

CHAPTER 97-111

House Bill No. 685

An act relating to local government audits; amending s. 11.45, F.S.; requiring auditors to notify members of the governing body of a local governmental entity under certain circumstances; providing additional duties of the Auditor General under circumstances of potential financial emergency for a local governmental entity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 11.45, Florida Statutes, 1996 Supplement, is amended to read:

11.45 Definitions; duties; audits; reports.—

(3)(a)1. The Auditor General shall annually make financial audits of the accounts and records of all state agencies, as defined in this section, of all district school boards, and of all district boards of trustees of community colleges. This section does not limit the Auditor General's discretionary authority to conduct performance audits of these governmental entities as authorized in subparagraph 2. A district school board may select an independent auditor to perform a financial audit as defined in paragraph (1)(b) notwithstanding the notification provisions of this section. In addition, a district school board may employ an internal auditor to perform ongoing financial verification of the financial records of a school district who must report directly to the district school board or its designee.

2. The Auditor General may at any time make financial audits and performance audits of the accounts and records of all governmental entities created pursuant to law. The audits referred to in this subparagraph must be made whenever determined by the Auditor General, whenever directed by the Legislative Auditing Committee, or whenever otherwise required by law or concurrent resolution. A district school board, expressway authority, or bridge authority may require that the annual financial audit of its accounts and records be completed within 12 months after the end of its fiscal year. If the Auditor General is unable to meet that requirement, the Auditor General shall notify the school board, the expressway authority, or the bridge authority pursuant to subparagraph 4.

3. The Office of Program Policy Analysis and Government Accountability within the Office of the Auditor General shall maintain a schedule of performance audits of state programs. In conducting a performance audit of a state program, the Office of Program Policy Analysis and Government Accountability, when appropriate, shall identify and comment upon alternatives for accomplishing the goals of the program being audited. Such alternatives may include funding techniques and, if appropriate, must describe how other states or governmental units accomplish similar goals.

4. If by July 1 in any fiscal year a district school board or local governmental entity has not been notified that a financial audit for that fiscal year will be performed by the Auditor General pursuant to subparagraph 2., each municipality with either revenues or expenditures of more than \$100,000, each special district with either revenues or expenditures of more than \$50,000, and each county agency shall, and each district school board may, require that an annual financial audit of its accounts and records be completed, within 12 months after the end of its respective fiscal year, by an independent certified public accountant retained by it and paid from its public funds. An independent certified public accountant who is selected to perform an annual financial audit of a school district must report directly to the district school board or its designee. A management letter must be prepared and included as a part of each financial audit report. Each local government finance commission, board, or council, and each municipal power corporation, created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), shall provide the Auditor General, within 12 months after the end of its fiscal year, with an annual financial audit report of its accounts and records and a written statement or explanation or rebuttal concerning the auditor's comments, including corrective action to be taken. The county audit shall be one document that includes a separate audit of each county agency. The county audit must include an audit of the deposits into and expenditures from the Public Records Modernization Trust Fund. The Auditor General shall tabulate the results of the audits of the Public Records Modernization Trust Fund and report a summary of the audits to the Legislature annually.

5. The governing body of a municipality or a special district must establish an auditor selection committee and competitive auditor selection procedures. The governing board may elect to use its own competitive auditor selection procedures or the procedures outlined in subparagraph 6.

6. The governing body of a noncharter county or district school board that elects to use a certified public accountant other than the Auditor General is responsible for selecting an independent certified public accountant to audit the county agencies of the county or district school board according to the following procedure:

a. For each noncharter county, an auditor selection committee must be established, consisting of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution, and one member of the board of county commissioners or its designee.

b. The committee shall publicly announce, in a uniform and consistent manner, each occasion when auditing services are required to be purchased. Public notice must include a general description of the audit and must indicate how interested certified public accountants can apply for consideration.

c. The committee shall encourage firms engaged in the lawful practice of public accounting who desire to provide professional services to submit annually a statement of qualifications and performance data.

d. Any certified public accountant desiring to provide auditing services must first be qualified pursuant to law. The committee shall make a finding that the firm or individual to be employed is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

e. The committee shall adopt procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record, experience, results of recent external quality control reviews, and such other factors as may be determined by the committee to be applicable to its particular requirements.

f. The public must not be excluded from the proceedings under this subparagraph.

g. The committee shall evaluate current statements of qualifications and performance data on file with the committee, together with those that may be submitted by other firms regarding the proposed audit, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the audit, and ability to furnish the required services.

h. The committee shall select no fewer than three firms deemed to be the most highly qualified to perform the required services after considering such factors as the ability of professional personnel; past performance; willingness to meet time requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to the firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. If fewer than three firms desire to perform the services, the committee shall recommend such firms as it determines to be qualified.

i. If the governing board receives more than one proposal for the same engagement, the board may rank, in order of preference, the firms to perform the engagement. The firm ranked first may then negotiate a contract with the board giving, among other things, a basis of its fee for that engagement. If the board is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the board shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The board, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time. The board shall also negotiate on the scope and quality of services. In making such determination, the board shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For contracts over \$50,000, the board shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that the rates of compensation and other

factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Such certificate shall also contain a description and disclosure of any understanding that places a limit on current or future years' audit contract fees, including any arrangements under which fixed limits on fees will not be subject to reconsideration if unexpected accounting or auditing issues are encountered. Such certificate shall also contain a description of any services rendered by the certified public accountant or firm of certified public accountants at rates or terms that are not customary. Any auditing service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the board determines the contract price was increased due to inaccurate or incomplete factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

j. If the board is unable to negotiate a satisfactory contract with any of the selected firms, the committee shall select additional firms, and the board shall continue negotiations in accordance with this subsection until an agreement is reached.

7. At the conclusion of the audit field work, the independent certified public accountant shall discuss with the head of each local governmental entity or the chair's designee or with the chair of the district school board or the chair's designee, as appropriate, all of the auditor's comments that will be included in the audit report. The auditor shall notify each member of the governing body of a local governmental entity for which deteriorating financial conditions exist which may cause a condition described in s. 218.503(1) to occur if actions are not taken to address such conditions. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office.

8. The officer's written statement of explanation or rebuttal concerning the auditor's comments, including corrective action to be taken, must be filed with the governing body of the local governmental entity or district school board within 30 days after the delivery of the financial audit report.

9. The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all local governmental entity audits. The rules must include, but are not limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Government Financial Emergencies Act as stated in s. 218.501.

10. Any local governmental entity or district school board financial audit report required under subparagraph 4. and the officer's written statement of explanation or rebuttal concerning the auditor's comments, including corrective action to be taken, must be submitted to the Auditor General within 45 days after delivery of the audit report to the local governmental entity or district school board but no later than 12 months after the end of the fiscal year. If the Auditor General does not receive the financial audit report within the prescribed period, he or she must notify the Legislative Auditing Committee that the governmental entity has not complied with this subparagraph. Following notification of failure to submit the required

audit report or items required by rule adopted by the Auditor General, a hearing must be scheduled by rule of the committee. After the hearing, the committee shall determine which local governmental entities will be subjected to further state action. If it finds that one or more local governmental entities should be subjected to further state action, the committee shall:

a. In the case of a local governmental entity, request the Department of Revenue and the Department of Banking and Finance to withhold any funds payable to such governmental entity until the required financial audit is received by the Auditor General.

b. In the case of a special district, notify the Department of Community Affairs that the special district has failed to provide the required audits. Upon receipt of notification, the Department of Community Affairs shall proceed pursuant to ss. 189.421 and 189.422.

11.a. The Auditor General, in consultation with the Board of Accountancy, shall review all audit reports submitted by local governmental entities pursuant to subparagraph 9. The Auditor General shall request any significant items that were omitted in violation of a rule adopted by the Auditor General. The items must be provided within 45 days after the date of the request. If the Auditor General does not receive the requested items, he shall notify the Joint Legislative Auditing Committee.

b. The Auditor General shall notify the Governor and the Joint Legislative Auditing Committee of any audit report reviewed by the Auditor General which contains a statement that the local governmental entity is in a state of financial emergency as provided in s. 218.503. If the Auditor General, in reviewing any audit report, identifies additional information which indicates the local governmental entity may be in a state of financial emergency as provided in s. 218.503, the Auditor General shall request appropriate clarification from the local governmental entity. Such clarification must be provided within 45 days after the date of the request. If the Auditor General does not receive such clarification, he or she shall notify the Joint Legislative Auditing Committee. If, after obtaining such clarification, the Auditor General determines that the local governmental entity is in a state of financial emergency as provided in s. 218.503, he or she shall notify the Governor and the Joint Legislative Auditing Committee.

12. In conducting a performance audit of any agency, the Auditor General shall use the Agency Strategic Plan of the agency in evaluating the performance of the agency.

Section 2. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.