

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 Appropriations

BILL: SB 1426

INTRODUCER: Senator Lee

SUBJECT: Local Government Fiscal Transparency

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Babin</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1426 creates the Local Government Fiscal Transparency Act. The act:

- Requires local governments to post on their websites the voting records related to taxes and debt.
- Requires property appraisers to maintain a website that includes certain property tax information.
- Requires local governments to provide additional notice of tax increases and new tax-supported debt.
- Requires local governments to undergo a debt affordability analysis before authorizing debt.
- Requires local government audits submitted to the Auditor General to be accompanied by an affidavit from the chair of the governing board stating that the local government has complied with the Local Government Fiscal Transparency Act.

The bill also:

- Requires the Auditor General, during its review of local government audit reports, to request evidence of corrective action from local governments found not to be in compliance under certain circumstances; and requires local governments to provide evidence of such correction action and evidence of completion of such action within a specified period.
- Revises the local government annual reporting requirements for economic development incentives.

The bill does not affect state or local government revenues.

II. Present Situation:

The present situation is included in Section III. Effect of Proposed Changes.

III. Effect of Proposed Changes:

General Provisions (Section 6)

The bill creates Part VIII of Chapter 218, F.S., titled the “Local Government Fiscal Transparency Act.” 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 creates s. 218.805, F.S., defining the following terms:

- “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 (Section 6)

Current Situation

While the voting records of local governments’ governing boards are public records¹ and subject to public disclosure, local governments are not required to make available, on their website, the voting records of their governing board on actions related to tax increases or the issuance of new tax-supported debt.

¹ See generally ch. 119, F.S., and s. 119.01, F.S.

However, there are 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, and the adoption of an ordinance generally requires publication of notice in a newspaper at least ten days before the meeting when such adoption is scheduled to occur.²

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 need not be included. The bill phases these provisions in over four years.

The bill also requires that the local government provide links on its website to allow users to navigate to related sites for available supporting details or documentation. Additionally, the local government must include the website address in the public notice of a tax increase or the issuance of new tax-supported debt.

Tax History: Property Taxes (Section 6)

Current Situation

Each year, the county property appraiser delivers a “notice of proposed property taxes and non-ad valorem assessments” to each taxpayer listed on the current year’s tax roll. This notice 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 ad valorem taxes or non-ad valorem assessments.³ The TRIM notice contains parcel-specific information that allows the property owner to compare the prior year’s taxes with the current year’s estimated taxes based on the recommended local government budget, as well as the time and place of the budget hearing.⁴ Several years’ of TRIM notices and corresponding tax bills are commonly available on county tax collectors’ and 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 four-year 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 taxes 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.

² See ss. 125.66(2)(a) and 166.041, F.S.

³ See s. 200.069, F.S.

⁴ Section 200.069(2), F.S.

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 four 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 three years.

Public Notice: Local Option Tax Increases and New Debt Issuance (Section 6)

Current Situation

Current law requires public notice for certain actions taken by local governments related to tax increases and new tax-supported debt issuance. For instance, actions by municipalities and counties that require the adoption of an ordinance would be subject to public notice requirements for ordinances;⁵ school districts are required to hold elections before the issuance of certain bonds,⁶ and elections require publication of notice at least once a week for two consecutive weeks in a newspaper published in the district.⁷

Additionally, ch. 200, F.S., requires local governments to 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.⁸

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 increase⁹ 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, 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 ten days before the date of the scheduled 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.

For tax increases, the notice must include, at a minimum:

⁵ See discussion related to voting records access, page 2, *infra*.

⁶ Section 1010.41(3), F.S.

⁷ Section 1010.43, F.S.

⁸ Section 200.065(2)(d), F.S.

⁹ For the purposes of this section, a tax increase does not include an ad valorem tax increase.

- 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.

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 (Section 6)

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 ten 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 ten 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 ten 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 ten fiscal years without the benchmark debt ratio of debt service to revenue exceeding six percent; and
- A comparison of the debt ratios prepared for the report with the comparable debt ratios for the ten 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 six 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 seven percent, the Legislature must determine 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 five fiscal years before the year the debt is expected to be issued and a projection of the ratio for at least the two 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 (Sections 1, 2, and 6)

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 nine 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.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 nine months after

¹⁰ Municipalities with revenues or total expenditures and expenses between \$100,000 and \$250,000, and special districts with revenues or total expenditures and expenses between \$50,000 and \$100,000 are also covered in certain circumstances. Section 218.39(1)(g)-(h), F.S.

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 that indicates that an audited entity failed to take full 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

Section 6 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 Part VIII of Chapter 218, F.S. (the new provisions created 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.

Section 2 amends s. 11.45, F.S., 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

¹¹ Section 218.39(7), F.S.

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.

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 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

Section 1 amends s. 11.40, F.S., 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 the entity fails to comply with Part VIII of Chapter 218, F.S.

Administrative Changes (Section 6)

Section 6 creates s. 218.89, F.S., to provide 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 (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. The 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. The 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

Sections 3 and 4 amend ss. 125.045 and 166.021, F.S., respectively, to revise the local government reporting requirements for economic development incentives. Sections 3 and 4 require 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.

¹⁷ Section 11.40(2), F.S.

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.

Under sections 3 and 4, EDR must 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 (Sections 5, 7, 8, and 9)

The bill transfers and renumbers s. 218.80 as s. 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:**

The bill does not directly affect state or local government revenues.

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.

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.