



# The Florida Senate

*Interim Report 2012-115*

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Committee on Community Affairs

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## INSIGNIFICANT FISCAL IMPACT

### Issue Description

In Florida, state “mandates” on local governments are generally described in the Florida Constitution as general laws requiring counties or municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state-shared tax revenue. Article VII, Section 18 of the Florida Constitution limits the ability of the Florida Legislature to enact laws that are mandates. Any law passed by the Legislature that has such an effect requires at least a two-thirds vote of the membership of each house and, for a mandate that requires the expenditure of funds, a finding of important state interest. However, there are a number of exemptions. One of these exemptions is for laws that have an insignificant fiscal impact.

The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered. However, in 2010, a lower court decision indicated that there may be a need to clarify the phrase “insignificant fiscal impact” statutorily.

### Background

Article VII, Section 18 of the Florida Constitution (the “mandates” provision) restricts the state’s ability to: (1) require local governments to spend money; (2) reduce local government authority to raise revenues; and (3) reduce local governments’ share of state taxes. Sixteen state constitutions incorporate similar protections for local governments due to a concern that state-level mandates were resulting in dramatically inflated property taxes and placing local governments in significant financial distress.<sup>1</sup> The intent of the Florida mandates provision is to give local governments bargaining power on the subject of unfunded mandates.

#### *Article VII, Section 18, of the Florida Constitution*

The mandate provision has two major components. First, it excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met; second, it prohibits the Legislature from enacting laws which reduce cities’ and counties’ revenue generating authority or percentage of state-shared revenues unless certain conditions are met. This provision applies only to general laws, as opposed to special laws, affecting cities and counties. It does not apply to other local governments such as special districts or school districts.

SECTION 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.—

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such

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<sup>1</sup> See generally, Joseph F. Zimmerman, *The State Mandate Problem*, STATE AND LOCAL GOV’T REV., 78-84 (Spring, 1987); FLORIDA ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, 1991 REPORT ON MANDATES AND MEASURES AFFECTING LOCAL GOVERNMENT FISCAL CAPACITY (Sept. 1991).

county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, **laws having insignificant fiscal impact**, and laws creating, modifying, or repealing noncriminal infractions, **are exempt from the requirements of this section.**

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.<sup>2</sup>

### *Insignificant Fiscal Impact - Legislative Guidance*

The Florida Constitution contains a number of exemptions and exceptions from the prohibitions against mandates. The exemption that is the subject of this interim project is the exemption for laws having an “insignificant fiscal impact.” The Florida Constitution does not define what constitutes an insignificant fiscal impact. However, joint Senate and House guidelines describe an insignificant fiscal impact in the following way:

This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term “insignificant” means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of \$1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of \$5 million statewide, but would generate \$4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.<sup>3</sup>

<sup>2</sup> FLA. CONST. art. VII, s. 18 (emphasis added).

<sup>3</sup> Senate President Margolis and Speaker of the House Wetherell, *County and Municipality Mandates Analysis* (1991).

### ***Insignificant Fiscal Impact - Case Law***

There has been very little case law addressing the issue of mandates. The First District Court of Appeals in *Lewis v. Leon County* struck down a law requiring local counties to fund a Regional Conflict Counsel.<sup>4</sup> However, the court at no point discussed the amount of the expenditure required by the act or the exemption for an insignificant fiscal impact. The court only noted that the law did require local governments to spend money and did not contain a finding of important state interest as required by the Florida Constitution.<sup>5</sup>

In 2009, in *City of Weston v. Crist*, a trial level court struck down a major growth management bill finding that the bill would require local governments to spend money and finding that the amount of money that would be spent would not be insignificant.<sup>6</sup> The decision was overturned on other grounds, and the statute was later rewritten. However, the court's discussion of what constitutes an insignificant fiscal impact did bring to the forefront the inherent ambiguity in that term and the possible need for legislative clarification.

The court decided that the law at issue violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years. The court reasoned that an insignificant fiscal impact would be 10 cents per resident or \$1.86 million dollars (thereby partially adopting the legislature's method of assessing an insignificant fiscal impact). The court did not consider the fact that local governments had two years to adopt these mobility plans or any offsetting cost effects over the long term.<sup>7</sup>

## **Findings and/or Conclusions**

Protecting local governments from undue fiscal hardships from unfunded state mandates is important to having a financially sound state. However, when major statewide laws are struck down because of confusion over what constitutes an unconstitutional mandate, it can cause costly and wasteful intergovernmental litigation and disrupt the implementation of legislative policies. Therefore, although minimizing the mandates the state places on local governments is important, it is also important for it to be clear which laws will constitute a mandate and which will be exempt.

The phrase "insignificant fiscal impact" is open to multiple interpretations. Although the Legislature's guidance documents are valuable for staff analyzing whether a bill has an insignificant fiscal impact, they are not binding on the courts. Article VII, Section 18(e) of the Florida Constitution explicitly anticipates the Legislature providing guidance on ambiguities such as this. In 2000, a broader Senate report, which reviewed legislative guidance on mandates issues, suggested that statutory language be drafted to clarify key terms and specifically noted that "insignificant fiscal impact" should be clarified.<sup>8</sup> In conclusion, it may be valuable for the Legislature to clarify what constitutes an insignificant fiscal impact.

## **Options and/or Recommendations**

While no action is necessary, it may provide clarity and guidance to the courts to statutorily clarify what is meant by an "insignificant fiscal impact." Professional committee staff recommends the following language:

Article VII, Section 18(d) of the Florida Constitution creates an exemption from the section's limitations on local government mandates for those laws that have an insignificant fiscal impact. For purposes of this exemption, an insignificant fiscal impact means an annual amount not greater than ten cents multiplied by the latest April 1 resident population estimate developed by the Florida Demographic Estimating Conference for the applicable

<sup>4</sup> 15 So. 3d 777 (Fla. 1st DCA 2009).

<sup>5</sup> *Id.*

<sup>6</sup> Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010) *rev'd on other grounds, Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2011).

<sup>7</sup> *Id.*

<sup>8</sup> Comm. on Comprehensive Planning, Local and Military Affairs, *Review of Legislative Staff Guidelines for Screening Bills for Mandates on Florida Counties and Municipalities* (Interim Report 2000-24) (Sept. 1999).

fiscal year. In determining whether a law rises beyond an insignificant fiscal impact, the average annual fiscal impact of the bill should be used taking into consideration any average annual revenues or savings the law may create.