

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 Committee on Governmental Oversight and Accountability

BILL: CS/SB 1628

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Government Accountability

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.			JU	
3.			ED	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The position of the Auditor General is created in the State Constitution. The Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Specified reports on such audit findings must be submitted to the President of the Senate, Speaker of the House, and the Legislative Auditing Committee.

CS/SB 1628 revises auditing provisions governing state agencies, the state courts system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities. The bill requires such entities to establish, maintain, and document the effective operation of internal controls, including controls designed to prevent and detect fraud, waste, and abuse; to ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; to promote and encourage economic and efficient operations; to ensure the reliability of financial records and reports; and to safeguard assets.

The bill also requires each Florida College System institution to annually file with the State Board of Education financial statements prepared in conformity with accounting principles

generally accepted by the United States and the uniform classification of accounts prescribed by the State Board of Education. The State Board of Education's rules must prescribe the filing deadline for the financial statements.

The bill may have an indeterminate fiscal impact on state and local governments. *See* Fiscal Comments. The provisions of s. 18, Art. VII, of the State Constitution, relating to restricted mandates imposed upon cities and counties, may apply. *See* IV. A. Municipality/County Mandates Restrictions.

II. Present Situation:

Background

Auditor General

The position of Auditor General is established by s. 2, Art. III of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹ The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.²

The Auditor General, before entering upon the duties of the office, must take the oath of office required of state officers by the State Constitution.³ At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and must have not less than 10 years' experience in an accounting or auditing related field.⁴

To carry out his or her duties, the Auditor General must make all spending decisions within the annual operating budget approved by the President of the Senate and the Speaker of the House of Representatives.⁵ The Auditor General must employ qualified persons necessary for the efficient operation of the Auditor General's office and must fix their duties and compensation and, with the approval of the President of the Senate and Speaker of the House of Representatives, must adopt and administer a uniform personnel, job classification, and pay plan for employees.⁶

The headquarters of the Auditor General are at the state capital, but to facilitate auditing and to eliminate unnecessary traveling, the Auditor General may establish field offices located outside the state capital. The Auditor General must be provided with adequate quarters to carry out the position's functions in the state capital and in other areas of the state.⁷

¹ Section 11.42(2), F.S.

² Section 11.42(5), F.S.

³ Section 11.42(4), F.S.

⁴ Section 11.42(2), F.S.

⁵ Section 11.42(3)(a), F.S.

⁶ *Id.*

⁷ Section 11.42(6)(a), F.S.

All payrolls and vouchers for the operations of the Auditor General's office must be submitted to the Chief Financial Officer for payment.⁸ The Auditor General may make and enforce reasonable rules and regulations necessary to facilitate authorized audits.⁹

The Auditor General must:¹⁰

- Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee;
- Annually conduct a financial audit of state government;
- Annually conduct financial audits of all state universities and state colleges;
- Annually conduct financial audits of all accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census;
- Once every three years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census;
- At least every three years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, and Florida Clerks of Court Operations, water management districts, and the Florida School of Deaf and the Blind;
- At least every three years, conduct a performance audit of the local government financial reporting system, which means any statutory provision related to local government financial reporting;
- At least every three years, conduct a performance audit of the Department of Revenue's administration of the ad valorem tax laws;
- Once every three years, review a sample of internal audit reports at each state agency¹¹ to determine compliance with the current Standards for Professional Practice of Internal Auditing or, if appropriate, government auditing standards; and
- Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law.

The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:¹²

- The accounts and records of any governmental entity created or established by law;
- The information technology programs, activities, functions, or systems of any governmental entity created or established by law;
- The accounts and records of any charter school created or established by law;

⁸ Section 11.42(6)(b), F.S.

⁹ Section 11.42(7), F.S.

¹⁰ Section 11.45(2), F.S.

¹¹ Section 20.055, F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system.

¹² Section 11.45(3), F.S.

- The accounts and records of any direct-support organization or citizen support organization created or established by law;
- The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person;
- State financial assistance provided to any nonstate entity;
- The Tobacco Settlement Financing Corporation;
- Any purchases of federal surplus lands for use as sites for correctional facilities;
- Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs;
- The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board;
- The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver's license application;
- The records pertaining to the use of funds from the sale of specialty license plates;
- The transportation corporations under contract with the Department of Transportation that are acting on behalf of the state to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems;
- The acquisition and divestitures related to the Florida Communities Trust Program;
- The Florida Water Pollution Control Financing Corporation;
- The school readiness program, including the early learning coalitions;
- The Florida Special Disability Trust Fund Financing Corporation;
- Workforce Florida, Inc., or other programs or entities created by Workforce Florida, Inc.;
- The corporation under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination, licensing, and prosecutorial support services;
- The Florida Engineers Management Corporation;
- The books and records of any permitholder that conducts race meetings or jai alai exhibitions;
- The corporation known as the Prison Rehabilitative Industries and Diversified Enterprise, Inc., or PRIDE Enterprises;
- The Florida Virtual School; and
- Virtual education providers receiving state funds or funds from local ad valorem taxes.

Auditor General Reports

The Auditor General must conduct audits, examinations, or reviews of government programs.¹³ Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.¹⁴ The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1; such report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and

¹³ Section 11.45(7), F.S.

¹⁴ Section 11.45(7)(f), F.S.

a list of statutory and fiscal changes recommended by the Auditor General.¹⁵ In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.¹⁶

The annual report for the Auditor General for November 1, 2012, through October 31, 2013, recommended, among others, the following two changes to the current law:¹⁷

- Require each state and local government to maintain internal controls designed to prevent fraud and detect fraud, waste, and abuse; ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; promote and encourage economic and efficient operations; ensure the reliability of financial records and reports; and safeguard assets; and
- Require the Justice Administration Commission, whose agencies are currently not audited by an internal auditor, to jointly employ an internal auditor or provide for internal audit services by interagency agreement with a state agency.

III. Effect of Proposed Changes:

The bill requires each agency head, state attorney, public defender, criminal conflict and civil regional counsel, Guardian Ad Litem program, Florida Clerk of Courts Operations Corporation, local government entity, charter school, Florida College System institution, and state university, as well as the Supreme Court and the Justice Administrative Commission to establish, maintain, and document the effective operation of internal controls, including controls designed to prevent and detect fraud, waste, and abuse; to ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; to promote and encourage economic and efficient operations; to ensure the reliability of financial records and reports; and to safeguard assets.

The bill also requires each Florida College System institution to annually file with the State Board of Education financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the State Board of Education. The State Board of Education's rules must prescribe the filing deadline for the financial statements.

The bill requires the State Board of Education to prescribe by rule the filing deadline for the required financial statements.

Section 1 amends s. 11.45, F.S., to clarify that the audit provisions in s. 11.45(2)(j), F.S., do not apply to water management districts; instead, the audit provisions in s. 11.45(2)(f), F.S., apply to water management districts. It clarifies the applicability of Auditor General audits on district school boards, which are already required in chapter 11, F.S., for state colleges and universities.

Sections 2, 4, 5, 6, 8, and 11 amend ss. 20.05, 25.382, 28.35, 43.16, 218.33, and 1002.33, F.S., respectively, to expand the responsibilities of department heads, the Supreme Court as it relates

¹⁵ Section 11.45(7)(h), F.S.

¹⁶ *Id.*

¹⁷ A copy of the report can be found online at: <http://www.myflorida.com/audgen/pages/whatsnew.htm> (last visited March 21, 2014).

to the state courts system, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, the Florida Clerk of Court Operations Corporation, local governmental entities, and governing bodies of charter schools to include the specific responsibility of establishing certain internal controls.

Section 3 amends s. 20.055, F.S., revising provisions relating to agency inspectors general; clarifying the definition of the term “agency head” with respect to the Florida Housing Finance Corporation to mean the chair of the board of directors.

Section 7 amends s. 215.985, F.S., to require the Department of Financial Services to specify the manner and form for the submission of water management district monthly financial statements.

Section 9 amends s. 373.536, F.S., to delete obsolete language.

Section 10 amends s. 1001.42, F.S., revising the responsibilities of a district school board’s internal auditor to perform certain audits and reviews.

Section 12 amends s. 1010.01, F.S., requiring each Florida College System institution to file certain annual financial statements with the State Board of Education; requiring each school district, Florida College System institution, and state university to establish certain internal controls.

Section 13 provides a finding that the bill fulfills an important state interest.

Section 14 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the State Constitution provides in pertinent part that “[n]o 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 certain requirements are met. However, several exemptions and exceptions exist. The exceptions to the constitutional provision include a legislative determination that the law fulfills an important state interest and one of the following relevant conditions: (a) the law requiring such expenditure is approved by 2/3 of the membership of each chamber or (b) the expenditure is required to comply with a law that applies to all persons similarly situated.

In this instance, the bill includes a legislative determination that the bill fulfills an important state interest, and the law, as amended, will apply to all state and local governmental entities in Florida. Arguably, any expenditure required by this bill will be required to comply with a law that applies to all persons similarly situated.

Subsection (d) of Art. VII, Sec. 18, of the State Constitution exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a

particular bill results in a significant impact on cities and counties must be determined on an aggregate, statewide basis. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2013-2014), are exempt.

The financial impact is unknown at this time. If the overall aggregate fiscal impact on cities and counties exceeds \$1.9 million per year, the bill, to be binding on all cities and counties, must meet the relevant conditions as an exception to the constitutional requirements.

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:

None.

C. Government Sector Impact:

The bill requires state agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities to establish, maintain, and document the effective use of specified internal controls. Such requirements may require additional time and expense to create the internal controls and document the effective operation of such internal controls.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.45, 20.05, 20.055, 25.382, 28.35, 43.16, 215.985, 218.33, 373.536, 1001.42, 1002.33, and 1010.01.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 3, 2014:

The Committee Substitute:

- Clarifies that for purposes of the local government audits in s. 11.45, F.S., local governmental entities do not include water management districts, and that certain audit provisions apply to district school boards;
- Amends the audit requirements in the bill to remove the requirement that governmental entities document the effective operation of internal controls;
- Removes the addition of the Justice Administration Commission from the definition of “state agency” in s. 20.055, F.S., and from the definition of “agency head;”
- Adds the capital collateral regional counsel to the list of entities required to establish and maintain internal controls within the Justice Administrative Commission;
- Amends s. 215.985, F.S., to require water management districts to submit the monthly financial statement in the form and manner prescribed by the Department of Financial Services;
- Amends s. 373.536, F.S., to delete obsolete language; and
- Provides that the act fulfills an important state interest.

- B. **Amendments:**

None.