

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7065 PCB WMC 17-01 Local Government Fiscal Transparency
SPONSOR(S): Government Accountability Committee; Ways & Means Committee; Burton
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ways & Means Committee	18 Y, 0 N	Aldridge	Langston
1) Government Accountability Committee	16 Y, 8 N, As CS	Harrington	Williamson

SUMMARY ANALYSIS

The bill contains several elements with an overarching purpose to increase the fiscal transparency of local governments.

The bill requires easy public access to local government governing boards' voting records related to tax increases and issuance of tax-supported debt (phased in over 4 years). The bill also requires easy online access to property tax TRIM notices and a 4-year history of property tax rates and amounts at the parcel level. This requirement is phased in over 3 years. Further, a 4-year history of property tax rates and total revenue generated at the jurisdiction level must be provided on government websites.

The bill requires additional public meetings and expands public notice requirements for local option tax increases, other than property taxes, and new long-term, tax-supported debt issuances. Public notices for proposed tax increases must contain information regarding the rate and total annual amount of revenue expected from a tax increase, 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, long-term 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.

Local governments must conduct and consider a debt affordability analysis prior to approving the issuance of new, long-term tax-supported debt. The analysis would consist, at a minimum, of calculating a debt affordability ratio for the most recent five years and at least two projected years to gauge the effects of the proposed new debt issuance on the government's debt service to revenue profile. 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.

Under current law, local governments are required to have a CPA conduct an annual financial audit, if the Auditor General has not already scheduled an audit of the local government. The bill requires the auditor to report whether or not the local government is in compliance with the provisions of the new "Local Government Fiscal Transparency Act" contained in Part VIII of ch. 218, F.S., created by the bill. The Auditor General must request evidence of corrective action from local governments found not to be in compliance with the Act. Local governments must provide evidence that corrective action has been initiated within 45 days and evidence of completion within 180 days of such request. The Auditor General must report to the Legislative Auditing Committee local governments that do not take corrective action.

The bill revises the local government reporting requirements for economic development incentives. It requires each county and municipality to report to the Office of Economic and Demographic Research 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 provides a statement that the Legislature finds that this act fulfills an important state interest.

The provisions of the bill are expected to require expenditures by local governments, the amount of which is unknown. See Fiscal Comments.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7065.GAC

DATE: 4/20/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Provisions

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 in their use of public funds by creating additional requirements for public noticing of local government actions to increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring that voting records of local government governing bodies related to such actions be easily and readily accessible by the public.

The bill contains several definitions as follows:

- “Debt” is defined as bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanism or financial arrangement, 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, extension, or an increase in the tax rate.
- “Tax-supported debt” is defined as debt with a term of more than five years that is secured in whole or in part by state or local tax levies, whether such security is direct or indirect, explicit or implicit, including but 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 that is secured solely by the revenues generated by the project that is financed with the debt.

Voting Record Access: *Property Tax, Local Option Taxes, New Debt Issuance*

Current Situation

While the voting records of local governments governing boards are public records¹ 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 prior to the meeting where such adoption is scheduled to occur.²

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

² See ss. 125.66 and 166.041, F.S.

Proposed Changes

The bill requires each local government to post on its website, in a manner that is easily accessible to the public, the voting records on any action taken by the governing board of the local government during the most recent four years related to tax increases and new tax-supported debt issuance, excluding refinancing or refunding of debt that does not extend the term or increase the outstanding principal amount of the original debt. The bill allows these provisions to be phased in over four years.

The bill also requires for any public notice required by law of a tax increase or new tax-supported debt issuance, each local government must include on or with the notice, the address of the internet link or website where the voting records can be found and accessed on its website.

Tax History: *Property Taxes*

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 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 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
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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’ websites

Proposed Changes

The bill requires 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 four years of history of the millage rate and the amount of tax levied by each taxing authority on each parcel. The bill phases-in the requirement for property appraisers to provide links that provide access on their website to four years of history of the millage rate and the amount of tax levied by each taxing authority for each parcel by requiring:

- By October 1, 2017, two years of history;
- By October 1, 2018, three years of history;
- By October 1, 2019, and thereafter four years of history.

The bill further requires each local government to prominently 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 rate(s), 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*

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 prior to the meeting where such adoption is scheduled to occur. School districts are required to hold elections prior to the issuance of certain bonds.³ These elections require publication of notice at least once a week for two consecutive weeks in a newspaper published in the district⁴.

Also 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 of the governing board's intent to adopt a final millage rate and budget.⁵ The form of the notice is prescribed in statute.⁶

Proposed Changes

The bill requires an additional public meeting of the local governing board prior to the board's taking final action on a tax increase, except for ad valorem taxes, or final action on new tax-supported debt issuance. In particular, at least 14 days prior to 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 an advertised 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 bill also requires each local government, at least 10 days prior to any final action scheduled to be taken by the governing board of the local government, to give public notice related to a tax increase, except for ad valorem taxes, or final action on any new issuance of tax-supported debt. 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. The notice must also be prominently 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 annual revenue expected 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 or not the governing board expects to use the tax proceeds to secure debt.

³ Section 1010.41, F.S.

⁴ Section 1010.43, F.S.

⁵ Section 200.065(2)(d), F.S.

⁶ Section 200.065(3), F.S.

For the new issuance of tax-supported debt, such 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 (see Debt Affordability Measures below).

New Debt Issuance: *Debt Affordability Measures*

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 as a result of the borrowing, the required statement is that such additional debt is necessary to address a critical state emergency.

Proposed Changes

The bill requires local governments to conduct and consider a debt affordability analysis prior to approving the issuance of new, long-term tax-supported debt. The analysis would consist, at a minimum, of calculating a debt affordability ratio for the most recent five years and at least two projected years to gauge the effects of the proposed new debt issuance on the government's debt service to revenue profile. 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. This ratio is required to be calculated both with and without the new debt issuance.

Consequences for Non-Compliance

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, certain 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, as reported on the fund financial statements;
- Any special district with revenues or the total of expenditures and expenses in excess of \$100,000, as reported on the fund financial statements;
- 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.

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.⁷ 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 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.⁸

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 has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports.⁹ 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.¹⁰ 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 or the chair's designee, the elected official of each county agency or the elected official's designee, the chair of the district school board or the chair's designee, the chair of the board of the charter school or the chair's designee, or the chair of the board of the charter technical career center or the chair's designee, as appropriate, to appear before the committee.¹¹ If the Legislative Auditing Committee determines that an audited entity has 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.¹²

Section 11.40, F.S., governs the Legislative Auditing Committee, including the scope of its authority and 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

⁷ Section 218.39(5), F.S.

⁸ Section 218.39(7), F.S.

⁹ Section 218.39(8), F.S.

¹⁰ Section 218.39(8)(a), F.S.

¹¹ Section 218.39(8)(b), F.S.

¹² Section 218.39(8)(c), F.S.

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.¹³

Proposed Changes

The bill requires the annual audit reports described above to report whether or not 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 requires 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 does not take corrective action.

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.¹⁴ This would include revenue 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.

Administrative Changes

The bill creates requirements as described above for various types of information to be prominently placed 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, that it must inform the county or counties within which the local government is located, of any information required to be posted to a website under this part, and such county must post the required information from such local government on the county's website.

Economic Development Incentive Reporting

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 revises the local government reporting requirements for economic development incentives. Specifically, the bill requires each county and municipality to report whether the incentive was provided

¹³ Section 11.40(2)(a), F.S.

¹⁴ Section 11.45(2), F.S.

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. It 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.

Declaration of Important State Interest

The bill contains a legislative finding that the act fulfills an important state interest.

Effective Date

The effective date of the bill is July 1, 2017.

B. SECTION DIRECTORY:

- Section 1. Amends s. 11.40(2), F.S., to provide a conforming change.
- Section 2. Amends s. 11.45, F.S., to redesignate paragraphs (d)-(j) as (e)-(k) and adds a new paragraph (d) requiring the Auditor General report certain noncompliance with new Part VIII of ch. 218, F.S., to the Legislative Auditing Committee under specified circumstances.
- Section 3. Amends s. 125.045, F.S., revising reporting requirements for economic development incentives for counties.
- Section 4. Amends s. 166.021, F.S., revising reporting requirements for economic development incentives for municipalities.
- Section 5. Transfers and renumbers s. 218.80, F.S., to s. 218.795, F.S.
- Section 6. Creates Part VIII of chapter 218, F.S., consisting of ss. 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89, F.S., creating the "Local Government Fiscal Transparency Act."
- Section 7. Amends s. 218.32, F.S., to provide a conforming change.
- Section 8. Provides a finding that the act fulfills an important state interest.
- Section 9. Provides that the effective date of the bill is July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

The provisions of the bill are expected to require expenditures by local governments, the amount of which is unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill could require expenditures related to provision of additional data on local government websites, additional noticing requirements and public meetings, and additional required analysis of debt affordability. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 19, 2017, the Government Accountability Committee adopted a proposed committee substitute and one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Revised the definition of “local government” to exclude special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes;
- Provided that access to documents on the local government’s website may be provided by links to such documents;

- Reduced the number of days that a public hearing must occur prior to a vote on a tax increase or issuance of a new tax-supported debt from 15 to 14 days;
- Revised the local government reporting requirements for economic development incentives; and
- Revised the audit provisions to require an affidavit signed by the chair of the governing board stating that the local government has complied, and if not, a description of the noncompliance and correction action taken to correct the noncompliance and to prevent such noncompliance in the future.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.