

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 1072

SPONSOR: Governmental Oversight and Productivity Committee and Senator Atwater

SUBJECT: Auditor Selection Procedures

DATE: March 30, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Yeatman	CA	Favorable
2.	Oxamendi	Imhof	RI	Favorable
3.	McKay	Wilson	GO	Fav/CS
4.			GA	
5.				
6.				

I. Summary:

This committee substitute revises procedures for the selection of financial auditors by local governmental entities. Specifically, the bill provides for the use of a Request for Proposal to secure audit services and clarifies the role of audit committees. The bill also establishes certain minimum requirements to be used in the evaluation of audit services, contract negotiations, and auditor selection procedures. Finally, the bill requires the use of written contracts for audit services and provides that auditor contracts may be renewed.

This bill substantially amends section 218.391 of the Florida Statutes.

II. Present Situation:

Section 218.39, F.S., requires that local governmental entities (counties, municipalities, and special districts), school boards, charter schools, and charter technical career centers obtain an annual financial audit of its accounts and records by a certified professional accountant, if the audit is not to be performed by the Auditor General.

Section 218.391, F.S., establishes procedures governing the selection of auditors as required by s. 218.39, F.S. The selection procedures vary based on the entity to be audited. For example, subsection (2) provides that the governing body of a *charter* county, municipality, special district, charter school, or charter technical career center may establish an auditor selection committee and auditor selection procedures, or use the procedures outlined in subsection (3). Subsection (3) provides that the governing body of a *noncharter* county or district school board must establish an auditor selection committee and select an auditor according to the following procedures:

- (a) For each noncharter county, the auditor selection committee must consist of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution¹ and one member of the board of county commissioners or its designee.
- (b) The committee must publicly announce, in a uniform and consistent manner, each occasion when auditing services are required to be purchased. Public notice must include a general description of the audit and must indicate how interested certified public accountants can apply for consideration.
- (c) The committee must encourage firms engaged in the lawful practice of public accounting who desire to provide professional services to submit annually a statement of qualifications and performance data.
- (d) Any certified public accountant desiring to provide auditing services must first be qualified pursuant to law. The committee shall make a finding that the firm or individual to be employed is fully qualified to render the required services.
- (e) The committee must adopt procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record, experience, results of recent external quality control reviews, and such other factors as may be determined by the committee to be applicable to its particular requirements.
- (f) The public may not be excluded from auditor selection proceedings.
- (g) The committee must evaluate current statements of qualifications and performance data on file with the committee, together with those that may be submitted by other firms regarding the proposed audit, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the audit, and ability to furnish the required services.
- (h) The committee must select, in order of preference, no fewer than three firms deemed to be the most highly qualified to perform the required services after considering the following factors: the ability of professional personnel; past performance; willingness to meet time requirements; location; and recent, current, and projected workloads of the firms. However, such distribution shall not violate the principle of selection of the most highly qualified firms.
- (i) The committee may request, accept, and consider proposals for the compensation to be paid only during competitive negotiations under paragraph (h). The firm ranked first may then negotiate a contract with the board giving, among other things, a basis of its fee for that engagement. If the board is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the board shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. The board, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it

¹ A sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.

may not negotiate with more than one firm at a time. The board shall also negotiate on the scope and quality of services.

(j) If the board is unable to negotiate a satisfactory contract with any of the selected firms, the committee shall select additional firms, and the board shall continue negotiations until an agreement is reached.

In July, 2003, the Auditor General's Office issued performance audit report No. 2004-006 on the Local Government Financial Reporting System. The report included a review of auditor selection procedures used by local governments. The report concluded that a number of local entities do not use what are considered to be prudent auditor procurement practices. Following the issuance of the report, the Auditor General appointed a 26-member task force to review auditor selection and procurement methods, and to recommend statutory changes to the Legislature.² The resulting task force final report was issued in October, 2004. The report states: "The underlying concept of the task force recommendations is to ensure that all such entities use sound auditor selection procedures while leaving sufficient discretion to such entities." The recommendations contained in the task force final report served as the basis for this bill.

III. Effect of Proposed Changes:

This bill amends s. 218.391, F.S., to implement a number of revisions to financial auditor selection procedures used by local governmental entities.

Auditor Qualifications – The bill clarifies existing statutory language to provide that financial audits undertaken pursuant to s. 218.39, F.S., must be prepared by a certified public accounting firm licensed under ch. 473, F.S., and qualified to conduct audits in accordance with government auditing standards adopted by the Florida Board of Accountancy.

Audit Committees – The bill provides that the governing body of a charter county, municipality, special district, district school board, charter school, or technical career center must establish an audit committee. Similarly, the bill provides that noncharter counties must establish an audit committee that, at a minimum, consists of each of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution, or a designee, and one member of the board of county commissioners or its designee. The bill clarifies that, while the primary purpose of the audit committee is to assist the governing body in selecting a financial auditor, it can serve additional audit oversight functions as determined by the entity's governing body.

Audit committees are also specifically authorized to establish factors for use in the evaluation of proposals for audit services. Factors to be considered include, but are not limited to: (1) ability of personnel; (2) experience; (3) ability to furnish the required services; and (4) other applicable factors.

² The task force included representatives from the following entities: the Florida Association of Counties; the Florida Association of Court Clerks and Controllers; the Florida Association of Special Districts; the Florida Association of Public Purchasing Officers; the Florida Government Finance Officers Association; the Florida League of Cities; the Florida School Finance Officers Association; the Florida Institute of Certified Public Accountants; and charter schools.

Audit committees are required to publicly announce the opportunities for auditing services through the issuance of requests for proposals (RFP). The RFP must include information on how proposals are to be evaluated and other information necessary to enable interested firms to respond. In addition, audit committees are to evaluate proposals submitted by qualified firms. Compensation may be used as a factor in evaluating audit proposals, however, it cannot be the sole or predominant factor used to evaluate proposals. Finally, audit committees are directed to rank and recommend in order of preference a minimum of three firms deemed to be the most highly qualified. If fewer than three firms respond to the request for proposal, the committee shall recommend such firms as it deems to be the most highly qualified.

Auditor Selection Criteria – The bill provides that after inquiring of qualified firms as to the basis of compensation, the appropriate governing body is required to select one of the firms recommended by the audit committee and negotiate a contract using one of the following methods:

- if compensation is not one of the established evaluation factors, the governing body must negotiate a contract with the firms according to ranked order;
- if compensation is one of the established evaluation factors, the governing body must select the highest ranked qualified firm, or if another firm is selected, document in the public record its reason for selecting a firm other than the highest-ranked firm; and
- a governing body may select a firm recommended by the audit committee and negotiate a contract using an appropriate alternative procurement method which does not use compensation as the sole or predominant factor in firm selection.

A governing body is authorized to appoint a designee to negotiate on its behalf.

Written Contracts for Audit Services – The bill requires the use of written contracts for audit services. The written contract must, at a minimum, include the following: (1) a provision specifying the services to be provided and the associated fees; (2) a provision requiring the use of invoices for fees or other compensation that demonstrate compliance with the terms of the contract; and (3) a provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed. Finally, the bill provides that an engagement letter signed and executed by both parties constitutes a valid contract.

Contract Renewal – The bill provides that written contracts may be renewed and such renewal may be done without the use of the auditor selection procedures previously discussed. Any renewal of a contract must be in writing.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The auditor selection task force also recommended the development of a “best practices” guide for use by local governments in the procurement of audit services, auditor selection, audit management, key contractual elements, and related issues.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
