

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Judiciary Committee

**BILL:** CS/SB 1868

**INTRODUCER:** Community Affairs Committee and Senator Gardiner

**SUBJECT:** Federal Grants

**DATE:** February 17, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Fav/CS</b>
2.	Irwin	Cibula	JU	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill requires a county, municipality, or special district to identify and disclose the projected, unfunded, long-term costs of each project funded by a federal grant prior to accepting such federal grant. The costs must be calculated from the inception of the project through the 2 fiscal years after the federal funds have been depleted. The unfunded costs may include, but are not limited to, required state and local matching funds, projected payroll costs, maintenance costs, and costs to operate and administer the project.

A disclosure statement of the costs and a plan to fund the project after the depletion of the federal grant must be posted on the grantee's website 10 days before a vote to accept any moneys or 10 days before any action to authorize acceptance. If a special district does not operate a website, procedures are provided to have the disclosure statement posted on the website of either the district's local general-purpose government or the district's governing authority. Accountants conducting audits of counties, municipalities, or special districts will be required to determine compliance with the bill's provisions. The bill further provides that a person may file a civil action to enforce the disclosure and plan provisions.

This bill does not apply to federal grants associated with natural disasters, grants involving the Federal Emergency Management Agency, grants received from the Department of Homeland Security, or Medicaid funds.

This bill amends section 218.39, Florida Statutes.

This bill creates an undesignated section of the Florida Statutes.

## II. Present Situation:

### Intergovernmental Grant Impact on Future Periods

A recent working paper by West Virginia University economists Russell Sobel and George Crowley examined the impact of federal grants on state and local tax policy in future periods.<sup>1</sup> Their analysis concluded that grant funding to state and local governments results in higher own source revenue and taxes in the future that support the programs initiated with the federal grant moneys.<sup>2</sup> The authors further argue that:

[T]he recent large increase in federal grants to state and local governments that has occurred as part of the American Recovery and Reinvestment Act (ARRA) will have significant future tax implications at the state and local level as these governments raise revenue to continue these newly funded programs into the future. Federal grants to state and local governments have risen from \$461 billion in 2008 to \$654 billion in 2010. Based on our estimates, *future* state taxes will rise by between 33 and 42 cents for every dollar in federal grants states received today, while local revenues will rise by between 23 and 46 cents for every dollar in federal (or state) grants received today. Using our estimates, this increase of \$200 billion in federal grants will eventually result in roughly \$80 billion in future state and local tax and own source revenue increases. This suggests the true cost of fiscal stimulus is underestimated when the costs of future state and local tax increases are overlooked.<sup>3</sup>

### Federal Aid to State and Local Governments by Program

The U.S. Census Bureau, Statistical Abstract for 2012, shows that Florida received \$22,686,000,000 in total federal aid for state and local governments in 2009.<sup>4</sup> Selected federal department program total grant amounts and percentages of the overall total are shown in the table below.<sup>5</sup>

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<sup>1</sup> Russell S. Sobel and George R. Crowley, *Do Intergovernmental Grants Create Ratchets in State and Local Taxes? Testing the Friedman-Sanford Hypothesis*, 25 (No. 10-51, August 2010) [http://mercatus.org/sites/default/files/publication/Do%20Intergovernmental%20Grants%20Create%20Ratchets.WP\\_.Corrected.10.4.10\\_0.pdf](http://mercatus.org/sites/default/files/publication/Do%20Intergovernmental%20Grants%20Create%20Ratchets.WP_.Corrected.10.4.10_0.pdf) (last visited February 16, 2012).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2012, *Table 434 Federal Aid to State and Local Governments – Selected Programs by State: 2009*, <http://www.census.gov/compendia/statab/2012/tables/12s0434.pdf> (last visited February 16, 2012).

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

Department	Total grant amount for 2009	% of total
Health and Human Services	\$13,573,000,000	59.8%
Education	\$2,201,000,000	9.7%
Transportation	\$2,038,000,000	9.0%
Housing and Urban Development	\$1,731,000,000	7.6%
Agriculture	\$1,418,000,000	6.3%
Labor	\$338,000,000	1.5%

### Special Districts

Special districts are governed by the Uniform Special District Accountability Act of 1989 in ch. 189, F.S.<sup>6</sup> s. 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose. A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.<sup>7</sup> A special district does *not* include a school district, a community college district, a special improvement district, a municipal service taxing or benefit unit, or a political subdivision board of a municipality providing electrical service.<sup>8</sup>

The Special District Information Program (SDIP) maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.<sup>9</sup> As of February 16, 2012, there were 1,636 special districts in this state.<sup>10</sup> Examples of special districts 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.<sup>11</sup>

### Local Government Annual Financial Audits

Section 218.39(1), F.S., provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within 9 months after the end of the fiscal year. The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds.<sup>12</sup> The entities include:

- Each county, district school board, charter school, or charter technical center.
- Each city with revenues or expenditures and expenses of more than \$250,000.
- Each special district having revenues or expenditures and expenses of more than \$100,000.

<sup>6</sup> Section 189.401, F.S.

<sup>7</sup> Section 189.403(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Sections 189.412(2) and 189.4035, F.S. *See also* Florida Department of Economic Opportunity, *Official List of Special Districts Online*, (available online at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm>) (last visited February 16, 2012).

<sup>10</sup> Florida Department of Economic Opportunity, *Special District Statewide Totals*, <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm> (last visited February 16, 2012).

<sup>11</sup> Florida Department of Economic Opportunity, *Special District Primary Functions Cross Reference List*, <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/functions.cfm> (last visited February 16, 2012).

<sup>12</sup> Section 218.39(1), F.S.

- Each city having revenues or expenditures and expenses between \$100,000 and \$250,000 that has not been audited within the 2 preceding fiscal years.
- Each special district having revenues or expenditures and expenses between \$50,000 and \$100,000 which has not been audited within the 2 preceding fiscal years.<sup>13</sup>

The audit report must be filed with the Auditor General and 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.<sup>14</sup> The Auditor General must notify the Legislative Auditing Committee (LAC) of any audit report that indicates an entity has failed to take full corrective action in response to a recommendation made in the 2 preceding financial audit reports.<sup>15</sup>

Upon being notified, LAC may direct the governing body of the audited entity to provide a written explanation for its failure to take corrective actions or subsequent plans for correction.<sup>16</sup> If the explanation is not sufficient, LAC may require an appropriate official from the entity to appear before the committee.<sup>17</sup> Should LAC determine that there is no justifiable reason for the entity to have not taken corrective action; LAC may proceed in accordance with s. 11.40(2), F.S.

- In the case of a local government entity or a district school board, LAC directs the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction until the local government entity or the district school board is in compliance. The LAC 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.<sup>18</sup>
- In the case of a special district, LAC must notify the Department of Economic Opportunity that the special district has failed to comply with the law. Failure of a special district to comply with actuarial and financial reporting requirements is deemed final action of the special district. The actuarial and financial reporting requirements are essential requirements of law. Remedy for noncompliance is by writ of certiorari.<sup>19</sup>
- In the case of a charter school or charter technical career center, LAC must notify the appropriate sponsoring entity that may terminate the charter.<sup>20</sup>

### III. Effect of Proposed Changes:

**Section 1.** Creates an undesignated section of law stating that before accepting federal grant funds, a county, municipality, or special district must identify and disclose the projected, unfunded, long-term costs of each project that is funded by a federal grant. The costs shall be

<sup>13</sup> Nearly 300 special districts did not meet the audit threshold established in Section 218.39, F.S., for the 2008-09 fiscal year. E-mail from Marilyn Rosetti, Audit Manager, Local Government Reviews & Special Audits, State of Florida Auditor General, to John Toman, Legislative Analyst, Senate Committee on Community Affairs (Nov. 3, 2011) (on file with the Senate Committee on Judiciary).

<sup>14</sup> Section 218.39(7), F.S.

<sup>15</sup> Section 218.39(8), F.S.

<sup>16</sup> Section 218.39(8), F.S.

<sup>17</sup> Section 218.39(8)(b), F.S.

<sup>18</sup> Section 11.40(2)(a), F.S.

<sup>19</sup> Sections 189.421(2)-(3), F.S.

<sup>20</sup> Section 11.40(2)(c), F.S.

calculated from inception of the project through the 2 fiscal years after the federal funds have been depleted. Such unfunded costs include, but are not limited to, required state and local matching funds, projected payroll costs, maintenance costs, and costs to operate and administer the project.

The projected, unfunded, long-term costs must be prominently disclosed by posting a disclosure statement on the website of the county, municipality, or special district at least 10 days before the county, municipality or special district votes to accept the federal grant or otherwise takes any other action to authorize acceptance of the federal grant. If a special district does not operate a website, procedures are provided to have the costs posted on the website of the district's local general-purpose government or governing authority. The disclosure statement must describe the project and must include a plan for funding the project for up to 2 fiscal years after the depletion of the federal grant.

This section of the bill further provides that a person may file a civil action to enforce the above provisions. If a civil action is filed against a county, municipality, or special district to enforce the above provisions and the court finds that the county, municipality, or special district failed to comply, the court must assess an award against the appropriate county, municipality, or special district for reasonable costs of enforcement, including reasonable attorney fees.

Certified public accountants conducting audits of counties, municipalities, or special districts pursuant to s. 218.39, F.S., must report, as part of the audit, whether the county, municipality, or special district has complied with the provisions of the bill. This bill does not apply to federal grants associated with natural disasters, grants involving the Federal Emergency Management Agency, grants received from the Department of Homeland Security, or Medicaid funds.

**Section 2.** Amends s. 218.39, F.S., to require the Auditor General to notify the Legislative Auditing Committee (LAC) of any audit report that indicates that an audited entity has failed to comply with the required disclosures relating to the receipt of federal funds. If an entity has not complied, LAC may require a written statement of explanation from the entity and could may require an appropriate entity official to appear before the committee. If the LAC determines that there is no justifiable reason for the failure to prepare a disclosure statement or that the entity has failed to comply with the explanation or appearance requests, the committee may proceed in accordance with s. 11.40(2), F.S.

**Section 3.** Provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, section 18(a) of the state Constitution states that “[n]o 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 it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- 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 required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption.<sup>21</sup> Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011), are exempt.<sup>22</sup>

It is not anticipated that the costs to comply with this act will exceed \$1.88 million, however, if they do, the law may be unenforceable unless passed by two-thirds in each house of the Legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Residents of the state may be afforded greater transparency related to the federal grant acceptance process of counties, municipalities and special districts.

**C. Government Sector Impact:**

Counties, municipalities and special districts may incur indeterminate costs related to reporting and planning development requirements as well as the auditing determinations required by the bill. The Auditor General and the Legislative Auditing Committee will experience indeterminate costs associated with their new oversight roles.

The Revenue Estimating Conference has not analyzed the impact of this bill.

<sup>21</sup> FLA. CONST. art. VII, s. 18.

<sup>22</sup> Comm. on Community Affairs, The Florida Senate, *Insignificant Fiscal Impact*, 2 (Interim Report 2012-115) (September 2011).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Community Affairs on January 30, 2012:**

- Establishes that the calculation of unfunded costs of a federal project must cover the time period from the inception of the grant through 2 fiscal years after depletion of the grant.
- Provides a procedure for special districts to post disclosures and plans if they do not have a website.
- Requires a determination of compliance with the CS's provisions to be included in a county, municipality, or special district financial audit.
- Requires the Auditor General to notify the Legislative Auditing Committee (LAC) of compliance failures. Under certain circumstances, the LAC may proceed in accordance with the provisions of s. 11.40, F.S.

**B. Amendments:**

None.