

## **Clarifying the Constitutional Role of the Clerk of the Circuit Court As County Auditor Will Help Improve Local Government Accountability for Florida Taxpayers**

A pair of bills in the 2008 Legislative Session, SB 640 and HB 399, designate the clerk of the circuit court (clerk) as the “county auditor,” when not otherwise provided by county charter or special law approved by vote of the citizens. Historically, the clerks have performed the role of auditor under constitutional and statutory authority. The pending legislation clarifies the clerk’s role as the county auditor and explicitly requires that the clerk shall prepare the annual financial report of the county and may perform such reviews and tests as necessary to determine the adequacy of internal controls and compliance with contracts, applicable laws, and rules.

A pending amendment will provide for the clerk to have the county auditor role only if the county does not employ an internal auditor or if the board of county commissioners expressly authorizes him or her to do so. This amendment would negate the effect of the underlying bill.

The bill also designates the clerk as accountant of the board of county commissioners. This section is basically a restatement of existing law found in section 125.17 F.S. However, another pending amendment provides for the clerk to act as the board’s accountant, if authorized by the board of county commissioners. This would substantially alter current statute as well as long standing case law as described below.

### **The Profession of Auditing**

To enable analysis of this bill, it is useful to understand the profession of auditing. There are two primary professional organizations that have established standards for use by auditing practitioners: the American Institute of Certified Public Accountants (AICPA) and the Institute of Internal Auditors (IIA).

The AICPA provides requirements for “external financial auditing” in the CPA profession. External financial auditing results in the expression of an opinion concerning an organization’s annual financial statements. Section S. 218.32 F.S., requires that a county annual financial report must be submitted to the Florida Department of Financial Services. This is not a formal audit report as defined by AICPA and does not include opinions relating to management performance. Separate formal audits are required by section 218.39 F.S. to be conducted annually for the county and each subdivision of local government by an “independent certified public accountant retained by [the county] and paid from its public funds,” unless notified otherwise by the state of Florida auditor general.

The IIA provides requirements for "internal auditing" and provides a professional certification, such as Certified Internal Auditor. There are three recognized forms of auditing: performance, financial, and compliance. Performance auditing assesses the cost-effectiveness of programs; financial auditing assesses the appropriate accountability over assets, liabilities, revenues, and expenditures; compliance auditing assesses whether management is complying with laws, rules, policies, and procedures.

Audits are sometimes referred to in organizations, as "post-audit" and "pre-audit." These are not formal terms used in the auditing profession; however, the term "pre-audit" is used to describe a review made before a final occurrence or decision is made, and the term "post-audit" refers to review after a decision or occurrence is made. The formal auditing recognized by the AICPA and IIA is a "post-audit." Any review prior to a decision or an occurrence is referred to in AICPA and IIA standards as "management advisory services."

The term "pre-audit" generally refers to the review by accounting staff of documentation and inquiry prior to payment. The review is made of supporting documentation required to evidence the appropriateness of a purchase. Inquiries are made if the proper documentation is not available to evidence various criteria that include: (1) proper requisition and management approval; (2) proper quotes or competitive bidding; (3) invoice accuracy and agreement with requisition; and (4) purchase order and/or properly executed contract. This type of "pre-audit" is recognized in the auditing profession as a management function, not a formal audit.

## **A Florida County Clerk's Role**

Article VIII, section 1(d), of the Constitution of the State of Florida, specifies that when not otherwise provided by county charter or special law approved by vote of the citizens, "the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds." The State Constitution clearly places fiscal responsibility for county funds, unless otherwise prescribed by law, with the county clerk. Additionally, section 125.17 F.S. provides that "the clerk of the circuit court for the county shall be clerk and accountant of the board of county commissioners" except in counties where, by charter or special act, the role of "accountant" has been transferred to another position.

In Florida county government, when the clerk's office is designated as the accountant, the responsibility for "pre-audit" belongs to the clerk. The clerk may also conduct "post-audit" procedures to assist in assuring accountability over all monies within local government. This is done through the preparation and "testing" of the accuracy of the annual financial report required by section 218.32 F.S. While not meeting standards of formal internal auditing (IIA), it is appropriate that an accounting function attain this assurance to be fiscally responsible. Therefore, in the auditing profession these "pre- and post- audit" roles would be appropriate management functions for a clerk, designated as accountant. In practice, except for counties where a charter or special act provides a different allocation of duties, the clerks have long performed this "post-audit" function of preparing the county's financial statement and resulting annual financial report that is required by statute.

In *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1977), the Florida Supreme Court held that the "clerk is county auditor, accountant, and custodian of all funds of the county pursuant to constitutional and statutory provisions." According to the court, the clerk's office conducts pre-

audits as county auditor, performance audits are made by an independent certified public accountant or auditing firm, and the auditor general or an independent accounting firm performs post-audit functions regarding county funds.

The court in *Alachua County v. Powers* affirmed the trial court's determination that the clerk is "to act as county auditor in all auditing functions, except when the board employs an independent auditing firm...." Section 218.39 F.S. provides that the county and each local government entity shall annually employ an independent CPA to conduct a formal audit of its books and records. Additionally, 125.01(x) F.S. provides that the board may "(e)memploy an independent certified accounting firm to audit any funds, accounts, and financial records of the county and its agencies and governmental subdivisions." However, the Supreme Court, in the *Alachua County v. Powers* case went on to quote from its earlier decision in *Landis v. Wheat*, 137 So. 277 at 283 (Fl 1931) saying that "(a) mere duplication of official duties may not be a violation of the general intendments of the Constitution when statutory regulation of duties is authorized by the Constitution. If there is duplication of duties, no organic provision is violated."

In *Brock v. Board of County Commissioners of Collier County*, currently on appeal to the Second District Court of Appeal, the court held that a clerk's authority to prepare financial statements on behalf of the county is derived only by a delegation of authority from the Board of County Commissioners. It is difficult to reconcile the circuit court decision with the earlier pronouncement of the Supreme Court, without further clarification from the legislature, as to what is the role of the clerk as accountant and county auditor. The Attorney General, in Advisory Legal Opinions 86-38 and 2002-29 relative to jurisdiction of clerk's to audit constitutional officers, expressed the belief that the clerk does not have authority to perform post-audit functions on the records of other constitutional officers.

In summary, SB 640 and HB 399 would provide that clarity without expanding the current practices of the clerks in non-charter counties; these bills do not extend any authority for clerks to perform performance audits of county operations or provide the ability or in any way relate to authority over other county constitutional officers.

## **Summary Considerations of SB 640**

Within the context of this bill, there are several issues that need to be considered.

- (1) If the clerk is designated the county "accountant", inherent in the Florida State Constitution, unless otherwise specified in law, then proper segregation of accounting and auditing duties recommended by the auditing profession would require the clerk not have formal audit responsibility. This authority is vested in the county to retain an independent CPA as provided in section 218.39 F.S. to conduct the formal annual audit. However, this should not preclude the clerk from conducting "pre-audit" and other "audit-like" procedures necessary to fulfill its management responsibility to perform a quality accounting function that ensures accountability for county funds as required in the preparation and testing of the annual financial report required by section 218.32 F.S.
- (2) This bill does not expand the clerk's role to "audit" other constitutional officers; legal interpretations have concluded the clerk does not have any jurisdiction over the other constitutional offices.

- (3) While the clerk cannot meet the auditing profession's requirements for "auditor", the "auditing" procedures applied by the clerk in its management role, and the clerk's independence from the board of county commissioners has provided citizens in the State of Florida comfort and assurance in the propriety of funds expended in county government.
- (4) The proposed amendment that would restrict the clerk's "auditing" procedures if the board has employed an internal auditor is of critical concern to citizens. This amendment would prevent the clerk from fulfilling its Constitutional responsibility as steward of county funds.

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