

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 1216

INTRODUCER: Senator Oelrich

SUBJECT: Clerk of the Board of County Commissioners

DATE: March 8, 2009 REVISED: 3/24/09 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill allows the county clerk to prepare the financial statements and annual financial report of the county, as well as perform audits, reviews and tests of accounts maintained by the county.

This bill substantially amends section 28.12 of the Florida Statutes.

II. Present Situation:

Clerks of Court

Article V, s. 16 of the Florida Constitution allows the duties of the clerks of the circuit courts to be divided by special or general law between two officers with one serving as clerk of the court and the other serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. The Florida Constitution designates the clerk of the circuit court as the ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds unless otherwise provided in a county charter or a special act approved by vote of the electors.¹

¹ FLA. CONST. art. VIII, s. 1(d).

The clerks of the circuit courts only possess the powers that have been expressly or by necessary implication granted to them by statute.² There are statutory provisions addressing the duties of the clerk as a county officer, auditor for county funds, and accountant for the board of county commissioners. Pursuant to s. 125.17, F.S., the clerk of the circuit court is to be the clerk and accountant of the board of county commissioners.³ The books of account and of record are to be kept by “[a]ll sheriffs and clerks of the circuit court and ex officio clerks of the boards of county commissioners of this state shall keep books of account and of record in accordance with s. 218.33.”⁴ Section 136.05, F.S., also provides that the board of the county commissioners must keep an accurate and complete set of the accounting books. It is unclear under current law whether both the board of county commissioners and the clerks keep a set of the books, or whether just the clerks, acting on behalf of the board, keep the books.

Pursuant to s. 129.09, F.S., a clerk “acting as a county auditor” is personally liable for any warrant for payment using county funds in excess of the amount allowed by law and for paying an illegal charge or unauthorized claim against the county. This section also creates a misdemeanor offense for a clerk who willfully and knowingly signs a warrant for such payment. Section 136.08, F.S., authorizes the county auditor and the auditor general to inspect the accounts of each county board and county accounts in each qualified public depository.

It is generally agreed that the clerk of the court has the duty to carry out pre-auditing functions, the auditing inquiry made prior to payment of county funds. There is more controversy regarding whether the clerk of the court has the responsibility to carry out post-auditing functions, the auditing inquiry made after moneys are spent. However, two Attorney General opinions have expressed the belief that the clerk does not have the authority to perform post-audit functions on the records and accounts of other constitutional officers.⁵

The Uniform Local Government Financial Management and Reporting Act⁶ requires an annual financial report covering each local governmental entity to be submitted to the Department of Financial Services.⁷ The chair of the governing body and the chief financial officer of each local governmental entity must sign the annual financial report, attesting to the accuracy of the information included in the report.⁸ Under s. 218.39, F.S., the Auditor General, or an independent certified public accountant retained by the county,⁹ must complete an annual

² 86 Fla. Op. Atty. Gen. 38, *2 (1986); *see also Alachua County v. Powers*, 351 So. 2d 32, 35 (Fla. 1977).

³ *See also* s. 28.12, F.S.

⁴ Section 116.07, F.S. (referencing s. 218.33, F.S., specifying what the fiscal year is for each local governmental entity and that uniform principles and standards are to be used to keep the books).

⁵ 2002 Fla. Op. Atty. Gen. 29; 86 Fla. Op. Atty. Gen. 38, *2 (1986); *see also Alachua County v. Powers*, 351 So. 2d 32, 35 (Fla. 1977).

⁶ Part III of ch. 218, F.S.

⁷ Section 218.32(1), F.S. According to Florida TaxWatch, this annual financial report is not a “formal audit” as defined by the American Institute of Certified Public Accountants, and therefore, does not include opinions relating to management performance. Kaye Kendrick, *Clarifying the Constitutional Role of the Clerk of the Circuit Court as County Auditor will Help Improve Local Government Accountability for Florida Taxpayers*, FLA. TAXWATCH BRIEFINGS (April 2008), available at <http://www.floridatxwatch.org/resources/pdf/042008BriefingClerksBillsSB640.pdf> (last visited April 18, 2008).

⁸ Section 218.32(1), F.S.

⁹ Section 218.391, F.S., establishes procedures for the selection of auditors to perform the annual financial audits required by s. 218.39, F.S.

financial audit within 12 months after the end of a fiscal year. The county audit report includes a financial audit of the county as a whole, including “reports on compliance and internal controls, management letters, and financial statements as required by rules adopted by the Auditor General.”¹⁰ Section 125.01(1)(x), F.S., also authorizes a board of county commissioners to employ an independent certified public accounting firm to audit the county’s funds, accounts, and financial records. Copies of the audit report must be filed with the clerk and maintained for public inspection.¹¹ The clerk is required to forward a copy of the audit report to the Auditor General.¹²

In *Alachua County v. Powers*,¹³ the Florida Supreme Court provided clarification of the duties of the clerk when serving as auditor, accountant, and custodian of county funds. The Court held that the “clerk is county auditor, accountant and custodian of all funds of the county pursuant to constitutional and statutory provisions.”¹⁴ The Court noted that the board of county commissioners and the clerk may share pre-auditing responsibilities and went on to state:

While the clerk has the responsibility to act as pre-auditor of county funds, the board has the right to audit its own funds and make such investigations as may be necessary before the use of any public funds. The constitutional and statutory language . . . require that the auditing function in making such an investigation be carried out by one of three entities: pre-auditing by the clerk in his capacity as county auditor, performance audit by an independent certified public accountant (or independent accounting firm), and post-audit by the auditor general or the independent auditing firm. . . .

The clerk has the authority and responsibility to perform the auditing functions both as an arm of the board in auditing the records of constitutional officers and as a watchdog of the board in the case of pre-auditing accounts of the board in determining legality of expenditure. The phrase “legality of expenditure” includes that the funds are spent for a public purpose, that the funds are spent in conformity with county purchasing procedures or statutory bidding procedures, that the expenditure does not overspend any account or fund of the budget as finally adopted and recorded in the office of the clerk. If the board becomes concerned, it has the authority to require a performance audit or post-audit by an independent accounting firm.¹⁵

The court affirmed the trial court’s determination that the clerk is “to act as county auditor in all auditing functions except when the board employs an independent auditing firm.”¹⁶

¹⁰ Section 218.39(2), F.S.

¹¹ Section 125.01(1)(x), F.S.

¹² *Id.*

¹³ *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1977).

¹⁴ *Id.* at 43.

¹⁵ *Id.* at 37.

¹⁶ *Id.* at 36.

The issue of the clerk's duties as auditor is the subject of *Brock v. Board of County Commissioners of Collier County*, Case No. 04-941-CA, which is currently on appeal to the Second District Court of Appeal.¹⁷ The trial court held the following:

- The clerk is the custodian of all county funds to which he has been given custody and there is no constitutional or statutory authority that would allow the clerk to initiate an independent investigation or attempt to recover funds which he has not been given custody;
- Prior to signing a warrant for the payment of any claim, bill, or indebtedness from county funds, it is proper for the clerk to conduct any auditing necessary to insure the legality of the expenditure. The court can find no constitutional or statutory authority to perform further audits beyond the time that the warrant is signed, unless so directed by the board of county commissioners;
- The clerk does not have the duty to prepare and certify the county's financial statements unless these tasks are delegated to him by the board of county commissioners. The scope of this delegation is within the discretion of the board of county commissioners and may be granted, removed, or modified.¹⁸

III. Effect of Proposed Changes:

The bill states that unless otherwise provided by county charter or special law, the clerk, as county auditor, shall prepare the financial statements and annual financial report of the county required by s. 218.32, F.S., and may perform audits, reviews, and tests of accounts maintained by the county as necessary to determine the adequacy of internal controls and compliance with contracts law. The bill gives the clerk of the court broad authority to conduct post-audit functions of county finances.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ This case has been consolidated with Case Nos. 05-953-CA and 05-1506-CA (20th Cir. Ct. 2007).

¹⁸ See *Brock*, Case No. 04-941-CA, *Order Granting "Collier County's Motion for Summary Judgment as to Case Number 05-953-CA and the Issuance of a Writ in Quo Warranto," Order granting, in part, and Denying, in part, the "Clerk's Motion for Partial Summary Judgment Regarding Undisputed Roles of the Clerk" and Granting "Collier County's Cross-Motion for Summary Judgment on the Undisputed Roles of the Clerk of Courts," and Order Denying the "Clerk's Motion for Partial Summary Judgment as to the Clerk's Declaratory Judgment Count"* (20th Cir. Ct. Aug. 2007).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 618138 by Community Affairs on March 24, 2009:

The amendment clarifies the county clerks' constitutional role and specifies that the clerk prepares financial statements and the annual financial report. The amendment states that s. 28.12, F.S., does not authorize the clerk of the circuit court to perform performance, operational, post-payment audits, or independent audits. (WITH TITLE AMENDMENT)