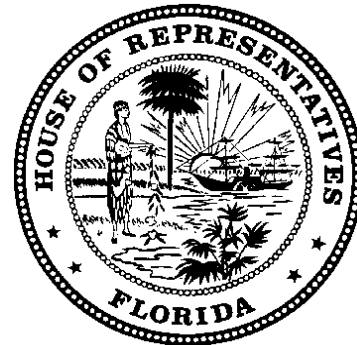


DON GAETZ
President of the Senate



WILL WEATHERFORD
Speaker of the House



Joint Legislative Auditing Committee

Senator Joseph Abruzzo, Chair
Representative Lake Ray, Vice Chair

Meeting Packet
Monday, October 7, 2013
1:00 P.M. to 3:00 P.M.
309 Capitol

AGENDA
JOINT LEGISLATIVE AUDITING COMMITTEE

DATE: October 7, 2013

TIME: 1:00 p.m. to 3:00 p.m.

PLACE: Room 309, The Capitol

MEMBERS:

Senator Joseph Abruzzo, Chair
Representative Lake Ray, Vice Chair

Senator Rob Bradley
Senator Alan Hays
Senator Jeremy Ring
Senator Wilton Simpson

Representative Daphne D. Campbell
Representative Gayle B. Harrell
Representative Daniel D. Raulerson
Representative Ray Rodrigues
Representative Cynthia A. Stafford

Presentation of the Auditor General's Operational Audit of the Delray Beach Community Redevelopment Agency (CRA) and response from CRA officials

Workshop on the guidelines for audits of lobbying firm compensation reports

Discussion and consideration of recommendations related to the Transparency Florida Act, s. 215.985, F.S.

Follow-up discussion related to the reporting of entities that have failed to correct repeat audit findings to the Committee



Joint Legislative Auditing Committee
October 7, 2013



Operational Audit of the Delray Beach Community Redevelopment Agency

Audit Overview



Period audited: October 2011 through March 2013

19 AUDIT FINDINGS

- ❑ Compliance with the Community Redevelopment Act (4 findings)
- ❑ Grant and Funding Administration (2 findings)
- ❑ Fraud and Ethics Controls (2 findings)
- ❑ Budgetary Controls (2 findings)
- ❑ Cash Controls and Administration (1 finding)
- ❑ Procurement of Goods and Services (4 findings)
- ❑ Real Property Acquisitions (1 finding)
- ❑ Contractual Services (2 findings)
- ❑ Travel (1 finding)

Community Redevelopment Agencies



- ❑ Community Redevelopment Agency (CRA) may be created by a county or municipality after making a legislative finding that the area to be redeveloped contains slum or blighted conditions or has a shortage of affordable housing and redevelopment is necessary.
- ❑ CRAs are special districts (special purpose local governments) that are limited to the authority expressly granted in law.
- ❑ CRAs must adopt a CRA Plan in accordance with the Community Redevelopment Act (Part III, Chapter 163, FS).
- ❑ Generally, moneys may only be spent for undertakings described in the approved CRA Plan.

Community Redevelopment Act

Part III, Chapter 163, FS



- ❑ Community Redevelopment Act (Act) primarily focuses on physical restoration of the slum or blighted area, including acquisition and preparation of land or other real property and construction of buildings or affordable housing.
- ❑ Act also provides for community policing innovations, which are policing techniques or strategies designed to reduce crime by reducing opportunities for, and increasing the perceived risks of engaging in, criminal activity through visible presence of police in the community.

Authorized Expenditures for CRAs



- ❑ Limited guidance to CRAs as to what constitutes authorized expenditures other than the language in the Act.
- ❑ Section 163.387(6), FS, indicates CRAs may expend moneys pursuant to the CRA Plan for the specific purposes, “including but not limited to . . .”
- ❑ Attorney General has issued opinions regarding authorized expenditures for CRAs. For example:
 - Opinion #82-86 – CRAs may make areawide improvements such as sidewalks and utilities.
 - Opinion #2010-40 – Indicates that CRAs may expend moneys to promote the redeveloped area but grants to entities which promote tourism and economic development, and nonprofits providing socially beneficial programs would appear outside the scope of the Act.



Finding 1: Promotional Activities and Socially Beneficial Programs

- During the period October 2011 through March 2013, the CRA paid a total of \$2,084,183 to various nonprofit organizations to fund their operations and for promotional activities or socially beneficial programs, and contributed \$1,070,000 to the City of Delray Beach as a sponsor for tennis tournaments.
- Neither the CRA Plan nor CRA records clearly demonstrated the CRA Board's determination of the extent to which the funds provided to the organizations had been appropriately restricted to activities authorized by the Community Redevelopment Act.

RECOMMENDATION: If it is the CRA's intent to continue funding the above-noted organizations on an ongoing basis, the CRA Board should seek guidance from the Attorney General as to whether the use of CRA funds for these funding arrangements is allowable under the Act. Additionally, the CRA should document in its records that these organizations' use of the funding is restricted to activities authorized by the Act.



Finding 2: Property Leased from the City

- ❑ In January 2010, CRA entered into 5-year lease (beginning in February) with City for approx. 10,000 sq. ft. of space for \$150,000 annual rent (\$14.58 per sq. ft.).
- ❑ Space was divided and CRA subleased to two arts organizations for 96 cents and \$1.06 per sq. ft., respectively.
- ❑ From February 2010 through January 2013, the CRA paid the City \$450,000 and received \$26,167 in rents from arts organizations. The net cost to CRA was \$423,833, which in effect, appears to be a subsidy of the City's operations.

RECOMMENDATION: The CRA should ensure that any future transactions with the City do not have the effect of subsidizing the City's operations.



Finding 3: Support for CRA Expenditures

- ❑ CRA entered into two interlocal agreements with the City to fund a portion of salaries and benefits for Project Manager and Neighborhood Planner positions for their work on CRA-related projects.
- ❑ From October 2011 to March 2013, CRA paid \$160,625 to City for these services.
- ❑ Payments were based on budgeted amounts rather than documentation supporting time and effort spent by the City employees on CRA-related projects.

RECOMMENDATION: To ensure that CRA funds are used only for allowable purposes, the CRA should ensure that amounts paid to the City are limited to actual salary expenditures based on actual time spent by these employees on CRA-related activities.

Finding 4: Ending Balances in CRA Trust Fund



- Section 163.387(7), FS, provides that moneys in the CRA Trust Fund at the end of the fiscal year must be:
 - Returned to taxing authorities,
 - Used to reduce indebtedness or deposited into an escrow account to later reduce indebtedness, or
 - Appropriated to specific redevelopment projects included in the CRA Plan, which projects will be completed within three years.
- For the fiscal years ended September 30, 2009, through 2012, CRA did not return moneys to taxing authorities, reduce indebtedness, place moneys in an escrow to later reduce indebtedness, and only appropriated a portion of the ending balance to redevelopment projects.

Finding 4: Ending Balances in CRA Trust Fund



Analysis of ending balances as of September 30, 2009, 2010, 2011, and 2012:

September 30	Ending Fund Balance Designated/Assigned for Appropriation in the Subsequent Fiscal Year	Less: Amount Used in Subsequent Fiscal Year	Unused Amount	Plus: Ending Fund Balance Undesignated/Unassigned	Total Unused
2009	\$5,980,620	(\$2,723,293)	\$3,257,327	\$4,450,685	\$7,708,012
2010	5,283,569	(486,637)	4,796,932	2,516,788	7,313,720
2011	5,019,518	0	5,019,518	2,473,620	7,493,138
2012	7,528,433	(1)	(1)	2,126,764	(1)

Note (1): The amounts used and unused during the 2012-13 fiscal year were not finalized as of the completion of our field work in August 2013.

Finding 4: Ending Balances in CRA Trust Fund



- ❑ CRA indicated ending balances are reviewed and provided an analysis of tax increment funding revenues and cumulative expenses. However, the ending balances include all deposits in the CRA trust fund, including leases, land sales, event revenues. Thus the CRA records did not demonstrate compliance with Section 163.387(7), FS.

RECOMMENDATION: The CRA should document in its records that unused funds have either been obligated for purposes authorized by law or return such funds to the taxing authorities.

Finding 5: Business Development Grants



- The CRA made some business development grant awards in excess of program guidelines, as follows:
 - For three grants providing rent subsidies, the CRA agreed to provide a total of \$6,000 more than allowed by program guidelines.
 - For one grant for providing partial reimbursement for the costs of exterior commercial building improvements, the CRA provided \$3,700 more than allowed by program guidelines.

RECOMMENDATION: The CRA should ensure that grant awards are made in accordance with program guidelines.



Finding 6: Monitoring of Funding Agreements

- ❑ Funding agreements did not require organizations to return unexpended funds.
- ❑ Some quarterly payments to the organizations were issued prior to receipt of required reports.
- ❑ Several reports were submitted late to the CRA.

RECOMMENDATION: The CRA should amend funding agreements to require that moneys unexpended, or expended for unauthorized purposes, be refunded to the CRA. The CRA should also enhance controls over monitoring funding agreements to ensure that required reports are submitted and reviewed timely. Additionally, the CRA should not provide quarterly funding if required reports have not been submitted.

Finding 7: Fraud Policies



- While the CRA Board had adopted ethics policies, it had not adopted policies for the mitigation, detection, and reporting of fraud.

RECOMMENDATION: The CRA Board should establish fraud policies and procedures that clearly identify actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences of fraudulent behavior.

Finding 8: Statement of Financial Interests



- ❑ Certain CRA Board members did not timely file statements of financial interests, contrary to Section 112.3145(2), Florida Statutes. For the 2011 calendar year, one CRA Board member did not file a statement and four Board members filed late. As of July 15, 2013, only three of the seven Board members had filed 2012 statements, although they were required to be filed by July 1.

RECOMMENDATION: The CRA should ensure that all Board members required to file a statement of financial interests are advised of the filing requirements, and ensure that the applicable names and positions are communicated to the appropriate coordinator.



Finding 9: Budget Preparation

- ❑ The CRA's adopted budget did not include all prior year balances brought forward, contrary to law. For the 2011-12 and 2012-13 budgets, the CRA did not include \$1.4 and \$2.1 million, respectively, available from the prior fiscal years.
- ❑ The CRA's adopted budget did not reflect the true cost of the Green Market program (program to attract visitors to the CRA area) because the Green Market Manager's salary of \$51,000 was not included. Had the salary been included, net losses of \$61,000 would have been reflected.

RECOMMENDATION: The CRA should ensure that all balances brought forward from prior fiscal years are included in the adopted budgets for the CRA trust fund. In addition, budgets should accurately present all direct Green Market program expenditures to provide the CRA Board with accurate and complete information from which it can make informed decisions regarding the program.



Finding 10: Budget Overexpenditures

- Although the CRA's total budget was not overexpended, five line items were each overexpended by amounts ranging from approximately \$5,700 to \$119,000 (total of \$198,000).

RECOMMENDATION: The CRA should enhance budgetary controls to timely amend budgets as necessary to ensure that expenditures are limited to budgeted amounts as required by law.

Finding 11: Electronic Funds Transfers



- ❑ The CRA had not entered into agreements with several financial institutions regarding electronic funds transfers. Of the seven accounts the CRA had with four financial institutions, the CRA had agreements for only two, from 2008 and 2009.

RECOMMENDATION: The CRA should ensure that it has current EFT agreements with each of its financial institutions.



Finding 12: Disbursement Processing

- ❑ Purchase orders or contracts were not always used to document prior authorization of purchases. Also, we noted instances in which invoices were dated prior to the purchase order or contract date.
- ❑ The CRA did not maintain documentation to evidence the receipt of goods or services prior to payment.

RECOMMENDATION: The CRA should ensure that written contracts or purchase order forms are used to document the authorization of purchases prior to incurring an obligation for payment. The CRA should also enhance controls over disbursements to ensure that documentation is retained to demonstrate the receipt of goods and services prior to payment.



Finding 13: Competitive Selection Process

- ❑ Documentation evidencing the times and dates bids were received was not always retained. Nor were completed evaluation sheets used and signed by selection committee members retained.
- ❑ Contract provisions required by law were not always included in the written agreements for architectural and landscape architectural services.
- ❑ Some services were not competitively bid and a selection process had not been conducted for General Counsel services since 2006.

RECOMMENDATION: For those purchases requiring competitive bids or proposals, the CRA should ensure that documentation is retained evidencing the date and time bids or proposals are received, and the selection committee's evaluations of bids or proposals. In addition, procedures for evaluating bids or proposals for professional services should include consideration regarding certified minority businesses as required by law. The CRA should also consider using a competitive selection process for acquiring General Counsel services.



Finding 14: Credit Cards

- ❑ The CRA Board did not approve, of record, the issuance of CRA credit cards or adopt policies, procedures, or other guidance as to the proper use of CRA-assigned credit cards.
- ❑ CRA employees assigned credit cards were not required to, and did not, sign written agreements specifying acceptable uses of credit cards.

RECOMMENDATION: The CRA Board should determine whether credit cards should be issued to CRA employees; set appropriate limits on the types of goods and services that can be purchased and the amounts of transactions; and implement appropriate policies and procedures regarding the issuance, use, and monitoring of credit cards. Such policies and procedures should include a requirement for each cardholder to sign a statement certifying that he or she accepts the terms and conditions set by the CRA on credit card usage.



Finding 15: Questioned Expenditures

- Our tests disclosed \$1,900 in expenditures for items such as flowers, food, gift cards for employees, and promotional items for which the CRA's records did not evidence the public purpose served by the expenditures.

RECOMMENDATION: The CRA should strengthen its procedures to require documentation that expenditures serve an authorized public purpose, and comply with the CRA Plan and Section 163.387, Florida Statutes. Such documentation should be present in the CRA's records prior to payment.



Finding 16: Property Appraisals

- ❑ CRA Board had not adopted written policies and procedures regarding real property acquisitions.
- ❑ An Operations Manual, not approved by the Board, did not address certain key elements that would help ensure the reasonableness of appraised values. For example, use of government and nonprofit sales was not discouraged by the CRA for appraisals and professional appraisal reviews were not used when two appraisals were widely divergent in value.
- ❑ For one acquisition for \$1.9 million, two appraisals were obtained and indicated values of \$1.5 and \$2.3 million. Third appraisal obtained indicating \$1.7 million. Wide divergence appeared to be caused, in part, by use of government sales (purchases by the CRA).



Finding 16: Property Appraisals

- ❑ For one acquisition for \$1.1 million, only one appraisal was obtained. This appraisal, in 2009, indicated a value of \$1.1 million, the same amount as the property sold for in 2004. Appraiser noted recent declines in commercial and industrial market conditions but appeared to rely on the negotiated price.

RECOMMENDATION: The CRA Board should adopt written policies and procedures for real property acquisitions. In doing so, the CRA Board should require that appraisals be acquired for all real property acquisitions; that at least two appraisals be acquired for acquisitions over a given dollar limit; that a professional appraisal review be obtained in instances in which two appraisals are widely divergent; and that the use of nonprofit, governmental, or quasi-governmental purchases be discouraged from consideration as comparable sales for appraisals obtained.



Finding 17: Contractual Agreements

- ❑ CRA did not have a current contract on file for General Counsel services and payments to the firm for out-of-pocket expenses were not supported by receipts or other documentation.
- ❑ The invoice for a progress billing for auditing services did not comply with Section 218.391, FS, in that it was not sufficiently detailed.
- ❑ CRA's contract for general consulting and other architectural services did not include a contingency provision required by law.

RECOMMENDATION: The CRA should ensure that written contracts are used for all professional services, contracts include all required terms and conditions, and that payments for contractual services are supported by detailed invoices sufficient to allow a determination of contract compliance prior to payment.

Finding 18: Contract Monitoring



- ❑ Reports submitted to the CRA associated with six contracts or interlocal agreements did not include the information required by the contracts or agreements.

RECOMMENDATION: The CRA should enhance its monitoring procedures to ensure that required reports are received and contain all information required by the contract or agreement.



Finding 19: Travel Expenditures

- ❑ The CRA's policies regarding mileage reimbursements were not in compliance with Section 112.061(14), FS.
- ❑ The CRA's policies did not require travel vouchers to be approved by supervisory personnel and we found no evidence that such approval was performed.
- ❑ Travel expenditures were not always adequately supported or in accordance with Section 112.061, Florida Statutes, or CRA policies.

RECOMMENDATION: The CRA should revise its policy to establish uniform mileage reimbursement rates as required by Section 112.061(14), Florida Statutes, and to require supervisory approval of travel vouchers. The CRA should also enhance its controls to ensure that all travel reimbursements are in accordance with the CRA's policy and Section 112.061, Florida Statutes.



Questions?

**DELRAY BEACH
COMMUNITY REDEVELOPMENT AGENCY**

Operational Audit



BOARD MEMBERS AND EXECUTIVE DIRECTOR

The Delray Beach Community Redevelopment Agency (CRA) Board consists of seven members appointed by the City Council. The Board members and Executive Director who served from October 2011 through March 2013 are listed below:

Howard Lewis, Chair
Cathy Balestriere, First Vice Chair
Peter B. Arts, Vice Chair
William "Bill" Branning
Veronica Covington
Annette Gray
Herman Stevens

Diane Colonna, Executive Director

The audit team leader was Ilene R. Gayle, CPA, and the audit was supervised by Ida Marie Westbrook, CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, by e-mail at marilynrosetti@aud.state.fl.us or by telephone at (850) 412-2881.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 487-9175; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

SUMMARY

Our operational audit of the Delray Beach Community Redevelopment Agency (CRA) disclosed the following:

COMPLIANCE WITH THE COMMUNITY REDEVELOPMENT ACT

Finding No. 1: During the period October 2011 through March 2013, the CRA paid a total of \$2,084,183 to various nonprofit organizations to fund their operations and for promotional activities or socially beneficial programs, and contributed \$1,070,000 to the City of Delray Beach (City) as a sponsor for tennis tournaments. Neither the CRA Plan nor CRA records clearly demonstrated the CRA Board's determination of the extent to which the funds provided to the organizations had been appropriately restricted to activities authorized by the Community Redevelopment Act.

Finding No. 2: The CRA leased property from the City and subleased the property for considerably less than it was paying the City, the net effect of which appears to have been a \$423,833 subsidy of the City's operations.

Finding No. 3: The CRA's records did not demonstrate that amounts paid to the City for Project Manager and Neighborhood Planner services were appropriate based on the actual time those employees spent on CRA-related activities.

Finding No. 4: The CRA's records did not demonstrate compliance with Section 163.387(7), Florida Statutes, regarding the disposition of unexpended CRA trust fund moneys at year-end.

GRANT AND FUNDING ADMINISTRATION

Finding No. 5: The CRA made some business development grant awards in excess of program guidelines.

Finding No. 6: The CRA did not adequately monitor funding provided to nonprofit organizations.

FRAUD AND ETHICS CONTROLS

Finding No. 7: The CRA Board had not adopted policies for the mitigation, detection, and reporting of fraud.

Finding No. 8: Certain CRA Board members did not timely file statements of financial interests, contrary to Section 112.3145(2), Florida Statutes.

BUDGETARY CONTROLS

Finding No. 9: The CRA's adopted budget did not include all prior year balances brought forward, contrary to law, and did not reflect the true cost of the Green Market program.

Finding No. 10: The CRA needed to enhance its budgetary controls to ensure that expenditures are limited to budgeted amounts as required by law.

CASH CONTROLS AND ADMINISTRATION

Finding No. 11: The CRA had not entered into agreements with several financial institutions regarding electronic funds transfers.

PROCUREMENT OF GOODS AND SERVICES

Finding No. 12: The CRA's disbursement processing controls could be enhanced.

Finding No. 13: The CRA did not always comply with prescribed policies and procedures, or State law, regarding the competitive procurement of services.

Finding No. 14: The CRA's controls over the issuance and use of credit cards could be enhanced.

Finding No. 15: CRA records did not always evidence the public purpose served by expenditures.

REAL PROPERTY ACQUISITIONS

Finding No. 16: The CRA needed to enhance its procedures for acquiring real property to ensure that real property is acquired at the best price possible.

CONTRACTUAL SERVICES

Finding No. 17: The CRA did not have a current written agreement for General Counsel services and some written agreements did not contain statutorily required provisions.

Finding No. 18: The CRA's monitoring of compliance with contractual reporting requirements could be enhanced.

TRAVEL

Finding No. 19: The CRA's policies and procedures regarding travel expenditures could be enhanced.

BACKGROUND

The "Community Redevelopment Act of 1969" (Act), codified as Part III of Chapter 163, Florida Statutes, authorizes counties and municipalities to create a redevelopment agency after adoption of a resolution making a legislative finding that the area to be redeveloped contains slum or blighted areas or has a shortage of affordable housing and the redevelopment is necessary in the interest of the public health, safety, morals, or welfare of the residents. The Act further provides for additional requirements, including, but not limited to, the manner in which such an agency may be established, the powers of the agency, and the funding of the agency. It requires the establishment of a redevelopment trust fund and restricts the use of those funds to redevelopment activities.

Pursuant to the Act, the City of Delray Beach (City) adopted Resolution 32-85 "Finding of Necessity," dated May 14, 1985, and City Ordinance 46-85, dated June 18, 1985, creating the Delray Beach Community Redevelopment Agency (CRA) and establishing a CRA area of 1,858 acres. The provisions of Ordinance No. 46-85 have been codified in Article 8.1 of the City's Land Development Regulations. This ordinance provided for the Agency to be governed by a seven-member Board of Commissioners appointed by the City Council. A "Finding of Necessity" for an additional 103 acres, located along North Federal Highway, was adopted by City Commission Resolution No. 47-87 on November 24, 1987, and the CRA area was increased to its current size of 1,961 acres. The Act requires the establishment of a CRA Plan and requires approval of the Plan by the CRA's governing body. Funding for the CRA is accomplished through tax increment revenues provided by each taxing authority (City and Palm Beach County), and expenditures of the CRA must be made in accordance with the approved CRA Plan.

The CRA has designated eight geographic sub-areas within its boundaries: Beach District/Area, Central Core, Northeast (Del-Ida and Seacrest) Neighborhoods, Northwest Neighborhood, North Federal Highway, Osceola Park, Southwest Neighborhood, and West Atlantic Avenue Neighborhood. The CRA Board adopted the current CRA Plan in July 2011. The CRA Plan groups the various sub-area plans, projects, and programs into three categories: Areawide and Neighborhood Plans (consisting of 7 plans); Redevelopment Projects (consisting of 12 projects); and Community Improvement Programs (consisting of 13 programs).

Section 163.356(3)(c), Florida Statutes, authorizes a CRA to employ an executive director, technical experts, and other such agents and employees, permanent and temporary, as it requires. The CRA is a separate legal entity, and its Executive Director reports to the CRA Board. As of March 31, 2013, the CRA had a staff of ten full-time employees, including an Economic Development Director whose position was funded partially by the City through an interlocal agreement between the CRA and the City. The CRA's operations are governed by Florida Statutes, CRA by-laws, and the CRA Board-adopted written accounting, personnel, and procurement policies. The CRA utilizes the City's

information technology resources and participates in the City’s insurance programs. The CRA’s expenditures¹ totaled approximately \$10.7 million for the 2011-12 fiscal year.

FINDINGS AND RECOMMENDATIONS

Compliance with the Community Redevelopment Act

“Redevelopment,” for purposes of the Act, is defined in Section 163.340(9), Florida Statutes, as undertakings, activities, or projects in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight; the reduction or prevention of crime; the provision of affordable housing; or the rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed. Section 163.370, Florida Statutes, grants counties and municipalities broad powers necessary or convenient to carry out the purposes of the Act. The Act focuses primarily on physical restoration of the CRA area, including acquisition and preparation of land or other real property, and the construction of buildings or affordable housing, except for express authority to conduct community policing innovations. Section 163.360(2), Florida Statutes, indicates that the CRA plan must: (a) conform to the comprehensive plan for the county or municipality as prepared by the local planning agency under the Community Planning Act; (b) be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the CRA area; zoning and planning changes, if any; land uses; maximum densities; and building requirements; and (c) provide for the development of affordable housing in the area, or state the reasons for not addressing in the CRA plan the development of affordable housing in the area. Further, Section 163.362, Florida Statutes, requires that the contents of every community development plan show by diagram and general description the physical layout of the CRA area and specifically identify any publicly funded capital projects in the area.

While the CRA expended moneys in accordance with the CRA Board-approved CRA Plan, as discussed further in finding Nos. 1, 2, and 3, we have questioned whether certain uses of CRA funds were consistent with the Act. Additionally, as discussed in finding No. 4, the CRA’s records did not evidence compliance with the Act regarding disposition of CRA trust fund moneys at year-end.

Finding No. 1: Promotional Activities and Socially Beneficial Programs

During the period October 2011 through March 2013, the CRA contributed moneys to various nonprofit organizations. Pursuant to agreements with these organizations, funding provided by the CRA was to be used for the nonprofit organizations’ ongoing operating expenses, promotional activities, or for socially beneficial programs. The nonprofit organizations included the following:

- ***Delray Beach Downtown Marketing Cooperative, Inc. (DMC).*** The DMC was created by the CRA, the City, the Delray Beach Downtown Development Authority, and the Greater Delray Beach Chamber of Commerce. The DMC’s mission is to attract people to the City, and create a positive economic impact through destination marketing, marketing programs, events, and community collaboration. The CRA provided the DMC funds totaling \$634,290 during the period October 2011 through March 2013, including \$465 for specific DMC events and \$633,825 to be expended as determined by the DMC.
- ***Creative City Collaborative, Inc. (CCC).*** The CCC’s mission is to create and implement strategies and programs for development and operation of an arts center within the CRA area to attract visitors and promote economic development. The CRA provided funds totaling \$481,893 during the period October 2011 through March 2013 to, or on behalf of, the CCC to support its operations and for the purpose of

¹ Source was the CRA’s 2011-12 fiscal year audited Statement of Revenues, Expenditures, and Changes in Fund Balance.

providing community and cultural art programs within the CRA area. In addition, the CRA paid for the space occupied by the CCC through a lease with the City (see additional discussion in finding No. 2). Pursuant to the agreement between the CRA and the CCC, beginning May 2011, the CCC was required to pay the CRA \$500 per month (increased to \$1,000 per month effective October 1, 2011) to compensate the CRA for marketing and maintenance expenses associated with arts programming.

- **Delray Beach Public Library (Library).** The CRA Plan indicates the Library is not a City facility and is run by a nonprofit board. The CRA Plan also indicates that while the City had financially supported the Library, the City reduced funding to the Library beginning in 2007 due to budget constraints created by property tax reform and “to continue to promote activity and economic development in the West Atlantic area, the CRA agreed to fund a portion of the operating funds . . .” The CRA provided the Library funds totaling \$462,000 during the period October 2011 through March 2013.
- **Old School Square, Inc. (OSS).** The OSS’s mission is to be the community’s cultural center, enriching people’s lives by presenting diverse experiences in visual and performing arts, education, and entertainment; nurturing artistic expression and involvement; providing a community gathering place and preserving its National Historic site, which is located within the CRA area. The CRA provided the OSS funds totaling \$356,250 during the period October 2011 through March 2013 to fund its organizational operations for the performing arts program and grassroots partnership program.
- **Expanding and Preserving Our Cultural Heritage, Inc. (EPOCH).** EPOCH’s mission is to expand, preserve, and present the culturally diverse history of the African Diaspora in Palm Beach County. The CRA provided EPOCH funds totaling \$149,750 during the period October 2011 through March 2013 to fund its organizational operations for the Museum and Exhibitions, and Lectures, programs.

The CRA also entered into agreements with the City to participate as a sponsor for the International Tennis Championships tournaments held at the Municipal Tennis Center, providing the City \$535,000 in the 2011-12 and 2012-13 fiscal years, respectively.

In considering the allowability of the types of contributions discussed above, which totaled \$3,154,183 during the period October 2011 through March 2013, we found that there is limited guidance to CRAs as to what constitutes authorized expenditures other than the language of the Act. The Attorney General has issued opinions addressing the allowability of certain expenditures under the Act. For example, in Opinion No. 82-86 the Attorney General indicated that, in addition to improvements that change the physical appearance of a particular property, areawide improvements such as improvements to sidewalks and utilities were appropriate projects to be undertaken by a CRA.

In Opinion No. 2010-40, the Attorney General responded to an inquiry regarding whether a CRA may expend funds for festivals or street parties designed to promote tourism and economic development, make grants to entities that promote tourism and economic development, or make grants to nonprofit entities providing socially beneficial programs. The Attorney General stated that while Section 163.387(6), Florida Statutes, indicates the use of CRA trust funds was not limited to those purposes enumerated therein, a CRA “is a statutorily created administrative agency that may only exercise those powers that have been expressly granted by statute or that are necessarily exercised in order to carry out an express power.” The Attorney General also indicated that the legislative intent of the Act would necessarily limit the expenditures by a CRA, and stated that “funds raised by taxation for one purpose cannot be diverted to another use.” In addition, the Attorney General stated that “[t]he enumerated uses of community redevelopment trust fund moneys are likewise couched in terms of redevelopment activities involving ‘bricks and mortar’ in a manner of speaking, rather than promotional campaigns to encourage people to populate the area once the redevelopment has been accomplished. However, to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process. Accordingly, I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of a redeveloped area would be prohibited. However, grants to

entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act.” The Attorney General further stated that “Use of community redevelopment funds for entities promoting tourism or providing socially beneficial programs, however, does not have an apparent nexus to carrying out the purposes of the community redevelopment act.”

The CRA’s contributions to the above organizations were subject to use for a variety of purposes, including promotion of the redeveloped area and the operation of organizations that were geographically located within the redeveloped area and that provided socially beneficial and cultural programs. Based on our consideration of the provisions of the Act and the referenced Attorney General opinions, use of CRA funds are to be restricted to those clearly authorized by the Act (e.g., redevelopment activities involving “bricks and mortar”) or for the promotion of the redeveloped area. The CRA provided us an opinion from its General Counsel characterizing the above-noted contributions as being for promotional activities and indicating that through inclusion of these activities in the CRA Plan, the CRA’s contributions were consistent with State law. However, neither the CRA Plan nor CRA records clearly demonstrated the CRA Board’s determination of the extent to which the funds contributed to the above-noted organizations had been appropriately restricted to activities authorized by the Act.

While it is clear that the location of organizations operating primarily socially beneficial and cultural programs in the redeveloped area may encourage the public to visit the redeveloped area and, thus, provide some promotion of the redeveloped area, it was not clear from the CRA records that the benefits provided by the funding were limited primarily to the redeveloped area or that promotion of the redeveloped area was the intended primary public benefit of the arrangements. In these circumstances, it was not apparent how funding of the operations of the various organizations referenced above constituted an appropriate nexus to the purposes of the Act.

Recommendation: If it is the CRA’s intent to continue funding the above-noted organizations on an ongoing basis, the CRA Board should seek guidance from the Attorney General as to whether the use of CRA funds for these funding arrangements is allowable under the Act. Additionally, the CRA should document in its records that these organizations’ use of the funding is restricted to activities authorized by the Act.

Finding No. 2: Property Leased from the City

On January 11, 2010, the CRA entered into a five-year lease agreement with the City for 10,289 square feet of the first floor of the Old School Square Parking Garage. Pursuant to the agreement, annual rent of \$150,000, or \$14.58 per square foot, is payable to the City in one lump sum at the beginning of each lease year. Subsequently, the CRA subleased the entire 10,289 square foot of space to two nonprofit organizations, whose missions are to promote the arts, as follows:

- On August 26, 2010, the CRA entered into a two-year sublease of approximately 5,000 square feet with the Puppetry Arts Center of the Palm Beaches, Inc., with monthly rent of \$400 (\$4,800 annually, or \$.96 per square foot). Due to construction delays, the lease term commenced on May 1, 2011, and an April 15, 2013, amendment to the lease extended the term of the lease through May 4, 2014.
- On December 21, 2010, the CRA entered into an agreement with the CCC for the CCC to provide assistance in creating and implementing the development and operations of an arts center. The agreement allows the CCC to use the remaining 5,289 square feet of space at no cost to the CCC (see additional discussion in finding No. 1). The CRA subsequently entered into a sublease agreement with the CCC for the period July 1, 2012, through January 31, 2015, with monthly rent of \$466.67 (\$5,600 annually, or \$1.06 per square foot).

During the period February 2010 through January 2013, the CRA paid \$450,000 in rent to the City and received rents totaling \$26,167 from the sublessees with these organizations, for a net cost to the CRA of \$423,833. The effect of these transactions appears to have been a \$423,833 subsidy of the City’s operations. According to the CRA’s 2011-12 fiscal year audited financial statements, Palm Beach County contributed 40 percent of the CRA’s total tax increment funding, which represented 38 percent of the CRA’s total revenues. Consequently, these transactions may have resulted in County funds being used for City purposes.

In response to our inquiries as to why the CRA leased space from the City and then subleased the space to the nonprofit organizations, rather than the City leasing the space directly to these organizations, CRA personnel indicated that the City is not accustomed to administering leases and, therefore, the CRA offered to manage the tenancy as an economic development initiative. However, it is not apparent why the CRA could not have acted as an agent for the City rather than using CRA trust fund moneys to subsidize City operations.

Recommendation: The CRA should ensure that any future transactions with the City do not have the effect of subsidizing the City’s operations.

Finding No. 3: Support for CRA Expenditures

Section 163.387(1)(a), Florida Statutes, requires that funds allocated to, and deposited in, the CRA trust fund be used to finance or refinance community redevelopment pursuant to an approved CRA plan. Section 163.387(6), Florida Statutes, provides that moneys in the CRA trust fund may be expended for undertakings of the CRA as described in the CRA plan, including, but not limited to:

- Administrative and overhead expenses necessary or incidental to the implementation of the CRA plan.
- Expenses of redevelopment planning, surveys, and financial analysis.
- Acquisition costs of real property in the redevelopment area.
- Clearance and preparation costs of the redevelopment area for redevelopment and relocation of site occupants.
- Repayment of principal and interest or any redemption premium for any form of indebtedness.
- Expenses incidental to, or connected with, the issuance, sale, redemption, retirement, or purchase of any form of indebtedness, including funding accounts provided for in related ordinances or resolutions authorizing the indebtedness.
- Costs for the development of affordable housing within the community redevelopment area.
- Costs for the development of community policing innovations.

The CRA entered into two interlocal agreements with the City to fund a portion of the salaries and benefits for a Project Manager and Neighborhood Planner position for their work on CRA-related projects. The agreements required the City to provide quarterly reports to the CRA, including timesheets and payroll information to support the amounts charged. The CRA was invoiced and paid a total of \$160,625 for these positions during the period October 2011 through March 2013; however, the invoiced amounts were based on budgeted amounts rather than actual salary expenditures based on actual time spent by these employees on CRA-related activities. As a result, CRA records did not demonstrate that the amounts paid to the City for these services were appropriate based on the actual time the employees spent on CRA-related activities.

Recommendation: To ensure that CRA funds are used only for allowable purposes, the CRA should ensure that amounts paid to the City are limited to actual salary expenditures based on actual time spent by these employees on CRA-related activities.

Finding No. 4: Ending Balances in CRA Trust Funds

Section 163.387(7), Florida Statutes, provides that on the last day of a CRA’s fiscal year, any money remaining in the CRA trust fund after the payment of expenses described in the CRA plan for such year must be either returned to each taxing authority that paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year; used to reduce the amount of any indebtedness to which increment revenues are pledged; deposited into an escrow account for the purpose of later reducing any indebtedness to which increment revenues are pledged; or appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan, which project will be completed within three years from the date of such appropriation.

As noted in finding No. 9, the CRA’s 2011-12 and 2012-13 fiscal year budgets only included a portion of the balances brought forward from the prior fiscal year. Although the CRA’s audited financial statements for the 2008-09 through 2011-12 fiscal years indicated that portions of ending fund balances were designated or assigned for appropriation in subsequent fiscal years’ budgets, much of the appropriations from the prior fiscal years were not used in the fiscal year in which they were appropriated. Further, the CRA also reported undesignated and unassigned fund balance in each of those fiscal years. As shown in Table 1, more than \$7 million of moneys deposited to the CRA trust fund since the 2008-09 fiscal year have been unused in subsequent years.

September 30	Ending Fund Balance Designated/Assigned for Appropriation in the Subsequent Fiscal Year	Less: Amount Used in Subsequent Fiscal Year	Unused Amount	Plus: Ending Fund Balance Undesignated/Unassigned	Total Unused
2009	\$5,980,620	(\$2,723,293)	\$3,257,327	\$4,450,685	\$7,708,012
2010	5,283,569	(486,637)	4,796,932	2,516,788	7,313,720
2011	5,019,518	0	5,019,518	2,473,620	7,493,138
2012	7,528,433	(1)	(1)	2,126,764	(1)

Note (1): The amounts used and unused during the 2012-13 fiscal year were not finalized as of the completion of our field work in August 2013.

Source: Auditor General calculations based on amounts included in the CRA's Audited Financial Statements

Further, the CRA did not reduce indebtedness, place funds in escrow to later reduce indebtedness, or return funds to the taxing authorities. Consequently, CRA records did not demonstrate compliance with Section 163.387(7), Florida Statutes, regarding the disposition of unexpended trust fund moneys.

In response to our inquiry regarding the CRA’s compliance with Section 163.387(7), Florida Statutes, CRA personnel indicated that a review of ending balances was performed annually through the budget process, audit report, and CRA Plan review. CRA personnel also provided an analysis comparing cumulative tax increment funding (TIF) revenues to cumulative expenses. Although the analysis indicated that cumulative expenses exceeded cumulative TIF revenue, this analysis did not include other revenues that were received and deposited into the CRA trust fund, such as revenue from leases, land sales, or the Green Market program (see discussion in finding No. 9). As such, the analysis did not demonstrate compliance with Section 163.387(7), Florida Statutes.

Recommendation: The CRA should document in its records that unused funds have either been obligated for purposes authorized by law or return such funds to the taxing authorities.

Grant and Funding Administration

Finding No. 5: Business Development Grants

Pursuant to the CRA’s 2011 Plan, the CRA provides financial assistance to local businesses and community organizations through the following local grant programs: Business Development Assistance Program, Historic Façade Easement Grant Program, Paint-up & Signage Program, and Site Development Assistance Program. Each program has specific guidelines and an application process and each grant award must be approved by the CRA Board. For the period October 2011 through March 2013, the CRA awarded 17 business development-related grants totaling \$134,407. Our test of 15 grant disbursements to local businesses, totaling \$74,485 for 15 grants, disclosed the following:

- The Business Development Assistance Program provided rent subsidies up to \$500 per month for a maximum of 12 months within the first 18 months of a multi-year lease. The program guidelines state that to be eligible for assistance, a business must be located within the CRA area, and must be either a new business venture in operation for less than six months at the time of application, an existing business relocating to Delray Beach from another city, or an existing business opening an additional location in Delray Beach. The business must be at the location for which the subsidy is being requested for less than six months at the time the application is submitted. Our review of seven grant awards under this program totaling \$40,300, disclosed three grants that will provide subsidies to businesses after the 18th month in the lease terms, contrary to the program guidelines. Subsidies in excess of program guidelines total \$6,000 over the grant periods. In response to audit inquiry, CRA personnel indicated they calculated the 18-month period beginning on the day of operation rather than on the day the lease term started. However, this is contrary to the program description in the guidelines.
- The Site Development Assistance Program offers a partial reimbursement for the cost of exterior improvements to commercial buildings located in the CRA area to encourage business owners to improve existing business sites. The guidelines state that funding is disbursed on a reimbursement basis only and requires submission of detailed work invoices and proof of payment. Our review of five grants awarded under this program disclosed one grant to a business for exterior improvements based on 25 percent of actual eligible expenses up to a maximum award of \$25,000. At the time the grant was awarded, the business had begun work on the project. CRA records indicated that the CRA Board-approved grant was based on the remaining exterior improvements, and funds would not be applied to any improvements that had been done prior to the CRA Board approval of the grant. According to CRA records, eligible project costs that were paid subsequent to the grant approval totaled \$85,139, an amount that would support a grant disbursement of \$21,285. However, the CRA disbursed \$25,000 to the business on March 28, 2013, resulting in an overpayment of \$3,715.

Enforcement of grant terms and guidelines is necessary to ensure that funds disbursed to recipients are limited to amounts authorized by the CRA Board.

Recommendation: The CRA should ensure that grant awards are made in accordance with program guidelines.

Finding No. 6: Monitoring of Funding Agreements

The CRA created a grant program entitled A-GUIDE, *Achieving Goals Using Impact Driven Evaluation*, to provide funding to nonprofit organizations involved in affordable housing, recreation and cultural facilities, and economic/business development. During the 2011-12 and 2012-13 fiscal years, the CRA provided significant funding, both for capital projects and operations, to four nonprofit organizations: Delray Beach Community Land Trust, Inc.; Delray Beach Public Library; Expanding and Preserving Our Cultural Heritage, Inc.; and Old School Square, Inc. For the 2011-12 and 2012-13 fiscal years, the CRA awarded a total of \$1,825,918 to these organizations under the A-GUIDE program.

In addition to the A-GUIDE program, the CRA also provided funding to the CCC to establish an arts incubator program within the CRA area. The CRA provided the CCC funds totaling \$304,795 during the 2011-12 fiscal year pursuant to a staffing and funding agreement, and totaling \$310,735 during the 2012-13 fiscal year pursuant to a funding agreement.

The 2011-12 and 2012-13 fiscal years funding agreements in effect for the four A-GUIDE organizations, as well as the 2012-13 fiscal year funding agreement for the CCC², required the organizations to provide quarterly financial and performance reports by specified dates. Pursuant to the agreements, quarterly payments were to be made to the organizations following the receipt of the required reports. The performance reports were designed to provide information on the activities related to the CRA funding provided, and the financial reports were required to detail the use of CRA funds provided.

Our review of the CRA's administration of the funding to these organizations disclosed the following:

- The amounts paid quarterly to the organizations were based on 25 percent of the funding award and the funding agreements did not require the organizations to return any unexpended funds to the CRA.
- Thirteen payments totaling \$743,672 were dated prior to the receipt of the required reports, contrary to the agreements. CRA personnel indicated that checks were prepared earlier to allow time for obtaining authorized signatures but were held until reports were received; however, we noted that two checks totaling \$142,500 cleared the bank prior to the report submittal date. For 11 other disbursements totaling \$674,903, CRA records did not evidence the date the required reports were received by the CRA, as the reports were not signed or dated by the organizations submitting the reports and the CRA did not date-stamp the reports upon receipt.
- Eight reports were dated 10 to 57 days after the required submission date.

Under the above conditions, there is an increased risk that moneys disbursed to these organizations may be used for unauthorized purposes.

Recommendation: The CRA should amend funding agreements to require that moneys unexpended, or expended for unauthorized purposes, be refunded to the CRA. The CRA should also enhance controls over monitoring funding agreements to ensure that required reports are submitted and reviewed timely. Additionally, the CRA should not provide quarterly funding if required reports have not been submitted.

² The CRA's 2011-12 fiscal year staffing and funding agreement with the CCC did not require quarterly financial and performance reports.

Fraud and Ethics Controls

Finding No. 7: Fraud Policies

On January 15, 2013, the CRA Board executed a Memorandum of Understanding between the CRA and the Palm Beach County Commission on Ethics to exercise authority, functions, and powers granted by the Section 2-258 of the Palm Beach County Code of Ordinances over CRA operations. The CRA’s personnel policies refer the staff to the *Palm Beach County Code of Ethics Guide for Employees*, 2011 Edition (*Ethics Guide*). The *Ethics Guide* provides detailed information relating to ethical violations and what may constitute a conflict of interest.

Although the CRA Board had adopted an ethics policy, it had not adopted fraud policies. Policies for communicating and reporting known or suspected fraud are essential to aid in the detection and prevention of fraud. Such policies should clearly identify actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences of fraudulent behavior. Fraud policies are necessary to educate employees about proper conduct, create an environment that deters dishonesty, and maintain internal controls that provide reasonable assurance of achieving management objectives and detecting dishonest acts. In addition, such policies serve to establish the responsibilities for investigating potential incidents of fraud, taking appropriate action, reporting evidence of such action to the appropriate authorities, and avoiding damage to reputations of persons suspected of fraud but subsequently found innocent. Further, in the absence of such policies, the risk increases that a known or suspected fraud may be identified but not reported to the appropriate authorities.

Recommendation: The CRA Board should establish fraud policies and procedures that clearly identify actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences of fraudulent behavior.

Finding No. 8: Statement of Financial Interests

Section 112.3145(6), Florida Statutes, provides that the Florida Commission on Ethics (Commission) shall annually prepare a listing of local officers required to file a statement of financial interests and provide that listing to the local supervisor of elections. Section 112.3145(2), Florida Statutes, provides that each local officer must file, with the supervisor of elections, a statement of financial interests no later than July 1 of each year. Section 112.3145(1)(a)3., Florida Statutes, specifies that local officers include any appointed member of the governing body of a political subdivision; any person holding the position of chief administrative employee of a municipality or other political subdivision; or purchasing agent having the authority to make a purchase exceeding \$20,000 on behalf of a political subdivision. Each year the Florida Commission on Ethics prepares the list of persons holding governmental positions who are required to file statements of financial interests for the previous year. The Commission obtains the name and address of each of these persons from coordinators who have been designated by each State and local government agency.

Our audit disclosed that for the 2011 calendar year, there was no statement of financial interests on file with the Palm Beach County Supervisor of Elections for one CRA Board member, and four CRA Board members filed their 2011 calendar year statements between 41 and 72 days after the July 1, due date. As of July 15, 2013, only three of the seven CRA Board members had filed statements of financial interests for the 2012 calendar year.

Recommendation: The CRA should ensure that all Board members required to file a statement of financial interests are advised of the filing requirements, and ensure that the applicable names and positions are communicated to the appropriate coordinator.

Budgetary Controls

Finding No. 9: Budget Preparation

The CRA is a special district as defined in Section 189.403, Florida Statutes. Section 189.418(3), Florida Statutes, requires that the governing body of each special district adopt a budget by resolution each fiscal year and states that the total amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total of appropriations for expenditures and reserves. Budgets are utilized as a tool to regulate expenditures and can also be used as a decision making tool by management regarding the viability and success of individual programs. Our review of the CRA’s approved budgets disclosed that:

- Contrary to law, in preparing its 2011-12 and 2012-13 fiscal year budgets, only a portion of the CRA’s available fund balance was brought forward from prior fiscal years in determining the amounts available for appropriations. For the 2011-12 and 2012-13 fiscal years budgets, the CRA did not include \$1,375,389 and \$2,126,764, respectively, available from the prior fiscal years. Upon audit inquiry, CRA personnel indicated the amount excluded from the 2012-13 budget represented a five percent reserve for contingencies and funds that would be needed to purchase land; however, pursuant to Section 189.418(3), Florida Statutes, the entire amount available should have been brought forward and the funds intended for a reserve for purchasing land should have been budgeted accordingly. Subsequent to our inquiry, a budget amendment, totaling \$1,852,000, was adopted in July 2013 to recognize the portion of the fund balance reserved for the land purchase.

- The CRA operates a Green Market program to attract visitors and business to the CRA area and included revenue and expenditure line items related to the Green Market program in its budgets. However, the salary for the Green Market Manager, whose position description only includes duties that pertain to the Green Market program, were included in the salaries budget line under the category of Administration. Excluding the Manager’s salary, the budgets for the 2011-12 and 2012-13 fiscal years show projected net losses for this program of (\$9,933) and (\$9,600), respectively. With the Manager’s gross salary included, these projected losses would be (\$60,933) and (\$60,600), respectively. As a result, the CRA’s budget presentation did not accurately disclose the extent of the projected loss of the Green Market program and, therefore, the CRA Board may not be aware of the true cost of running this program. In response to audit inquiry, CRA personnel stated that the Green Market Manager also performs some general administrative duties for the CRA and the CRA would still incur the expense of this position if the Green Market did not exist. However, the extent of duties unrelated to the Green Market program was not evident from the Green Market Manager’s position description.

Including all balances available in the CRA’s budget improves transparency and accountability for CRA resources. Also, as previously discussed in finding No. 4, the failure to appropriate balances remaining in the CRA trust fund at the end of a fiscal year may be contrary to law, if those funds are not otherwise used as indicated in Section 163.387(7), Florida Statutes. In addition, an accurate of presentation of the Green Market program’s expenditures in the budget, and a documented determination of the portion of the Green Market Manager’s salary that should be allocated to the program, would improve the usefulness of the budget as a tool for decision making.

Recommendation: The CRA should ensure that all balances brought forward from prior fiscal years are included in the adopted budgets for the CRA trust fund. In addition, budgets should accurately present all direct Green Market program expenditures to provide the CRA Board with accurate and complete information from which it can make informed decisions regarding the program.

Finding No. 10: Budget Overexpenditures

Section 189.418(3), Florida Statutes, provides that the adopted budget must regulate expenditures of the special district, and it is unlawful for any officer of a special district to expend or contract for expenditures in any fiscal year except in pursuance of budgeted appropriations. The CRA’s budgets established the legal level of budgetary control at the object level by cost center, and budget amendments were prepared and approved by the CRA Board twice each fiscal year.

Our review of the final budget-to-actual expenditures comparison included in the CRA’s 2011-12 fiscal year annual financial audit report disclosed that although the CRA’s total budget was not overexpended, five object level line items were each overexpended by amounts ranging from \$5,703 to \$119,283 (total of \$197,619).

CRA personnel indicated that the overexpenditures were due to adjustments made to agree the CRA’s receivables and payables with the City to the corresponding accounts as reported by the City. Absent timely budget amendments, there is an increased risk that CRA expenditures may exceed available resources.

Recommendation: The CRA should enhance budgetary controls to timely amend budgets as necessary to ensure that expenditures are limited to budgeted amounts as required by law.

Cash Controls and Administration

Finding No. 11: Electronic Funds Transfers

Good control over electronic transfers of CRA funds requires the use of written agreements with each financial institution to or from which moneys are to be transferred. Such agreements should specify the locations and accounts to which transfers can be made, amounts that can be transferred, and the employees authorized to make such transfers and change the locations to where funds can be transferred.

During the period October 2011 through March 2013, the CRA initiated electronic funds transfers (EFTs) totaling \$18,088,711. The CRA used EFTs to pay certain vendors and to transfer funds to and from financial institutions (seven accounts at four institutions) and the State Board of Administration (two accounts). The CRA’s records did not evidence written agreements with each of its financial institutions regarding EFTs that included restrictions as to the amount of the transfers, where the funds may be transferred, employees authorized to make such transfers, and employees authorized to make changes to the agreement. We were provided written funds transfer agreements for two of the CRA’s financial institutions; however, they were dated 2008 and 2009 and were applicable to only two accounts still in use.

Absent current written agreements with all of the CRA’s financial institutions specifying authorized destination accounts and dollar limits, and employees authorized to make transfers and changes to the agreements, there is an increased risk that unauthorized transfers could occur without timely detection.

Recommendation: The CRA should ensure that it has current EFT agreements with each of its financial institutions.

Procurement of Goods and Services

Finding No. 12: Disbursement Processing

Controls over disbursements should provide for the documented authorization of purchases prior to paying for and receiving goods or services. In addition, payment should not be made until after confirmation that the purchased goods or services have been received. Our review of 40 check disbursements for purchases, totaling \$395,321, made between October 2011 and March 2013 disclosed the following:

- The CRA’s Procurement and Purchasing Procedures Manual (Manual) requires that a purchase order form be used for all purchases. Contrary to the Manual, for 5 of the 40 disbursements reviewed totaling \$54,506, a contract or purchase order form was not prepared to document authorization of the purchase. In addition, for 8 of the 40 disbursements reviewed totaling \$7,125, the invoice was dated prior to the contract or purchase order form. Contracts and purchase order forms serve to document management’s authorization to acquire goods and services, and the specifications and prices of the goods and services ordered, and also provide a basis for controlling the use of appropriated resources through encumbrances.
- The CRA did not maintain documentation, such as receiving reports, to evidence receipt of goods or services prior to payment for any of the 40 disbursements reviewed. CRA personnel indicated that the Finance Director verbally verified with the purchaser that the goods or services were received prior to payment. Documentation including signatures and dates evidencing that goods and services were received, inspected, and approved by appropriate CRA employees are necessary to ensure that the invoiced goods and services have been received in good condition. Dates that the goods or services were received are necessary for a proper recording of accounts payable at fiscal year-end and may be needed to evidence compliance with the Florida Prompt Payment Act (Chapter 218, Part VII, Florida Statutes), which establishes procedures and time limits for processing and paying invoices submitted by vendors to local governmental entities.

Absent adequate control procedures over purchases and disbursements, there is an increased risk of unauthorized purchases, or payment for goods or services that were not received, without timely detection.

Recommendation: The CRA should ensure that written contracts or purchase order forms are used to document the authorization of purchases prior to incurring an obligation for payment. The CRA should also enhance controls over disbursements to ensure that documentation is retained to demonstrate the receipt of goods and services prior to payment.

Finding No. 13: Competitive Selection Process

The Manual recommends at least three quotes for purchases of \$5,000 or less, requires at least three written quotes for purchases from \$5,001 to \$25,000, and requires the use of competitive sealed bids or proposals for purchases in excess of \$25,000. Section 5.6 of the Manual establishes procedures for competitive sealed bids or proposals. These procedures include guidance for advertising, surety, insurance, bid opening, contract and awards, inspection and rejection of bids. Certain exceptions to the purchasing requirements provided in the Manual include: subscriptions, publications, and memberships; emergency purchases; and sole source purchases.

Our test of 11 contracts for services that were subject to the competitive bid or proposal requirements disclosed the following:

- For 8 of the 11 contracts tested, CRA records did not evidence the times or dates the bids were received. These contracts were for consulting, artistic, architectural, landscape, and construction services acquired. For 7 of the contracts, the bid tabulation or proposal sign-in forms included a statement that the listed bids or proposals were received prior to the deadline, but did not provide the actual dates and times received. For

the 8th contract, the proposal sign-in form included dates and times for 3 of the 8 proposals received but only indicated a date for the remaining proposals. CRA personnel indicated that bid or proposal envelopes were time and date stamped but were not retained.

- For 2 of the 11 contracts tested, CRA records did not include completed evaluation sheets used and signed by the selection committee to score and rank the submitted proposals. The 2 contracts were for auditing services and consulting services for an arts center development plan.
- Two of the 11 contracts were for architectural and landscape architectural services and, therefore, were subject to the requirements of Section 287.055, Florida Statutes. However, contrary to Section 287.055(3)(d), Florida Statutes, the selection criteria used to evaluate the proposals for these services did not include consideration of whether the firm was a certified minority business enterprise.

Also, our test of 40 check disbursements discussed in finding No. 12 disclosed a \$32,000 payment for repairs to a 100-foot tall artificial Christmas tree used to attract visitors to Downtown Delray Beach that were not competitively bid. In this instance, CRA records did not evidence that this purchase was exempt from competitive bidding. In addition, we noted that a selection process for General Counsel services had not been conducted since 2006 (see further discussion in finding No. 17) and these services were listed as excluded from the purchasing requirements in the Manual. During the period October 2011 through March 2013, the CRA paid \$169,150 for General Counsel services.

Absent adequate documentation to evidence that bids and proposals were timely received and fairly evaluated in accordance with law and the Manual requirements, there is an increased risk that the CRA may be limited in its ability to sufficiently defend itself against claims alleging unfair purchasing practices. Additionally, without using a competitive selection process when acquiring contractual services, the CRA cannot be assured that such services are obtained at the lowest cost consistent with acceptable quality and performance.

Recommendation: For those purchases requiring competitive bids or proposals, the CRA should ensure that documentation is retained evidencing the date and time bids or proposals are received, and the selection committee’s evaluations of bids or proposals. In addition, procedures for evaluating bids or proposals for professional services should include consideration regarding certified minority businesses as required by law. The CRA should also consider using a competitive selection process for acquiring General Counsel services.

Finding No. 14: Credit Cards

As of March 31, 2013, the CRA had four credit cards that were issued to employees. The CRA received one billing statement each month for all four cards and the cards had a combined credit limit of \$22,500. During the period October 2011 through March 2013, CRA credit card purchases totaled \$73,785.

Our review of the use of credit cards and test of 30 transactions totaling \$14,749 disclosed the following:

- The CRA Board did not approve, of record, the issuance of CRA credit cards or adopt policies, procedures, or other guidance as to the proper use of CRA-assigned credit cards.
- The employees assigned credit cards were not required to, and did not, sign written agreements specifying acceptable uses of credit cards.

In the absence of adequate controls over the issuance and use of credit cards, including certifications signed by credit card holders, and adequate review of support for credit card transactions to ensure that charges are appropriate, there is an increased risk that unauthorized charges may be made without timely detection.

Recommendation: The CRA Board should determine whether credit cards should be issued to CRA employees; set appropriate limits on the types of goods and services that can be purchased and the amounts of transactions; and implement appropriate policies and procedures regarding the issuance, use, and monitoring of credit cards. Such policies and procedures should include a requirement for each cardholder to sign a statement certifying that he or she accepts the terms and conditions set by the CRA on credit card usage.

Finding No. 15: Questioned Expenditures

Expenditures of public funds must be shown to be authorized by applicable law or resolution; reasonable in the circumstances and necessary to the accomplishment of authorized purposes of the governmental unit; and in pursuit of a public, rather than a private, purpose. Section 163.387(6), Florida Statutes, indicates that moneys in the CRA trust fund may be expended for undertakings of the CRA that are related to financing or refinancing of redevelopment in the CRA area pursuant to an approved CRA plan. Since moneys deposited in the CRA trust fund are restricted as to their use, CRA officials are responsible for establishing and maintaining controls, including the adoption of sound accounting practices, which will provide reasonable assurance that CRA funds are expended only for authorized purposes.

Additionally, the Attorney General has indicated on numerous occasions that documentation of an expenditure in sufficient detail to establish the authorized public purpose served, and how that particular expenditure serves to further the identified public purpose, should be present at the point in time when the voucher is presented for payment of funds. The Attorney General has further indicated that unless such documentation is present, the request for payment should be denied.

In addition to the questionable use of CRA funds as discussed in finding Nos. 1, 2, and 3, our audit disclosed numerous other instances in which CRA records did not evidence that expenditures served a public purpose, and complied with the CRA's 2011 Plan and Section 163.387, Florida Statutes. Specifically, we noted the following:

- Our tests of 70 check and credit card transactions for the period October 2011 through March 2013 disclosed 10 (14 percent) transactions totaling \$1,534 for items such as flowers, food, gift cards for employees, promotional items, and restaurant charges.
- Our review of three petty cash reimbursements, totaling \$466, disclosed \$266 related to purchases of food items, and \$43 related to reimbursements that were listed on the petty cash reconciliation as \$20 for tips and \$23 for a gift, but for which the CRA's records did not evidence supporting receipts.
- A total of \$100 in credit card rewards points redeemed for cash were, according to CRA personnel, used for various CRA lunch meetings.

Absent documentation establishing the authorized public purpose served, and how an expenditure serves to further the identified public purpose, the CRA has not demonstrated that CRA funds were appropriately used.

Recommendation: The CRA should strengthen its procedures to require documentation that expenditures serve an authorized public purpose, and comply with the CRA Plan and Section 163.387, Florida Statutes. Such documentation should be present in the CRA's records prior to payment.

Real Property Acquisitions

Finding No. 16: Property Appraisals

Good business practice dictates the use of appraisals to determine market value for real property acquisitions. For larger acquisitions, the use of two appraisals provides more assurance of the market value of the property prior to purchase. Should two appraisals result in significant differences in value, the use of a professional appraisal review³ can assist in determining the market value of the property to be purchased.

One definition⁴ of “market value,” indicates that market value is the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale under conditions whereby the buyer and seller are typically motivated, both parties are well-informed and acting in their own best interests, a reasonable time is allowed for exposure in the open market, payment is made in terms of cash in U.S. dollars or comparable financial arrangements, and the price represents the normal consideration for the property sold. Guidance from the Appraisal Institute regarding the sales comparison approach, a commonly used approach in appraisals, indicates that appraisers must consider all relevant transactions that have occurred in the market and then determine which of those transactions should be used. Factors that may determine whether a sale is unusable or requires adjustment include atypical buyer or seller motivations.

The Operations Manual used internally by CRA personnel indicated that the offering price for property acquisitions is to be typically based upon CRA personnel’s knowledge of market conditions, but the purchase and sale agreement will be made subject to the condition that an appraisal must be completed prior to closing. The Operations Manual also indicated that if CRA personnel estimate the value to be at or above \$500,000, a second appraisal was required. After appraisals were received they were reviewed by the Development Manager for accuracy. The Operations Manual, which had not been approved by the CRA Board, did not provide for appraisal instructions prohibiting the use of nonprofit, governmental, or quasi-governmental sales in determining value estimates; provide the steps to be taken should widely divergent appraisals be received; or specify when the engagement of professional review appraisers should be considered.

Our review of 11 real property acquisitions between February 2010 and November 2012, totaling \$3,852,305, disclosed the following:

- For one property acquired for \$1,895,000, the CRA initially obtained two appraisals that indicated values of \$1,500,000 and \$2,340,000, respectively. Since these values were widely divergent, the CRA obtained a third appraisal that valued the property at \$1,685,000. We noted that the CRA did not use a professional review appraiser to assist in determining the reasonableness of the support for the market value of the property. We also noted that some of the wide divergence in the value conclusions among the appraisers appears to have been caused, in part, by the CRA’s failure to discourage appraisers from using government-related transactions within the CRA area (i.e., other purchases by the CRA). For example, for the two appraisals with the highest overall value conclusions, all but one of the comparable sales used to value the subject property involved the CRA as the purchaser. However, the CRA would likely be considered an atypically motivated buyer that may have influenced prices in an atypical market created by the CRA. Appraisal guidance used by some governmental agencies strongly discourages the use of governmental purchases in appraisals. For example, *Uniform Appraisal Standards for Federal Land Acquisitions* states “When appraisals for federal land acquisitions are conducted, sales to the government should not be used as comparable sales unless there is a

³ A professional appraisal review can assist in determining compliance with applicable appraisal standards and accepted appraisal procedures.

⁴ Definition derived from Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

paucity of private market data as to make a reliable estimate of market value impossible without the use of government purchases.” Similarly, the *Supplemental Appraisal Standards for the Board of Trustees (State Standards)* promulgated by the Florida Department of Environmental Protection for State land acquisitions, indicates that appraisers are encouraged not to use purchases by nonprofit organizations, water management districts, or quasi-governmental or governmental agencies, as primary indicators of value, and that regional sales searches are encouraged in the event no local comparable sales can be located. *State Standards* further require that use of nonprofit, governmental, or quasi-governmental sales be analyzed and considered separately in the appraisal report. We noted that the \$1,500,000 appraisal had minimized the use of nonprofit, governmental, or quasi-governmental comparable purchases.

- For one property acquired for \$1,100,000, the CRA obtained only one appraisal, contrary to the Operations Manual. Further, the appraisal, which valued the property at \$1,100,000, relied on the negotiated price of the subject property, which was the same price the property sold for in 2004, in determining the value. The appraiser’s report acknowledged recent significant declines in the commercial and industrial market conditions. However, the report did not indicate how the market conditions in 2009, when the property was valued by the appraiser, compared to those at the time of the prior sale for the same price in 2004 to test the reasonableness of his value estimate. Consequently, the appraiser’s analyses and conclusions did not appear to conclusively support that the value in 2009 was the same as the 2004 sale price.

CRA Board consideration and adoption of real property appraisal policies and procedures would better ensure the reasonableness of value estimates and the CRA’s acquisition of real property at the best price possible.

Recommendation: The CRA Board should adopt written policies and procedures for real property acquisitions. In doing so, the CRA Board should require that appraisals be acquired for all real property acquisitions; that at least two appraisals be acquired for acquisitions over a given dollar limit; that a professional appraisal review be obtained in instances in which two appraisals are widely divergent; and that the use of nonprofit, governmental, or quasi-governmental purchases be discouraged from consideration as comparable sales for appraisals obtained.

Contractual Services

Finding No. 17: Contractual Agreements

As a matter of good business practice, contractual arrangements should be evidenced by written agreements embodying all provisions and conditions of the procurement of such services. The use of a formal written agreement protects the interests of the CRA, identifies the responsibilities of both parties, defines the services to be performed, and provides a basis for payment. The CRA is responsible for establishing controls to provide assurance that the process of contracting for services is effectively and consistently administered. Such controls should include execution of written contracts with clearly defined deliverables; Board approval of all contracts, amendments, and work orders; monitoring of contract payments to ensure they are in accordance with contract terms; and contract provisions requiring the contractor to provide invoices in a detail sufficient for proper pre- and postaudit.

Our review of ten contracts for various professional services, and ten interlocal agreements with the City, disclosed the following:

- ***No Contract.*** The latest contract the CRA had on file for General Counsel services was dated January 26, 2006, for a two-year term. Although there was a renewal provision stated in the contract, CRA records did not evidence that the contract was renewed. Upon audit inquiry, CRA personnel indicated that the rates had not changed and there was no regular evaluation of the firm by the CRA Board. In addition, our review of the payments for these services disclosed that the firm was paid \$6,759 for out-of-pocket expenses (copying costs, title and lien searches, and messenger services) that were not supported by receipts or other appropriate

documentation. Inadequate review of invoices prior to payment increases the risk of overpayments or that the CRA will pay for services not provided.

➤ **Contract Provisions.**

- **Audit Services.** Section 218.391, Florida Statutes, requires that a procurement of audit services be evidenced by a written contract that includes certain provisions, such as a requirement that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract. Although the auditors’ contract with the CRA for the 2011-12 fiscal year included a statement that invoices for fees will be rendered each month as work progresses and indicated the hourly rates for each position within the firm, it did not include a provision requiring submittal of sufficiently detailed invoices, and our tests disclosed an instance in which a CRA payment for audit services was not supported by a detailed invoice. Specifically, the CRA received and paid a progress billing invoice for \$17,300 for services rendered through January 2013 related to the 2011-12 fiscal year audit; however, the invoice did not detail the amount of hours spent and applicable hourly rates for the work performed through January 2013. As such, CRA records did not demonstrate that the amount invoiced and paid was in accordance with the contract.
- **Contingent Fees.** Section 287.055(6), Florida Statutes, requires contracts for professional services to contain a prohibition against contingent fees stating that the contractor warrants that he/she has not paid anyone other than a bona fide employee working solely for the contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the agreement. In May 2011, the CRA entered into a contract with a firm for a period of three years commencing June 1, 2011, for general consulting and other architectural services. However, the contract did not contain the above-noted provision, contrary to law.

Recommendation: The CRA should ensure that written contracts are used for all professional services, contracts include all required terms and conditions, and that payments for contractual services are supported by detailed invoices sufficient to allow a determination of contract compliance prior to payment.

Finding No. 18: Contract Monitoring

We reviewed 20 contracts and interlocal agreements, each of which included provisions requiring the contractor to provide performance and financial reports to assist the CRA in monitoring the services being performed. Our review disclosed that reports submitted for 6 contracts or interlocal agreements did not include the information required by the contract or interlocal agreement, as follows:

- The quarterly reports submitted for real estate broker services did not contain the foreclosure status in the targeted area or tax deed data in the targeted area.
- An interlocal agreement with the City for construction/professional services required monthly reports detailing the progress of the specific projects, including but not limited to the contract amount, the amount of funds paid to the contractor, the status of the project, and the total change orders. However, CRA records did not evidence that the CRA received the required reports.
- The interlocal agreement with the City for shuttle bus services required the City to submit quarterly ridership reports on or prior to the 30th day of January, April, July, and October. However, CRA records did not evidence that the CRA received reports for April 2012, October 2012, or January 2013.

Absent the receipt and review of the required reports, there is an increased risk that the CRA will pay for services that were not rendered in accordance with contract terms.

Recommendation: The CRA should enhance its monitoring procedures to ensure that required reports are received and contain all information required by the contract.

Travel

Finding No. 19: Travel Expenditures

Pursuant to Section 112.061(3)(b), Florida Statutes, travel expenses of CRA officials and employees are limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the CRA and must be within the limitations prescribed by that Section. During the period October 2011 through March 2013, CRA travel expenditures totaled \$12,282.

Our review of the CRA’s Human Resources Policies and Procedures (Policy) disclosed the following:

- Section 29 of the Policy, provides that automobile travel for employees will be reimbursed at the mileage rate set by Section 112.061(7)(d), Florida Statutes. Section 31 of the Policy, covering travel advances and expense reconciliations, states that employees shall be reimbursed for use of a personal car for CRA business at the current published Internal Revenue Service mileage reimbursement rate in effect when the travel took place. Section 112.061(14), Florida Statutes, provides the CRA Board with the authority to establish by resolution per diem, subsistence, and mileage rates that vary from those provided in Section 112.061, Florida Statutes, provided that the rates established be applied uniformly to all CRA travel. Our tests disclosed that CRA employees were reimbursed for mileage based on the Internal Revenue Service-published rate; however, because the CRA’s Policy prescribes two different mileage reimbursement provisions, the Policy is contrary to law.
- The Policy did not require travel vouchers to be approved by supervisory personnel and our tests disclosed no evidence that supervisory personnel reviewed or approved travel vouchers.

In addition, our test of 8 travel vouchers and 7 credit card payments for hotels or airport parking, during the period October 2011 through March 2013, disclosed that these expenditures were not always adequately supported or in accordance with Section 112.061, Florida Statutes, or CRA policies. For example, contrary to Section 31j. of the Policy, for the 8 travel vouchers reviewed, the traveler had not certified that the expenses were necessary for performance of the travelers’ official duties. We also noted that 6 of the 8 travel vouchers reviewed did not list vicinity mileage claimed for reimbursement as a separate line item, contrary to Section 112.061(7)(d)3., Florida Statutes. In addition, we noted some minor overpayments to two CRA Board members and an employee.

Enhancement of the Policy and improved review of travel expenditures would decrease the risk of unauthorized travel or improper payments.

Recommendation: The CRA should revise its Policy to establish uniform mileage reimbursement rates as required by Section 112.061(14), Florida Statutes, and to require supervisory approval of travel vouchers. The CRA should also enhance its controls to ensure that all travel reimbursements are in accordance with the CRA’s Policy and Section 112.061, Florida Statutes.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts audits of governmental entities to provide the Legislature, Florida’s citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations. Pursuant to Section 11.45(3)(a), Florida Statutes, the Legislative Auditing Committee, at its April 1, 2013, meeting, directed us to conduct this audit.

We conducted this operational audit from May 2013 to August 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient,

appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of this operational audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those controls.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls; instances of noncompliance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

For those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

The scope and methodology of this operational audit are described in Exhibit A. Our audit included selection and examinations of various records and transactions from October 2011 through March 2013, and selected actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these records and transactions were not selected with the intent of projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

Management's response is included as Exhibit B.

**EXHIBIT A
AUDIT SCOPE AND METHODOLOGY**

Scope (Topic)	Methodology
Organizational Issues	Reviewed organizational structure of the CRA and assessed the functional responsibilities within the organizational structure to determine whether they were adequately separated to provide effective internal controls. Examined and reviewed documentation such as the organization chart, CRA by-laws, and minutes of the CRA Board meetings. Performed searches on the Florida Department of State, Division of Corporations' Web site to identify potential conflicts of interest.
Written Policies and Procedures	Determined whether the CRA had written policies and procedures in place for major functions. Determined whether the CRA maintained public records in accordance with Chapter 119, Florida Statutes.
Budgetary Controls	Reviewed the CRA's budgetary procedures for adequacy and compliance with Florida Statutes. Reviewed tax increment funding calculations and receipts.
Cash Management	Reviewed the CRA's procedures related to cash. Reviewed bank account reconciliations for timeliness, completeness, and supervisory review. Reviewed banking agreements and electronic funds transfer agreements for sufficiency in providing adequate safeguards.
Real Property Acquisitions	Tested real property purchases to determine whether real property purchased within the CRA area was acquired at reasonable prices based on the appraised value of the property in accordance with the CRA Plan and applicable laws, rules, regulations, contracts, grant agreements, CRA policies and procedures, and other guidelines. Reviewed real property transactions between the CRA and Delray Beach Community Land Trust to determine propriety of the transactions and compliance with , rules, regulations, contracts, grant agreements, CRA policies and procedures, and other guidelines
Payroll and Personnel Administration	Reviewed the hiring process and qualifications of CRA employees and CRA Personnel Policies. Reviewed salary expenditures to determine whether employees were paid at authorized pay rates within the salary ranges noted on their approved job descriptions.
Procurement of Goods and Services	Tested CRA check disbursements, credit card payments, and travel expenses to determine whether they were properly approved, served a public purpose, were not made to related parties, and were in accordance with the CRA Plan and applicable laws, rules, regulations, contracts, grant agreements, CRA policies and procedures, and other guidelines.

**EXHIBIT A (CONTINUED)
AUDIT SCOPE AND METHODOLOGY**

Scope (Topic)	Methodology
Contractual Agreements and Expenditures	<p>Tested CRA contractual agreements to determine whether they contained the required provisions in accordance with Florida Statutes. Tested the competitive selection process in place to determine whether contractors were selected in accordance with applicable laws, rules, regulations, contracts, grant agreements, CRA policies and procedures, and other guidelines. Tested payments made to contractors to determine whether they were made in accordance with contract provisions and adequate monitoring procedures were in place. We reviewed these agreements and expenditures to determine whether any involved related parties.</p>
Grant Awards, Funding Agreements and Monitoring	<p>Reviewed the CRA's Policies and Grant guidelines. Tested Grants awarded to determine whether awards were made within the guidelines established; whether there were adequate monitoring procedures in place; and whether awards were in accordance with the CRA Plan and applicable laws, rules, regulations, contracts, grant agreements, CRA policies and procedures, and other guidelines. Reviewed funding agreements with nonprofit agencies to determine whether there were apparent conflicts of interest and whether agreements were in accordance with the CRA Plan and applicable laws, rules, regulations, contract, grant agreements, CRA policies and procedures, and other guidelines.</p> <p>Tested related expenditures to determine whether they were made in accordance with grant and funding agreements.</p>

EXHIBIT B
MANAGEMENT'S RESPONSE



September 12, 2013

Mr. David W. Martin, CPA
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

**RE: Delray Beach Community Redevelopment Agency
Response to Preliminary and Tentative Audit Findings Report**

Dear Mr. Martin,

Pursuant to Section 11.45(4)(d), Florida Statutes, we hereby submit the attached written response to the Auditor General's Preliminary and Tentative Audit Findings Report.

We appreciate the opportunity to respond to the findings and look forward to working with your staff to provide any additional information that is needed. We are committed to continually improving the policies and procedures of the Delray Beach Community Redevelopment Agency.

Please feel free to contact us with any additional questions or concerns you may have.

Sincerely,

Howard Lewis
CRA Chair

Diane Colonna
CRA Executive Director

c: Delray Beach CRA Board
Delray Beach Mayor and Commissioners
Mr. Louie Chapman, City Manager

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY
RESPONSE TO FLORIDA AUDITOR GENERAL
PRELIMINARY AND TENTATIVE FINDINGS REPORT DATED SEPTEMBER 9, 2013

Finding 1: CRA funding provided to nonprofit organizations and City of Delray Beach for promotional activities is not clearly authorized by the Community Redevelopment Act nor the 2010 Attorney General Opinion. This includes funding for: Delray Beach Marketing Cooperative (DBMC), Creative City Collaborative (CCC), Delray Beach Public Library, Delray Beach Center for the Arts at Old School Square (OSS), Expanding and Preserving Our Cultural Heritage (EPOCH, Spady Museum) as well as sponsorship of the City's annual tennis tournament.

The Delray Beach CRA Plan, which has been adopted by the CRA Board and City Commission, provides the basis for the CRA's funding of the organizations and activities listed above. The projects and programs in the Plan are based on the parameters contained within the Community Redevelopment Act. The Plan includes descriptions of economic development and promotional activities and programs that the agency will fund through its A-GUIDE Program (Achieving Goals Using Impact Driven Evaluation). In order to qualify, facilities must be located on public land and must demonstrate that their programs and operations are consistent with the CRA Plan and will help to achieve the CRA's economic development objectives.

The City of Delray Beach and the CRA have successfully partnered with local cultural and civic institutions for many years to help revitalize the downtown and surrounding neighborhoods and to attract private investment and support local businesses. Some of the downtown's transformation can be attributed to physical upgrades, but long term success and ongoing prevention of blighted conditions depends upon activities and investments that will continue to attract people and spark renewed private sector investment. Entities such as the Delray Beach Marketing Cooperative, the Delray Beach Center for the Arts at Old School Square, the Delray Beach Public Library, the Spady Museum and the Creative City Collaborative (Arts Garage) attract thousands of people to the downtown area each year and generate a significant economic impact throughout the entire CRA district. Spending by arts organizations and their audiences has been shown to result in economic benefits to the community through spending on restaurant and retail establishments, parking fees and transportation, child care, etc. For instance, using accepted methods of calculating the return on investment of public dollars, the DBMC's events and activities are estimated to have an economic impact of \$11.8 million and the impact of the annual tennis tournament is estimated at \$12.2 million. CRA funding enables the library to stay open on Sundays, and allows Old School Square to provide affordable rental rates for festivals and events that bring large crowds to its campus and beyond. The CCC's Arts Garage in is estimated to have a \$3.2 million economic impact for 2012. The Spady Museum is the cultural anchor to the recently revitalized NW/SW 5th Avenue corridor, where the City and CRA have invested millions in infrastructure, property improvements and landscaping/parking upgrades.

The CRA Board and City Commission authorized these initiatives when they approved the CRA Plan and its subsequent amendments. The A-GUIDE process employs a logic model and measurable objectives to ensure that program outcomes help achieve the CRA's goals for the redevelopment area. We believe that the activities generated by these events and entities are consistent with the Community Redevelopment Act. They contribute to the prevention of slum and blighted conditions in the CRA district by bringing patrons to the district, helping to reduce vacancies and crime, support local businesses, maintain higher rental rates, and increase property values.

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

Delray Beach Community Redevelopment Agency

Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

The Attorney General recognized in his 2010 letter that promoting the use of a redeveloped area falls within the scope of the community redevelopment act. In addition the CRA has consistently followed the advice of its own legal counsel with regard to this matter. The CRA board discussed the AG Advisory Opinion Letter at the meeting of November 18, 2010. Counsel advised that as long as the agency's funds are used in a manner that is consistent with the Redevelopment Plan and in a manner that serves the redevelopment area itself there is no conflict with the opinion. In addition, the attached Memorandum from the CRA's attorneys dated March 28, 2013 includes a detailed review of the CRA's expenditures with regard to promotional activities and concludes that the CRA's activities are consistent with Florida law and the CRA's Redevelopment Plan, and that its actions and use of funds is consistent with Chapter 163 and the 2010 Attorney General Opinion.

This Finding will be further discussed by the CRA Board and consideration will be given to the AG's suggestion that additional clarification be sought from the Attorney General regarding this issue.

Finding #2: Property leased by CRA from City at Old School Square Garage—why didn't the City lease the space directly to the nonprofits-- net effect appears to be a subsidy of City operations

The Economic Development Director is staffed at the CRA; the CRA agreed to manage the tenancy for the City-owned commercial space in the garage as an economic development initiative for the Pineapple Grove Arts District. Real estate values had fallen and the purchase offers for the space were not what the City had anticipated. Both the City and CRA felt that a temporary art/culture use would be appropriate for the space and could generate economic activity for the surrounding businesses. The stated goal was to establish art and culture venues in the facility that would augment, rather than compete with, surrounding restaurant and retail businesses. The CRA issued an RFQ specifically geared to non-profit art and culture establishments, and agreed to sublet the space to those entities at a discount in order to help ensure their viability over the course of the lease term. The City has the obligation for maintaining at its expense all structural, functional and systemic aspects of the building including roof, elevators, walkways, parking garage, landscaping, etc.

As recommended by this Finding the CRA will ensure that future transactions with the City do not have the effect of subsidizing City operations.

Finding #3: Funding of City Neighborhood Planner and Project Manager not based on actual time spent on CRA activities.

For those City positions that are involved in redevelopment activities and which the CRA agrees to contribute to through an Interlocal Agreement (ILA), the amounts budgeted have been based on the prior year's actual salary and benefits, and the City invoices the CRA accordingly. It's possible that the final amount paid by the CRA may vary slightly from the City's actual expense, but it is also noted that in 2009 the CRA was reimbursed \$10,075.85 when a position remained vacant for a period of time. The CRA will modify the ILAs in the future to better ensure that the CRA pays only for actual expenditures.

Finding #4: Ending balances in CRA Trust Funds didn't comply with F.S. 163.387(7) (funds must be committed to projects planned for completion in 3 years, applied to debt, or refunded to taxing agencies)

The CRA Plan calls for the agency to fund or otherwise participate in the implementation of projects contained within numerous plans adopted for specific areas (i.e. Downtown Master Plan, West Atlantic Redevelopment

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

Delray Beach Community Redevelopment Agency

Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

Plan, Southwest Neighborhood Plan, etc.). For instance, the Downtown Master Plan contains millions of dollars in infrastructure projects that were to be funded with CRA dollars, most of which were scheduled to be completed within an estimated time frame of 2 to 5 years (reference pg. 73 of Delray Beach Downtown Master Plan). Due to the length of time involved in designing, permitting and bidding the projects, as well as obtaining grant funding from other sources, many of these projects took longer to accomplish than anticipated. This caused a temporary delay in the expenditure of dollars in the trust fund, however, there was never a situation where the money was not targeted to projects that were intended to be completed within the stipulated 3-year time frame. This backlog of projects has been resolved, and the moneys in the trust fund have since been expended and/or specifically allocated to projects in the FY 13/14 budget.

Finding #5 Grants and Funding Administration—Grant awards made in excess of guidelines

- *Business Development Grants—payments made based on length of operations not on lease term*

There is an inconsistency in certain sections of the Guidelines for this program. The Purpose Statement says that the program allows the CRA to provide rental subsidies that are intended to assist start-up businesses “during the critical first year of operation”. The eligibility criteria clarify and specify that qualified applicants may receive 12 months of assistance anytime during “the first 18 months of a business’s operation.” However the first paragraph of the Program sub-section states that the program provides rent subsidies ... “for twelve (12) months anytime during the first 18 months of a multi-year lease.” The intent of the program is to assist a business during its first year of actual operations. This is to account for instances in which a business spends the first few months of its lease period building out its space and is therefore not operational.

In response to this Finding, the Guidelines will be modified to provide consistency and clarify the actual intent.

- *Site Development Assistance Grant--Payment made for work done prior to grant approval*

This finding came about largely due to the fact that our documentation for the payment associated with this particular grant was not specific enough as to the work that was being included in the invoice. The applicant for the subject grant had begun work on the project prior to applying for funding, and was informed that they would not be reimbursed for work completed before the CRA board approved the grant. In order to verify the extent of the work completed the site was visited by the CRA’s Marketing and Grants Manager and CRA Assistant Director on March 8, 2012 prior to the CRA Board meeting, and photos were taken to document the project status. The roof and windows were not installed prior to the CRA Board’s approval as inferred in this Finding. However the CRA did allow reimbursement for deposits that had been made on materials prior to the grant approval, but the work itself had not been completed.

The inspections that are required prior to installation of the windows and doors were conducted in April 2012 (subsequent to the grant approval). In addition, the City’s building permit records indicate a revision to the roof plans was submitted on March 5, 2012 and revised truss drawings were submitted to the Community Improvement/Building Department in April 2012. A subsequent letter dated May 8, 2012 was provided by the roof manufacturing company (Riffe Metal Co.) regarding the method of installing the roof material.

Based on the above it is our opinion that all eligible improvements were completed subsequent to the board’s approval of the grant. The CRA will ensure that in the future the records supporting reimbursements are clear as to the nature and the timing of work that the CRA is being billed for.

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

Delray Beach Community Redevelopment Agency

Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

Finding #6: Monitoring of Funding Agreements—checks cut prior to receipt of required reports

CRA checks are processed during scheduled CRA check runs. The entire check process can be somewhat time consuming since it requires the approval of the CRA Finance & Operations Director, CRA Executive Director and a CRA Board member. If quarterly reports/documents are not received prior to the processing of the check, it is noted on the check that it must be held until the quarterly report/documents are received and reviewed. An additional check run would not be efficient use of staff time. The specific dates that the checks cleared the bank was provided in a previous correspondence.

Other than two instances where an early release of payment was requested in writing due to extenuating circumstances, no payments were released prior to the required reports being submitted. As noted in the audit report several reports were submitted after the stipulated date, however payment was not released. Regarding the notation of the time and date that reports are submitted, many are received via email and the date and times can be readily verified.

In the future the CRA will require that the reports are submitted electronically in order to have verification of the date received. Staff has drafted a modified A-GUIDE Agreement that addresses the timeliness of the reports, and provides that the CRA may adjust the amount of the final disbursement based on the organization's year end budget.

Finding #7: CRA Board has not adopted specific policies to mitigate, detect and report fraud

The CRA considers the risk of fraud each year in conjunction with its annual financial audit. Budgetary and other controls are regularly updated to maintain a low risk of fraud, including the issuance of monthly financial reports to the board, separation of duties, board approval for any borrowing, etc. The majority of the CRA's revenues are received by wire transfer or check, with minimal handling of cash by any employees. With the checks and balances that have been put into place the CRA has avoided any instances of fraud during its nearly 30 years of operation.

In response to this finding the CRA will update its Financial Policy and Procedures Manual to include a provision regarding the mitigation, detection and reporting of fraud.

Finding #8: Statements of Financial Interest not filed timely

The list of persons required to file the financial forms is provided to the Florida Commission on Ethics by the City Clerk's office. Several of the reports have been recently filed.

The CRA will ensure that the proper listing of individuals required to file the report is provided to the Florida Commission on Ethics so that those individuals receive timely notification, and will also follow up with the Board to ensure the reports are filed.

Finding # 9: Budget Preparation—Not all prior year balances brought forward, budget did not reflect true cost of Green Market

The CRA maintains a five percent (5%) reserve to allow for unanticipated costs or land purchase opportunities. The reserve has not been specifically identified in the budget. We will ask the CRA board to formally adopt a policy to that effect.

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

Delray Beach Community Redevelopment Agency

Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

Regarding the Green Market budget, the Green Market Manager position has been listed under the overall CRA Administrative Personnel –Salary and Wages line (GL 8011) because she also provides general administrative support for the agency in addition to managing the market. This is particularly true in the off-season months.

In order to address this finding, the position has been moved to GL-7381 under the Green Market program, and the Green Market Manager job description will be modified to include the additional off-season duties.

Finding #10: Expenditures – Five line items over-expended

As noted in the AG report, the CRA's overall budget was not over-expended. The line items noted were mostly a result of changes requested during the CRA's annual audit, which was completed subsequent to the end of the Fiscal Year and after the last budget amendment had been adopted. Balances were adjusted for two construction agreements and an adjustment of \$119,283 was made to affordable housing land values. Another change was a reclassification of legal fees from "Other Legal" to "Debt Service" related to the CRA's line of credit, because the auditors felt it was necessary for clarification.

In the future the CRA will hold open its last budget amendment for the allowable sixty (60) day period in order to have additional time to review changes and adjustments. If the annual audit recommends adjustments beyond that date, a late budget amendment may have to be processed.

Finding # 11: – No written agreements for electronic funds transfer

Three CRA staff persons are authorized to request electronic funds transfers--the Executive Director, Assistant Director, and Finance and Operations Director. All electronic transfers are verified by at least two of the three people, and a form is signed by the Finance and Operations Director, the Executive Director and a board member. There have been no improper or unauthorized transfers. Agreements are in place with three institutions but will be reviewed and updated as needed in order to address this Finding.

Finding # 12: Disbursement processing controls could be enhanced; purchase orders not issued for certain expenses, or invoice dated prior to P.O.

The largest of the invoices (\$32,000) was for repairs to the City's 100' artificial Christmas Tree, and was paid upon receipt from the Delray Beach Marketing Cooperative (DBMC) with coordination from City administrative staff. The expense was a line item in the CRA's budget. Two of the invoices involved purchases made for Arts Garage equipment after the staff had relocated to the facility and did not have access to the CRA's server in order to complete a P.O. In a few instances CRA staff did not prepare the required P.O. in a timely manner. Another invoice involved our regular weekly cleaning service, which should be listed as being exempt from the P.O. requirement in our Procurement Manual.

Regarding the verification of the receipt of goods and services, multiple CRA staff persons sign off on check approvals prior to issuing payment by initialing the Check Authorization Stamp. This typically includes review and approval by the person who ordered the items or service, as well as the Finance and Operations Director and the Executive Director.

In order to address this Finding the CRA will examine its processes to identify ways to provide additional documentation of goods and services received, and to improve the Purchase Order process. We will also amend our Procurement Manual to add "regular janitorial services" to the list of expenditures that are exempt from the P.O. requirement.

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

Delray Beach Community Redevelopment Agency

Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

Finding # 13: Competitive selection process—compliance with State law regarding procurement

- *CRA records did not evidence time and date bids received*

All RFP submittal packages (envelopes and/or boxes) are stamped with the time and date received. This information is then transposed onto a submittal form. Respondents are provided a receipt indicating the time and date they submitted their proposal, if requested. This information is transposed onto the respective submittal/bid form. The submittal/bid form includes a statement that the responses indicated on the form were received prior to the submittal deadline. This form is signed by at least 2 CRA employees who witness the bid opening, which occurs at a public meeting and the bids are read aloud. Any proposals/bids that are received past the deadline date and time are not accepted for processing. The Board Summary that is prepared for awarding the bid includes information on all bids received, including any that came in late and those that were determined be non-responsive based on requirements outlined in the CRA's Procurement and Purchasing Procedures Manual and the Request for Bids and/or Qualifications, as applicable. In cases where the City of Delray Beach assists with the Request for Bids (for construction projects) or RFP process (for disposal of CRA property), City proposals are submitted directly to the City's Purchasing division and the Purchasing staff coordinates the bid opening meeting and registers all responses onto the bid tabulation form.

In order to address this Finding the submittal packages with date and time received will be scanned and maintained on file.

- *2 of 11 contracts tested did not include completed evaluation sheets*
 - *RFP for Auditing Services (2008)*

Unfortunately we could only locate one of the three rating sheets completed for this RFP.

- *Consulting service for arts warehouse plan (2011)*

The selection process for this RFP was managed by the Creative City Collaborative, who presented their overall ranking and recommendations to the CRA board at the meeting of April 14, 2011. CCC staff relocated their offices since that time and have not been able to locate the original ranking sheets.

- *2 of 11 contracts (architectural and landscape architectural services) did not include consideration of whether a firm was a certified minority business*

A review of the continuing services contracts (architects, landscape architects, and development services consultants) entered into by the CRA for the years 2007 through 2013 indicates that five (5) of the sixteen (16) companies that have provided these services to the CRA would qualify as MWBE businesses. In order to address this Finding the CRA will specifically incorporate the statutory requirements in future Requests for Qualifications.

- *Christmas Tree repairs not competitively bid*

The tree repairs are conducted by the same company that erects and disassembles the tree each year, Eagle Metal. This is a specialized service that was arranged by the Downtown Joint Venture, now the Delray Beach Marketing Cooperative, since the tree was first installed in the 1990's. The cost of the repairs is figured into

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

Delray Beach Community Redevelopment Agency

Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

Eagle's overall budget for the job and would be difficult to separate out. CRA staff verifies the repairs that are needed and inspects the work when it is done. In the future alternative sources of funding other than the CRA will be sought for this project.

- *General Counsel services not put out to bid since 2006*

The CRA's general counsel has extensive experience in municipal government and represents several cities, special districts and Community Redevelopment Agencies in the local area. Their hourly rate has remained the same since the contract was first approved. In order to address this finding the CRA board will be asked to issue a Request for Proposals for general counsel services in the near future.

Finding # 14: CRA board did not adopt credit card policy

The CRA primarily uses one credit card to which it charges items such as office supplies, computer equipment and software purchases, appliances for properties, property maintenance expenses, rope lights for the trees downtown, website expenses, association memberships and conferences, banners and signs, etc. Purchase Orders are to be executed and signed prior to purchases as with non-credit card purchases. Receipts are maintained, attached to the credit card bill and verified by the purchaser, finance staff and management prior to payment. These processes and practices have to date prevented any misuse of credit cards.

In order to address this Finding, the procedures that are currently in place will be put in writing for CRA board approval, and staff will be asked to sign written agreements regarding the appropriate use of credit cards.

Finding # 15: Questioned expenditures—funds used for food, gift cards, etc.

The expenditures identified in this finding were used for CRA activities and events as described below.

In order to better inform the public about the CRA's programs and projects the CRA established March 2012 as "CRA Awareness Month" and held several activities aimed at expanding awareness and interest. These included presentations at City Hall for City employees, an event in the West Atlantic Neighborhood, and coffee with CRA Chairman Howard Lewis at a local coffee shop. Refreshments were served at some of these events and some promotional items were purchased to give away to participants. (Total \$712.60)

The two \$100 gift cards (\$209.90) were given as a token of appreciation to two employees who helped out for several months during another employee's extended medical leave, coordinating and delivering board packets, preparing meeting agendas and minutes, etc. The flowers (\$64.08) were for an employee who had surgery, and the agency has been reimbursed.

In October of 2011 the CRA Executive Director and Assistant Director invited two individuals from the Chamber of Commerce to have lunch and get acquainted with the newly hired Economic Development Director (\$109.43).

Refreshments and lunch were provided at a team building workshop for CRA employees on June 25, 2012 at a cost of \$187.75. The workshop lasted from 9:00 a.m. to 3:00 p.m.

EXHIBIT B (CONTINUED)
MANAGEMENT’S RESPONSE

Delray Beach Community Redevelopment Agency
Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

The CRA staff and board held a holiday party, and spent \$141.81 at BJ’s for snacks and supplies. CRA management staff contributed additional dollars for food and beverages. The CRA also expended \$99.32 for poinsettias and other holiday decorations for the office, which is visited on a regular basis by members of the public.

In our opinion the above expenditures were appropriate in that they supported CRA programs and events, promoted employee morale and productivity, provided decorative elements to enhance the appearance of the downtown area, and helped inform the public about the CRA’s activities and programs. However, in the future we will ensure that a public purpose for expenditures such as these is documented and available as a public record (i.e. CRA Meeting Minutes).

Finding # 16: Property Appraisal Procedures—recommended use of Review Appraisers

The CRA obtains at least one appraisal for every property it purchases. The CRA employs qualified state certified real estate appraisers for all appraisal jobs, several of whom have the MAI designation.

For the property valued at \$1,895,000 the CRA obtained three separate appraisals, two of which were from MAI designated appraisers. During the period in question the sharp decline in the real estate market made it extremely difficult to determine values. There were few comparable sales and many property exchanges were the result of foreclosures or distress sales. Sales of commercial property in the West Atlantic area to private entities were especially limited during this period.

Regarding the purchase of the warehouse, while the preferred practice has been to obtain more than one appraisal for properties anticipated to have values of \$500,000 or greater, that procedure wasn’t included in the CRA Operating Manual until 2011. It’s noted that the listing price for the warehouse property was \$1.7 million and the property owners had it appraised for \$1.2 million in February 2009. The CRA had it re-appraised in December of 2009 and purchased it for the resulting value of \$1.1 million.

In response to this finding the CRA will continue to obtain appraisals from qualified firms, and will have the existing acquisition policies and procedures adopted by the CRA board. Staff will evaluate the cost effectiveness of using review appraisers instead of obtaining more than one appraisal in certain cases.

Finding #17: Contractual Agreements

- *Contract with General Counsel has expired, need more back-up for expenses*

We agree with this finding (although we note that the fee structure has remained the same since 2006) and will take corrective steps.

Contract Provisions:

- *Audit Services—Invoices did not provide sufficient detail of hours expended*

We will examine our audit agreement and ensure that the CRA is receiving the level of detail that is called for with respect to invoices for services.

- *Contingent Fees—CRA contracts must include clause prohibiting contingent fees*

We agree with this finding and will ensure that future contracts include this clause.

**EXHIBIT B (CONTINUED)
MANAGEMENT’S RESPONSE**

Delray Beach Community Redevelopment Agency
Response to Florida Auditor General Preliminary and Tentative Findings Report Dated September 9, 2013

Finding #18: Contract Monitoring

- *Real estate broker reports did not include foreclosure/tax deed information*

The CRA entered into the Agreement with Anderson & Carr on July 12, 2012. In October 2012, the CRA’s Broker coordinated the purchase of a foreclosed property at 203 NW 5th Avenue, via the Palm Beach County Clerk & Comptroller’s website. In subsequent months the Broker researched priority properties as directed by CRA staff along the West Atlantic Avenue corridor to determine if there were any pending foreclosure or tax deed sales, which was indicated on the quarterly reports. In the first two quarters of 2013, the CRA’s broker assisted closely in the negotiations to acquire two key parcels adjacent to other CRA owned sites.

CRA staff will review the status of the contract to determine if it should be modified to more closely reflect the desired outcomes.

- *Construction/Professional Services Agreement with City – required monthly reports were not submitted*

The status of all CRA-funded projects including those contained within the subject agreement is provided to the CRA Board in the Monthly Status Report, which is routinely updated by CRA and City staff. CRA staff will work with City staff to ensure that the information required per the Construction/Professional Services Agreement is provided either in that report or in a separate report.

- *Interlocal Agreement with City for Shuttle Funding – ridership data not submitted in a timely manner.*

We agree with this finding and will take steps to ensure that the data is submitted on a quarterly basis.

Finding #19: Policies and Procedures regarding travel expenditures could be enhanced

There is an inconsistency in the Human Resources Manual regarding the calculation of mileage. In order to address this finding the Manual will be modified to state that the IRS mileage reimbursement rate will be used.

All CRA travel is for justifiable purposes related to obtaining education and information on redevelopment issues, or in many cases, making presentations about the Delray Beach CRA at conferences and workshops.

In order to address this Finding staff will review the CRA’s travel policies to determine ways to improve the approval and review of expenditures.

Attachment: Memorandum No 2013-006 from CRA Attorneys re Delay Beach CRA Expenditures of Tax Increment Funds

**EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE**

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

MEMORANDUM NO. 2013-006

TO: Diane Colonna, Executive Director

CC: Howard Lewis, Chair
Members of the CRA Board of Commissioners

FROM: Donald J. Doody, Office of the General Counsel *DJD*
David N. Tolces, Office of the General Counsel *DM7*

RE: Delray Beach Community Redevelopment Agency ("CRA") / Expenditures of Tax Increment Funds

DATE: March 28, 2013

Pursuant to your request, we have reviewed the March 14, 2013 memorandum submitted by a member of the public. The memorandum asserts a position that there exist several issues relative to the expenditure of public funds by the CRA. Accordingly, our office has reviewed the relevant Florida statutes, Attorney General Opinions, and the CRA's Redevelopment Plan and conclude that the expenditures of funds for the construction and promotion of facilities such as the Arts Garage, the Municipal Tennis Center, and the Delray Beach Public Library are consistent with the applicable statutes governing the operation of a CRA, and therefore legally allowed. This memorandum examines the CRA's authority to fund such operations and facilities.

I. Attorney General Opinion 2010-40

On September 27, 2010, the Florida Attorney General issued an Attorney General Opinion ("AGO") in response to an inquiry concerning a CRA's expenditure of funds for events that promote the redevelopment area as well as for entities that promote tourism and provide socially beneficial programs. AGO 2010-40 was issued in response to an inquiry from the City of Sanford City Commission regarding the expenditure of CRA funds for promotion of the redevelopment area in the City of Sanford.

In a response addressed to the Sanford City Attorney, Attorney General Bill McCollum stated that the use of CRA funds to promote the redevelopment area ". . . would appear to fall within the purposes of the redevelopment act." The Attorney General also stated that in the case of the City of Sandford the use of redevelopment funds to pay entities promoting tourism or providing socially beneficial programs, did not, however, "have an apparent nexus to carrying out the purposes of the redevelopment act." Therefore, the opinion issued to the City of Sanford required a nexus between the expenditure and the fulfillment of the purposes of the Community Redevelopment Act. It is important to note, however, that the cited Attorney General's opinion does not prohibit the use of CRA funds to promote activities that are contained in the CRA's Redevelopment Plan and further the redevelopment purposes of the CRA.

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

Notwithstanding the Attorney General's cautionary statement regarding the required nexus between the expenditure and the Redevelopment Act, the Attorney General examined Section 163.387(6), Fla. Stat., with respect to whether a CRA may use redevelopment trust funds for promotion of the community redevelopment area and concluded that ". . . [to] read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing the community redevelopment as a static process." Based upon this reasoning, the CRA's expenditures to promote the redeveloped areas within the Community Redevelopment Area are consistent with the statutory language.

II. Legal Analysis

Section 163.356(1), Florida Statutes, states in part that the CRA's purpose is to undertake "community redevelopment." The term "community redevelopment" is defined in Section 163.340(9), Florida Statutes, as follows:

(9) "Community redevelopment" or "redevelopment" means undertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight, or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly, and may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan.

In order to pursue its purpose of community redevelopment, Section 163.387(6), Florida Statutes authorizes the expenditure of funds in the redevelopment trust fund by the CRA "for undertakings of a community redevelopment agency as described in the community redevelopment plan, including but not limited to:"

- (a) Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency.
- (b) Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the community redevelopment agency for such expenses incurred before the redevelopment plan was approved and adopted.
- (c) The acquisition of real property in the redevelopment area.
- (d) The clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370.
- (e) The repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness.
- (f) All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

indebtedness, including funding of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness.

(g) The development of affordable housing within the community redevelopment area.

(h) The development of community policing innovations.

In AGO 2010-40, the Attorney General recognized that the use of the term "including, but not limited to" in Section 163.387(6), Florida Statutes, provides flexibility to a CRA with respect to the use of redevelopment trust funds.

III. The Delray Beach CRA Community Redevelopment Plan

In further support of the CRA's activities and expenditures, the CRA's Redevelopment Plan, most recently updated on September 20, 2011, through the adoption of Ordinance 27-11, by the City of Delray Beach City Commission, contains the authority for the CRA to expend the redevelopment trust funds for promotional activities including, but not limited to the Old School Square Parking Garage Commercial Space, the Municipal Tennis Center, and the Delray Beach Municipal Library.

A. Commercial Space within Old School Square Parking Garage.

The Redevelopment Plan provides for the following with respect to development potential within the Pineapple Grove Cluster. On Page 36 of the Redevelopment Plan, the use of commercial space in the parking garage is identified as a potential for development. The Redevelopment Plan provides the following redevelopment opportunities in the Pineapple Grove area:

- Promote Pineapple Grove as a high profile destination
- Create storefronts at strategic locations (corners, near building entrances, etc.) and allow some non-retail on ground floor (i.e. at the new garage) to avoid a glut of marginal retail space.

Objectives contained on Page 52 of the Redevelopment Plan include the following objectives with respect to the downtown area:

- To create a self-sustaining downtown that has a balanced mix of uses.
- To facilitate economic development and ensure that the downtown remains the economic, cultural, and governmental center of the City.

The Pineapple Grove Neighborhood Plan provides for the development and promotion of venues providing space for art and music. Specifically, on Page 60 of the Redevelopment Plan, the CRA's participation may include the following elements:

- Support arts-related uses and features that help establish and maintain the area's identity as an arts district.

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

- Work with the Pineapple Grove organization to ensure that the City's Land Development Regulations facilitate the establishment of arts-related uses.
- Establishment of the area's special identity as an arts related district.

Finally, Block 76, "Old School Square Expansion and Parking Garage" is specifically referenced on Page 66 of the Redevelopment Plan. In explaining the background of the project, the Redevelopment Plan provides "The plans for [the] garage also included ground floor commercial space adjacent to Pineapple Grove Way and NE 1st Street." The objectives for the Old School Square Expansion and Parking Garage as stated in the Redevelopment Plan include:

- Promote arts and cultural activities as a means to foster increased economic development within the city center.
- Provide a cornerstone for the revitalization

The inclusion of these specific references to the parking garage, and commercial space within the parking garage, provides the guidance for the CRA to expend funds contained within the redevelopment trust fund on projects related to the Old School Square Parking Garage in a manner consistent with state law.

B. Municipal Tennis Center and Delray Beach Public Library.

With respect to the Municipal Tennis Center and the Delray Beach Public Library, the Redevelopment Plan confirms the CRA's participation in these projects as an essential element of the enhancement of recreation and cultural facilities in the Community Redevelopment Area. Specifically on Page 30, the Redevelopment Plan confirms that:

The CRA helped pay off debt service for the establishment of the tennis stadium at the downtown Tennis Center. This facility has hosted major tournaments and generated a great deal of economic activity for downtown restaurants, shops, and hotels. The CRA also contributed funding for the establishment of the new public library in the 100 block of the south side of West Atlantic Avenue. The relocation of this facility to West Atlantic area has been a major catalyst to the redevelopment of the western edge of the downtown, as it attracts more people and activities to venture west of Swinton Avenue.

The Municipal Tennis Center is identified as a Community Improvement Program on Page 94 of the Redevelopment Plan. The objectives of the CRA's participation in the funding and operation of the Municipal Tennis Center are to:

- Encourage the use of the Municipal Tennis Center as a venue for major sporting events and other entertainment activities
- Stimulate economic development within the West Atlantic Redevelopment Area and the downtown as a whole by attracting visitors and activity to a major public facility located directly within the area.

EXHIBIT B (CONTINUED)
MANAGEMENT'S RESPONSE

- Where appropriate, support the utilization of sports facilities within the CRA district for events and programs that will provide an economic benefit to hotels and businesses within the CRA district and the City as a whole.

By identifying the specific program and objectives in the Redevelopment Plan, the CRA's funding and participation in events and programs associated with the Municipal Tennis Center is consistent with the statutory provisions and the Attorney General's Opinion.

The Delray Beach Public Library's continued operation and development as a cultural hub in the West Atlantic Area is included as an ongoing redevelopment project on Page 68 of the Redevelopment Plan. Specifically, the Redevelopment Plan provides:

In order to continue to promote activity and economic development in the West Atlantic area, the CRA agreed to fund a portion of the operating funds so that the library could continue to be open seven days a week and offer the same range of services and activities. The CRA will consider on an annual basis, a commitment of funding in order to ensure that the library can continue to function in this manner.

This type of promotional activity to support a completed capital project is consistent with the relevant statutory provisions and the Attorney General's Opinion.

IV. Conclusion

The CRA's activities, as evidenced above, are consistent with Florida law and the CRA's Redevelopment Plan. The CRA's actions and use of funds to eliminate slum and blight, and to promote the redeveloped area within the CRA's boundaries, is consistent with the provisions of Chapter 163 and the 2010 Attorney General's Opinion.

If you require any additional information, please do not hesitate to contact our office.

DNT:dnt

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**Lobbying Firms'
Compensation Reports**

Workshop on the guidelines for audits of lobbying firm compensation reports

The following documents are included in the meeting packet:

1. Letter from the presiding officers
2. Outline of issues for discussion to develop guidelines
3. Relevant laws (ss. 11.40(3), 11.045, and 112.3215, F.S.)
4. Relevant rules (Joint Rule One and portions of Senate Rule 9.8; House Rules reference Joint Rule One)
5. Sample lobbying firm compensation report
6. Board of Accountancy Letter
7. Board of Accountancy's Independence Standards and Definitions
8. FAQs from Online Sunshine related to Legislative branch lobbyist registration and compensation reports

**1. Letter from the
Presiding Officers**



THE FLORIDA LEGISLATURE



DON GAETZ

President of the Senate

WILL WEATHERFORD

*Speaker of the House of
Representatives*

September 26, 2013

The Honorable Joseph Abruzzo
Alternating Chair, Joint Legislative Auditing Committee
222 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

The Honorable Lake Ray
Alternating Chair, Joint Legislative Auditing Committee
402 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399-1300

Dear Senator Abruzzo and Representative Ray:

On September 23, the Joint Legislative Auditing Committee took the first steps to address the Legislature's failure to audit lobbyist compensation reports as required by Florida law. We commend the Committee for its willingness to take on this matter and your leadership in elevating this topic as a part of the Legislature's continuing commitment to ethics reform.

To ensure that this issue is addressed in a timely and transparent manner, we believe the Committee should take the following actions beginning immediately.

First, the Committee should solicit public input on a set of guidelines to govern the auditing process. The guidelines should ensure that similarly situated compensation reports are audited in a uniform manner. They should provide clear direction to certified public accountants and lobbying firms regarding the appropriate manner of reporting compensation, including a rational standard for allocating compensation between executive and legislative branch lobbying and between lobbying and non-lobbying activities. And, as stipulated in law, the Committee should provide for a system guaranteeing a truly random selection of the lobbying firms to be audited.

Second, the Committee should establish procedures for selecting at least ten independent contract auditors to conduct the required audits. The independent contract auditors should be identified through a competitive solicitation process with due consideration for the auditors' professional qualifications and fee proposals for participating in the process.

September 26, 2013

Page 2

Third, the Committee should develop an estimate of the total expense that will be required to conduct the random audits based on the number of audits, the hourly rates charged by the selected independent contract auditors, and the average number of hours anticipated for each random audit. The Committee should provide its estimate to the Appropriations Committees in each chamber so that budget authority for this expenditure can be included in the 2014 General Appropriations Act. The Committee should also provide its recommendation as to whether this expense should be offset by an increase in lobbyist registration fees.

Finally, we note that the law requires each random audit to cover the quarterly compensation reports "for the previous calendar year." Our strong preference is that there be no further delay in beginning these audits. The prompt adoption of a clear and comprehensive set of auditing guidelines, no later than the end of this calendar year, will allow all lobbying firms to file their compensation reports for the first quarter of 2014 under uniform and consistent standards.

Thank you again for your Committee's attention to this important issue.

Sincerely,



Don Gaetz
President
The Florida Senate



Will Weatherford
Speaker
The Florida House of Representatives

**Outline for JLAC Workshop
Guidelines for Audits of Lobbying Firm Compensation Reports
October 7, 2013**

I. Background

A. Number of Lobbying Firms¹ and Audits Anticipated

1. Legislative Branch: 430
Audits anticipated: 13 (3% * 430)
2. Executive Branch: 348
Audits anticipated: 11 (3% * 348)

B. Discussion relating to Audit versus Attestation Services (Agreed-Upon Procedures)

1. Discuss difference and concerns raised by the Florida Board of Accountancy.
[See 2/12/2007 letter; update requested - on agenda for discussion at 10/4/2013 Board meeting]

C. Discussion relating to Independence Definition in s. 11.40(3)(c), F.S.

["No independent contract auditor, whether designated by the lobbying firm or by the committee, may perform the audit of a lobbying firm where the auditor and lobbying firm have ever had a direct personal relationship or any professional accounting, auditing, tax advisory, or tax preparing relationship with each other."]

1. Discuss difference between strict definition of independence in law and Florida Board of Accountancy's current rule related to independence standards.
2. Concerns raised by the Florida Board of Accountancy
[See 2/12/2007 letter; update requested - on agenda for discussion at 10/4/2013 Board meeting]

II. Selection of Lobbying Firms to be Audited [s. 11.40(3)(b), F.S.]

A. Lists of Lobbying Firms for Legislative Branch and Executive Branch – from Office of Legislative Services, Division of Law Revision and Information

B. Selection Process

1. Method of Selection

- a) Example: Number each list of lobbying firms (currently 1 to 430 for legislative branch and 1 to 348 for executive branch). Use a random number generator program to select the lobbying firms. [Presentation of such a program by Auditor General staff.]
- b) Thoughts on other methods?

¹ Source: Office of Legislative Services, Division of Law Revision and Information. Numbers are as of September 10, 2013.

**Outline for JLAC Workshop
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III. Selection of CPAs/CPA Firms [s. 11.40(3)(c), F.S.]

- A. Request for Proposal – to be issued through Office of Legislative Services, Purchasing Office
- B. Further discussions on the RFP will be held during future Committee meetings.
- C. Process to be used if Committee is required to select an auditor for a lobbying firm [when lobbying firm has not selected an auditor within 30 days of being notified (s. 11.40(3)(c), F.S.)]

IV. Procedures to Consider for CPAs/CPA Firms to Perform

- A. Marketing agreements and/or lobbying contracts (however termed) between the lobbying firm and each principal that cover the calendar year
 - 1. Review agreements/contracts and verify that none are contingency fee based², unless exception provided in law (i.e., related to a claim bill (both legislative and executive); compensation or commission of a salesperson as part of a bona fide contractual relationship with company paying the compensation or commission (executive only).
 - 2. Prepare schedule of such agreements/contract, noting payment schedule for compensation (i.e., as services are rendered and billed, monthly, quarterly, lump sum at beginning of contract period, lump sum at end of contract period, etc.).
- B. Send confirmation letters to principals to verify amounts paid to the lobbying firm as compensation for lobbying services
 - 1. To all principals or to only a specified % or not at all
 - 2. Type: Positive or Negative?
[positive - written with a request for the recipient to confirm an amount specified in the letter; negative - written with a request for the recipient to reply only if there is disagreement with the information]
- C. Trace compensation amounts provided or owed to the lobbying firm by each principal to the applicable client (principal) records
 - 1. 100% or other specified %
 - 2. Type of records? (i.e., payment records, cash receipts journal and original receipts documentation, deposit slips, monthly bank statements, accounts receivable records and journal, and other pertinent records of the lobbying firm).

² See ss. 11.047 and 112.3217, F.S., relating to contingency fees.

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- D. Allocation of compensation amounts – determination of reasonableness
 - 1. Verification of allocated compensation amounts
 - a) Included only on applicable compensation report
 - b) Total compensation received from a principal agrees with total per agreement/contract – no double reporting on legislative branch and executive branch compensation reports
 - 2. See information in VI. below.
- E. Failure by lobbying firm “...to give full, frank, and prompt cooperation and access to books, records, and associated backup documents as requested in writing by the auditor” required to be “clearly noted” by auditor in report. [s, 11.40(3)(f), F.S.]
 - 1. Type of document to be completed by CPA/CPA firm? (i.e., report paragraph, schedule, other)
 - 2. Specified format to be used?
- F. Representation letter from lobbying firm – include:
 - 1. Statement that all applicable marketing agreements and/or lobbying contracts (however termed) between the lobbying firm and each principal that cover the calendar year have been provided to the CPA/CPA firm?
 - 2. Other suggestions?

V. Compensation Records to be Maintained

- A. All marketing agreements and/or lobbying contracts (however termed) between the lobbying firm and each principal by calendar year.
- B. All subcontractor agreements and/or contracts between the lobbying firm and other lobbying firms or lobbyists.
- C. A schedule of contracted compensation by principal that indicates the payment schedule for such compensation (i.e., as services are rendered and billed, monthly, quarterly, lump sum at beginning of contract period, lump sum at end of contract period, etc.).
- D. Client (Principal) payment records, including original receipts documentation.

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- E. If “compensation” relates to any reimbursements received: documentation to substantiate the reimbursement.³

VI. Allocation of Compensation Received – Rational Method

- A. From a principal for lobbying services provided for legislative branch lobbying and executive branch lobbying
- B. From a principal for lobbying and non-lobbying services
- C. One option: Request that lobbying firm provide to the CPA/CPA firm a written statement or other form of documentation that explains the method used to allocate the compensation, as well as documentation to support the allocations.
- D. One method could be allocating the compensation based on percentage of time spent on activities (i.e., lobbying vs. non-lobbying services; legislative branch vs. executive branch)

Example: Actual time spent (hours or minutes) * hourly rate (for each lobbyist or support staff working on each activity)

- E. Any allocation formula should be reviewed on a regular basis to determine if any adjustments need to be made to reflect current activity.
- F. If no allocation method is documented
 - 1. Should assumption be that all (100%) of compensation received from a principal is for lobbying services?
 - 2. Suggestions on split between lobbying services related to legislative branch and executive branch?
- G. End Result: Total compensation received from a principal should agree with totals reported on the legislative branch and executive branch compensation reports. There should be no double reporting of compensation received.

VII. Records Retention

- A. Already established in law
- B. Each lobbying firm and each principal is required to preserve for a period of **4 years** “all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation.” [ss. 11.045(2)(e) and 112.3215(5)(e), F.S.]

³ Compensation, as defined in ss. 11.045(1)(b) and 112.3215(1)(c), F.S., includes reimbursements.

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Statutory Language - Definitions

Compensation is defined in ss. 11.045(1)(b) and 112.3215(1)(c), F.S., as “a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.”

Lobbying firm is defined in ss. 11.045(1)(f) and 112.3215(1)(g), F.S., as any “business entity, including an individual contract lobbyist, which receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.”

Lobbyist is defined in ss. 11.045(1)(g) and 112.3215(1)(h), F.S., as “a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.” [Note: Section 112.3215(1)(h)1.-4., F.S., specifically exclude certain individuals from “lobbyist” definition.]

Principal is defined in ss. 11.045(1)(i) and 112.3215(1)(i), F.S., as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”

Relevant Laws

The following laws are included in the meeting packet:

Section 11.40(3), F.S.; Legislative Auditing Committee

Section 11.045, F.S.; Lobbying before the Legislature; registration and reporting; exemptions; penalties

Section 112.3215, F.S.; Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission

11.40 Legislative Auditing Committee.—

(3)(a) As used in this subsection, “independent contract auditor” means a state-licensed certified public accountant or firm with which a state-licensed certified public accountant is currently employed or associated who is actively engaged in the accounting profession.

(b) Audits specified in this subsection cover the quarterly compensation reports for the previous calendar year for a random sample of 3 percent of all legislative branch lobbying firms and a random sample of 3 percent of all executive branch lobbying firms calculated using as the total number of such lobbying firms those filing a compensation report for the preceding calendar year. The committee shall provide for a system of random selection of the lobbying firms to be audited.

(c) The committee shall create and maintain a list of not less than 10 independent contract auditors approved to conduct the required audits. Each lobbying firm selected for audit in the random audit process may designate one of the independent contract auditors from the committee’s approved list. Upon failure for any reason of a lobbying firm selected in the random selection process to designate an independent contract auditor from the committee’s list within 30 calendar days after being notified by the committee of its selection, the committee shall assign one of the available independent contract auditors from the approved list to perform the required audit. No independent contract auditor, whether designated by the lobbying firm or by the committee, may perform the audit of a lobbying firm where the auditor and lobbying firm have ever had a direct personal relationship or any professional accounting, auditing, tax advisory, or tax preparing relationship with each other. The committee shall obtain a written, sworn certification subject to s. [837.06](#), both from the randomly selected lobbying firm and from the proposed independent contract auditor, that no such relationship has ever existed.

(d) Each independent contract auditor shall be engaged by and compensated solely by the state for the work performed in accomplishing an audit under this subsection.

(e) Any violations of law, deficiencies, or material misstatements discovered and noted in an audit report shall be clearly identified in the audit report and be determined under the rules of either house of the Legislature or under the joint rules, as applicable.

(f) If any lobbying firm fails to give full, frank, and prompt cooperation and access to books, records, and associated backup documents as requested in writing by the auditor, that failure shall be clearly noted by the independent contract auditor in the report of audit.

(g) The committee shall establish procedures for the selection of independent contract auditors desiring to enter into audit contracts pursuant to this subsection. Such procedures shall include, but not be limited to, a rating system that takes into account pertinent information, including the independent contract auditor’s fee proposals for participating in the process. All contracts under this subsection between an independent contract auditor and the Speaker of the House of Representatives and the President of the Senate shall be terminable by either party at any time upon written notice to

the other, and such contracts may contain such other terms and conditions as the Speaker of the House of Representatives and the President of the Senate deem appropriate under the circumstances.

(h) The committee shall adopt guidelines that govern random audits and field investigations conducted pursuant to this subsection. The guidelines shall ensure that similarly situated compensation reports are audited in a uniform manner. The guidelines shall also be formulated to encourage compliance and detect violations of the legislative and executive lobbying compensation reporting requirements in ss. [11.045](#) and [112.3215](#) and to ensure that each audit is conducted with maximum efficiency in a cost-effective manner. In adopting the guidelines, the committee shall consider relevant guidelines and standards of the American Institute of Certified Public Accountants to the extent that such guidelines and standards are applicable and consistent with the purposes set forth in this subsection.

(i) All audit reports of legislative lobbying firms shall, upon completion by an independent contract auditor, be delivered to the President of the Senate and the Speaker of the House of Representatives for their respective review and handling. All audit reports of executive branch lobbyists, upon completion by an independent contract auditor, shall be delivered by the auditor to the Commission on Ethics.

History.—s. 1, ch. 67-470; s. 1, ch. 69-82; s. 1, ch. 73-6; s. 18, ch. 95-147; s. 21, ch. 96-318; s. 13, ch. 2001-266; s. 879, ch. 2002-387; s. 5, ch. 2003-261; s. 1, ch. 2004-5; s. 1, ch. 2004-305; s. 4, ch. 2005-359; s. 1, ch. 2009-74; s. 12, ch. 2011-34; s. 11, ch. 2011-52; s. 35, ch. 2011-142; s. 1, ch. 2011-144.

Note.—Former s. 11.181.

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.—

(1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the committee of each house charged by the presiding officer with responsibility for ethical conduct of lobbyists.

(b) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

(c) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

(d) "Legislative action" means introduction, sponsorship, testimony, debate, voting, or any other official action on any measure, resolution, amendment, nomination, appointment, or report of, or any matter that may be the subject of action by, either house of the Legislature or any committee thereof.

(e) "Lobbying" means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

(f) "Lobbying firm" means any business entity, including an individual contract lobbyist, which receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(g) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

(h) "Office" means the Office of Legislative Services.

(i) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) Each house of the Legislature shall provide by rule, or may provide by a joint rule adopted by both houses, for the registration of lobbyists who lobby the Legislature. The rule may provide for the payment of a registration fee. The rule may provide for exemptions from registration or registration fees. The rule shall provide that:

(a) Registration is required for each principal represented.

(b) Registration shall include a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the Office of Legislative Services.

(c) A registrant shall promptly send a written statement to the office canceling the registration for a principal upon termination of the lobbyist's representation of that principal. However, the office may remove the name of a registrant from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(d) Every registrant shall be required to state the extent of any direct business association or partnership with any current member of the Legislature.

(e) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by legislative subpoena of either house of the Legislature, and the subpoena may be enforced in circuit court.

(f) All registrations shall be open to the public.

(g) Any person who is exempt from registration under the rule shall not be considered a lobbyist for any purpose.

(3) Each house of the Legislature shall provide the following reporting requirements by rule:

(a)1. Each lobbying firm shall file a compensation report with the office for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report must include the:

a. Full name, business address, and telephone number of the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report must also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category "\$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the office shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

(c) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements must be filed by electronic means as provided in s. [11.0455](#).

(d) Each house of the Legislature shall provide by rule, or both houses may provide by joint rule, a procedure by which a lobbying firm that fails to timely file a report shall be notified and assessed fines. The rule must provide the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day, not to exceed \$5,000 per report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the electronic receipt issued pursuant to s. [11.0455](#) is dated.

3. Such fine must be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the office. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

4. A fine may not be assessed against a lobbying firm the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm is responsible must be filed within 30 days after notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the General Counsel of the Office of Legislative Services, who shall recommend to the President of the Senate and the Speaker of the House of Representatives, or their respective designees, that the fine be

waived in whole or in part for good cause shown. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, may concur in the recommendation and waive the fine in whole or in part. Any such request must be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to request a hearing.

6. A lobbying firm may request that the filing of a report be waived upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services, who shall make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may grant or deny the request.

7. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the office shall promptly notify all affected principals of any suspension or reinstatement.

8. The person designated to review the timeliness of reports shall notify the coordinator of the office of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed.

(4)(a) Notwithstanding s. [112.3148](#), s. [112.3149](#), or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

(b) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(5) Each house of the Legislature shall provide by rule a procedure by which a person, when in doubt about the applicability and interpretation of this section in a particular context, may submit in writing the facts for an advisory opinion to the committee of either house and may appear in person before the committee. The rule shall provide a procedure by which:

(a) The committee shall render advisory opinions to any person who seeks advice as to whether the facts in a particular case would constitute a violation of this section.

(b) The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions.

(c) All advisory opinions of the committee shall be numbered, dated, and open to public inspection.

(6) Each house of the Legislature shall provide by rule for keeping all advisory opinions of the committees relating to lobbying firms, lobbyists, and lobbying activities. The rule shall also provide that each house keep a current list of registered lobbyists along with reports required of lobbying firms under this section, all of which shall be open for public inspection.

(7) Each house of the Legislature shall provide by rule that a committee of either house investigate any person upon receipt of a sworn complaint alleging a violation of this section, s. [112.3148](#), or s. [112.3149](#) by such person; also, the rule shall provide that a committee of either house investigate any lobbying firm upon receipt of audit information indicating a possible violation other than a late-filed report. Such proceedings shall be conducted pursuant to the rules of the respective houses. If the committee finds that there has been a violation of this section, s. [112.3148](#), or s. [112.3149](#), it shall report its findings to the President of the Senate or the Speaker of the House of Representatives, as appropriate, together with a recommended penalty, to include a fine of not more than \$5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months. Upon the receipt of such report, the President of the Senate or the Speaker of the House of Representatives shall cause the committee report and recommendations to be brought before the respective house and a final determination shall be made by a majority of said house.

(8) Any person required to be registered or to provide information pursuant to this section or pursuant to rules established in conformity with this section who knowingly fails to disclose any material fact required by this section or by rules established in conformity with this section, or who knowingly provides false information on any report required by this section or by rules established in conformity with this section, commits a noncriminal infraction, punishable by a fine not to exceed \$5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (7).

(9) There is hereby created the Legislative Lobbyist Registration Trust Fund, to be used for the purpose of funding any office established for the administration of the registration of lobbyists lobbying the Legislature, including the payment of salaries and other expenses, and for the purpose of paying the expenses incurred by the Legislature in providing services to lobbyists. The trust fund is not subject to the service charge to general revenue provisions of chapter 215. Fees collected pursuant to rules established in accordance with subsection (2) shall be deposited into the Legislative Lobbyist Registration Trust Fund.

History.—s. 1, ch. 78-268; s. 1, ch. 90-502; s. 1, ch. 91-292; s. 2, ch. 93-121; s. 1, ch. 96-203; s. 1, ch. 98-136; s. 2, ch. 2000-122; s. 1, ch. 2000-232; ss. 1, 2, ch. 2005-359; s. 11, ch. 2006-275; ss. 27, 30, ch. 2011-6; HJR 7105, 2011 Regular Session; s. 1, ch. 2012-51.

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(1) For the purposes of this section:

(a) "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. In addition, "agency" shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.

(b) "Agency official" or "employee" means any individual who is required by law to file full or limited public disclosure of his or her financial interests.

(c) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

(e) "Fund" means the Executive Branch Lobby Registration Trust Fund.

(f) "Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. "Lobbies" also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

(g) "Lobbying firm" means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(h) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.

2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. [287.017](#).

(i) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) The Executive Branch Lobby Registration Trust Fund is hereby created within the commission to be used for the purpose of funding any office established to administer the registration of lobbyists lobbying an agency, including the payment of salaries and other expenses. The trust fund is not subject to the service charge to General Revenue provisions of chapter 215. All annual registration fees collected pursuant to this section shall be deposited into such fund.

(3) A person may not lobby an agency until such person has registered as a lobbyist with the commission. Such registration shall be due upon initially being retained to lobby and is renewable on a calendar year basis thereafter. Upon registration the person shall provide a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the commission. The registration shall require each lobbyist to disclose, under oath, the following information:

(a) Name and business address;

(b) The name and business address of each principal represented;

(c) His or her area of interest;

(d) The agencies before which he or she will appear; and

(e) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency with which he or she lobbies, or intends to lobby, as disclosed in the registration.

(4) The annual lobbyist registration fee shall be set by the commission by rule, not to exceed \$40 for each principal represented.

(5)(a)1. Each lobbying firm shall file a compensation report with the commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

- a. Full name, business address, and telephone number of the lobbying firm;
- b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category "\$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the commission shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

(c) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. Reporting statements must be filed by electronic means as provided in s. [112.32155](#).

(d) The commission shall provide by rule the grounds for waiving a fine, the procedures by which a lobbying firm that fails to timely file a report shall be notified and assessed fines, and the procedure for appealing the fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the electronic receipt issued pursuant to s. [112.32155](#) is dated.

3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.

4. A fine shall not be assessed against a lobbying firm the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm is responsible must be filed within 30 days after the notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the commission, which shall have the authority to waive the fine in whole or in part for good cause shown. Any such request shall be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission.

6. The person designated to review the timeliness of reports shall notify the commission of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the commission shall promptly notify all affected principals of each suspension and each reinstatement.

7. Notwithstanding any provision of chapter 120, any fine imposed under this subsection that is not waived by final order of the commission and that remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the lobbying firm's appeal shall be collected by the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department may assign the collection of such fine to a collection agent as provided in s. [17.20](#).

(e) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by the Legislative Auditing Committee pursuant to s. [11.40](#), and such subpoena may be enforced in circuit court.

(6)(a) Notwithstanding s. [112.3148](#), s. [112.3149](#), or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure.

(b) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(7) A lobbyist shall promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation of that principal. Notwithstanding this requirement, the commission may remove the name of a lobbyist from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(8)(a) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit a compensation report, has made a prohibited expenditure, or has knowingly submitted false information in any report or registration required in this section.

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. [286.011\(1\)](#) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

(c) The commission shall investigate any lobbying firm, lobbyist, principal, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.

(d)1. Records relating to an audit conducted pursuant to this section or an investigation conducted pursuant to this section or s. [112.32155](#) are confidential and exempt from s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution.

2. Any portion of a meeting wherein such investigation or audit is discussed is exempt from s. [286.011](#) and s. 24(b), Art. I of the State Constitution.

3. The exemptions no longer apply if the lobbying firm requests in writing that such investigation and associated records and meetings be made public or the commission determines there is probable cause that the audit reflects a violation of the reporting laws.

(9) If the commission finds no probable cause to believe that a violation of this section occurred, it shall dismiss the complaint, whereupon the complaint, together with a written statement of the findings of the investigation and a summary of the facts, shall become a matter of public record, and the commission shall send a copy of the complaint, findings, and summary to the complainant and the alleged violator. If, after investigating information from a random audit of lobbying reports, the commission finds no probable cause to believe that a violation of this section occurred, a written statement of the findings of the investigation and a summary of the facts shall become a matter of public record, and the commission shall send a copy of the findings and summary to the alleged violator. If the commission finds probable cause to believe that a violation occurred, it shall report the

results of its investigation to the Governor and Cabinet and send a copy of the report to the alleged violator by certified mail. Such notification and all documents made or received in the disposition of the complaint shall then become public records. Upon request submitted to the Governor and Cabinet in writing, any person whom the commission finds probable cause to believe has violated any provision of this section shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification. However, the Governor and Cabinet may on its own motion require a public hearing and may conduct such further investigation as it deems necessary.

(10) If the Governor and Cabinet find that a violation occurred, ^[1]the Governor and Cabinet may reprimand the violator, censure the violator, or prohibit the violator from lobbying all agencies for a period not to exceed 2 years. If the violator is a lobbying firm, lobbyist, or principal, the Governor and Cabinet may also assess a fine of not more than \$5,000 to be deposited in the Executive Branch Lobby Registration Trust Fund.

(11) Any person who is required to be registered or to provide information under this section or under rules adopted pursuant to this section and who knowingly fails to disclose any material fact that is required by this section or by rules adopted pursuant to this section, or who knowingly provides false information on any report required by this section or by rules adopted pursuant to this section, commits a noncriminal infraction, punishable by a fine not to exceed \$5,000. Such penalty is in addition to any other penalty assessed by the Governor and Cabinet pursuant to subsection (10).

(12) Any person, when in doubt about the applicability and interpretation of this section to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to establish the standard of duty. An advisory opinion shall be rendered by the commission and, until amended or revoked, shall be binding on the conduct of the person who sought the opinion, unless material facts were omitted or misstated in the request.

(13) Agencies shall be diligent to ascertain whether persons required to register pursuant to this section have complied. An agency may not knowingly permit a person who is not registered pursuant to this section to lobby the agency.

(14) Upon discovery of violations of this section an agency or any person may file a sworn complaint with the commission.

(15) The commission shall adopt rules to administer this section, which shall prescribe forms for registration and compensation reports, procedures for registration, and procedures that will prevent disclosure of information that is confidential as provided in this section.

History.—s. 2, ch. 89-325; s. 3, ch. 90-268; s. 29, ch. 90-360; s. 5, ch. 91-292; s. 2, ch. 92-35; s. 6, ch. 93-121; s. 705, ch. 95-147; s. 1, ch. 95-357; s. 2, ch. 96-203; s. 38, ch. 96-406; s. 1, ch. 97-12; s. 2, ch. 2000-232; s. 131, ch. 2003-261; ss. 5, 6, ch. 2005-359; s. 1, ch. 2005-361; ss. 12, 13, 14, ch. 2006-275; s. 6, ch. 2010-151; ss. 29, 30, ch. 2011-6; s. 76, ch. 2011-40; s. 1, ch. 2011-178; HJR 7105, 2011 Regular Session; s. 3, ch. 2012-25; s. 16, ch. 2013-36.

^[1]**Note.**—The words “the Governor and Cabinet” were substituted for the word “it” by the editors to improve clarity.

Relevant Rules

The following rules are included in the meeting packet:

Joint Rules of the Florida Legislature, Joint Rule One; Lobbyist Registration and Compensation Reporting

Portions of Senate Rule 9.8; Lobbyist expenditures and compensation

**JOINT RULES
of the
Florida Legislature**

Pursuant to SCR 2-Org., Adopted November 2012

JOINT RULE ONE

LOBBYIST REGISTRATION AND COMPENSATION REPORTING

1.1—Those Required to Register; Exemptions; Committee Appearance Records

(1) All lobbyists before the Florida Legislature must register with the Lobbyist Registration Office in the Office of Legislative Services. Registration is required for each principal represented.

(2) As used in Joint Rule One, unless the context otherwise requires, the term:

(a) “Compensation” means payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

(b) “Legislative action” means introduction, sponsorship, testimony, debate, voting, or any other official action on any measure, resolution, amendment, nomination, appointment, or report of, or any matter that may be the subject of action by, either house of the Legislature or any committee thereof.

(c) “Lobby” or “lobbying” means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

(d) “Lobbying firm” means any business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying and where any partner, owner, officer, or employee of the business entity is a lobbyist. “Lobbying firm” does not include an entity that has employees who are lobbyists if

the entity does not derive compensation from principals for lobbying or if such compensation is received exclusively from a subsidiary or affiliate corporation of the employer. As used in this paragraph, an affiliate corporation is a corporation that directly or indirectly shares the same ultimate parent corporation as the employer and does not receive compensation for lobbying from any unaffiliated entity.

(e) “Lobbyist” means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. An employee of the principal is not a “lobbyist” unless the employee is principally employed for governmental affairs. “Principally employed for governmental affairs” means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer’s various relationships with government or representing the employer in its contacts with government. Any person employed by the Governor, the Executive Office of the Governor, or any executive or judicial department of the state or any community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist.

(f) “Office” means the Office of Legislative Services.

(g) “Payment” or “salary” means wages or any other consideration provided in exchange for services but does not include reimbursement for expenses.

(h) “Principal” means the person, firm, corporation, or other entity that has employed or retained a lobbyist. When an association has employed or retained a lobbyist, the association is the principal; the individual members of the association are not principals merely because of their membership in the association.

(i) “Unusual circumstances,” with respect to any failure of a person to satisfy a filing requirement, means uncommon, rare, or sudden events over which the person has no control and which directly

result in the failure to satisfy the filing requirement.

(3) For purposes of this rule, the terms “lobby” and “lobbying” do not include any of the following:

(a) Response to an inquiry for information made by any member, committee, or staff of the Legislature.

(b) An appearance in response to a legislative subpoena.

(c) Advice or services that arise out of a contractual obligation with the Legislature, a member, a committee, any staff, or any legislative entity to render the advice or services where such obligation is fulfilled through the use of public funds.

(d) Representation of a client before the House of Representatives or the Senate, or any member or committee thereof, when the client is subject to disciplinary action by the House of Representatives or the Senate, or any member or committee thereof.

(4) For purposes of registration and reporting, the term “lobbyist” does not include any of the following:

(a) A member of the Legislature.

(b) A person who is employed by the Legislature.

(c) A judge who is acting in that judge’s official capacity.

(d) A person who is a state officer holding elective office or an officer of a political subdivision of the state holding elective office and who is acting in that officer’s official capacity.

(e) A person who appears as a witness or for the purpose of providing information at the written request of the chair of a committee, subcommittee, or legislative delegation.

(f) A person employed by any executive or judicial department of the state or any community college of the state who makes a personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, while that person is on approved leave or outside normal working hours and who does not otherwise meet the definition of lobbyist.

(5) When a person, regardless of whether the person is registered as a lobbyist, appears before a committee of the Legislature, that person must submit a Committee Appearance Record as required by the

respective house.

(6) The responsibilities of the office and of the Lobbyist Registration Office under Joint Rule One may be assigned to another entity by agreement of the President of the Senate and the Speaker of the House of Representatives for a contract period not to extend beyond December 1 following the Organization Session of the next biennium, provided that the powers and duties of the President, the Speaker, the General Counsel of the Office of Legislative Services, and any legislative committee referenced in Joint Rule One may not be delegated.

1.2—Method of Registration

(1) Each person who is required to register must register on forms furnished by the Lobbyist Registration Office, on which that person must state, under oath, that person's full legal name, business address, and telephone number, the name and business address of each principal that person represents, and the extent of any direct business association or partnership that person has with any member of the Legislature. In addition, if the lobbyist is a partner, owner, officer, or employee of a lobbying firm, the lobbyist must state the name, address, and telephone number of each lobbying firm to which the lobbyist belongs. The Lobbyist Registration Office or its designee is authorized to acknowledge the oath of any person who registers in person. Any changes to the information provided in the registration form must be reported to the Lobbyist Registration Office in writing within 15 days on forms furnished by the Lobbyist Registration Office.

(2) Any person required to register must do so with respect to each principal prior to commencement of lobbying on behalf of that principal. At the time of registration, the registrant shall provide a statement on a form provided by the Lobbyist Registration Office, signed by the principal or principal's representative, that the registrant is authorized to represent the principal. On the authorization statement, the principal or principal's representative shall also identify and designate the principal's main business pursuant to a classification system approved by the Office of Legislative Services, which shall be the

North American Industry Classification System (NAICS) six-digit numerical code that most accurately describes the principal's main business.

(3) Any person required to register must renew the registration annually for each calendar year.

(4) A lobbyist shall promptly send a notice to the Lobbyist Registration Office, on forms furnished by the Lobbyist Registration Office, canceling the registration for a principal upon termination of the lobbyist's representation of that principal. A notice of cancellation takes effect the day it is received by the Lobbyist Registration Office. Notwithstanding this requirement, the Lobbyist Registration Office may remove the name of a lobbyist from the list of registered lobbyists if the principal notifies the Lobbyist Registration Office that the lobbyist is no longer authorized to represent that principal.

(5) The Lobbyist Registration Office shall retain all original registration documents submitted under this rule.

(6) A person who is required to register under Joint Rule One, or who chooses to register, shall be considered a lobbyist of the Legislature for the purposes of ss. 11.045, 112.3148, and 112.3149, Florida Statutes.

1.3—Registration Costs; Exemptions

(1) To cover the costs incurred in administering Joint Rule One, each person who registers under Joint Rule 1.1 must pay an annual registration fee to the Lobbyist Registration Office. The annual period runs from January 1 to December 31. These fees must be paid at the time of registration.

(2) The following persons are exempt from paying the fee, provided they are designated in writing by the agency head or person designated in this subsection:

(a) Two employees of each department of the executive branch created under chapter 20, Florida Statutes.

(b) Two employees of the Fish and Wildlife Conservation Commission.

(c) Two employees of the Executive Office of the Governor.

- (d) Two employees of the Commission on Ethics.
- (e) Two employees of the Florida Public Service Commission.
- (f) Two employees of the judicial branch designated in writing by the Chief Justice of the Florida Supreme Court.

(3) The annual fee is up to \$50 per each house for a person to register to represent one principal and up to an additional \$10 per house for each additional principal that the person registers to represent. The amount of each fee shall be established annually by the President of the Senate and the Speaker of the House of Representatives. The fees set shall be adequate to ensure operation of the lobbyist registration and reporting operations of the Lobbyist Registration Office. The fees collected by the Lobbyist Registration Office under this rule shall be deposited in the State Treasury and credited to the Legislative Lobbyist Registration Trust Fund specifically to cover the costs incurred in administering Joint Rule One.

1.4—Reporting of Lobbying Firm Compensation

(1)(a) Each lobbying firm shall file a compensation report with the office for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

1. Full name, business address, and telephone number of the lobbying firm;
2. Registration name of each of the firm's lobbyists; and
3. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; or \$1 million or more.

(b) For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

1. Full name, business address, and telephone number of the principal; and
2. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1

to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category “\$50,000 or more” is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

(c) If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

1. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm’s principal for reporting purposes under this paragraph; and

2. The reporting lobbying firm shall, for each lobbying firm identified as the reporting lobbying firm’s principal under paragraph (b), identify the name and address of the principal originating the lobbying work.

(d) The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this rule; certify that no compensation has been omitted from this report by deeming such compensation as “consulting services,” “media services,” “professional services,” or anything other than compensation; and certify that no officer or employee of the firm has made an expenditure in violation of s. 11.045, Florida Statutes, as amended by chapter 2005-359, Laws of Florida.

(2) For each principal represented by more than one lobbying firm, the office shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal. Compensation reported within a category shall be aggregated as follows:

Category (dollars)	Dollar amount to use aggregating
0	0
1-9,999	5,000
10,000-19,999	15,000
20,000-29,999	25,000
30,000-39,999	35,000
40,000-49,999	45,000
50,000 or more	Actual amount reported

(3) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements shall be filed by electronic means through the electronic filing system developed by the office, conforming to subsection (4).

(4) The electronic filing system for compensation reporting shall include the following:

(a) As used in this rule, the term “electronic filing system” means an Internet system for recording and reporting lobbying compensation and other required information by reporting period.

(b) A report filed pursuant to this rule must be completed and filed through the electronic filing system not later than 11:59 p.m. of the day designated in subsection (3). A report not filed by 11:59 p.m. of the day designated is a late-filed report and is subject to the penalties under Joint Rule 1.5(1).

(c) Each person given secure sign-on credentials to file via the electronic filing system is responsible for protecting the credentials from disclosure and is responsible for all filings made by use of such credentials, unless and until the office is notified that the person’s credentials have been compromised. Each report filed by electronic means pursuant to this rule shall be deemed certified in accordance with paragraph (1)(d) by the person given the secure sign-on credentials and, as such, subjects the person and the lobbying firm to the provisions of s. 11.045(8), Florida Statutes, as well as any discipline provided under the rules of the Senate or House of Representatives.

(d) The electronic filing system shall:

1. Be based on access by means of the Internet.
2. Be accessible by anyone with Internet access using standard web-browsing software.
3. Provide for direct entry of compensation-report information as

well as upload of such information from software authorized by the office.

4. Provide a method that prevents unauthorized access to electronic filing system functions.

5. Provide for the issuance of an electronic receipt to the person submitting the report indicating and verifying the date and time that the report was filed.

(5) The office shall provide reasonable public notice of the electronic filing procedures and of any significant changes in such procedures. If, whenever they deem it necessary, the President of the Senate and the Speaker of the House of Representatives jointly declare the electronic system not to be operable, the reports shall be filed in the manner required prior to April 1, 2007, as provided by House Concurrent Resolution 7011 (2007), enrolled, unless the President of the Senate and the Speaker of the House of Representatives direct use of an alternate means of reporting. The office shall develop and maintain such alternative means as may be practicable. Public notice of changes in filing procedures and any declaration or direction of the President of the Senate and the Speaker of the House of Representatives may be provided by publication for a continuous period of reasonable time on one or more Internet websites maintained by the Senate and the House of Representatives.

1.5—Failure to File Timely Compensation Report; Notice and Assessment of Fines; Appeals

(1) Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day, not to exceed \$5,000 per report.

(2) Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine based on when the report is actually received by the office or when the electronic receipt issued by the electronic filing system is dated,

whichever is earlier.

(3) Such fine shall be paid within 30 days after the notice of payment due is transmitted by the person designated to review the timeliness of reports, unless appeal is made to the office. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

(4) A fine shall not be assessed against a lobbying firm the first time the report for which the lobbying firm is responsible is not timely filed. However, to receive the one-time fine waiver, the report for which the lobbying firm is responsible must be filed within 30 days after notice that the report has not been timely filed is transmitted by the person designated to review the timeliness of reports. A fine shall be assessed for any subsequent late-filed reports.

(5) Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the General Counsel of the Office of Legislative Services, who shall recommend to the President of the Senate and the Speaker of the House of Representatives, or their respective designees, that the fine be waived in whole or in part for good cause shown. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, may by joint agreement concur in the recommendation and waive the fine in whole or in part. Any such request shall be made within 30 days after the notice of payment due is transmitted by the person designated to review the timeliness of reports. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of the firm's intention to request a hearing.

(6) A lobbying firm may request that the filing of a report be waived upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services, who shall make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker

of the House of Representatives may, by joint agreement, grant or deny the request.

(7)(a) All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived and all late reports have been filed or waived. The office shall promptly notify all affected principals, the President of the Senate, and the Speaker of the House of Representatives of any suspension or reinstatement. All lobbyists who are partners, owners, officers, or employees of a lobbying firm are jointly and severally liable for any outstanding fine owed by a lobbying firm.

(b) No such lobbyist may be reinstated in any capacity representing any principal until the fine is paid and all late reports have been filed or waived or until the fine is waived as to that lobbyist and all late reports for that lobbyist have been filed or waived. A suspended lobbyist may request a waiver upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services who shall, as soon as practicable, make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may, by joint agreement, grant or deny the request.

(8) The person designated to review the timeliness of reports shall notify the director of the office of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed.

1.6—Open Records; Internet Publication of Registrations and Compensation Reports

(1) All of the lobbyist registration forms and compensation reports received by the Lobbyist Registration Office shall be available for public inspection and for duplication at reasonable cost.

(2) The office shall make information filed pursuant to Joint Rules 1.2 and 1.4 reasonably available on the Internet in an easily

understandable and accessible format. The Internet website shall include, but not be limited to, the names and business addresses of lobbyists, lobbying firms, and principals, the affiliations between lobbyists and principals, and the classification system designated and identified with respect to principals pursuant to Joint Rule 1.2.

1.7—Records Retention and Inspection and Complaint Procedure

(1) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation reports.

(2) Upon receipt of a complaint based upon the personal knowledge of the complainant made pursuant to the Senate Rules or Rules of the House of Representatives, any such documents and records may be inspected when authorized by the President of the Senate or the Speaker of the House of Representatives, as applicable. The person authorized to perform the inspection shall be designated in writing and shall be a member of The Florida Bar or a certified public accountant licensed in Florida. Any information obtained by such an inspection may only be used for purposes authorized by law, this Joint Rule One, Senate Rules, or Rules of the House of Representatives, which purposes may include the imposition of sanctions against a person subject to Joint Rule One, the Senate Rules, or the Rules of the House of Representatives. Any employee who uses that information for an unauthorized purpose is subject to discipline. Any member who uses that information for an unauthorized purpose is subject to discipline under the applicable rules of each house.

(3) The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.

1.8—Questions Regarding Interpretation of this Joint Rule One

(1) A person may request in writing an informal opinion from the General Counsel of the Office of Legislative Services as to the

application of this Joint Rule One to a specific situation involving that person's conduct. The General Counsel shall issue the opinion within 10 days after receiving the request. The informal opinion may be relied upon by the person who requested the informal opinion. A copy of each informal opinion that is issued shall be provided to the presiding officer of each house. A committee of either house designated pursuant to section 11.045(5), Florida Statutes, may revise any informal opinion rendered by the General Counsel through an advisory opinion to the person who requested the informal opinion. The advisory opinion shall supersede the informal opinion as of the date the advisory opinion is issued.

(2) A person in doubt about the applicability or interpretation of this Joint Rule One with respect to that person's conduct may submit in writing the facts for an advisory opinion to the committee of either house designated pursuant to s. 11.045(5), Florida Statutes, and may appear in person before the committee in accordance with s. 11.045(5), Florida Statutes.

1.9—Effect of Readoption and Revision

All obligations existing under Joint Rule One as of the last day of the previous legislative biennium are hereby ratified, preserved, and reimposed pursuant to the terms thereof as of that date. The provisions of Joint Rule One are imposed retroactively to the first day of the present legislative biennium except that provisions new to this revision are effective on the date of adoption or as otherwise expressly provided herein.

**FLORIDA SENATE
RULES AND MANUAL**

2012-2014



**DON GAETZ
PRESIDENT**

AS ADOPTED NOVEMBER 20, 2012

9.8—Lobbyist expenditures and compensation

Chapter 2005-359, *Laws of Florida*, amends existing provisions of the law relating to legislative lobbying at the state level in Florida and adds new and substantial obligations, prohibitions, and requirements.

This Rule provides assistance to persons seeking to comply with the letter and spirit of the new law as it applies in the legislative context by refining the law and providing Interim Lobbying Guidelines and answers to 25 Frequently Asked Questions. It also is intended to provide guidance to the legislative committees that will participate in enforcing the new law.

Part One of the Guidelines refines and applies the new prohibition, with ten clearly stated exceptions, so that Senators and Senate employees can no longer directly or indirectly take any “expenditure” from a lobbyist or principal in either the public or private sector.

Part Two of the Guidelines refines and applies the underlying core requirement that “lobbying firms” must publicly disclose the compensation they receive for lobbying activities, and does so in a way that is narrowly tailored, furthers the state’s compelling governmental interest in regulating legislative lobbying at the state level, and employs the least intrusive means available to do so.

This Rule sets out general principles. Outcomes depend heavily on underlying fact patterns that can vary greatly from case to case. Full disclosure of the operative facts must be provided and considered before a proper and correct answer can be derived.

A Senator may request an informal advisory opinion from the Senate General Counsel regarding the application of the new law and this Rule to a specific situation, on which the legislator may reasonably rely.

The houses of the Legislature are responsible for the administration and enforcement of the legislative lobbying portions of the new law. The legislative lobbying expenditure prohibitions are not part of the Florida Code of Ethics for Public Officers and Employees. Neither the Florida Commission on Ethics nor the Florida courts have jurisdiction to interpret these internal matters of the Legislature.

* * *

Part Two - Compensation

(1) General Guidelines

Chapter 2005-359, *Laws of Florida*, for the first time, requires the reporting of *compensation* received by *lobbying firms* for each calendar quarter, both in the aggregate and for each individual principal. Much of the reporting is done in dollar categories; however, if compensation from a single principal is \$50,000 or more in a calendar quarter, the lobbying firm must report the specific dollar amount of the compensation, rounded to the nearest \$1,000.

A “lobbying firm” is any business entity with a lobbyist, or an individual contract lobbyist, who gets paid to lobby for a principal. It is the lobbying firm that must report, *not the individual lobbyists in the firm* (except in the case of an individual contract lobbyist, where the lobbyist also comprises the entire lobbying firm).

Reports are due no later than 45 days after the end of each calendar quarter. Compensation reports must be filed electronically using the online filing system of the Office of Legislative Services.

The new law requires the senior partner, officer, or owner of the lobbying firm to certify to the veracity and completeness of each compensation report. This requirement is designed to discourage the mischaracterization and thus omission of reportable compensation through designations such as “media fees,” “consulting services,” “professional services,” “governmental services,” and other such artifices.

For example, if a law firm were paid a lump sum for rendering multiple types of services to a client, only one of which is lobbying, then the person certifying the report is responsible for properly and reasonably allocating the portion of the total fee received for lobbying activities and for activities other than lobbying. Only the compensation received for *lobbying* activities is to be reported on the compensation form.

The Legislature will use random audits supplemented by the lobbyist disciplinary process to hold the person certifying the compensation report and the lobbying firm accountable for making a true, complete, properly allocated report as required by law. In addition, the certification brings every compensation report filer within the scope of potential criminal penalties in section 837.06, *Florida Statutes*, for culpable violations.

(2) Frequently Asked Questions

1. Question: Is an in-house, salaried lobbyist for an association, a governmental entity, or a corporation that does not derive income from principals for lobbying required to report compensation?

ANSWER: No. An association, a governmental entity, a corporation or other business entity that does not derive income from principals for lobbying, and its employee lobbyists, are not a “lobbying firm” as defined in section 11.045(1)(g), *Florida Statutes*. Only “lobbying firms” must report compensation as provided in section 11.045(3)(a), *Florida Statutes*.

2. Question: Does the prohibition against providing compensation to an individual or business entity that is not a lobbying firm mean that inhouse lobbyists must either become a lobbying firm or cease lobbying?

ANSWER: No. The provision in question merely clarifies that reportable “compensation” under the law must be provided to a “lobbying firm,” and not contracted or subcontracted through some “straw man” to circumvent compensation reporting requirements. The provision in question clarifies and emphasizes the statutory definition of “compensation” in section 11.045(1)(b), *Florida Statutes*, as “anything of value provided or owed to a *lobbying firm*.”



[Return to Compensation Report List Page](#)

This report was submitted to the Lobbyist Registration Office on August 05, 2013 at 11:17:18 am Eastern Time.

Reporting Period

April 1, 2013 - June 30, 2013 Legislative Branch Lobbying

Firm Information

XYZ & Associates Inc
PO Box 123
TALLAHASSEE, FLORIDA US 33333
(850) 555-5555

Firm Lobbyists

- Doe, John B.

Principals and Compensation

Principal	Information	Compensation
Blue Services Company	795 5th Avenue NEW YORK CITY, NEW YORK US 10065 (212) 555-0000	\$1.00 to \$9,999.00
North Air Company	8695 Parkway Ave TALLAHASSEE FLORIDA US 32301 (850) 555-0000	\$10,000.00 to \$19,999.00
The Products Corporation	1234 Hyde Park Blvd. JACKSONVILLE, FLORIDA US 32318 (888) 555-1111	\$1.00 to \$9,999.00
Box Company	Hwy 93 BOULDER CITY, NEVADA US 89005 (702) 293-8321	\$20,000.00 to \$29,000.00

Prime Contractor Firms

Prime Contractor Firm	Firm Information	Originating Principal	Principal Information
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Total Compensation

Total Compensation: \$50,000.00 to \$99,999.00

Certification

I hereby certify to the veracity and completeness of the information herein; that no reportable compensation has been omitted; and that no officer or employee of this lobbying firm has made an expenditure in violation of Section 11.045 , F.S.

John B Doe , Owner



FLORIDA BOARD OF ACCOUNTANCY

240 Northwest 76 Drive Suite A
Gainesville Florida 32607-1111
(352)333-2505 – Fax 352(333-2508)

October 7, 2013

The Honorable Joseph Abruzzo
Chairman, Joint Legislative Auditing Committee
876 Pepper Building
111 W. Madison Street
Tallahassee FL 32399-1400

The Honorable Lake Ray
Alternating Chairman, Joint Legislative Auditing Committee
876 Pepper Building
111 W. Madison Street
Tallahassee FL 32399-1400

Attention: Kathy DuBose
Committee Coordinator, Joint Legislative Audit Committee

Dear Senator Abruzzo and Representative Ray:

Please accept this letter on behalf of the Florida Board of Accountancy. At our last meeting on October 4, 2013, we discussed issues relating to the implementation of section 11.40(3) Florida Statutes, as it relates to practicing public accountancy. After which, the board voted to draft a letter raising our concerns regarding how the implementation of section 11.40(3) Florida Statutes, will affect Florida certified public accountants. Specifically, the Florida Board of Accountancy has the following concerns:

1) **Audit Engagement:**

The statute indicates an "audit" will be performed. It is our opinion that the intent of the word "Audit" as it applies in section 11.40(3), Florida Statutes, actually may have been intended as Webster's Dictionary defines "a formal examination of an organization or individual accounts or financial situation; a methodical examination and review". This definition and what is practiced in public accountancy is where an expectation gap is created. I would refer you to the definition of audit in section 11.45, Florida Statutes attached. Further, after reviewing the definition under section 11.45, Florida Statutes, it is apparent that the "audit" required under section 11.40(3), Florida Statutes will be direct conflict with audit as defined in section 11.45, Florida Statutes

Based on our interviews and discussion, the requirements of section 11.40(3), Florida Statutes would be more accurately fulfilled by Florida CPA's performing "an agreed-upon procedures report", not an Audit. Such engagements are attestation engagements in which a CPA expresses a report of findings based on specific agreed-upon procedures in which a CPA expresses a report of findings based on specific agreed-upon procedures in lieu of an opinion. Instead, an agreed-upon procedures engagement is considered a "finding of facts." (See attached Definition of Agreed upon Procedures from AICPA Attestation Standards Section 201).

Cynthia Borders-Byrd, CPA
Maria E. Caldwell, CPA
David L. Dennis, CPA
William H. Durkin, CPA, Chair
Dr. Martin Fennema, CPA

Stephen C. Riggs, CPA, Vice-Chair
Eric Robinson, CPA

Teresa Borcheck, Consumer Member
H. Steven Vogel, Consumer Member

Veloria A. Kelly, Executive Director
Mary Ellen Clark, Esq., Legal Counsel



FLORIDA BOARD OF ACCOUNTANCY

240 Northwest 76 Drive Suite A
Gainesville Florida 32607-1111
(352)333-2505 – Fax 352(333-2508)

2) New Independence Definition Concerns:

Since this law specifically addresses the issue of auditor independence, it is important that consideration be given to the Board of Accountancy's current rule related to independence standards (see 61H1-21.001, F.A.C.). This rule closely tracks independence standards contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants.

Under professional standards and Florida's laws and rules regulating CPA's, a CPA must be independent when expressing an opinion on a financial statement. The Board has concerns that creating a new definition of independence for Florida CPA's in section 11.40, Florida Statutes will cause confusion and conflicts between the current rules and this new engagement. It is entirely possible that a CPA could be adhering to the independence standards in this law, yet be violating the Florida Board of Accountancy's independence rule. Conversely, the CPA could adhere to the board's independence rule and violate the new statute. **Either action could subject the CPA to discipline, suspension or loss of licensure.**

Thank you for your time and consideration of these questions and concerns. I or another member of the Florida Board of Accountancy is available to address the committee or your staff, if needed.

Sincerely,

William H. Durkin, CPA
Chairman, Florida Board of Accountancy

cc: The Honorable Don Gaetz, Senate President
The Honorable Will Weatherford, Speaker of the House
The Honorable Rob Bradley
The Honorable Daphne Campbell
The Honorable Gayle Harrell
The Honorable Alan Hayes
The Honorable Daniel D. Raulerson
The Honorable Jeremy Ring
The Honorable Ray Wesley Rodrigues
The Honorable Wilton Simpson
The Honorable Cynthia A. Stafford
Florida Board of Accountancy
Ken Lawson, DBPR Secretary
George T. Levesque, Florida Senate Counsel
Daniel Nordby, Florida House Counsel

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61H1-21.001 Independence.

(1) A firm shall not express an opinion on financial statements (as that term is defined in the Standards for Independence) of an enterprise or on the reliability of an assertion by one party for use by another (third) party unless the firm is active licensed and independent with respect to such enterprise or the party making the assertion. A licensed firm is also precluded from expressing such an opinion if the firm is aware that an individual in the firm is not independent and that individual is a covered certified public accountant or is otherwise required to be independent. A certified public accountant shall not express such an opinion unless the certified public accountant is independent with respect to such enterprise or the party making the assertion. A certified public accountant is also precluded from expressing such an opinion if he or she is aware that an individual in the firm is not independent and that individual is a covered certified public accountant or is otherwise required to be independent. All covered certified public accountants and all other individuals who are required to be independent are required to disclose to the firm that they are not independent prior to the issuance of such an opinion; failure to do so is a violation of this rule. All firms are required to adopt appropriate policies to implement the disclosure requirement and to monitor compliance therewith.

(2) In order to delineate the standards against which a certified public accountant's independence or lack thereof is to be judged, the Board has created a document entitled "Standards for Determining Independence in the Practice of Public Accountancy for CPAs Practicing Public Accountancy in the State of Florida" (effective 12-31-2004) (hereinafter "Standards for Independence") which document is hereby incorporated by reference in this rule. The standards contained in the "Standards for Independence" are similar to those contained in the Code of Professional Conduct promulgated by the American Institute of Certified Public Accountants.

(3) In order to be considered independent a certified public accountant must comply with the requirements set out in the "Standards for Independence" and the requirements of this rule.

Rulemaking Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Amended 2-3-81, 10-28-85, Formerly 21A-21.01, Amended 10-20-86, Formerly 21A-21.001, Amended 5-21-03, 1-31-05, 12-10-09.

2013 Florida Statutes

Title III	Chapter 11	View
LEGISLATIVE BRANCH; COMMISSIONS	LEGISLATIVE ORGANIZATION, PROCEDURES, AND STAFFING	Entire Chapter

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. [11.40-11.51](#), the term:

(a) “Audit” means a financial audit, operational audit, or performance audit.

(b) “County agency” means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of the above are under law separately placed.

(c) “Financial audit” means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits shall encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.

(d) “Governmental entity” means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(e) “Local governmental entity” means a county agency, municipality, or special district as defined in s. [189.403](#), but does not include any housing authority established under chapter 421.

(f) “Management letter” means a statement of the auditor’s comments and recommendations.

(g) “Operational audit” means an audit whose purpose is to evaluate management’s performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing

standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

(h) "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.
2. Structure or design of the program to accomplish its goals and objectives.
3. Adequacy of the program to meet the needs identified by the Legislature or governing body.
4. Alternative methods of providing program services or products.
5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.
6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.
7. Compliance of the program with appropriate policies, rules, or laws.
8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(i) "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(j) "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

(2) DUTIES.—The Auditor General shall:

- (a) Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee.
- (b) Annually conduct a financial audit of state government.
- (c) Annually conduct financial audits of all state universities and state colleges.

(d) Annually conduct financial audits of the accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census.

(e) Once every 3 years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census.

(f) At least every 3 years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind.

(g) At least every 3 years, conduct a performance audit of the local government financial reporting system, which, for the purpose of this chapter, means any statutory provision related to local government financial reporting. The purpose of such an audit is to determine the accuracy, efficiency, and effectiveness of the reporting system in achieving its goals and to make recommendations to the local governments, the Governor, and the Legislature as to how the reporting system can be improved and how program costs can be reduced. The Auditor General shall determine the scope of the audits. The local government financial reporting system should provide for the timely, accurate, uniform, and cost-effective accumulation of financial and other information that can be used by the members of the Legislature and other appropriate officials to accomplish the following goals:

1. Enhance citizen participation in local government;
2. Improve the financial condition of local governments;
3. Provide essential government services in an efficient and effective manner; and
4. Improve decisionmaking on the part of the Legislature, state agencies, and local government officials on matters relating to local government.

(h) At least every 3 years, conduct a performance audit of the Department of Revenue's administration of the ad valorem tax laws as described in s. [195.096](#). The audit report shall report on the activities of the ad valorem tax program of the Department of Revenue related to the ad valorem tax rolls. The Auditor General shall include, for at least four counties reviewed, findings as to the accuracy of assessment procedures, projections, and computations made by the department, using the same generally accepted appraisal standards and procedures to which the department and the property appraisers are required to adhere. However, the report may not include any findings or statistics related to any ad valorem tax roll that is in litigation between the state and county officials at the time the report is issued.

(i) Once every 3 years, review a sample of internal audit reports at each state agency, as defined in s. 20.055(1), to determine compliance with current Standards for the Professional Practice of Internal Auditing or, if appropriate, government auditing standards.

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall notify each member of the audited entity's governing body and the Legislative Auditing Committee of the results of his or her determination.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(3) **AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.**—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

- (a) The accounts and records of any governmental entity created or established by law.
- (b) The information technology programs, activities, functions, or systems of any governmental entity created or established by law.
- (c) The accounts and records of any charter school created or established by law.
- (d) The accounts and records of any direct-support organization or citizen support organization created or established by law. The Auditor General is authorized to require and receive any records from the direct-support organization or citizen support organization, or from its independent auditor.
- (e) The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person. All records of a nongovernmental agency, corporation, or person with respect to the receipt and expenditure of such an appropriation shall be public records and shall be treated in the same manner as other public records are under general law.
- (f) State financial assistance provided to any nonstate entity as defined by s. 215.97.
- (g) The Tobacco Settlement Financing Corporation created pursuant to s. 215.56005.
- (h) Any purchases of federal surplus lands for use as sites for correctional facilities as described in s. 253.037.

(i) Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs. The audit report may not reveal the identity of any person who has anonymously made a donation to Enterprise Florida, Inc., pursuant to this paragraph. The identity of a donor or prospective donor to Enterprise Florida, Inc., who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such anonymity shall be maintained in the auditor's report.

(j) The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board. The audit or report may not reveal the identity of any person who has anonymously made a donation to the board pursuant to this paragraph. The identity of a donor or prospective donor to the board who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such anonymity shall be maintained in the auditor's report.

(k) The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver's license application authorized pursuant to ss. 320.023 and 322.081.

(l) The records pertaining to the use of funds from the sale of specialty license plates described in chapter 320.

(m) The transportation corporations under contract with the Department of Transportation that are acting on behalf of the state to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems pursuant to ss. 339.401-339.421.

(n) The acquisitions and divestitures related to the Florida Communities Trust Program created pursuant to chapter 380.

(o) The Florida Water Pollution Control Financing Corporation created pursuant to s. 403.1837.

(p) The school readiness program, including the early learning coalitions under part VI of chapter 1002.

(q) The Florida Special Disability Trust Fund Financing Corporation created pursuant to s. 440.49.

(r) Workforce Florida, Inc., or the programs or entities created by Workforce Florida, Inc., created pursuant to s. 445.004.

(s) The corporation defined in s. 455.32 that is under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination,

licensing, and prosecutorial support services in accordance with the provisions of s. 455.32 and the practice act of the relevant profession.

(t) The Florida Engineers Management Corporation created pursuant to chapter 471.

(u) The books and records of any permitholder that conducts race meetings or jai alai exhibitions under chapter 550.

(v) The corporation defined in part II of chapter 946, known as the Prison Rehabilitative Industries and Diversified Enterprises, Inc., or PRIDE Enterprises.

(w) The Florida Virtual School pursuant to s. 1002.37.

(x) Virtual education providers receiving state funds or funds from local ad valorem taxes.

(4) SCHEDULING AND STAFFING OF AUDITS.—

(a) Each financial audit required or authorized by this section, when practicable, shall be made and completed within not more than 9 months following the end of each audited fiscal year of the state agency or political subdivision, or at such lesser time which may be provided by law or concurrent resolution or directed by the Legislative Auditing Committee. When the Auditor General determines that conducting any audit or engagement otherwise required by law would not be possible due to workload or would not be an efficient or effective use of his or her resources based on an assessment of risk, then, in his or her discretion, the Auditor General may temporarily or indefinitely postpone such audits or other engagements for such period or any portion thereof, unless otherwise directed by the committee.

(b) The Auditor General may, when in his or her judgment it is necessary, designate and direct any auditor employed by the Auditor General to audit any accounts or records within the authority of the Auditor General to audit. The auditor shall report his or her findings for review by the Auditor General, who shall prepare the audit report.

(c) The audit report when final shall be a public record. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. The audit workpapers and notes shall be retained by the Auditor General until no longer useful in his or her proper functions, after which time they may be destroyed.

(d) At the conclusion of the audit, the Auditor General or the Auditor General's designated representative shall discuss the audit with the official whose office is subject to audit and submit to that official a list of the Auditor General's findings which may be included in the audit report. If the official is not available for receipt of the list of audit findings, then delivery is presumed to be made when it is delivered to his or her office. The official shall submit to the Auditor General or the designated representative, within 30 days after the receipt of the list of

findings, his or her written statement of explanation or rebuttal concerning all of the findings, including corrective action to be taken to preclude a recurrence of all findings.

(e) The Auditor General shall provide the successor independent certified public accountant of a district school board with access to the prior year's working papers in accordance with the Statements on Auditing Standards, including documentation of planning, internal control, audit results, and other matters of continuing accounting and auditing significance, such as the working paper analysis of balance sheet accounts and those relating to contingencies.

(5) PETITION FOR AN AUDIT BY THE AUDITOR GENERAL.—

(a) The Legislative Auditing Committee shall direct the Auditor General to make an audit of any municipality whenever petitioned to do so by at least 20 percent of the registered electors in the last general election of that municipality pursuant to this subsection. The supervisor of elections of the county in which the municipality is located shall certify whether or not the petition contains the signatures of at least 20 percent of the registered electors of the municipality. After the completion of the audit, the Auditor General shall determine whether the municipality has the fiscal resources necessary to pay the cost of the audit. The municipality shall pay the cost of the audit within 90 days after the Auditor General's determination that the municipality has the available resources. If the municipality fails to pay the cost of the audit, the Department of Revenue shall, upon certification of the Auditor General, withhold from that portion of the distribution pursuant to s. 212.20(6)(d)5, which is distributable to such municipality, a sum sufficient to pay the cost of the audit and shall deposit that sum into the General Revenue Fund of the state.

(b) At least one registered elector in the most recent general election must file a letter of intent with the municipal clerk prior to any petition of the electors of that municipality for the purpose of an audit. Each petition must be submitted to the supervisor of elections and contain, at a minimum:

1. The elector's printed name;
2. The signature of the elector;
3. The elector's residence address;
4. The elector's date of birth; and
5. The date signed.

All petitions must be submitted for verification within 1 calendar year after the audit petition origination by the municipal electors.

(6) REQUEST BY A LOCAL GOVERNMENTAL ENTITY FOR AN AUDIT BY THE AUDITOR GENERAL.—Whenever a local governmental entity requests the Auditor General to conduct an audit of all or part of its operations and the Auditor General conducts the audit under his or

her own authority or at the direction of the Legislative Auditing Committee, the expenses of the audit shall be paid by the local governmental entity. The Auditor General shall estimate the cost of the audit. Fifty percent of the cost estimate shall be paid by the local governmental entity before the initiation of the audit and deposited into the General Revenue Fund of the state. After the completion of the audit, the Auditor General shall notify the local governmental entity of the actual cost of the audit. The local governmental entity shall remit the remainder of the cost of the audit to the Auditor General for deposit into the General Revenue Fund of the state. If the local governmental entity fails to comply with paying the remaining cost of the audit, the Auditor General shall notify the Legislative Auditing Committee.

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(a) The Auditor General shall notify the Legislative Auditing Committee of any local governmental entity, district school board, charter school, or charter technical career center that does not comply with the reporting requirements of s. 218.39.

(b) The Auditor General, in consultation with the Board of Accountancy, shall review all audit reports submitted pursuant to s. 218.39. 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 governmental entity does not comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee.

(c) The Auditor General shall provide annually a list of those special districts which are not in compliance with s. 218.39 to the Special District Information Program of the Department of Economic Opportunity.

(d) During the Auditor General's review of audit reports, he or she shall contact those units of local government, as defined in s. 218.403, that are not in compliance with s. 218.415 and request evidence of corrective action. The unit of local government shall provide the Auditor General with evidence of corrective action within 45 days after the date it is requested by the Auditor General. If the unit of local government fails to comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee.

(e) The Auditor General shall notify the Governor or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee of any audit report reviewed by the Auditor General pursuant to paragraph (b) which contains a statement that a local governmental entity, charter school, charter technical career center, or district school board has met one or more of the conditions specified in s. 218.503. If the Auditor General requests a clarification regarding information included in an audit report to determine whether a local governmental entity, charter school, charter technical career center, or district school board

has met one or more of the conditions specified in s. 218.503, the requested clarification must be provided within 45 days after the date of the request. If the local governmental entity, charter school, charter technical career center, or district school board does not comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee. If, after obtaining the requested clarification, the Auditor General determines that the local governmental entity, charter school, charter technical career center, or district school board has met one or more of the conditions specified in s. 218.503, he or she shall notify the Governor or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee.

(f) The Auditor General shall annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports reviewed in paragraph (b) or otherwise identified by the Auditor General's review of such audit reports and financial information, and identified in audits of district school boards conducted by the Auditor General. The Auditor General shall include financial information provided pursuant to s. 218.32(1)(e) for entities with fiscal years ending on or after June 30, 2003, within his or her reports submitted pursuant to this paragraph.

(g) If the Auditor General discovers significant errors, improper practices, or other significant discrepancies in connection with his or her audits of a state agency or state officer, the Auditor General shall notify the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee. The President of the Senate and the Speaker of the House of Representatives shall promptly forward a copy of the notification to the chairs of the respective legislative committees, which in the judgment of the President of the Senate and the Speaker of the House of Representatives are substantially concerned with the functions of the state agency or state officer involved. Thereafter, and in no event later than the 10th day of the next succeeding legislative session, the person in charge of the state agency involved, or the state officer involved, as the case may be, shall explain in writing to the President of the Senate, the Speaker of the House of Representatives, and to the Legislative Auditing Committee the reasons or justifications for such errors, improper practices, or other significant discrepancies and the corrective measures, if any, taken by the agency.

(h) The Auditor General shall annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee by December 1 of each year a report that includes a projected 2-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General. The Auditor General may also transmit

recommendations at other times of the year when the information would be timely and useful for the Legislature.

(i) Beginning in 2012, the Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

(j) The Auditor General shall notify the Legislative Auditing Committee of any financial or operational audit report prepared pursuant to this section which indicates that a state university or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial or operational audit reports.

1. The committee may direct the governing body of the state university or Florida College System institution to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.

2. If the committee determines that the written statement is not sufficient, the committee may require the chair of the governing body of the state university or Florida College System institution, or the chair's designee, to appear before the committee.

3. If the committee determines that the state university or Florida College System institution has failed to take full corrective action for which there is no justifiable reason or has failed to comply with committee requests made pursuant to this section, the committee shall refer the matter to the State Board of Education or the Board of Governors, as appropriate, to proceed in accordance with s. 1008.32 or s. 1008.322, respectively.

(8) RULES OF THE AUDITOR GENERAL.—The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all financial audits performed by independent certified public accountants pursuant to ss. 215.981, 218.39, 1001.453, 1004.28, and 1004.70. The rules for audits of local governmental entities, charter schools, charter technical career centers, and district school boards must include, but are not limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act as stated in s. 218.501.

(9) TECHNICAL ADVICE PROVIDED BY THE AUDITOR GENERAL.—The Auditor General may provide technical advice to:

(a) The Department of Education in the development of a compliance supplement for the financial audit of a district school board conducted by an independent certified public accountant.

(b) Governmental entities on their financial and accounting systems, procedures, and related matters.

(c) Governmental entities on promoting the building of competent and efficient accounting and internal audit organizations in their offices.

History.—s. 6, ch. 67-470; s. 6, ch. 69-82; s. 1, ch. 72-6; ss. 1, 2, ch. 73-234; s. 1, ch. 75-122; s. 1, ch. 76-73; s. 1, ch. 77-102; s. 2, ch. 79-183; ss. 1, 3, 6, ch. 79-589; s. 1, ch. 81-167; s. 1, ch. 83-55; s. 1, ch. 83-106; s. 1, ch. 84-241; s. 1, ch. 85-80; s. 14, ch. 86-204; s. 2, ch. 86-217; s. 1, ch. 87-114; s. 4, ch. 89-87; s. 30, ch. 89-169; s. 9, ch. 90-110; s. 19, ch. 90-227; s. 65, ch. 91-45; s. 17, ch. 91-282; s. 2, ch. 91-429; s. 91, ch. 92-142; s. 136, ch. 92-279; s. 55, ch. 92-326; s. 15, ch. 94-249; s. 1309, ch. 95-147; s. 1, ch. 95-214; s. 1, ch. 95-380; s. 12, ch. 95-396; s. 26, ch. 96-318; s. 1, ch. 96-324; s. 21, ch. 97-96; s. 1, ch. 97-111; s. 1, ch. 97-255; s. 26, ch. 97-271; s. 3, ch. 99-333; s. 1, ch. 2000-151; s. 4, ch. 2000-264; s. 31, ch. 2000-355; s. 36, ch. 2000-371; s. 30, ch. 2001-140; s. 15, ch. 2001-266; s. 1, ch. 2002-1; s. 17, ch. 2002-22; s. 880, ch. 2002-387; s. 2, ch. 2004-305; s. 1, ch. 2004-331; s. 3, ch. 2004-484; s. 1, ch. 2005-171; s. 7, ch. 2006-190; s. 5, ch. 2009-68; s. 1, ch. 2009-214; s. 2, ch. 2010-5; s. 13, ch. 2011-34; s. 1, ch. 2011-49; s. 1, ch. 2011-52; s. 36, ch. 2011-142; s. 1, ch. 2012-5; s. 1, ch. 2012-134; s. 1, ch. 2013-15; s. 1, ch. 2013-51; s. 19, ch. 2013-252.

Note.—Former s. 11.186.

AT Section 201

Agreed-Upon Procedures Engagements

Source: SSAE No. 10; SSAE No. 11.

Effective when the subject matter or assertion is as of or for a period ending on or after June 1, 2001, unless otherwise indicated.

Introduction and Applicability

.01 This section sets forth attestation standards and provides guidance to a practitioner concerning performance and reporting in all agreed-upon procedures engagements, except as noted in paragraph .02. A practitioner also should refer to the following sections of this Statement on Standards for Attestation Engagements (SSAE), which provide additional guidance for certain types of agreed-upon procedures engagements:

- a. Section 301, *Financial Forecasts and Projections*
- b. Section 601, *Compliance Attestation*

.02 This section does not apply to the following:¹

- a. Situations in which an auditor reports on specified compliance requirements based solely on an audit of financial statements, as addressed in AU section 623, *Special Reports*, paragraphs .19–.21
- b. Engagements for which the objective is to report in accordance with AU section 801, *Compliance Audits*, unless the terms of the engagement specify that the engagement be performed pursuant to SSAEs
- c. Engagements covered by AU section 634, *Letters for Underwriters and Certain Other Requesting Parties*
- d. Certain professional services that would not be considered as falling under this section as described in section 101, *Attest Engagements*, paragraph .04.

[Revised, December 2010, to reflect conforming changes necessary due to the issuance of SAS No. 117. Revised, August 2011, to reflect conforming changes necessary due to the issuance of SSAE No. 16.]

Agreed-Upon Procedures Engagements

.03 An agreed-upon procedures engagement is one in which a practitioner is engaged by a client to issue a report of findings based on specific procedures performed on subject matter. The client engages the practitioner to assist specified parties in evaluating subject matter or an assertion as a result of a need or needs of the specified parties.² Because the specified parties require that

¹ The Attest Interpretation, "Responding to Requests for Reports on Matters Relating to Solvency" (section 9101.23–.33), prohibits the performance of any attest engagements concerning matters of solvency or insolvency.

² See paragraphs .08 and .09 for a discussion of subject matter and assertion.

findings be independently derived, the services of a practitioner are obtained to perform procedures and report his or her findings. The specified parties and the practitioner agree upon the procedures to be performed by the practitioner that the specified parties believe are appropriate. Because the needs of the specified parties may vary widely, the nature, timing, and extent of the agreed-upon procedures may vary as well; consequently, the specified parties assume responsibility for the sufficiency of the procedures since they best understand their own needs. In an engagement performed under this section, the practitioner does not perform an examination or a review, as discussed in section 101, and does not provide an opinion or negative assurance.³ (See paragraph .24.) Instead, the practitioner's report on agreed-upon procedures should be in the form of procedures and findings. (See paragraph .31.)

.04 As a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, a practitioner's report on such engagements should clearly indicate that its use is restricted to those specified parties.⁴ Those specified parties, including the client, are hereinafter referred to as *specified parties*.

Standards

.05 The general, fieldwork, and reporting standards for attestation engagements as established in section 50, *SSAE Hierarchy*, together with interpretive guidance regarding their application as addressed throughout this section, should be followed by the practitioner in performing and reporting on agreed-upon procedures engagements. [Revised, November 2006, to reflect conforming changes necessary due to the issuance of Statement on Standards for Attestation Engagements No. 14.]

Conditions for Engagement Performance

.06 The practitioner may perform an agreed-upon procedures attest engagement provided that—

- a. The practitioner is independent.
- b. One of the following conditions is met.
 - (1) The party wishing to engage the practitioner is responsible for the subject matter, or has a reasonable basis for providing a written assertion about the subject matter when the nature of the subject matter is such that a responsible party does not otherwise exist.
 - (2) The party wishing to engage the practitioner is not responsible for the subject matter but is able to provide the practitioner, or have a third party who is responsible for the subject matter provide the practitioner with evidence of the third party's responsibility for the subject matter.
- c. The practitioner and the specified parties agree upon the procedures performed or to be performed by the practitioner.

³ For guidance on expressing an opinion on specified elements, accounts, or items of a financial statement based on an audit, see AU section 623.11–18.

⁴ See section 101.78–.83 for additional guidance regarding restricted-use reports.

- d.* The specified parties take responsibility for the sufficiency of the agreed-upon procedures for their purposes.
- e.* The specific subject matter to which the procedures are to be applied is subject to reasonably consistent measurement.
- f.* Criteria to be used in the determination of findings are agreed upon between the practitioner and the specified parties.
- g.* The procedures to be applied to the specific subject matter are expected to result in reasonably consistent findings using the criteria.
- h.* Evidential matter related to the specific subject matter to which the procedures are applied is expected to exist to provide a reasonable basis for expressing the findings in the practitioner's report.
- i.* Where applicable, the practitioner and the specified parties agree on any materiality limits for reporting purposes. (See paragraph .25.)
- j.* Use of the report is restricted to the specified parties.
- k.* For agreed-upon procedures engagements on prospective financial information, the prospective financial statements include a summary of significant assumptions. (See section 301.52.)

Agreement on and Sufficiency of Procedures

.07 To satisfy the requirements that the practitioner and the specified parties agree upon the procedures performed or to be performed and that the specified parties take responsibility for the sufficiency of the agreed-upon procedures for their purposes, ordinarily the practitioner should communicate directly with and obtain affirmative acknowledgment from each of the specified parties. For example, this may be accomplished by meeting with the specified parties or by distributing a draft of the anticipated report or a copy of an engagement letter to the specified parties and obtaining their agreement. If the practitioner is not able to communicate directly with all of the specified parties, the practitioner may satisfy these requirements by applying any one or more of the following or similar procedures.

- Compare the procedures to be applied to written requirements of the specified parties.
- Discuss the procedures to be applied with appropriate representatives of the specified parties involved.
- Review relevant contracts with or correspondence from the specified parties.

The practitioner should not report on an engagement when specified parties do not agree upon the procedures performed or to be performed and do not take responsibility for the sufficiency of the procedures for their purposes. (See paragraph .36 for guidance on satisfying these requirements when the practitioner is requested to add other parties as specified parties after the date of completion of the agreed-upon procedures.)

Subject Matter and Related Assertions

.08 The subject matter of an agreed-upon procedures engagement may take many different forms and may be at a point in time or covering a period of time. In an agreed-upon procedures engagement, it is the specific subject

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matter to which the agreed-upon procedures are to be applied using the criteria selected. Even though the procedures are agreed upon between the practitioner and the specified parties, the subject matter and the criteria must meet the conditions set forth in the third general standard. (See section 101.23 and .24.) The criteria against which the specific subject matter needs to be measured may be recited within the procedures enumerated or referred to in the practitioner's report.

.09 An assertion is any declaration or set of declarations about whether the subject matter is based on or in conformity with the criteria selected. A written assertion is generally not required in an agreed-upon procedures engagement unless specifically required by another attest standard (for example, see section 601.11). If, however, the practitioner requests the responsible party to provide an assertion, the assertion may be presented in a representation letter or another written communication from the responsible party, such as in a statement, narrative description, or schedule appropriately identifying what is being presented and the point in time or the period of time covered.

Establishing an Understanding With the Client

.10 The practitioner should establish an understanding with the client regarding the services to be performed. When the practitioner documents the understanding through a written communication with the client (an *engagement letter*), such communication should be addressed to the client, and in some circumstances also to all specified parties. Matters that might be included in such an understanding include the following:

- The nature of the engagement
- Identification of the subject matter (or the assertion related thereto), the responsible party, and the criteria to be used
- Identification of specified parties (See paragraph .36.)
- Specified parties' acknowledgment of their responsibility for the sufficiency of the procedures
- Responsibilities of the practitioner (See paragraphs .12 to .14 and .40.)
- Reference to attestation standards established by the American Institute of Certified Public Accountants (AICPA)
- Agreement on procedures by enumerating (or referring to) the procedures (See paragraphs .15 to .18.)
- Disclaimers expected to be included in the practitioner's report
- Use restrictions
- Assistance to be provided to the practitioner (See paragraphs .22 and .23.)
- Involvement of a specialist (See paragraphs .19 to .21.)
- Agreed-upon materiality limits (See paragraph .25.)

Nature, Timing, and Extent of Procedures

Responsibility of the Specified Parties

.11 Specified parties are responsible for the sufficiency (nature, timing, and extent) of the agreed-upon procedures because they best understand their own needs. The specified parties assume the risk that such procedures might be insufficient for their purposes. In addition, the specified parties assume the risk that they might misunderstand or otherwise inappropriately use findings properly reported by the practitioner.

Practitioner's Responsibility

.12 The responsibility of the practitioner is to carry out the procedures and report the findings in accordance with the general, fieldwork, and reporting standards as discussed and interpreted in this section. The practitioner assumes the risk that misapplication of the procedures may result in inappropriate findings being reported. Furthermore, the practitioner assumes the risk that appropriate findings may not be reported or may be reported inaccurately. The practitioner's risks can be reduced through adequate planning and supervision and due professional care in performing the procedures, determining the findings, and preparing the report.

.13 The practitioner should have adequate knowledge in the specific subject matter to which the agreed-upon procedures are to be applied. He or she may obtain such knowledge through formal or continuing education, practical experience, or consultation with others.⁵

.14 The practitioner has no responsibility to determine the differences between the agreed-upon procedures to be performed and the procedures that the practitioner would have determined to be necessary had he or she been engaged to perform another form of attest engagement. The procedures that the practitioner agrees to perform pursuant to an agreed-upon procedures engagement may be more or less extensive than the procedures that the practitioner would determine to be necessary had he or she been engaged to perform another form of engagement.

Procedures to Be Performed

.15 The procedures that the practitioner and specified parties agree upon may be as limited or as extensive as the specified parties desire. However, mere reading of an assertion or specified information about the subject matter does not constitute a procedure sufficient to permit a practitioner to report on the results of applying agreed-upon procedures. In some circumstances, the procedures agreed upon evolve or are modified over the course of the engagement. In general, there is flexibility in determining the procedures as long as the specified parties acknowledge responsibility for the sufficiency of such procedures for their purposes. Matters that should be agreed upon include the nature, timing, and extent of the procedures.

⁵ Section 601.19 and .20 provide guidance about obtaining an understanding of certain requirements in an agreed-upon procedures engagement on compliance.

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.16 The practitioner should not agree to perform procedures that are overly subjective and thus possibly open to varying interpretations. Terms of uncertain meaning (such as general review, limited review, check, or test) should not be used in describing the procedures unless such terms are defined within the agreed-upon procedures. The practitioner should obtain evidential matter from applying the agreed-upon procedures to provide a reasonable basis for the finding or findings expressed in his or her report, but need not perform additional procedures outside the scope of the engagement to gather additional evidential matter.

.17 Examples of appropriate procedures include the following:

- Execution of a sampling application after agreeing on relevant parameters
- Inspection of specified documents evidencing certain types of transactions or detailed attributes thereof
- Confirmation of specific information with third parties
- Comparison of documents, schedules, or analyses with certain specified attributes
- Performance of specific procedures on work performed by others (including the work of internal auditors—see paragraphs .22 and .23)
- Performance of mathematical computations

.18 Examples of inappropriate procedures include the following:

- Mere reading of the work performed by others solely to describe their findings
- Evaluating the competency or objectivity of another party
- Obtaining an understanding about a particular subject
- Interpreting documents outside the scope of the practitioner's professional expertise

Involvement of a Specialist⁶

.19 The practitioner's education and experience enable him or her to be knowledgeable about business matters in general, but he or she is not expected to have the expertise of a person trained for or qualified to engage in the practice of another profession or occupation. In certain circumstances, it may be appropriate to involve a specialist to assist the practitioner in the performance of one or more procedures. The following are examples.

- An attorney might provide assistance concerning the interpretation of legal terminology involving laws, regulations, rules, contracts, or grants.
- A medical specialist might provide assistance in understanding the characteristics of diagnosis codes documented in patient medical records.
- An environmental engineer might provide assistance in interpreting environmental remedial action regulatory directives that may affect

⁶ A *specialist* is a person (or firm) possessing skill or knowledge in a particular field other than the attest function. As used herein, a specialist does not include a person employed by the practitioner's firm who participates in the attest engagement.

the agreed-upon procedures applied to an environmental liabilities account in a financial statement.

- A geologist might provide assistance in distinguishing between varying physical characteristics of a generic minerals group related to information to which the agreed-upon procedures are applied.

.20 The practitioner and the specified parties should explicitly agree to the involvement of the specialist in assisting a practitioner in the performance of an agreed-upon procedures engagement. This agreement may be reached when obtaining agreement on the procedures performed or to be performed and acknowledgment of responsibility for the sufficiency of the procedures, as discussed in paragraph .07. The practitioner's report should describe the nature of the assistance provided by the specialist.

.21 A practitioner may agree to apply procedures to the report or work product of a specialist that does not constitute assistance by the specialist to the practitioner in an agreed-upon procedures engagement. For example, the practitioner may make reference to information contained in a report of a specialist in describing an agreed-upon procedure. However, it is inappropriate for the practitioner to agree to merely read the specialist's report solely to describe or repeat the findings, or to take responsibility for all or a portion of any procedures performed by a specialist or the specialist's work product.

Internal Auditors and Other Personnel

.22 The agreed-upon procedures to be enumerated or referred to in the practitioner's report are to be performed entirely by the practitioner except as discussed in paragraphs .19 to .21.⁷ However, internal auditors or other personnel may prepare schedules and accumulate data or provide other information for the practitioner's use in performing the agreed-upon procedures. Also, internal auditors may perform and report separately on procedures that they have carried out. Such procedures may be similar to those that a practitioner may perform under this section.

.23 A practitioner may agree to perform procedures on information documented in the working papers of internal auditors. For example, the practitioner may agree to—

- Repeat all or some of the procedures.
- Determine whether the internal auditors' working papers contain documentation of procedures performed and whether the findings documented in the working papers are presented in a report by the internal auditors.

However, it is inappropriate for the practitioner to—

- Agree to merely read the internal auditors' report solely to describe or repeat their findings.
- Take responsibility for all or a portion of any procedures performed by internal auditors by reporting those findings as the practitioner's own.
- Report in any manner that implies shared responsibility for the procedures with the internal auditors.

⁷ AU section 322, *The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements*, does not apply to agreed-upon procedures engagements.

Findings

.24 A practitioner should present the results of applying agreed-upon procedures to specific subject matter in the form of findings. The practitioner should not provide negative assurance about whether the subject matter or the assertion is fairly stated based on the criteria. For example, the practitioner should not include a statement in his or her report that "nothing came to my attention that caused me to believe that the [identify subject matter] is not presented based on [or the assertion is not fairly stated based on] [identify criteria]."

.25 The practitioner should report all findings from application of the agreed-upon procedures. The concept of materiality does not apply to findings to be reported in an agreed-upon procedures engagement unless the definition of materiality is agreed to by the specified parties. Any agreed-upon materiality limits should be described in the practitioner's report.

.26 The practitioner should avoid vague or ambiguous language in reporting findings. Examples of appropriate and inappropriate descriptions of findings resulting from the application of certain agreed-upon procedures follow.

<i>Procedures Agreed Upon</i>	<i>Appropriate Description of Findings</i>	<i>Inappropriate Description of Findings</i>
Inspect the shipment dates for a sample (agreed-upon) of specified shipping documents, and determine whether any such dates were subsequent to December 31, 20XX.	No shipment dates shown on the sample of shipping documents were subsequent to December 31, 20XX.	Nothing came to my attention as a result of applying that procedure.
Calculate the number of blocks of streets paved during the year ended September 30, 20XX, shown on contractors' certificates of project completion; compare the resultant number to the number in an identified chart of performance statistics.	The number of blocks of streets paved in the chart of performance statistics was Y blocks more than the number calculated from the contractors' certificates of project completion.	The number of blocks of streets paved approximated the number of blocks included in the chart of performance statistics.
Calculate the rate of return on a specified investment (according to an agreed-upon formula) and verify that the resultant percentage agrees to the percentage in an identified schedule.	No exceptions were found as a result of applying the procedure.	The resultant percentage approximated the predetermined percentage in the identified schedule.

<i>Procedures Agreed Upon</i>	<i>Appropriate Description of Findings</i>	<i>Inappropriate Description of Findings</i>
Inspect the quality standards classification codes in identified performance test documents for products produced during a specified period; compare such codes to those shown in an identified computer printout.	All classification codes inspected in the identified documents were the same as those shown in the computer printout except for the following: [List all exceptions.]	All classification codes appeared to comply with such performance documents.
Trace all outstanding checks appearing on a bank reconciliation as of a certain date to checks cleared in the bank statement of the subsequent month.	All outstanding checks appearing on the bank reconciliation were cleared in the subsequent month's bank statement except for the following: [List all exceptions.]	Nothing came to my attention as a result of applying the procedure.
Compare the amounts of the invoices included in the "over ninety days" column shown in an identified schedule of aged accounts receivable of a specific customer as of a certain date to the amount and invoice date shown on the outstanding invoice and determine whether or not the invoice dates precede the date indicated on the schedule by more than ninety days.	All outstanding invoice amounts agreed with the amounts shown on the schedule in the "over ninety days" column, and the dates shown on such invoices preceded the date indicated on the schedule by more than ninety days.	The outstanding invoice amounts agreed within approximation of the amounts shown on the schedule in the "over ninety days" column, and nothing came to our attention that the dates shown on such invoices preceded the date indicated on the schedule by more than ninety days.

Working Papers

[.27-.30] [Paragraphs deleted by the issuance of Statement on Standards for Attestation Engagements No. 11, January 2002.]^[8-9]

^[8-9] [Footnotes deleted by the issuance of Statement on Standards for Attestation Engagements No. 11, January 2002.]

Reporting

Required Elements

.31 The practitioner's report on agreed-upon procedures should be in the form of procedures and findings. The practitioner's report should contain the following elements:

- a. A title that includes the word *independent*
- b. Identification of the specified parties (See paragraph .36.)
- c. Identification of the subject matter¹⁰ (or the written assertion related thereto) and the character of the engagement
- d. Identification of the responsible party
- e. A statement that the subject matter is the responsibility of the responsible party
- f. A statement that the procedures performed were those agreed to by the specified parties identified in the report
- g. A statement that the agreed-upon procedures engagement was conducted in accordance with attestation standards established by the AICPA
- h. A statement that the sufficiency of the procedures is solely the responsibility of the specified parties and a disclaimer of responsibility for the sufficiency of those procedures
- i. A list of the procedures performed (or reference thereto) and related findings (The practitioner should not provide negative assurance—see paragraph .24.)
- j. Where applicable, a description of any agreed-upon materiality limits (See paragraph .25.)
- k. A statement that the practitioner was not engaged to and did not conduct an examination^{11, 12} of the subject matter, the objective of which would be the expression of an opinion, a disclaimer of opinion on the subject matter, and a statement that if the practitioner

¹⁰ In some agreed-upon procedures engagements, the practitioner may be asked to apply agreed-upon procedures to more than one subject matter or assertion. In these engagements, the practitioner may issue one report that refers to all subject matter covered or assertions presented. (For example, see section 601.28.)

¹¹ If the practitioner also wishes to refer to a review, alternate wording would be as follows. A statement that the practitioner was not engaged to and did not conduct an examination or a review of the subject matter, the objectives of which would be the expression of an opinion or limited assurance, a disclaimer of opinion on the subject matter, and a statement that if the practitioner had performed additional procedures, other matters might have come to his or her attention that would have been reported.

¹² If the subject matter consists of elements, accounts, or items of a financial statement, this statement may be worded as follows.

We were not engaged to and did not conduct an audit [or a review], the objective of which would be the expression of an opinion [or limited assurance] on the [identify elements, accounts, or items of a financial statement]. Accordingly, we do not express such an opinion [or limited assurance].

Alternatively, the wording may be the following.

These agreed-upon procedures do not constitute an audit [or a review] of financial statements or any part thereof, the objective of which is the expression of opinion [or limited assurance] on the financial statements or a part thereof.

had performed additional procedures, other matters might have come to his or her attention that would have been reported¹³

- l. A statement of restrictions on the use of the report because it is intended to be used solely by the specified parties¹⁴
- m. Where applicable, reservations or restrictions concerning procedures or findings as discussed in paragraphs .33, .35, .39, and .40
- n. For an agreed-upon procedures engagement on prospective financial information, all items included in section 301.55
- o. Where applicable, a description of the nature of the assistance provided by a specialist as discussed in paragraphs .19 through .21
- p. The manual or printed signature of the practitioner's firm
- q. The date of the report

Illustrative Report

.32 The following is an illustration of an agreed-upon procedures report.

Independent Accountant's Report on Applying Agreed-Upon Procedures

To the Audit Committees and Managements of ABC Inc. and XYZ Fund:

We have performed the procedures enumerated below, which were agreed to by the audit committees and managements of ABC Inc. and XYZ Fund, solely to assist you in evaluating the accompanying Statement of Investment Performance Statistics of XYZ Fund (prepared in accordance with the criteria specified therein) for the year ended December 31, 20X1. XYZ Fund's management is responsible for the statement of investment performance statistics. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

[Include paragraphs to enumerate procedures and findings.]

¹³ When the practitioner consents to the inclusion of his or her report on an agreed-upon procedures engagement in a document or written communication containing the entity's financial statements, he or she should refer to AU section 504, *Association With Financial Statements*, or to Statement on Standards for Accounting and Review Services (SSARS) No. 1, *Compilation and Review of Financial Statements* [AR section 100], as appropriate, for guidance on his or her responsibility pertaining to the financial statements.

The practitioner should follow (a) AU section 504.04 when the financial statements of a public or nonpublic entity are audited (or reviewed in accordance with AU section 722, *Interim Financial Information*, or (b) AU section 504.05 when the financial statements of a public entity are unaudited. The practitioner should follow SSARS No. 1, paragraph 3 [AR section 100.03] when (a) the financial statements of a nonpublic entity are reviewed or compiled or (b) the financial statements of a nonpublic entity are *not* reviewed or compiled and are not submitted by the accountant, as defined in SSARS No. 1, paragraph 1 [AR section 100.01]. (See section 101.82 and .83 for guidance when the practitioner combines or includes in a document a restricted-use report with a general-use report.) [Footnote revised, November 2002, to reflect conforming changes necessary due to the issuance of Statement on Standards for Accounting and Review Services No. 9.]

¹⁴ The purpose of the restriction on the use of the practitioner's report on applying agreed-upon procedures is to restrict its use to only those parties that have agreed upon the procedures performed and taken responsibility for the sufficiency of the procedures. Paragraph .36 describes the process for adding parties who were not originally contemplated in the agreed-upon procedures engagement.

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We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the accompanying Statement of Investment Performance Statistics of XYZ Fund. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the audit committees and managements of ABC Inc. and XYZ Fund,¹⁵ and is not intended to be and should not be used by anyone other than these specified parties.

[Signature]

[Date]

Explanatory Language

.33 The practitioner also may include explanatory language about matters such as the following:

- Disclosure of stipulated facts, assumptions, or interpretations (including the source thereof) used in the application of agreed-upon procedures (For example, see section 601.26.)
- Description of the condition of records, controls, or data to which the procedures were applied
- Explanation that the practitioner has no responsibility to update his or her report
- Explanation of sampling risk

Dating of Report

.34 The date of completion of the agreed-upon procedures should be used as the date of the practitioner's report.

Restrictions on the Performance of Procedures

.35 When circumstances impose restrictions on the performance of the agreed-upon procedures, the practitioner should attempt to obtain agreement from the specified parties for modification of the agreed-upon procedures. When such agreement cannot be obtained (for example, when the agreed-upon procedures are published by a regulatory agency that will not modify the procedures), the practitioner should describe any restrictions on the performance of procedures in his or her report or withdraw from the engagement.

Adding Specified Parties (Nonparticipant Parties)

.36 Subsequent to the completion of the agreed-upon procedures engagement, a practitioner may be requested to consider the addition of another party as a specified party (*a nonparticipant party*). The practitioner may agree to add a nonparticipant party as a specified party, based on consideration of such factors as the identity of the nonparticipant party and the intended use of the report.¹⁶ If the practitioner does agree to add the nonparticipant party, he or

¹⁵ The report may list the specified parties or refer the reader to the specified parties listed elsewhere in the report.

¹⁶ When considering whether to add a nonparticipant party, the guidance in AU section 530, *Dating of the Independent Auditor's Report*, paragraphs .06 and .07, may be helpful.

she should obtain affirmative acknowledgment, normally in writing, from the nonparticipant party agreeing to the procedures performed and of its taking responsibility for the sufficiency of the procedures. If the nonparticipant party is added after the practitioner has issued his or her report, the report may be reissued or the practitioner may provide other written acknowledgment that the nonparticipant party has been added as a specified party. If the report is reissued, the report date should not be changed. If the practitioner provides written acknowledgment that the nonparticipant party has been added as a specified party, such written acknowledgment ordinarily should state that no procedures have been performed subsequent to the date of the report.

Written Representations

.37 A practitioner may find a representation letter to be a useful and practical means of obtaining representations from the responsible party. The need for such a letter may depend on the nature of the engagement and the specified parties. For example, section 601.68 requires a practitioner to obtain written representations from the responsible party in an agreed-upon procedures engagement related to compliance with specified requirements.

.38 Examples of matters that might appear in a representation letter from the responsible party include the following:

- a. A statement acknowledging responsibility for the subject matter and, when applicable, the assertion
- b. A statement acknowledging responsibility for selecting the criteria and for determining that such criteria are appropriate for their purposes
- c. The assertion about the subject matter based on the criteria selected
- d. A statement that all known matters contradicting the subject matter or the assertion and any communication from regulatory agencies affecting the subject matter or the assertion has been disclosed to the practitioner
- e. Availability of all records relevant to the subject matter and the agreed-upon procedures
- f. Other matters as the practitioner deems appropriate

.39 The responsible party's refusal to furnish written representations determined by the practitioner to be appropriate for the engagement constitutes a limitation on the performance of the engagement. In such circumstances, the practitioner should do one of the following.

- a. Disclose in his or her report the inability to obtain representations from the responsible party.
- b. Withdraw from the engagement.¹⁷
- c. Change the engagement to another form of engagement.

¹⁷ For an agreed-upon procedures engagement performed pursuant to section 601, management's refusal to furnish all required representations also constitutes a limitation on the scope of the engagement that requires the practitioner to withdraw from the engagement.

Knowledge of Matters Outside Agreed-Upon Procedures

.40 The practitioner need not perform procedures beyond the agreed-upon procedures. However, in connection with the application of agreed-upon procedures, if matters come to the practitioner's attention by other means that significantly contradict the subject matter (or written assertion related thereto) referred to in the practitioner's report, the practitioner should include this matter in his or her report.¹⁸ For example, if, during the course of applying agreed-upon procedures regarding an entity's internal control, the practitioner becomes aware of a material weakness by means other than performance of the agreed-upon procedure, the practitioner should include this matter in his or her report.

Change to an Agreed-Upon Procedures Engagement From Another Form of Engagement

.41 A practitioner who has been engaged to perform another form of attest engagement or a nonattest service engagement may, before the engagement's completion, be requested to change the engagement to an agreed-upon procedures engagement under this section. A request to change the engagement may result from a change in circumstances affecting the client's requirements, a misunderstanding about the nature of the original services or the alternative services originally available, or a restriction on the performance of the original engagement, whether imposed by the client or caused by circumstances.

.42 Before a practitioner who was engaged to perform another form of engagement agrees to change the engagement to an agreed-upon procedures engagement, he or she should consider the following:

- a. The possibility that certain procedures performed as part of another type of engagement are not appropriate for inclusion in an agreed-upon procedures engagement
- b. The reason given for the request, particularly the implications of a restriction on the scope of the original engagement or the matters to be reported
- c. The additional effort required to complete the original engagement
- d. If applicable, the reasons for changing from a general-use report to a restricted-use report

.43 If the specified parties acknowledge agreement to the procedures performed or to be performed and assume responsibility for the sufficiency of the procedures to be included in the agreed-upon procedures engagement, either of the following would be considered a reasonable basis for requesting a change in the engagement—

- a. A change in circumstances that requires another form of engagement
- b. A misunderstanding concerning the nature of the original engagement or the available alternatives

¹⁸ If the practitioner has performed (or has been engaged to perform) an audit of the entity's financial statements to which an element, account, or item of a financial statement relates and the auditor's report on such financial statements includes a departure from a standard report [see AU section 508, *Reports on Audited Financial Statements*], he or she should consider including a reference to the auditor's report and the departure from the standard report in his or her agreed-upon procedures report.

.44 In all circumstances, if the original engagement procedures are substantially complete or the effort to complete such procedures is relatively insignificant, the practitioner should consider the propriety of accepting a change in the engagement.

.45 If the practitioner concludes, based on his or her professional judgment, that there is reasonable justification to change the engagement, and provided he or she complies with the standards applicable to agreed-upon procedures engagements, the practitioner should issue an appropriate agreed-upon procedures report. The report should not include reference to either the original engagement or performance limitations that resulted in the changed engagement. (See paragraph .40.)

Combined Reports Covering Both Restricted-Use and General-Use Subject Matter or Presentations

.46 When a practitioner performs services pursuant to an engagement to apply agreed-upon procedures to specific subject matter as part of or in addition to another form of service, this section applies only to those services described herein; other Standards would apply to the other services. Other services may include an audit, review, or compilation of a financial statement, another attest service performed pursuant to the SSAEs, or a nonattest service.¹⁹ Reports on applying agreed-upon procedures to specific subject matter may be combined with reports on such other services, provided the types of services can be clearly distinguished and the applicable Standards for each service are followed. See section 101.82 and .83, regarding restricting the use of the combined report.

Effective Date

.47 This section is effective when the subject matter or assertion is as of or for a period ending on or after June 1, 2001. Early application is permitted.

¹⁹ See section 101.105–.107 for requirements relating to attest services provided as part of a consulting service engagement.

.48

Appendix

Additional Illustrative Reports

The following are additional illustrations of reporting on applying agreed-upon procedures to elements, accounts, or items of a financial statement.

1. Report in Connection With a Proposed Acquisition

Independent Accountant's Report
on Applying Agreed-Upon Procedures

To the Board of Directors and Management of X Company:

We have performed the procedures enumerated below, which were agreed to by the Board of Directors and Management of X Company, solely to assist you in connection with the proposed acquisition of Y Company as of December 31, 20XX. Y Company is responsible for its cash and accounts receivable records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and the associated findings are as follows:

Cash

- We obtained confirmation of the cash on deposit from the following banks, and we agreed the confirmed balance to the amount shown on the bank reconciliations maintained by Y Company. We mathematically checked the bank reconciliations and compared the resultant cash balances per book to the respective general ledger account balances.

<i>Bank</i>	<i>General Ledger Account Balances as of December 31, 20XX</i>
ABC National Bank	\$ 5,000
DEF State Bank	3,776
XYZ Trust Company regular account	86,912
XYZ Trust Company payroll account	5,000
	<u>\$110,688</u>

We found no exceptions as a result of the procedures.

Accounts Receivable

- We added the individual customer account balances shown in an aged trial balance of accounts receivable (identified as Exhibit A) and compared the resultant total with the balance in the general ledger account.

We found no difference.

AT §201.48

3. We compared the individual customer account balances shown in the aged trial balance of accounts receivable (Exhibit A) as of December 31, 19XX, to the balances shown in the accounts receivable subsidiary ledger.

We found no exceptions as a result of the comparisons.

4. We traced the aging (according to invoice dates) for 50 customer account balances shown in Exhibit A to the details of outstanding invoices in the accounts receivable subsidiary ledger. The balances selected for tracing were determined by starting at the eighth item and selecting every fifteenth item thereafter.

We found no exceptions in the aging of the amounts of the 50 customer account balances selected. The sample size traced was 9.8 percent of the aggregate amount of the customer account balances.

5. We mailed confirmations directly to the customers representing the 150 largest customer account balances selected from the accounts receivable trial balance, and we received responses as indicated below. We also traced the items constituting the outstanding customer account balance to invoices and supporting shipping documents for customers from which there was no reply. As agreed, any individual differences in a customer account balance of less than \$300 were to be considered minor, and no further procedures were performed.

Of the 150 customer balances confirmed, we received responses from 140 customers; 10 customers did not reply. No exceptions were identified in 120 of the confirmations received. The differences disclosed in the remaining 20 confirmation replies were either minor in amount (as defined above) or were reconciled to the customer account balance without proposed adjustment thereto. A summary of the confirmation results according to the respective aging categories is as follows.

<i>Aging Categories</i>	<i>Accounts Receivable December 31, 20XX</i>		
	<i>Customer Account Balances</i>	<i>Confirmations Requested</i>	<i>Confirmations Received</i>
Current	\$156,000	\$ 76,000	\$ 65,000
Past due:			
Less than one month:	60,000	30,000	19,000
One to three months	36,000	18,000	10,000
Over three months	48,000	48,000	8,000
	<u>\$300,000</u>	<u>\$172,000</u>	<u>\$102,000</u>

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on cash and accounts receivable. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the board of directors and management of X Company and is not intended to be and should not be used by anyone other than these specified parties.

[Signature]

[Date]

2. Report in Connection With Claims of Creditors**Independent Accountant's Report
on Applying Agreed-Upon Procedures**

To the Trustee of XYZ Company:

We have performed the procedures described below, which were agreed to by the Trustee of XYZ Company, with respect to the claims of creditors solely to assist you in determining the validity of claims of XYZ Company as of May 31, 20XX, as set forth in the accompanying Schedule A. XYZ Company is responsible for maintaining records of claims submitted by creditors of XYZ Company. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the party specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

1. Compare the total of the trial balance of accounts payable at May 31, 20XX, prepared by XYZ Company, to the balance in the related general ledger account.

The total of the accounts payable trial balance agreed with the balance in the related general ledger account.

2. Compare the amounts for claims received from creditors (as shown in claim documents provided by XYZ Company) to the respective amounts shown in the trial balance of accounts payable. Using the data included in the claims documents and in XYZ Company's accounts payable detail records, reconcile any differences found to the accounts payable trial balance.

All differences noted are presented in column 3 of Schedule A. Except for those amounts shown in column 4 of Schedule A, all such differences were reconciled.

3. Obtain the documentation submitted by creditors in support of the amounts claimed and compare it to the following documentation in XYZ Company's files: invoices, receiving reports, and other evidence of receipt of goods or services.

No exceptions were found as a result of these comparisons.

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on the claims of creditors set forth in the accompanying Schedule A. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Trustee of XYZ Company and is not intended to be and should not be used by anyone other than this specified party.

[Signature]

[Date]

**7. Board of Accountancy's
Independence Standards
& Definitions**

Board of Accountancy's Independence Standards and Definitions

The following documents are included in the meeting packet:

Standards for Determining Independence in the Practice of Public Accountancy for CPAs Practicing Public Accountancy in the State of Florida; Document created by the Board of Accountancy "in order to delineate the standards against which a certified public accountant's independence or lack thereof is to be judged." (Rule 61H1-21.001, F.A.C.)

Independence Definitions; Document from the Division of Certified Public Accounting of the Department of Business and Professional Regulation, which provides administrative support to the Board of Accountancy

**STANDARDS FOR DETERMINING INDEPENDENCE IN
THE PRACTICE OF PUBLIC ACCOUNTANCY FOR CPAS
PRACTICING PUBLIC ACCOUNTANCY IN THE STATE OF FLORIDA**

(Words that appear in bold (initially) are defined in the definitions section at the end of this document.)

Section 101-1. Independence-General Provisions

Independence shall be considered to be impaired if:

- (1) During the **period of the professional engagement** a covered licensee:
 - (a) Had or was committed to acquire any direct or material indirect financial interest in the **client**.
 - (b) Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client and
 1. The covered licensee had the authority to make (individually or with others) investment decisions for the trust or estate; or
 2. The trust or estate owned or was committed to acquire more than 10 percent of the client's outstanding equity securities or other ownership interests; or
 3. The value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or estate.
 - (c) Had a **joint closely held investment** that was material to the covered licensee.
 - (d) Except as specifically permitted in Section 101-5 herein, had any **loan** to or from the client, any officer or director of the client, or any individual owning ten percent or more of the client's outstanding equity securities or other ownership interests.
- (2) During the period of the professional engagement, a firm, a **partner** or professional employee of the **firm**, his or her **immediate family**, or any group of such persons acting together owned more than five percent of a client's outstanding equity securities or other ownership interests.
- (3) During the period covered by the **financial statements** or during the period of the professional engagement, a partner or professional employee of the firm was simultaneously associated with the client as a(n)
 - (a) Director, officer, or employee, or in any capacity equivalent to that of a member of management;
 - (b) Promoter, underwriter, or voting trustee; or
 - (c) Trustee for any pension or profit-sharing trust of the client.

Application of the Independence Rules to Covered Licensees Formerly Employed by a Client or Otherwise Associated With a Client

An individual who was formerly (i) employed by a client or (ii) associated with a client as a(n) officer, director, promoter, underwriter, voting trustee, or trustee for a pension or profit-sharing trust of the client would impair his or her firm's independence if the individual

- (1) Participated on the **attest engagement team** or was an **individual in a position to influence the attest engagement** for the client when the **attest engagement** covers any period that includes his or her former employment or association with that client; or
- (2) Was otherwise a covered licensee with respect to the client unless the individual first dissociates from the client by
 - (a) Terminating any relationships with the client described in Subsection 101-1(1)(c);
 - (b) Disposing of any direct or material indirect financial interest in the client;
 - (c) Collecting or repaying any loans to or from the client, except for loans specifically permitted or grandfathered under Section 101-5.
 - (d) Ceasing to participate¹ in all employee benefit plans sponsored by the client, unless the client is legally required to allow the individual to participate in the plan (for example, COBRA) and the individual pays 100 percent of the cost of participation on a current basis; and

¹If a licensee participates in or receives benefits from a health and welfare plan (the "plan") sponsored by a client and that licensee is a covered licensee then that covered licensee's participation in a plan sponsored by a client

(e) Liquidating or transferring all vested benefits in the client's defined benefit plans, defined contribution plans, deferred compensation plans, and other similar arrangements at the earliest date permitted under the plan. However, liquidation or transfer is not required if a penalty² significant to the benefits is imposed upon liquidation or transfer.

Application of the Independence Rules to a Covered Licensee's Immediate Family

Except as stated in the following paragraph, a covered licensee's immediate family is subject to Rule 61H1-21.001 and these Standards.

The exceptions are that independence would not be considered to be impaired solely as a result of the following:

(1) An individual in a covered licensee's immediate family was employed by the client in a position other than a **key position**.

(2) In connection with his or her employment, an individual in the immediate family of one of the following covered licensees participated in a retirement, savings, compensation, or similar plan that is a client, is sponsored by a client, or that invests in a client (provided such plan is normally offered to all employees in similar positions):

(a) A partner or **manager** who provides ten or more hours of non-attest services to the client; or

(b) Any partner in the **office** in which the lead attest engagement partner primarily practices in connection with the attest engagement.

For purposes of determining materiality under this Rule the financial interests of the covered licensee and his or her immediate family should be aggregated.

Application of the Independence Rules to Close Relatives

Independence would be considered to be

impaired if—

(1) An individual participating on the attest engagement team has a **close relative** who had

(a) A key position with the client, or

(b) A financial interest in the client that

(i) Was material to the close relative and of which the individual has knowledge; or

(ii) Enabled the close relative to exercise **significant influence** over the client.

(2) An individual in a position to influence the attest engagement or any partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement has a close relative who had

(a) A key position with the client; or

(b) A financial interest in the client that

(i) Was material to the close relative and of which the individual or partner has knowledge; and

(ii) Enabled the close relative to exercise significant influence over the client.

Other Considerations

It is impossible to enumerate all circumstances in which the appearance of independence might be questioned. Licensees should consider whether personal and business relationships between the licensee and the client or an individual associated with the client would lead a reasonable person aware of all the relevant facts to conclude that there is an unacceptable threat to the licensee's and the firm's independence.

Section 101-2. Employment or Association with Attest Clients

A firm's independence will be considered to be impaired with respect to a client if a partner or professional employee leaves the firm and is subsequently employed by or associated with that client in a key position unless all of the following conditions are met:

would impair independence with respect to the client sponsor and the plan. However, if the covered licensee's participation in the plan, or benefits received thereunder, arises as a result of the permitted employment of the covered licensee's immediate family, independence would not be considered to be impaired provided that the plan is normally offered to all employees in equivalent employment positions.

²A penalty includes an early withdrawal penalty levied under the tax law but excludes other income taxes that would be owed or market losses that may be incurred as a result of the liquidation or transfer.

1. Amounts due to the former partner or professional employee for his or her previous interest in the firm and for unfunded, vested retirement benefits are not material to the firm, and the underlying formula used to calculate the payments remains fixed during the payout period. Retirement benefits may be adjusted for inflation and interest may be paid on amounts due.

2. The former partner or professional employee is not in a position to influence the accounting firm's operations or financial policies.

3. The former partner or professional employee does not participate in or appear to participate in, and is not associated with the firm, whether or not compensated for such participation or association, once employment or association with the client begins. An appearance of participation or association results from such actions as:

The individual provides consultation to the firm.

The firm provides the individual with an office and related amenities (for example, secretarial and telephone services).

The individual's name is included in the firm's office directory.

The individual's name is included as a member of the firm in other membership lists of business, professional, or civic organizations, unless the individual is clearly designated as retired.

4. The ongoing attest engagement team considers the appropriateness or necessity of modifying the engagement procedures to adjust for the risk that, by virtue of the former partner or professional employee's prior knowledge of the audit plan, audit effectiveness could be reduced.

5. The firm assesses whether existing attest engagement team members have the appropriate experience and stature to effectively deal with the former partner or professional employee and his or her work, when that person will have significant interaction with the attest engagement team.

6. The subsequent attest engagement is reviewed to determine whether the engagement team members maintained the appropriate level of skepticism when evaluating the representations and work of the former partner or professional employee, when the person joins the client in a key position within one year of disassociating from the firm and has significant interaction with the attest engagement team. The review should be performed by a professional with appropriate stature, expertise, and objectivity and should be tailored based on the position that the person assumed at the client, the position he or she held at the firm, the nature of the services he or she provided to the client, and other relevant facts and circumstances. Appropriate actions, as deemed necessary, should be taken based on the results of the review.

Responsible members within the firm should implement procedures for compliance with the preceding conditions when firm professionals are employed or associated with attest clients.

With respect to conditions 4, 5 and 6, the procedures adopted will depend on several factors, including whether the former partner or professional employee served as a member of the engagement team, the positions he or she held at the firm and has accepted at the client, the length of time that has elapsed since the professional left the firm, and the circumstances of his or her departure.³

Considering Employment or Association with the Client

When a member of the attest engagement team or an individual in a position to influence the attest engagement intends to seek or discuss potential employment or association with an attest client, or is in receipt of a specific offer of employment from an attest client, independence will be impaired with respect to the client unless the person promptly reports such consideration or offer to an appropriate person in the firm, and removes himself or herself from the engagement until the employment offer is rejected or employment is no longer being sought. When a covered licensee becomes aware that a member of the attest engagement team or an individual in a position to influence the attest engagement is considering employment or association with a client, the covered licensee should notify an appropriate person in the firm.

The appropriate person should consider what additional procedures may be necessary to provide reasonable assurance that any work performed for the client by that person was performed with objectivity and integrity as

³An inadvertent and isolated failure to meet conditions 4, 5 and 6, would not impair independence provided that the required procedures are performed promptly upon discovery of the failure to do so, and all other provisions of Section 101-2 are met.

required under Rule 61H1-21.002. Additional procedures, such as reperformance of work already done, will depend on the nature of the engagement and individual involved.

Section 101-3. RESERVED Performance of nonattest services. Before a covered licensee or firm performs nonattest services for an attest client,⁴ the covered licensee shall determine that the requirements described in this section have been met. In cases where the requirements have not been met during the period of the professional engagement or the period covered by the financial statements, the covered licensee's independence would be impaired.

Engagements Subject to Independence Rules or Certain Regulatory Bodies.

This section requires compliance with independence regulations of authoritative regulatory bodies (such as the Securities and Exchange Commission [SEC], the General Accounting Office [GAO], the Department of Labor [DOL], where a covered licensee performs nonattest services for a client and is required to be independent of the client under the regulations of the applicable regulatory body. Accordingly, failure to comply with the nonattest services provisions contained in the independence rules of the applicable regulatory body that are more restrictive than the provisions of this interpretation would constitute a violation of this section if so determined by the applicable regulatory body.

General Requirements for Performing Nonattest Services

(1) The covered licensee should not perform management functions or make management decisions for the attest client. However, the covered licensee may provide advice, research materials, and recommendations to assist the client's management in performing its functions and making decisions.

(2) The client must agree to perform the following functions in connection with the engagement to perform nonattest services:

- (a) Make all management decisions and perform all management functions;
- (b) Designate a competent employee, preferable within senior management, to oversee the services;
- (c) Evaluate the adequacy and results of the services performed;
- (d) Accept responsibility for the results of the services; and
- (e) Establish and maintain internal controls, including monitoring ongoing activities.

The covered licensee should be satisfied that the client will be able to meet all of these criteria and make an informed judgment on the results of the member's nonattest services. In assessing the competency of the client's designated employee, the covered licensee should be satisfied that such individual understands the services to be performed sufficiently to oversee them. In cases where the client is unable or unwilling to assume these responsibilities (for example, the client does not have an individual with the necessary competence to oversee the nonattest services provided, or is unwilling to perform such functions due to lack of time or desire), the covered licensee's or firm's provision of these services would impair independence.

(3) Before performing nonattest services, the covered licensee should establish and document in writing⁵ the licensee's or firm's understanding with the client (board of directors, audit committee, or management, as appropriate in the circumstances) regarding the following:

- (a) Objective of the engagement
- (b) Services to be performed
- (c) Client's acceptance of its responsibilities
- (d) Covered licensee's or firm's responsibilities
- (e) Any limitations of the engagement

⁴A covered licensee who performs a compilation engagement for a client should modify the compilation report to indicate a lack of independence if the covered licensee or firm does not meet all of the conditions set out in this section when providing a nonattest service to that client (see Statement of Standards for Accounting and Review Services No. 1, *Compilation and Review of Financial Statements*).

⁵An isolated and inadvertent failure to prepare the required documentation would not impair independence, provided that the licensee did establish the understanding with the client, the licensee documents the understanding promptly upon discovery of the failure to do so, and all other provisions of the interpretation are met.

The documentation requirement does not apply to certain routine activities performed by the covered licensee such as providing advice and responding to the client's technical questions as part of the normal client-covered licensee relationship.

General Activities

The following are some general activities that would impair a covered licensee's or firm's independence:

- # Authorizing, executing, or consummating a transaction, otherwise exercising authority on behalf of a client, or having the authority to do so
- # Preparing source documents,⁶ in electronic or other form, evidencing the occurrence of a transaction
- # Having custody of client assets
- # Supervising client employees in the performance of their normal recurring activities
- # Determining which recommendations of the covered licensee should be implemented
- # Reporting to the board of directors on behalf of management
- # Servicing as a client's stock transfer or escrow agent, registrar, general counsel or its equivalent

Specific Examples of Nonattest Services

The examples in the following table identify the effect that performance of certain nonattest services for an attest client can have on a covered licensee's or firm's independence.

These examples presume that the general requirements in the previous subsection "**General Requirements for Performing Nonattest Services**" have been met and are not intended to be all-inclusive of the types of nonattest services performed by covered licensee.

Impact on Independence of Performance of Nonattest Services

<i>Type of Nonattest Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>

⁶Source documents are the documents upon which evidence of an accounting transaction are initially recorded. Source documents are often followed by the creation of many additional records and reports, which do not, however, qualify as initial recordings. Examples of source documents are purchase orders, payroll time cards, and customer orders.

<i>Type of Nonattest Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Bookkeeping	<p>Record transactions for which management</p> <p>Prepare financial statements</p> <p>Post client-approved entries to a client's trial balance.</p> <p>Propose standard, adjusting, or correcting journal entries or other changes affecting the financial statements to the client provided the client reviews the entries and the covered licensee is satisfied that management understands the nature of the proposed entries and the impact the entries have on the financial statements.</p>	<p>Determine or change journal entries, account codings or classifications for transactions, or other accounting records without obtaining client approval.</p> <p>Authorize or approve transactions.</p> <p>Prepare source documents.</p> <p>Make changes to source documents without client approval.</p>
Payroll and other disbursements	<p>Using payroll time records provided and approved by the client, generate unsigned checks, or process client's payroll.</p> <p>Transmit client-approved payroll or other disbursement information to a financial institution provided the client has authorized the member to make the transmission and has made arrangements for the financial institution to limit the corresponding individual payments as to amount and payee. In addition, once transmitted, the client must authorize the financial institution to process the information.</p> <p>Make electronic payroll tax payments in accordance with U.S. Treasury Department or comparable guidelines provided the client has made arrangements for its financial institutions to limit such payments to a named payee.</p>	<p>Accept responsibility to authorize payment of client funds, electronically or otherwise, except as specifically provided for with respect to electronic payroll tax payments.</p> <p>Accept responsibility to sign or cosign client checks, even if only in emergency situations.</p> <p>Maintain a client's bank account or otherwise have custody of a client's funds or make credit or banking decisions for the client.</p> <p>Sign payroll tax return on behalf of client management.</p> <p>Approve vendor invoices for payment.</p>

<i>Type of Nonattest Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Benefit plan administration	<p>Communicate summary plan data to plan trustee</p> <p>Advise client management regarding the application or impact of provisions of the plan documented.</p> <p>Process transactions (e.g., investment/benefit elections or increase/decrease contributions to the plan; data entry; participant confirmations; and processing of distributions and loans) initiated by plan participants through the covered licensee's or firm's electronic medium such as an interactive voice response system or Internet connection or other media.</p> <p>Prepare account valuations for plan participants using data collected through the covered licensee's or firm's electronic or other media.</p> <p>Prepare and transmit participant statements to plan participants based on data collected through the covered licensee's or firm's electronic or other medium.</p>	<p>Make policy decisions on behalf of client management.</p> <p>When dealing with plan participants, interpret the plan document on behalf of management without first obtaining management's concurrence.</p> <p>Make disbursements on behalf of the plan.</p> <p>Have custody of assets of a plan.</p> <p>Service a plan as a fiduciary as defined by ERISA.</p>

<i>Type of Nonattest Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Investment–advisory or management	<p>Recommend the allocation of funds that a client should invest in various asset classes, depending upon the client’s desired rate of return, risk tolerance, etc.,</p> <p>Perform recordkeeping and reporting of client's portfolio balances including providing a comparative analysis of the client's investments to third-party benchmarks.</p> <p>Review the manner in which a client's portfolio is being managed by investment account managers, including determining whether the managers are (1) following the guidelines of the client's investment policy statement; (2) meeting the client's investment objectives; and (3) conforming to the client's stated investment styles.</p> <p>Transmit a client's investment selection to a broker-dealer or equivalent provided the client has authorized the broker-dealer or equivalent to execute the transaction.</p>	<p>Make investment decisions on behalf of client management or otherwise have discretionary authority over a client's investments.</p> <p>Execute a transaction to buy or sel a client's investment.</p> <p>Have custody of client assets, such as taking temporary possession of securities purchased by a client.</p>
Corporate finance–consulting or advisory	<p>Assist in developing corporate strategies.</p> <p>Assist in identifying or introducing the client to possible sources of capital that meet the client's specifications or criteria.</p> <p>Assist in analyzing the effects of proposed transactions including providing advice to a client during negotiations with potential buyers, sellers, or capital sources.</p> <p>Assist in drafting an offering document or memorandum.</p> <p>Participate in transaction negotiations in an advisory capacity.</p> <p>Be named as a financial adviser in a client's private placement memoranda or offering documents.</p>	<p>Commit the client to the terms of a transaction or consummate a transaction on behalf of the client.</p> <p>Act as a promoter, underwriter, broker-dealer, or guarantor of client securities, or distributor of private placement memoranda or offering documents.</p> <p>Maintain custody of client securities.</p>

<i>Type of Nonattest Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Executive or employee search	<p>Recommend a position description or candidate specifications.</p> <p>Solicit and perform screen of candidate and recommend qualified candidates to a client based on the client-approved criteria (e.g., required skills and experience).</p> <p>Participate in employee hiring or compensation discussions in an advisory capacity.</p>	<p>Commit the client to employee compensation or benefit arrangements</p> <p>Hire or terminate client employees.</p>
Business risk consulting	<p>Provide assistance in assessing the client's business risks and control processes.</p> <p>Recommend a plan for making improvements to a client's control processes and assist in implementing these improvements.</p>	<p>Make or approve business risk decisions.</p> <p>Present business risk considerations to the Board or others on behalf of management.</p>
Information systems—design, installation or integration	<p>Install or integrate a client's financial information that was not designed or developed by the covered licensee (e. g. an off-the-shelf accounting package)</p> <p>Design, develop, install or integrate a client's information system that is unrelated to the client's financial statements or accounting records.</p> <p>Assist in setting up the client's chart of accounts and financial information system that is unrelated to the client's financial statements or accounting records.</p> <p>Provide training and instruction to client employees on an information and control system.</p>	<p>Design or develop a client's financial information system.</p> <p>Make other than insignificant modifications to source code underlying a client's existing financial information system.</p> <p>Supervise client personnel in the daily operation of a client's information system.</p> <p>Operate a client's local area network (LAN) system.</p>

Appraisal, Valuation, and Actuarial Services

(1) Independence would be impaired if a covered licensee performs an appraisal, valuation, or actuarial service for an attest client where the results of the service, individually or in the aggregate, would be material to the financial statements and the appraisal, valuation, or actuarial service involves a significant degree of subjectivity.

(2) Valuations performed in connection with, for example, employee stock ownership plans, business combinations, or appraisals of assets or liabilities generally involve a significant degree of subjectivity.

Accordingly, if these services produce results that are material to the financial statements, independence would be impaired.

⁷Although this type of transaction may be considered by some to be similar to signing checks or disbursing funds, making electronic payroll tax payments under the specified criteria would not impair a covered licensee's or firm's independence.

⁸When auditing plans subject to the Employee Retirement Income Security Act (ERISA), Department of Labor (DOL) regulations, which may be more restrictive, must be followed.

(3) An actuarial valuation of a client's pension or postemployment benefit liabilities generally produces reasonably consistent results because the valuation does not require a significant degree of subjectivity. Therefore, such services would not impair independence. In addition, appraisal, valuation, and actuarial services performed for nonfinancial statement purposes would not impair independence.⁹ However, in performing such services, all other requirements of this section should be met, including that all significant assumptions and matters of judgment are determined or approved by the client and the client is in a position to have an informed judgment on, and accepts responsibility for, the results of the service.

Internal Audit Assistance Services

(1) Internal audit services involve assisting the client in the performance of its internal audit activities, sometimes referred to as "internal audit outsourcing." In evaluating whether independence would be impaired with respect to an attest client, the nature of the service needs to be considered.

(2) Assisting the client in performing financial and operational¹⁰ internal audit activities would impair independence unless the covered licensee takes appropriate steps to ensure that the client understands its responsibility for establishing and maintaining the internal control system¹¹ and directing the internal audit function, including the management thereof. Accordingly, any outsourcing of the internal audit function to the covered licensee whereby the covered licensee in effect manages the internal audit activities of the client would impair independence.

(3) In addition, to the general requirements of this interpretation, the covered licensee should ensure the client management:

Designates a competent¹² individual or individuals, preferable within senior management, to be responsible for the internal audit functions;

Determines the scope risk and frequency of internal audit activities, including those to be performed by the covered licensee providing internal audit assistance services;

\$ Evaluates the findings and results arising from the internal audit activities, including those performed by the covered licensee providing internal audit assistance services; and

\$ Evaluates the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining reports from the licensee.

(4) The covered licensee should also be satisfied that the client's board of directors, audit committee, or other governing body is informed about the covered licensee's or firm's and management's respective roles and

⁹Examples of such services may include appraisal, valuation, and actuarial services performed for tax planning or tax compliance, estate and gift taxation, and divorce proceedings.

¹⁰For example, a covered licensee may assess whether performance is in compliance with management's policies and procedures, to identify opportunities for improvement, and to develop recommendations for improvement or further action for management consideration and decision making.

¹¹As part of its responsibility to establish and maintain internal control, management monitors internal control to assess the quality of its performance over time. Monitoring can be accomplished through ongoing activities, separate evaluations, or a combination of both. Ongoing monitoring activities are the procedures designed to assess the quality of internal control performance over time and built into the normal recurring activities of an entity; they include regular management and supervisory activities, comparisons, reconciliations, and other routine actions. A licensee's independence would not be impaired by the performance of separate evaluations of the effectiveness of a client's internal control, including separate evaluations of the client's ongoing monitoring activities. [Footnote added, effective December 31, 2003, by the Professional Ethics Executive Committee.

¹²A competent individual would have an understanding of internal audit activities sufficient to oversee the services performed by the covered licensee.

responsibilities in connection with the engagement. Such information should provide the client's governing body a basis for developing guidelines for management and the licensee to follow in carrying out these responsibilities and monitoring how well the respective responsibilities have been met.

(5) The covered licensee is responsible for performing the internal audit procedures in accordance with the terms of the engagement and reporting thereon. The performance of such procedures should be directed, reviewed, and supervised by the covered licensee. The report should include information that allows the individual responsible for the internal audit function to evaluate the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures. This report may include recommendations for improvements in systems, processes, and procedures. The covered licensee may assist the individual responsible for the internal audit function in performing preliminary audit risk assessments, preparing audit plans, and recommending audit priorities. However, the covered licensee should not undertake any responsibilities that are required, as described above, to be performed by the individual responsible for the internal audit function.

(6) The following are examples of activities (in addition to those listed in the “**General Activities**” section of this interpretation) that, if performed as part of an internal audit assistance engagement, would impair independence:

\$ Performing ongoing monitoring activities or control activities (for example, reviewing loan originations as part of the client's approval process or reviewing customer credit information as part of the customer's sales authorization process) that affect the execution of transactions or ensure that transactions are properly executed, accounted for, or both, and performing routine activities in connection with the client's operating or production processes that are equivalent to those of an ongoing compliance or quality control function

\$ Determining which, if any, recommendations for improving the internal control should be implemented

\$ Reporting to the board of directors or audit committee on behalf of management or the individual responsible for the internal audit function

\$ Approving or being responsible for the overall internal audit work plan including the determination of the internal audit risk and scope, project priorities, and frequency of performance of audit procedures

\$ Being connected with the client as an employee or in any capacity equivalent to a licensee of client management (for example, being listed as an employee in client directories or other client publications, permitting himself or herself to be referred to by title or description as supervising or being in charge of the client's internal audit function, or using the client's letterhead or internal correspondence forms in communications) The foregoing list is not intended to be all-inclusive.

(7) Services involving an extension of the procedures that are generally of the type considered to be extensions of the covered licensee's or firm's audit scope applied in the audit of the client's financial statements, such as confirming of accounts receivable and analyzing fluctuations in account balances, are not considered internal audit assistance services and would not impair independence even if the extent of such testing exceeds that required by generally accepted auditing standards. In addition, engagements performed under the attestation standards would not be considered internal audit assistance services and therefore would not impair independence.

Transition

Independence would not be impaired as a result of the more restrictive requirements of this Section, provided the provision of any such nonattest services are pursuant arrangements in existence on December 31, 2004, and are completed December 31, 2005, and the covered licensee was in compliance with the preexisting requirements of Rule 61H1-21.001.

Section 101-4. Honorary Directorships and Trusteeships of Not-for-profit Organization.

Partners or professional employees of a firm (individual) may be asked to lend the prestige of their names to not-for-profit organizations that limit their activities to those of a charitable, religious, civic, or similar nature by being named as a director or a trustee. An individual who permits his or her name to be used in this manner would not be considered to impair independence under rule 61H1-21.001, provided his or her position is clearly honorary, and he or she cannot vote or otherwise participate in board or management functions. If the individual is named in

letterheads and externally circulated materials, he or she must be identified as an honorary director or honorary trustee.

Section 101-5. Permitted Loans

This section describes the conditions a covered licensee (or his or her **immediate family**) must meet in order to have any loan to or from the client, any officer or director of the client, or any individual owning ten percent or more of the client's outstanding equity securities or other ownership interests. Acceptable loans are termed "**Grandfathered Loans**" or "**Other Permitted Loans**."

Grandfathered Loans

Unsecured loans that are not material to the covered licensee's net worth, home mortgages¹³, and other secured loans¹⁴ are grandfathered if:

(1) they were obtained from a **financial institution** under that institution's **normal lending procedures, terms, and requirements**,

¹³The value of the collateral securing a home mortgage or other secured loan should equal or exceed the remaining balance of the grandfathered loan during the term of the loan. If the value of the collateral is less than the remaining balance of the grandfathered loan, the portion of the loan that exceeds the value of the collateral must not be material to the covered licensee's net worth.

¹⁴See Footnote 4.

(2) after becoming a covered licensee they are kept current as to all terms at all times and those terms do not change in any manner not provided for in the original loan agreement,¹⁵ and

(3) they were:

(a) obtained from the financial institution prior to its becoming a client requiring independence; or

(b) obtained from a financial institution for which independence was not required and were later sold to a client for which independence is required; or

(c) were obtained prior to April 1, 2003 and met the requirements of previous provisions of Rule 61H1-21.001; or

(d) obtained after April 1, 2003 from a financial institution client requiring independence by a borrower prior to his or her becoming a covered licensee with respect to that client.

In determining when a loan was obtained, the date a loan commitment or line of credit is granted must be used, rather than the date a transaction closes or funds are obtained.

For purposes of applying the grandfathered loans provision when the covered licensee is a partner in a partnership:

a loan to a limited partnership (or similar type of entity) or a general partnership would be ascribed to each covered licensee who is a partner in the partnership on the basis of their legal liability as a limited or general partner if:

the covered licensee's interest in the limited partnership, either individually or combined with the interest of one or more covered licensees, exceeds 50 percent of the total limited partnership interest; or

the covered licensee, either individually or together with one or more covered licensees, can control the general partnership.

even if no amount of a partnership loan is ascribed to the covered licensee(s) identified above, independence is considered to be impaired if the partnership renegotiates the loan or enters into a new loan that is not one of the permitted loans described below.

Other Permitted Loans

This provision permits only the following new loans to be obtained from a financial institution client for which independence is required. These loans must be obtained under the institution's normal lending procedures, terms, and requirements and must, at all times, be kept current as to all terms.

(1) Automobile loans and leases collateralized by the automobile.

(2) Loans fully collateralized by the cash surrender value of an insurance policy.

(3) Loans fully collateralized by cash deposits at the same financial institution (e.g., "passbook loans").

(4) Credit cards and cash advances where the aggregate outstanding balance on the current statement is reduced to \$10,000 or less by the payment due date.

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such financial institutions. Broker-dealers, for example, are subject to regulation by the Securities and Exchange Commission.

Section 101-6. The Effect of Actual or Threatened Litigation on Independence.

In some circumstances, independence may be considered to be impaired as a result of litigation or the expressed intention to commence litigation as discussed below.

Litigation between client and licensee

The relationship between the management of the client and a covered licensee must be characterized by complete candor and full disclosure regarding all aspects of the client's business operations. In addition, there must be an absence of bias on the part of the covered licensee so that he or she can exercise professional judgment on the financial reporting decisions made by the management. When the present management of a client company commences, or expresses an intention to commence, legal action against a covered licensee, the covered licensee

¹⁵Changes in the terms of the loan include, but are not limited to, a new or extended maturity date, a new interest rate or formula, revised collateral, or revised or waived covenants.

and the client's management may be placed in adversarial positions in which the management's willingness to make complete disclosures and the covered licensee's objectivity may be affected by self-interest.

For the reasons outlined above, independence may be impaired whenever the covered licensee and the covered licensee's client or its management are in threatened or actual positions of material adverse interests by reason of threatened or actual litigation. Because of the complexity and diversity of the situations of adverse interests which may arise, however, it is difficult to prescribe precise points at which independence may be impaired. The following criteria are offered as guidelines:

1. The commencement of litigation by the present management alleging deficiencies in audit work for the client would be considered to impair independence.
2. The commencement of litigation by the covered licensee against the present management alleging management fraud or deceit would be considered to impair independence.
3. An expressed intention by the present management to commence litigation against the covered licensee alleging deficiencies in audit work for the client would be considered to impair independence if the covered licensee concludes that it is probable that such a claim will be filed.
4. Litigation not related to performance of an attest engagement for the client (whether threatened or actual) for an amount not material to the covered licensee's firm¹⁶ or to the client company¹⁷ would not generally be considered to affect the relationship in such a way as to impair independence. Such claims may arise, for example, out of disputes as to billings for services, results of tax or management services advice or similar matters.

Litigation by security holders

A covered licensee may also become involved in litigation ("primary litigation") in which the covered licensee and the client or its management are defendants. Such litigation may arise, for example, when one or more stockholders bring a stockholders' derivative action or a so-called "class action" against the client or its management, its officers, directors, underwriters and covered licensees under the securities laws. Such primary litigation in itself would not alter fundamental relationships between the client or its management and the covered licensee and therefore would not be deemed to have an adverse impact on independence. These situations should be examined carefully, however, since the potential for adverse interests may exist if cross-claims are filed against the covered licensee alleging that the covered licensee is responsible for any deficiencies or if the covered licensee alleges fraud or deceit by the present management as a defense. In assessing the extent to which independence may be impaired under these conditions, the covered licensee should consider the following additional guidelines:

1. The existence of cross-claims filed by the client, its management, or any of its directors to protect a right to legal redress in the event of a future adverse decision in the primary litigation (or, in lieu of cross-claims, agreements to extend the statute of limitations) would not normally affect the relationship between client management and the covered licensee in such a way as to impair independence, unless there exists a significant risk that the cross-claim will result in a settlement or judgment in an amount material to the covered licensee's firm¹⁸ or to the client.
2. The assertion of cross-claims against the covered licensee by underwriters would not generally impair independence if no such claims are asserted by the client or the present management.
3. If any of the persons who file cross-claims against the covered licensee are also officers or directors of other clients of the covered licensee, independence with respect to such other clients would not generally be considered to be impaired.

Other third-party litigation

¹⁶Because of the complexities of litigation and the circumstances under which it may arise, it is not possible to prescribe meaningful criteria for measuring materiality; accordingly, the covered licensee should consider the nature of the controversy underlying the litigation and all other relevant factors in reaching a judgment.

¹⁷See Footnote 7.

¹⁸See Footnote 7.

Another type of third-party litigation against the covered licensee may be commenced by a lending institution, other creditor, security holder, or insurance company who alleges reliance on financial statements of the client with which the covered licensee is associated as a basis for extending credit or insurance coverage to the client. In some instances, an insurance company may commence litigation (under subrogation rights) against the covered licensee in the name of the client to recover losses reimbursed to the client. These types of litigation would not normally affect independence with respect to a client who is either not the plaintiff or is only the nominal plaintiff, since the relationship between the covered licensee and client management would not be affected. They should be examined carefully, however, since the potential for adverse interests may exist if the covered licensee alleges, in his defense, fraud, or deceit by the present management.

If the real party in interest in the litigation (e.g., the insurance company) is also a client of the covered licensee ("the plaintiff client"), independence with respect to the plaintiff client may be impaired if the litigation involves a significant risk of a settlement or judgment in an amount which would be material to the covered licensee's firm¹⁹ or to the plaintiff client.

Effects of impairment of independence

If the covered licensee believes that the circumstances would lead a reasonable person having knowledge of the facts to conclude that the actual or intended litigation poses an unacceptable threat to independence, the covered licensee shall either (a) disengage himself or herself, or (b) disclaim an opinion because of lack of independence. Such disengagement may take the form of resignation or cessation of any attest engagement then in progress pending resolution of the issue between the parties.

Termination of impairment

The conditions giving rise to a lack of independence are generally eliminated when a final resolution is reached and the matters at issue no longer affect the relationship between the covered licensee and client. The covered licensee should carefully review the conditions of such resolution to determine that all impairments to the covered licensee's objectivity have been removed.

101-7. RESERVED

101-8. Effect on Independence of Financial Interests in Nonclients Having Investor or Investee Relationships with a Covered Licensee's Client.

Introduction

Financial interests in nonclients that are related in various ways to a client may impair independence. Situations in which the nonclient investor is a partnership are covered in other rulings [See Appendix 3].

The Following Definitions are to be used in only in Section 101-8 (all other definitions are contained at the end of the Standards).

The following specifically identified terms are used in Section 101-8 as indicated:

1. Client. The term client means the person or entity with whose financial statements a covered licensee is associated.
2. Investor. The term investor means (a) a parent, (b) a general partner, or (c) a natural person or corporation that has the ability to exercise significant influence.
3. Investee. The term investee means (a) a subsidiary or (b) an entity over which an investor has the ability to exercise significant influence.

Interpretation

Where a nonclient **investee** is material to a client **investor**, any direct or material indirect financial interest of a covered licensee in the nonclient investee would be considered to impair independence with respect to the client investor. If the nonclient investee is immaterial to the client investor, a covered licensee's material investment in the nonclient investee would cause an impairment of independence.

Where a client investee is material to nonclient investor, any direct or material indirect financial interest of a covered licensee in the nonclient investor would be considered to impair independence with respect to the client investee. If the client investee is immaterial to the nonclient investor, and if a covered licensee's financial interest in

¹⁹See Footnote 7.

the nonclient investor allows the covered licensee to exercise significant influence over the actions of the nonclient investor, independence would be considered to be impaired.

Other relationships, such as those involving brother-sister common control or client-nonclient joint ventures, may affect the appearance of independence. The covered licensee should make a reasonable inquiry to determine whether such relationships exist, and if they do, careful consideration should be given to whether the financial interests in question would lead a reasonable observer to conclude that the specified relationships pose an unacceptable threat to independence.

In general, in brother-sister common control situations, an immaterial financial interest of a covered licensee in the nonclient investee would not impair independence with respect to the client investee, provided the covered licensee could not exercise significant influence over the nonclient investor. However, if a covered licensee's financial interest in a nonclient investee is material, the covered licensee could be influenced by the nonclient investor, thereby impairing independence with respect to the client investee. In like manner, in a joint venture situation, an immaterial financial interest of a covered licensee in the nonclient investor would not impair the independence of the covered licensee with respect to the client investor, provided that the covered licensee could not exercise significant influence over the nonclient investor.

If a covered licensee does not and could not reasonably be expected to have knowledge of the financial interests or relationship described in this Section, independence would not be considered to be impaired under this Section.

Section 101-9. RESERVED

Section 101-10. The Effect on Independence of Relationships with Entities Included in the Governmental Financial Statements.²⁰

For purposes of this Section, a financial reporting entity's basic financial statements, issued in conformity with generally accepted accounting principles in the United States of America, include the government-wide financial statements (consisting of the entity's governmental activities, business-type activities, and discretely presented component units), the fund financial statements (consisting of major funds, nonmajor governmental and enterprise funds, internal service funds, blended component units, and fiduciary funds) and other entities disclosed in the notes to the basic financial statements. Entities that should be disclosed in the notes to the basic financial statements include, but are not limited to, related organizations, joint ventures, jointly governed organizations, and component units of another government with characteristics of a joint venture or jointly governed organization.

Auditor of Financial Reporting Entity

A covered licensee issuing a report on the basic financial statements of the financial reporting entity must be independent of the financial reporting entity, as defined in the preceding paragraph of this Section. However, independence is not required with respect to any major or nonmajor fund, internal service fund, fiduciary fund, or component unit or other entities disclosed in the financial statements, where the primary auditor explicitly states reliance on other auditors reports thereon. In addition, independence is not required with respect to an entity disclosed in the notes to the basic financial statements, if the financial reporting entity is not financially accountable for the organization and the required disclosure does not include financial information. For example, a disclosure limited to the financial reporting entity's ability to appoint the governing board members would not require a licensee to be independent of that organization.

However, the covered licensee and his or her immediate family shall not hold a key position with a major fund, nonmajor fund, internal service fund, fiduciary fund, or component unit of the financial reporting entity or other entity that should be disclosed in the notes to the basic financial statements.

Auditor of a Major Fund, Nonmajor Fund, Internal Service Fund, Fiduciary Fund, or Component Unit of the Financial Reporting Entity or Other Entity That Should Be Disclosed in the Notes to the Basic Financial

²⁰Except for a financial reporting entity's general purpose financial statements, which is defined within the text of this interpretation, certain terminology used throughout the interpretation is specifically defined by the Governmental Accounting Standards Board.

Statements

A covered licensee who is auditing the financial statements of a major fund, nonmajor fund, internal service fund, fiduciary fund, or component unit of the financial reporting entity or an entity that should be disclosed in the notes to the basic financial statements of the financial reporting entity, but is not auditing the primary government, must be independent with respect to those financial statements that the covered licensee is reporting upon. The covered licensee is not required to be independent of the primary government or other funds or component units of the reporting entity or entities that should be disclosed in the notes to the basic financial statements. However, the covered licensee and his or her immediate family should not hold a key position within the primary government. For purposes of this Section, a covered licensee and immediate family member would not be considered employed by the primary government if the exceptions provided for in the definition of a **client** are met.

Section 101-11. RESERVED

Section 101-12. Independence and Cooperative Arrangements with Clients.

Independence will be considered to be impaired if, during the period of a professional engagement, a licensee or his or her firm had any cooperative arrangement with the client that was material to the licensee's firm or to the client.

Cooperative Arrangement – A cooperative arrangement exists when a licensee's firm and a client jointly participate in a business activity. The following are examples, which are not all inclusive, of cooperative arrangements:

1. Prime/subcontractor arrangements to provide services or products to a third party
2. Joint ventures to develop or market products or services
3. Arrangements to combine one or more services or products of the firm with one or more services or products of the client and market the package with references to both parties
4. Distribution or marketing arrangements under which the firm acts as a distributor or marketer of the client's products or services, or the client acts as the distributor or marketer of the products or services of the firm

Nevertheless, joint participation with a client in a business activity does not ordinarily constitute a cooperative arrangement when all the following conditions are present:

\$ The participation of the firm and the participation of the client are governed by separate agreements, arrangements, or understandings.

\$ The firm assumes no responsibility for the activities or results of the client, and vice versa.

\$ Neither party has the authority to act as the representative or agent of the other party.

In addition, the licensee's firm should consider the requirements of section 473.319 and section 473.3205.

101-13 RESERVED.

101-14 RESERVED.

Independence Definitions

(1) **Attest engagement.** An attest engagement is an engagement to perform services defined in Section 473.302(7)(a), Fla. Stat.

(2) **Attest engagement team.** The attest engagement team consists of individuals participating in the attest engagement, including those who perform concurring and second partner reviews. The attest engagement team includes all employees and contractors retained by the firm who participate in the attest engagement, irrespective of their functional classification (for example, audit, tax or management consulting services). The attest engagement team excludes specialists as discussed in SAS No. 73, Using the Work of a Specialist [AU section 336] (incorporated herein), and individuals who perform only routine clerical functions, such as word processing and photocopying.

(3) **Client.** A client is any person or entity, other than the licensee's employer, that engages a licensee or a licensee's firm to perform professional services or a person or entity with respect to which professional services are performed. For purposes of this paragraph, the term "employer" does not include—

(a) Entities engaged in the practice of public accounting;
or

(b) Federal, state, and local governments or component units thereof provided the licensee performing professional services with respect to those entities—

(i) Is directly elected by voters of the government or component unit thereof with respect to which professional services are performed; or

(ii) Is an individual who is (1) appointed by a legislative body and (2) subject to removal by a legislative body; or

(iii) Is appointed by someone other than the legislative body, so long as the appointment is confirmed by the legislative body and removal is subject to oversight or approval by the legislative body.

(4) **Close relative.** A close relative is a parent, sibling, or nondependent child.

(5) **Covered licensee.** A covered licensee is:

(a) An individual on the attest engagement team;

(b) An individual in a position to influence the attest engagement;

(c) A partner or manager who provides nonattest services to the attest client beginning once he or she provides ten hours of nonattest services to the client within any fiscal year and ending on the later of the date (i) the firm signs the report on the financial statements for the fiscal year during which those services were provided or (ii) he or she no longer expects to

provide ten or more hours of nonattest services to the attest client on a recurring basis;

(d) A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;

(e) The firm, including the firm's employee benefit plans;
or

(f) An entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles (GAAP) for consolidation purposes) by any of the individuals or entities described in (a) through (e) or by two or more such individuals or entities if they act together.

(6) **Financial Statements.** A presentation of financial data, including accompanying notes, if any, intended to communicate an entity's economic resources and/or obligations at a point in time or the changes therein for a period of time, in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles.

Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on Standards for Attestation Engagements as defined in Rule 61H1-20.0099 and tax returns supporting schedules do not, for this purpose, constitute financial statements. The statement,

affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.

(7) **Financial Institution.** A financial institution is considered to be an entity that, as part of its normal business operations, makes loans to the general public.

(8) **Firm.** A firm means an entity or entities as defined in Rule 61H1-20.006.

(9) **Immediate family.** Immediate family is a spouse, spousal equivalent, or dependent (whether or not related).

(10) **Individual in a position to influence the attest engagement.** An individual in a position to influence the attest engagement is one who:

(a) Evaluates the performance or recommends the compensation of the attest engagement partner;

(b) Directly supervises or manages the attest engagement partner, including all successively senior levels above that individual through the firm's chief executive;

(c) Consults with the attest engagement team regarding technical or industry-related issues specific to the attest engagement; or

(11) **Joint closely held investment.** A joint closely held investment is an investment in an entity or property by the licensee and the client (or the client's officers or directors,

or any owner who has the ability to exercise significant influence over the client) that enables them to control (as defined by GAAP for consolidation purposes) the entity or property.

(12) **Key position.** A key position is a position in which an individual:

(a) Has primary responsibility for significant accounting functions that support material components of the financial statements;

(b) Has primary responsibility for the preparation of the financial statements; or

(c) Has the ability to exercise influence over the contents of the financial statements, including when the individual is a licensee of the board of directors or similar governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

For purposes of attest engagements not involving a client's financial statements, a key position is one in which an individual is primarily responsible, or able to influence, the subject matter of the attest engagement, as described above.

(13) **Loan.** A loan is a financial transaction, the characteristics of which generally include, but are not limited

to, an agreement that provides for repayment terms and a rate of interest. A loan includes, but is not limited to, a guarantee of a loan, a letter of credit, a line of credit, or a loan commitment.

(14) **Manager.** A manager is a professional employee of the firm who has either of the following responsibilities:

(a)

Continuing responsibility for the overall planning and supervision of engagements for specified clients.

(b) Authority to determine that an engagement is complete subject to final partner approval if required.

(15) **Licensee.** A licensee as defined in Rule 61H1-20.001.

(16) **Normal lending procedures, terms, and requirements** relating to a covered licensee's loan from a financial institution are defined as lending procedures, terms, and requirements that are reasonably comparable with those relating to loans of a similar character committed to other borrowers during the period in which the loan to the covered licensee is committed. Accordingly, in making such comparison and in evaluating whether a loan was made under "normal lending procedures, terms, and requirements," the covered licensee should

consider all the circumstances under which the loan was granted, including

(a) The amount of the loan in relation to the value of the collateral pledged as security and the credit standing of the covered licensee.

(b) Repayment terms.

(c) Interest rate, including "points."

(d) Closing costs.

(e) General availability of such loans to the public.

(17) **Office.** An office is a reasonably distinct subgroup within a firm, whether constituted by formal organization or informal practice, where personnel who make up the subgroup generally serve the same group of clients or work on the same categories of matters. Substance should govern the office classification. For example, the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than an individual's physical location.

(18) **Partner.** A partner is a proprietor, shareholder, equity or non-equity partner or any individual who assumes the risks and benefits of firm ownership or who is otherwise held out by the firm to be the equivalent of any of the aforementioned.

(19) **Period of the professional engagement.** The period of the professional engagement begins when a licensee either signs

an initial engagement letter or other agreement to perform attest services or begins to perform an attest engagement for a client, whichever is earlier. The period lasts for the entire duration of the professional relationship (which could cover many periods) and ends with the formal or informal notification, either by the licensee or the client, of the termination of the professional relationship or by the issuance of a report, whichever is later. Accordingly, the period does not end with the issuance of a report and recommence with the beginning of the following year's attest engagement.

(20) **Practice of Public Accounting.** Means activities defined in Section 473.302(7), Fla. Stat.

(21) **Professional Services.** Professional services include all services defined as the Practice of Public Accounting.

(22) **Significant influence.** The term significant influence is as defined in Accounting Principles Board Opinion No. 18 [See Appendix ___ AC section I82] and its interpretations (incorporated herein).

FAQs For Lobbyists Before The Florida Legislature

Lobbyists are urged to read the law (sections 11.045-11.062, Florida Statutes) and Joint Rule One prior to registration.

1. Who is required to register in order to lobby?

Lobbyists must register. A lobbyist is anyone who lobbies for compensation or any person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

2. When do lobbyists register?

For each principal represented, a lobbyist must register prior to lobbying for that principal.

3. What is a principal?

The entity, person, firm, corporation, or association which has employed or retained a lobbyist.

4. How do lobbyists register?

By filing a completed Registration Form and Authorization Form, and paying the applicable registration fee. Forms are furnished by the Lobbyist Registration Office (LRO).

5. Where may lobbyists obtain the required forms?

From the web site at

www.leg.state.fl.us/Lobbyist/index.cfm?Mode=Forms&Submenu=4&Tab=lobbyist or from the LRO at 111 W. Madison St., Rm. G-68, Tallahassee, Florida 32399-1425.

6. When are registrations effective?

When all of the required items have been received in good order by the LRO.

7. How long are registrations effective?

The registration cycle is a calendar year beginning January 1 and ending December 31.

8. What information is required on the Registration Form?

The lobbyist's name, business address and phone number; the principal represented and principal's business address; the lobbying firm (if applicable), the lobbying firm's phone number and business address; whether the lobbyist has a business association or partnership with a current member of the Legislature and the name of the member; whether the lobbyist has been convicted of a felony. Registration information must be stated under oath.

9. Must lobbyists have permission of a principal in order to register for that principal?

Yes. Their principals must authorize them to lobby. The required Authorization Form, which is furnished by the LRO, must be filed with the Registration Form and fee.

10. What is the registration fee?

Lobbyists must pay \$50 for their first registration of the year and \$20 for each additional registration for that year. Registration fees are not prorated over the calendar year. The fee must be submitted with the Registration Form. (If a person is registering to lobby before only one chamber, then the fee is \$25 for the first registration and \$10 for each additional registration.)

11. Are there any exemptions to the registration fee?

Yes. There are fee exemptions, but only for employees of specified state agencies and the judicial branch. Two employees of the following are exempt from paying the fee, provided

they are designated in writing by the agency head:

- each department created under chapter 20, F.S.
- the Fish and Wildlife Conservation Commission
- the Executive Office of the Governor
- the Commission on Ethics
- the Florida Public Service Commission
- the judicial branch (designated in writing by the Chief Justice of the Florida Supreme Court)

All other registrants must pay the fee.

12. What must lobbyists do if they no longer represent a principal?

Cancel their registration immediately on a Cancellation Form furnished by the LRO. Principals may also submit a letter canceling their lobbyists' registrations. Cancellations cannot be made retroactively and are effective only upon receipt by the LRO.

13. What must lobbyists do if their registration information changes during the year?

Notify the LRO within 15 days of any changes on a "Change in Information Form" furnished by the LRO.

14. What should a lobbyist do if he or she registered for a principal and the principal subsequently changed its name?

If a lobbyist registered for a principal, for example Blue Green Dot Consulting, Inc, and the principal subsequently changed its name to Green Dot Consulting, Inc., then lobbyist must cancel the current registration for the principal under the old name and file registration and authorization forms under the new name of the principal and pay the \$20 registration fee.

However, if the principal did not actually change its name but the lobbyist made a simple mistake on the registration form, such as a typographical error or omitting a comma or a word like "The" from the name, then the lobbyist may file a form furnished by the LRO to correct the name.

15. May lobbyists receive contingency fees?

No. No person may, in whole or part, pay, give, or receive, or agree to pay, give, or receive a contingency fee. However, this prohibition does not apply to lobbying on a claim bill.

16. What is compensation?

Payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

17. Who is required to disclose compensation?

Lobbying firms. Every lobbying firm must submit a Compensation Report for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal.

18. What is a lobbying firm?

"Lobbying firm" means an association, a corporation, or any other business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist. "Lobbying firm" does not include an entity that has "employees" who are lobbyists as long as the entity does not derive compensation from principals for lobbying, or such compensation is received exclusively from a subsidiary corporation of the employer "Employees" receive W-2 forms. If you receive a 1099, you are not an "employee" for LRO purposes.

19. What are the filing requirements for a compensation report?

Compensation reports must be created and submitted through the [LRO's Electronic Filing System](#), not later than 11:59 p.m. Eastern on the date of the filing deadline. Proof of electronic filing will be by electronic receipt indicating the date and time that the report was submitted. View the LRO's Electronic Filing System at <http://olcr.leg.state.fl.us>.

20. When are the deadlines for filing Compensation Reports?

Reports must be filed no later than 45 days after the end of each quarter. The four quarters are January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31.

21. What method of accounting must be used to report compensation?

Compensation shall be reported using the accrual basis of accounting.

22. What information is required on the Compensation Report?

The lobbying firm's full name, business address, and phone number; the name of each of the firm's registered lobbyists; the total compensation provided or owed to the lobbying firm from all principals for the quarter; the principal's full name, business address and phone number; total compensation provided or owed to the firm for each principal represented. Compensation should only be reported once. In other words, do not report the same item of compensation in the quarter it became owed and again in the quarter it was received.

23. What if the lobbying firm subcontracts work from another firm and not from the originating principal?

The lobbying firm providing the work to be subcontracted is treated as the reporting lobbying firm's "principal" for compensation reporting purposes. The reporting lobbying firm must state the name and address of the principal that **originated** the lobbying work.

24. How does a lobbying firm report compensation that was partly for lobbying and partly for legal or other non-lobbying services, or was partly for legislative and partly for executive branch lobbying services?

Good faith, rationally-based, contemporaneously-documented allocation is required and will likely be a lobbying firm's first line of response if the firm's compensation reports are selected for examination by the Legislature's independent contract auditor.

25. Are there fines for filing a report after the deadline?

Yes. The fine is \$50 per report per day for each late day, not to exceed \$5,000 per report. If a lobbying firm fails to pay a fine timely, then the registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm are all automatically suspended until the fine is paid or waived.

26. May a lobbying firm pay the fine the first time a report is filed late and use the one-time fine waiver during another quarter when the report might be filed late?

No. The one-time fine waiver is only available to a lobbying firm the very first time the firm's compensation report is filed late.

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Recommendations suggested by Committee members:

- **Florida College System institutions:** Add employee salary information to the [Florida Has a Right to Know](#) website for employees of all colleges. Note: currently, the website provides salary information for employees of the state (People First data), the State Board of Administration, and state universities.
- **Water Management Districts:** Add financial-related information for the five water management districts to Transparency Florida. No specific information requested.

Questions to consider for further recommendations:

- Should the scope of the [Transparency Florida website](#) be expanded to include additional state agency information?
 - If so, what type of information?
- Should the scope of the website be expanded to include information from any of the following non-state entities?
 - State universities
 - Florida College System institutions
 - School districts (Note: selected information, primarily summary reports, is now available on the website for school districts)
 - Charter schools and charter technical career centers
 - County offices (Board of County Commissioners, Clerk of Circuit Courts, Property Appraiser, Sherriff, Supervisor of Elections, and Tax Collector)
 - Municipalities
 - Special Districts

If so:

- 1) Which entities should be included?
- 2) What type of information should be included?

For example:

- a) Information prepared during the normal course of business, such as financial statements, budget documents, audit reports, contracts and related information.
 - b) New information that provides transaction-level information for revenues and expenditures. This could be an electronic checkbook that an entity posts on its website or a database at the state level that entities submit transaction data to on a periodic basis.
- 3) How should the information be provided or transmitted for public access?

**Transparency Florida Act
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For example:

- a) Should each non-state entity provide all or some of the information on its website with links also provided on Transparency Florida to access the data?
 - b) Should the non-state entities transmit the raw financial data (for transaction-level detail) via file transfer protocol (FTP) to the State with the State responsible for designing and building a system for displaying the information?
- If you recommend that the State should design and build a system for displaying the information:
 - 1) What State entity should be assigned the responsibility to either design and build the system or to procure the services to do so?
 - 2) Once operational, what State entity should be responsible for receiving the non-state information and ensuring that it is made available to the public on the Transparency Florida website?
 - 3) How frequently should the different types of information be updated (i.e., daily, weekly, monthly, quarterly, or annually)?
 - 4) When should the information be included, by type of entity?

For example:

- a) Should information from all entities you are recommending for inclusion be added over a specified period of time?
- b) If so, in what order should each type of entity be added to the website?

Note: If specific dates are recommended, items to consider are: (1) time for the passage of possible legislation and the Governor's review, and (2) time that will be required by the State and the non-state entities to comply with the reporting requirements.

- 5) What format should be used to display the information?
- If you recommend that entities should be responsible for posting information on their websites, with access provided on Transparency Florida website:
 - 1) Should the display and access be required to be uniform between entities?
 - 2) How many years worth of information should be retained on the website once new fiscal year information is posted?

**Transparency Florida Act
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Single Website

In addition to the [Transparency Florida](#) website previously discussed, the single website also provides access to the following websites:

- [Transparency Florida](#) (State Finances; provided by the Chief Financial Officer);
- [Florida Has a Right to Know](#) (owned by the Governor; information provided by the Department of Management Services);
- [Florida Accountability Contract Tracking System](#) (FACTS; provided by the Chief Financial Officer);
- [Florida Fiscal Portal](#) (provided by the EOG in cooperation with the appropriations committees); and,
- [Florida Government Program Summaries](#) (provided by OPPAGA).

The Act requires the Committee to provide “recommendations for enhancement of the content and format of the [single] website and related policies and procedures.”¹

- Do you recommend any revisions to the single website and the websites that may be accessed from it?

For example, do you recommend:

- any additional information on a specific website? (i.e., include salary information for water management districts or other entities on the Florida Has a Right to Know website.)
- any modifications to make the information more user-friendly?
- any formatting changes to any of the websites?
- any new websites to be created/included?

¹ Section 215.985(13), F.S.

DON GAETZ
President



WILL WEATHERFORD
Speaker



DRAFT

**TRANSPARENCY FLORIDA
STATUS AND RECOMMENDATIONS**

**Joint Legislative Auditing Committee
September 2013**

Joint Legislative Auditing Committee

Senator Joseph Abruzzo, Chair
Representative Lake Ray, Vice Chair

Senator Rob Bradley
Senator Alan Hays
Senator Jeremy Ring
Senator Wilton Simpson

Representative Daphne D. Campbell
Representative Gayle B. Harrell
Representative Daniel D. “Dan” Raulerson
Representative Cynthia A. Stafford

TRANSPARENCY FLORIDA STATUS AND RECOMMENDATIONS

SCOPE

As required by s. 215.985(7), F.S., this report from the Joint Legislative Auditing Committee (Committee) provides recommendations related the possible expansion of the Transparency Florida website,¹ including whether to expand the scope to include educational, local governmental, and other non-state governmental entities. Also, as required by s. 215.985(13), F.S., this report provides the progress made in establishing the single website required by the Transparency Florida Act and recommendations for enhancing the content and format of the website and related policies and procedures.

BACKGROUND

Overview of the Transparency Florida Act

The “Transparency Florida Act (Act),”² an act relating to transparency in government spending, requires several websites for public access to government entity financial information.

The Act, as originally approved in 2009,³ required a single website to be established by the Executive Office of the Governor (EOG), in consultation with the appropriations committees of the Senate and the House of Representatives. Specified information relating to state expenditures, appropriations, spending authority, and employee positions and pay rates was required to be provided on the website.

Responsibilities assigned by law to the Committee included:

- oversight and management of the website;⁴
- propose additional state fiscal information to be included on the website;
- develop a schedule for adding information from other governmental entities to the website;⁵
- coordinate with the Financial Management Information Board in developing any recommendations for including information on the website which is necessary to meet the requirements of s. 215.91(8); and,
- prepare an annual report detailing progress in establishing the website and providing recommendations for enhancement of the content and format of the website and related policies and procedures.

In 2011, the Act was revised to require the Chief Financial Officer (CFO) to provide public access to a state contract management system that provides information and documentation relating to the contracting agency.⁶ Other revisions included: (1) requiring the State’s five water management districts to provide

¹ Refers to the website established by the Executive Office of the Governor, in consultation with the appropriations committees of the Senate and the House of Representatives, which provides information related to the approved operating budget for the State of Florida.

² Chapter 2013-54, L.O.F.

³ Chapter 2009-74, L.O.F.

⁴ Section 11.40(4)(b), F.S. (2009)

⁵ These entities included any state, county, municipal, special district, or other political subdivision whether executive, judicial or legislative, including, but not limited, to any department, division, bureau, commission, authority, district, or agency thereof, or any public school district, community college, state university, or associated board.

⁶ Chapter 2011-49, L.O.F.

TRANSPARENCY FLORIDA STATUS AND RECOMMENDATIONS

monthly financial statements to their board members and to make such statements available for public access on their website, (2) exempting municipalities and special districts with total annual revenues of less than \$10 million from the Act's requirements, and (3) several technical and clarifying changes.⁷ Also, a revision to s. 11.40, F.S., removed the Committee's responsibility to manage and oversee the Transparency Florida website.⁸

Further revisions to the Act were adopted in 2013.⁹ In addition to the two websites previously required, the Act now also requires the following websites:

- The EOG, in consultation with the appropriations committees of the Senate and the House of Representatives, is required to establish and maintain a website that provides information relating to fiscal planning for the State. Minimum requirements include the Legislative Budget Commission's long-range financial outlook; instructions provided to state agencies relating to legislative budget requests; capital improvements plans, long-range program plans and legislative budget requests (LBR) submitted by each state agency or branch of state government; any amendments to LBRs; and, the Governor's budget recommendation submitted pursuant to s. 216.163, F.S.
- The Department of Management Services is required to establish and maintain a website that provides current information relating to each employee or officer of a state agency, a state university, or the State Board of Administration. Minimum requirements include providing the names of employees and their salary or hourly rate of pay; position number, class code, and class title; and employing agency and budget entity.
- The EOG, in consultation with the appropriations committees of the Senate and the House of Representatives, is required to establish and maintain a single website that provides access to all other websites (four) required by the Act.

Additional revisions include:

- The minimum requirements for the Act's original website (information relating to state expenditures, appropriations, spending authority, and employee positions) were expanded to include balance reports for trust funds and general revenue; fixed capital outlay project data; a 10-year history of appropriations by agency; links to state audits or reports related to the expenditure and dispersal of state funds; and links to program or activity descriptions for which funds may be expended.
- The Committee is no longer required to recommend a format for collecting and displaying information from governmental entities, including local governmental and educational entities. Rather, the Committee is required to recommend: (1) whether additional information from these entities should be included on the website, and (2) a schedule and a format for collecting and displaying the additional information.
- Language related to the contract tracking system required to be posted by the CFO is expanded to: (1) provide timelines, (2) require each state entity to post information to the contract tracking system, (3) address confidentiality and other legal issues, (4) provide definitions, and (5) authorize Cabinet members to post the required contract tracking information to their own agency-managed websites in lieu of posting on the CFO's tracking system.

Additional details relating to the Act in its current form may be found in Appendix A.

⁷ Ibid.

⁸ Chapter 2011-34, L.O.F.

⁹ Chapter 2013-54, L.O.F.

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Previous Committee Effort

The Committee has issued two previous reports related to the Act. A brief summary of the recommendations of each report follows:

2010 Committee Report

The act, as originally written, required the Committee to develop a plan to add fiscal information for other governmental entities, such as municipalities and school districts, to the website. Although the Committee was authorized to also make recommendations related by state agency information, much of that information was specified in statute and was being implemented by the EOG, in consultation with the appropriations committees of the Senate and the House of Representatives. The Committee's initial focus was on school districts due to the consistency of financial information required of the State's 67 school districts. Specific recommendations and timeframes for adding school district fiscal information to *Transparency Florida*¹⁰ were provided. Also, general recommendations were provided for adding fiscal information for other governmental entities, including state agencies, universities, colleges, counties, municipalities, special districts, and charter schools/charter technical career centers.

The Committee recommended the use of three phases for the addition of school district financial information to *Transparency Florida*. The Committee wanted citizens who visit either the home page of a school district's website or *Transparency Florida* to have the ability to easily access the school district's financial information that was located on the school district's website, the Department of Education's (DOE) website, and *Transparency Florida*.

The overall approach was to recommend that information which was readily available, with minimal effort and cost, should be included for school districts during the first phases of implementation. Most of the information should be located on the DOE's website with links to access it on *Transparency Florida*. This information included numerous reports prepared by the school districts, the DOE, and the Auditor General. The Committee expected that the first two phases could be accomplished without the need for additional resources.

Ultimately, once all phases were implemented, the goal was to provide transaction-level details of expenditures. Stakeholders expressed concern about the school districts' ability to provide this level of detail. School districts' accounting systems have the ability to capture expenditures at the sub-function and the sub-object levels.¹¹ These systems do not usually capture details of the amount spent on specific supplies, such as pencils or paper, or on a roofing project. Stakeholders also had concerns about the school districts' ability to provide this information on their websites, primarily due to cost and staffing issues. Their preference was for the State to build a data-system and require the school districts to upload via FTP (File Transfer Protocol) a monthly summary of expenditures at the sub-function and sub-object levels to *Transparency Florida*. Although Committee members were interested in more detailed information, this approach was agreed to with the idea that it was a starting point. In addition, the Committee recommended that the school districts provide vendor histories, to include details of expenditures for each vendor.

¹⁰ For the purpose of this report, *Transparency Florida* refers to www.transparencyflorida.gov/, the original website created pursuant to the Transparency Florida Act.

¹¹ For example, sub-function categories include costs associated with K-12, food services, and pupil transportation services; sub-object categories include costs associated with classroom teachers, travel, and textbooks.

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Although both the State and the school districts would incur costs, the main financial burden of the project would fall on the State. Rough estimates of the State's cost ran into the millions of dollars. Due to the uncertainty of the cost estimates, the Committee members voted to recommend to delay this phase until further information is available.

2011 Committee Report

The initial Committee report, discussed above, recommended deferring implementation related to detailed school district financial transactions until the Committee had additional information and could further discuss the issues and potential costs involved. The premise was that the school districts would transmit monthly data to the State for display on *Transparency Florida*. As explained, the cost was expected to be in the millions of dollars, but only a rough estimate was available.

In light of the continued financial difficulties being faced by the State, the Committee decided to abandon this approach and recommend an alternative. The new focus was to keep local information at the local level and for the State to provide access to it on *Transparency Florida*.

Although the Committee understood that the goal of the project was to provide more financial transparency at all levels of government, it recognized that local governments¹² know best what information their citizens want available for review. The Committee did not believe that it was the State's responsibility to design and build a system to collect and display local governments' information. Rather, the Committee recommended that the State work in partnership with local governments, as they increase transparency on their websites, so that the full financial burden did not fall on the local governments.

The Committee recommended that representatives for each type of entity develop suggested guidelines for the type of financial information and the level of detail that should be included. Each local government should be responsible for providing its financial information on its own website. A link should be included on *Transparency Florida* for each entity that implements the suggested guidelines in order to provide a central access point.

The Committee suggested that the guidelines include a uniform framework to display the information in a well-organized fashion so as to provide easy, consistent access to all online financial information for all local governments. When developing the suggested guidelines, some of the financial information that the Committee recommended for consideration included a searchable electronic checkbook, plus various documents that are prepared during the normal course of business, such as budget documents, monthly financial statements, audit reports, and contracts and related information. The Committee's intent was to provide an opportunity for increased financial transparency for Florida's citizens, by providing guidance and flexibility to local governments, without causing a financial burden in the process.

Transparency-Related Legislation

During the 2010 Legislative Session, the Legislature adopted proviso language to implement the Committee's recommendations related to school districts for the first two phases. The DOE was required to provide access to existing school district financial-related reports on its website, create a working group to develop recommendations to provide school-level data in greater detail and frequency, and publish a

¹² Local government referred to all non-state entities subject to the requirements of the Transparency Florida Act at the time of the Committee's recommendation.

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report of its findings by December 1, 2010. School districts were required to provide a link to *Transparency Florida* on their website. Links to the DOE and other website information were provided on *Transparency Florida*. The requirements assigned to the DOE and school districts were fulfilled.

In 2011, two bills were passed which, although not directly related to the Act, relate to efforts to provide more financial transparency to Florida's citizens. Senate Bill 1292 (2011)¹³ requires the Chief Financial Officer to conduct workshops with state agencies, local governments, and educational entities and develop recommendations for uniform charts of accounts. The final report is due in January 2014. An entity's charts of accounts refers to the coding structure used to identify financial transactions. Most of the non-state entities are currently authorized to adopt their own charts of accounts. The school districts are the exception; the chart of accounts that they are required to use is specified by the DOE. During discussions related to determining recommendations for its first required report required by the Act, the Committee understood that the various charts of accounts used by entities across the state was an obstacle for providing financial data that could be compared from one entity to another.

Senate Bill 224 (2011)¹⁴ requires counties, municipalities, special districts, and school districts to post their tentative budgets, final budgets, and adopted budget amendments on their official websites within a specified period of time. If a municipality or special district does not have an official website, these documents are required to be posted on the official website of a county or other specified local governing authority, as applicable. Another provision requires each local governmental entity to provide a link to the DFS' website to view the entity's annual financial report (AFR). The AFR presents a financial snapshot at fiscal year-end of the entity's financial condition. It includes the types of revenue received and expenditures incurred by the entity. The format and content of the AFR is prescribed by the DFS.¹⁵ See Appendix B for the specific requirements of the bill.

In 2013, a provision in House Bill 5401 (2013),¹⁶ the bill which revised the Act, created the User Experience Task Force. Its purpose is to develop and recommend a design for consolidating existing state-managed websites that provide public access to state operational and fiscal information into a single website. The task force is comprised of four members, with one member each designated by the Governor, Chief Financial Officer, President of the Senate, and Speaker of the House. The task force's work plan is required to include a review of: (1) all relevant state-managed websites, (2) options for reducing the number of websites without losing detailed data, and (3) options for linking expenditure data with related invoices and contracts. The recommendations are due March 1, 2014, and must include: (1) a design that provides an intuitive and cohesive user experience that allows users to move easily between varied types of related data, and (2) a cost estimate for implementation of the design.

The Legislature did not address the recommendations made in the Committee's 2011 report.

PRESENT SITUATION

Status of Single Website

The requirements of s. 215.985(3), F.S., have been met. The single website titled "Florida Sunshine: Guiding you to the right financial source" provides external links to all other websites required by the Act

¹³ Chapter 2011-44, L.O.F.

¹⁴ Chapter 2011-144, L.O.F.

¹⁵ See s. 218.32, F.S.

¹⁶ Chapter 2013-54, L.O.F.

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and is available at <http://floridasunshine.gov/>. It provides access to: (1) Transparency Florida (State Finances), (2) Transparency Florida (State Budget), (3) Florida Has a Right to Know, (4) Florida Accountability Contract Tracking System (FACTS), (5) Florida Fiscal Portal, and (6) Florida Government Program Summaries.

Status of the Website Related to the Approved Operating Budget for State Government

The requirements of s. 215.985(4), F.S., have been predominantly met. The website titled “[Transparency Florida](#)” includes financial-related information for state agencies and other units of state government for the fiscal years 2008-09 through the current fiscal year, 2013-14. School district information is also available. The website includes the Transparency Florida Tour, a video overview of the website; a training overview which provides general information about the financial data, as well as tips on how to navigate the website; an agency contact list; a glossary of terms and definitions; and, frequently asked questions.

Summary of State Information Available on *Transparency Florida*

The main focus of *Transparency Florida* has been to provide current financial data related to the State’s operating budget and daily expenditures made by the state agencies. Such financial data is updated nightly as funds are released to the state agencies, transferred between budget categories, and used for goods and services.

Details of the operating budget are available in either agency/ledger or bill format. The agency/ledger format allows users to select a specific state agency, including the legislative branch and the state courts system, to view the fiscal year budget and the number of employee positions. The current fiscal year, 2013-14, is the default; however, users may view information for any fiscal year from 2008-09 through the current year by selecting from a drop-down menu. By clicking on the hyperlinks, users may drill down to view agency information broken down by program. The bill format displays the information as it appears in the General Appropriations Act. Again, users may drill down to view more detailed information by clicking on the hyperlinks. Both views provide detailed information for positions and the daily status of appropriations for each program. Hyperlinks also allow users to view disbursements by object and an organizational schedule of allotment balances. By continuing to drill down, the name of each vendor associated with an expenditure is provided. Since the State does not have electronic invoicing, images of invoices are not provided; however, the statewide document number is provided, and users may contact the specified agency contact to request further information or a copy of an invoice.

Various reports relating to the operating budget, appropriations/disbursements, fixed capital outlay, reversions, general revenue, and trust funds can be generated from *Transparency Florida* and include:

- Operating budget by expenditure type, fund source, or program area;
- Comparison of operational appropriations for two fiscal years by state agency and/or category;
- Comparison of operational appropriations to disbursements made within one fiscal year by state agency and/or category;
- Comparison of operational disbursements for two fiscal years by state agency, category, and/or object code;
- Disbursements by line item;
- Fixed capital outlay appropriations and disbursements by category and/or state agency;

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- Operating budgets by expenditure type, fund source, or program area;
- Schedule of Allotment Balances;
- Annual operational reversions by fiscal year;
- Comparison of operational reversions by fiscal year;
- Fixed capital outlay appropriations, reversions, and outstanding disbursements by fiscal year;
- Five-year history of operational reversions;
- General Revenue Fund cash balance, cash receipts, and cash disbursements, by month and by year; and,
- Trust fund balances.

In addition, *Transparency Florida* provides links to various reports, websites, and other documents related to the state budget as follows:

- Fiscal Analysis in Brief: an annual report prepared and published by the Legislature that summarizes fiscal and budgetary information for a given fiscal year;
- Long-Range Financial Outlook 3-Year Plan: an annual report prepared and published by the Legislature that provides a long-range picture of the State's financial position by integrating projections of the major programs driving annual budget requirements with revenue estimates;
- The Chief Financial Officer's [Transparency Florida](#): a webpage which includes links to:
 - State Budget Information;
 - Florida State Contract Search (FACTS);
 - Vendor Payments;
 - State Cash Balances;
 - Estimated state taxes paid based on income;
 - State Contract Audits;
 - State Spending Reports and Graphs;
 - State Financial Reports;
 - Local Government Financial Reporting; and,
 - State Employee Data (Florida Has a Right to Know).
- Reports on State Properties and Occupancy Rates: information from the Department of Management Services' Division of Real Estate Development and Management on state-owned buildings and occupancy rates; and,
- Government Program Summaries: encyclopedia of descriptive information on over 200 major state programs compiled by the Office of Program Policy Analysis and Government Accountability.

EOG staff have indicated that they are in the process of including appropriations data for several years preceding the 2008-09 fiscal year. This will meet the recent requirement of the Act which requires *Transparency Florida* to include a 10-year history by agency. Other planned revisions to the website include: (1) providing the amount of cash receipts, and (2) revising the look of the website. Some individuals have indicated that the website is difficult to navigate. Effort is being made to provide a simpler interface for users who may not be familiar with the state appropriations process and terminology, yet retain the depth of information for the more knowledgeable users.

With the exception of providing the 10-year history of appropriations data, which as mentioned above is a new requirement and is in the process of being included, *Transparency Florida* includes all information required by the Act.

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Background and Summary of School District Information Accessible from *Transparency Florida*

To date, the only non-state financial-related information that is accessible from *Transparency Florida* relates to school districts. As previously discussed, the Committee's focus for its 2010 report was on the addition of school district information to the website. Proviso language in the 2010 General Appropriations Act¹⁷ was based on the Committee's 2010 recommendations and required the DOE to:

- Coordinate, organize, and publish online all currently available reports relating to school district finances, including information generated from the DOE's school district finance database;
- Coordinate with the EOG to create links on *Transparency Florida* to school district reports by August 1, 2010;
- Publish additional finance data relating to school districts not currently available online, including school-level expenditure data, by December 31, 2010;
- Work with the school districts to ensure that each district website provides a link to *Transparency Florida*; and
- Establish a working group to study issues related to the future expansion of school finance data available to the public through *Transparency Florida*, develop recommendations regarding the establishment of a framework to provide school-level data in greater detail and frequency, and publish a report of its findings by December 1, 2010.

The DOE met the proviso language requirements and the EOG, working in consultation with the appropriations committees of the Senate and the House of Representatives, provided access to the related school district information on *Transparency Florida*. As a result, the following reports and links are now accessible:

- School District Summary Budget
- School District Annual Financial Report
- School District Audit Reports Prepared by the Auditor General
- School District Audit Reports Prepared by Private CPA Firms
- School District Program Cost Reports
- Return on Investment (ROI)/School Efficiency Measures
- Financial Profiles of School Districts
- Florida Education Finance Program (FEFP) Calculations
- Five-Year Facilities Work Plan
- Public School District Websites

A description of these reports is provided in Appendix C.¹⁸

In addition, the websites of many school districts include a link to *Transparency Florida*, although in some cases the links are not working properly. Generally, the link is located on the homepage of the school district's website; however, some school districts have included the link only on the webpage for their finance or business services department. The proviso language that required school districts to post

¹⁷ Proviso language for Specific Appropriations 116 through 130 of Ch. 2010-152, L.O.F.

¹⁸ Links to school district reports on *Transparency Florida* are located at <http://transparencyflorida.gov/LinkInfo.aspx>.

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the link to *Transparency Florida* on their home page was in effect for the 2010-11 fiscal year. Currently, there is no such requirement.

The DOE established the workgroup required by the proviso language to address the expansion of school district information available on *Transparency Florida*. The School District Working Group's report, published in December 2010,¹⁹ recommended:

- Providing school-level data at the sub-function (i.e., K-12, food services, and pupil transportation services) and sub-object (i.e., classroom teachers, travel, and textbooks) levels;²⁰ and,
- Uploading school district data to *Transparency Florida* via file transfer protocol (FTP) on a monthly basis.

The sub-function and sub-object levels were recommended as the most cost effective method due to the variety of accounting packages used by the school districts. These report recommendations align with the Committee's 2010 recommendations for phase three of school district implementation. The goal of this phase was to provide more frequent and detailed information than had been recommended in the two earlier phases. The Committee's 2011 recommendation, however, was to require local entities, including school districts, to post their financial information on their own website. The Committee reversed the earlier recommendation which required entities to submit data to the State and the State bearing the responsibility to design and build a system to receive and display the information on *Transparency Florida*.

Status of the Website Related to Fiscal Planning for the State

The requirements of s. 215.985(5), F.S., have been met. The website titled "[Florida Fiscal Portal](#)" includes budget-related information for the fiscal years 2000-2001 through 2014-2015. Publications available include: (1) planning and budgeting instructions provided to state agencies, (2) agency legislative budget requests, (3) the Governor's recommended budget, (4) appropriations bills, (5) the approved budget, (6) the final budget report (prepared after year-end), (7) agency long-range program plans, (8) agency capital improvement plans, (9) fiscal analysis in brief, (10) long-range financial outlook 3-year plan, and other documents for selected years.

Status of the Website Related to Employee Positions and Salary

The requirements of s. 215.985(6), F.S., have been predominantly met. The website titled "[Florida Has A Right To Know](#)," allows users to search payroll data from the State of Florida People First personnel information system. The database includes information from all Executive Branch agencies, the Lottery, the Justice Administrative Commission (including state attorneys and public defenders) and the State Courts System (including judges). In addition, spreadsheets provide information related to employees of the State Board of Administration and 11 of the 12 state universities.²¹

¹⁹ The report can be viewed at <http://www.fldoe.org/fejp/pdf/TransparencyFloridaWorkingGroup.pdf>.

²⁰ The level of detail required by *Financial and Program Cost Accounting and Reporting for Florida Schools*. Known as the Red Book, this is the uniform chart of accounts required to be used by all Florida school districts for budgeting and financial reporting (see Sections 1010.01 and 1010.20, F.S., and Rule 6A-1.001, F.A.C.).

²¹ Florida's newest university, Florida Polytechnic University, has not yet been included. The campus is under construction with classes scheduled to begin in August 2014. It is currently operating with limited staff.

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Information available includes: (1) name of employee, (2) salary or other rate of pay,²² (3) employing agency or entity, (4) budget entity, (5) position number, (6) class code, and (7) class title. The People First information is updated weekly, the university information is updated twice per year, and the State Board of Administration information is reportedly updated quarterly.

Status of the Contract Management System

The requirements of s. 215.985(14), F.S., have been substantially met. The CFO established the [Florida Accountability Contract Tracking System \(FACTS\)](#), which provides online public access to information related to contracts executed by state agencies. It includes contracts for executive branch agencies, including the Department of Legal Services and the Department of Agriculture and Consumer Services;²³ the state court system; the Justice Administrative Commission, including state attorneys, public defenders; and, the Public Service Commission. To date, contracts that have been procured following ch. 287, F.S., or similar requirements are included in the system. Information available includes: (1) the contract short title, (2) agency name, (3) vendor name, (4) contract ID, (5) total contract amount, (6) commodity/service type, (7) contract type, and (8) DFS contract audits, if applicable. Users may search for contracts by agency name, contract ID, beginning and/or ending dates of contracts, vendor name, contract dollar value, and commodity/service type. By selecting a specific contract and drilling down, users may access detailed information related to the contract, such as its statutory authority and whether there were any legal challenges to the procurement; a schedule of deliverables; a record of payments made; and, an image of the contract, if available. State agencies are required to redact confidential information prior to posting the contract document image online. Due, in part, to the length of time necessary to review contracts to ensure that all confidential information has been redacted, not all required images have been posted yet. At a minimum, the images of each agency's five largest contracts, based on total contract amount, are reportedly available on FACTS. Remaining contracts are in the process of being redacted and added to the system.

FACTS is being enhanced to allow agencies to post information related to grant agreements and purchase orders. State agencies are expected to be able to begin posting information related to both types of contracts before this report is published; however, due to the volume of contracts included in these categories, it will likely require considerable time before complete information is accessible on FACTS.

Status of Water Management District Information

The requirements of s. 215.985(11), F.S., have been met. All five of the state's water management districts indicated that they provide monthly financial statements to their governing board members. Also, three or more recent monthly financial statements were posted on the website of each water management district.

Potential Entities Subject to Transparency Florida Act Requirements

A governmental entity, as defined in the Act, means any state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited

²² Universities provide the amount paid per term for Other Personnel Service (OPS) employees; the remaining entities provide the hourly rate of pay for OPS employees.

²³ An exemption for these two Cabinet agencies, provided in s. 215.985(14)(i), F.S., authorized each to create its own agency-managed website for posting contracts in lieu of posting such information on the CFO's contract management system. Both agencies have opted to post contract information to the CFO's website, FACTS.

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to, any department, division, bureau, commission, authority, district, or agency thereof, or any public school district, community college, state university, or associated board. As originally passed, the Act required the Committee to recommend a format for displaying information from these entities on *Transparency Florida*. Smaller municipalities and special districts, defined as those with a population of 10,000 or less, were exempt from the Act. Entities that did not receive state appropriations were also exempt. Later, the Act was revised to provide an exemption based on revenues rather than population. Municipalities and special districts with total annual revenues of less than \$10 million were then exempt from the Act's requirements. In addition, the exemption for entities that did not receive state appropriations was removed.

Subsequent to a major revision in 2013, current law does not require specific non-state entities to be included in the Committee's recommendations or provide an exemption to any of these entities. The Committee is required to recommend "additional information to be added to a website, such as whether to expand the scope of the information provided to include state universities, Florida college system institutions, school districts, charter schools, charter technical career centers, local government units, and other governmental entities."²⁴ The following table shows the number of non-state entities of each type that could potentially be recommended for inclusion:

Type of Entity (Non-State)	Total Number
School Districts	67
Charter Schools and Charter Technical Career Centers	579 ²⁵
State Universities	12
Florida College System Institutions	28
Counties	67 ²⁶
Municipalities	410
Special Districts	1633 active ²⁷
Regional Planning Councils	11
Metropolitan Planning Organizations	26
Entities affiliated with Universities and Colleges, such as the Moffitt Cancer Center	Unknown

To date, only school districts have been assigned responsibility related to the Transparency Florida Act. As previously discussed, the DOE was directed to work with the school districts to ensure that each district's website provided a link to *Transparency Florida*. This requirement was based on proviso language and was applicable for the 2010-11 fiscal year.

²⁴ Section 215.985(7)(a), F.S.

²⁵ As reported by the Department of Education for the 2012-13 school year.

²⁶ While there are 67 counties within the State, there are many more independent reporting entities since many of the constitutional officers operate their own financial management/accounting systems. The 38 counties that responded to a 2009 survey by the Florida Association of Counties reported 193 independent reporting entities.

²⁷ Current as of September 10, 2013.

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RECOMMENDATIONS

To Be Determined.

DRAFT

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Appendix A

Requirements of the Transparency Florida Act		
Entity	Section of Law	Requirement
Joint Legislative Auditing Committee	215.985(7)	By November 1, 2013, and annually thereafter, the Committee shall recommend to the President of the Senate and the Speaker or the House of Representatives: <ul style="list-style-type: none"> • Additional information to be added to a website, such as whether to expand the scope of the information provided to include state universities, Florida College System institutions, school districts, charter schools, charter technical career centers, local government units, and other governmental entities. • A schedule for adding information to the website by type of information and governmental entity, including timeframes and development entity. • A format for collecting and displaying the additional information.
Joint Legislative Auditing Committee	215.985(13)	Prepare an annual report detailing progress in establishing the single website and providing recommendations for enhancement of the content and format of the website and related policies and procedures. Report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1.
Joint Legislative Auditing Committee	215.985(9)	Coordinate with the Financial Management Information Board in developing recommendations for including information on the website which is necessary to meet the requirements of s. 215.91(8) . ²⁸
Executive Office of the Governor (EOG), in consultation with the appropriations committees of the Senate and the House of Representatives	215.985(3)	Establish and maintain a single website that provides access to all other websites required by the Transparency Florida Act. These websites include information relating to: <ul style="list-style-type: none"> • The approved operating budget for each branch of state government and state agency; • Fiscal planning for the state; • Each employee or officer of a state agency, a state university, or the State Board of Administration; and, • A contract tracking system. Specific requirements include compliance with the American Disabilities Act, compatible with all major web browsers, provide an intuitive user experience to the extent possible, and provide a consistent visual design, interaction or navigation design and information or data presentation.
EOG, in consultation with the appropriations committees of the Senate and the House of Representatives	215.985(4)	Establish and maintain a website that provides information relating to the approved operating budget for each branch of state government and state agency. Information must include: <ul style="list-style-type: none"> • Disbursement data and details of expenditure data, must be searchable; • Appropriations, including adjustments, vetoes, approved supplemental appropriations included in legislation other than the General Appropriations Act (GAA), budget amendments, and other actions and adjustments; • Status of spending authority for each appropriation in the approved operating budget, including released, unreleased, reserved, and disbursed balances. • Position and rate information for employees; • Allotments for planned expenditures and the current balance for such allotments; • Trust fund balance reports;

²⁸ The Financial Management Information Board, comprised of the Governor and Cabinet, has not met in a number of years.

TRANSPARENCY FLORIDA STATUS AND RECOMMENDATIONS

Requirements of the Transparency Florida Act		
Entity	Section of Law	Requirement
EOG, in consultation with the appropriations committees of the Senate and the House of Representatives (Continued)		<ul style="list-style-type: none"> • General revenue fund balance reports; • Fixed capital outlay project data; • A 10-year history of appropriations by agency; and Links to state audits or reports related to the expenditure and dispersal of state funds.
EOG, in consultation with the appropriations committees of the Senate and the House of Representatives	215.985(5)	Establish and maintain a website that provides information relating to fiscal planning for the state: <ul style="list-style-type: none"> • The long-range fiscal outlook adopted by the Legislative Budget Commission; • Instructions to agencies relating to the legislative budget requests, capital improvement plans, and long-range program plans; • The legislative budget requests submitted by each state agency or branch of state government, including any amendments; • The Capital improvement plans submitted by each state agency or branch of state government; • The long-range program plans submitted by each state agency or branch of state government; and • The Governor’s budget recommendation submitted pursuant to s. 216.163, must be searchable by the fiscal year, agency, appropriation category, and keywords. The Office of Policy and Budget in the EOG shall ensure that all data added to the website remains accessible to the public for 10 years.
Department of Management Services (DMS)	215.985(6)	Establish and maintain a website that provides current information relating to each employee or officer of a state agency, a state university, or the State Board of Administration. Information to include: <ul style="list-style-type: none"> • Name and salary or hourly rate of pay of each employee; • Position number, class code, and class title; • Employing agency and budget entity. Information must be searchable by state agency, state university, and the State Board of Administration, and by employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.
Manager of each website described in 215.985(4), (5), and (6). This refers to the three preceding websites and to staff of the EOG and DMS	215.985(8)	Submit to the Joint Legislative Auditing Committee information relating to the cost of creating and maintaining such website, and the number of times the website has been accessed.
Chief Financial Officer	215.985(14)	Establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website. Appropriate Internet security measures must be used to ensure that no person has the ability to alter or modify records available on the website
Each State Agency	215.985(14)(a)	Post contract related information on the CFO’s contract tracking system within 30 days after executing a contract. Information to include names of contracting entities, procurement method, contract beginning and ending dates, nature or type of commodities or services purchased, total compensation to be paid or received, all payments made to the contractor to date, and applicable contract performance measures. If competitive solicitation was not used, justification must be provided. Information must be updated within 30 days of any contract amendments.
Water Management Districts	215.985(11)	Provide a monthly financial statement to its governing board and make such statement available for public access on its website.

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Appendix B

Summary of Senate Bill 224 (2011) Requirements Related to Financial Transparency <i>Documents That Entities Are Required to Post on Their Official Websites</i>				
Type of Entity	Tentative Budget <i>(must be posted online)</i>	Final Budget <i>(must be posted online)</i>	Adopted Budget Amendments <i>(must be posted online)</i>	If No Official Website
Board of County Commissioners	2 days before public hearing	Within 30 days after adoption	Within 5 days after adoption	N/A
Municipality	2 days before public hearing	Within 30 days after adoption	Within 5 days after adoption	The municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the tentative and final budget to the manager or administrator of such county or counties who shall post the budget on the county's website
Special District (excludes Water Management Districts)	2 days before public hearing	Within 30 days after adoption	Within 5 days after adoption	The special district must, within a reasonable period of time as established by the local general-purpose government or governments in which the special district is located or the local governing authority to which the district is dependent, transmit the tentative budget or final budget to the manager or administrator of the local general-purpose government or the local governing authority. The manager or administrator shall post the tentative budget or final budget on the website of the local general-purpose government or local governing authority.
Property Appraiser	N/A	Within 30 days after adoption	N/A	Must be posted on the county's official website
Tax Collector	N/A	Within 30 days after adoption	N/A	Must be posted on the county's official website
Clerk of Circuit Court <i>(budget may be included in county budget)</i>	N/A	Within 30 days after adoption	N/A	Must be posted on the county's official website
Water Management District	2 days before public hearing	Within 30 days after adoption	N/A	N/A
District School Board	2 days before public hearing	Within 30 days after adoption	Within 5 days after adoption	N/A
Additional Requirement				
Each local governmental entity website must provide a link to the DFS website to view the entity's AFR submitted; if an entity does not have an official website, the county government website must provide the link.				

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Appendix C

Transparency Florida Links: Reports and Other Information Available for School Districts <i>(As recommended in the Committee's 2010 report)</i>	
Title of Report / Other Information	Summary Description of Report / Other Information
School District Summary Budget	<i>At the beginning of each fiscal year, each district school board formally adopts a budget. The District Summary Budget is the adopted budget that is submitted to the DOE by school districts. The budget document provides millage levies; estimated revenues detailed by federal, state, and local sources; and estimated expenditures.</i>
School District Annual Financial Report	<i>The Annual Financial Report is the unaudited data submitted to the DOE by school districts after the close of each fiscal year. It includes actual revenues detailed by federal, state, and local sources, and actual expenditures.</i>
School District Audit Reports Prepared by the Auditor General	<i>The Auditor General provides periodic financial, federal, and operational audits of district school boards. The Auditor General also provides periodic audits of district school boards to determine whether the district: 1) complied with state requirements governing the determination and reporting of the number of full-time equivalent students under the Florida Education Finance Program and 2) complied with state requirements governing the determination and reporting of the number of students transported.</i>
School District Audit Reports Prepared by Private CPA Firms	<i>The Auditor General maintains copies of district school board financial and federal audit reports, which are prepared on a rotational basis by private certified public accounting firms.</i>
School District Program Cost Reports	<i>The Program Cost Report data is submitted to the DOE by school districts after the close of each fiscal year. Actual expenditures by fund type are presented as either direct costs or indirect costs, and are attributed to each program at each school. A total of nine separate reports are produced from the cost reporting system.</i>
Return on Investment (ROI)/ School Efficiency Measures http://roi.fldoe.org/index.cfm	<p> <i>Two major categories of information are provided at the state and school district level. Much of the information is also provided on an individual school level.</i> </p> <p> <i>Student/Staff Indicators include: School and District Demographics, School and District Staff, School and District Student Performance, School Students in Special Programs/School Discipline, School and District Graduation Follow-up, District School Readiness, and District Community Information. Financial Indicators include: School Return on Investment Index, School Total Costs Per Students, District Revenues, District Expenditures, District Financial Margins and Reserves, District Taxes, and District Debt.</i> </p> <p> <i>The ROI website allows users to evaluate measures of performance in light of the resources allocated to the individual schools and school districts.</i> </p>

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Transparency Florida Links: Reports and Other Information Available for School Districts <i>(As recommended in the Committee's 2010 report)</i>	
Title of Report / Other Information	Summary Description of Report / Other Information
Financial Profiles of School Districts http://www.fldoe.org/fefp/profile.asp	<i>The Financial Profiles of School Districts reports provide detailed summary information about revenues and expenditures of the school districts – revenues by source and expenditures by function and object.</i>
Florida Education Finance Program (FEFP) Calculations http://www.fldoe.org/fefp/offrfefp.asp	<i>The FEFP is the primary mechanism for funding the operating costs of the school districts, and calculations are made five times throughout each school year to arrive at each year's final appropriation. The amount allocated to each of the components of the FEFP funding formula is shown for each school district.</i>
Five-Year Facilities Work Plan http://www.fldoe.org/edfacil/workplanlibrary.asp	<i>Each school district must annually prepare a Five-Year Facilities Work Plan that includes long-range planning for its facilities needs over 5-, 10-, and 20-year periods.</i>
Public School Websites	<i>Provides a link to the homepage of each school district. The homepage of many school districts includes a link to Transparency Florida.</i>

**Local Governments: Failure to
Correct Repeat Audit Findings**

There are no meeting materials for this item.