

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.)

BILL: CS/SB 2426

SPONSOR: Governmental Oversight and Productivity Committee and Senator Rossin

SUBJECT: Legislative Oversight of Governmental Programs

DATE: March 23, 1999 REVISED: 3/25/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill implements an internal organizational review of the Joint Legislative Auditing Committee and its principal operating units, the Office of the Auditor General and the Office of Program Policy Analysis and Governmental Accountability (OPPAGA). Generally, it transfers components of the Office of the Auditor General from the legislative to the executive branch of government, changes time frames for the completion of financial post-audits, and makes designated units of local government individually responsible for audit responsibilities now assumed by the Auditor General.

This bill substantially amends the following sections of the Florida Statutes: 11.42, 11.45, 11.50, 402.3015, 414.34, 414.39, 414.40, 951.28, 373.589, 195.096, 232.44, 946.516, 283.31, 944.719, 985.07, 11.511, 11.513, 112.3187, 112.3188, 112.31895, 985.401, and 218.502. The bill also repeals sections 284.50(4), 475.045(1)(f), and 985.07, F.S.

II. Present Situation:

The Joint Legislative Management Committee was established by statute in 1968 as the governing authority over the then two principal legislative units: the Legislative Reference Bureau and the Fiscal Accounting Division. By 1972 purchasing and data processing divisions were added and the combined research responsibilities were separated. Each chamber thereafter operated its own bill drafting, analysis, and staffing functions.

Until the passage of CS/SB 1574 by the 1998 Legislature, these functions and the organization created in 1972 have remained largely unchained. The 1998 Legislature chose to abolish the Joint Legislative Management Committee and to give many of its combined duties to the respective presiding officers. That committee's governance structure was replaced by an Office of Legislative Services which reported to the Senate President and the House Speaker directly.

In October 1998 the Office of the Senate President and the Office of the Speaker of the House issued *Joint Committee Review and Rightsizing Project, Review Report* on the activities and components of the Joint Legislative Auditing Committee. As discussed below, the report recommended changes to the audit cycle and audit responsibilities now given the Auditor General. The bill provided no change in mission or staffing for the OPPAGA.

III. Effect of Proposed Changes:

Section 1. Amends ss. 11.42(3), (6), (8), and (9), F.S., related to the Auditor General. Authorizes the Auditor General to make all spending decisions under the operating budget approved by the President of the Senate (President) and the Speaker of the House of Representatives (Speaker). Also, requires the Auditor General to transmit to the President and the Speaker a list of statutory and fiscal changes recommended by audit reports. Provides for the format of the list. Removes language related to auditing compliance with the minority business enterprise procurement goals set forth in s. 287.0945, F.S.

Section 2. Amends ss. 11.45(1), (3), and (7), F.S., related to definitions, duties, audits, and reports of the Auditor General. Provides a definition for the term “operational audit.” Requires the Auditor General to conduct biennial operational audits of state agencies instead of annual audits. Requires charter schools to contract with an independent certified public accountant for annual financial audits. Requires the audit reports and management letters of the charter schools to be submitted to district school boards, the Department of Education, and the Auditor General. Requires charter schools to establish an auditor selection committee and competitive auditor selection procedures. Requires charter schools’ independent certified public accountants to discuss all of the comments that will be included within the audit report with the chair of the charter school. Requires charter schools to provide a written statement of explanation or rebuttal within 30 days after the delivery of the audit report concerning the auditor’s comments, including corrective action to be taken.

Requires the Auditor General to notify the Governor and the Joint Legislative Auditing Committee of any district school board audits that report the board is in a state of financial emergency as provided in s. 218.503, F.S. Requires the Auditor General to request clarification from a district school board when that district school board may be in a financial emergency.

Requires the Auditor General to annually transmit to the President, the Speaker, and the Joint Legislative Auditing Committee a summary of significant findings and financial trends identified in audits of local governmental entities conducted by independent certified public accountants.

Requires the Joint Legislative Auditing Committee to direct the Auditor General to make a financial audit of a municipality whenever petitioned to do so by at least 20 percent of the electors of the municipality. Requires the Auditor General to determine whether the municipality has the fiscal resources necessary to pay the cost of the audit. Requires the municipality to pay the cost of the audit within 90 days after the Auditor General’s determination that the municipality has the available resources.

Requires the Auditor General to estimate the cost of an audit of a local governmental entity that will be conducted by the Auditor General’s office. Requires the local governmental entity to pay

50 percent of the estimated cost before the initiation of the audit. Requires the local governmental entity to pay for the remainder of the audit costs subsequent to the completion of the audit. Authorizes the Joint Legislative Auditing Committee to implement the provisions specified in s. 11.45(3)(a)10., F.S., when notified of a local governmental entity that fails to pay for the remainder of the cost of an audit conducted by the Auditor General.

Authorizes the President and the Speaker, upon the recommendation of the Director of the OPPAGA, to jointly waive a follow-up report from the Auditor General or OPPAGA to the Joint Legislative Auditing Committee and to the appropriate legislative standing committees.

Section 3. The Auditor General's Division of Public Assistance Fraud is transferred to the Department of Law Enforcement by a type two transfer, effective October 1, 1999.

Section 4. Transfers s. 11.50, F.S., related to the Division of Public Assistance Fraud, to s. 943.401, F.S. Conforms the statutes to reflect the transfer of the division from the Auditor General to the Department of Law Enforcement.

Section 5. Amends s. 402.3015(6)(b), F.S., related to the subsidized child care program, purpose, fees, and contracts. Conforms the statutes to reflect the transfer of the division from the Auditor General to the Department of Law Enforcement.

Section 6. Amends s. 414.33(2), F.S., related to violations of food stamp program. Conforms the statutes to reflect the transfer of the division from the Auditor General to the Department of Law Enforcement.

Section 7. Amends s. 414.34, F.S., related to the annual report concerning administrative complaints and disciplinary actions involving food stamp program violations. Conforms the statutes to reflect the transfer of the division from the Auditor General to the Department of Law Enforcement.

Section 8. Amends s. 414.39(9), F.S., related to fraud. Conforms the statutes to reflect the transfer of the division from the Auditor General to the Department of Law Enforcement.

Section 9. Amends s. 414.40, F.S., related to Stop Inmate Fraud Program establishment, and guidelines. Conforms the statutes to reflect the transfer of the division from the Auditor General to the Department of Law Enforcement.

Section 10. Amends s. 951.28, F.S., related to transmitting prisoner information to reduce public assistance fraud. Conforms the statutes to reflect the transfer of the division from the Auditor General to the Department of Law Enforcement.

Section 11. Amends s. 373.589, F.S., related to water management district audits by the Auditor General. Requires water management districts to contract with an independent certified public accountant for annual financial audits. Removes the requirement for the Auditor General to conduct the audit at the direction of the Governor.

Section 12. Amends s. 195.096(7), F.S., related to the review of assessment rolls. Changes the frequency of the Auditor General's performance audits of the administration of ad valorem tax laws by the Department of Revenue from biennially to triennially.

Section 13. Amends s. 232.44(1), F.S., related to the audit of records of nonprofit corporations and associations handling interscholastic activities (for example, the Florida High School Activities Association). Removes the requirement for the Auditor General to semiannually conduct an audit of these corporations and associations. Requires the corporations and associations to contract with an independent certified public accountant for annual financial audits. Provides for copies of the audits to be furnished to the Auditor General for review.

Section 14. Amends s. 946.516, F.S., requires PRIDE to contract with an independent certified public accountant for annual financial audits. Requires a copy of the audit to be furnished to the Auditor General. Authorizes the Auditor General or the Director of OPPAGA to conduct an audit of PRIDE pursuant to their own authority or at the direction of the Joint Legislative Auditing Committee. Removes the requirement that the Auditor General conduct a biennial financial and performance audit of PRIDE.

Section 15. Amends s. 283.31, F.S., related to records of executive agency publications. Removes the requirement that the Auditor General conduct triennial financial and performance audits of the correctional industry printing program (administered by PRIDE). Removes the requirement that the Auditor General conduct a minimum of triennial audits of agency compliance with s. 283.31, F.S.

Section 16. Amends s. 944.719(5), F.S., related to the adoption of rules, monitoring, and reporting. Requires OPPAGA, instead of the Auditor General, to audit the operation of a correctional facility by a private vendor. Requires the audit to be conducted by February 1 of the third year of operation by the private vendor instead of April 1 of the first year.

Section 17. Amends ss. 11.511(3) and (6), F.S., and creates s. 11.511,(7), F.S., related to the Director of OPPAGA; appointment; employment of staff; powers and duties. Authorizes the Director of OPPAGA to make all spending decisions under the operating budget approved by the President and the Speaker. Authorizes the Director of OPPAGA to enter into contracts that have been approved within the annual operating budget without consent from the Joint Legislative Auditing Committee. Authorizes the Director of OPPAGA, with the consent of the President and the Speaker, to amend OPPAGA's work schedule to concentrate on agency programs that are determined to have high oversight priority. Authorizes the reduction or elimination of certain recurring performance audits required by law as of July 1, 1999. Authorizes the Director of OPPAGA to conduct performance reviews of any governmental entity created by law.

Section 18. Amends s. 11.513(4), F.S., and creates subsection (8), related to program evaluation and justification reviews. Changes from July 1 to December 1 the due date for submission of program evaluation and justification reviews. Authorizes the President and the Speaker to jointly amend the schedule of program evaluation and justification reviews existing on July 1, 1999.

Section 19. Amends ss. 112.3187(6), (7), (8), and (9), F.S., related to adverse action against an employee for disclosing information of specified nature; provides for employee remedy and relief.

Removes all references to the Office of the Public Counsel from the Whistle Blower provisions. Delegates the responsibilities of the Office of the Public Counsel concerning remedies and relief to the Department of Legal Affairs.

Section 20. Amends s. 112.3188(2), F.S., related to confidentiality of information given to the Chief Inspector General, internal auditors, inspectors general, local chief executive officers, or other appropriate local officials. Removes all references to the Office of the Public Counsel from the Whistle Blower provisions.

Section 21. Amends s. 112.31895, F.S., related to investigative procedures in response to prohibited personnel actions. Removes all references to the Office of the Public Counsel from the Whistle Blower provisions. Delegates the responsibilities of the Office of the Public Counsel within s. 112.31895, F.S., to the Department of Legal Affairs.

Section 22. Amends s. 985.401, F.S., related to the Juvenile Justice Accountability Board. Reduces the number of members of the JJAB from nine to seven. Transfers the authority to appoint JJAB board members from the President and the Speaker to the Governor. Specifies the composition of the JJAB's board. Removes the board's authority to appoint an executive director. Removes the exemption of board staff from the Career Service System. Assigns the board and its staff to the Department of Juvenile Justice. Removes any reference to the Joint Legislative Auditing Committee. Requires that the Secretary of Juvenile Justice and the Governor receive a copy of the board's outcome evaluation report. Removes the JJAB's authority to contract with consultants and to apply for and receive grants for conducting research and evaluation activities. Removes the mandate that state agencies assist the board. Unless reenacted by the Legislature, s. 985.401 expires June 30, 2001.

Section 23. Amends s. 218.502, related to definitions of the Local Government Financial Emergencies Act. Subjects district school boards to the local government financial emergencies act by including them within the definition of a local governmental entity.

Section 24. Repeals subsection (4) of s. 284.50, F.S., related to a compliance evaluation conducted by the Auditor General of each department with its loss prevention program. Repeals paragraph (f) of subsection (1) of s. 475.045, F.S., related to an annual financial audit of the Florida Real Estate Commission Education and Research Foundation conducted by the Auditor General. Repeals s. 985.07, F.S., related to school district and law enforcement information sharing; provides for an Auditor General examination.

Section 25. This act shall take effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the State Constitution, places constitutional restrictions upon the legislative branch of state government in the implementation of legislation which cause unfunded mandates. While the provisions in this bill will shift the incidence of cost to district school boards and charter schools, none of these entities is specifically named in

this constitutional provision.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

While the fiscal analysis contemplates cost savings to the Auditor General these reductions will not be transferred to local governments. They will have to assume the expenses out of their own funds.

B. Private Sector Impact:

Estimates provided by staff of the Joint Legislative Auditing Committee indicate that 24 positions and about \$1.25 million will be affected by the shift in audit schedules and the transfer of work to private Certified Public Accounting firms.

Two positions and \$104,000 will be affected by the shift from state to private firm audits of water management districts and expressway authorities.

C. Government Sector Impact:

Eight positions with a financial impact of \$431,000 will be transferred from the Office of the Auditor General to the Office of Legislative Services.

One hundred twenty-eight positions and \$7.8 million will be transferred from the Auditor General to the Department of Law Enforcement as a result of the shift in organizational responsibilities for public assistance fraud.

Twenty-seven and one-half positions and \$1.4 million will be eliminated due to the elimination of audit responsibilities.

Ten positions and \$521,000 will be added due to general workload increases resulting from the bill.

The transfer of the Juvenile Justice Accountability Board and the Division of Public Assistance Fraud from the legislative to executive branch will cause affected employees to lose their prior employer payment for all benefit costs. Thereafter, these employees will have to assume co-payments for health and life insurance coverage and may accrue sick and annual

leave at a different rate. These employees may also be eligible to either roll over their accrued leave balances or receive a full or partial cash payment for them from their departing employer.

There is no requirement that staff displaced as a result of the shift in audit responsibilities and frequency must be assumed by the private sector. Generally, the benefit package provided State of Florida employees is more generous than that available in the private sector. For purposes of salary, the legislative report prepared on this subject assumes CPA fees will be the same as costs charged by the Auditor General for the same work.

Section 473.307, F.S., permits an applicant for a CPA license to use employment with the Office of the Auditor General or the Florida Public Service Commission to satisfy the one-year experience requirement. The transfer and termination of the above responsibilities will limit the number of future applicants who can use this alternative.

Employees discharging duties involving the investigation of public assistance fraud who are transferred to the Department of Law Enforcement may subsequently inquire whether these positions have become law enforcement equivalents. They may petition their employer for such designation or, in the alternative, the employer may recognize them as such and require their adherence to the certification provisions in ch. 943, F.S. In such an event there would be additional, unbudgeted costs associated with the pay, personnel and retirement consequences. The use of the Type One transfer of this program, that is, the wholesale transfer of the current organizational unit intact, may lessen the onset of this issue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 22 incorporates a definition of “minorities” to specifically include African Americans, Hispanics, and American Indians only. A minority person, defined in s. 288.703, F.S., includes Asian Americans in that term along with women. The bill removes women from the definition altogether and places that group along side the public and minorities, for whom the composition of the board must be broadly based. Specific reference to Asian Americans is deleted.

The bill provides that the Department of Legal Affairs shall succeed the Office of the Public Counsel in the investigation of whistle-blower complaints. The Office of the Public Counsel and the Florida Public Service Commission are parts of the legislative branch, pursuant to chs. 11 and 350, F.S., respectively. Discharge of the Attorney General’s responsibilities under this amended section may cause that office to conduct routine inquiries into the actions of constitutionally distinct governmental entities.

VIII. Amendments:

None.

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