

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 Ethics and Elections

BILL: CS/SB 686

INTRODUCER: Ethics and Elections Committee and Senator Gaetz

SUBJECT: Government Accountability

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.			GO	
3.			CA	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 686 is an omnibus government accountability bill. The bill creates a new monthly report required of legislative branch lobbyists to disclose which bills, appropriations, or proposed legislation the lobbyists are seeking to support, oppose, or influence. If a lobbyist fails to file the disclosure within 7 business days of the beginning of the month, a fine is imposed of \$50 per day up to a maximum of \$5,000; which may be waived upon a demonstration of unusual circumstances. The bill prohibits legislators from accepting employment with private entities that directly receive funding through state revenues appropriated by the General Appropriations Act. A member who is employed by such an entity may keep his or her employment, however, there are limitations on advancement, promotions, additional compensation, or anything of value that is given because of his or her position. Additionally, such advancement, promotion, additional compensation, or thing of value may not be inconsistent with that given to any other similarly situated employee. The bill includes changes to Florida's governmental ethics policies including broadening the water management district lobbyist registration provisions to apply to many more special districts, and applying post-employment lobbying restrictions to certain individuals with Enterprise Florida, its divisions, and the Florida Development Finance Corporation. The bill applies certain ethics standards and post-employment lobbying restrictions to corporations created or housed within the Department of Economic Opportunity that are not currently covered by ethical standards. The bill extends the conflicting contractual relationship ban in s. 112.313(7)(a), F.S., to include contracts held by a business entity in which a public officer or public employee holds a controlling interest in a business entity or are an officer, director, or a

member who manages such an entity. The bill also requires that, beginning in 2016, all elected municipal officers must file the more detailed CE Form 6 financial disclosure with their qualifying papers and for each year that they hold office. The bill allows the Commission on Ethics to initiate its own investigations, by super-majority vote, based upon receipt of reliable and publicly disseminated information. The bill amends Florida's criminal provisions relating to Bribery, Misuse of Public Office, Unlawful Compensation or Reward for Official Behavior, Official Misconduct, Bid Tampering to replace the corrupt intent mens rea requirement with the knowingly and intentionally mens rea requirement. The bill also applies those crimes to "public contractors."

The bill also requires local governmental entities to keep their final budgets, and any amendments thereto, on their website for a period of 2 years after adoption.

The bill requires various governmental entities to adopt internal controls to prevent and detect fraud, waste, and abuse.

The bill makes it a first degree misdemeanor to provide prohibited compensation. The bill requires governmental entities to investigate claims of unauthorized compensation and authorizes litigation to enforce the civil penalty and treble damages provisions. Finally, it provides a reward structure and extends Whistle-blower's Protection Act coverage to those reporting prohibited compensation. The bill also makes compensation claims in violation of s. 215.425, F.S., a false claim against the state. Thus, the state would be authorized to sue to recover damages and civil penalties as provided in ss. 68.082 and 68.083, F.S. (The False Claims Act). Additionally, the Department of Financial Services is authorized to file suit under the False Claims Act.

The bill allows the Governor or Commissioner of Education, or their designees, to report that a local governmental entity has failed to comply with applicable auditing, financial reporting, bond issuance notification, bond verification provisions, or failed to disclose a financial emergency or provide information required during a financial emergency. It increases the Single Audit Act threshold from \$500,000 to \$750,000 and allows the Auditor General to review the threshold periodically and make appropriate recommendations to the Legislature. It makes changes to the financial reporting requirements and independent audit requirements. The bill specifies who can serve as members of the auditor selection committees for local governmental entities. It requires the Florida Virtual School to have an independent financial audit each year.

If an audit report of a school district, Florida College System institution, or other institution or agency under the supervision of the State Board of Education and state universities under the supervision of the Board of Governors includes a recommendation that was in the preceding financial audit report, the entity must indicate its intent regarding corrective action within 60 days after the delivery of the audit report. This response must occur during a regularly scheduled public meeting.

The bill also requires the Florida Clerk of Courts Corporation to notify the Legislature quarterly of any clerk of court not meeting workload requirements and provide corrective action plans within 45 days of the end of the quarter.

The bill requires a water management district monthly financial report to be provided in the format required by the Department of Financial Services.

The Governor or the Commissioner of Education must notify the Legislative Auditing Committee of financial emergencies instead of notifying the members of the Legislative Auditing Committee.

Finally, the bill clarifies that members of the public are not required to provide an advance written copy of his or her testimony or comments as a precondition to being given the opportunity to be heard.

CS/SB 686 is effective October 1, 2016.

I. Present Situation:

For the purposes of this bill analysis, the Present Situation will be addressed in the III. Effect of Proposed Changes section below.

II. Effect of Proposed Changes:

Statement of Legislative Findings and Intent

The bill explains that the intent of the bill is to prevent fraud, waste, and abuse, and to safeguard government resources. Specifically, section 44 of the bill provides: “The Legislature finds that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property. Therefore, the Legislature determines and declares that this act fulfills an important state interest.”

Governmental Ethics Laws

Legislative Branch Lobbying

Present Situation: Sections 11.045 through 11.062 of the Florida Statutes, regulate legislative branch lobbying. Section 11.045, F.S., requires legislative branch lobbyists to register; to file quarterly compensation reports; prohibits expenditures; authorizes advisory opinions on application of the expenditure ban and disclosure requirements; and authorizes investigations and punishment of violations. Section 11.0451, F.S., prohibits a convicted felon from registering as a legislative branch lobbyist until such time as he/she has been released from incarceration and any postconviction supervision, has paid all court costs and court ordered restitution, and had his/her civil rights restored. Section 11.0455, F.S., requires lobbyists compensation reporting to be filed electronically. Section 11.047, F.S., prohibits contingency fee arrangements concerning the enactment, defeat, modification, or other outcome of certain legislative action. Such arrangements are made a first degree misdemeanor. Section 11.061, F.S., requires registration of lobbyists employed by the state, universities, and community colleges and requires them to record their attendance at committee meetings with the committee chairman. Additionally, such individuals are required to record with the joint legislative office that he or she is in attendance in

the chambers, committee rooms, legislative hallways, and other areas in the immediate vicinity. Finally, s. 11.062, F.S., prohibits the use of state funds for lobbying.

Effect of the Bill: The bill requires each house of the Legislature (or by joint rule) to provide monthly reporting requirements by rule that include:

- The name, address, and telephone number of the lobbying firm;
- The name of the firm's lobbyists;
- An itemized list of the firm's lobbying activity specifying:
 - The proposed legislation or proposed legislative action that the firm has attempted to support, oppose, or influence;
 - The entity lobbied;
 - Each principal on behalf of whom the firm acted; and
 - If lobbying on an appropriation, the intended recipient of the appropriation.

The bill requires the reports to identify proposed legislation by any legislatively assigned identifying numbers including bill numbers, amendment barcode numbers, or specific appropriation numbers. If the proposed legislation does not have an identifying number assigned, the report must include a description of the subject matter of the proposed legislation, whether the lobbying firm is supporting or opposing the proposed legislation and, if seeking to modify the proposed legislation, how the lobbying firm's modification would alter the proposal. The reports must be filed even if the firm did not engage in any activities requiring disclosure during that month. If no such activities occurred, then the firm must simply indicate that the disclosures are not applicable.

The reports are required to be filed by the seventh business day after the end of the preceding month. If late, the firm is subject to a penalty of \$50 per day up to a maximum of \$5,000. The bill contains a one-time waiver for the first missed deadline. It also provides authority to appeal the fine based upon unusual circumstances. All lobbyist registrations are suspended until the fine is paid. Finally, failure to disclose any fact required to be disclosed or knowingly providing false information is a noncriminal infraction punishable by fine up to \$5,000. That penalty is in addition to any other penalty assessed for failing to timely file the forms.

Executive Branch Lobbying

Present Situation: Sections 112.3215 through 112.3217 of the Florida Statutes, regulate executive branch lobbying. Section 112.3215, F.S., requires executive branch lobbyists to register; to file quarterly compensation reports; prohibits expenditures; authorizes advisory opinions on application of the expenditure ban and disclosure requirements; and authorizes investigations and punishment of violations. Section 112.32151, F.S., prohibits a convicted felon from registering as an executive branch lobbyist until such time as he/she has been released from incarceration and any postconviction supervision, has paid all court costs and court ordered restitution, and had his/her civil rights restored. Section 112.32155, F.S., requires lobbyists compensation reporting to be filed electronically. Section 112.3217, F.S., prohibits contingency fee arrangements concerning the enactment, defeat, modification, or other outcome of certain executive action. Such arrangements are made a first degree misdemeanor.

Effect of the Bill: The bill requires a lobbying firm to file monthly reports if it lobbies the Governor to approve or veto a bill or appropriation. The report must contain the same information that legislative branch lobbyists are required to disclose described above. In fact, the legislative form promulgated for that report may be filed with the Commission on Ethics to satisfy the reporting requirement. The reports must be filed even if the firm did not engage in any activities requiring disclosure during that month. If no such activities occurred, then the firm must simply indicate that the disclosures are not applicable.

The reports are required to be filed by the seventh business day after the end of the preceding month. If late, the firm is subject to a penalty of \$50 per day up to a maximum of \$5,000. The bill contains a one-time waiver for the first missed deadline. It also provides authority to appeal the fine to the Commission on Ethics based upon unusual circumstances. All lobbyist registrations are suspended until the fine is paid. Finally, failure to disclose any fact required to be disclosed or knowingly providing false information is a noncriminal infraction punishable by fine up to \$5,000. That penalty is in addition to any other penalty assessed for failing to timely file the forms. The Commission on Ethics is authorized to investigate any complaint concerning a failure to file the report or allegation that any false information is contained in the report.

Employment of Members of the Legislature

Present Situation: Article II, Section 8e of the State Constitution prohibits members of the legislature from personally representing another person or entity for compensation before any state agency other than judicial tribunals. Additionally, s. 112.3125, F.S., prohibits legislators (as well as other public officers) from being employed by the state or any of its political subdivisions if he or she knows, or with the exercise of reasonable care should know, that the position is being offered for the purpose of gaining influence or other advantage based upon his or her service as a legislator. A legislator may accept public employment if: the position was already in existence or was created before the entity knew the legislator was interested in the position; the position was publicly advertised; the legislator was subject to the same application and hiring process as other candidates for the position; and, the legislator meets or exceeds the qualifications for the position.

The standards of conduct in the Code of Ethics for Public Officers and Employees also contain several limitations on the types of private sector employment and duties that a legislator may have. Specifically, s. 112.313(3), F.S., prohibits a legislator from doing business with the legislature; s. 112.313(7), F.S., prohibits legislators from having employment or contractual relationships with any business entity or agency that is subject to the regulation of, or doing business with, the Legislature. That Section also prohibits employment or contractual relationships that will create a continuing or frequently recurring conflict of interests or that would impede the proper performance of his or her public duties. Several other provisions of the Code prohibit certain actions, even if the employment or contractual relationship itself is permitted.

Effect of the bill: The bill prohibits legislators from accepting employment with private entities that directly receive funding through state revenues appropriated by the General Appropriations Act. A member who is employed by such an entity may keep his or her employment; however, there are limitations on advancement, promotions, additional compensation, or anything of value

that is given because of his or her position. Additionally, such advancement, promotion, additional compensation, or thing of value may not be inconsistent with that given to any other similarly situated employee.

Investigations by the Commission on Ethics

Present Situation: Section 112.324, F.S., authorizes the Commission on Ethics to investigate alleged ethics violations received via ethics complaint or referral from the Governor, the Florida Department of Law Enforcement, a state attorney, or a United States Attorney. The Commission does not have the authority to initiate an investigation outside of these avenues. Upon receipt of the allegations, the Commission must determine whether the complaint or referral is legally sufficient; that is, that the complaint indicates a possible violation of the ethics laws. If legally sufficient, the Commission must investigate the allegations and determine whether or not there is probable cause to believe the ethics law were actually violated. If probable cause is found, the respondent may either enter into a settlement agreement or may have a public hearing to determine whether, by a preponderance of the evidence, the violation occurred. If it is determined that a violation occurred, the findings are reported to the Governor or other appropriate authority for imposition of penalties.

Effect of the bill: The bill authorizes the Commission on Ethics to initiate investigations based upon receipt of reliable and publicly disseminated information indicating a potential violation of the ethics laws. Seven of the nine Commission members must vote to initiate the investigation for the investigation to begin. After the investigation is initiated, the matter will proceed in the same manner as a complaint or referral.

Collection Methods for Unpaid Financial Disclosure Fines

Present Situation: Section 112.31455, F.S., authorizes the Florida Commission on Ethics to engage in common-law withholding of wages and to seek garnishment in order to collect unpaid financial disclosure fines. Prior to referring such a fine to the Department of Financial Services, the Florida Commission on Ethics must attempt to determine whether or not the filer is a current public officer or public employee.¹ If the person is currently a public officer or public employee, the Florida Commission on Ethics may notify the Chief Financial Officer or the governing body of the appropriate county, municipality, or special district of the total amount of the fine owed to the Florida Commission on Ethics. After receipt and verification of the notice from the Florida Commission on Ethics, the appropriate governing body is required to begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment. The withheld payments shall be remitted to the Florida Commission on Ethics until the fine is satisfied. Additionally, the Chief Financial Officer or appropriate governing body may retain an amount from each withheld payment to cover administrative costs incurred under s. 112.31455(1)(b), F.S. In the event that the Florida Commission on Ethics determines that the person is no longer a public officer, or is unable to make such a determination, the Florida Commission on Ethics must wait for 6 months. After that period of time, the Florida Commission on Ethics can seek garnishment pursuant to ch. 77, F.S. Additionally, the Florida Commission on Ethics can refer the unpaid fine to a collection agency.² The collection agency

¹ Section 112.31455(1), F.S.

² Section 112.31455(3), F.S.

can use any legal tool it may possess to collect the unpaid fine. The statute of limitations for an unpaid financial disclosure fine is 20 years.³

Effect of the Bill: The bill expressly requires school districts to withhold public salary-related payments after receiving notice from the commission that an employee has an unpaid fine, including a portion to cover any administrative costs incurred under this section.

Lobbying Registration and Reporting Requirements for Certain Districts

Present Situation: Section 112.3261, F.S., requires a person who seeks to lobby a water management district to register as a lobbyist before he or she begins to lobby. The lobbyist must present a signed statement authorizing him or her to act on the principal's behalf. The statement must also state the principal's main business. Changes to this information must be reported within 15 days. Water management districts may create their own lobbyist registration forms or use a legislative or executive branch lobbyist registration form. Districts are required to be diligent in ascertaining whether lobbyists have properly registered and may not knowingly allow a lobbyist to lobby if he or she is not registered. The Florida Commission on Ethics is charged with investigating complaints alleging that a lobbyist has failed to register or provided false information in a report or registration. The Governor has the authority to enforce the Florida Commission on Ethics' findings and recommendation. The water management districts were granted rulemaking authority to adopt rules and establish procedures to govern lobbyist registration, including the adoption of forms and the establishment of a lobbyist registration fee not to exceed \$40.

Effect of the Bill: The bill expands the scope of these lobbyist registration and reporting requirements to apply to hospital districts, a children's services district, expressway authorities, port authorities, counties or municipalities that have not adopted lobbyist registration or reporting requirements, or any independent special district with annual revenues of more than \$5 million which exercises ad valorem taxing authority.

Post Service Lobbying Restrictions

Present Situation: Section 288.92, F.S., authorizes Enterprise Florida to create and dissolve divisions as necessary to carry out its mission. That section also requires Enterprise Florida to have certain divisions. The law also provides for hiring of officers and members of the divisions of Enterprise Florida and subjects certain officers and members to several standards of conduct in the Code of Ethics for Public Officers and Employees.⁴ The law currently does not contain any post-employment or post-service restrictions.

The Florida Development Finance Authority is created in s. 288.9604, F.S. That provision addresses appointment of members of the board of directors and powers of the corporation. It also subjects directors to several standards of conduct in the Code of Ethics for Public Officers and Employees.⁵ The law currently does not contain any post-employment or post-service restrictions.

³ Section 112.31455(4), F.S.

⁴ Part III, Chapter 112, Florida Statutes.

⁵ Part III, Chapter 112, Florida Statutes.

The Department of Economic Opportunity is created in s. 20.60, F.S., and has numerous entities under its purview in various chapters of the Florida Statutes. While the Department is an agency, and therefore subject to the provisions of the Code of Ethics for Public Officers and Employees, many of the divisions and corporations created by, or administratively housed in, may not be subject to the provisions. In 2014, the Legislature required that the officers and board members of Enterprise Florida, its divisions, its subsidiaries, corporations created to carry out the missions of Enterprise Florida, and of corporations with which a division is required to contract with in order to carry out its missions are all subject to specified standards of conduct.⁶ The Legislature also applied certain standards of conduct to the Florida Development Finance Corporation.⁷

Effect of the Bill: The bill prohibits officers and members of the boards of directors of the divisions of Enterprise Florida, subsidiaries of Enterprise Florida, corporations created to carry out the missions of Enterprise Florida, and corporations with which a division is required by law to contract to carry out its missions, from representing another person or entity for compensation before Enterprise Florida, Inc., divisions of Enterprise Florida, subsidiaries of Enterprise Florida, corporations created to carry out the missions of Enterprise Florida, and corporations with which a division is required by law to contract to carry out its missions, for a period of 2 years after retirement or termination of service to a division. If such person is removed or terminated for misconduct, as defined in s. 443.036(29), F.S., that term is extended to a period of 10 years after termination of the service.

The bill also prohibits directors of the Florida Development Finance Authority from representing another person or entity for compensation before the corporation, for a period of 2 years after retirement or termination of service.

The bill subjects the officers and members of the boards of directors of any corporation created pursuant to ch. 288, F.S., Space Florida, CareerSource Florida, Inc., the Florida Housing Finance Corporation, or any other corporation created by the Department of Economic Opportunity to certain standards of conduct. Specifically, those individuals are subject to the anti-nepotism provision in s. 112.3135, F.S., the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S., and the standards of conduct in s. 112.313, F.S. Additionally, the bill prohibits a former officer or board member from representing a person or entity for compensation before his or her corporation; a division, subsidiary or the board of directors of a corporation created to carry out the mission of his or her corporation; a corporation with which his or her former corporation within DEO is required by law to contract with to carry out its missions for a period of 6 years after retirement or termination of service with the DEO corporate entity. If he or she is removed due to misconduct, as defined in s. 443.036(29), F.S., the prohibition applies for a period of 10 years.

Conflicting Employment and Contractual Relationships

Present Situation: Section 112.313(7)(a), F.S., prohibits public officers and employees of an agency from having employment or contractual relationships with a business entity or agency that is subject to the regulation of, or doing business with, his or her agency. That section further prohibits public officers and employees of an agency from having employment or a contractual

⁶ Section 8, Ch. 2014-183, L.O.F.

⁷ Section 9, Ch. 2014-183, L.O.F.

relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

In its annual reports to the Legislature for the last several years, the Commission on Ethics has advised that the law needs to be amended. Specifically, the Commission has advised that individuals were creating a fictitious legal entity then using those fictitious legal entities to engage in contracts that would be prohibited if the people entered them individually.

Effect of the Bill: The bill provides that if a public officer or public employee holds a controlling interest in a business entity or is an officer, director, or a member who manages such an entity, contractual relationships held by the business entity are deemed to be held by the public officer. As such, if a public officer or public employee holds a controlling interest in a business entity or is an officer, director, or a member who manages such an entity, it would be a violation for the business entity to have a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties. The public officer or public employee would face penalties ranging from censure and reprimand to removal from office. The penalties also permit a civil fine up to \$10,000 per violation.

CE Form 6 Financial Disclosure

Present Situation: Section 112.3144, F.S., requires certain officers that are specified in Article II, Section 8 of the State Constitution, and other officers as required by law, to file a Full and Public Disclosure of Financial Interests (commonly referred to as a CE Form 6). That statute addresses what is required to be disclosed, the due date of the disclosure, the processes to amend the disclosure, and penalties for failing to file the CE Form 6 as required. This filing is more detailed than what is referred to as a CE Form 1 which is filed annually by other officers as provided in s. 112.3145, F.S. Currently, elected municipal officers are subject to the CE Form 1 filing requirement.

Effect of the Bill: The bill requires all elected municipal officers to file the more detailed CE Form 6 annually as provided in s. 112.3144, F.S., beginning with the 2016 filing year.⁸ The bill also amends s. 99.061, F.S., to require a candidate for elected municipal office to file a CE Form 6 with his or her qualifying papers.

⁸ Financial disclosure, much like federal income tax filings, are done for the preceding year. Thus, elected municipal officers will be required to file the CE Form 6 for the first year by July 1, 2017.

Criminal Ethics Provisions

Nineteenth Statewide Grand Jury

A statewide grand jury⁹ was impaneled in February 2010 upon the petition of Governor Charlie Crist to the Supreme Court of Florida. In the Petition for Order to Impanel a Statewide Grand Jury, Governor Crist requested that the following should be addressed:¹⁰

- Examine criminal activity of public officials who have abused their powers via their public office;
- Consider whether Florida’s prosecutors have sufficient resources to effectively combat corruption;
- Address the effectiveness of Florida’s current statutes in fighting public corruption;
- Identify any deficiencies in current laws, punishments or enforcement efforts and make detailed recommendations to improve our anti-corruption initiatives;
- Investigate crimes, return indictments, and make presentations; and
- Examine public policy issues regarding public corruption and develop specific recommendations regarding improving current laws.

The Nineteenth Statewide Grand Jury issued its First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions on December 17, 2010. In its report, the Nineteenth Statewide Grand Jury made several recommendations to the Legislature, including revisions to ch. 838, F.S., regarding the definitions of the terms “public servant” and “corruptly” and “corrupt intent,” and the offenses of bribery, unlawful compensation or reward for official behavior, official misconduct, and bid tampering.

Color of Law

Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed “under color of law” where the enhancements for wrongful conduct are based on public authority or position or the assertion of such that does not form an element of the underlying crime. The Nineteenth Statewide Grand Jury also recommended that the legislature consider reclassification of such offenses.¹¹

Doctrine of Mens Rea and Scienter

The term “mens rea” is defined as “a guilty mind; a guilty or wrongful purpose; a criminal intent.”¹² Black’s Law Dictionary notes that the term scienter is defined as “knowingly” and frequently used to signify the defendant’s guilty knowledge.¹³ The general rule is that scienter or mens rea is a necessary element in the indictment for every crime.¹⁴

⁹ See ss. 905.31-905.40, F.S., known as the Statewide Grand Jury Act.

¹⁰ Nineteenth Statewide Grand Jury First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions, December 17, 2010, Case No. SC 09-1910. Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf) (last visited on November 20, 2015).

¹¹ See *supra* note 2.

¹² BLACK’S LAW DICTIONARY 1137 (4th Rev. 1968).

¹³ *Id.* 1512.

¹⁴ *Chicone v. State*, 684 So.2d 736, 741 (Fla. 1996). Also, see *U.S. v. Balint*, 258 U.S. 250 (1922).

The Nineteenth Statewide Grand Jury found that the use of the word “corruptly” or “with corrupt intent” made prosecutions of offenses under ch. 838, F.S., more difficult and might require additional evidence, such as testimony from persons involved.¹⁵ The Nineteenth Statewide Grand Jury recommended that the additional element of “corruptly” or “with corrupt intent” be removed from the ch. 838, F.S., offenses of bribery, unlawful compensation, official misconduct, and bid tampering.¹⁶

Bribery; Misuse of Public Office: Chapter 838, F.S.

Present Situation: Chapter 838, F.S., pertains to bribery and other offenses concerning the misuse of public office.

Section 838.014(4), F.S., defines the term “corruptly” or “with corrupt intent” as acting knowingly and dishonestly for a wrongful purpose.

Section 838.014(6), F.S., defines the term “public servant” as:

- a) Any officer or employee of a state, county, municipal, or special district agency or entity;
- b) Any legislative or judicial officer or employee;
- c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

Bribery

Present Situation: Section 838.015, F.S., relates to the offense of bribery.¹⁷ Any individual who violates this section is guilty of a felony of the second degree, which is punishable as provided for in ss. 775.082, 775.083, or 775.084, F.S.¹⁸

Chapter 838, F.S., also contains 3 other bribery offenses, including bribery in athletic contests,¹⁹ commercial bribery receiving,²⁰ and commercial bribery.²¹ In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was invalid.²² The

¹⁵ See *supra* note 2, at 24.

¹⁶ *Id.*

¹⁷ Section 838.015(1), F.S., defines “bribery” as corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

¹⁸ Section 838.015(3), F.S. Under sections 775.082 and 775.083, Florida Statutes, a second degree felony is punishable by a term of imprisonment not to exceed 15 years, and a maximum fine of \$10,000. Section 775.084, Florida Statutes, relates to habitual felony offenders. If a habitual felony offender is convicted of a second degree felony, such offender may be sentenced for a term not exceeding 30 years.

¹⁹ Section 838.12, F.S.

²⁰ Section 838.15, F.S.

²¹ Section 838.16, F.S.

²² *Roque v. State*, 664 So.2d 928 (Fla. 1995). The Court further noted that s. 838.015, F.S., was impermissibly vague and subject to arbitrary application. *Id.* at 929.

Nineteenth Statewide Grand Jury Report opined that s. 838.16, F.S., commercial bribery, was probably unconstitutionally vague since s. 838.16, F.S., referred to s. 838.15, F.S.²³

Unlawful Compensation or Reward for Official Behavior

Present Situation: Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. Any person who violates this section commits a second degree felony which is punishable as provided for in ss. 775.082, 775.083, or 775.084, F.S.²⁴

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. It is a second degree felony for any person corruptly to give, offer, or promise to any public servant any benefit not authorized by law; or for any public servant corruptly to request, solicit, accept or agree to accept any benefit not authorized by law:

- For the past, present, or future performance, nonperformance or violation of any act or omission; or
- For the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been or the public servant represents to have been either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

Official Misconduct

Present Situation: The offense of official misconduct contained in s. 838.022(1), F.S., provides that it “is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another to:

- e) Falsify, or cause another person to falsify, any official record or official document;
- f) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
- g) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

Any person who violates this section commits a felony of the third degree, which is punishable as provided for in sections 775.082, 775.083, or section 775.084, F.S.²⁵

Bid Tampering

Present Situation: Section 838.22, F.S., provides that:

- 1) It is unlawful for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:

²³ See *supra* note 2, at 34.

²⁴ Section 838.016(4), F.S. Also, see *supra* note 4.

²⁵ Section 838.022(3), F.S. Under sections 775.082 and 775.083, Florida Statutes, a third degree felony is punishable by a term of imprisonment not to exceed 5 years, and a maximum fine of \$5,000. Section 775.084, Florida Statutes, relates to habitual felony offenders. If a habitual felony offender is convicted of a third degree felony, such offender may be sentenced for a term not exceeding 10 years.

- a) Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.
 - b) Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.
- 2) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.
 - 3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate subsection (1) or subsection (2).
 - 4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant acting in violation of subsection (1) or subsection (2).
 - 5) Any person who violates this section commits a felony of the second degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.²⁶

Effect of the Bill: The bill amends s. 838.014, F.S., to define the term “governmental entity” as an agency or entity of the state, a county, a municipality, or a special district or any other public entity created or authorized by law. The bill appears to expand the definition of “governmental entity” to include other public entities, such as Citizens Property Insurance Corporation,²⁷ statutorily-created direct support organizations,²⁸ and other statutorily-created public entities. The definition of “corruptly” or “with corrupt intent” is eliminated.

The bill defines the term “public contractor” as any person, as defined in s. 1.01, F.S., who has entered into a contract with a governmental entity; or any officer or employee of a person, as defined in s. 1.01, F.S., who has entered into a contract with a governmental entity. “Person” is defined in s. 1.01(3), F.S., as “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”

The bill amends s. 838.015(1), F.S., relating to bribery; s. 838.016, F.S., relating to unlawful compensation or reward for official behavior; s. 838.022, F.S., relating to official misconduct; and s. 838.22, F.S., relating to bid tampering, to change the mens rea element of each crime from “corruptly” to “knowingly and intentionally.” Additionally, s. 838.022, F.S., relating to official misconduct, is clarified so that the benefit received by the other person must be an “improper” benefit or the harm caused to another must be an “unlawful” harm. Further, these provisions are modified to apply to “public contractors.” The offense known as “Bid Tampering” in s. 838.22, F.S., is renamed “Unlawful Influence of the Competitive Solicitation Process.”

²⁶ See *supra* note 3.

²⁷ Section 627.351(6), F.S. Citizens Property Insurance Corporation was created in 2002 as a not-for-profit insurer of last resort for home-owners who could not obtain insurance elsewhere.

²⁸ A direct support organization is an organization incorporated under ch. 617, F.S., and approved by the Department of State as a Florida corporation not for profit that is approved by a state agency to operate for the benefit of a specific program, such as the Florida Historic Capitol Museum Council’s direct support organization. See s. 272.131(1)(e), F.S.

Online Posting of Governmental Budgets

Counties, Municipalities, and Special Districts

Present Situation: Counties²⁹, municipalities³⁰, and special districts³¹ are required to post their tentative budgets on their websites 2 days prior to consideration of the budget. The final budget of a county, municipality or special district must be posted on the county's, municipality's, or special district's website within 30 days after adoption. An amendment to a budget must be posted to the county's, municipality's, or special district's website within 5 days of adoption.³² Current law does not specify how long those items must remain available on the website.

Effect of the Bill: The bill requires the tentative budget to remain on the county's, municipality's, or special district's website for at least 45 days. The bill also requires that the final adopted budget must remain on the county's, municipality's, or special district's website for at least 2 years. Finally, the bill requires an adopted amendment to the budget to remain on a county's, municipality's, or special district's website for at least 2 years.

Water Management Districts

Present Situation: Chapter 373 governs Florida's water resource management. That chapter includes provisions authorizing the creation of water management districts and provides those districts with taxing authority. Section 373.536, F.S., governs water management districts' budget process. That section also requires financial audits, 5-year capital improvement plans, and 5-year water resource development work programs. All of these items must be submitted to the Department of Environmental Protection as specified in s. 373.536(6), F.S. The tentative budget is required to be posted on the water management district's website at least 2 days before the budget hearings are conducted. The law requires the final budget to be posted on the district's official website within 30 days of adoption.

Effect of the Bill: The bill requires the tentative budget to remain on the district's website for at least 45 days. The bill requires the final budget to remain on the district's website for at least 2 years.

Internal Controls to Prevent and Detect Fraud, Waste, and Abuse

State Agencies and the Judicial Branch

Present Situation: Section 215.86, F.S., provides:

Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. Accounting systems and procedures shall

²⁹ Section 129.03, F.S.

³⁰ Section 166.241, F.S.

³¹ Section 189.016, F.S.

³² Section 129.06, F.S.

be designed to fulfill the requirements of generally accepted accounting principles.

Local Governmental Entities

Present Situation: Section 218.33, F.S., requires each local governmental entity to begin its fiscal year on October 1 and end it on September 30. Section 218.33(2), F.S., requires each local governmental entity shall follow uniform accounting practices and procedures as provided by rule of the department to assure the use of proper accounting and fiscal management by such units. Such rules shall include a uniform classification of accounts.

Charter Schools

Present Situation: Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to the creation of charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law requires that the governing body of a charter school is responsible for: ensuring that the charter school has retained a certified public accountant to perform its annual audit; reviewing the audit report; establishing a corrective plan, if necessary; monitoring a financial recovery plan to ensure compliance; and, participating in governance training approved by the Department of Education. That governance training is required to address government in the sunshine, conflicts of interest, ethics, and financial responsibility.

School Districts and Florida College System Institutions

Present Situation: The financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the State Board of Education shall be prepared and maintained as prescribed by law and rules of the State Board of Education. The financial records and accounts of each state university under the supervision of the Board of Governors shall be prepared and maintained as prescribed by law and rules of the Board of Governors. Rules of the State Board of Education and rules of the Board of Governors shall incorporate the requirements of law and accounting principles generally accepted in the United States. Such rules shall include a uniform classification of accounts. Each state university shall annually file with the Board of Governors financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the Board of Governors. The Board of Governors' rules shall prescribe the filing deadline for the financial statements. Required financial accounts and reports shall include provisions that are unique to each of the following: K-12 school districts, Florida College System institutions, and state universities, and shall provide for the data to be reported to the National Center of Educational Statistics and other governmental and professional educational data information services as appropriate.

Justice Administration Commission

Present Situation: The Justice Administration Commission is created in s. 43.16, F.S. Among its duties, the Commission is charged with maintaining a central state office for administrative services and assistance when possible, and on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel of Florida, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program. Additionally, the Commission records

and submits necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans that were created by the state attorney, public defender, and criminal conflict and civil regional counsel and the Guardian Ad Litem Program.

Effect of the Bill: The bill requires each entity³³ to maintain internal 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 economic, efficient, and effective operations; ensure reliability of records and reports; and, safeguard assets. The bill also permits a district school board to retain an internal auditor to determine the adequacy of internal controls described above; compliance with applicable laws, rules, contracts, grant agreements, and best practices; the efficiency of operations; reliability of financial records and reports; and safeguarding of assets.

Extra Compensation Claims and False Claims Act Changes

Extra Compensation Claims

Present Situation: Section 215.425, F.S., prohibits extra compensation to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. However, when adopting salary schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year. That section also requires a contract or employment agreement, or renewal of a contract or employment agreement, containing a provision for severance pay to limit severance pay to 20 weeks and to prohibit severance pay when the individual is terminated for misconduct.

Effect of the Bill: The bill defines “public funds” as:

any taxes, tuition, 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, political subdivision, board, bureau, commission, authority, or institution of such entities.

The bill clarifies that there can be no violation of s. 215.425, F.S., for payment of a bonus or severance pay that is paid from sources other than public funds. Additionally, if allowed under the Code of Ethics for Public Officers and Employees in Part III, Chapter 112, F.S., the following funds may be used to pay extra compensation:

³³ This includes each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem program.

- Revenues received by state universities 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;
- Revenues received by Florida College System institutions through or from faculty practice plans; health services support organizations; direct-support organizations; or federal, auxiliary, or private sources, except for tuition;
- Certain revenues that are received by a hospital licensed under chapter 395 which has entered into a Medicaid Provider Contract, and that:
 - Are not derived from the levy of an ad valorem tax;
 - Are not derived from patient services paid through the Medicaid or Medicare program;
 - Are derived from patient services pursuant to contracts with private insurers or private managed care entities; or
 - Are not appropriated by the Legislature or by 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, political subdivision, board, bureau, commission, authority, or institution of such entities, except for revenues otherwise authorized to be used pursuant to subparagraphs 2. and 3.
- Revenues or fees received by a seaport or airport from sources other than through the levy of a tax, or funds appropriated by any county or municipality or the Legislature.

CS/SB 686 requires new contracts or renewal contracts after October 1, 2016, in which state universities or units of government are a party, to contain a requirement that severance pay from public funds may not exceed 20 weeks and to prohibit severance paid from any source of revenue when the officer, agent, employee, or contractor has been fired for misconduct.

The bill requires a unit of government that has made a prohibited compensation payment to investigate and take all actions necessary to recover the prohibited compensation. If the compensation was provided unintentionally, the unit of government must recover the prohibited compensation through its normal recovery methods. If the prohibited payment was willfully made, the unit of government must recover the payment from either the recipient or the person who authorized the prohibited payment. Willfully providing a prohibited payment would become a first degree misdemeanor under the bill. The bill provides for suspension and removal of officers as follows: An officer who exercises the powers and duties of a state or county office may be suspended by the Governor and removed by the Florida Senate. Any other officer may be suspended and removed by the Governor pursuant to s. 112.51, F.S.

A person who reports the making of a prohibited extra compensation payment is eligible for a reward of at least \$500, or the lesser of 10 percent of the funds recovered or \$10,000 per incident. There is an exception to the reward provision where the recovery of the prohibited compensation is based on disclosures of information relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, inspector general, or other government report; auditor general report, hearing, audit, or investigation; or from the news media. If the person was involved in the authorization, or was convicted for his role in the

unauthorized compensation, he or she is not eligible for the reward. Whistle-blowers are granted full protection under the Whistle-blower's Act.³⁴

If the unit of government fails to recover the prohibited extra compensation payment within 90 days, a lawsuit is authorized to recover those funds using the legal procedures in ss. 68.082, (governing false claims against the state) and 68.083, F.S., (governing civil actions for false claims). Litigation to recover such funds must be brought in the circuit court of the county in which the unit of local government is located.

False Claims Against the State

Present Situation: 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.

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 a violation has occurred, it is authorized to commence a civil action against the violator. Additionally, the Department of Financial Services may bring such a suit if the Department of Legal Affairs has not done so.

Effect of the Bill: The bill makes it a "false claim against the state" for any person to knowingly authorize, approve, or receive payment of prohibited extra compensation in violation of s. 215.425, F.S. A person who authorizes, approves, or receives payment of prohibited extra compensation is subject to the civil penalty ranging from \$5,500 to \$11,000 and for treble the amount of damages that the state sustains as a result of the authorization, approval, or receipt of prohibited compensation.

³⁴ Section 112.3187, F.S.

The bill authorizes the Department of Financial Services to bring a civil action if the action arises from an investigation by that Department concerning a violation of the prohibited extra compensation claim and the Department of Legal Affairs has not filed an action to recover the civil penalty and damages.

Auditing

Joint Legislative Auditing Committee

Present Situation: Section 11.40, F.S., provides:

Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within ss. 11.45(5)-(7),³⁵ 218.32(1),³⁶ 218.38,³⁷ or 218.503(3),³⁸ the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action.

Section 11.45, F.S., defines the types of audits that may be conducted. That section requires the Auditor General to conduct certain state and local governmental audits and specifies the frequency with which the audits must occur. Section 11.45, F.S., also allows the Auditor General to conduct other audits he or she determines to be appropriate. For purposes of s. 11.45, F.S., the term local governmental entity means “a county agency, municipality, or special district as defined in s. 189.012, F.S., but does not include any housing authority established under ch. 421, F.S.”

The Auditor General is required to transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

Effect of the Bill: The bill provides that the Governor or his or her designee, or the Commissioner of Education or his or her designee, may also notify the Joint Legislative Auditing Committee that a local governmental entity has failed to comply with applicable auditing, financial reporting, bond issuance notification, bond verification provisions, or failed to disclose a financial emergency or provide information required during a financial emergency.

The bill defines the terms “abuse,” “fraud,” and “waste” in s. 11.45, F.S., as follows:

³⁵ Section 11.45, F.S., governs certain audits to be conducted by the Auditor General.

³⁶ Section 218.32(1), F.S., requires annual financial reports from local governmental entities.

³⁷ Section 218.38, F.S., requires notice of bond issuance and contains verification requirements.

³⁸ Section 218.503(3), F.S., requires those entities to disclose a financial emergency and provide certain information concerning a financial emergency.

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

The bill also redefines the term “Local governmental entity” for purposes of s. 11.45, F.S., to include tourist development councils and county tourism promotion agencies.

The bill exempts water management districts from being subject to audits pursuant to s. 11.45(2)(j), F.S. The bill allows the Auditor General to conduct audits or other engagements of tourist development councils and county tourism promotion agencies. The bill also conforms the Auditor General’s reporting requirement to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, by removing the obsolete reference to water management districts and replacing it with the phrase “local governmental entity.”

Single Audit Act

Present Situation: The Florida Single Audit Act, s. 215.97, F.S., is designed to establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects; promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities; promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities; provide for identification of state financial assistance transactions in the state accounting records and recipient organization records; promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and, ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities. Pursuant to the Single Audit Act, certain entities that exceed the “audit threshold” are subject to a state single audit or a project specific audit. Currently, the “audit threshold” is defined as:

the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such nonstate entity shall be required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, shall review the threshold amount for requiring audits under this section and may adjust

such threshold amount consistent with the purposes of this section. Section 215.97(2)(a), F.S.

Effect of the Bill: The bill changes the audit threshold from \$500,000 to \$750,000. Additionally, the bill changes the requirement that the Auditor General review the threshold amount for requiring audits from every 2 years to “periodically.” The term “periodically” is not defined in the bill. Finally, the bill authorizes the Auditor General to recommend to the Legislature a statutory change to revise the threshold amount in the annual report submitted pursuant to s. 11.45(7)(f), F.S.

Local Government Entity Annual Financial Reports

Present Situation: Section 218.32, F.S., requires certain local governmental entities to submit an annual financial report for the previous fiscal year. The annual financial report is required to be signed by the chair of the governing body and the chief financial officer of the local governmental entity. That section also specifies what information is required to be in the report.

Additionally, the Department of Financial Services is required to file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.³⁹

Effect of the Bill: The bill requires an independent certified public accountant completing an audit of a unit of local government pursuant to s. 218.39, F.S., to determine, as part of the audit, whether or not the entity’s annual financial report is in agreement with the audit report. The accountant’s audit report must be supported by the same level of detail required for the annual financial report. If the reports are not in agreement, the bill requires the audit to specify the differences that exist between the annual financial report and the audit report.

The bill also provides that, in preparing the verified report, the Department of Financial Services may request additional information from the local governmental entity. Any additional information requested must be provided within 45 days of the request. If the local governmental entity does not comply with the request, the Department of Financial Services must notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2), F.S.

Annual Financial Audit Reports

Present Situation: If certain types of governmental entities are not notified by the first day of the fiscal year that they will be audited by the Auditor General, those entities must have an annual financial audit performed by an independent certified public accountant completed within 9 months.⁴⁰ Section 218.39, F.S., lays out the minimum required information for the independent audits and provides for discussion between the governing body and the independent certified public accountant regarding certain specified conditions. If corrective action is required and has

³⁹ Section 218.32(2), F.S.

⁴⁰ Section 218.39, F.S.

not been taken, the Legislative Auditing Committee can request a statement explaining why the corrective action has not been taken and provides for corrective steps including actions pursuant to s. 11.40(2), F.S.

Effect of the Bill: The bill provides that if the audit report contains a recommendation from the preceding financial audit report, the governing body, within 60 days, must indicate its intent regarding corrective action, the corrective action to be taken, and when the corrective action will occur. If the governing body does not intend to take any corrective action, it shall explain why such action will not be taken at the regularly scheduled public meeting.

Auditor Selection Procedures

Present Situation: Section 218.391, F.S., lays out the process that specified governmental entities⁴¹ must follow in selecting its independent certified public accountant to act as an auditor. Noncharter counties are required to create a committee consisting of each of its elected county constitutional officers and one member of the board of county commissioners or their designee. Those entities must create an audit committee which must make a request for proposals. The law lays out what must be considered in selecting the firm and discusses negotiating for compensation.

Effect of the Bill: The bill requires all counties to have an auditor selection committee consisting of each of its officers elected pursuant to the county charter or Florida Constitution. The bill requires municipalities, special districts, district school boards, charter schools, or charter technical career centers to create an audit committee with at least three members, one of which must be a member of the governing body of the entity. That member will serve as the committee's chair. Members of county, municipal, or special district audit committees may not exercise financial management responsibilities for the county, municipality, or special district. The bill provides that the contract period may not exceed 5 years. The bill creates a 2-year period of ineligibility for a firm to get a new contract after its 5-year contract has expired.

The audit report submitted pursuant to s. 218.39, F.S., must include an affidavit executed by the chair of the audit committee affirming that the committee complied with the auditor selection requirements. If the Auditor General determines that an entity failed to comply with the requirements in selecting an auditor, the entity shall select a replacement auditor to conduct audits for the remaining subsequent fiscal year(s) remaining in the contract.

The Florida Virtual School

Present Situation: The Florida Virtual School is created to develop and deliver online and distance learning. The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education. The report is required to address: operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global; marketing and operational plan for the Florida Virtual School and Florida Virtual School

⁴¹ The entities are: the governing body of a charter county, municipality, special district, district school board, charter school, or charter technical career center.

Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology; assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year; a copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General; recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global; and, recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.⁴²

The Auditor General is required to conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global. The scope of the audit must include, but not be limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds, including internal funds; student enrollment records; franchise agreements; information technology utilization, assets, and security; performance measures and standards; and accountability. The final report on the audit shall be submitted to the President of the Senate and the Speaker of the House of Representatives no later than January 31, 2014.

Effect of the Bill: The bill eliminates the requirement that the Auditor General conduct an operation audit and report to the President of the Senate and the Speaker of the House of Representatives by January 31, 2014. That provision is replaced with requiring the Florida Virtual School to have an annual financial audit of its accounts and records completed by an independent auditor who is a licensed certified public accountant. The independent auditor must conduct the audit in accordance with the rules adopted by the Auditor General governing such audits. The audit report is required to include a written statement of the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations. Upon completion of the audits, the independent auditor is required to submit an audit report to the board of trustees and the Auditor General no later than 9 months after the end of the prior fiscal year. The bill also makes conforming changes to the annual report provided to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education, by requiring a copy of the audit report be submitted with the annual statement. That audit report is to provide a written statement of the board of trustees describing corrective action to be taken in response to each finding of the independent auditor's recommendations included in the audit report.

Required Audits of Certain Educational Institutions

Present Situation: School districts, Florida College System institutions, and other institutions and agencies under the supervision of the State Board of Education and state universities under the supervision of the Board of Governors are subject to the audit provisions of ss. 11.45 and 218.39, F.S. If an audit contains a significant finding, the district school board, the Florida College System institution board of trustees, or the university board of trustees shall conduct an audit overview during a public meeting.

⁴² Section 1002.37(6), F.S.

Effect of the Bill: If any audit report includes a recommendation that was previously included in the preceding financial audit report, the district school board, the Florida College System institution board of trustees, or the university board of trustees, must indicate its intent regarding corrective action, the corrective action to be taken, and when the corrective action will occur within 60 days after the delivery of the audit report. This response must occur during a regularly scheduled public meeting. If the district school board, Florida College System institution board of trustees, or university board of trustees does not intend to take corrective action, it shall explain why such action will not be taken at the regularly scheduled public meeting.

Other Provisions

Florida Clerk of Courts Corporation

Present Situation: Currently, s. 28.35, F.S., requires the Florida Clerk of Courts Corporation to develop and certify a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards must be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation shall develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. The corporation shall notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans.

Effect of the Bill: The bill requires the Florida Clerk of Courts Corporation to notify the Legislature of any clerk not meeting the workload performance standards and provide a copy of any corrective action plans within 45 days after the end of each quarter. For purposes of s. 28.35, F.S., the quarters end on the last day of March, June, September, and December of each year.

Transparency in Government Spending

Present Situation: The Transparency Florida Act, located in s. 215.985, F.S., requires the Governor, in consultation with the appropriations committees of the House and Senate, to maintain a central website providing access to all other websites required to be linked under the Act. That law requires certain budget information to be readily available online, certain contract information, and minimum functionality standards. In pertinent part, s. 215.985(11), F.S., requires: “Each water management district shall provide a monthly financial statement to its governing board and make such statement available for public access on its website.”

Effect of the Bill: The bill requires the monthly financial statement to be in the form and manner prescribed by the Department of Financial Services to the district’s governing board and make such monthly financial statement available to the public on its website.

Financial Emergencies

Present Situation: Local governmental entities, charter schools, charter technical career centers, and district school boards are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, under certain circumstances.⁴³ If a financial emergency occurs, the Governor or the Commissioner of Education must contact the entity to determine what steps have been taken to rectify, resolve, or prevent the financial emergency. Any information requested must be provided within 45 days. If the local governmental entity or the district school board does not comply with the request, the Governor or Commissioner of Education must notify the *members* of the Legislative Auditing Committee who may take action pursuant to s. 11.40, F.S. The Governor or the Commissioner of Education must then determine whether the entity needs state assistance. If so, the entity is considered to be in a state of financial emergency. The Governor or the Commissioner of Education then has the authority to take steps to resolve the financial emergency.⁴⁴

Effect of the Bill: The bill provides that the Governor, or his or her designee, or the Commissioner of Education, or his or her designee, must notify the Legislative Auditing Committee instead of notifying the members of the Legislative Auditing Committee.

Reasonable Opportunity to be Heard at Public Meetings

Present Situation: Section 286.0114, F.S., requires, with certain exceptions, that the public be provided a reasonable opportunity to be heard. That Section prescribes the general process and permits entities to prescribe how public comment is made and certain reasonable limitations. The law also provides for the availability of attorneys fees.

Effect of the Bill: The bill clarifies that a member of the public is not required to provide an advance written copy of his or her testimony or comments as a precondition to being given the opportunity to be heard.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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 exemption 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.

⁴³ Section 218.503(1), F.S.

⁴⁴ Section 218.503(3), F.S.

B. Public Records/Open Meetings Issues:

As amended, CS/SB 686 authorizes the Florida Commission on Ethics to initiate investigation, without having received a complaint or referral, based upon reliable and publicly disseminated information. The Commission's investigations of complaints and referrals are confidential until such time as the respondent (the public officer or employee) waives confidentiality or probable cause is found to believe that a violation occurred. This confidentiality should also be maintained for investigations that the Commission initiates on its own. Therefore, a separate public records exemption bill is needed.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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.

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 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.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill creates section 20.602 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 28.35, 43.16, 112.313, 112.3144, 112.31455, 112.3261, 129.03, 129.06, 166.241, 189.016, 215.425, 215.86, 215.97, 215.985, 218.32, 218.33, 218.39, 218.391, 286.0114, 288.92, 288.9604, 373.536, 838.014, 838.015, 838.016, 838.022, 838.22, 1001.42, 1002.33, 1002.37, 1010.01, 1010.30, 68.082, 68.083, 99.061, 218.503, 1002.455, and 817.568.

VIII. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections on January 12, 2016:

CS/SB 686 differs from the original bill in that it:

- Requires legislative branch lobbyists to file a monthly report detailing which bills or appropriations that they have attempted to support, oppose, or influence;
- Authorizes fines of \$50 per day up to a maximum of \$5,000 for failing to timely file the monthly reports and provides grounds for waiving the fines;
- Prohibits lobbying the Department of Economic Opportunity and its various divisions, units and corporations (including the Florida Development Finance Corporation) for a period of 2 years instead of 6 years;
- Prohibits legislators from accepting certain employment while in office;
- Authorizes the Commission on Ethics to initiate investigations under certain circumstances by a super-majority vote;
- Clarifies which sources of funds are permissible to use to pay additional compensation or severance pay in excess of those authorized by statute to public employees;
- Defines “public contractor” and removes the definition of “nongovernmental entity” from the bill in s. 838.014, F.S.; and
- Applies the offenses of bribery, unlawful compensation or reward for official behavior, official misconduct, and unlawful influence in the competitive solicitation process to “public contractors.”

B. Amendments:

None.