

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1149 Local Government Fiscal Transparency

**SPONSOR(S):** DiCeglie and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 3 N	Darden	Miller
2) Ways & Means Committee	11 Y, 4 N	Aldridge	Langston
3) State Affairs Committee	15 Y, 6 N	Darden	Williamson

### SUMMARY ANALYSIS

The bill creates the Local Government Fiscal Transparency Act (Act), providing for increased fiscal transparency for local governments by requiring:

- Easy public access to voting records of local governing body members related to tax increases and the issuance of tax-supported debt;
- Easy online access to truth-in-millage notices and a four-year history of property tax rates and total revenue generated by each local government;
- Additional public meetings and expanded public notice requirements for local option tax increases and the issuance of new long-term, tax-supported debt;
- Local governments to conduct a debt affordability analysis prior to issuance of new long-term, tax-supported debt;
- The chair of the local governing body to sign an affidavit of compliance with the Act; and
- The Auditor General to request evidence of corrective action from local governments found not to be in compliance with the Act and to report those who fail to do so to the Legislative Auditing Committee.

The bill revises reporting requirements for local government economic development incentives. The bill requires each county and municipality to report to the Office of Economic and Demographic Research on economic incentives provided directly to an individual business or by another entity on behalf of the local government, as well as the source of all funds obligated for the incentive.

The bill provides a statement that the Legislature finds that this act fills an important state interest.

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

**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.**

## 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 (Act). The bill provides a statement of purpose to:

promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

The bill provides definitions for the following terms used in the Act:

- “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, regardless of whether they are debt for legal purposes, or for financing or refinancing the acquisition, construction, improvement, or purchase of capital outlay projects.
- “Local government” is defined as any county, municipality, school district, municipal service taxing unit, or special district, but does not include special districts established to provide hospital services (if the district does not levy, assess, or collect ad valorem taxes).
- “Tax increase” is defined as any increase in a local government’s millage rate above the rolled-back rate as described in s. 200.065(1), F.S., (for ad valorem taxes) or a tax enactment, extension, or an increase in the tax rate (for all other taxes).
- “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, regardless of whether such security is direct or indirect, explicit or implicit, including 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.

##### **Local Government Voting History: Property Tax, Local Option Taxes, New Debt Issuance**

###### Current Situation

While the voting records of local government governing boards are public records<sup>1</sup> 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 boards on votes taken related to tax increases or the new issuance of tax-supported debt.

Under current law, there are 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.<sup>2</sup>

###### Effect of 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 preceding four years related to tax increases and new tax-supported debt issuance,

<sup>1</sup> See Ch. 119, F.S., generally, and s. 119.01, F.S.

<sup>2</sup> See ss. 125.66 and 166.041, F.S.

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. Further, the bill provides that the website must provide links to allow users to navigate to related sites if supporting details or documentation are available and the websites and information on those websites must be compliant with the Americans with Disabilities Act.

In any public notice of a tax increase or new tax-supported debt issuance, each local government must include with the notice, the website address at which the voting records can be accessed on its website.

## **Property Taxes: Tax History**

### **Current Situation**

Chapter 200, F.S., “Determination of Millage,” generally governs the process, procedures and limitations on the establishment of millage rates by units of local government with ad valorem taxing authority. As part of this process, each property appraiser must provide each taxpayer listed on the current year’s assessment roll a notice of proposed property taxes and non-ad valorem assessments by first-class mail.<sup>3</sup> This notice, more commonly known as a truth-in-millage, or TRIM, notice, is sent on behalf of all taxing authorities levying ad valorem taxes and non-ad valorem assessments on each parcel listed on the current year’s assessment roll.<sup>4</sup>

The first page of the TRIM notice states that the notice is a “notice of proposed property taxes” and that the notice is not a bill.<sup>5</sup> The notice must inform the taxpayer that the taxing authorities that levy taxes on the property will soon hold public hearings to adopt budgets and tax rates for the following year. The notice must include a brief legal description of the property, the name and mailing address of the owner of record, and the tax information applicable to the specific parcel in question.<sup>6</sup> The notice must include seven columns labeled:<sup>7</sup>

- “Taxing Authority;”
- “Your Property Taxes Last Year;”
- “Last Year’s Adjusted Tax Rate (Millage);”<sup>8</sup>
- “Your Taxes This Year IF NO Budget Change Is Adopted;”
- “Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage);”
- “Your Taxes This Year IF PROPOSED Budget Change Is Adopted;” and
- “A Public Hearing on the Proposed Taxes and Budget Will Be Held.”

The tax history of individual parcels of real property are commonly available on the websites of the tax collector and property appraiser of each county.<sup>9</sup>

### **Effect of Proposed Changes**

The bill requires each county property appraiser to maintain a website that includes for each parcel of property, in a manner easily accessible by the public, 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

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<sup>3</sup> S. 200.069, F.S.

<sup>4</sup> See *Your TRIM Notice Explained*, Marion County, available at <https://www.marioncountyfl.org/home/showdocument?id=7990> (last visited Jan. 14, 2020).

<sup>5</sup> S. 200.069(1), F.S.

<sup>6</sup> S. 200.069(2)(a), F.S.

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

<sup>8</sup> “Last years’ adjusted tax rate” is the rolled-back rate. S. 200.069(2)(b), F.S. For voted levies for debt service, “last years’ adjusted tax rate” is the rate authorized by referendum. S. 200.069(4)(c), F.S.

<sup>9</sup> See, e.g., *Search by Property Address*, Leon County Property Appraiser, available at

<https://www.leonpa.org/pt/search/commonsearch.aspx?mode=address> (last visited Jan. 14, 2020) (providing tax history of each parcel in the county in search results).

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, 2020, two years of history;
- By October 1, 2021, three years of history;
- By October 1, 2022, and thereafter, four years of history.

The bill further requires each local government to post prominently 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 for Local Option Tax Increases and New Debt Issuance**

### **Current Situation**

Under current law, there are 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.<sup>10</sup> School districts are required to hold elections prior to the issuance of certain bonds.<sup>11</sup> These elections require publication of notice at least once a week for two consecutive weeks in a newspaper published in the district.<sup>12</sup>

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 the steps required to establish 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.<sup>13</sup> 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.<sup>14</sup> The form of the notice is prescribed in statute.<sup>15</sup>

### **Effect of Proposed Changes**

The bill requires an additional public meeting of the local governing board prior to the board taking final action on a tax increase, except for ad valorem taxes, or final action on new tax-supported debt issuance. Tax-supported debt does not include debt approved by referendum and secured by ad valorem taxes. 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 the issuance of new tax-supported debt. The public is specifically allowed to speak and ask questions relevant to the proposed tax increase or issuance of new tax-supported debt.

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 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

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<sup>10</sup> See ss. 125.66 and 166.041, F.S.

<sup>11</sup> S. 1010.41, F.S.

<sup>12</sup> S. 1010.43, F.S.

<sup>13</sup> S. 200.065, F.S.

<sup>14</sup> S. 200.065(2)(d), F.S.

<sup>15</sup> S. 200.065(3), F.S.

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 proposed 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 public 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 the governing board expects to use the tax proceeds to secure debt.

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 public 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
- A description of the debt affordability ratios required to be calculated (see Debt Affordability Measures below).

### **Debt Affordability Measures for New Debt Issuance**

#### **Current Situation**

The Division of Bond Finance is required to prepare a debt affordability report for the state on an annual basis.<sup>16</sup> 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.

A legislative statement of determination (commonly referred to as a “budget statement”) in the legislative authorization of new tax-supported debt if the additional borrowing would exceed certain benchmark debt ratios.<sup>17</sup> 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 required statement of determination must state the 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 must state that such additional debt is necessary to address a critical state emergency.

No similar requirements exist for local governments.

### Effect of 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 must be calculated both with and without the new debt issuance.

### Consequences for Non-Compliance

#### Current Situation

Each subject local governmental entity, district school board, charter school, or charter technical career center must have an annual financial audit, conducted by an independent certified public accountant, of its accounts and records completed within nine months of the end of its fiscal year, unless the entity is informed before the start of the fiscal year that the Auditor General intends to conduct an audit of the entity for that year.<sup>18</sup> This provision applies to:<sup>19</sup>

- 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.

Additionally, each municipality with revenues or the total of expenditures and expenses between \$100,000 and \$ 250,000, and each special district with revenues or the total of expenditures and expenses between \$50,000 and \$100,000, must conduct a financial audit if the entity has not been subject to a financial audit in the two preceding fiscal years.<sup>20</sup>

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.<sup>21</sup> If the designated person 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. The auditor is required to prepare an audit report in accordance with the rules of the Auditor General.<sup>22</sup> 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

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<sup>17</sup> S. 215.98(1), F.S.

<sup>18</sup> S. 218.39, F.S.

<sup>19</sup> S. 218.39(1)(a)-(f), F.S.

<sup>20</sup> S. 218.39(1)(g)-(h), F.S.

<sup>21</sup> S. 218.39(5), F.S.

<sup>22</sup> S. 218.39(7), F.S.

statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.

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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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 (DOR) and the Department of Financial Services (DFS) to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.<sup>27</sup>

#### Effect of Proposed Changes

The bill requires the annual audit reports described above to include an affidavit signed by the chair of the governing board of the local government stating the local government has complied with the requirements of the newly created Part VIII of ch. 218, F.S., as contemplated by the bill. This affidavit must be contained in a separate document. 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 the Auditor General to request evidence of corrective action from each local government not in compliance with Part VIII of ch. 218, F.S., and for such local government to provide evidence of the initiation of corrective action within 45 days 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 within the specified timeframe or fails to comply with the Auditor General's request.

Failure to comply with Part VIII, ch. 218, F.S., could therefore ultimately result in the Legislative Auditing Committee directing DOR and DFS to withhold any funds not pledged for bond debt service satisfaction which are payable to such local government entity until the entity complies with the law.<sup>28</sup> This would include revenue sharing monies that the state distributes to 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.

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<sup>23</sup> S. 218.39(8), F.S.

<sup>24</sup> S. 218.39(8)(a), F.S.

<sup>25</sup> S. 218.39(8)(b), F.S.

<sup>26</sup> S. 218.39(8)(c), F.S.

<sup>27</sup> S. 11.40(2)(a), F.S.

<sup>28</sup> S. 11.45(2), F.S.

## **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**

Counties and municipalities are required 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.<sup>29</sup> EDR annually collects this data from local governments through an online survey, coupled with follow-up communications as necessary.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

### **Effect of 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 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 within similar classes to the extent that such a comparison is possible.

## **Other Provisions**

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

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 11.40(2), F.S., making a conforming change.

Section 2: Amends s. 11.45, F.S., redesignating paragraphs (d)-(j) as (e)-(k) and adding a new paragraph (d) requiring the Auditor General report certain noncompliance with new Part

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<sup>29</sup> Ss. 125.045(5)(a) and 166.021(8)(e), F.S. The municipal reporting requirement only applies to municipalities with annual revenues or expenditures greater than \$250,000.

<sup>30</sup> Office of Economic and Demographic Research, Florida County & Municipal Economic Development Incentives: Local Fiscal Year 2015-16 Report Based on 2017 Survey Responses 6, *available at* <http://edr.state.fl.us/Content/local-government/reports/econincentives16.pdf> (last visited Jan. 14, 2020).

<sup>31</sup> *Id.* at 2.

<sup>32</sup> Ss. 125.045(5)(a) and 166.021(8)(e), F.S.



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 ch. 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., as the “Local Government Fiscal Transparency Act.”
- Section 7: Amends s. 215.97, F.S., making a conforming change.
- Section 8: Amends s. 218.32, F.S., making a conforming change.
- Section 9: Provides that the act fulfils an important state interest.
- Section 10: Provides an effective date of July 1, 2020.

## **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:

None.

2. Expenditures:

The provisions of the bill are expected to require an indeterminate amount of local government expenditures.

### **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:**

None.

### 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 the inclusion 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:

The bill does not provide rulemaking authority or require executive branch rulemaking.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.