOTICE OF ELECTION

TUESDAY AUGUST 26, 2014

IN

ORANGE COUNTY, FLORIDA

NOTICE IS HEREBY GIVEN THAT AN ELECTION HAS BEEN CALLED BY THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA FROM 7:00 A.M. UNTIL 7:00 P.M. ON TUESDAY, AUGUST 26, 2014, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY QUALIFIED ELECTORS OF ORANGE COUNTY, FLORIDA THE FOLLOWING QUESTION:

ONE-HALF CENT SALES SURTAX FOR SCHOOL CONSTRUCTION,
RENOVATION, TECHNOLOGY RETROFITTING AND LAND ACQUISITION

SHALL THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA RENEW THE CURRENT ONE-HALF CENT SALES SURTAX TO FUND THE CONSTRUCTION AND RENOVATION OF SCHOOL FACILITIES INCLUDING THE COSTS OF RETROFITTING AND PROVIDING TECHNOLOGY IMPLEMENTATION AND ANY RELATED LAND ACQUISITION, LAND IMPROVEMENT, DESIGN AND ENGINEERING COSTS, INCLUDING ANY BOND INDEBTEDNESS, WITH CONTINUED OVERSIGHT BY AN INDEPENDENT COMMITTEE, BEGINNING JANUARY 1, 2016 AND ENDING DECEMBER 31, 2025?

_____ FOR THE ONE-HALF CENT TAX

_____ AGAINST THE ONE-HALF CENT TAX

RESOLUTION NO. 2014-06-10 ADOPTED BY THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA ON JUNE 10, 2014, PROVIDES FOR THE RENEWAL OF THE ONE-HALF CENT SALES TAX PER DOLLAR ON ALL TAXABLE TRANSACTIONS WITHIN ORANGE COUNTY. THE PROCEEDS OF THE SALES SURTAX SHALL BE EXPENDED BY THE SCHOOL BOARD FOR FIXED CAPITAL EXPENDITURES OR FIXED CAPITAL COSTS ASSOCIATED WITH THE CONSTRUCTION, RECONSTRUCTION OR IMPROVEMENT OF SCHOOL FACILITIES AND CAMPUSES WHICH HAVE A USEFUL LIFE EXPECTANCY OF (5) OR MORE YEARS, AND ANY LAND ACQUISITION, LAND IMPROVEMENT, DESIGN AND ENGINEERING COSTS RELATED THERETO, AND FOR THE COSTS OF RETROFITTING AND PROVIDING FOR TECHNOLOGY IMPLEMENTATION, FOR THE VARIOUS SITES WITHIN THE DISTRICT (THE "PLAN"), WITH OVERSIGHT BY THE INDEPENDENT CITIZENS' CONSTRUCTION OVERSIGHT AND VALUE ENGINEERING ("COVE") COMMITTEE. SUCH PROCEEDS AND INTEREST THEREON MAY ALSO BE USED FOR THE PURPOSE OF MAKING LEASE PAYMENTS UNDER LEASE PURCHASE AGREEMENTS AND/OR SERVICING BOND INDEBTEDNESS TO FINANCE PROJECTS AUTHORIZED BY THE PLAN. THE PLAN FOR USE OF THE PROCEEDS OF SUCH SURTAX IS SET FORTH IN AN EXHIBIT TO THE RESOLUTION.

IN ACCORDANCE WITH THE CONSTITUTION AND THE ELECTION LAWS OF THE STATE OF FLORIDA, ALL DULY QUALIFIED ELECTORS OF ORANGE COUNTY, FLORIDA SHALL BE ENTITLED TO VOTE IN THE ELECTION TO WHICH THIS NOTICE PERTAINS.

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA SHALL BE AUTHORIZED TO LEVY THE TAX COVERED BY THE QUESTION STATED

ABOVE IF THE QUESTION SHALL BE APPROVED BY VOTE OF A MAJORITY OF THE DULY QUALIFIED ELECTORS OF ORANGE COUNTY, FLORIDA VOTING THEREON.

Section 9. Official Ballot. The official ballot to be used in the election to be held on Tuesday, August 26, 2014, shall be in English and Spanish and shall be in full compliance with the laws of the State of Florida and shall be substantially in the following form:

OFFICIAL BALLOT

ONE-HALF CENT SALES SURTAX FOR SCHOOL CONSTRUCTION, RENOVATION, TECHNOLOGY RETROFITTING AND LAND ACQUISITION

SHALL THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA RENEW THE CURRENT ONE-HALF CENT SALES SURTAX TO FUND THE CONSTRUCTION AND RENOVATION OF SCHOOL FACILITIES INCLUDING THE COSTS OF RETROFITTING AND PROVIDING TECHNOLOGY IMPLEMENTATION AND ANY RELATED LAND ACQUISITION, LAND IMPROVEMENT, DESIGN AND ENGINEERING COSTS, INCLUDING ANY BOND INDEBTEDNESS, WITH CONTINUED OVERSIGHT BY AN INDEPENDENT COMMITTEE, BEGINNING JANUARY 1, 2016 AND ENDING DECEMBER 31, 2025?

_____ FOR THE ONE-HALF CENT TAX

_____ AGAINST THE ONE-HALF CENT TAX

If a majority of the ballots cast at such election shall be "FOR THE ONE-HALF CENT TAX", the levy of such tax shall be approved and said surtax shall be levied as provided by law.


Section 10. Statutory References. All statutory references herein shall be to said statutes as they exist on the date of adoption of this Resolution and as they may be from time to time amended or renumbered, including pursuant to the Education Bill upon its effective date, as well as by future legislation, except to the extent contractual commitments would preclude application of a subsequent statutory revision or repeal.

Section 11. Severability. It is declared to be the intent of the School Board that, if any section, subsequent, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

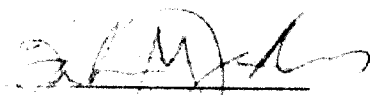
Section 12. Conflict. Any resolution or part thereof in conflict with this Resolution or any part hereof is hereby repealed to the extent of the conflict.

Section 13. Effective Date. Sections 1 through 6 of this Resolution shall be effective upon approval by a majority of votes cast by qualified electors in the referendum provided for herein and the remaining sections of this Resolution shall be effective immediately upon its adoption.

Adopted this Tuesday, June 10, 2014

By: 
Chairman, The School Board of
Orange County, Florida

[SEAL]

ATTEST: 
Secretary, The School Board of
Orange County, Florida

Approved as to form and legality.

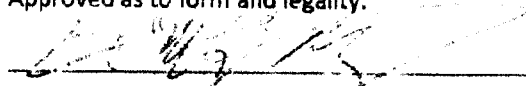

School Board Attorney

EXHIBIT A

Plan for Use of Sales Tax for Capital Outlay Program.

1. Revenues from the sales tax generated pursuant to Section 212.055 Florida Statutes will fund:
 - Replacement, renovation or improvement of any existing schools;
 - Construction of new schools as needed, including site acquisition;
 - Retrofitting for technology;
 - Capital renewal allowance to replace major system elements, as necessary.
2. The scope of the projects will be driven by a thorough, detailed assessment of facility condition and educational program requirements.
3. Priority will be given to those projects on the original list, as promulgated in conjunction with the 2002 sales surtax, subject to any other conditions agreed upon by the School Board, such as the Unitary Status Settlement Agreement.
4. An assessment of the remaining facility projects will be determined periodically by the School Board applying the following objective criteria: including the age of the school, the number of students affected, overcrowding and growth of population, critical needs, technology needs, the facility condition index and recent dollars expended at the school.
5. A copy of the most recent assessment of OCPS schools, as considered by Orange County School Board will be available on the OCPS website.
6. The Citizens' Construction Oversight and Value Engineering (COVE) Committee will continue to provide oversight of all projects throughout the 10 year term of the sales tax as it has during the current sales surtax. The COVE Committee will continue to have the authority to authorize and/or commission audits of the capital outlay program, as necessary.