The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1426

INTRODUCER: Senator Lee

SUBJECT: Local Government Fiscal Transparency

DATE: January 29, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.			AP	
3.			RC	

I. Summary:

SB 1426 creates the Local Government Fiscal Transparency Act.

Specifically, the bill requires local government to post the voting records related to tax increases and issuance of tax-supported debt on its website. The bill also requires each county property appraiser to maintain a website that provides access to property tax TRIM notices and a 4-year history of property tax rates and amounts levied on each parcel. Additionally, the bill requires a 4-year history of property tax rates and total revenue generated to be provided on such local government websites.

The bill requires additional public meetings and expands public notice requirements for local option tax increases, other than property taxes, and new tax-supported debt issuances. Public notices for proposed tax increases must contain information regarding the rate and total annual amount of revenue expected, the annual additional revenue expressed as a percent of annual general fund revenue, detailed explanation of intended uses of the levy, and an indication of whether or not the tax proceeds will be used to secure debt. Public notices for proposed new debt issuance must disclose the total lifetime costs of the debt, annual debt service, and effects of the new debt on a government's debt affordability measures.

Furthermore, local governments must conduct a debt affordability analysis before approving the issuance of new tax-supported debt. The analysis must, at a minimum, calculate a debt affordability ratio[1] for the most recent 5 previous years and at least 2 projected years to gauge the effects of the new debt issuance on the government's debt service to revenue profile.

[1] The debt affordability ratio is the annual debt service for outstanding tax-supported debt divided by total annual revenues available to pay debt service on outstanding debt.

The bill also contains several additional elements intended to increase the fiscal transparency of local governments including:

- Requiring that annual audit reports contain an affidavit signed by the chair of the local government governing board stating that it is in compliance with the provisions of the Local Government Fiscal Transparency Act;
- Requiring the Auditor General to request evidence of corrective action from local governments found not to be in compliance under certain circumstances;
- Requiring local governments to provide evidence of such correction action and evidence of completion of such action within a specified period; and
- Revising the local government reporting requirements for economic development incentives.

II. Present Situation:

The present situation is included in the proposed changes analysis below.

III. Effect of Proposed Changes:

General Provisions (Bill Section 5)

The bill creates Part VIII of Chapter 218, F.S., titled the "Local Government Fiscal Transparency Act." The substantive provisions of the bill are explained more fully below. The bill creates s. 218.803, F.S., providing that the purpose of the Act is to:

> Promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that would increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

The bill provides several definitions in s. 218.805, F.S., as follows:

- "Debt" is defined as bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanisms or financial arrangements, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital outlay projects.
- "Local government" is defined as any county, municipality, school district, special district dependent to a county or municipality, municipal service taxing unit, or independent special district, but does not include special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes.
- "Tax increase" is defined as:
  - For ad valorem taxes, any increase in a local government's millage rate above the rolled-back rate as defined in s. 200.065(1), F.S.
  - For all other taxes, a tax enactment, tax extension, or an increase in the tax rate.
- "Tax-supported debt" is defined as debt with a duration of more than 5 years secured in whole or in part by state or local tax levies, whether such security is direct or indirect, explicit or implicit, and includes, but is not limited to, debt for which annual appropriations

pledged for payment are from government fund types receiving tax revenues or shared revenues from state tax sources. The term does not include debt secured solely by the revenues generated by the project that is financed with the debt.

Voting Record Access: Property Tax, Local Option Taxes, and New Debt Issuance (Bill Section 5)

Current Situation

While the voting records of local governments' governing boards are public records[2] and therefore subject to public disclosure, there is no current requirement under Florida law for local governments to make available, on their website, the voting records of their governing board on votes taken related to tax increases or the new issuance of tax-supported debt.

Under current law, there are a number of different types of public notice requirements for actions taken by local governments related to tax increases and new tax-supported debt issuance. For example, many of these actions by municipalities and counties require the adoption of an ordinance. Generally, the adoption of an ordinance requires publication of notice in a newspaper at least 10 days before the meeting when such adoption is scheduled to occur.[3]

Proposed Changes

The bill creates s. 218.81, F.S., to require each local government to post on its website, in a manner that is easily accessible to the public, the voting records of each action taken by the local governing board during the most recent four years related to tax increases or new tax-supported debt issuance. However, debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt does not need to be included. The bill phases these provisions in over 4 years.

The bill also requires that the local government provide links on its website to allow users to navigate to related sites for supporting details or documentation as applicable. Additionally, the local government must include the website address where the voting records can be accessed with the public notice of a tax increase or the issuance of new tax-supported debt.

Tax History: Property Taxes (Bill Section 5)

Current Situation

Chapter 200, F.S., is titled "Determination of Millage" and generally governs the process, procedures, and limitations on the establishment of millage rates by units of local government with ad valorem taxing authority. Section 200.069, F.S., requires the preparation and delivery by the county property appraiser of a "notice of proposed property taxes and non-ad valorem assessments." This is commonly referred to as the truth-in-millage notice or TRIM notice, and it is sent on behalf of all taxing authorities and local governing boards levying both ad valorem taxes and non-ad valorem assessments on a parcel to the owner of each parcel on the current

[2] *See* Chapter 119, F.S., generally, and s. 119.01, F.S.
[3] *See* ss. 125.66 and 166.041, F.S.

year's assessment roll. The TRIM notice contains the following parcel-specific information in the following format for each taxing authority:

Taxing Authority	Your Property Taxes Last Year	Millage Rate Last Year	Your Taxes This Year IF PROPOSED Budget Change is Made	Millage Rate This Year IF PROPOSED Budget Change is Made	A Public Hearing on the Proposed Taxes and Budget Will be Held:	Your Taxes This Year IF NO Budget Change is Made	Millage Rate IF NO Budget Change is Made

The TRIM notice also includes the times and places for local government board meetings at which tentative budgets and proposed tax rates are to be considered, prior to final approval.

Parcel-specific histories of property tax bills are commonly available on county tax collectors' or property appraisers' websites.

Proposed Changes

The bill creates s. 218.82, F.S., to require each county property appraiser to maintain a website that includes, in a manner easily accessible by the public, for each parcel of property, the TRIM notice and a minimum of 4 years of history of the millage rate and the amount of tax levied by each taxing authority on each parcel. The bill phases-in these requirements for the millage and tax levied as follows:

- By October 1, 2017, 2 years of history;
- By October 1, 2018, 3 years of history; and
- By October 1, 2019, and thereafter 4 years of history.

The bill further requires each local government to post on its website, in a manner that is easily accessible to the public, a minimum of 4 years of history of its annual millage rates and the total annual amount of property tax revenue generated by each of these levies. The bill allows these provisions to be phased in over 3 years.

Public Notice: Local Option Tax Increases and New Debt Issuance (Bill Section 5)

Current Situation

As mentioned above, under current law, there are a number of different types of public notice requirements for actions taken by local governments related to tax increases and new tax-supported debt issuance. For example, many of these actions by municipalities and counties require the adoption of an ordinance. Generally, the adoption of an ordinance requires publication of notice in a newspaper at least 10 days before the meeting when the adoption is scheduled to occur. School districts are required to hold elections before the issuance of certain bonds.[4] These elections require publication of notice at least once a week for 2 consecutive weeks in a newspaper published in the district.[5]

[4] Section 1010.41, F.S.
[5] Section 1010.43, F.S.

In addition, as mentioned above, Chapter 200, F.S., generally governs the process, procedures and limitations on the establishment of millage rates by units of local government with ad valorem taxing authority. The chapter specifies all of the steps required by various persons in establishing a millage rate for a given taxing authority. Included in these required steps are various noticing requirements. For example, in addition to the preparation and distribution of the TRIM notice as described above, each local government must hold at least two public hearings to first adopt a tentative budget and then to adopt a final budget. The public meeting held to adopt the final budget requires publication of notice in a newspaper of general circulation in the county stating the governing board's intent to adopt a final millage rate and budget.[6] The form of the notice is prescribed in statute.[7]

Proposed Changes

The bill creates s. 218.83, F.S., to require an additional public meeting of the local governing board before the board takes final action on a tax increase[8] or final action on a new tax-supported debt issuance. Specifically, at least 14 days before the governing body meeting to take a final vote to approve a tax increase or to approve the issuance of any new tax-supported debt, the governing body must hold a public hearing to solicit public input on the proposed tax increase or new tax-supported debt issuance. The public is specifically allowed to speak and ask questions relevant to the proposed tax increase or debt issuance. The public hearing must be held after 5 p.m. if scheduled on a day other than Saturday and may not be held on a Sunday.

If, after the public hearing required 14 days before the governing body meeting to take a final vote, the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-support debt, the local government must provide additional public notice at least 10 days before the date of the schedule meeting. The notice must be in an advertisement in a newspaper of general circulation in the county or counties where the local government is located. In lieu of publishing in a newspaper, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government. However, the mailed notice must also be posted on the local government's website in a manner that is easily accessible to the public.

Current noticing and meeting requirements regarding ad valorem taxes are unchanged.
For tax increases, the notice must include at a minimum:

- A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension, or tax rate increase;
- The time and place of the meeting;
- The amount of the tax increase, including both the rate and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the local government's general revenue fund;
- A detailed explanation of the intended uses of the levy; and
- A statement indicating whether the governing board expects to use the tax proceeds to secure debt.

[6] Section 200.065(2)(d), F.S.
[7] Section 200.065(3), F.S.
[8] For the purposes of this section, a tax increase does not include an ad valorem tax increase.

For the new issuance of tax-supported debt, the notice must include at a minimum:

- A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt;
- The time and place of the meeting;
- A truth in bonding statement that includes the amount of the debt, the period of time over which the debt is expected to be repaid, a forecasted interest rate for the debt, the total amount of interest expected to be paid over the term of the debt issuance, the source of repayment or security for the debt, and a statement that the authorization of the debt will result in a specific amount of money being unavailable to finance the other services of the local government for each year of the term of the debt; and
- Presentation of the debt affordability ratios required to be calculated pursuant to s. 218.84, F.S. (see Debt Affordability Measures below).

New Debt Issuance: Debt Affordability Measures (Bill Section 5)

Current Situation

Section 215.98, F.S., requires the state to annually prepare a debt affordability report. The report is required to include, at a minimum:

- A listing of state debt outstanding, other debt secured by state revenues, and other contingent debt;
- An estimate of revenues available for the next 10 fiscal years to pay debt service, including general revenues plus any revenues specifically pledged to pay debt service;
- An estimate of additional debt issuance for the next 10 fiscal years for the state's existing borrowing programs;
- A schedule of the annual debt service requirements, including principal and interest allocation, on the outstanding state debt and an estimate of the annual debt service requirements on the debt for each of the next 10 fiscal years;
- An overview of the state's general obligation credit rating;
- Identification and calculation of pertinent debt ratios, including, but not limited to, debt service to revenues available to pay debt service, debt to personal income, and debt per capita for the state's net tax-supported debt;
- The estimated debt capacity available over the next 10 fiscal years without the benchmark debt ratio of debt service to revenue exceeding 6 percent; and
- A comparison of the debt ratios prepared for the report with the comparable debt ratios for the 10 most populous states.

Section 215.98, F.S., also requires legislative statements of determination (commonly referred to as "budget statements") in the legislative authorization of new tax-supported debt if the additional borrowing would exceed certain benchmark debt ratios. If the ratio of debt service to revenue available to pay debt service on tax-supported debt would exceed 6 percent as a result of the borrowing, the statement of determination is that such authorization and issuance is in the best interest of the state and should be implemented. If the same ratio would exceed 7 percent because of the borrowing, the required statement is that such additional debt is necessary to address a critical state emergency.

Proposed Changes

The bill creates s. 218.84, F.S., to require local governments to conduct and consider a debt affordability analysis before approving the issuance of new tax-supported debt. The analysis must, at a minimum, consist of the calculation of the local government's actual debt affordability ratio for the 5 fiscal years before the year the debt is expected to be issued and a projection of the ratio for at least the 2 fiscal years in which the new debt is expected to be issued. The analysis must include a comparison of the debt affordability ratio with and without the new debt issuance. The debt affordability ratio is the total annual debt service for outstanding tax-supported debt divided by total annual revenues available to pay debt service on outstanding debt.

Consequences for Non-Compliance (Bill Sections 1, 2, and 5)

Current Situation

Section 218.39, F.S., governs annual audit reports of local entities. If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, those entities must have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds. The types of local governments covered by this provision are:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of $250,000;
- Any special district with revenues or the total of expenditures and expenses in excess of $100,000;
- Each district school board;
- Each charter school established under s. 1002.33, F.S; and
- Each charter technical center established under s. 1002.34, F.S.[9]

At the conclusion of the audit, the auditor must discuss with the statutorily designated person for each entity, all of the auditor's comments that will be included in the audit report. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office.[10] The auditor is required to prepare an audit report in accordance with the rules of the Auditor General. The audit report must be filed with the Auditor General within 45 days after delivery of the audit report to the governing body of the audited entity, but no later than 9 months after the end of the audited entity's fiscal year. The audit report must include a written statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.[11]

The Auditor General is required to notify the Legislative Auditing Committee of any audit report prepared pursuant to this section which indicates that an audited entity failed to take full

[9] Municipalities with revenues or the total of expenditures and expenses between $100,000 and $250,000, and special districts with revenues or the total of expenditures and expenses between $50,000 and $100,000 are also covered in certain circumstances. Section 218.39(1)(g)-(h), F.S.
[10] Section 218.39(5), F.S.
[11] Section 218.39(7), F.S.

corrective action in response to a recommendation that was included in the two preceding financial audit reports.[12] The Legislative Auditing Committee may direct the governing body of the audited entity to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.[13] If the Legislative Auditing Committee determines that the written statement is not sufficient, it may require the chair of the governing body of the local governmental entity, the elected official of each county agency, the chair of the district school board, the chair of the board of the charter school, or the chair of the board of the charter technical career center, to appear before the committee.[14] If the Legislative Auditing Committee determines that an audited entity failed to take full corrective action for which there is no justifiable reason for not taking such action, or has failed to comply with committee requests made pursuant to this section, the committee may proceed in accordance with s. 11.40(2), F.S.[15]

Section 11.40, F.S., governs the Legislative Auditing Committee, its authority, and the actions it may take in specified circumstances. In the case of a local governmental entity or district school board, these actions include, but are not limited to, directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.[16]

Proposed Changes

The bill creates s. 218.88, F.S., to require the annual audit reports described above to include an affidavit executed by the chair of the governing board of the local government stating that the local government has complied with the requirements of the newly created Part VIII of Chapter 218, F.S., as contemplated by the bill. If the local government has not complied, the affidavit must include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

The bill amends s. 11.45, F.S., in Bill Section 2, to require local governments not in compliance with Part VIII of Chapter 218, F.S., to provide, upon request of the Auditor General, evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. The Auditor General must notify the Legislative Auditing Committee if the local government fails to comply with the Auditor General's request or is unable to take correction action within the required timeframe.

Failure to comply with Part VIII, Chapter 218, F.S., could therefore ultimately result in the Legislative Auditing Committee directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.[17] This would include revenue

[12] Section 218.39(8), F.S.
[13] Section 218.39(8)(a), F.S.
[14] Section 218.39(8)(b), F.S.
[15] Section 218.39(8)(c), F.S.
[16] Section 11.40(2)(a), F.S.
[17] Section 11.40(2), F.S.

sharing monies that the state shares with local governments. Generally, state-shared revenue programs allocate all or some portion of a state-collected fee or tax to specified local governments based on eligibility requirements. In some cases, a formula has been developed for the allocation of funds between units of local government. While general law restricts the use of several shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments.

The bill also amends s. 11.40, F.S., in Bill Section 1, to authorize the Department of Financial Services and the Division of Bond Finance of the State Board of Administration to subject a local government entity, district school board, charter school, or charter technical career center to further state action if such entities fail to comply with Part VIII of Chapter 218, F.S.

Administrative Changes (Bill Section 5)

The bill creates s. 218.89, F.S., to require various types of information to be included on local government websites. The bill provides that if a local government is required to post information to its website, but does not operate a website, the local government must inform the county or counties within which the local government is located, of any information required to be posted. Each such county must post the required information from such local government on the county's website.

Economic Development Incentive Reporting (Bill Sections 3 and 4)

Current Situation

Sections 125.045 and 166.021, F.S., require local governments to provide the Office of Economic and Demographic Research (EDR) with details regarding their economic development incentives in excess of $25,000 granted during the previous fiscal year. EDR annually collects this data from local governments through an online survey, coupled with follow-up communications as necessary. The survey questions are guided by four categories of incentives: direct financial incentives of monetary assistance, indirect incentives in the forms of grants and loans, fee-based or tax-based incentives, and below-market rate leases or deeds for real property. EDR compiles the economic development incentives provided by the local governments in a manner that shows the total of each class of incentives into a report and provides the report to the President of the Senate, Speaker of the House of Representatives, and the Department of Economic Opportunity.

Proposed Changes

The bill amends ss. 125.045 and 166.021, F.S., to revise the local government reporting requirements for economic development incentives. Specifically, the bill requires each county and municipality to report whether the incentive was provided directly to an individual business or by another entity on behalf of the local government and the source of local dollars, and any state or federal dollars obligated for the incentive.

The bill also revises the classes of economic development incentives. The bill requires reporting on financial incentives; general assistance, services, and support; and business recruitment, retention, or expansion efforts.

The bill requires EDR to compare the results of the economic development incentives provided by all local governments with the results of state incentives provided in similar classes to the extent that such a comparison is possible.

Other Miscellaneous Provisions (Bill Sections 5, 7, 8, and 9)

The bill transfers and renumbers section 218.80 as section 218.795, F.S., amends s. 218.32(1)(e), F.S., to conform a cross-reference, and contains a legislative finding that the act fulfills an important state interest.

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill could require expenditures related to the provision of additional data on local government websites, additional noticing requirements and public meetings, and additional required analysis of debt affordability.

However, there are several exemptions and exceptions to the mandate requirements. The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was approximately $2.05 million or less.[18,19,20] If none of the exemptions or exceptions apply, the bill must contain a finding that the bill fulfills an important state interest and must be approved by two-thirds of the membership of each house of the Legislature.

Bill Section 8 provides that this act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[18] FLA. CONST. art. VII, s. 18(d).
[19] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf.
[20] Based on the Demographic Estimating Conference's population adopted on April 1, 2017. The executive summary is available at http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Households and businesses will have improved access to upcoming local government decisions regarding tax increases and new debt issuance.

C. Government Sector Impact:

The provisions of the bill are expected to require indeterminate expenditures by local governments. The provisions of the bill have no direct impact on local government revenue. The provisions of the bill, though, may increase public scrutiny of local government decisions to increase taxes. Consequently, some tax increases that otherwise would have occurred may not happen.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 125.045, 166.021, and 218.32.

This bill creates the following sections of the Florida Statutes: 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89.

This bill transfers and renumbers section 218.80 of the Florida Statutes as section 218.795 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.