

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: SB 1130

INTRODUCER: Senator Constantine

SUBJECT: The Local Government Revenue Intercept Act

DATE: February 11, 2010 REVISED: 03/04/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/4 amendments
2.			GO	
3.			FT	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input checked="" type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill gives local governments the ability to use a pre-default revenue intercept program. Such an intercept program would allow the state, through the Department of Revenue (DOR), to “intercept” specified local government revenue streams and use them to make payments into a debt service account if the local government fails to make timely payments for local government bonds. The bill requires local governments that opt to have such a program to enact ordinances or resolutions that implement the program. The bill provides that DOR will be paid for its administrative costs. The bill gives DOR rulemaking authority to implement the bill.

This bill creates section 218.387 of the Florida Statutes.

II. Present Situation:

Intercept Programs and Credit Enhancement

Intercept programs work by dedicating a revenue source to be “intercepted” to pay back debt either before or after the local government goes into default on the debt. Local governments use intercept programs to enhance their credit ratings, which may allow them to get better terms when borrowing money. Credit risk reflects whether the borrower can make full and timely

payments of debt service, and, if the borrower falls behind, the size and duration of default are also taken into consideration. An intercept program is a commonly used and powerful form of security because it creates the ability to divert payments before they reach the local government.¹

Communications Services Tax - Chapter 202, Florida Statutes²

The Communications Services Tax Simplification Law was enacted to restructure taxes on telecommunications, cable, direct-to-home satellite, and related services that existed prior to October 1, 2001.³ The law replaced and consolidated seven different state and local taxes or fees with a single tax comprised of two components: a state communications services tax and a local communications services tax.⁴ The tax is imposed on retail sales of communications services which originate and terminate in the state, or originate or terminate in the state and are billed to an address within the state. Tax proceeds are transferred to county and municipal governments, the Public Education Capital Outlay and Debt Service Trust Fund, and the state's General Revenue Fund.

The state communications services tax consists of two components: a state tax and a gross receipts tax. A state tax is imposed on the retail sale of communications services at the rate of 6.8 percent while the retail sale of any direct-to-home satellite service received in this state is taxed at the rate of 10.8 percent.⁵ The second component is the gross receipts tax of 2.37 percent that is applied to communications services, which includes direct-to-home satellite service.⁶

A county or municipality may, by ordinance, levy a local communications services tax.⁷ The local tax rates vary, depending on the type of local government. For municipalities and charter counties that have not chosen to levy permit fees, the tax may be levied at a rate up to 5.1 percent. For municipalities and charter counties that have chosen to levy permit fees, the tax may be levied at a rate up to 4.98 percent. Non-charter counties may levy the tax at a rate of up to 1.6 percent. These maximum rates do not include add-ons of up to 0.12 percent for municipalities and charter counties or up to 0.24 percent for non-charter counties that have elected not to require and collect permit fees authorized pursuant to s. 337.401, F.S., nor do they supersede conversion or emergency rates authorized by s. 202.20, F.S., which are in excess of these maximum rates.⁸ In addition to the local communications services taxes, any local option sales tax that a county or school board has levied pursuant to s. 212.055, F.S., is imposed as a local communications services tax, and the rate shall be determined in accordance with s. 202.20(3), F.S.⁹

¹ See Moody's Investors Service, State Aid Intercept Programs and Financings (Feb. 2008), *available at* www.moody.com.

² A full description including tables giving a breakdown of the revenues generated in each local government can be found in the following publication: FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), *available at* <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfi09.pdf>.

³ Refer to the Department of Revenue's Communications Services Tax: An Overview of Florida's Tax Restructuring (http://dor.myflorida.com/dor/taxes/pdf/Cst_ovr.pdf) for a more detailed explanation of the 2001 tax law changes.

⁴ The definition of communications services encompasses voice, data, audio, video, or any other information or signals, including cable services that are transmitted by any medium.

⁵ Section 202.12(1), F.S.

⁶ Section 203.01(1)(b), F.S.

⁷ Section 202.19(1), F.S.

⁸ Section 202.19(2), F.S.

⁹ Section 202.19(5), F.S.

County and municipal governments receive proceeds of the state communications services tax via the County Revenue Sharing Program, Local Government Half-cent Sales Tax Program, and Municipal Revenue Sharing Program. Counties, municipalities, and school boards may be eligible to receive proceeds of the local communications services tax.

The Department of Revenue (DOR) administers the statewide collection of both the state and local components of the communications service tax. Dealers who collect local communications services tax must notify the DOR of the method employed to accurately assign addresses to the appropriate taxing jurisdiction. The DOR maintains a database that provides the local taxing jurisdiction for all addresses in Florida. The database contains county and municipal names for every address and is based on information provided by the local taxing jurisdiction and updated at least once every six months.¹⁰

The amount of revenue collected is dependent on the jurisdiction's local communications services tax rate. A county government's local communications services tax is charged to those billable customers residing within the unincorporated area. A municipal government's local communications services tax is charged to those billable customers residing within the incorporated area.

The proceeds of each local communications services tax levied by a county or municipality, less the DOR's costs of administration, is transferred to the Local Communications Services Tax Clearing Trust Fund for distribution to counties and municipalities. The amount deducted for administrative costs may not exceed 1 percent of the total revenue generated for all taxing jurisdictions, and the total administrative costs shall be prorated among those taxing jurisdictions on the basis of the amount collected for a particular jurisdiction relative to the amount collected for all such jurisdictions.¹¹

Any adoption, repeal, or change in the rate of a local communications services tax imposed under s. 202.19, F.S., is effective with respect to taxable services included on bills that are dated on or after January 1st subsequent to such adoption, repeal, or change. The local government must notify the DOR of the adoption, repeal, or change by September 1st which immediately precedes the January 1st effective date.¹²

The revenues derived from the local communications services tax may be used for any public purpose, including the pledge of such revenues for the repayment of current or future bonded indebtedness. Revenue raised by a tax imposed pursuant to s. 202.19(5), F.S., shall be used for the same purposes as the underlying local option sales tax imposed by the county or school board pursuant to s. 212.055, F.S.¹³

The total revenue estimate for the State of Florida for the Communications Services Tax for the fiscal year ending September 30, 2010, is \$828,297,323. Tables listing the revenues generated in

¹⁰ Section 202.22, F.S.

¹¹ Section 202.18(3), F.S.

¹² Section 202.21, F.S.

¹³ Section 202.19(8), F.S.

each local government jurisdiction are available in the 2009 Local Government Financial Information Handbook.¹⁴

Local Government Half-cent Sales Tax Program¹⁵

Authorized in 1982, the program generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature.¹⁶ It distributes a portion of state sales tax revenue via three separate distributions to eligible county or municipal governments. Additionally, the program distributes a portion of communications services tax revenue to eligible local governments. Allocation formulas serve as the basis for these separate distributions. The program's primary purpose is to provide relief from ad valorem and utility taxes in addition to providing counties and municipalities with revenues for local programs.

The program includes three distributions of state sales tax revenues collected pursuant to ch. 212, F.S. The ordinary distribution to eligible county and municipal governments is possible due to the transfer of 8.814 percent of net sales tax proceeds to the Local Government Half-cent Sales Tax Clearing Trust Fund.¹⁷ The emergency and supplemental distributions are possible due to the transfer of 0.095 percent of net sales tax proceeds to the trust fund.¹⁸ The emergency and supplemental distributions are available to select counties that meet certain fiscal related eligibility requirements or have an inmate population of greater than seven percent of the total county population, respectively.

As of July 1, 2006, the program includes a separate distribution from the trust fund to select counties that meet statutory criteria to qualify as a fiscally constrained county.¹⁹ A fiscally constrained county is one that is entirely within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656, F.S., or for which the value of one mill of property tax levy will raise no more than \$5 million in revenue based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S. This separate distribution is in addition to the qualifying county's ordinary distribution and any emergency or supplemental distribution.

Only those county and municipal governments that meet the eligibility requirements for revenue sharing pursuant to s. 218.23, F.S., shall participate in the program.²⁰ However, a municipality incorporated subsequent to the effective date of ch. 82-154, L.O.F. (i.e., April 19, 1982), which does not meet the applicable criteria for incorporation pursuant to s. 165.061, F.S., may not participate in the program. In either case, distributions to eligible units of local government in that county shall be made as though the nonparticipating municipality had not incorporated. The monies that otherwise would be distributed to a unit of local government failing to certify compliance as required by s. 218.23(1), F.S., or having otherwise failed to meet the requirements

¹⁴ FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf>.

¹⁵ A full description including tables giving a breakdown of the revenues generated in each local government can be found in the following publication: FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf>.

¹⁶ Chapter 82-154, L.O.F.

¹⁷ Section 212.20(6)(d)2., F.S.

¹⁸ Section 212.20(6)(d)3., F.S.

¹⁹ Section 218.67, F.S.

²⁰ Section 218.63(1), F.S.

of s. 200.065, F.S., shall be deposited in the State General Revenue Fund for the twelve months following a determination of noncompliance by the Department of Revenue (DOR).²¹

A county government, meeting certain criteria, shall also participate in the monthly emergency and supplemental distributions. The qualifications are determined annually at the start of the fiscal year.²² Participation in the emergency distribution is dependent on the existence of a defined fiscal emergency. The Legislature has declared that a fiscal emergency exists in any county that meets both conditions listed below.

- The county has a population of 65,000 or less; and
- The monies distributed to the county government pursuant to s. 218.62, F.S., for the prior fiscal year were less than the current per capita limitation, based on the county's population.

Monies remitted by a sales tax dealer located within the county and transferred into the trust fund are earmarked for distribution to the governing body of that county and each municipality within that county.²³ Such distributions shall be made after funding is provided pursuant to s. 218.64(3), F.S. Monies in the Trust Fund are appropriated to the DOR and are distributed monthly to participating units of local government.

Each participating county and municipal government receives a proportion of monies earmarked for distribution within that county.²⁴ Each local government's distribution is determined by multiplying an allocation factor based on population by the sales tax monies earmarked for distribution within that county. Emergency distributions, supplemental distributions, and distributions for fiscally constrained local governments are governed by statutory criteria in ss. 218.65 and 218.67, F.S.

The proportion of the total proceeds received by a county government, based on two-thirds of the incorporated area population, is countywide revenue and may be expended only for countywide tax relief or countywide programs. The remaining county government portion is deemed county revenues derived on behalf of the unincorporated area but may be expended on a countywide basis.²⁵

Municipalities are directed to expend their portions only for municipal-wide programs or for municipal-wide property tax or municipal utility tax relief. All utility tax rate reductions afforded by participation in the program shall be applied uniformly across all types of taxed utility services. A county or municipality is also authorized to pledge the proceeds for the payment of principal and interest on any capital project.

For any eligible county receiving a fiscally constrained distribution, the revenues may be used for any public purpose, except to pay debt service on bonds, notes, certificates of participation, or any other forms of indebtedness.²⁶

²¹ Section 218.63(2), F.S.

²² Section 218.65, F.S.

²³ Section 218.61, F.S.

²⁴ Section 218.62, F.S.

²⁵ Section 218.64, F.S.

²⁶ Section 218.67(5), F.S.

The total revenue estimate for the State of Florida for the Local Government Half-cent Sales Tax for the fiscal year ending September 30, 2010 is \$1,415,288,001. Tables listing the revenues generated in each local government jurisdiction are available in the 2009 Local Government Financial Information Handbook.²⁷

Local Option Fuel Tax²⁸

The Local Option Fuel Tax is implemented in ss. 206.41(1)(d)-(e), 206.87(1)(b)-(c), 336.021, and 336.025, F.S. County governments are authorized to levy up to 12 cents of local option fuel taxes in the form of three separate levies. The first is a tax of 1 cent on every net gallon of motor and diesel fuel sold within a county.²⁹ Known as the Ninth-Cent Fuel Tax, this tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a countywide referendum. Generally, the proceeds may be used to fund transportation expenditures.

The second is a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold within a county.³⁰ This tax may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a countywide referendum. Generally, the proceeds may be used to fund transportation expenditures.

The third tax is a 1 to 5 cents levy upon every net gallon of motor fuel sold within a county.³¹ Diesel fuel is not subject to this tax. This additional tax may be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body or voter approval in a countywide referendum. Proceeds received from this additional tax may be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan.

The Legislature has authorized the statewide equalization of local option tax rates on diesel fuel by requiring that the full 6 cents of the 1 to 6 cents fuel tax as well as the 1 cent Ninth-Cent Fuel Tax be levied on diesel fuel in every county even though the county government may not have imposed either tax on motor fuel or may not be levying the tax on motor fuel at the maximum rate.³² Consequently, 7 cents worth of local option tax revenue on diesel fuel are distributed to local governments, regardless of whether or not the county government is levying these two taxes on motor fuel at any rate.

DOR administers these taxes and has the authority to deduct its administrative costs incurred in collecting, administering, enforcing, and distributing the proceeds to the counties.³³ Such administrative costs may not exceed 2 percent of collections. Additionally, several deductions

²⁷ FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf>.

²⁸ A full description including tables giving a breakdown of the revenues generated in each local government can be found in the following publication: FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf>.

²⁹ Section 336.021(1)(a), F.S.

³⁰ Section 336.025(1)(a), F.S.

³¹ Section 336.025(1)(b), F.S.

³² See Sections 336.021(6), .025(9), F.S.

³³ See Sections 336.021(2)(a), .025(2)(a), F.S.

from one or more of the local option fuel tax collections are statutorily authorized. These include the General Revenue Service Charge, collection allowances, and refunds.

The total administrative costs are prorated among those counties levying the tax according to formula, which are revised on July 1st of each year. Two-thirds of the amount deducted is based on the county's proportional share of the number of dealers who are registered for purposes of ch. 212, F.S., on June 30th of the preceding state fiscal year. One-third of the amount deducted is based on the county's share of the total amount of tax collected during the preceding state fiscal year. DOR has the authority to promulgate rules necessary to enforce these taxes, and these rules shall have the full force and effect of law.

The Ninth-Cent Fuel Tax proceeds are transferred to the Ninth-Cent Fuel Tax Trust Fund. The 1 to 6 cents of optional fuel tax is collected and remitted in the same manner provided by ss. 206.41(1)(e) and 206.87(1)(c), F.S. The 1 to 5 cents of optional fuel tax is collected and remitted in the same manner provided by s. 206.41(1)(e), F.S. The remitted taxes are transferred to the Local Option Fuel Tax Trust Fund, which was created for distribution of the proceeds to the eligible local governments.

Statutory guidelines dictate how a county levying or wishing to levy the Ninth-Cent Fuel Tax must inform the DOR of its proposed and adopted ordinances implementing the tax.³⁴ Similarly, the statutes contain specific guidelines requiring the county to annually notify the DOR of the respective tax rates for both the 1 to 6 cents and 1 to 5 cents fuel taxes, any decision to rescind or change the rate of either tax,³⁵ and the interlocal agreement specifying how the funds are distributed.³⁶

The local option fuel taxes on motor fuel are distributed monthly by the DOR to the county reported by the terminal suppliers, wholesalers, and importers as the destination of the gallons distributed for retail sale or use. The taxes on diesel fuel are distributed monthly by the DOR to each county according to the procedure specified in law.³⁷

With regard to the Ninth-Cent Fuel Tax, the governing body of the county may provide, by joint agreement with one or more municipalities located within the county, for the authorized transportation purposes and the distribution of the tax proceeds within both the incorporated and unincorporated areas of the county. However, the county is not required to share the proceeds of this tax with municipalities.³⁸

A county's proceeds from the 1 to 6 cents and 1 to 5 cents fuel taxes are distributed by DOR according to the distribution factors determined at the local level by interlocal agreement between the county and municipalities within the county's boundaries. If no interlocal agreement is established, then the distribution is based on the transportation expenditures of each local government for the immediately preceding 5 fiscal years as a proportion of the total of such expenditures for the county and all municipalities within the county. These proportions are

³⁴ Section 336.021(4), F.S.

³⁵ See Sections 336.021(5), .025(5)(a), F.S.

³⁶ Section 336.025(5)(a), F.S.

³⁷ See Sections 336.021(1)(d), .025(2)(a), F.S.

³⁸ Section 336.021(1)(b), F.S.

recalculated every 10 years based on the transportation expenditures of the immediately preceding 5 years.

This recalculation shall under no circumstances materially or adversely affect the rights of holders of bonds outstanding on July 1, 1986, which are backed by proceeds of the 1 to 6 cents fuel tax. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of the recalculation.

In addition, any inland county with a population greater than 500,000 as of July 1, 1996, having an interlocal agreement with one or more of the incorporated areas within the county must utilize the population estimates of local government units as of April 1st of each year for dividing the proceeds of the 1 to 6 cents fuel tax.³⁹ This provision applies only to Orange County. Any newly incorporated municipality, eligible for participation in the distribution of monies under the Local Government Half-cent Sales Tax and Municipal Revenue Sharing Programs and located in a county levying the 1 to 6 cents or 1 to 5 cents fuel tax, is entitled to receive a distribution of the tax revenues in the first full fiscal year following incorporation.⁴⁰ The distribution shall be equal to the county's per lane mile expenditure in the previous year times the number of lane miles within the municipality's jurisdiction or scope of responsibility, in which case the county's share would be reduced proportionately; or as determined by the local act incorporating the municipality. Such a distribution shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds that are backed by these taxes. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of redistribution.

The total revenue estimate for the State of Florida for the Ninth-Cent Fuel Tax for the fiscal year ending September 30, 2010, is \$75,904,860. The estimated fuel tax of 1 to 6 cents on every net gallon of motor and diesel fuel for the entire state for the fiscal year ending September 30, 2010, is \$518,774,102. The estimated fuel tax of 1 to 5 cents on every net gallon of motor fuel only for the entire state for the fiscal year ending September 30, 2010, is \$160,012,731. Tables listing the revenues generated in each local government jurisdiction are available in the 2009 Local Government Financial Information Handbook.⁴¹

Revenue Sharing Program⁴²

The Florida Revenue Sharing Act of 1972 was a major attempt by the Legislature to ensure a minimum level of revenue parity across units of local government.⁴³ In order to be eligible to

³⁹ Section 336.025(3)(a)3., F.S.

⁴⁰ Section 336.025(4)(b), F.S.

⁴¹ FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf>.

⁴² A full description including tables giving a breakdown of the revenues generated in each local government can be found in the following publication: FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf>.

participate in revenue sharing beyond the minimum entitlement in any fiscal year, a local government must have satisfied a number of statutory requirements.⁴⁴ The term “minimum entitlement” is defined as the amount of revenue, as certified by the local government and determined by DOR, which must be shared with the local government so that the local government will receive the amount of revenue necessary to meet its obligations as the result of pledges, assignments, or trusts entered into which obligated funds received from revenue sources or proceeds distributed out of the Revenue Sharing Trust Fund.⁴⁵

The revenue sharing programs are administered by the DOR, and monthly distributions are made to eligible local governments. The county program is comprised of state cigarette and sales taxes that are collected and transferred to the county trust fund.

The County Revenue Sharing Program can be found in ss. 210.20(2), 212.20(6), and 218.20-.26, F.S. Provisions in the enacting legislation created the Revenue Sharing Trust Fund for Counties. Currently, the county trust fund receives 2.9 percent of net cigarette tax collections and 2.044 percent of sales and use tax collections. An allocation formula serves as the basis for the distribution of these revenues to each county that meets the strict eligibility requirements. There are statutory limitations regarding funds that can be used as a pledge for indebtedness.⁴⁶

For the counties, 2.9 percent of net cigarette tax collections⁴⁷ represents 4.5 percent of total program funding, while 2.044 percent of sales and use tax collections⁴⁸ represents 95.5 percent of total program funding. The estimated county revenue sharing funds for the entire state for the fiscal year ending June 30, 2010, are \$305,707,175.⁴⁹

An apportionment factor is calculated for each eligible county using a formula consisting of the following equally weighted factors: county population, unincorporated county population, and county sales tax collections.⁵⁰

There are no use restrictions on the county revenues; however, statutory provisions exist that restrict the amount of funds that can be pledged for bonded indebtedness. Counties are allowed to pledge the guaranteed entitlement proceeds.⁵¹ Additionally, the second guaranteed entitlement may also be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness.⁵² However, in spite of these restrictions, a county may assign, pledge, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, an amount

⁴³ Chapter 72-360, L.O.F.

⁴⁴ Section 218.23(1), F.S.

⁴⁵ Section 218.21(7), F.S.

⁴⁶ Section 218.25, F.S.

⁴⁷ Section 212.20(6)(d)5., F.S.

⁴⁸ Section 206.605(1), F.S.

⁴⁹ FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf>.

⁵⁰ Section 218.245(1), F.S.

⁵¹ Section 218.25(1), F.S.

⁵² Section 218.25(2), F.S.

up to 50 percent of the funds received in the prior year.⁵³ Consequently, it is possible that some portion of a county's growth monies will become available as a pledge for bonded indebtedness.

The Municipal Revenue Sharing Program can be found in ss. 206.605(1), 206.879(1), 212.20(6), and 218.20-.26, F.S. Provisions in the enacting legislation created the Revenue Sharing Trust Fund for Municipalities. Currently, the municipal trust fund receives 1.3409 percent of sales and use tax collections, 12.5 percent of the state alternative fuel user decal fee collections, and the net collections from the one-cent municipal fuel tax. An allocation formula serves as the basis for the distribution of these revenues to each municipality that meets strict eligibility requirements. Municipalities must use the funds derived from the one-cent municipal fuel tax for transportation-related expenditures. Additionally, there are statutory limitations on the use of the funds as a pledge for bonded indebtedness.⁵⁴

The municipal revenue sharing program is comprised of state sales taxes, municipal fuel taxes, and state alternative fuel user decal fees that are collected and transferred to the municipal trust fund. For municipalities, 1.3409 percent of sales and use tax collections⁵⁵ represents 71.32 percent of total program funding, while the one-cent municipal fuel tax on motor fuel⁵⁶ represents 28.67 percent of total program funding, and 12.5 percent of state alternative fuel user decal fee collections⁵⁷ represents 0.01 percent of total program funding. The estimated municipal revenue sharing funds for the entire state for the fiscal year ending June 30, 2010, are \$288,950,999.⁵⁸

An apportionment factor is calculated for each eligible municipality using a formula consisting of the following equally weighted factors: adjusted municipal population, municipal sales tax collections, and municipality's relative ability to raise revenue.⁵⁹

Several statutory restrictions exist regarding the authorized use of municipal revenue sharing proceeds. Funds derived from the municipal fuel tax on motor fuel shall be used only for the purchase of transportation facilities and road and street rights-of-way; construction, reconstruction, and maintenance of roads, streets, bicycle paths, and pedestrian pathways; adjustment of city-owned utilities as required by road and street construction; and construction, reconstruction, transportation-related public safety activities, maintenance, and operation of transportation facilities. Municipalities are authorized to expend these funds in conjunction with other municipalities, counties, state government, or the federal government in joint projects. According to DOR, municipalities may assume that 28.67 percent of their estimated 2010 fiscal year distribution is derived from the municipal fuel tax. Therefore, at least that proportion of each municipality's revenue sharing distribution must be expended on those transportation-related purposes.

⁵³ Section 218.25(4), F.S.

⁵⁴ Section 218.25, F.S.

⁵⁵ Section 212.20(6)(d)5., F.S.

⁵⁶ Section 206.605(1), F.S.

⁵⁷ Section 206.879(1), F.S.

⁵⁸ FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lghih09.pdf>.

⁵⁹ Section 218.245(2), F.S.

Municipalities are restricted as to the amount of program funds that can be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, and there shall be no other use restriction on these shared revenues.⁶⁰ Municipalities may assign, pledge, or set aside as trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness an amount up to 50 percent of the funds received in the prior year.⁶¹ Consequently, it is possible that some portion of a municipality's growth monies will become available as a pledge for bonded indebtedness.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 218.387, F.S., the "Local Government Revenue Intercept Act." The bill creates a definitions section which includes the following definitions:

- Available revenues include local government funds from:
 - the communications services tax,
 - the local government half-cent sales tax,
 - a local option fuel tax, or
 - revenue sharing.
- Intercept program means an authorized process for intercepting a local government's available revenues as instituted through the local governments ordinance as specified by statute.

The bill sets up an intercept program at the option of local governments. When a local government has enacted a proper ordinance or resolution, the bill authorizes the DOR to intercept the local government's available revenues. The resolution or ordinance adopting the intercept program must:

- Authorize DOR to intercept available revenues collected or held by the state for the local government and use the revenues to replenish the debt service reserve or other similar payment account for the local government bonds if the local government failed to make a required debt service or other similar payment and the bond account has been drawn upon to make such payment.
- Authorize DOR to intercept available revenues that have not been pledged to other current or future bonds of the local government.
- Authorize DOR to intercept available revenues, if any, as needed from the following sources in the following order of priority:
 - revenue sharing which are restricted under s. 218.25(4), F.S., and not permitted to be assigned, pledged, or set aside for debt service or other similar payment;
 - the local government half-cent sales tax;
 - the communications services tax;
 - local option fuel tax if the funds relate to an authorized use of such funds;
 - any remaining funds derived from revenue sharing.
- Specify the trustee or paying agent for the local government bonds.

⁶⁰ Section 218.25(1), F.S.

⁶¹ Section 218.25(4), F.S.

- Authorize DOR to receive and act on requests by the trustee or paying agent to intercept available revenues.⁶²
- Acknowledge that the local government is responsible for informing DOR of any changes to the trustee or paying agent within 30 days after the change.
- Require that local government bonds have a cash-funded debt service or other similar payment.
- Require that payment dates for principal and interest for the bonds be no more frequent than quarterly.
- Inform DOR of the debt service or other similar payment schedule for the local government bonds.
- Provide that the local government has determined in good faith that anticipated available revenues will be at least 1.75 times the maximum annual amount of debt service or other similar payment on the bonds.
- Provide that the local government may not amend or repeal the intercept program without the concurrence of a majority of the purchasers, holders, and owners of the local government bonds.
- Acknowledge that the resolution or ordinance authorizing the intercept program must be included and made a part of the bond resolution or other bond agreement.

The local government shall provide DOR with a copy of the ordinance or resolution. DOR will review it for consistency with the statute and either accept it or inform the local government in writing of any deficiencies.

The trustee or paying agent for local government bonds subject to an intercept program must provide DOR with:

- at least 60 days' written notice of the need to intercept the local government's available revenues;
- the exact amount of revenues to be intercepted;
- the date the intercepted revenues are to be deposited with the trustee or paying agent;
- wiring or other instructions for transmitting the revenues; and
- joint notification with the local government when a local government bond subject to the intercept program is terminated.

The bill states that revenue sharing funds under s. 218.25(4), F.S., and not permitted to be assigned, pledged, or set aside for debt service or other similar payment, must be available revenues subject to being intercepted. Available revenues of 1.75 times the maximum annual amount of debt service are provided solely to prevent a default on the local government bonds and may not be considered in any calculation for additional local government bonds. DOR is not responsible for providing the local government's demographic or revenue history.

Upon receiving a notice of need to intercept from the trustee or paying agent, DOR shall intercept the local government's available revenues that would ordinarily be distributed to the

⁶² The trustee or paying agent is responsible for managing the debt service reserve or other similar payment account and notifying the DOR when an intercept is necessary to replenish the account because of the local government failed to make a required payment.

local government to the trustee or paying agent. The bill specifies that the department shall be paid for all of its administrative costs in administering the intercept program.

The bill explains that the intercept program does not obligate any state funds. The state covenants with the purchasers, holders, and owners of bonds covered under an intercept program that it will not repeal, revoke, rescind, modify, or amend the provisions in this section implementing the intercept program in a manner that would abrogate the rights or protections of purchasers, holders, and owners of bonds.

The bill gives DOR rulemaking authority.

Section 2 of the bill provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Lenders will have further assurance that local governments' debts would be paid if the local government has enacted an intercept program.

C. Government Sector Impact:

As written, the bill provides that "[t]he department shall be paid for all costs it incurs in administering this section." In context, this seems to mean that the local government that requires DOR to take action pursuant to the revenue intercept program would have to pay DOR's administrative costs. Additionally, DOR would likely incur costs from the rulemaking process if it makes rules to administer the intercept program. However, DOR's analysis states that the bill does not present difficulty in implementation and enforcement and the operational impacts would be insignificant.

Local governments that implement intercept programs should see an increase in their credit rating, which may lead to savings.

VI. Technical Deficiencies:

The bill authorizes DOR to intercept funds derived from revenue sharing which are restricted under s. 218.25(4), F.S., and not permitted to be assigned, pledged, or set aside for debt service or other similar payment. However, s. 218.25(4), F.S., allows local governments to assign, pledge, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness an amount of up to 50 percent of the funds received in the prior year. Because s. 218.25(4) applies to committed funds, but the bill language excludes committed funds under 218.25(4), these provisions seem in conflict.

VII. Related Issues:

The bill provides that “[t]he department shall be paid for all costs it incurs in administering this section.” However, the bill does not specify how the department will be paid or what entity is responsible for making payment.

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:**

Barcode 244656 by Community Affairs on March 4, 2010:
Simplifies bill language.

Barcode 327300 by Community Affairs on March 4, 2010:
Clarifies that the intercept program may use funds in excess of those restricted.

Barcode 409014 by Community Affairs on March 4, 2010:
Clarifies that local governments are responsible for paying administrative costs.

Barcode 633862 by Community Affairs on March 4, 2010:
Clarifies that the intercept program may use funds in excess of those restricted.