SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: January 12, 1998 Revised: _____ _____ _____ _____

Subject: Florida Single Audit Act

	Analyst	Staff Director	Reference	Action
1.	Lombardi	Wilson	GO	Favorable
2.			WM	
3.				
4.				
5.				

I. Summary:

The bill creates the Florida Single Audit Act and establishes audit and accountability requirements for units of local government and non-profit organizations which function as contract vendors to public agencies and to which monies from the General Appropriations Act are channeled each year. It implements findings and recommendations of the Auditor General to bring the State into compliance with federal legislation of the same name enacted in 1991.

This bill creates section 216.3491 and repeals section 216.349, Florida Statutes.

II. Present Situation:

Section 11.40, F.S., creates the Legislative Auditing Committee as a standing joint committee of the Legislature. The committee is composed of 10 members, five from each House of the Legislature. The committee is the nominal supervising entity for the Office of the Auditor General, which is created in s. 11.41, F.S. The Auditor General is the state entity responsible for post-audit financial integrity of publicly funded organizations and also of private organizations acting as instrumentalities of public agencies. Section 11.44(2), F.S., provides that

> The Legislature hereby declares and determines that the Legislative Auditing Committee is a standing committee of the Legislature with interim powers and that the Auditor General is an office under the legislative branch of government; they are not agencies of government within the intention of the Legislature as expressed in chapter 216. . . .

In Audit Report 12869, *Audit of the State of Florida Oversight of Grants and Aids to Nonprofit Organizations,* and Audit Report 12870, *Audit of the State of Florida Review of State Governmental Nonprofit Organizations,* the Auditor General reviewed the State oversight of

grants and aids appropriations disbursed to nonprofit organizations, including nonprofit organizations that have been created by the State to perform various State related purposes. In Audit Report 12869, the Auditor General made the following findings and recommendations:

- Better Records are Needed to Improve State Oversight of Grants and Aids to Nonprofit Organizations
- Guidance and Oversight of Audits of Nonprofit Organizations Could be Improved
- Surveys of State Agencies, Nonprofit Organizations, and Auditors of Nonprofit Organizations Indicate a Need for Improvement in State Oversight Laws
- A Florida Single Audit Act to Parallel but Not Duplicate the Federal Single Audit Act Would Assist in Resolving the Confusion

In Audit Report 12870, the Auditor General made the following findings and recommendations:

- The Legislature Should Review Legislation Authorizing Governmental Nonprofit Organizations (GNPOs)
- Model Legislation for the Creation of Future GNPOs Should Be Adopted
- Guidelines for Determining GNPOs Should Be Established for Determining GNPOs in a Financial Emergency
- A Central Depository Should Be Established for Maintaining Information on GNPOs
- GNPOs Have a Significant Impact on State Government

Section 216.349(1), F.S., provides that, before disbursing any funds from a grants and aids appropriation pursuant to a grant or contract, the state agency,[1] or the judicial branch, authorized by the appropriations act to administer the funds and the Comptroller must independently ensure that the proposed expenditure is in accordance with all legal and regulatory requirements and find that the terms of the grant or contract specifically prohibit the use of funds for the purpose of lobbying. Subsection (2) of the section provides that any local governmental entity, nonprofit organization, or for-profit organization that is awarded funds from a grants and aids appropriation must:

(a) If the amounts received exceed $100,000, have an audit performed in accordance with the rules of the Auditor General promulgated pursuant to s. 11.45, F.S.;

(b) If the amounts received exceed $25,000 but do not exceed $100,000, have an audit performed in accordance with the rules of the Auditor General promulgated pursuant to s. 11.45, F.S., or have a statement prepared by an independent certified public accountant which attests that the receiving entity or organization has complied with the provisions of the grant; or

[1]Section 216.001, F.S., provides that, except as otherwise provided, "state agency" or "agency" means any unit of organization of the executive branch, including any official, officer, department, board, commission, division, bureau, section, district, office, authority, committee, or council or any other unit of government, however designated, and the Public Service Commission. For purposes of chapter 94-249, "state agency" shall not include the judicial branch. For purposes of chapter 94-249, "judicial branch" shall mean all officers, employee, and offices of the Supreme Court, district courts of appeal, circuit courts, county courts, Justice Data Center, and the Judicial Qualifications Commission.

(c) If the amounts received do not exceed $25,000, have the head of the entity or organization attest, under penalties of perjury, that the entity or organization has complied with the provisions of the grant.

Public Law 104-156 from the 104th Congress amended Chapter 75 of Title 31, United States Code, to revise pre-existing requirements for the conduct of audits governing non-federal entities receiving federal awards in excess of $300,000. The stated purposes of the amendments, titled "The Single Audit Act Amendments of 1996" were to promote sound financial management and to support uniform expectations of audit work products.

III. Effect of Proposed Changes:

The bill repeals s. 216.349, F.S., which provides that the state agency or the judicial branch and the Comptroller must ensure that the proposed expenditure is in accordance with all legal and regulatory requirements and that the terms of the grant or contract specifically prohibit the use of funds for the purpose of lobbying. The tiered audit requirements of subsection (2) would be repealed, as well.

The bill establishes the "Florida Single Audit Act." The intent of the act is to establish state audit and accountability requirements for state financial assistance provided to nonstate entities.[2] Further, the bill finds that

> The Legislature finds that federal financial assistance passed through the state to nonstate entities is subject to mandatory federal audit requirements. The Legislature also recognizes that significant amounts of state financial assistance are provided to nonstate entities to carry out state projects and heretofore have not been subject to state audit requirements that parallel federal audit requirements. It is the intent of this act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.

Each of the stated purposes of the federal amendments are repeated in the proposed s. 216.3491, F.S., in this bill, as well.

Section 216.3491(3), F.S., in the bill provides that the Executive Office of the Governor (EOG) must, after conferring with the Comptroller and all state agencies that make state awards, adopt guidelines necessary to provide appropriate guidance to state awarding agencies,[3] recipients,[4] and

[2]A "nonstate entity" is defined by the bill to mean a local governmental entity, nonprofit organization, or for-profit organization that receives a state award.

[3]A "state awarding agency" is defined by the bill to mean the state agency that provided state financial assistance to the nonstate entity for purposes of carrying out a state project.

[4]A "recipient" is defined by the bill to mean a nonstate entity that receives a state award directly from a state awarding agency.

subrecipients,[5] and independent auditors of state financial assistance relating to the requirements of the section. The bill specifically refers to:

(1) The types or classes of financial assistance considered to be state financial assistance that would be subject to the requirements of the section, including guidance to assist in identifying when the state agency or recipient has contracted with a vendor rather than with a recipient or subrecipient;
(2) The criteria to be used for identifying a major state project; and
(3) The criteria to use in selecting state projects for audit based on inherent risk.

The bill also requires the EOG to be responsible for coordinating the initial preparation and subsequent revisions of the Catalog of State Financial Assistance and the State Projects Compliance Supplement. These two projects must be performed after consultation with the Comptroller and all state agencies that award state financial assistance to nonstate entities.

The bill also assigns the Comptroller duties. The Comptroller must make enhancements to the state's accounting system so that particular recording and identification measures are performed.[6] As well, the Comptroller is to adopt guidelines, after conferring with the Executive Office of the Governor and all state agencies that make state awards, which guidelines provide appropriate guidance to state awarding agencies, recipients and subrecipients, and independent auditors of state financial assistance relating to the format for the Schedule of State Financial Assistance. The Comptroller also must perform any inspections, reviews, investigations, or audits of state financial assistance considered necessary in carrying out the Comptroller's legal responsibilities for state financial assistance and the section.

Section 216.3491(5), F.S., in the bill requires each state agency that makes state awards: (a) to provide information needed by the recipient to comply with the requirements of the section;[7] (b) require the recipient, as a condition of receiving state financial assistance, to allow the state awarding agency, the Comptroller, and the Auditor General access to the recipient's records and the recipient's independent auditor's working papers as necessary for complying with the bill's requirements; (c) notify the recipient that the section does not limit the authority of the state

[5]A "subrecipient" is defined by the bill to mean a nonstate entity that receives a state award through another nonstate entity but does not include an individual who receives state financial assistance through such state awards.

[6]Specifically, the enhancements must provide for the: (a) recording of state financial assistance and federal financial assistance appropriations and expenditures as separate categories within the state awarding agencies' operating funds; (b) recording of state project number identifiers, as provided in the Catalog of State Financial Assistance, for state awards; and (c) establishment and recording of an identification code for each financial transaction, including state agencies' awards of state financial assistance and federal financial assistance, as to the corresponding type or organization that is party to the transaction (e.g., other governmental agencies, nonprofit organization, and for-profit organizations).

[7]Included under this informational section are: (a) the audit and accountability requirements for state projects and applicable rules of the EOG, the Comptroller, and rules of the Auditor General; (b) information from the Catalog of State Financial Assistance, including the standard state project number identifier, official title, legal authorization, and description of the state project; (c) information from the State Projects Compliance Supplement, including the significant compliance requirements, eligibility requirements, matching requirements, suggested audit procedures, and other relevant information determined necessary.

awarding agency to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance, or limit the authority of any state agency inspector general, the Auditor General, or any other state official; (d) to be provided one copy of each financial reporting package prepared in accordance with the requirements of the section; and (e) to review the recipient financial reporting package to determine whether timely and appropriate corrective action has been taken with respect to audit findings and recommendations.

Section 216.3491(6), F.S., in the bill provides that, as a condition of receiving state financial assistance, each recipient that provides state financial assistance to a subrecipient must: (a) provide for each state award to a subrecipient information needed by the subrecipient to comply with the requirements of the section; (b) review the subrecipient audit reports, including the management letters, to the extent necessary to determine whether timely and appropriate corrective action has been taken with respect to audit findings and recommendations pertaining to state awards made by the state agency; (c) perform such other procedures as specified in terms and conditions of the written agreement with the state awarding agency; (d) require subrecipients, as a condition of receiving state financial assistance, to permit the independent auditor of the recipient, the state awarding agency, the Comptroller, and the Auditor General access to the subrecipients records and the subrecipient's independent auditor's working papers as necessary to comply with the requirements of the section.

Section 216.3491(7), F.S., in the bill requires each recipient or subrecipient of state financial assistance to obtain an audit that meets particular requirements. The audit must comply with the following: (a) nonstate entities that receive an award that meets the audit threshold requirements[8] must have a state single audit conducted for that fiscal year; nonstate entities that receive state awards that do not meet the threshold requirements are exempt for that fiscal year. Regardless of the amount of the award, the section does not exempt nonstate entities from compliance with the provisions of law relating to maintaining from compliance with provisions of law relating to maintaining records concerning state awards to nonstate entities or allowing access and examination of those records.

These annual audits must be conducted by independent auditors in accordance with auditing standards as stated in rules of the Auditor General. Copies of the recipient's financial reporting package must be filed with the state awarding agency and the Auditor General upon completion of the audit. All financial reporting packages must be available for public inspection.

If an audit indicates any material noncompliance with requirements, the nonstate entity must submit as part of the audit package a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary.

[8]Section 216.3491(2)(a) of the bill defines "audit threshold" to mean the amount to use in determining when a state single audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state awards equal to or in excess of $300,000 in any fiscal year of such nonstate entity shall be required to have a state single audit for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the EOG, the Comptroller, and all state agencies that provide state financial assistance to nonstate entities, shall review the amount for requiring audits under the section and may adjust such dollar amount consistent with the purpose of the section.

The bill also includes requirements upon the independent auditor when conducting a state single audit of recipients or subrecipients. Included among these requirements are determinations of whether the nonstate entity's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and whether the state awards shown on the Schedule of State Financial Assistance are presented fairly in all material respects in relation to the nonstate entity's financial statements taken as a whole. As well, the independent auditor must determine whether the nonstate entity has internal controls in place to provide reasonable assurance of compliance with the law and rules, and determine whether each major state project[9] complied with the law.

The bill provides that when major state projects are less than 50 percent of the nonstate entity's total expenditures for all state awards, the auditor must select and test additional state projects as major state projects as necessary to achieve audit coverage of at least 50 percent of the expenditures for all state awards to the nonstate entity.

Section 216.3491(9), F.S., in the bill provides that the Auditor General has power to (a) audit state financial assistance when determined to be necessary by the Auditor General or when directed by the Legislative Auditing Committee; (b) adopt rules that state auditing standards to be followed by independent auditors that audit nonstate entities; and (c) adopt rules that describe the contents and the filing deadlines for the financial reporting package; (d) provide technical advice upon request of the Comptroller, EOG, and state agencies relating to financial reporting and audit responsibilities; (e) be provided one copy of each financial reporting package; and (f) perform ongoing reviews of a sample of financial reporting packages to determine compliance.

The bill provides that the act applies to any nonstate entity fiscal year beginning on or after July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[9]A "major state project" is defined by the bill to mean any state project meeting the criteria as stated in the rules of the EOG.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Provides guidance to those who receive the monies and those who perform audits.

C. Government Sector Impact:

Florida Single Audit Act
Impact of Proposed $300,000 Threshold
Based on 1994-95 Fiscal Year Data (1995-96 Data for Nonprofits)

Type of Entity	Total Number of Entities	Number Over $300,000 in Revenue From State	Number Less Than $300,000 in Revenue From State	Number with No Revenue From State	Dollar Coverage Greater Than $300,000	Dollar Coverage Less Than $300,000	Percentage of Dollar Coverage at $300,000
Cities	392	44	171	177	$78,246,204	$11,736,007	87%
Nonprofits	233	130	103	N/A	$301,192,483	$12,077,999	96%
Districts	391	16	30	345	$159,619,542	$1,491,759	99%
Totals	1016	190	304	522	$539,058,229	$25,305,765	96%

The Office of the Auditor General reviewed four of the smaller counties in the state and all had State Revenue in excess of $300,000. Although it has not analyzed all counties, the Office of the Auditor General states that it feels relatively certain that all counties would be required to be audited under the $300,000 threshold.

The information above is based on the Department of Banking and Finance data base and considers only state revenues and does not consider expenditures. The Auditor General indicated that expenditures would roughly parallel revenue over time. In addition, since CPA firms verify data in the annual reports of local governments, the Auditor General believes that the data is reasonably accurate and reliable.

The data on nonprofits comes from audit reports that were filed with the Auditor General. As noted in their report on nonprofits, about 50 percent do not file reports with the Auditor General, as required by law.

A drop to a $200,000 threshold is not expected to significantly affect the audit coverage except in the case of cities. At a $200,000 threshold, 20 additional cities would be required to be audited and the audit coverage would increase by 6 percent. Additionally, the Federal

audit requirement have been changed to the $300,000 threshold. This means that the State would be required to pay for all audits under this threshold for joint Federally and State funded projects as opposed to relying on Federal audit requirements and documents to obtain audit assurances.

Under the Florida Single Audit Act, the State Comptroller would be charged with making improvements to the state's accounting system. The **Office of the Comptroller** has provided the following fiscal impact to facilitate these changes:

	Year 1	Year 2	Year 3
Payroll, OCO, Exp.	$494,151	$468,341	$258,174
FTE	9	9	5

Once the changes to the accounting system are made, more reliable data will be available to identify the impact of the threshold.

The **Executive Office of the Governor** is generally supportive of the legislation and sees it as an opportunity to provide better accountability for state funds. The EOG is also willing to accept the additional responsibilities this legislation assigns however, with some concerns. This legislation does not provide adequate lead time to accomplish the incorporation of the "Catalog of State Financial Assistance" and the definitions of major state projects and other state projects falling under the audit requirements of this act into the Legislative Budget Request (LBR). Additionally, the budget instructions require concurrence from the appropriations staff of the Senate Ways and Means Committee and the House Fiscal Responsibility Council which are unable to work on budget preparation until session has ended. Consequently, the first appropriations to be audited will not have been properly identified in the appropriations act as envisioned by this legislation.

EOG also anticipates system changes and additions to LAS/PBS, the statewide appropriations and budgeting system shared by the executive and legislative branches. This workload issue would have to be addressed and gain approval from the LAS/PBS Steering Committee. Additionally, the Office of Planning and Budgeting does not have anyone experienced enough to prepare the State Projects Compliance Supplement. An additional person would have to be recruited to have this experience in-house.

The state will have some assurances that audits will be performed properly and local governments will have additional assurance that monies will be properly distributed and that audits will be performed properly.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Rules. Section 216.349, F.S., in the bill requires the EOG to adopt "rules." These rules would provide guidance to state awarding agencies, recipients and subrecipients, and independent auditors of state financial assistance relating to the *requirements of the section.* These rules would include: (a) the types or classes of financial assistance considered to be state financial assistance; (b) the criteria to be used for identifying a major state project; and (c) the criteria to use in selecting state projects for audit based on inherent risk. Furthermore, the Comptroller, under s. 216.3491(4)(b), F.S., in the bill, must adopt rules that provide appropriate guidelines to state awarding agencies, recipients and subrecipients, and independent auditors of state financial assistance relating to the format for the Schedule of State Financial Assistance. Under s. 216.3491, F.S., in the bill, the Auditor General is required to adopt rules that state the auditing standards that independent auditors are to follow for audits of nonstate entities and rules that describe the contents and filing deadlines for the financial reporting package. Chapter 120, F.S., the Administrative Procedure Act (APA), which requires statements that meet the definition of a rule to be adopted as a rule as soon as feasible and practicable, applies to the Governor in the exercise of all executive powers other than those derived from the State Constitution, as well as state executive agencies, but it does not apply to the judicial or legislative branches.

Section 120.52(15), F.S., defines as a rule ". . . each agency statement of *general applicability* that *implements, interprets, or prescribes law or policy* or *describes the procedure or practice requirements* of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule *(emphasis added)*. . . .

The definition of "rule" excludes certain items from the definition of a rule. Specifically, the following are not rules: (a) internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum; (b) legal memoranda or opinions issued by the Attorney General or other agency prior to their use in connection with an agency action; and (c) the preparation or modification of agency budgets, contractual provisions reached as a result of collective bargaining, and *statements, memoranda, or instructions to state agencies issued by the Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Comptroller*.

It would appear that the "rules" EOG and the Comptroller would be required to adopt do not fall within any of the exemptions enumerated by statute. Section 120.54(1), F.S., provides that rulemaking is not a matter of agency discretion. Each agency statement defined as a rule must be adopted as a rule by the rulemaking procedure provided by the Administrative Procedure Act as soon as feasible and practicable.

Rulemaking is presumed to be feasible unless the agency proves that: (a) the agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; (b) related matters are not sufficiently resolved to enable the agency to

address a statement by rulemaking; or (c) the agency is currently using the rulemaking procedure expeditiously and in good faith to adopt rules which address the statement.

Rulemaking is presumed to be practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principle, criteria, or standards for agency decisions unless the agency proves that: (a) detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or (b) the particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

Under s. 120.56(4)(a), F.S., any person substantially affected by an agency statement may seek an administrative determination that a statement meets the definition of a rule but has not been adopted as a rule as required. If the agency cannot prove that rulemaking is not feasible and practicable, the agency, upon entry of a final order by the administrative law judge, must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action.[10]

Under s. 120.595(4), F.S., upon entry of a final order that all or part of an agency statement meets the definition of a rule but has not been properly promulgated, the administrative law judge shall award reasonable costs and reasonable attorney's fees to the petitioner. Notwithstanding the provisions of ch. 284, F.S., an award must be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency shall not be entitled to payment of an award or reimbursement for payment of an award under any provision of law.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

[10]Under s.120.56(4)(e), F.S., the agency is permitted to rely upon the statement if, prior to the entry of the final order by the administrative law judge, the agency publishes proposed rules that address the statement and if the agency proceeds expeditiously and in good faith to adopt rules which address the statement. If an agency fails to adopt rules which address the statement within 180 days after publishing proposed rules, a presumption is created that the agency is not acting expeditiously and in good faith to adopt rules.