

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/CS/SB 686

INTRODUCER: Governmental Oversight and Accountability Committee, Ethics and Elections  
Committee and Senator Gaetz

SUBJECT: Government Accountability

DATE: February 11, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 686 is an omnibus government accountability 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 legislative position. Additionally, such advancement, promotion, additional compensation, or thing of value may not be inconsistent with that given to any other similarly situated employee. For acceptance of future employment by legislators with such entity, several criteria must be met, including the position must already exist or be created without the knowledge or anticipation of the legislator's interest in the position and the position must be open to other candidates.
- 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.
- 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.

- 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.
- 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.
- 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 the crimes of Official Misconduct and Bid Tampering to "public contractors."
- Requires local governmental entities to keep their final budgets, and any amendments thereto, on their website for a period of 2 years after adoption.
- Requires various governmental entities to adopt internal controls to prevent and detect fraud, waste, and abuse.
- The bill requires governmental entities to investigate claims of unauthorized compensation.
- 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.
- 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.
- Requires a water management district monthly financial report to be provided in the format required by the Department of Financial Services.
- Requires 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.
- 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.

The bill is effective October 1, 2016.

## **II. Present Situation:**

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

### III. Effect of Proposed Changes:

#### DISCUSSION

##### Governmental Ethics Laws

###### *Employment of Members of the Legislature*

*Present Situation:* Article II, Section 8(e) 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 creates s. 112.3126, F.S., to define the term “private entity” as any nongovernmental entity, such as a corporation, partnership, company or nonprofit organization, any legal entity, or any natural person. The bill prohibits legislators or a candidate for the Legislature from accepting employment with private entities that directly receive funding through state revenues appropriated by the General Appropriations Act, if he or she knows, or with the exercise of reasonable care should know, that the position is being offered by the employer for the purpose of gaining influence or other advantage based on the legislator’s office or candidacy.

Any employment with such private entity accepted by a member or candidate must meet all of the following conditions:

- The position was already in existence or was created by the employer without the knowledge or anticipation of the legislator’s interest in such position;
- The position was open to other applicants;
- The legislator was subject to the same application and hiring process as other candidates for the position; and
- The legislator meets or exceeds the required qualifications for the position.

A member who is employed by such an entity before his or her legislative service 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.

### ***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.<sup>1</sup> 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 of 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. The Florida Commission on Ethics can refer the unpaid fine to a collection agency.<sup>2</sup> The collection agency 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.<sup>3</sup>

*Effect of the Bill:* The bill amends s. 112.31455, F.S., to expressly require 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

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

<sup>2</sup> Section 112.31455(3), F.S.

<sup>3</sup> Section 112.31455(4), F.S.

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 amends s. 112.3261, F.S., to revise definitions of the terms "governmental entity" or "entity," and "lobbies," and to expand the scope of 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, Inc. (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.<sup>4</sup> The law currently does not contain any post-employment or post-service restrictions.

*Effect of Bill:* The bill amends s. 288.92, F.S., to prohibit 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, 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, or for a period of 10 years if such officer or board member is removed or terminated for misconduct, as defined in s. 443.036(29), F.S.

*Present Situation:* 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.<sup>5</sup> The law currently does not contain any post-employment or post-service restrictions.

*Effect of the Bill:* The bill amends s. 288.9604, F.S., to prohibit directors of the Florida Development Finance Authority from representing another person or entity for compensation before the corporation, for a period of 2 years following his or her service on the board.

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<sup>4</sup> Part III, Chapter 112, Florida Statutes.

<sup>5</sup> *Id.*

*Present Situation:* 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.

*Effect of the Bill:* The bill creates s. 20.602, F.S., to subject 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 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 amends s. 112.313(7)(a), F.S., to provide 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 in accordance with s. 99.061, F.S.

*Effect of the Bill:* The bill amends s. 112.3144, F.S., to require 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.<sup>6</sup> 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.

### **Criminal Ethics Provisions**

#### ***Nineteenth Statewide Grand Jury***

A statewide grand jury<sup>7</sup> 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:<sup>8</sup>

- 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.

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<sup>6</sup> 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.

<sup>7</sup> See ss. 905.31-905.40, F.S., known as the Statewide Grand Jury Act.

<sup>8</sup> 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).

***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.<sup>9</sup>

***Doctrine of Mens Rea and Scienter***

The term “mens rea” is defined as “a guilty mind; a guilty or wrongful purpose; a criminal intent.”<sup>10</sup> Black’s Law Dictionary notes that the term scienter is defined as “knowingly” and frequently used to signify the defendant’s guilty knowledge.<sup>11</sup> The general rule is that scienter or mens rea is a necessary element in the indictment for every crime.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

***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.

*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

<sup>9</sup> *Id.*

<sup>10</sup> BLACK’S LAW DICTIONARY 1137 (4th Rev. 1968).

<sup>11</sup> *Id.* 1512.

<sup>12</sup> *Chicone v. State*, 684 So. 2d 736, 741 (Fla. 1996). Also, see *U.S. v. Balint*, 258 U.S. 250 (1922).

<sup>13</sup> See *supra* note 8, at 24.

<sup>14</sup> *Id.*



entity” to include other public entities, such as Citizens Property Insurance Corporation,<sup>15</sup> statutorily-created direct support organizations,<sup>16</sup> and other statutorily-created public entities. The definition of “corruptly” or “with corrupt intent” is eliminated.

The bill defines the term “public contractor,” for the offenses of official misconduct<sup>17</sup> and bid tampering,<sup>18</sup> as any person, as defined in s. 1.01(3), 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(3), 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 revises the definition of the term “public servant” as any officer or employee of a governmental entity including executive, legislative, or judicial branch officer or employee and a candidate for election or appointment to any of the officer positions listed in this subsection.

### ***Bribery***

*Present Situation:* Section 838.015, F.S., relates to the offense of bribery.<sup>19</sup> 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.<sup>20</sup>

Chapter 838, F.S., also contains 3 other bribery offenses, including bribery in athletic contests,<sup>21</sup> commercial bribery receiving,<sup>22</sup> and commercial bribery.<sup>23</sup> In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was invalid.<sup>24</sup> The 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.<sup>25</sup>

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> Section 838.022, F.S.

<sup>18</sup> Section 838.22, F.S.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> Section 838.12, F.S.

<sup>22</sup> Section 838.15, F.S.

<sup>23</sup> Section 838.16, F.S.

<sup>24</sup> *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.

<sup>25</sup> See *supra* note 2, at 34.

*Effect of the bill:* The bill amends s. 838.015, F.S., to change the mens rea element of the offense of bribery from “corruptly” to “knowingly and intentionally.”

### ***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.<sup>26</sup>

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.

*Effect of the bill:* The bill amends s. 838.016, F.S., to change the mens rea element of the offense of unlawful compensation or reward for official behavior from “corruptly” to “knowingly and intentionally.”

### ***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.<sup>27</sup>

*Effect of the bill:* The bill amends s. 838.022, F.S., to subject public contractors to the same level of conduct as public servants. The mens rea element of the offense is changed from “with corrupt intent” to “knowingly and intentionally.” The law is clarified so that the harm caused to

<sup>26</sup> Section 838.016(4), F.S. Also, see *supra* note 4.

<sup>27</sup> 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.

another must be an “unlawful” harm.” Concealing, covering up, destroying, mutilating, or altering an official record is criminalized unless such action is authorized by law or contract.

### ***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:
  - 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.<sup>28</sup>

*Effect of the Bill:* The bill amends s. 838.22, F.S., to expand the application of the bid tampering laws to public contractors who have contracted with a governmental entity to assist in a competitive procurement. These public contractors are treated similar to public servants for this law. The mens rea element of the offense is changed from “with corrupt intent” to “knowingly and intentionally” influence.

### **Online Posting of Governmental Budgets**

#### ***Counties, Municipalities, and Special Districts***

*Present Situation:* Counties<sup>29</sup>, municipalities<sup>30</sup>, and special districts<sup>31</sup> 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.<sup>32</sup> Current law does not specify how long those items must remain available on the website.

*Effect of the Bill:* The bill amends s. 129.03, F.S., to require a county’s tentative budget to remain on the county’s website for at least 45 days and the final budget remain on its website for

<sup>28</sup> See *supra* note 3.

<sup>29</sup> Section 129.03, F.S.

<sup>30</sup> Section 166.241, F.S.

<sup>31</sup> Section 189.016, F.S.

<sup>32</sup> Section 129.06, F.S.

at least 2 years. The bill amends s. 129.06, F.S., to require that the amended final adopted budget must remain on the county's website for at least 2 years.

The bill amends s. 166.241, F.S., to require a municipality's tentative budget to remain on the municipality's website for at least 45 days and the final adopted budget remain on its website for at least 2 years.

The bill amends s. 189.016, F.S., to require a special district's tentative budget to remain on the special district's website for at least 45 days, the final adopted budget to remain on its website for at least 2 years, and the amended final adopted budget remain on its 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 amends s. 373.536, F.S., to require 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 be designed to fulfill the requirements of generally accepted accounting principles.

*Effect of Bill:* The bill amends s. 215.86, F.S., to require each entity to establish and maintain internal controls designed to: prevent and detect fraud, waste, and abuse; promote and encourage compliance with applicable laws, rules, contracts, and grant agreements; support economical and efficient operations; ensure reliability of financial records and reports; and, safeguard assets.

#### ***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.

*Effect of Bill:* The amends s. 218.33, F.S., to require each local governmental entity to establish and 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 economical and efficient operations; ensure reliability of financial records and reports; and, safeguard assets.

### ***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.

*Effect of Bill:* The amends s. 1002.33, F.S., to require each the governing body of each charter school to establish and 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 economical and efficient operations; ensure reliability of financial records and reports; and, safeguard assets.

### ***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.

Section 1001.42, F.S., outlines the powers and duties of district school boards, including the discretionary authority to retain an internal auditor to perform ongoing financial verification of the financial records of the school district.

*Effect of Bill:* The bill amends s. 1010.01, F.S., to require each school district, Florida College System institution, and state university to establish and 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 economical and efficient operations; ensure reliability of financial records and reports; and, safeguard assets..

The bill also amends s. 1001.42(12), F.S., to authorize the internal auditor that may be employed by the school district to perform ongoing financial verification of financial records and other such audits and reviews as the district school board directs for the purposes of determining: the adequacy of internal controls designed to prevent and detect fraud, waste and abuse; compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices; the efficiency of operations; the reliability of financial records and reports; and the safeguarding of assets.

Additionally, the bill amends s. 1001.42, F.S., to authorize district school board members to visit schools, observe the management and instruction, give suggestions for improvement, and advise citizens with the view of promoting interest in education and improving the school.

### ***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 amends s. 43.16, F.S., to require the Justice Administration Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program to establish and 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 economical and efficient operations; ensure reliability of financial records and reports; and, safeguard 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 amends s. 215.425, F.S., to define the term “public funds” as:

Any 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, political subdivision, board, bureau, or commission of such entities. However, if the payment and receipt does not otherwise violate part III, Chapter 112, F.S., the following are not considered public funds:

- Revenues received by the Board of Governors or 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 paid by the patient or private 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.

The bill amends the provisions regarding a bonus scheme to require notification of all employees who meet the prescribed criteria for a particular bonus and to consider all employees who meet the prescribed criteria for a particular bonus scheme.

CS/CS/SB 686 requires new contracts or renewal contracts on or after July 1, 2011, in which units of government are a party, and on or after July 1, 2012, in which state universities 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.

In regards to determining the amount of severance pay, the bill requires the unit of government or the state university to consider the nature of the claim, the circumstances giving rise to the claim, and the potential cost of resolving the dispute. Existence of a contract providing for severance pay does not limit the application of this provision to the settlement of a dispute.

The bill requires a unit of government that has made a prohibited compensation payment to investigate and take all reasonable actions to recover the prohibited compensation. If the compensation was provided unintentionally, the unit of government must take all reasonable action to recover the prohibited compensation through its normal recovery methods. If the prohibited payment was willfully made, the unit of government must take all reasonable action to recover the payment from either the recipient or the employee or employees of the unit of government who willfully violated this section. Each individual determined to have willfully violated this section is jointly and severally liable for repayment of the prohibited compensation. 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.

Subsections (6)-(8) apply prospectively to contracts or employment agreements, or the renewal or renegotiation or an existing contract or employment agreement, effective on or after October 1, 2016.

## **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),<sup>33</sup> 218.32(1),<sup>34</sup>

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<sup>33</sup> Section 11.45, F.S., governs certain audits to be conducted by the Auditor General.

<sup>34</sup> Section 218.32(1), F.S., requires annual financial reports from local governmental entities.



218.38,<sup>35</sup> or 218.503(3),<sup>36</sup> 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 amends s. 11.40, F.S., to provide 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 amends s. 11.45, F.S., to define the terms “abuse,” “fraud,” and “waste” as follows:

- “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

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<sup>35</sup> Section 218.38, F.S., requires notice of bond issuance and contains verification requirements.

<sup>36</sup> Section 218.503(3), F.S., requires those entities to disclose a financial emergency and provide certain information concerning a financial emergency.

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 amends s. 215.97, F.S., to change 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.<sup>37</sup>

*Effect of the Bill:* The bill amends s. 218.32, F.S., to require 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.<sup>38</sup> 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 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 amends s. 218.39, F.S., to provide 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 entities<sup>39</sup> 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

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<sup>37</sup> Section 218.32(2), F.S.

<sup>38</sup> Section 218.39, F.S.

<sup>39</sup> The entities are: the governing body of a charter county, municipality, special district, district school board, charter school, or charter technical career center.

lays out what must be considered in selecting the firm and discusses negotiating for compensation.

*Effect of the Bill:* The bill amends s. 218.391, F.S., to require 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. 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 may not be a member of an audit committee established under this section.

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<sup>40</sup> was 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 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.<sup>41</sup>

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

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<sup>40</sup> Section 100.37, F.S.

<sup>41</sup> Section 1002.37(6), F.S.

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 amends s. 1002.37, F.S. to eliminate 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.

### ***Required Audits of Certain Educational Institutions***

*Present Situation:* Section 1010.30(1), F.S., provides that 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.<sup>42</sup>

*Effect of the Bill:* The bill amends s. 1010.30, F.S., to require that 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,

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<sup>42</sup> Section 1010.30(2), F.S.

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 amends s. 28.35, F.S., to require 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 amends s. 215.985, F.S., to require 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.<sup>43</sup> 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.<sup>44</sup>

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<sup>43</sup> Section 218.503(1), F.S.

<sup>44</sup> Section 218.503(3), F.S.

*Effect of the Bill:* The bill amends s. 218.503, F.S., to provide 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 attorney fees.

*Effect of the Bill:* The bill amends s. 286.0114, F.S., to clarify 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.

**Directory**

**Section 1** amends s. 11.40, F.S., relating to the Legislative Auditing Committee.

**Section 2** amends s. 11.45, F.S., relating to definitions, duties, authorities, reports, and rules of the Auditor General.

**Section 3** creates s. 20.602, F.S., relating to standards of conduct; officers and board members of DEO corporate entities.

**Section 4** amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

**Section 5** amends s. 43.16, F.S., relating to the Justice Administrative Commission.

**Section 6** creates s. 112.3126, F.S., relating to employment restrictions for legislators.

**Section 7** amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

**Section 8** amends s. 112.3144, F.S., relating to full and public disclosure of financial interests.

**Section 9** specifies that the changes made to s. 112.3144, F.S., apply to disclosures filed for the 2016 calendar year and all subsequent calendar years.

**Section 10** amends s. 112.31455, F.S., relating to collection methods for unpaid automatic fines for failure to timely file disclosure of financial interests.

**Section 11** amends s. 112.3261, F.S., relating to lobbying before water management districts; registration and reporting.

**Section 12** amends s. 129.03, F.S., relating to preparation and adoption of county budgets.

**Section 13** amends s. 129.06, F.S., relating to execution and amendment of county budgets.

**Section 14** amends s. 166.241, F.S., relating to fiscal years, budgets, and budget amendments for municipalities.

**Section 15** amends s. 189.016, F.S., relating to reports, budgets, and audits for special districts.

**Section 16** amends s. 215.425, F.S., relating to extra compensation claims prohibited; bonuses; severance pay.

**Section 17** amends s. 215.86, F.S., relating to management systems and controls for state agencies and the judicial branch.

**Section 18** amends s. 215.97, F.S., relating to the Florida Single Audit Act.

**Section 19** amends s. 215.985, F.S., relating to transparency in government spending.

**Section 20** amends s. 218.32, F.S., relating to annual financial reports for local governmental entities.

**Section 21** amends s. 218.33, F.S., relating to local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.

**Section 22** amends s. 218.39, F.S., relating to annual financial audit reports.

**Section 23** amends s. 218.391, F.S., relating to auditor selection procedures.

**Section 24** amends s. 286.0114, F.S., relating to public meetings; reasonable opportunity to be heard; attorney fees.

**Section 25** amends s. 288.92, F.S., relating to divisions of Enterprise Florida, Inc.

**Section 26** amends s. 288.9604, F.S., relating to creation of the Florida Development Finance Corporation.

**Section 27** amends s. 373.536, F.S., relating to water management district budget and hearing thereon.

**Section 28** amends s. 838.014, F.S., relating to definitions.

**Section 29** amends s. 838.015, F.S., relating to bribery.

**Section 30** amends s. 838.016, F.S., relating to unlawful compensation or reward for official behavior.

**Section 31** amends s. 838.022, F.S., relating to official misconduct.

**Section 32** amends s. 838.22, F.S., relating to bid tampering.



**Section 33** amends s. 1001.42, F.S., relating to powers and duties of district school boards.

**Section 34** amends s. 1002.33, F.S., relating to charter schools.

**Section 35** amends s. 1002.37, F.S., relating to the Florida Virtual School.

**Section 36** amends s. 1010.01, F.S., relating to uniform records and accounts.

**Section 37** amends s. 1010.30, F.S., relating to audits required.

**Section 38** amends s. 99.061, F.S., relating to method of qualifying for nomination or election to federal, state, county, or district office.

**Section 39** amends s. 218.503, F.S., relating to determination of financial emergency.

**Section 40** amends s. 1002.455, F.S., relating to student eligibility for K-12 instruction, to incorporate by reference revisions made to s. 1002.37, F.S., in this act.

**Section 41** amends s. 112.534, F.S., relating to failure to comply; official misconduct, to incorporate by reference revisions made to s. 838.022, F.S., in this act.

**Section 42** amends s. 117.01, F.S., relating to appointment, application, suspension, revocation, application fee, bond, and oath for a notary public, to incorporate by reference revisions made to s. 838.022, F.S.

**Section 43** amends s. 817.568, F.S., relating to criminal use of personal identification information, to incorporate by reference revisions made to s. 838.014, F.S., in this act.

**Section 44** reenacts s. 921.0022(3)(g), F.S., relating to criminal punishment code; offense severity ranking chart, to incorporate by reference revisions made to ss. 838.015, 838.016, and 838.22, F.S., in this act.

**Section 45** reenacts s. 921.0022(3)(d), F.S., relating to criminal punishment code; offense severity ranking chart, to incorporate by reference revisions made to s. 838.022, F.S., in this act.

**Section 46** authorizes the Commission on Ethics, as provided in s. 112.322(3), F.S., to render advisory opinions to any public officer, candidate for public office, or public employee regarding application of code of ethics for public officers and employees, including amendments made by this act, for public officers and employees.

**Section 47** provides legislative intent and declares that the act fulfills an important state interest.

**Section 48** provides an effective date of October 1, 2016.

**IV. 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 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 (section 47 of the bill).

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

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 judicial branch, local governments, district school boards, charter schools, school districts, state colleges and universities, and the Justice Administration Commission 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.

**VI. Technical Deficiencies:**

Sections 21, 33, 34, and 36 reference compliance with best practices for establishing and maintaining internal controls to prevent fraud, waste, and abuse. Section 17 deletes "best practices" in the amendment to s. 215.86, F.S. It is unclear whether or not this term should be included in the other referenced sections.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates sections 20.602 and 112.3126 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, 99.061, 218.503, 1002.455, and 817.568.

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

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

**CS/CS by Governmental Oversight and Accountability on February 9, 2016:**

- Deletes provisions in CS regarding previous title of bill, legislative branch lobbying, executive branch lobbying, and investigations by the Commission on Ethics;
- Deletes provision in CS regarding electronic filing of compensation reports and other information;
- Revises provisions regarding employment of members of the Legislature;
- Revises the definition of “public contractor;”
- Deletes the provisions in CS expanding the offenses of bribery and unlawful compensation or reward for official behavior to include public contractors;
- Deletes provision in CS renaming bid tampering offense as unlawful influence of the competitive solicitation process;
- Deletes provision in CS regarding compliance with best practices for state agencies and judicial branch for internal controls to prevent fraud, waste, and abuse;
- Authorizes district school board members to visit schools, observe the management and instruction, give suggestions for improvement, and advise citizens with the view of promoting interest in education and improving the school;
- Revises the definition of “public funds” for extra compensation claims;
- Deletes various provisions regarding rewards and prosecution of extra compensation payments;
- Revises notification and consideration requirements for employees who meet criteria for a bonus scheme;
- Requires a unit of government or state university to consider various factors in determining amount of severance pay and provides existence of contract does not limit application of this provision;
- Deletes provisions in CS regarding false claims against the state and civil actions for false claims;

- Amends ss. 112.534 and 117.01, F.S., relating to failure to comply; official misconduct, and regulation of notary publics, respectively, to incorporate by reference revisions made by this act;
- Reenacts s. 921.022(3)(d), F.S., relating to criminal punishment code; offense severity chart, to incorporate by reference revisions made by this act; and
- Authorizes the Commission on Ethics to render advisory opinions to any public officer, candidate for public office, or public employee regarding application of code of ethics for public officers and employees.

**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.