

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 107 Local Government Accountability
SPONSOR(S): Government Operations Subcommittee, Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Duncan	Hoagland
2) Government Operations Subcommittee	11 Y, 0 N, As CS	Thompson	Williamson
3) Appropriations Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill requires that budgets and budget amendments of each county, county constitutional officer, municipality, special district, water management district, and school district be posted on the governmental entity's website. If the local governmental entity does not have an official website, the local government must transmit the required budget information to the county or counties in which it is located or to the relevant governing authority for posting.

The bill also requires that budgets be prepared in a similar level of detail required by the annual financial reports.

Within nine months of the end of the fiscal year, counties, municipalities, and special districts must file their annual financial reports with the Department of Financial Services and their annual financial audit reports with the Auditor General.

The bill also amends the reporting process used by the Legislative Auditing Committee and the Department of Community Affairs to compel special districts to provide certain information.

The mandates provision appears to apply because the bill requires counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, the amount of the expenditure is insignificant because most local governments have websites and, therefore, an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

The bill removes superfluous language and corrects cross references.

The bill may have an indeterminate fiscal impact on local and state government. See "Fiscal Analysis."

The bill is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

The Florida Constitution specifically provides four types of local governmental entities: counties, municipalities, school districts, and special districts. Counties are subdivisions of the state that operate to provide a variety of core services through constitutional officers (county commissioners, sheriffs, tax collectors, property appraisers, supervisors of elections, and clerks of the court) pursuant to authority granted in the constitution, consistent with general law.¹ A municipality is a local governmental entity located within a county that is created to perform additional functions and services for the particular benefit of the population within the municipality.²

Local governmental entities have the authority to raise revenues and spend funds, subject to certain restrictions on the ability to tax, borrow, and spend as provided in both the Florida Constitution and Florida Statutes.³ These provisions are designed to promote accountability and transparency in the budgetary process. Current law specifies how local governments and local government officials may develop and maintain their budget each fiscal year. The fiscal year for counties and municipalities begins on October 1 of each year and ends on September 30 of the following year.⁴

Local governments are subject to financial reporting guidelines that are reviewed by the Legislature and by state agencies such as the Department of Financial Services (DFS) and the Department of Management Services.⁵ Local governmental entities that have taxing authority are required to provide notice of their adopted tentative budget in a newspaper of general circulation in the respective county.⁶

Currently, local governmental entities are not required to publish budget information on a local government website. With the exception of Calhoun, Lafayette, and Union Counties, each county within the state of Florida has an official website. Those that do not have official websites do have websites for the county clerk that may be used to publish county information.

Municipal Budget

A municipality is required to annually adopt a budget by ordinance or resolution unless the municipality has a charter that specifies another method for adoption. The funds available from taxation and other sources must equal the total appropriations for expenditures and reserves.⁷ Officers of a municipal government may not expend funds except according to the budgeted appropriations. A municipality may amend its budget up to 60 days following the end of the fiscal year under certain conditions.⁸

County Budget

Current law establishes a budget system that controls the finances of the boards of county commissioners of Florida counties.⁹ Each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year for such funds as may be required by law or by sound financial practices and generally accepted accounting principles, which controls the levy of taxes and the

¹ FLA. CONST. art. VIII, s. 1.

² See FLA. CONST. art. VIII, s. 2.; see also s. 166.021, F.S.

³ FLA. CONST. art. VII

⁴ Sections 129.04 and 166.241(1), F.S.

⁵ Part III, Chapter 218, F.S.; s. 112.63, F.S.

⁶ Section 200.065(2)(d) and (3), F.S.

⁷ Section 166.241(2), F.S.

⁸ Section 166.241(3), F.S.

⁹ See Chapter 129, F.S.

expenditure of money for all county purposes during the ensuing fiscal year.¹⁰ The budget is prepared by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.¹¹ The receipts portion of the budget must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied, and must include all balances estimated to be brought forward at the beginning of the fiscal year.¹²

County budget requirements relating to reserves for contingencies and cash balances must be carried over for future costs so that any surplus carried over can be placed in any other county fund and budgeted as a receipt to the other fund.¹³ However, a fund for debt services cannot be transferred to another fund, and a capital outlay reserve fund may not be transferred until the funded projects have been finished and paid for. Additional county budget provisions include:

- Requirements that county officers submit budgets in sufficient detail and containing sufficient information;¹⁴ and
- Requirements for the preparation, adoption, and amendment of such budgets.¹⁵

Each board of county commissioners is authorized to designate a county budget officer to carry out the duties prescribed by statute as to county budgets. If the board fails to designate a different officer, the clerk of the circuit court or the county comptroller, if applicable, will be the budget officer.¹⁶ County fee officers also are subject to reporting requirements.¹⁷ County fee officers are defined in Florida Statutes as “those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though said budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.”¹⁸ For example, each sheriff, clerk of the circuit court, property appraiser, and tax collector has budget reporting requirements of their own in addition to the budget reporting requirements of the county.¹⁹

It is unlawful for the board of county commissioners to expend more than the amount budgeted for a fund absent a budget amendment. Any indebtedness contracted in excess of the amount budgeted is void and no suit for its collection may be maintained. Commissioners approving contracts for such amounts, and their surety company, may be liable for these debts.²⁰

Sheriff Budget

A sheriff is required to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year of the county.²¹ The proposed budget must show the estimated amounts of all proposed expenditures for operating and equipping the sheriff’s office and jail, excluding the cost of construction, repair, or capital improvement of county buildings during the fiscal year.²² The sheriff is required to itemize expenditures in accordance with the uniform chart of accounts prescribed by DFS, as: personal services, operating expenses, capital outlay, debt service, and non-operating disbursements and contingency reserves.

¹⁰ Section 129.01(1), F.S.

¹¹ Section 129.01(2), F.S.

¹² Section 129.01(2)(b), F.S.

¹³ Sections 129.01 and 129.02(6), F.S.

¹⁴ Section 129.021, F.S.

¹⁵ See ss. 129.03 and 129.06, F.S.

¹⁶ Section 129.025(1), F.S.

¹⁷ See s. 218.35, F.S.

¹⁸ Section 218.31(8), F.S.

¹⁹ Sections 30.49 (sheriffs’ budgets), 218.35(2) (clerks of the court budgets), and 195.087 (property appraisers and tax collectors budgets), F.S.

²⁰ Section 129.07, F.S.; See also, *Edwards v. City of Ocala*, 58 Fla. 217, 50 So. 421 (1909) and *White v. Crandon*, 116 Fla. 162, 156 So. 303 (1934) (discussing county commissioner liability for misappropriation of funds).

²¹ Section 30.49(1), F.S.

²² Section 30.49(2)(a), F.S.

The Supreme Court of Florida has stated “the internal operation of the sheriff’s office and the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county.”²³ Therefore, although a county can increase or reduce by lump sums the items, a county cannot dictate how the money allocated to an individual item should be used.²⁴

Supervisor of Elections Budget

A supervisor of elections is required to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30.²⁵ The supervisor of elections must itemize expenditures such as: personnel compensation, operating expenses, capital outlay, contingencies, and transfers.²⁶ The proposed budget must be submitted to the board of county commissioners or county budget commission to be included in the general county budget.²⁷

Property Appraiser and Tax Collector Budget

Annually, each property appraiser must submit to the Department of Revenue (DOR) a budget for the operation of the property appraiser’s office for the ensuing fiscal year beginning October 1. The report, due annually on or before June 1, must be submitted in the manner and form required by DOR. A copy of the budget must be provided to the board of county commissioners at the same time. On or before August 15, DOR must make its final budget amendments or changes to the budget and notify the property appraiser and the board of county commissioners.²⁸

Annually, each tax collector must submit to DOR, on or before August 1, a budget for the operation of the tax collector’s office for the ensuing fiscal year in the manner and form prescribed by DOR. A copy of the budget must be provided to the board of county commissioners at the same time. DOR examines the budget and, if it is found adequate, must approve the budget and certify it back to the tax collector.²⁹

Clerk of the Circuit Court Budget

The clerk of the circuit court, functioning as the clerk of the circuit and county courts and as clerk of the board of county commissioners, is required to prepare the budget in two parts:

- The budget for funds necessary to perform court-related functions, which details the methodologies used to apportion costs between court-related and non court-related functions performed by the clerk; and
- The budget relating to the requirements of the clerk as the clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties.³⁰

Special Districts

The Uniform Special District Accountability Act of 1989³¹ sets forth the general provisions for the definition, creation, and operation of all special districts. Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.³² Special districts have the same governing powers and restrictions as counties and municipalities. Special districts are held accountable to the public, and are subject to public sunshine laws and financial reporting requirements.³³

²³ *Weitzenfeld v. Dierks*, 312 So.2d 194 (Fla. 1975); Fla. Atty. Gen. Op. 93-92 (December 17, 1993).

²⁴ *Id.*

²⁵ Section 129.201(1), F.S.

²⁶ Section 129.201(2)(a), F.S.

²⁷ Section 129.201(7), F.S.

²⁸ Section 195.087(1)(a), F.S.

²⁹ Section 195.087(2), F.S.

³⁰ Section 218.35(2), F.S.

³¹ Chapter 89-169, L.O.F.; codified as Chapter 189, F.S.

³² Section 189.403(1), F.S.

³³ See ss. 189.417 and 189.418, F.S.

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following criteria:

- The membership of its governing body is identical to that of the governing body of a single county or single municipality.
- All members of its governing body are appointed by the governing body of a single county or single municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or single municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or single municipality.³⁴

An "independent special district" is a special district that is not a dependent special district as defined in state law. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.³⁵

As of March 16, 2011, there were approximately 1,629 special districts in Florida, including 618 dependent districts and 1,008 independent districts. Examples of special districts in Florida include, but are not limited to, water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.³⁶

Special districts do not include:

- A school district;
- A community college district;
- A Seminole and Miccosukee Tribe special improvement district;
- A municipal service taxing or benefit unit; or
- A board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

Special District Budget

The budget process for special districts is similar to the municipal budget requirements.³⁷ The governing body of each special district must adopt a budget by resolution each fiscal year. The total amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total of appropriations for expenditures and reserves. The adopted budget must regulate expenditures of the special district.³⁸

The proposed budget of a dependent special district must be presented in accordance with generally accepted accounting principles, contained within the general budget of the local governing authority, and be clearly stated as the budget of the dependent district. However, with the concurrence of the local governing authority, a dependent district may be budgeted separately.³⁹

The governing body of each special district at any time within a fiscal year or within up to 60 days following the end of the fiscal year may amend a budget for that year. The budget amendment must be adopted by resolution.⁴⁰ A local government may, in its discretion, review the budget or tax levy of any special district located solely within its boundaries.⁴¹

³⁴ Section 189.403(2), F.S.

³⁵ Section 189.403(3), F.S.

³⁶ See *supra* note 33.

³⁷ See s. 189.418, F.S.

³⁸ Section 189.418(3), F.S.

³⁹ Section 189.418(4), F.S.

⁴⁰ Section 189.418(5), F.S.

⁴¹ Section 189.418(6), F.S.

Special District Information Program

As provided by law, the Special District Information Program (SDIP) is administered by the Department of Community Affairs (DCA).⁴² DCA has clearinghouse, technical assistance, and monitoring responsibilities with no oversight authority and limited enforcement authority.⁴³ Specifically, the SDIP is responsible for the:

- Collection and maintenance of special noncompliance status reports from the Department of Management Services (DMS), the Department of Financial Services (DFS), the Division of Bond Finance of the State Board of Administration, and the Auditor General.
- Maintenance of a master list of independent and dependent special districts available on DCA's website.
- Publishing and updating of a "Florida Special District Handbook."
- Facilitation of coordination and communication among state agencies regarding special district information.
- Assistance to local general-purpose governments and certain state agencies in collecting delinquent reports or information, helping special districts comply with reporting requirements, declaring special districts inactive when appropriate, and, when directed by the Legislative Auditing Committee, initiating enforcement proceedings.⁴⁴

The Uniform Special District Accountability Act provides basic reporting requirements that each special district must follow. When a new special district is created, the special district must file with DCA its creation document, creation document amendments, a written statement referencing the basis for its independent or dependent status, map, and map amendments.⁴⁵ Other reporting requirements include:⁴⁶

- Annual Fee (fee schedule);⁴⁷
- Regular public meeting schedule;⁴⁸
- Annual budget;⁴⁹
- Annual Financial Audit Report;⁵⁰
- Annual Financial Report;⁵¹
- Retirement System Reports;⁵²
- Bond Financing Reports;⁵³ and
- Public Facilities Reports.⁵⁴

Upon notification that a special district has failed to file a financial report, DCA is directed to assist the special district to comply with its financial reporting requirements by sending the special district a certified letter with a copy sent to the chair of the local general-purpose government. The letter describes the required report, including statutory submission deadlines, contact information for technical assistance, a 60-day extension of time for filing the required report, and an explanation of the penalties⁵⁵ for noncompliance. DCA is authorized to grant an additional 30-day extension, if requested

⁴² See s. 189.412, F.S.

⁴³ Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, Florida Special District Handbook Online, *The Special District information Program, Purposes and Responsibilities*, <http://www.floridaspecialdistricts.org/Handbook/1-3SDIP.cfm> (last visited February 28, 2011).

⁴⁴ Section 189.412 (1)-(3), (5) and (8), F.S.

⁴⁵ Section 189.418(1) and (2), F.S.

⁴⁶ Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, *Special Districts Basic Presentation*, at 25 (Jan. 2011), available at <http://www.floridaspecialdistricts.org/files/SpecialDistrictPresentation.pdf>.

⁴⁷ Rule 9B-50.003, F.A.C.

⁴⁸ Section 189.417, F.S.

⁴⁹ Section 189.418, F.S.

⁵⁰ Section 218.39, F.S.

⁵¹ Section 218.32, F.S.

⁵² Section 112.63, F.S.

⁵³ Section 218.38, F.S.

⁵⁴ Section 189.415, F.S.

⁵⁵ Section 189.421, F.S.

in writing, by the special district.⁵⁶ The Legislative Auditing Committee is required to notify DCA of those districts that have failed to file the required reports and DCA must then file a petition for writ of certiorari in circuit court.⁵⁷

DCA is authorized to declare a special district inactive and take steps to dissolve a district if the district fails to file any one of the following with the appropriate state agency:

- Retirement-related reports – DMS.
- Annual Financial Report – DFS.
- Annual Financial Audit Report – Auditor General and DFS.
- Bond-related reports – State Board of Administration, Division of Bond Finance.⁵⁸

Local Government Annual Financial Reports

Local governments are required to submit to DFS an Annual Financial Report covering their operations for the preceding fiscal year.⁵⁹ To assure the use of proper accounting and fiscal management, each local government must follow uniform accounting practices and procedures according to DFS rules. All Annual Financial Reports must be electronically produced and submitted through the DFS Bureau of Local Government's web-based Local Government Electronic Reporting System.⁶⁰

Submission of the annual report depends on whether the local governmental entity is required to have an annual audit. If no audit is required, the deadline is April 30 of each year.⁶¹ If an audit is required, the deadline is within 45 days after completion of the audit report, but no later than 12 months after the end of the entity's fiscal year.⁶² If the DFS does not receive a completed annual financial report from a local government entity, the DFS must notify the Legislative Auditing Committee, which must schedule a hearing.⁶³

If the Legislative Auditing Committee (committee) determines that an entity should be subject to further state action, the committee must:

- In the case of a local governmental entity or a district school board, direct DOR and DFS to withhold any funds not pledged for bond debt service satisfaction until the local governmental entity or the district school board is in compliance. The committee must specify the date that action will begin and both departments must receive notification 30 days before the date the withheld funds would normally be distributed.
- In the case of a special district, the committee must notify DCA and the department must offer assistance to the special district. If the district still fails to comply, DCA must petition the circuit court in Leon County for a writ of certiorari and the court must award attorney costs and court fees to the prevailing party.
- In the case of a charter school or charter technical career center, the committee must notify the appropriate sponsoring entity that may terminate the charter.⁶⁴

Local Government Annual Financial Audit Reports

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, each of the following entities must have an annual financial audit of its accounts and records completed within 12 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

- Each county, district school board, charter school, or charter technical center.
- Each municipality with revenues or total expenditures and expenses more than \$250,000.

⁵⁶ Section 189.421(1), F.S.

⁵⁷ Section 189.421(3), F.S.

⁵⁸ Section 189.419(3), F.S.

⁵⁹ Section 218.32(1), F.S.

⁶⁰ Rule 69I-51.003, F.A.C.

⁶¹ Section 218.32(1)(e), F.S.

⁶² Section 218.32(1)(d), F.S.

⁶³ Section 218.32(1)(f), F.S.; *see also* s. 11.40(5), F.S.

⁶⁴ Section 11.40(5)(a)–(c), F.S.

- Each special district with revenues or total expenditures and expenses more than \$100,000.
- Each municipality with revenues or total expenditures and expenses between \$100,000 and \$250,000 that has not been audited within the two preceding fiscal years.
- Each special district with revenues or total expenditures and expenses between \$50,000 and \$100,000 that has not been audited within the two preceding fiscal years.⁶⁵

Actuarial Reports

The “Florida Protection of Public Employee Retirement Benefits Act” (act) establishes minimum standards for operating and funding public employee retirement systems and plans.⁶⁶ The act is applicable to all units of state, county, special district and municipal governments which participate in, operate, or administer a retirement system or plan for public employees funded in whole or in part by public funds.⁶⁷

The act further prohibits a unit of local government from agreeing to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement (division) within DMS.⁶⁸

If a local government does not submit complete and adequate data necessary for the division to perform its statutorily required functions, the division may request additional information. Upon completion of its review, the division may notify the local government about concerns it has regarding the actuarial soundness of a plan. If, after a reasonable period of time, a satisfactory adjustment has not been made, DMS may notify the division and DFS of the noncompliance and those agencies may withhold funds not pledged for satisfaction of bonds until adjustment is made. The affected local government may petition for a hearing.⁶⁹ If a special district fails to make the adjustment, DMS also notifies DCA, which may seek a writ of certiorari with the circuit court for noncompliance.⁷⁰

Effect of Proposed Changes

Municipal Budget

The bill requires municipalities to provide, at a minimum, an adopted budget that shows, for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit at a level of detail that is at least at the level of detail in the state-required annual financial report. The bill requires the tentative budget to be published on the municipality’s official website at least 2 days before the budget hearing. The final adopted budget must be posted on the municipality’s official website within 30 days after adoption. If the municipality does not have an official website, the municipality must transmit the tentative budget and final budget to the county manager or administrator for posting on the county’s website within a reasonable amount of time as determined by the county. Certain budget amendments must be posted within 5 days after adoption or, if the county manager does not operate an official website, must be transmitted to the county manager or administrator for posting within a reasonable time as determined by the county. As of February 1, 2011, 63 municipalities did not have websites.⁷¹

County Budget

The bill requires counties to provide, at a minimum, a budget that shows, for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit at a level of detail that is at least at the level of detail in the state-required annual financial report. A county’s tentative budget must be posted on the county’s official website at least 2 days before the public hearing to consider the budget. The final budget must be posted on the website within 30 days after

⁶⁵ Section 218.39, F.S.

⁶⁶ Part VII, Chapter 112, F.S.

⁶⁷ Section 112.62, F.S.

⁶⁸ Section 112.63(3), F.S.

⁶⁹ Section 112.63(4), F.S.

⁷⁰ Section 112.63(4)(b), F.S.

⁷¹ Florida League of Cities, Email from staff regarding HB 107 (February 1, 2011).

adoption. The bill clarifies county budget amendment provisions and requires budget amendments authorized by resolution or ordinance to be posted on the county's official website within 5 days after adoption. The bill clarifies that it is unlawful for the boards of county commissioners to exceed budgeted appropriations except as provided in s. 129.06, F.S.

The bill also requires budgets of dependent special districts (included within the county's budget) to show budgeted revenues and expenditures by organizational unit at a level of detail that is at least at a level of detail required for the state-required annual financial report. The amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total appropriations for expenditures and reserves. The bill revises provisions specifying how a county fee officer is to prepare and submit a budget.

Sheriff Budget

The budget requirements of sheriffs are amended to require each sheriff to annually prepare and submit a proposed budget to the board of county commissioners. The requirements also clarify that personnel services, grants and aid, and other uses must be itemized by the sheriff's office. The sheriff must include expenditures at the sub-object code level in accordance with the uniform accounting system prescribed by DFS.⁷² The board of county commissioners or the county budget commission may not amend, modify, increase, or reduce any expenditure at the sub-object code level.

Supervisor of Elections Budget

The bill stipulates that each supervisor of elections is required to prepare and annually submit, rather than certify, to the board of county commissioners a proposed budget. The bill requires each supervisor of elections to itemize expenditures in accordance with the uniform accounting system prescribed by DFS into the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The supervisor of elections must furnish expenditures to the board at the sub-object code level in accordance to the account system prescribed by DFS. The board of county commissioners or the county budget commission may not amend, modify, increase, or reduce any expenditure at the sub-object code level.

Property Appraisers and Tax Collectors Budget

The bill requires property appraisers and tax collectors to post their final approved budget on their official website within 30 days after adoption. Each county's official website must have a link to the website of the property appraiser or tax collector where the final budget is posted. If the property appraiser or tax collector does not have an official website, the final approved budget must be posted on the county's official website.

Clerk of the Circuit Court Budget

The bill provides that the budget relating to the requirements of the clerk of the circuit court as the clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds must be annually prepared and submitted to the board of county commissioners. The bill requires that expenditures be itemized in accordance with the uniform accounting system prescribed by DFS using the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses.

The bill requires the clerk of the circuit court to provide the board of county commissioners with all relevant and pertinent information as the board deems necessary, including expenditures at the subobject code level in accordance with the uniform accounting system prescribed by DFS.

The bill also requires the clerk of the circuit court's final approved budget to be posted on the county's official website within 30 days after adoption. The final approved budget of the clerk of the circuit court may be included in the county's budget.

⁷² The Department of Financial Services website provides information regarding object and sub-object classifications at <http://www.myfloridacfo.com/aadir/localgov/DocsManuals/2011UASManualCounty122910.pdf>, last visited Feb. 16, 2011. The 11th and 12th digits of the expenditure account designate the object classification. The object code level is made up of sub-object codes that may be used at the budgetary level.

Special Districts

The bill authorizes DCA to declare a special district inactive pursuant to the process prescribed by law⁷³ for failure to disclose financial reports, or for not having a registered office and agent on file with DCA for one or more years. The Special District Information Program must collect and maintain a special district noncompliance status report prepared by the Legislative Auditing Committee.

The bill requires special districts to provide, at a minimum, a budget that shows, for each fund, as required by law and sound financial practices, revenues and expenditures by organizational unit at a level of detail that is at the level of detail in the state-required annual financial report.

Dependent special districts are required to provide any budget information requested by the local governing authority. In addition, a local general-purpose government or governing authority may request, from any special district located solely within its boundaries, financial information necessary to comply with its reporting requirements for filing state-required annual financial reports and annual financial audit reports. The special district must cooperate with these requests and provide the financial information at the time and place designated by the local general-purpose government or governing authority.

The tentative budget must be posted on the special district's website at least 2 days before the budget hearing. The final adopted budget must be posted on the special district's official website within 30 days after adoption. If the special district does not operate a website, the special district must transmit the tentative budget or final budget to the local general-purpose government in which the special district is located or the local governing authority. The manager or administrator must post the tentative or final budget on the website of the local general-purpose government or the local governing authority. The bill exempts water management districts from the posting requirements.

The bill authorizes a governing body of a special district, by a motion recorded in the minutes, to amend its budget by decreasing or increasing appropriations for expenditures within a fund, if the total appropriations of the fund do not increase; or by establishing procedures by which the designated budget officer may authorize certain budget amendments, if the total appropriations of the fund do not increase. The bill requires a budget amendment that is required for other purposes than specified above to be adopted by resolution.

Amendments to an adopted special district budget must be posted on the official website or transmitted to the local general-purpose government or local governing authority within 5 days after adoption. If the special district does not operate a website, the special district must transmit the adopted amendment to the local general-purpose government in which the special district is located or to the local governing authority. The manager or administrator must post the adopted amendment on the website of the local general-purpose government or the local governing authority.

The bill clarifies what occurs when an independent special district fails to file reports or information required under chapter 189, F.S. If the governing body of a local general-purpose government determines that failure to file required reports or information is unjustified, the local general-purpose government may notify DCA which then may proceed according to the procedures established by law.⁷⁴

If a dependent special district fails to file reports or information with the local governing authority, the local governing authority is required to take whatever steps it deems necessary to enforce the special district's accountability, including withholding funds; removing governing board members at will; vetoing the special district's budget; conducting the oversight review process;⁷⁵ or amending, merging, or dissolving the special district. If a special district fails to file the state-required notice of bond issues⁷⁶ to the appropriate agencies, the bill requires DCA, upon such notification, to send a certified technical

⁷³ Section 189.4044, F.S.

⁷⁴ See the Special Districts discussion in the Present Situation section of this bill analysis. See also s. 189.421, F.S.

⁷⁵ Section 189.428, F.S.

⁷⁶ Section 218.38, F.S.

assistance letter to the special district that summarizes the requirements and encourages the special district to take steps to prevent the noncompliance from reoccurring. If a special district fails to meet the actuarial reporting requirements under the Florida Protection of Public Employee Retirement Benefits Act,⁷⁷ or fails to file the state-required annual financial report or annual financial audit report, to the appropriate state agency, such agency must notify DCA, which will then precede according to the failure procedures established by law.⁷⁸

The bill revises the procedures for when a special district fails to disclose financial reports. When a special district fails to file a report or information required under Chapter 189, F.S., or is unable to comply with the 60-day reporting deadline granted by DCA, it must provide a written notice to DCA stating:

- The reason it is unable to comply with the deadline;
- The steps it is taking to prevent the noncompliance from recurring; and
- The estimated date the special district will file the report with the appropriate agency.

The written notice does not constitute an extension by DCA; however, DCA must forward the written notice as follows:

- If the written notice refers to the state-required annual financial report or annual financial audit report, then DCA must forward the written notice to the Legislative Auditing Committee, which will determine whether state action is needed and notify DCA as to whether they should proceed according to the procedures⁷⁹ established by law.
- If the written notice refers to a special district report or information that was not filed,⁸⁰ as required by law, then DCA must forward the notice to the local general-purpose government for its consideration in determining what actions to take.
- If the written notice refers to the reports or information required for meeting the actuarial reporting requirements under Florida Protection of Public Employee Retirement Benefits Act, then DCA must forward the notice to DMS for its consideration in determining whether the special district should be subject to further action.

The bill deletes the additional 30-day extension and further amends the law to specify that the failure of a special district to comply with actuarial reporting requirements, as well as specified financial reporting requirements, is deemed final action of the special district. The remedy for noncompliance is writ of certiorari. If the Legislative Auditing Committee or DMS notifies DCA that specific special districts have failed to file required reports, DCA must, notwithstanding chapter 120, F.S., initiate a writ of certiorari in the circuit court within 60 days after receiving such notice. Current law gives DCA 30 days. The writ of certiorari must be issued unless a respondent establishes that the notification of the Legislative Auditing Committee or DMS was issued as a result of material error. The venue for all actions pursuant to this section is to be in Leon County. Attorney's fees are to be awarded to the prevailing party unless affirmatively waived by all parties and proceedings are otherwise governed by the Rules of Appellate Procedure.

Water Management Districts and School Districts

The bill requires a water management district to post its tentative budget on its official website at least 2 days before budget hearings. The final adopted budget must be posted on the website within 30 days after adoption.

The bill also requires a district school board to post a summary of its tentative budgets on the district's official website within 2 days before a budget hearing. The bill requires the district school board's final adopted budgets to be posted on the district's official website within 30 days after adoption, and any budget amendments to be posted on their official website within 5 days after adoption.

⁷⁷ Section 112.63, F.S.

⁷⁸ Section 189.421(1), F.S.

⁷⁹ Section 189.421, F.S.

⁸⁰ Section 189.419(1), F.S.

Local Government Annual Financial Audit Reports and Annual Financial Reports

The bill requires local governmental entities to file their audits with DFS within 9 months, rather than 12 months, after the end of the fiscal year. Local governments not required to file audits must file annual financial reports no later than 9 months after the end of the fiscal year, rather than April 30 of each year. The bill also requires DFS to file its report on local governmental entities that are not in compliance with the annual financial report requirements, with DCA's Special District Information Program. Each local governmental entity's website must provide a link to the DFS website to view the entity's annual financial report submitted to the department. If the local governmental entity does not have an official website, then the county government's website must provide the required link for the local governmental entity.

The bill requires certain counties, municipalities, special districts, district school boards, charter schools, and charter technical career centers, to file their annual financial audit report within 9 months, rather than 12 months, after the end of the fiscal year. The bill specifies that the entity's revenues or total expenditures and expenses are as reported on the fund financial statements.

The bill requires auditors to prepare auditing reports in accordance with the rules of the Auditor General. These reports must be filed with the Auditor General within 45 days after the delivery of the report to the audited entity but no later than 9 months after the end of the fiscal year. The bill also requires the Auditor General to notify the Legislative Auditing Committee (committee) of any audit report that indicates an audited entity required to have an annual audit has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports filed. The notification must include any audited entity required to have audits on other than an annual basis that failed to take full corrective action in response to a recommendation that was included in the most recent preceding audit report filed.

The committee is given the authority to direct a local governmental entity to provide a written statement explaining why full corrective action has not been taken or describing corrective action to be taken and when. If the committee determines that the written statement is not sufficient, it may require the chair of the governing board of the entity or the chair's designee to appear before the committee.

The bill further authorizes the committee to take corrective actions⁸¹ against an audited entity that has failed to take full corrective action and for which there is no justifiable reason for the entity's inaction, or if the entity has failed to comply with the committee's requests.

The bill clarifies that a deficit in the fund financial statements of entities required to report under governmental financial reporting standards or on not-for-profit financial statements constitutes a financial distress indicator that subjects the entity to review and oversight for financial emergency. The bill replaces the term "fixed or capital assets" with "property, plant, and essential equipment" as types of property that, if necessary, will not be considered resources available to cover the deficit.

B. SECTION DIRECTORY:

Section 1: Amends s. 11.40, F.S., to clarify that DCA can declare a special district inactive for failure to disclose financial reports.

Section 2: Amends s. 30.49, F.S., to clarify account categories and the level of detail required for each account.

Section 3: Amends s. 112.63, F.S., to authorize DMS to notify DCA that a special district has failed to provide requested information or make appropriate adjustments.

Section 4: Amends s. 129.01, F.S., to require a county budget to be prepared at a level of detail that is consistent with the annual financial reports required by s. 218.32(1), F.S.

⁸¹ Section 11.40(5), F.S.

Section 5: Amends s. 129.02, F.S., to require budgets of special districts included within the county budget to be prepared at a level of detail that is consistent with the annual financial reports required by s. 218.32(1), F.S.

Section 6: Amends s. 129.021, F.S., to correct a cross-reference.

Section 7: Amends s. 129.03, F.S., to require a county tentative, adopted tentative, and final adopted budget to be posted on the county's official website.

Section 8: Amends s. 129.06, F.S., to clarify the budget amendment authority of counties.

Section 9: Amends s. 129.07, F.S., to clarify that a board of county commissioners may not exceed budgeted appropriations, except as provided in s. 129.06, F.S.

Section 10: Amends s. 129.201, F.S., to require the supervisor of elections to itemize expenditures according to uniform chart of accounts.

Section 11: Amends s. 166.241, F.S., to require municipalities to provide, at a minimum, a level of detail consistent with the annual financial report required by s. 218.32, F.S., and to publish the tentative, adopted, and final adopted budgets, including amendments, on the municipality's website.

Section 12: Amends s. 189.4044, F.S., to allow DCA to declare any special district inactive if the district has not had a registered office and agent on file with the department for one or more years.

Section 13: Amends s. 189.412, F.S., to require the DCA Special District Information Program to collect and maintain a special district noncompliance state report prepared by the Legislative Auditing Committee.

Section 14: Amends s. 189.418, F.S., to require special districts to prepare budgets at a level of detail that is consistent with the annual financial reports required by s. 218.32(1), F.S., and to publish the tentative, adopted, and final adopted budgets, including amendments, on the special district's website or on the county's website in which the special district is located.

Section 15: Amends s. 189.419, F.S., to provide procedures to follow when a special district fails to provide certain information.

Section 16: Amends s. 189.421, F.S., to provide procedures to follow when a special district fails to provide financial reports.

Section 17: Amends s. 195.087, F.S., to require each tax collector and property appraiser to post his or her budget on the county's official website.

Section 18: Amends s. 218.32, F.S., to require each local governmental entity's website to provide a link to the DFS website to view the entity's annual financial report.

Section 19: Amends s. 218.35, F.S., to specify how county fee officers and clerks of court must prepare a budget.

Section 20: Amends s. 218.39, F.S., to require certain local governmental entities to have annual financial audits completed within 9 months after the end of the fiscal year.

Section 21: Amends s. 218.503, F.S., to clarify how to determine a fund balance deficit.

Section 22: Amends s. 373.536, F.S., to require water management districts to post their tentative and final adopted budgets on their website.

Section 23: Amends s. 1011.03, F.S., to require district school boards to post a summary of their tentative and adopted budgets, including amendments, on their website. If the school district does not operate a website the information shall be posted on the county's website.

Section 24: Amends s. 1011.051, F.S., to correct accounting terminology.

Section 25: Amends s. 1011.64, F.S., to correct accounting terminology.

Section 26: Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCA may experience increased expenditures resulting from the enhanced enforcement provisions. The resulting fiscal impact is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires local governmental entities to post annual budget and financial reporting information on the local government website. This requirement may have an indeterminate fiscal impact on affected local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will increase transparency in the budget process of local governments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18(a), Article VII of the State Constitution, prohibits any general law that would require cities and counties to spend funds or take action requiring the expenditure of funds. Section 18(d), Article VII of the State Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (FY 2011-2012 \$1.9 million).⁸²

The mandates provision appears to apply because the bill requires counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, the amount of the

⁸² Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

expenditure is insignificant because most local governments have websites and, therefore, an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize any new grants of rulemaking authority, nor are any additional grants necessary. However, DOR has indicated that, due to changes proposed by the bill, a new rule may be required.⁸³

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Government Operations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute.

The bill as filed authorized a governing body of a special district to amend its budget by decreasing or increasing appropriations for expenditures within a fund, if the total appropriations of the fund do not increase; or by establishing procedures by which the designated budget officer may authorize certain budget amendments, if the total appropriations of the fund do not increase. The committee substitute allows special districts to amend their budget as long as the budget is not increased.

The bill as filed provided that when a special district fails to file a report or information required under Chapter 189, F.S., or is unable to comply with the 60-day reporting deadline granted by DCA, it must provide a written notice to DCA stating the reasons for not complying, steps to prevent recurrence, and estimated date the special district will file the report. Subsequently, the bill refers to the written notice as a written response and provides that the written response does not constitute an extension by DCA; however, DCA must forward the written response as specified. The committee substitute changes the term written response to written notice to conform to the special district requirement.

The bill as filed required the Auditor General to notify the Legislative Auditing Committee of any audit report that indicates 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. Under current law, certain municipalities may not be required to provide for an annual audit if they meet certain budget criteria and have not been subject to a financial audit for the two preceding fiscal years. Thus, a discrepancy in time periods for corrective action may result. The committee substitute provides that all audited entities have the same period of time to take full corrective action.

⁸³ Department of Revenue HB 107 Analysis (Jan. 25, 2011), at 2; on file with the House Government Operations Subcommittee.