

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 Community Affairs Committee

BILL: SPB 7002

INTRODUCER: For consideration by the Community Affairs Committee

SUBJECT: Laws Requiring Counties Municipalities to Spend Funds/Limiting Ability to Raise Revenue or Receive State Tax Revenue

DATE: September 27, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill defines an “insignificant fiscal impact” for the purposes of Article VII, Section 18 of the Florida Constitution.

II. Present Situation:

This bill is the result of an interim report 2012-115, Insignificant Fiscal Impact. This report was designed to explain the exemption from the mandates provision of the Florida Constitution and present a possible clarification. The following is a discussion of the issues discussed in the report.

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.¹ The intent of the Florida mandates provision is to give local governments bargaining power on the subject of unfunded mandates.

¹ 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).

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.

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.²

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.³ 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.⁴

² Senate President Margolis and Speaker of the House Wetherell, *County and Municipality Mandates Analysis* (1991).

³ 15 So. 3d 777 (Fla. 1st DCA 2009).

⁴ *Id.*

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.⁵ 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 decided that the cost of amending the comprehensive plan would be at least \$15,000 per jurisdiction required to amend its comprehensive plan (the cost of comprehensive planning in actuality varies from jurisdiction to jurisdiction). The court determined that local governments would have to spend \$3,690,000 to comply with the bill. This one-time cost, assessed over two years, falls just short of the court's threshold for a mandate. Therefore, it was evident that the court did not consider the fact that local governments had two years to adopt these mobility plans nor did the court consider any offsetting cost effects over the long term.⁶ Under a standard that does not look at the annual cost, any cost, if considered over a long enough time period, would eventually trigger the 10 cents per capita number.

III. Effect of Proposed Changes:

The bill defines an insignificant fiscal impact as an annual amount equal to or less than 10 cents multiplied by the latest resident population estimate on April 1 by the Florida Demographic Estimating Conference for the applicable state fiscal year. In determining whether the fiscal impact of a law exceeds an insignificant fiscal impact, the average annual fiscal impact of the law, including any average annual revenues or savings that the law may create, must be taken into consideration.

Other Potential Implications:

Clarity in the law can assist the courts, the Legislature, and local governments determine whether a law is a mandate. This clarity may help prevent intergovernmental litigation, thereby saving taxpayer dollars.

Nevertheless, unlike the current legislative guidance documents, by placing this definition in statute, the Legislature will be precluding itself from arguing that larger fiscal impacts are insignificant.

⁵ 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).

⁶ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill clarifies the meaning of insignificant fiscal impact for the purposes of the mandates provision of the Florida Constitution.

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:

None.

C. Government Sector Impact:

Indeterminate.

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.)

None.

B. Amendments:

None.