

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 593 Government Accountability  
**SPONSOR(S):** Government Operations Subcommittee; Metz and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Moore	Williamson
2) Appropriations Committee		White	Leznoff
3) State Affairs Committee			

### SUMMARY ANALYSIS

Various statutes ensure government accountability of state and local governments. The bill makes changes to some of these statutes. In part, the bill:

- Authorizes the Governor or Commissioner of Education to notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements;
- Applies certain ethics standards and post-employment lobbying restrictions to certain corporations created or housed within the Department of Economic Opportunity;
- Applies the conflicting contractual relationship ban to contracts held by a business entity in which a public officer or public employee holds a controlling interest or that he or she manages;
- 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;
- Revises criminal provisions relating to bribery, misuse of public office, unlawful compensation or reward for official behavior, official misconduct, and bid tampering to replace the "corrupt intent" mens rea requirement with a "knowingly and intentionally" mens rea requirement and to expand the applicability of these offenses to officers and employees of a public entity created or authorized by law;
- Subjects public contractors to the criminal offenses of official misconduct and bid tampering;
- Allows public servants and public contractors prosecuted for a criminal offense to recover attorney fees;
- Revises financial disclosure requirements for elected municipal officers who receive compensation;
- Adds school districts to the list of governmental entities who may withhold salary-related payments for failure to timely file disclosure of financial interests;
- Requires counties, municipalities, and special districts to maintain certain budget documents on their websites for specified timeframes;
- Requires a unit of government to investigate and take action to recover prohibited compensation and exempts from the prohibition specified bonuses and severance pay;
- Revises the monthly financial statement requirements for water management districts;
- Prohibits certain officers, members, or directors from representing a person or entity before Enterprise Florida, Inc., and its divisions and corporations, and the Florida Development Finance Corporation;
- Requires completion of an annual financial audit of the Florida Virtual School;
- Requires a district school board, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances; 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.

The bill may have an indeterminate but likely insignificant negative fiscal impact on the state, local governments, and the private sector. See Fiscal Comments section.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Statement of Legislative Findings and Intent**

The bill specifies that its intent is to prevent fraud, waste, and abuse and to safeguard government resources. It also provides 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.

##### **Governmental Ethics Laws**

###### Collection Methods for Unpaid Financial Disclosure Fines

###### *Present Situation*

Section 112.31455, F.S., authorizes the Commission on Ethics (COE) 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 (DFS), the COE must attempt to determine whether the filer is a current public officer or employee.<sup>1</sup> If the person is currently a public officer or employee, the COE 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 COE by the individual. After receipt and verification of the notice from the COE, the Chief Financial Officer or the appropriate governing body is required to begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment. The withheld payments must be remitted to the COE 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 to comply with these requirements. In the event that the COE determines the individual owing a fine is no longer a public officer or employee or if the COE is unable to make such a determination, the COE must wait for six months after the order becomes final. After that period of time, the COE may seek garnishment pursuant to ch. 77, F.S. Additionally, the COE may refer the unpaid fine to a collection agency.<sup>2</sup> The collection agency may utilize any collection methods provided by law. The statute of limitations for an unpaid financial disclosure fine is 20 years.<sup>3</sup>

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

The bill expressly requires school districts to withhold public salary-related payments after receiving notice from the COE that an employee has an unpaid fine, including a portion to cover any administrative costs incurred by the school district to comply with the requirement.

###### Post Service Lobbying Restrictions

###### *Present Situation*

Section 288.92, F.S., authorizes Enterprise Florida, Inc., to create and dissolve divisions as necessary to carry out its mission and requires Enterprise Florida, Inc., to have divisions related to certain areas. The law also provides for the hiring of officers and members of the divisions and subjects certain officers and members to specified 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.

The Florida Development Finance Authority is created in s. 288.9604, F.S., which addresses the appointment of members of the board of directors and the powers of the authority. The directors are

---

<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.

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

subject to specified standards of conduct in the Code of Ethics for Public Officers and Employees. The law currently does not contain any post-employment or post-service restrictions.

The Department of Economic Opportunity (DEO) is created in s. 20.60, F.S., and has numerous entities under its purview in various chapters of the Florida Statutes. While DEO is an agency, and is 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, DEO may not be subject to its provisions. In 2014, the Legislature required the officers and board members of Enterprise Florida, Inc., its divisions, its subsidiaries, corporations created to carry out its mission, and corporations with which a division is required to contract in order to carry out its missions to be subject to specified standards of conduct.<sup>5</sup> The Legislature also applied certain standards of conduct to the Florida Development Finance Corporation.<sup>6</sup>

#### *Effect of the Bill*

The bill prohibits the officers and members of the boards of directors of the divisions of Enterprise Florida, Inc., its subsidiaries, corporations created to carry out its missions, and corporations with which a division is required by law to contract to carry out its missions from representing another person or entity for compensation before Enterprise Florida, Inc., its divisions, its subsidiaries, and such corporations, for a period of two years after retirement or termination of service to a division. If the officer or member of the board of directors is removed or terminated for misconduct, as defined in s. 443.036(29), F.S.,<sup>7</sup> that term is extended to a period of 10 years after termination of the service. The bill also prohibits a director of the Florida Development Finance Authority from representing another person or entity for compensation before the authority for a period of two years following his or her service on the board of directors.

The bill subjects the officers and members of the boards of directors of any corporation created pursuant to ch. 288, F.S., Space Florida, CareerSource Florida, Inc., the Florida Housing Finance Corporation, or any other corporation created by DEO 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 for public officers and employees in s. 112.313, F.S. Additionally, the bill prohibits a former officer or board member, for a period of two years after retirement or termination of service with the DEO corporate entity, from representing a person or entity for compensation before his or her corporation; a division, a subsidiary, or the board of directors of a corporation created to carry out the mission of his or her corporation; or a corporation with which his or her corporation within DEO is required by law to contract

---

<sup>5</sup> Section 8, Ch. 2014-183, L.O.F.

<sup>6</sup> Section 9, Ch. 2014-183, L.O.F.

<sup>7</sup> Section 443.036(29), F.S., provides that “misconduct,” irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer’s interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer’s property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e)1. A violation of an employer’s rule, unless the claimant can demonstrate that:

- a. He or she did not know, and could not reasonably know, of the rule’s requirements;
- b. The rule is not lawful or not reasonably related to the job environment and performance; or
- c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

to carry out its missions. If he or she is removed due to misconduct, 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 is doing business with, his or her agency. The law further prohibits public officers and employees of an agency from having an 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 past several years, the COE has advised that the law needs to be amended. Specifically, the COE has advised that individuals were creating a fictitious legal entity and subsequently using those fictitious legal entities to engage in contracts that would be prohibited if the people entered them individually.

#### *Effect of the Bill*

The bill provides that if a public officer or employee of an agency holds a controlling interest in a business entity or is an officer, a 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 or employee. As such, if a public officer or employee holds a controlling interest in a business entity or is an officer, a 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 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 Art. II, s. 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). The law specifies the information that must be disclosed, the due date of the disclosure, the processes to amend the disclosure, and penalties for failing to file the CE Form 6 as required. This filing is more detailed than what is referred to as a CE Form 1, which is filed annually by other officers as provided in s. 112.3145, F.S. Currently, elected municipal officers are subject to the CE Form 1 filing requirement.

#### *Effect of the Bill*

The bill requires all elected municipal officers who receive compensation to file the more detailed CE Form 6 annually as provided in s. 112.3144, F.S., beginning with the 2016 filing year.<sup>8</sup> The bill also amends s. 99.061, F.S., to require a candidate for an elected municipal office for which compensation is provided to file a CE Form 6 with his or her qualifying papers.

---

<sup>8</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.

## Criminal Ethics Provisions

### Present Situation

#### *Nineteenth Statewide Grand Jury*

A statewide grand jury<sup>9</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 stated that the following should be addressed statewide:

- 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 presentments; and
- Examine public policy issues regarding public corruption and develop specific recommendations regarding improving current laws.<sup>10</sup>

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" or "with corrupt intent" as well as the offenses of bribery, unlawful compensation or reward for official behavior, official misconduct, and bid tampering.

#### *Color of Law*

Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed "under color of law," which refers to criminal offenses that are committed by one who is acting or purporting to act in the performance of his or her official duties, unless acting or purporting to act in the performance of official duties is a necessary element of the underlying crime. The Nineteenth Statewide Grand Jury recommended that the Legislature consider reclassification of such offenses.<sup>11</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>12</sup> Black's Law Dictionary notes that the term scienter is defined as "knowingly" and is frequently used to signify the defendant's guilty knowledge.<sup>13</sup> The general rule is that scienter or mens rea is a necessary element in the indictment for every crime.<sup>14</sup>

The Nineteenth Statewide Grand Jury found that the use of the word "corruptly" or "with corrupt intent" makes the prosecution of offenses under ch. 838, F.S., more difficult and might require additional evidence, such as testimony from persons involved.<sup>15</sup> The Nineteenth Statewide Grand Jury recommended removing the element of "corruptly" or "with corrupt intent" from the ch. 838, F.S., offenses of bribery, unlawful compensation, official misconduct, and bid tampering.<sup>16</sup>

#### *Definitions Related to Bribery and Misuse of Public Office*

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

---

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

<sup>10</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 at* [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf) [hereinafter Interim Report].

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

<sup>12</sup> BLACK'S LAW DICTIONARY 1137 (4th Rev. 1968).

<sup>13</sup> *Id.* at 1512.

<sup>14</sup> *Chicone v. State*, 684 So. 2d 736, 741 (Fla. 1996); *see also U.S. v. Balint*, 258 U.S. 250 (1922).

<sup>15</sup> See Interim Report, *supra* note 11, at 24.

<sup>16</sup> *Id.*

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:

- Any officer or employee of a state, county, municipal, or special district agency or entity;
- Any legislative or judicial officer or employee;
- 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
- A candidate for election or appointment to any of the positions listed in this definition, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

### *Bribery*

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

Chapter 838, F.S., also contains three other bribery offenses, including bribery in athletic contests,<sup>19</sup> commercial bribe receiving,<sup>20</sup> and commercial bribery.<sup>21</sup> In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was unconstitutionally vague.<sup>22</sup> The Nineteenth Statewide Grand Jury Report opined that s. 838.16, F.S., commercial bribery, is most certainly also unconstitutionally vague since s. 838.16, F.S., refers to s. 838.15, F.S.<sup>23</sup>

### *Unlawful Compensation or Reward for Official Behavior*

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. It is a second degree felony<sup>24</sup> 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 that the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty; or
- For the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission that the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

### *Official Misconduct*

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:

- Falsify, or cause another person to falsify, any official record or official document;

---

<sup>17</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>18</sup> Section 838.015(3), F.S. Under ss. 775.082 and 775.083, F.S., 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, F.S., 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>19</sup> Section 838.12, F.S.

<sup>20</sup> Section 838.15, F.S.

<sup>21</sup> Section 838.16, F.S.

<sup>22</sup> *Roque v. State*, 664 So. 2d 928 (Fla. 1995).

<sup>23</sup> See Interim Report *supra* note 11, at 34.

<sup>24</sup> A second degree felony is punishable as provided for in ss. 775.082, 775.083, or 775.084, F.S. See *supra* note 19.

- Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
- 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 these provisions commits a felony of the third degree, which is punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, F.S.<sup>25</sup>

### *Bid Tampering*

Section 838.22, F.S., provides that:

- 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:
  - Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.
  - 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.
- 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.
- It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate one of the above provisions.
- It is unlawful for any person to knowingly enter into a contract for commodities or services that was secured by a public servant acting in violation of one of the above provisions.

Any person who violates one of these provisions commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.<sup>26</sup>

### *Attorney Fees*

Under common law, a public officer who successfully defends charges of misconduct while in office is entitled to be reimbursed for his or her attorney fees accrued defending such charges.<sup>27</sup> The reimbursement applies regardless of whether the official is defending his or her conduct in civil proceedings or in criminal proceedings.<sup>28</sup> However, in order to be entitled to attorney fees, the litigation must arise out of or in connection with the performance of the public officer's official duties and must serve a public purpose.<sup>29</sup> Inherent in the requirement of a "public purpose" is that the public officer was not advancing his or her own private pecuniary interests.<sup>30</sup> Thus, in order to be reimbursed, the public officer must successfully defend himself or herself against charges and demonstrate his or her actions were for a public purpose.

### Effect of the Bill

#### *Applicability of the Criminal Offenses in Ch. 838, F.S.*

The bill expands the population of persons subject to criminal sanction under ch. 838, F.S., by amending the definition of "public servant," creating a new definition of "governmental entity," creating a new definition of "public contractor" applicable to official misconduct, and including public contractors who contract with a governmental entity to assist in competitive procurement in bid tampering offenses. The bill redefines the term "public servant" as any officer or employee of a governmental entity,

<sup>25</sup> Section 838.022(3), F.S. Under ss. 775.082 and 775.083, F.S., 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, F.S., 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.

<sup>26</sup> See *supra* note 19.

<sup>27</sup> *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 916 (Fla. 1990).

<sup>28</sup> *Chavez v. City of Tampa*, 560 So. 2d 1214, 1217 (Fla. 2d DCA 1990).

<sup>29</sup> *Thornber*, 568 So. 2d at 916.

<sup>30</sup> *Chavez*, 560 So. 2d at 1217.

including any executive, legislative, or judicial branch. The bill defines the term “governmental entity” as an agency or entity of the state; a county, municipality, or special district; or any other public entity created or authorized by law. Thus, the bill expands the governmental entities subject to the criminal offenses of bribery, unlawful compensation, official misconduct, and other offenses in ch. 838, F.S., to include public entities such as Citizens Property Insurance Corporation,<sup>31</sup> statutorily-created direct-support organizations,<sup>32</sup> and other statutorily-created public entities. The definition of “corruptly” or “with corrupt intent” is eliminated.

In addition, the bill expands who may be prosecuted for official misconduct. The bill creates a new definition of “public contractor,” which is defined as any person, officer, or employee of a person who has entered into a contract with a governmental entity. The term “person” in the definition of public contractor includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.<sup>33</sup> Under the amended offense of official misconduct, it is unlawful for a public servant or a public contractor to falsify, or cause another person to falsify, any official record or official document; to conceal, cover up, destroy, mutilate, or alter any official record or official document, except as authorized by law or contract; or to obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the governmental entity served by the public contractor.

The bill applies the offense of bid tampering to public contractors who have contracted with a governmental entity to assist in a competitive procurement. A public contractor who has contracted with a governmental entity to assist in a competitive procurement is prohibited from influencing or attempting to influence a competitive solicitation by:

- Disclosing, except as authorized by law, material information concerning a vendor’s response, any evaluation results, or other aspects of the competitive solicitation when such information is not publicly disclosed; or
- Altering or amending a submitted response, documents or other materials supporting a submitted response, or any evaluation results relating to the competitive solicitation for the purpose of intentionally providing a competitive advantage to any person who submits a response.

A public contractor who violates this prohibition commits a second degree felony.<sup>34</sup>

The bill reenacts several sections of law to incorporate amendments by the bill to the definition of public servant.

#### *Mens Rea*

The bill amends s. 838.015(1), F.S., relating to bribery; s. 838.016, F.S., relating to unlawful compensation or reward for official behavior; s. 838.022, F.S., relating to official misconduct; and s. 838.22, F.S., relating to bid tampering, to change the mens rea element of each crime from “corruptly” to “knowingly and intentionally.” Under the bill, a prosecutor will no longer have to show a defendant acted dishonestly for a wrongful purpose by accepting a bribe but rather that the defendant knowingly and intentionally accepted the bribe.

#### *Attorney Fees*

The bill authorizes public servants and public contractors prosecuted for a violation under the bill to recover attorney fees in the same manner as provided by general law for public officers and employees with respect to the enforcement of public corruption offenses.

---

<sup>31</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 homeowners who could not obtain insurance elsewhere.

<sup>32</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. 272.136, F.S.

<sup>33</sup> Section 1.01(3), F.S.

<sup>34</sup> A second degree felony is punishable by a term of imprisonment of up to 15 years and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.



## **Online Posting of Governmental Budgets**

### Counties, Municipalities, and Special Districts

#### *Present Situation*

Counties,<sup>35</sup> municipalities,<sup>36</sup> and special districts<sup>37</sup> are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county, municipality, or special district must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption.<sup>38</sup> Current law does not specify how long these documents must remain available on the website.

#### *Effect of the Bill*

The bill requires a tentative budget to remain on a county's, municipality's, or special district's website for at least 45 days. The bill also requires a final budget to remain on the entity's website for at least two years. Finally, the bill requires an adopted amendment to a budget to remain on the website for at least two 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. 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 two 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*

The bill 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 two years.

## **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:

---

<sup>35</sup> Section 129.03, F.S.

<sup>36</sup> Section 166.241, F.S.

<sup>37</sup> Section 189.016(4), F.S.

<sup>38</sup> Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.

- 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>39</sup>

#### *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 State Board of Education (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 Board of Governors (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 accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the BOG. 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 each of the following: K-12 school districts, Florida College System institutions, and state universities, and must 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.<sup>40</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 when possible to 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 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.

#### Effect of the Bill

The bill requires 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;
- 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 authorizes a district school board to retain an internal auditor to determine the adequacy of internal controls described above.

#### **Extra Compensation Claims and False Claims Act Changes**

---

<sup>39</sup> Section 1002.33(9)(j), F.S.

<sup>40</sup> Section 1010.01, F.S.

## 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. In addition, no money may 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. Current law also requires a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay to include in the contract provisions that limit severance pay to 20 weeks and that prohibit severance pay when the individual is terminated for misconduct.<sup>41</sup>

### *Effect of the Bill*

The bill defines “public funds” to mean any taxes, tuition, grants, fines, fees, or other charges or any other type of revenue collected by the state or any county, municipality, special district, school district, Florida College System institution, state university, or other separate unit of government created pursuant to law, including any office, department, agency, division, subdivision, political subdivision, board, bureau, or commission of such entities.

The bill requires a contract or employment agreement, or renewal of an existing contract or agreement, entered into by a unit of local government on or after July 1, 2011, or by a state university on or after July 1, 2012, to contain a requirement that severance pay from public funds may not exceed 20 weeks and to prohibit the provision of severance pay paid from public funds when the officer, agent, employee, or contractor has been fired for misconduct.

The bill specifies that if the payment and receipt does not otherwise violate the Code of Ethics for Public Officers and Employees, the following funds may be used to provide extra compensation or severance pay in excess of the 20-week limitation:

- Revenues received by state universities through or from faculty practice plans; health services support organizations; hospitals with which state universities are affiliated; direct-support organizations; or federal, auxiliary, or private sources, except for tuition.
- Revenues received by Florida College System institutions through or from faculty practice plans; health services support organizations; direct-support organizations; or federal, auxiliary, or private sources, except for tuition.
- Revenues that are received by a hospital licensed under ch. 395, F.S., that has entered into a Medicaid provider contract, and the revenues:
  - Are not derived from the levy of an ad valorem tax;
  - Are not derived from patient services paid through the Medicaid or Medicare program;
  - Are derived from patient services pursuant to contracts with private insurers or private managed care entities; or
  - Are not appropriated by the Legislature or by any county, municipality, special district, school district, Florida College System institution, state university, or other separate unit of government created pursuant to law, including any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, or institution of such entities, except for revenues otherwise authorized to be used.
- 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 requires a unit of government that has made a prohibited compensation payment to investigate and take all actions necessary to recover the prohibited compensation. If the compensation was provided unintentionally, the unit of government must recover the prohibited compensation through its normal recovery methods for overpayments. If the prohibited compensation was willfully made, the unit

---

<sup>41</sup> Section 215.425(4)(a), F.S.  
**STORAGE NAME:** h0593b.APC  
**DATE:** 2/15/2016

of government must recover the compensation from either the recipient or the individual who authorized the prohibited payment. Each individual determined to have willfully violated the prohibition is jointly and severally liable for repayment of the prohibited compensation. A person who willfully provides prohibited compensation commits a first degree misdemeanor under the bill. The bill provides for suspension and removal of officers who willfully provide prohibited compensation as follows: an officer who exercises the powers and duties of a state or county officer may be suspended by the Governor and removed by the Florida Senate; any other officer may be suspended and removed by the Governor pursuant to s. 112.51, F.S.

A person who reports a prohibited compensation payment is eligible for a reward of at least \$500, or the lesser of 10 percent of the funds recovered or \$10,000 per incident. There is an exception to the reward provision where the recovery of the prohibited compensation is based on disclosures of information relating to allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, inspector general, or other government report; in an auditor general report, hearing, audit, or investigation; or in the news media. If the reporting person was involved in the authorization, approval, or receipt of the prohibited compensation or is convicted for his or her role in the authorization, approval, or receipt of the prohibited compensation, he or she is not eligible for the reward. Whistle-blowers are granted full protection under the Whistle-blower's Act.<sup>42</sup>

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

The bill specifies that the provisions regarding the recovery of prohibited compensation apply prospectively to contracts or employment agreements, or the renewal or renegotiation of an existing contract or employment agreement, effective on or after October 1, 2016.

### False Claims against the State

#### *Present Situation*

Section 68.082, F.S., prohibits a person from:

- Knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval;
- Knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim;
- Having possession, custody, or control of property or money used or to be used by the state and knowingly delivering or causing to be delivered less than all of that money or property;
- Making or delivering a document certifying receipt of property used or to be used by the state and, intending to defraud the state, making or delivering the receipt without knowing that the information on the receipt is true;
- Knowingly buying or receiving, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property;
- Knowingly making, using, or causing to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the state; or
- Conspiring to commit one of the above violations.

A person who does any of the foregoing is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the state sustains as a result of the person's act.

Section 68.083, F.S., authorizes the Department of Legal Affairs to investigate an allegation of a false claim against the state. If the Department of Legal Affairs determines a violation has occurred, it is

---

<sup>42</sup> Section 112.3187, F.S.

authorized to commence a civil action against the violator. Additionally, DFS may bring such a suit in certain circumstances if the Department of Legal Affairs has not done so.

#### *Effect of the Bill*

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

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

## **Auditing**

### Joint Legislative Auditing Committee

#### *Present Situation*

Section 11.40, F.S., provides:

Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within ss. 11.45(5)-(7),<sup>43</sup> 218.32(1),<sup>44</sup> 218.38,<sup>45</sup> or 218.503(3),<sup>46</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(3), 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,<sup>47</sup> F.S., but does not include any housing authority established under ch. 421, F.S.

The Auditor General is 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 WMDs that have failed to comply with certain transparency requirements.

#### *Effect of the Bill*

The bill provides that the Governor or his or her designee, or the Commissioner of Education or his or her designee, may also notify the Joint Legislative Auditing Committee that a local governmental entity, 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.

---

<sup>43</sup> Section 11.45, F.S., governs certain audits to be conducted by the Auditor General.

<sup>44</sup> Section 218.32(1), F.S., requires annual financial reports from local governmental entities.

<sup>45</sup> Section 218.38, F.S., requires notice of bond issuance and contains verification requirements.

<sup>46</sup> Section 218.503(3), F.S., requires those entities to disclose a financial emergency and provide certain information concerning a financial emergency.

<sup>47</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 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.

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

- “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 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 WMDs from being subject to audits of local governmental entities conducted pursuant to s. 11.45(2)(j), F.S. The bill authorizes the Auditor General to conduct audits or other engagements of tourist development councils and county tourism promotion agencies. The bill also makes conforming changes to the Auditor General’s reporting requirement.

### Florida Single Audit Act

#### *Present Situation*

The Florida Single Audit Act, codified in 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 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 \$500,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every two 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>48</sup>

#### *Effect of the Bill*

The bill increases 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 two years to “periodically;” however, the term “periodically” is not defined. Finally, the bill 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

---

<sup>48</sup> Section 215.97(2)(a), F.S.  
**STORAGE NAME:** h0593b.APC  
**DATE:** 2/15/2016

### *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, those entities meeting certain requirements must have an annual financial audit of its accounts and records completed within nine months after the end of its fiscal year by an independent certified public accountant.<sup>49</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>50</sup>

### *Effect of the Bill*

The bill provides that if the 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 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 a regularly scheduled 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 nine 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 DEO 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>51</sup>

### *Effect of the Bill*

The bill 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 audited financial statements. The accountant's audit report must be supported by the same level of detail as required for the annual financial report. If the reports are not in agreement, the bill requires the accountant to specify in the audit report the differences that exist between the annual financial report and the audit 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.

## Auditor Selection Procedures

### *Present Situation*

Section 218.391, F.S., outlines the process that each local governmental entity, district school board, charter school, or charter technical career center must follow in selecting a certified public accounting

---

<sup>49</sup> Section 218.39(1), F.S.

<sup>50</sup> Section 11.40(2), F.S.

<sup>51</sup> Section 218.32(2), F.S.

firm to act as an auditor. Noncharter counties are required to create an audit committee consisting of each of its officers elected pursuant to the State Constitution and one member of the board of county commissioners or its designee. The audit committee must publicly announce requests for proposals for the audit services. The law specifies the factors that must be considered in selecting the firm and the procedures for negotiating for compensation.

#### *Effect of the Bill*

The bill requires all counties to have an auditor selection committee consisting of each of its elected county constitutional officers or its officers elected pursuant to the county charter or their respective designees. The bill requires municipalities, special districts, district school boards, charter schools, and charter technical career centers to create an audit committee with at least three members, one of whom must be a member of the governing body of the entity. That member must serve as the audit 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 serve as a member of an audit committee.

The bill requires the audit report submitted pursuant to s. 218.39, F.S., to 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 must select a replacement auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

### The Florida Virtual School

#### *Present Situation*

The Florida Virtual School is created to develop and deliver online and distance learning. The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the SBE that must address:

- The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global;
- The 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;
- The 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>52</sup>

The Auditor General must conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global.<sup>53</sup> The scope of the audit must include, but is not limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds, including internal funds; student enrollment records; franchise agreements; information technology utilization, assets, and security; performance measures and standards; and accountability. The law specifies that the final report on the audit must 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*

---

<sup>52</sup> Section 1002.37(6), F.S.

<sup>53</sup> Section 1002.37(11), F.S.



The bill eliminates the requirement for the Auditor General to conduct an operational audit and report to the presiding officers by January 31, 2014.

The bill creates a new requirement for the Florida Virtual School to have an annual financial audit of its accounts and records conducted 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 and must prepare an audit report in accordance with such rules. The audit report must 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. The independent auditor must submit the audit report to the board of trustees and the Auditor General no later than nine months after the end of the preceding fiscal year. The bill also makes conforming changes to the annual report provided to the Governor, the Legislature, the Commissioner of Education, and the SBE by requiring a copy of the audit report to be submitted with the board of trustees' annual statement.

### Required Audits of Certain Educational Institutions

#### *Present Situation*

School districts, Florida College System institutions, and other institutions and agencies under the supervision of the SBE and state universities under the supervision of the 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 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>54</sup>

#### *Effect of the Bill*

The bill 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.

### **Other Provisions**

### Florida Clerks of Court Operations Corporation

#### *Present Situation*

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

#### *Effect of the Bill*

The bill requires the Florida Clerks of Court Operations 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.

---

<sup>54</sup> Section 1010.30(2), F.S.  
STORAGE NAME: h0593b.APC  
DATE: 2/15/2016

## 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 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*

The bill requires the monthly financial statement to be in the form and manner prescribed by DFS to the district's governing board 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*

The bill 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.

## B. SECTION DIRECTORY:

Section 1 provides that the act may be cited as the "Florida Anti-Corruption Act of 2016."

Section 2 amends s. 11.40, F.S., relating to the Legislative Auditing Committee.

Section 3 amends s. 11.45, F.S., relating to definitions; duties; authorities; reports; and rules of the Auditor General.

Section 4 amends s. 20.602, F.S., relating to standards of conduct; officers and board members of DEO corporate entities.

Section 5 amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 6 amends s. 43.16, F.S., relating to the Justice Administrative Commission.

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. 129.03, F.S., relating to preparation and adoption of county budgets.

Section 12 amends s. 129.06, F.S., relating to execution and amendment of county budgets.

Section 13 amends s. 166.241, F.S., relating to fiscal years, budgets, and budget amendments for municipalities.

Section 14 amends s. 189.016, F.S., relating to reports, budgets, and audits for special districts.

Section 15 amends s. 215.425, F.S., relating to extra compensation claims prohibited; bonuses; severance pay.

Section 16 amends s. 215.86, F.S., relating to management systems and controls for state agencies and the judicial branch.

Section 17 amends s. 215.97, F.S., relating to the Florida Single Audit Act.

Section 18 amends s. 215.985, F.S., relating to transparency in government spending.

Section 19 amends s. 218.32, F.S., relating to annual financial reports for local governmental entities.

Section 20 amends s. 218.33, F.S., relating to local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.

Section 21 amends s. 218.39, F.S., relating to annual financial audit reports.

Section 22 amends s. 218.391, F.S., relating to auditor selection procedures.

Section 23 amends s. 286.0114, F.S., relating to public meetings; reasonable opportunity to be heard; attorney fees.

Section 24 amends s. 288.92, F.S., relating to divisions of Enterprise Florida, Inc.

Section 25 amends s. 288.9604, F.S., relating to creation of the Florida Development Finance Corporation.

Section 26 amends s. 373.536, F.S., relating to district budget and hearing thereon.

Section 27 amends s. 838.014, F.S., relating to definitions.

Section 28 amends s. 838.015, F.S., relating to bribery.

Section 29 amends s. 838.016, F.S., relating to unlawful compensation or reward for official behavior.

Section 30 amends s. 838.022, F.S., relating to official misconduct.

Section 31 amends s. 838.22, F.S., relating to bid tampering.

Section 32 creates s. 838.24, F.S., relating to attorney fees.

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. 68.082, F.S., relating to false claims against the state; definitions; liability.

Section 39 amends s. 68.083, F.S., relating to civil actions for false claims.

Section 40 amends s. 99.061, F.S., relating to method of qualifying for nomination or election to federal, state, county, or district office.

Section 41 amends s. 218.503, F.S., relating to determination of financial emergency.

Section 42 amends s. 1002.455, F.S., conforming a cross-reference to changes made by the act.

Section 43 reenacts s. 112.534, F.S., relating to failure to comply; official misconduct.

Section 44 reenacts s. 117.01, F.S., relating to appointment, application, suspension, revocation, application fee, bond, and oath.

Section 45 reenacts s. 817.568, F.S., relating to criminal use of personal identification information.

Section 46 reenacts s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

Section 47 reenacts criminal punishment code; offense severity ranking chart.

Section 48 specifies that the act fulfills an important state interest.

Section 49 provides an effective date of October 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See Fiscal Comments.

#### **2. Expenditures:**

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See Fiscal Comments.

#### **2. Expenditures:**

See Fiscal Comments.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See Fiscal Comments.

### **D. FISCAL COMMENTS:**

The bill may have an indeterminate but likely insignificant 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.

The bill amends provisions related to the prohibition against extra compensation. It requires the investigation of allegations and repayment of any prohibited compensation. It also requires the payment of rewards to individuals who report violations. The bill may have an indeterminate fiscal impact on the state because these changes may result in the recovery of prohibited payments, but there will also be an associated increased cost due to the workload for conducting investigations and the payment of rewards.

The bill expands those who are eligible for prosecution for felony offenses in ch. 838, F.S.; thus, the bill may have an indeterminate prison bed impact on the Department of Corrections.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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 specifies that it serves an important state interest.

##### **2. Other:**

###### Other Comments: Single-Subject Requirement

Article III, s. 6 of the State 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>55</sup>

The title of the bill is “Government Accountability” and it contains many provisions related to governmental ethics, governmental auditing and reporting requirements, and prohibited acts by governmental officers and employees, among others. Section 24 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.

#### **B. RULE-MAKING AUTHORITY:**

The bill requires DFS to specify the form and manner for the submission of WMD monthly financial statements.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 26, 2016, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed provisions expanding the types of governmental entities subject to lobbyist registration requirements;

---

<sup>55</sup> *Chenoweth v. Kemp*, 396 So. 2d 1122 (Fla. 1981).

- Prohibited certain officers, members, or directors from representing a person or entity before the Department of Economic Opportunity and its various divisions, units, and corporations; Enterprise Florida, Inc., and its divisions and corporations, and the Florida Development Finance Corporation for a period of two years after retirement or termination of service instead of six years;
- Limited the elected municipal officers and candidates for such offices who must file an annual CE Form 6 to only those officers who receive compensation and candidates for such offices;
- Clarified 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;
- Expanded the population of persons subject to criminal sanction under ch. 838, F.S., by amending the definition of “public servant,” creating a new definition of “governmental entity,” creating a new definition of “public contractor” applicable to official misconduct, and including public contractors who contract with a governmental entity to assist in competitive procurement in bid tampering offenses; and
- Authorized public servants and public contractors prosecuted for a violation under the bill to recover attorney fees in the same manner as provided by general law for public officers and employees with respect to the enforcement of public corruption offenses.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.