

**Constitution Revision Commission
Finance and Taxation Committee
Proposal Analysis**

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

Proposal #: P 92

Relating to: FINANCE AND TAXATION, Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue

Introducer(s): Commissioner Solari

Article/Section affected: Art. XII, s. 18, Florida Constitution

Date: December 8, 2017

	REFERENCE	ACTION
1.	FT	Pre-meeting
2.	LE	_____
3.	LO	_____

I. SUMMARY:

The proposal provides that the legislature may not enact a law constituting an unfunded state mandate or reduce the authority that municipalities and counties have to raise revenues unless the law:

- Contains only a single subject;
- Is enacted only after a public hearing has been held, with at least 24 hour notice before the hearing that legislation containing an unfunded state mandate will be considered;
- Is accompanied by a fiscal analysis available at the time of the public hearing; and
- Passed by a three-fourths vote of the membership of each house of the legislature.

The proposal provides that any law containing an unfunded state mandate is repealed on October 1 in the eighth year after its enactment. Any reenactment of the law must adhere to the requirements listed above as well.

The proposal defines an unfunded state mandate as a law which requires a county or municipality to:

- Spend funds or to take an action requiring the expenditure of funds;
- Accept the transfer of a responsibility or function performed by the state; or
- Accept an increase in a responsibility or function performed by the state.

The proposal also eliminates the ability of the legislature to enact a law if the anticipated effect is a reduction of a state tax in the aggregate shared with counties or municipalities.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article VII- Section 18: Local Unfunded Mandates

Section 18 of Article VII of the Florida Constitution¹ is commonly referred to as the “unfunded mandates” section.² The section was designed to prevent the legislature from imposing requirements on local governments without providing a means to pay for such requirements.³ The amendment was proposed and adopted in reaction to the growing costs absorbed by counties and municipalities for such things as growth management, environmental protection, pension benefits, and the operation of the state courts system.⁴ Because sources of revenue to local governments are limited to those allowed by law, counties and municipalities made a strong argument that mandates should not be imposed by the state without the state also providing a means to fund the costs of the mandate.⁵

The unfunded mandate section provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest. . .”⁶ and one of the following conditions have been met:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.⁷

The section provides that the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or

¹ This section was added in the Florida Constitution in 1990. The amendment was placed on the ballot by the Florida Legislature. <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=57> (last visited 12/09/17).

² *Westlaw Commentary for s.18 of Art. VII of the Fla. Const.*, by William A. Buzzett and Deborah K. Kearney.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Art. VII, s. 18(a), Fla. Const.

⁷ *Id.*

counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989, unless approved by each house of the legislature by two-thirds of the membership.⁸

The section also prohibits the legislature from enacting, amending, or repealing any general law if the anticipated effect of doing so would reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989, unless approved by each house of the legislature by two-thirds of the membership.⁹

The following types of laws are exempt from this section, laws adopted to require:

- Funding of pension benefits existing on the effective date of this section;
- Criminal laws;
- Election laws;
- The general appropriations act; and
- Special appropriations acts.¹⁰

Also, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of section 18.¹¹

B. EFFECT OF PROPOSED CHANGES:

The proposal revises s. 18 of Art. VII of the Florida Constitution to provide that the legislature may not enact a law constituting an unfunded state mandate or reduce the authority that municipalities and counties have to raise revenues unless the law:

- Contains only a single subject;
- Is enacted only after a public hearing has been held, with at least 24 hour notice before the hearing that legislation containing an unfunded state mandate will be considered;
- Is accompanied by a fiscal analysis available at the time of the public hearing; and
- Passed by a three-fourths vote of the membership of each house of the legislature.

The proposal provides that any law containing an unfunded state mandate is repealed on October 1 in the eighth year after its enactments. Any reenactment of the law must adhere to the requirements listed above as well.

The proposal defines an unfunded state mandate as a law which requires a county or municipality to:

- Spend funds or to take an action requiring the expenditure of funds;

⁸ Art. VII, s. 18(b), Fla. Const.

⁹ Art. VII, s. 18(c), Fla. Const.

¹⁰ Art. VII, s. 18(d), Fla. Const.

¹¹ *Id.*

- Accept the transfer of a responsibility or function performed by the state; or
- Accept an increase in a responsibility or function performed by the state.

The proposal eliminates the ability of the legislature to enact a law if the anticipated effect is a reduction of a state tax in the aggregate shared with counties or municipalities.

The proposal also eliminates the following exemptions from the requirements of unfunded mandates: local pensions, elections laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, and laws creating, modifying, or repealing noncriminal infractions.

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.