

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1063 Government Accountability

**SPONSOR(S):** State Affairs Committee; Appropriations Committee; Government Operations Subcommittee; Metz

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee	25 Y, 0 N, As CS	White	Leznoff
3) State Affairs Committee	17 Y, 0 N, As CS	Harrington	Camechis

### SUMMARY ANALYSIS

Various statutes ensure government accountability of state and local governments. For example, the Auditor General conducts audits of accounts and records of certain governmental entities, and 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. Other statutes require publishing of budgets online, disclosing of financial interests, and registering before lobbying certain entities.

The bill amends statutes pertaining to government accountability and auditing. The bill:

- Specifies that the Governor, the Commissioner of Education, or the designee of the Governor or of the Commissioner of Education may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements;
- Provides definitions for the terms "abuse," "fraud," and "waste;"
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, governing bodies of charter schools, each school district, Florida College System institution, and each state university to establish and maintain internal controls;
- Adds school district to the list of governmental entities who may withhold salary-related payments for failure to timely file disclosure of financial interests;
- Expands the types of governmental entities that are subject to lobbyist registration requirements;
- Requires counties, municipalities, and special districts to maintain certain budget documents on the entities' websites for specified timeframes;
- Requires a unit of government to investigate and take action to recover prohibited compensation, specifies methods of recovery and liability for violations, provides a reward structure to those reporting prohibited compensation, and exempts from the prohibition specified bonuses and severance pay;
- Revises the monthly financial statement requirements for water management districts;
- Revises the composition of an audit committee;
- Prohibits certain officers, members, or directors from representing a person or entity before Enterprise Florida, its divisions, and the Florida Development Finance Corporation;
- Requires completion of an annual financial audit of the Florida Virtual School; and
- Requires a district school board, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances.

The act provides that it fulfills an important state interest. The bill may have an indeterminate but likely insignificant negative fiscal impact on state and local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### 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.<sup>1</sup> The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.<sup>2</sup> 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.<sup>3</sup> 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 may not have less than 10 years' experience in an accounting or auditing related field.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

The Auditor General must:<sup>7</sup>

- 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 Corporation, water management districts, and the Florida School for the 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 agency<sup>8</sup> to determine compliance with the current Standards for Professional Practice of Internal Auditing or, if appropriate, government auditing standards;

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<sup>1</sup> Section 11.42(2), F.S.

<sup>2</sup> Section 11.42(5), F.S.

<sup>3</sup> Section 11.42(4), F.S.

<sup>4</sup> Section 11.42(2), F.S.

<sup>5</sup> Section 11.42(3)(a), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 11.45(2), F.S.

- 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; and
- Annually conduct operational audits of the accounts and records of eligible nonprofit scholarship-funding organizations receiving eligible contributions under s. 1002.395, F.S., to determine compliance with that section.

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:<sup>9</sup>

- 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;
- 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;
- Virtual education providers receiving state funds or funds from local ad valorem taxes; and
- The accounts and records of a nonprofit scholarship-funding organization participating in a state sponsored scholarship program authorized by chapter 1002, F.S.

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<sup>8</sup> Section 20.055, F.S., defines the term "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, the Agency for State Technology, and the state courts system.

<sup>9</sup> Section 11.45(3), F.S.

### Auditor General Reports

The Auditor General must conduct audits, examinations, or reviews of government programs.<sup>10</sup> 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.<sup>11</sup> 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. The report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.<sup>12</sup> 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.<sup>13</sup>

The annual report for the Auditor General for November 1, 2012, through October 31, 2013, recommended, among others, the following change to the current law:<sup>14</sup>

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.

### Local Government Auditing

Current law requires local governments<sup>15</sup> to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the preceding fiscal year.<sup>16</sup> Each local governmental entity's website must provide a link to DFS' website to view the entity's annual financial report. If the local governmental entity does not have an official website, the county government's website must provide the required link for the local governmental entity.<sup>17</sup>

If a local government will not be audited by the Auditor General, then the local government must provide for an annual financial audit to be conducted within nine months after the end of its fiscal year by an independent certified public accountant retained by the entity and paid for from public funds.<sup>18</sup> The audit report of an internal auditor prepared for or on behalf of a local government becomes a public record when the audit becomes final. Audit work papers and notes related to the audit are confidential and exempt from public record requirements until the audit report becomes final.<sup>19</sup>

### Transparency Florida Act

The Transparency Florida Act (Act) requires specified governmental fiscal information to be made publicly available via website or management system.<sup>20</sup> The Act requires the Governor, in consultation with the appropriate committees of the House of Representatives and the Senate, to maintain a central website providing access to all other websites required to be linked under the Act. The law requires certain budget information to be readily available online, certain contract information, and minimum functionality standards.

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<sup>10</sup> Section 11.45(7), F.S.

<sup>11</sup> Section 11.45(7)(f), F.S.

<sup>12</sup> Section 11.45(7)(h), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> A copy of the report can be found online at: <http://www.myflorida.com/audgen/pages/annualrpt.htm> (last visited March 20, 2015).

<sup>15</sup> Section 218.31(1), F.S., defines the term "local governmental entity" as a county agency, a municipality, or a special district. For purposes of s. 218.32, F.S., the term also includes a housing authority created under chapter 421, F.S.

<sup>16</sup> Section 218.32(1)(a), F.S.

<sup>17</sup> Section 218.32(1)(g), F.S.

<sup>18</sup> Section 218.39(1), F.S.

<sup>19</sup> Section 119.0713(2), F.S.

<sup>20</sup> Section 215.985, F.S.

### Local Government Budgets

Counties,<sup>21</sup> municipalities,<sup>22</sup> and special districts<sup>23</sup> are required to post their tentative budgets on their websites two days prior to consideration of the budget. The final budget of a county, municipality, or special district must be posted on the website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption. Current law does not specify how long the items must remain on the website.

### Water Management Districts

Section 373.069, F.S., provides for the creation of water management districts. A water management district (WMD) is defined as “any flood control, resource management, or water management district” operating under the authority of chapter 373, F.S.<sup>24</sup> There are five WMDs in Florida: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida.<sup>25</sup>

### *Budget Requirements*

Section 373.536, F.S., governs WMD budget processes. The tentative budget must be posted on the WMD’s website at least two days before the budget hearings are conducted. Final budgets must be posted on the WMD’s website within 30 days of adoption.<sup>26</sup>

### *Lobbying Registration Requirements*

Persons who lobby WMDs must register annually with the WMD as a lobbyist.<sup>27</sup> The registration must include a statement signed by the principal stating that the registrant is authorized to lobby the principal, identify its main business pursuant to a classification system approved by the WMD, and disclose the existence of any direct or indirect business or financial relationship between the lobbyist and any officer or employee of the district.<sup>28</sup> A WMD may accept a completed legislative branch or executive branch lobbyist registration form in lieu of creating its own registration form.<sup>29</sup>

Each WMD may levy an annual lobbyist registration fee not to exceed \$40 for each principal represented. The money collected must be used for administration of the lobbyist registration system.<sup>30</sup> The WMDs must be diligent in determining whether lobbyists are duly registered and are prohibited from knowingly allowing unregistered individuals to lobby the WMD.<sup>31</sup>

### Financial Disclosures

The State Constitution requires all elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees to file full and public disclosure of their financial interest.<sup>32</sup> Financial disclosure requirements are contained in ss. 112.3144 and 112.3145, F.S. Section 112.3145, F.S., requires each state or local officer and each specified state employee to file a statement of financial interests no later than July 1 of each year.<sup>33</sup>

Those who are required to file a statement of financial interests pursuant to s. 112.3145, F.S., are required to disclose primary sources of income (other than from his or her public position), secondary sources of income (in certain circumstances), real property (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses. The law permits a filer to report the required interests based upon one of two thresholds. First, the filer may calculate

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<sup>21</sup> Sections 129.03(3)(c) and 129.06(2)(f), F.S.

<sup>22</sup> Section 166.241, F.S.

<sup>23</sup> Section 189.016, F.S.

<sup>24</sup> Section 373.019(23), F.S.

<sup>25</sup> Section 373.069(1), F.S.

<sup>26</sup> Section 373.536, F.S.

<sup>27</sup> Section 112.3261(2), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 112.3261(5), F.S.

<sup>31</sup> Section 112.3261(6), F.S.

<sup>32</sup> Section 8, Art. II, Fla. Const.

<sup>33</sup> Section 112.3145(2)(b), F.S.

whether an interest is required to be reported based upon whether that interest exceeds a specified percentage of his or her net worth. This is referred to as the “comparative (percentage) threshold.” Alternatively, the filer may determine whether an interest is reported if the interest exceeds a specified dollar value. This is referred to as the “dollar value threshold.”<sup>34</sup>

The Commission on Ethics (Commission) serves as the depository for financial disclosure filings of state officers or employees. Those who serve at a local level file their financial disclosure with the local supervisor of elections. The Commission and supervisors of elections are statutorily required to assist each other in identifying those subject to the financial disclosure requirement, providing notice to those individuals, and tracking receipt of financial disclosures. In the event that an individual fails to timely file his or her financial disclosure, the Commission imposes an automatic fine of \$25 per day. The automatic fine is capped at \$1,500.<sup>35</sup> Neither the Commission nor the supervisor of elections is required to examine the financial disclosure filings.

#### Collection Methods for Unpaid Fines

Before referring any unpaid fine to DFS, the Commission must attempt to determine whether the individual owing such a fine is a current public officer or current public employee.<sup>36</sup> If so, the Commission must notify the Chief Financial Officer (CFO) or the governing body of the appropriate county, municipality, or special district of the total amount of any fine owed to the Commission. After verification from the Commission, the appropriate entity must begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment.<sup>37</sup> The withheld payments must be remitted until the fine is satisfied. If the individual is no longer a public officer or public employee, the Commission may seek a circuit court judgment and garnish wages to satisfy the amount of the fine owed.<sup>38</sup> Action may be taken to collect any unpaid fine within 20 years after the date the final order is rendered.<sup>39</sup>

#### Extra Compensation Claims

Extra compensation claims are prohibited under s. 215.425, F.S., with some exceptions. The section provides that no extra compensation may be made to any officer, agent, employee, or contractor after service has been rendered or the contract made, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature.

The section does not apply to:

- A bonus or severance pay that is paid wholly from nontax revenues and nonstate-appropriated funds, the payment and receipt of which does not otherwise violate part III of chapter 112, F.S., and which is paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or special district; or
- A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49, F.S.

Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:<sup>40</sup>

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

Current law provides requirements for severance pay provisions, which prohibit a unit of government from including severance pay in an amount greater than 20 weeks of compensation or when the employee has been fired for misconduct. In addition, an employee may receive an amount no greater

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<sup>34</sup> See s. 112.3145(3), F.S.

<sup>35</sup> Sections 112.3144(5)(e) and 112.3145(7)(f), F.S.

<sup>36</sup> Section 112.31455(1), F.S.

<sup>37</sup> Section 112.31455(1)(a), F.S.

<sup>38</sup> Section 112.31455(2), F.S.

<sup>39</sup> Section 112.31455(4), F.S.

<sup>40</sup> Section 215.425(3), F.S.

than six weeks of compensation as severance if the severance pay represents the settlement of an employment dispute.<sup>41</sup>

Any agreement or contract executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor, may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract.<sup>42</sup>

### False Claims against the State

Section 68.082, F.S., prohibits a person from:

- Knowingly presenting a false or fraudulent claim for payment or approval;
- Knowingly making or using a false record or statement material to a false or fraudulent claim;
- Conspiring to commit a violation of this subsection;
- Having possession, custody, or control of property or money used or to be used by the state and knowingly delivering less than all of that money or property;
- Making or delivering a document certifying receipt of property used or to be used by the state and, intending to defraud the state, making or delivering the receipt without knowing that the information on the receipt is true;
- Knowingly buying or receiving, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly making or using a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the state.

A person who does any of the foregoing is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the state sustains.<sup>43</sup>

Section 68.083, F.S., authorizes the Department of Legal Affairs to investigate an allegation of a false claim against the state. If the Department of Legal Affairs determines that a violation has occurred, it is authorized to commence civil action against the violator. In addition, DFS may bring suit if the Department of Legal Affairs has not brought suit.<sup>44</sup>

### **Effect of Proposed Changes**

#### Audit Provisions

Currently the Auditor General, DFS, and the Division of Bond Finance of the State Board of Administration may notify the Legislative Auditing Committee (committee) if a local governmental entity, district school board, charter school, or charter technical career center fail to comply with certain auditing and financial reporting requirements. The bill adds to the list of entities that may notify the committee to include the Governor, the Commissioner of Education, or the designee of the Governor or the Commissioner of Education.

The bill creates the following definitions:

- “Abuse” means behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.
- “Fraud” means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity’s assets, bribery, or the use of one’s position for personal enrichment through the deliberate misuse or misapplication of an organization’s resources.

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<sup>41</sup> Section 215.425(4), F.S.

<sup>42</sup> Section 215.425(5), F.S.

<sup>43</sup> Section 68.082(2), F.S.

<sup>44</sup> Section 68.083(1), F.S.

- “Waste” means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

The bill amends the definition for “local governmental entity” to include tourist development council and county tourism promotion agency.

The bill amends s. 11.45(2)(j), F.S., to clarify that the audit provisions in that paragraph do not apply to WMDs; instead, the audit provisions in s. 11.45(2)(f), F.S., apply to WMDs. The bill expands the list of entities that must be included in the Auditor General report concerning entities that fail to comply with transparency requirements in s. 11.45, F.S., to include local governmental entities.

The bill requires each state agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, governing bodies of charter schools, each school district, Florida College System institution, and each state university to establish and maintain internal controls, including controls designed to:

- Prevent and detect fraud, waste, and abuse;
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices;
- Support economical and efficient operations;
- Ensure the reliability of financial records and reports; and
- Safeguard assets.

The bill increases the threshold total amount of state financial assistance level for purposes of triggering a state single audit or project-specific audit for nonstate entities. It raises the amount to \$750,000, rather than \$500,000. It provides that the Auditor General, after consulting with the Executive Office of the Governor, DFS, and all state awarding agencies, must review the threshold amount for requiring the audits, and if appropriate, may recommend to the Legislature a statutory change to the required amount.

The bill requires each local governmental entity required to provide an audit under s. 218.39(1), F.S., to provide an independent certified public accountant statement concerning whether or not the entity’s annual financial report is in agreement with the audited financial statement, and if not in agreement, it must specify the significant differences between the annual financial report and the audited financial statements and explain the differences. Such determination must be made at the level of detail required for the annual financial report.

The bill provides that DFS can request additional information when preparing a verified, annual report. The information requested must be provided to DFS within 45 days, and if the local governmental entity does not comply, DFS must notify the Legislative Auditing Committee.

If a local government audit report includes a recommendation that was previously included in the audit report, the bill requires the governing body to, during a regularly scheduled public meeting, indicate its intent regarding corrective action, or why it will not take action regarding the recommendation in the report. The bill requires the same action for audits of school districts, Florida College System institutions, and universities.

The bill requires the Florida Virtual School to have an annual financial audit of its accounts and records completed by an independent auditor. The bill provides requirements and timeframes for the submission of the audit. The bill deletes the requirement that the Auditor General conduct an operational audit of the Florida Virtual School no later than January 31, 2014, as the language is obsolete.

#### Auditor Selection Procedures

The bill provides that for a municipality, special district, district school board, charter school, or charter technical career center, the audit committee must consist of at least three members, one of whom must be a member of the governing body of the municipality, special district, district school board, charter school, or charter technical career center. The chair of the audit committee must be a member of the



governing body. A member of the audit committee may not be an employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center.

The bill requires audit reports submitted pursuant to s. 218.39, F.S., to include an affidavit signed by the chair of the audit committee stating the entity has complied with s. 218.391(3)-(6), F.S., in selecting the auditor.<sup>45</sup> The bill provides that a multiyear contract between an entity or an auditor may not prohibit or restrict an entity from complying with this requirement.

#### Clerks of Court

Current law requires the Clerks of Court Operations Corporation (corporation) to notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans. The bill prescribes quarterly reporting periods for such notice, ending on the last day of the months of March, June, September, and December. The notification must be submitted no later than 45 days after the end of the quarterly period.

#### Unpaid Fines for Failure to Timely File Disclosure of Financial Interest

Current law authorizes the CFO or the governing body of the county, municipality, school district, or special district to withhold the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment until the unpaid fine for failure to timely file a disclosure of financial interest has been satisfied. The bill expands current law to include school districts in the list of government entities whose employees are subject to the salary-related withholding provisions.

The bill creates s. 112.31456, F.S., for unpaid fines related to individuals who are no longer a public officer or public employee or for those individuals that the Commission cannot determine whether the person is a public officer or public employee.

#### Lobbying Registration

The bill amends s. 112.3261, F.S., which relates to lobbying before WMDs. It expands the registration and reporting requirements to include “governmental entity” as defined in the section, rather than only WMDs. It defines “governmental entity” to mean:

A WMD, a hospital district, a children’s services district, an expressway authority, a port authority, or an independent special district with annual revenues of more than \$5 million, which exercises ad valorem taxing authority.

The bill requires a governmental entity to make its own lobbyist registration form, modeled after the printed or online version of the legislative branch or executive branch lobbyist registration form. The form must be returned to or electronically filed with the governmental entity.

#### Budgets

The bill specifies that a tentative county budget must remain on the county’s website for at least 45 days, and the final budget must remain on the website for at least two years. In addition, an adopted amendment to the budget must remain published on the county’s website for at least two years. The bill requires the same publishing timeframes for municipalities and WMDs.

#### Extra Compensation

The bill amends provisions related to extra compensation. The bill defines the term “public funds” to mean:

[A]ny taxes, tuition, state grants, fines, fees, or other charges or any other type of revenue collected by the state or any county, municipality, special district, school district, Florida College System institution, state university, or other separate unit of government created pursuant to law, including any office, department, agency, division, subdivision,

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<sup>45</sup> The subsections provide a competitive procurement process for selecting an auditor.

political subdivision, board, bureau, or commission of such entities. However, the term does not include the following:

(a) For state universities, revenues received by, through, or from faculty practice plans, health services support organizations, hospitals with which state universities are affiliated, direct-support organizations, or federal, auxiliary, or private sources, except for tuition;

(b) For public hospitals, special districts, and Florida College System institutions, revenues and fees received from non-state appropriated sources or other general non-tax revenues; or

(c) A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49.

The bill limits the requirement that severance pay may not exceed an amount greater than 20 weeks of compensation to severance pay paid from public funds. It also limits the prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29), F.S., by the unit of government to severance pay paid from public funds.

The bill requires a unit of government to investigate and take all necessary action to recover any prohibited compensation upon discovery or notification that the unit has violated the laws relating to prohibited compensation. If the violation was unintentional, the bill requires the unit of government to recover the prohibited compensation through normal recovery methods for overpayments. If the violation was willful, the unit of government must recover the prohibited compensation from either the individual receiving the compensation or the individual or individuals responsible for approving the prohibited compensation. Each individual determined to have willfully violated the section is jointly and severally liable for repayment.

The bill makes the willful violation of the prohibition against extra compensation a misdemeanor of the first degree.<sup>46</sup> An officer who exercises the powers and duties of a state or county officer and who willfully violates the extra compensation prohibitions is subject to suspension by the Governor. An officer who exercises powers and duties other than those of a state or county officer and willfully violates the extra compensation prohibitions is subject to the suspension and removal procedures under s. 112.51, F.S.

The bill provides for a reward for a person who reports a violation of the section of at least \$500, or the lesser of 10 percent of the funds recovered, or \$10,000 per incident. The bill prohibits the reward if the recovery of the prohibited compensation is based primarily on information other than what was provided by the person, or if the person was involved in the authorization, approval, or receipt of the prohibited compensation.

The bill provides that an employee has a cause of action under s. 112.3187, F.S., if the employee is discharged, demoted, suspended, threatened, harassed, or in any manner discriminated against by his or her employer because of lawful acts done by the employee concerning prohibited compensation.

If the unit of government fails to recover prohibited compensation for willful violation of this section upon discovery and notification of such prohibited payment within 90 days, a cause of action may be brought to:

- Recover state funds in accordance with ss. 68.082 and 68.083, F.S.<sup>47</sup>
- Recover other funds by the Department of Legal Affairs using the procedures set forth in ss. 68.082 and 68.083, F.S., except that venue must lie in the circuit court of the county in which the unit of government is located.
- Recover other funds by a person using the procedures set forth in ss. 68.082 and 68.083, F.S., except that venue must lie in the circuit court of the county in which the unit of government is located.

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<sup>46</sup> A misdemeanor of the first degree is punishable by imprisonment not to exceed one year or a fine not to exceed \$1,000. Sections 775.082 and 775.083, F.S.

<sup>47</sup> Sections 68.082 and 68.083, F.S., relate to civil actions for false claims.

The bill limits the applicability of certain penalties related to the prohibition of extra compensation to contracts or employment agreements entered into on or after July 1, 2015, or the renewal or renegotiation of an existing contract or agreement on or after July 1, 2015.

#### Financial Statements

The bill requires DFS to specify the manner and form for the submission of a WMD monthly financial statement. It requires the WMD to make monthly financial statements available on its website.

#### Prohibited Representation

The bill prohibits specified officers and board members from representing another person or entity for compensation before Enterprise Florida, Inc., or a division, a subsidiary, or the board of directors of corporations created to carry out the missions of Enterprise Florida, Inc., or which a division is required by law to contract to carry out its missions, for a period of two years after retirement from or termination of service to a division. However, the bill provides that it is not a violation for a specified officer or board member to participate in the establishment or calculation of payments related to the private match requirements of s. 288.904(3), F.S., or any individual component of the 4-year marketing plan of his or her principal within two years after termination from service on the board.

The bill prohibits a director of the board of directors of the Florida Development Finance Corporation from representing another person or entity for compensation before the Florida Development Finance Corporation for a period of two years after his or her service on the board.

#### Miscellaneous

The bill provides that it fulfills an important state interest.

### B. SECTION DIRECTORY:

Section 1 amends s. 11.40, F.S., specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the Commissioner of Education may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements.

Section 2 amends s. 11.45, F.S., revising and providing definitions; excluding water management districts from certain audit requirements applicable to the Auditor General.

Section 3 amends s. 28.35, F.S., revising reporting requirements applicable to the corporation.

Sections 4, 13, 17, 23, 25 amend ss. 43.16, 215.86, 218.33, and 1002.33, 1010.01, F.S., revising the responsibilities of each state agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, governing bodies of charter schools, each school district, Florida College System institution, and state university to establish certain internal controls.

Section 5 amends s. 112.31455, F.S., correcting a cross-reference; revising provisions governing collection methods for unpaid automatic fines for failure to timely file disclosure of financial interests to include school districts.

Section 6 creates s. 112.31456, F.S., authorizing the Commission to seek wage garnishment of certain individuals to satisfy unpaid fines; authorizing the Commission to refer unpaid fines to a collection agency; establishing a statute of limitations with respect to the collection of an unpaid fine.

Section 7 amends s. 112.3261, F.S., revising definitions to conform to changes made by the act; expanding the types of governmental entities that are subject to lobbyist registration requirements; requiring such entities to create lobbyist registration forms.

Sections 8, 9, 10, and 11 amend ss. 129.03, 129.06, 166.241, and 189.016, F.S., requiring counties, municipalities, and special districts to maintain certain budget documents on the entities' websites for a specified period.

Section 12 amends s. 215.425, F.S., defining public funds; requiring certain contracts to which a unit of government or state university is a party during a specified period to contain certain prohibitions on severance pay; requiring a unit of government to investigate and take necessary action to recover prohibited compensation; specifying methods of recovery and liability for unintentional and willful violations; providing a penalty; authorizing the Governor to suspend officers under specified circumstances; establishing eligibility criteria and amounts for awards; specifying circumstances under which an employee has a cause of action under the Whistle-blower's Act; establishing causes of action if a unit of government fails to recover prohibited compensation within a certain timeframe; providing applicability.

Section 14 amends s. 215.97, F.S., revising the definition of the term "audit threshold."

Section 15 amends s. 215.985, F.S., revising the requirements for a monthly financial statement provided by a WMD.

Section 16 amends s. 218.32, F.S., revising the requirements of the annual financial audit report of a local governmental entity; authorizing DFS to request additional information from a local governmental entity; requiring a local governmental entity to respond to such requests within a specified timeframe.

Section 18 amends s. 218.39, F.S., requiring an audited entity to respond to audit recommendations under specified circumstances.

Section 19 amends s. 218.391, F.S., revising the composition of audit committees; prohibiting an audit committee member from being an employee, chief executive officer, or chief financial officer of the respective governmental entity; requiring the chair of an audit committee to execute an affidavit affirming compliance with auditor selection procedures; providing procedures in the event of noncompliance with auditor selection procedures.

Section 20 amends s. 288.92, F.S., prohibiting specified officers and board members of Enterprise Florida, Inc., from representing a person or entity for compensation before Enterprise Florida, Inc., for a specified timeframe.

Section 21 amends s. 288.9604, F.S., prohibiting a director of the board of directors of the Florida Development Finance Corporation from representing a person or entity for compensation before the corporation for a specified timeframe.

Section 22 amends s. 373.536, F.S., deleting obsolete language; requiring WMDs to maintain certain budget documents on the WMD's websites for a specified period.

Section 24 amends s. 1002.37, F.S., requiring completion of an annual financial audit of the Florida Virtual School; specifying audit requirements; requiring an audit report to be submitted to the board of trustees of the Florida Virtual School and the Auditor General; removing an obsolete provision.

Section 26 amends s. 1010.30, F.S., requiring a district school board, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances.

Sections 27, 28, 29, and 30 amend ss. 68.082, 68.083, 218.503, and 1002.455, F.S., conforming provisions and cross-references to changes made by the act.

Section 31 declares that the act fulfills an important state interest.

Section 32 provides an effective date of October 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires members of the public to register as a lobbyist when lobbying a specified unit of local government. Current law authorizes a fee for each registration, which may not exceed \$40.

### D. FISCAL COMMENTS:

The bill may have an indeterminate but likely insignificant negative fiscal impact on state and local governments. 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 specified internal controls. Such requirement may require additional time and expense to create the internal controls.

The bill amends provisions related to the prohibition against extra compensation. It requires investigations of allegations, and repayment of any prohibited compensation. It also requires the payment of rewards to individuals who report violations. The changes may result in the recovery of prohibited payments, but it also will have an associated increased workload cost for investigations and the payment of rewards.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments to establish and maintain specified internal controls. An exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. An exception also may apply because similarly situated persons are all required to comply and the bill articulates a threshold finding of serving an important state interest.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill requires DFS to specify the form and manner for the submission of water management district monthly financial statements.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with a committee substitute. The committee substitute:

- Clarifies that the internal controls must ensure the reliability of financial records and reports.
- Reduces the amount the CFO or the governing body of the county, municipality, or special district may withhold from an individual's public salary-related payment to 25 percent, rather than the entire amount of any fine owed.
- Requires a local governmental entity to model its registration form after the legislative branch or executive branch lobbyist registration form. The form must be returned to the local governmental entity.
- Requires an independent certified public accountant completing an audit to state whether or not the entity's financial report agrees with the audited financial statements, rather than the audit report.
- Revises the audit membership requirements for an audit committee of a municipality, special district, district school board, charter school, or charter technical career center to require one of the members to be a member of the governing body of the municipality, special district, district school board, charter school, or charter technical career center. It also provides that the chair of the audit committee must be a member of such governing body.
- Deletes a provision that limited an audit contract to two years.
- Requires an audit submitted pursuant to s. 218.39, F.S., to include an affidavit that the auditor was selected in accordance with s. 218.391(3)-(6), F.S., which provides a competitive procurement process.
- Changes the effective date to October 1, 2015, rather than July 1, 2015.

On April 7, 2015, the Appropriations Committee adopted a strike-all amendment and reported the bill favorably with a committee substitute. The committee substitute:

- Changes the amount that may be withheld from an individual's public salary-related payment for failure to timely file disclosure of financial interests back to current law.
- Adds school district to the list of governmental entities who may withhold salary-related payments for failure to timely file disclosure of financial interests.
- Defines public funds in s. 215.425, F.S.
- Exempts a bonus or severance pay that is paid from sources other than public funds, or from patient services from private insurers from s. 215.425, F.S.

On April 14, 2015, the State Affairs Committee adopted two amendments and reported the bill favorably with a committee substitute. The committee substitute:

- Specifies that the lobbyist registration form must be modeled after the printed or online version of the legislative or executive branch lobbyist registration form, and may be returned electronically to the governmental entity.
- Provides that the prohibition against extra compensation does not include specified revenues for state universities, public hospitals, special districts, and Florida College System institutions.
- Limits the applicability of certain penalties related to the prohibition of extra compensation to contracts or employment agreements entered into on or after July 1, 2015, or the renewal or renegotiation of an existing contract or agreement on or after July 1, 2015.
- Provides that it is not a violation of the prohibition against representation before Enterprise Florida, Inc., or specified divisions, subsidiaries, or boards, to participate in the establishment or calculation of payments related to the private match requirements or any individual component of the 4-year marketing plan of his or her principal within two years after termination from service on the board.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

