

By Senator Atwater

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See HB 349

1 A bill to be entitled
2 An act relating to auditor selection
3 procedures; amending s. 218.391, F.S.; revising
4 the auditor selection procedures that local
5 governmental entities, district school boards,
6 charter schools, and charter technical career
7 centers must use in selecting auditors to
8 conduct certain required financial audits;
9 revising provisions relating to membership,
10 purposes, and duties of audit committees
11 required to be established to aid in such
12 selection; providing for requests for
13 proposals; providing review and ranking
14 requirements; requiring written contracts and
15 providing requirements therefor, including
16 renewal requirements; providing an effective
17 date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 218.391, Florida Statutes, is
22 amended to read:

23 218.391 Auditor selection procedures.--

24 (1) Each local governmental entity, district school
25 board, charter school, or charter technical career center,
26 prior to entering into a written contract pursuant to
27 subsection (7), except as provided in subsection (8), shall
28 use auditor selection procedures when selecting an auditor to
29 conduct the annual financial audit required in s. 218.39.

30 (2) The governing body of a charter county,
31 municipality, special district, district school board, charter

1 school, or charter technical career center shall establish an
2 ~~audit auditor selection committee and auditor selection~~
3 ~~procedures or use the procedures outlined in subsection (3).~~
4 Each noncharter county shall establish an audit committee
5 that, at a minimum, shall consist of each of the county
6 officers elected pursuant to s. 1(d), Art. VIII of the State
7 Constitution, or a designee, and one member of the board of
8 county commissioners or its designee. The primary purpose of
9 the audit committee and the procedures is to assist the
10 governing body in selecting contract with an auditor to
11 conduct the annual financial audit required in s. 218.39;
12 however, the audit committee may serve other audit oversight
13 purposes as determined by the entity's governing body. The
14 public shall not be excluded from the proceedings under this
15 section.

16 (3) ~~The audit governing body of a noncharter county or~~
17 ~~district school board that retains a certified public~~
18 ~~accountant shall establish an auditor selection committee~~
19 ~~shall and select an auditor according to the following~~
20 ~~procedure:~~

21 (a) Establish factors to use for the evaluation of
22 audit services to be provided by a certified public accounting
23 firm duly licensed under chapter 473 and qualified to conduct
24 audits in accordance with government auditing standards as
25 adopted by the Florida Board of Accountancy. Such factors
26 shall include, but are not limited to, ability of personnel,
27 experience, ability to furnish the required services, and such
28 other factors as may be determined by the committee to be
29 applicable to its particular requirements ~~For each noncharter~~
30 ~~county, the auditor selection committee shall consist of the~~
31 ~~county officers elected pursuant to s. 1(d), Art. VIII of the~~

1 ~~State Constitution, and one member of the board of county~~
2 ~~commissioners or its designee.~~

3 (b) ~~The committee shall~~ Publicly announce requests for
4 proposals, in a uniform and consistent manner, each occasion
5 ~~when auditing services are required to be purchased.~~ Public
6 announcements ~~notice~~ must include, at a minimum, a brief
7 ~~general~~ description of the audit and ~~must~~ indicate how
8 interested firms ~~certified public accountants~~ can apply for
9 consideration.

10 (c) Provide interested ~~The committee shall encourage~~
11 firms with a request for proposal. The request for proposal
12 shall include information on how proposals are to be evaluated
13 and such other information the committee determines is
14 necessary for the firm to prepare a proposal engaged in the
15 ~~lawful practice of public accounting who desire to provide~~
16 ~~professional services to submit annually a statement of~~
17 ~~qualifications and performance data.~~

18 (d) ~~Any certified public accountant desiring to~~
19 ~~provide auditing services shall first be qualified pursuant to~~
20 ~~law. The committee shall make a finding that the firm or~~
21 ~~individual to be employed is fully qualified to render the~~
22 ~~required services. Among the factors to be considered in~~
23 ~~making this finding are the capabilities, adequacy of~~
24 ~~personnel, past record, and experience of the firm or~~
25 ~~individual.~~

26 (e) ~~The committee shall adopt procedures for the~~
27 ~~evaluation of professional services, including, but not~~
28 ~~limited to, capabilities, adequacy of personnel, past record,~~
29 ~~experience, results of recent external quality control~~
30 ~~reviews, and such other factors as may be determined by the~~
31 ~~committee to be applicable to its particular requirements.~~

1 ~~(f) The public shall not be excluded from the~~
2 ~~proceedings under this subsection.~~

3 ~~(d)(g) The committee shall Evaluate proposals provided~~
4 ~~current statements of qualifications and performance data on~~
5 ~~file with the committee, together with those that may be~~
6 ~~submitted by qualified other firms regarding the proposed~~
7 ~~audit, and shall conduct discussions with, and may require~~
8 ~~public presentations by, no fewer than three firms regarding~~
9 ~~their qualifications, approach to the audit, and ability to~~
10 ~~furnish the required services. If compensation is one of the~~
11 ~~factors established pursuant to paragraph (a), it shall not be~~
12 ~~the sole or predominant factor used to evaluate proposals.~~

13 ~~(e)(h) The committee shall select Rank and recommend~~
14 ~~in order of preference no fewer than three firms deemed to be~~
15 ~~the most highly qualified to perform the required services~~
16 ~~after considering the ~~following~~ factors established pursuant~~
17 ~~to paragraph (a): the ability of professional personnel; past~~
18 ~~performance; willingness to meet time requirements; location;~~
19 ~~and recent, current, and projected workloads of the firms.~~
20 ~~However, such distribution shall not violate the principle of~~
21 ~~selection of the most highly qualified firms. If fewer than~~
22 ~~three firms respond to the request for proposal ~~desire to~~~~
23 ~~perform the services, the committee shall recommend such firms~~
24 ~~as it ~~deems~~ determines to be the most highly qualified.~~

25 ~~(4)(i) The governing body shall inquire of qualified~~
26 ~~firms as to the basis of compensation, select one of the firms~~
27 ~~recommended by the audit committee, and negotiate a contract,~~
28 ~~using one of the following methods:~~

29 ~~(a) If compensation is not one of the factors~~
30 ~~established pursuant to paragraph (3)(a) and not used to~~
31 ~~evaluate firms pursuant to paragraph (3)(e), the governing~~

1 body shall negotiate a contract with ~~The committee may~~
2 ~~request, accept, and consider proposals for the compensation~~
3 ~~to be paid only during competitive negotiations under~~
4 ~~paragraph (h).~~ the firm ranked first ~~may then negotiate a~~
5 ~~contract with the board giving, among other things, a basis of~~
6 ~~its fee for that engagement.~~ If the governing body ~~board~~ is
7 unable to negotiate a satisfactory contract with that firm,
8 negotiations with that firm shall be formally terminated, and
9 the governing body ~~board~~ shall then undertake negotiations
10 with the second-ranked firm. Failing accord with the
11 second-ranked firm, negotiations shall then be terminated with
12 that firm and undertaken with the third-ranked firm.
13 Negotiations with the other ranked firms shall be undertaken
14 in the same manner. The governing body ~~board~~, in negotiating
15 with firms, may reopen formal negotiations with any one of the
16 three top-ranked firms, but it may not negotiate with more
17 than one firm at a time. ~~The board shall also negotiate on the~~
18 ~~scope and quality of services. In making such determination,~~
19 ~~the board shall conduct a detailed analysis of the cost of the~~
20 ~~professional services required in addition to considering~~
21 ~~their scope and complexity. For contracts over \$50,000, the~~
22 ~~board shall require the firm receiving the award to execute a~~
23 ~~truth in negotiations certificate stating that the rates of~~
24 ~~compensation and other factual unit costs supporting the~~
25 ~~compensation are accurate, complete, and current at the time~~
26 ~~of contracting. Such certificate shall also contain a~~
27 ~~description and disclosure of any understanding that places a~~
28 ~~limit on current or future years' audit contract fees,~~
29 ~~including any arrangements under which fixed limits on fees~~
30 ~~will not be subject to reconsideration if unexpected~~
31 ~~accounting or auditing issues are encountered. Such~~

1 ~~certificate shall also contain a description of any services~~
2 ~~rendered by the certified public accountant or firm of~~
3 ~~certified public accountants at rates or terms that are not~~
4 ~~customary. Any auditing service contract under which such a~~
5 ~~certificate is required must contain a provision that the~~
6 ~~original contract price and any additions thereto shall be~~
7 ~~adjusted to exclude any significant sums by which the board~~
8 ~~determines the contract price was increased due to inaccurate~~
9 ~~or incomplete factual unit costs. All such contract~~
10 ~~adjustments shall be made within 1 year following the end of~~
11 ~~the contract.~~

12 (b) If compensation is one of the factors established
13 pursuant to paragraph (3)(a) and used in the evaluation of
14 proposals pursuant to paragraph (3)(d), the governing body
15 shall select the highest-ranked qualified firm or must
16 document in its public records the reason for not selecting
17 the highest-ranked qualified firm.

18 (c) The governing body may select a firm recommended
19 by the audit committee and negotiate a contract with such firm
20 using an appropriate alternative procurement method for which
21 compensation is not the sole or predominant factor used to
22 select the firm.

23 (d) In negotiations with firms under this section, the
24 governing body may allow a designee to conduct negotiations on
25 its behalf.

26 (5) The method used by the governing body to select a
27 firm recommended by the audit committee and negotiate a
28 contract with such firm must ensure that the agreed-upon
29 compensation is reasonable to satisfy the requirements of s.
30 218.39 and the needs of the governing body.

31

1 ~~(6)(j)~~ If the governing body ~~board~~ is unable to
2 negotiate a satisfactory contract with any of the recommended
3 ~~selected~~ firms, the committee shall recommend ~~select~~
4 additional firms, and negotiations ~~the board~~ shall continue
5 ~~negotiations~~ in accordance with this section ~~subsection~~ until
6 an agreement is reached.

7 (7) Every procurement of audit services shall be
8 evidenced by a written contract embodying all provisions and
9 conditions of the procurement of such services. For purposes
10 of this section, an engagement letter signed and executed by
11 both parties shall constitute a written contract. The written
12 contract shall, at a minimum, include the following:

13 (a) A provision specifying the services to be provided
14 and fees or other compensation for such services.

15 (b) A provision requiring that invoices for fees or
16 other compensation be submitted in sufficient detail to
17 demonstrate compliance with the terms of the contract.

18 (c) A provision specifying the contract period,
19 including renewals, and conditions under which the contract
20 may be terminated or renewed.

21 (8) Written contracts entered into pursuant to
22 subsection (7) may be renewed. Such renewals may be done
23 without the use of the auditor selection procedures provided
24 in this section. Renewal of a contract shall be in writing.

25 Section 2. This act shall take effect July 1, 2005.