

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: SB 880

INTRODUCER: Senator Stargel

SUBJECT: Government Accountability

DATE: March 13, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	<b>Pre-meeting</b>
2.			AP	
3.			RC	

---

**I. Summary:**

SB 880 amends statutes to enhance government accountability and auditing, based on recommendations noted in recent reports by the Auditor General. The bill:

- Specifies that the Governor or Commissioner of Education, or designee, may notify the Legislative Auditing Committee of an entity’s failure to comply with certain auditing and financial reporting requirements;
- Provides definitions for the terms “abuse,” “fraud,” and “waste;”
- Adds tourist development council and county tourism promotion agency to the definition of “local government entity;”
- Includes tourist development councils and county tourism promotion agencies in the list of entities that the Auditor General may audit;
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, charter schools, school districts, Florida College System institutions, and state universities to establish and maintain internal controls;
- Requires counties, municipalities, and water management districts to maintain certain budget documents on their websites for specified timeframes;
- Revises the monthly financial statement requirements for water management districts;
- Provides that the Department of Financial Services may request additional information from local government entities when preparing its annual verified report;
- Requires a local governmental entity, district school board, charter school, or charter technical career center, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances;
- Requires an independent certified public accountant conducting an audit of a local governmental entity to determine, as part of the audit, whether the entity’s annual financial report is in agreement with the entity’s audited financial statements; and

- Prohibits a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard.

## II. Present Situation:

Various statutes ensure government accountability of state and local governments. For example, the Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Other statutes require publishing of government budgets and other information online and require government entities to follow certain practices to promote efficiency and compliance within the entity.

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

## III. Effect of Proposed Changes:

### Auditing

#### *Present Situation*

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.<sup>1</sup> The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.<sup>2</sup> At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and may not have less than 10 years' experience in an accounting or auditing related field.<sup>3</sup>

The Auditor General must conduct audits, examinations, or reviews of government programs<sup>4</sup> as well as audit the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee.<sup>5</sup> The Auditor General conducts operational and performance audits on public records and information technology systems and also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.<sup>6</sup>

Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, the Speaker

---

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

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

<sup>3</sup> Section 11.42(2), F.S.

<sup>4</sup> Section 11.45(7), F.S.

<sup>5</sup> Section 11.45(2)(d)-(f), F.S.

<sup>6</sup> Section 11.45(7)(b), F.S.

of the House of Representatives, and the Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.<sup>7</sup> The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1. The report must include a 2-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.<sup>8</sup> In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.<sup>9</sup>

The annual report for the Auditor General for November 1, 2015, through October 31, 2016, contained the following recommendation:<sup>10</sup>

The Legislature should consider amending applicable Florida Statutes to establish in law the responsibility of each State and local government for the establishment and maintenance of management systems and 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.

Section 11.45, F.S., defines the types of audits the Auditor General may conduct. That section requires certain state and local governmental audits to be conducted and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits he or she determines to be appropriate.

Following notification by the Auditor General, the Department of Financial Services (DFS), 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 applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or the failure to disclose a financial emergency or provide information required during a financial emergency,<sup>11</sup> the Legislative Auditing Committee may schedule a hearing to determine whether the entity should be subject to further state action. 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.,<sup>12</sup> but does not include any housing authority established under ch. 421, F.S.

---

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

<sup>8</sup> Section 11.45(7)(h), F.S.

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

<sup>10</sup> A copy of the report can be found online at: <http://www.myflorida.com/audgen/pages/annualrpt.htm> (last visited March 9, 2017).

<sup>11</sup> Section 11.45, F.S., governs certain audits to be conducted by the Auditor General. Section 218.32(1), F.S., requires annual financial reports from local governmental entities. Section 218.38, F.S., requires notice of bond issuance and contains verification requirements. Section 218.503(3), F.S., requires certain entities to disclose a financial emergency and provide certain information concerning a financial emergency.

<sup>12</sup> Section 189.012(6), F.S., defines a “special district” to mean a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or

The Auditor General is also required to annually transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and DFS a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts (WMDs) that have failed to comply with certain transparency requirements.

***Effect of the Bill***

**Section 1** provides that the Governor or his or her designee, and the Commissioner of Education or his or her designee, are also authorized to notify the Legislative Auditing Committee that a local governmental entity, district school board, charter school, or charter technical career center has failed to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or failed to disclose a financial emergency or provide information required during a financial emergency.

**Section 2** creates the following definitions:

- “Abuse” means behavior that is deficient or improper when compared with behavior that a prudent person would consider a 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 amends the definition for “local governmental entity” for purposes of s. 11.45, F.S., to include tourist development council and county tourism promotion agency. This section also authorizes the Auditor General to conduct audits or other engagements of tourist development councils and county tourism promotion agencies. The bill amends the list of entities that must be included in the Auditor General report concerning entities that fail to comply with transparency requirements in s. 11.45, F.S., to add local governmental entities and remove WMDs. The WMDs are already covered by s. 11.45(2)(f), F.S.,<sup>13</sup> and the Auditor General did not find it helpful to have additional authority for an as needed audit.

**Florida Single Audit Act**

***Present Situation***

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to:

---

benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

<sup>13</sup> Section 11.45(2)(f), F.S. states in part that at least every 3 years, the Auditor General shall conduct operational audits of the accounts and records of water management districts.

- 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 Florida Single Audit Act, certain entities that meet the “audit threshold” requirements are subject to a state single audit or a project-specific audit. Currently, the “audit threshold” requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every 2 years, the Auditor General, after consulting with the Executive Office of the Governor, DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.<sup>14</sup>

### *Effect of the Bill*

**Section 8** changes the requirement that the Auditor General review the threshold amount for requiring audits from every 2 years to “periodically;” however, the term “periodically” is not defined. The bill also authorizes the Auditor General to recommend to the Legislature a statutory change to revise the threshold amount in its annual report.

## **Annual Financial Audit Reports**

### *Present Situation*

If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, an entity meeting certain requirements must have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant.<sup>15</sup> Section 218.39, F.S., specifies 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 take certain steps to determine whether the entity should be subject to further state action.<sup>16</sup>

### *Effect of the Bill*

---

<sup>14</sup> Section 215.97(2)(a), F.S.

<sup>15</sup> Section 218.39(1), F.S.

<sup>16</sup> Section 11.40(2), F.S.

**Section 12** provides that if an audit report contains a recommendation that was included in the preceding financial audit report but remains unaddressed, the governing body of the audited entity, within 60 days after delivery of the audit report to the governing body, must indicate during a regularly scheduled public meeting whether it intends to take a 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 must explain its decision at the public meeting.

### **Local Governmental Entity Annual Financial Reports**

#### ***Present Situation***

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to DFS within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, DFS 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>17</sup>

#### ***Effect of the Bill***

**Section 10** requires an independent certified public accountant conducting an audit of a local governmental entity pursuant to s. 218.39, F.S., to determine, as part of the audit, whether the entity's annual financial report is in agreement with the entity's audited financial statements. If the audited financial statements are not in agreement with the annual financial report, the bill requires the accountant to specify in the audit report the significant differences that exist between the audited financial statements and the annual financial report.

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

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

#### ***Present Situation***

School districts, Florida College System institutions, and other institutions and agencies under the supervision of the State Board of Education (SBE) and state universities under the supervision of the Board of Governors (BOG) 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

---

<sup>17</sup> Section 218.32(2), F.S.

Florida College System institution board of trustees, or the university board of trustees is required to conduct an audit overview during a public meeting.<sup>18</sup>

### ***Effect of the Bill***

**Section 18** provides that if an audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed, the district school board, the Florida College System institution board of trustees, or the university board of trustees must indicate during a regularly scheduled public meeting whether it intends to take 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. 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 must explain its decision at the public meeting.

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

### ***Present Situation***

#### *State Agencies and the Judicial Branch*

Section 215.86, F.S., requires each state agency and the judicial branch as defined in s. 216.011, F.S., to 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. It requires accounting systems and procedures to be designed to fulfill the requirements of generally accepted accounting principles.

#### *Local Governmental Entities*

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 to follow uniform accounting practices and procedures as provided by rule of DFS to assure the use of proper accounting and fiscal management by such units. Such rules must include a uniform classification of accounts.

#### *Charter Schools*

Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to creating charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law provides that the governing body of a charter school is responsible for:

- Ensuring that the charter school has retained a certified public accountant or auditor to perform its annual audit;
- Reviewing and approving 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, which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.<sup>19</sup>

---

<sup>18</sup> Section 1010.30(2), F.S.

<sup>19</sup> Section 1002.33(9)(j), F.S.

*School Districts, Florida College System Institutions, and State Universities*

Current law requires the financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the SBE to be prepared and maintained as prescribed by law and rules of the SBE. The financial records and accounts of each state university under the supervision of the BOG must be prepared and maintained as prescribed by law and rules of the BOG. Rules of the SBE and rules of the BOG must incorporate the requirements of law and accounting principles generally accepted in the United States and must include a uniform classification of accounts. Each state university must annually file with the BOG financial statements prepared in conformity with these requirements. The BOG's rules must prescribe the filing deadline for the financial statements. The required financial accounts and reports must include provisions that are unique to K-12 school districts, Florida College System institutions, and state universities.<sup>20</sup>

*Justice Administrative Commission*

The Justice Administrative Commission (Commission) is created in s. 43.16, F.S. As one of its duties, the Commission is charged with maintaining a central state office for administrative services and assistance on behalf of state attorneys and public defenders, the capital collateral regional counsel, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.<sup>21</sup> Additionally, the Commission records and submits certain documents prepared by a state attorney, public defender, or criminal conflict and civil regional counsel or the Guardian Ad Litem Program, including 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.<sup>22</sup>

*Effect of the Bill*

**Sections 3, 7, 11, 16, and 17** require state agencies, the judicial branch, local governmental entities, charter schools, school districts, Florida College System institutions, state universities, the 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, as defined in s. 11.45(1), F.S.;
- 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.

**Section 15** authorizes a district school board to retain an internal auditor to determine:

- 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.

---

<sup>20</sup> Section 1010.01, F.S.

<sup>21</sup> Section 43.16(5)(a), F.S.

<sup>22</sup> Section 43.16(5)(b), F.S.



- The efficiency of operations.
- The reliability of financial records and reports.
- The safeguarding of assets.

## **Online Posting of Governmental Budgets**

### *Counties and Municipalities*

#### ***Present Situation***

Counties<sup>23</sup> and municipalities<sup>24</sup> are required to post their tentative budgets on their websites 2 days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within 5 days of adoption.<sup>25</sup> Current law does not specify how long these documents must remain available on the website.

#### ***Effect of the Bill***

**Sections 4, 5, and 6** require a tentative budget to remain on a county or municipality's website for at least 45 days. The bill also requires a final budget to remain on the entity's website for at least 2 years. Finally, the bill requires an adopted amendment to a budget to remain on the website for at least 2 years.

### *Water Management Districts*

#### ***Present Situation***

Chapter 373, F.S., governs Florida's water resource management and authorizes the creation of WMDs, which are given taxing authority. A WMD is defined as "any flood control, resource management, or water management district" operating under the authority of ch. 373, F.S.<sup>26</sup> There are five WMDs in Florida: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida.<sup>27</sup> Section 373.536, F.S., governs the budget process for WMDs and requires a WMD's tentative budget to be posted on the WMD's website at least 2 days before budget hearings are conducted. The law requires a WMD's final adopted budget to be posted on the WMD's official website within 30 days after adoption.

#### ***Effect of the Bill***

**Section 14** requires a WMD's tentative budget to remain on the WMD's website for at least 45 days and requires the final adopted budget to remain on the website for at least 2 years.

## **Transparency in Government Spending**

### ***Present Situation***

The Transparency Florida Act (Act), codified 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. It also requires

<sup>23</sup> Section 129.03, F.S.

<sup>24</sup> Section 166.241, F.S.

<sup>25</sup> Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.

<sup>26</sup> Section 373.019(23), F.S.

<sup>27</sup> Section 373.069(1), F.S.

certain budget information, certain contract information, and minimum functionality standards to be readily available online. In pertinent part, s. 215.985(11), F.S., requires each WMD to provide a monthly financial statement to its governing board and make the statement available for public access on its website.

***Effect of the Bill***

**Section 9** requires a WMD's monthly financial statement to be in the form and manner prescribed by DFS and requires each WMD to make the monthly financial statement available to the public on its website.

**Reasonable Opportunity to be Heard at Public Meetings**

***Present Situation***

Section 286.0114, F.S., requires, with certain exceptions, that members of the public be provided a reasonable opportunity to be heard before a board or commission. The law describes a general public comment process and allows entities to prescribe how public comment is made and create certain reasonable limitations.

***Effect of the Bill***

**Section 13** specifies that a board or commission may not require a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard at a meeting.

**Statement of Legislative Findings**

**Section 19** specifies that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property.

**Section 20** of the bill provides an effective date of July 1, 2017.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires county and municipal governments to establish and maintain specified internal controls, and to post government budgets online. 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 Section 19 of the bill specifies that it serves an important state interest.

B. Public Records/Open Meetings Issues:

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**Single-Subject Requirement

Article III, Section 6 of the Florida Constitution provides, in relevant part, that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” In interpreting this provision, the Florida Supreme Court has stated, “[a]n act may be as broad as the Legislature chooses, provided the matters included in the act have a natural or logical connection.”<sup>28</sup>

The title of the bill is “Government Accountability” and it contains many provisions related to governmental auditing and reporting requirements. Section 13 of the bill amends s. 286.0114, F.S., to prohibit a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard at a meeting. It is unclear whether a reviewing court would conclude that this provision has a “natural or logical connection” with government accountability.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill may have an indeterminate negative fiscal impact on state agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities because it requires them to establish specified internal controls. This requirement may require additional time and expense to create the internal controls.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>28</sup> *Chenoweth v. Kemp*, 396 So. 2d 1122 (Fla. 1981).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 43.16, 129.03, 129.06, 166.241, 215.86, 215.97, 215.985, 218.32, 218.33, 218.39, 286.0114, 373.536, 1001.42, 1002.33, 1010.01, and 1010.30.

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

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

None.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---