

COMPLIANCE AUDITING IN FLORIDA

COUNTIES | MUNICIPALITIES | SPECIAL DISTRICTS

A Florida Institute of Certified Public Accountants Practice Aid

Prepared by the
FICPA State and Local
Government Committee
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Preface

This Practice Aid has been prepared to assist the Florida independent auditor (auditor) in obtaining an understanding of the compliance issues that may be addressed in an audit of a Florida local government. It is intended to provide assistance in testing and reporting compliance matters in connection with audits of Florida's local governmental entities,¹ including counties (all county constitutional officers), municipalities, and special districts. District school boards are not included in this Practice Aid.

The Practice Aid provides listings or examples of statutory and other legal references pertinent to the audits of the respective types of Florida local governmental entities. This Practice Aid does not represent or establish professional standards in auditing and is not an authoritative professional reference source. Accordingly, it should be used only in conjunction with generally accepted auditing standards and other authoritative guidelines.

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¹ Throughout this practice aid, the terms “local governmental entity” or “local governmental entities” are used interchangeably with the terms “local government” or “local governments,” respectively.

State and Local Government Mission Statement

Enhance knowledge and promote excellence among members interested in state and local government accounting, auditing, and other related issues.

For more information on becoming a Committee member, visit the FICPA Web site at www.ficpa.org and click on Menu, then click on Get Involved/Committees.

GENERAL AUDIT CONSIDERATIONS

Introduction

This Practice Aid is designed to assist those CPAs involved, or contemplating involvement, in local government audits, including counties, municipalities, and special districts.

The Committee's intent is to share with auditors and the staff of the local governments the complex array of information that it has gathered concerning compliance requirements applicable to Florida's local governments. Such guidance is most relevant to governmental audits because of the great diversity of legal requirements affecting the audit process.

Florida's counties, municipalities, and special districts share responsibility for providing the governmental services needed by densely populated geographic areas as well as those areas that retain their rural identity. The determination of specific services to be provided, and at what levels, must be made ultimately by those citizens affected. In response to those needs, state law provides for the formation of counties, municipalities, and special districts within structured legal confinements.

There are 67 counties in Florida, each imposing taxes and fees to finance local governmental services and interacting with federal, state, and other local governments. There are over 400 incorporated municipalities in Florida. Although the counties and municipalities are subject to general state law and, in many instances, special acts of the Legislature, many operate under charters and all have adopted ordinances to carry out their obligations to serve the citizens. There are also over 1,900 special districts in Florida that are also subject to general State law and special acts of the Legislature, but do not have the power to adopt local ordinances. One of the auditor's responsibilities is to determine the local governments' compliance with these legal requirements.

In addressing the effects of law, rules, and regulations on a local government's operations, consideration will first be given to principles of law and to laws with general application and then to laws affecting each type of local government.

The seemingly profuse and confusing requirements of law are actually regulatory systems. These systems act to protect the rights of the citizens and provide limits on the power to raise taxes or impose fees and on the subsequent use of public moneys. They also provide for full accountability as to the use of public resources. A major element of this control system is the requirement for external determination of compliance with those requirements as part of financial audits conducted in accordance with Section 218.39, Florida Statutes (F.S.), and Chapter 10.550, Rules of the Auditor General.

The FICPA is continually striving to improve the quality of these governmental audits. This Practice Aid is one result of this dedication to improvement in professional practices.

This Practice Aid is primarily directed toward auditors who have been contracted to provide independent audits of local governments. This Practice Aid can neither be regarded as an audit program nor as a comprehensive list of local government compliance requirements. Rather, this document is intended to enhance auditors' awareness of the existence and location of compliance requirements. The Practice Aid is intended to stimulate and provoke thought in developing audit plans and programs. It is recommended that each auditor, from the partner to the entry-level staff, study this Practice Aid.

Internal auditors and other accountants involved with local governments, including local government staff, will find this aid useful as a practical resource manual. Its overview of the audit requirements for compliance determination will assist in supporting audits from the client's perspective by illustrating the kind of information needed by the auditors. This Practice Aid may also be useful as a staff-training tool.

The Audit Environment

Florida law recognizes the importance of financial accountability by public officials. To accomplish that objective, applicable law prescribes a series of reporting and independent verification procedures to ensure that public officials accurately and fully account for the public resources entrusted to their care.

For example, under Section 218.39, F.S., each county and county agency (except that a separate audit of the board of county commissioners is optional), as well as municipalities and special districts meeting specified criteria, must obtain an independent financial audit performed in accordance with Chapter 10.550, Rules of the Auditor General. As defined in Section 218.31(17), F.S., the term "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." Under Florida law, a local government "financial audit" also includes an examination to determine compliance with specified laws; an audit of state financial assistance, if applicable, in accordance with Section 215.97, F.S. (the *Florida Single Audit Act*); and the additional activities necessary to establish compliance with Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) with respect to federal awards and other applicable federal law.

The fundamental purpose of the required financial audit is to provide independent assurance to the citizens and to other affected parties, such as bondholders, debt rating institutions, and other governments, that the financial reports prepared by the reporting local governments fully account, in accordance with generally accepted accounting principles, for the financial transactions affecting the public resources entrusted to their stewardship. In providing such assurances, the auditor must understand and consider a number of legal requirements, generally accepted auditing standards, generally accepted government auditing standards (i.e., *Government Auditing Standards*,² issued by the Comptroller General of the United States), attestation standards, and generally accepted accounting principles before expressing an opinion on the audited entity's financial statements.

Limiting Effects of Law

The importance of laws and regulations is especially significant in the governmental environment. Unlike the "for profit" environment, generally there is no direct correlation between revenues and expenditures and other traditional profit measurement criteria. Financial and related administrative discipline is often provided for governments through the establishment of laws, ordinances, and procedures to control their operations.

Although many of the requirements imposed on the auditor by law and the Rules of the Auditor General would also apply to an audit of an entity in the private sector, there are many elements that are unique to the public sector.

Principal among these factors is the limiting effect of law on the authorized actions of public officials and the related effect of such laws on the authority for and execution of various financial transactions. Because of the limited authority granted to governmental entities and the requirements of law governing their operations, the audit process is driven, in large part, by authorizing laws. When addressing matters of compliance or noncompliance with law, there are certain common characteristics of applicable law that must be considered in planning the audit engagement.

Laws, ordinances, resolutions, and court orders generally provide specific and limited grants of power, which serve to guide and regulate virtually every authorized action undertaken by a Florida

² The 2018 revision of *Government Auditing Standards* is effective for financial audits, attestation engagements, and reviews of financial statements for periods ending on or after June 30, 2020, and for performance audits beginning on or after July 1, 2019. Early implementation is not permitted.

governmental entity. For a proper understanding of such laws, auditors should be aware of certain underlying principles necessary to an adequate understanding of applicable law.

Examples of basic underlying principles, the application of which can be extremely complex depending on the particular circumstances, are presented as follows for illustrative purposes only:

- In carrying out their assigned duties, government officials may, generally, authorize only those actions that are both authorized by applicable law and necessary to the proper exercise of their duties.
- Normally, only specific powers are granted to a government and the assumption of implied powers is discouraged by the courts.

Laws may provide descriptions of the entity, establish the scope of authorized operations, and provide for the powers of the governing authority. They may also address general legislative policies as to how certain transactions may be executed or place limits on the expenditure of public funds for specific purposes. They may contain elements of both authorizing and limiting legislative direction. In other words, governing laws may specify both the substance of authorized powers and the manner in which those powers may be executed.

Laws may be of general application or apply only to one of the particular activities within the scope of the audit. Auditors should be cognizant of various factors included within the body of law applicable to the entity being audited.

Among these factors are the:

- Nature of the entity.
- Method of creation.
- Authorized functions.
- Powers and duties.
- Sources of funding.
- Expenditure limitations.

Nature of the Entity - Each local government is organized to carry out certain activities. Many local governments are limited to a few revenue sources and expenditure authority is narrowly construed unless there is a clear expression of legislative intent to the contrary.

Auditors must carefully determine the nature of the services authorized to be provided by the local government and the extent of the implementing powers granted. Once determined, these powers should form the basis for developing the specific compliance auditing procedures to be employed during the audit.

Creation Method - Local governments are created pursuant to constitutional and legislative authority. General State law, as well as specific county and municipal charters, also provide for unique oversight authority to be exercised by other governmental entities.

Authorized Functions - The authorized functions of local governments are those specified in applicable law. The extension of activities to other functions is generally prohibited.

Powers and Duties - Limitations of governmental powers relate both to the substance of transactions and to the manner in which they may be carried out. The powers granted to local governments will customarily address such matters as the:

- Manner of appointing executive officials.
- Terms of office for officials.
- Power to raise revenues of various types.
- Power to employ staff.
- Contractual powers granted the governing authority.
- Power to borrow money.
- Power to do those other things necessary to implement the government's authorized purposes.

Although the preceding list is by no means exhaustive, it illustrates the types of powers granted. Furthermore, authorizing laws also place several limitations on the exercise of power by those officials.

Sources of Funding - The manner in which tax is exercised has been the subject of close judicial scrutiny and control. The law is replete with restrictions of the power and there are many court cases interpreting the valid exercise of the power. As with other powers granted to local governments, the power to raise revenues is strictly limited and has been construed narrowly by the courts.

Generally, authorizing laws will enumerate the nature and limits of revenue raising powers granted and they may regulate the manner in which authorized revenues may be raised. Such taxing powers may include ad valorem taxation, special assessments, and various fees. They may also include the operation of enterprise-type activities. Regardless of the nature of the authority provided, the power must be exercised in strict compliance with the provisions of law.

Expenditure Limitations - Similarly, authorizing laws generally place limitations on governmental authority to expend moneys. The basic limitation imposed is moneys may be expended only when there exists an authorized public purpose to be served by the expenditure, and the expenditure is necessary and reasonable in terms of the authorized public purpose to be served.

Applying these criteria, auditors should also remember that the manner in which an expenditure is incurred may be nearly as critical to a determination of legal compliance as the existence of an authorized public purpose to be served by the transaction. Generally, legislative direction as to the manner in which a transaction is to be accomplished precludes any other means of accomplishing the specified result.

For example, if a law specifies that a purchase may be made only after securing written competitive bids, the award of a contract without securing the required bids as a precedent to the award could result in the purchase contract being invalidated. Similarly, the employment of staff and payment of compensation in excess of limits prescribed by law could act to create unauthorized expenditures of public funds.

Auditors must, for the preceding reasons, ascertain through appropriate audit procedures that expenditures within the scope of the audit were incurred solely to serve authorized public purposes and that those expenditures were executed in the manner specified by applicable law and rules. Such determinations require careful research of applicable law and rules.

Goals and Objectives

General - Any compliance audit must consider the goals and objectives of the local government. Compliance requirements are established largely to ensure that local governments are successful in achieving their intended purposes. If the goals and objectives of the administering entities are not harmonious with the objectives expressed in law or regulatory pronouncements, it is quite unlikely that the legally directed goals will be achieved.

Auditors can expect to find the goals of the local government expressed in a number of places, principal among which are:

- Enabling law (county and municipal charters, statutory provisions).
- Budget documents.
- Policy statements.

It may also be desirable to interview the local government's managers to determine entity goals and objectives, as they are perceived by those individuals responsible for their accomplishment.

Financial Audit Objectives - The objectives of the financial audit are those customarily found in other audits but with additional emphasis placed on certain audit factors. Generally, the financial audit objectives are to:

- Express an opinion on whether financial statements are presented in conformity with generally accepted accounting principles.
- Report on the internal control and specific financial compliance requirements.

Although the audit procedures necessary to support the auditor's opinion on the financial statements closely parallel those found in commercial engagements, additional consideration must be given to the requirements for fund accounting including: the impact of differences in applicable principles affecting such matters as revenue recognition, treatment of capital assets, and liabilities to be satisfied from assets to be acquired in future periods; and the effects of budgetary requirements.

These differences constitute a few of the factors differentiating these audits from audits of commercial entities.

Internal Control Considerations - Perhaps more importantly, the auditor must place a significantly greater degree of emphasis on consideration of internal controls. The auditor must gain an understanding of established controls over financial reporting.

Specific Compliance Considerations - An adequate knowledge of the compliance auditing environment for Florida local governments requires the auditor to gain a clear understanding of the nature and operation of local government. It is critical to the audit process that the auditor understands that neither the local governments, nor their elected and appointed officials and employees, possess any inherent powers. That is, unless the subject local government possesses home rule power, it is limited in power to those expressly granted by, or necessarily implied by, law.

This basic principal of law has been affirmed by the courts on repeated occasions (See *Crandon v. Hazlett*, 26 So. d 638 (Fla. 1946) and *White v. Crandon*, 156 So. 303 (Fla. 1934)). The concept of no inherent powers holds true notwithstanding the grant of limited plenary power to counties and municipalities. Those powers represent merely a delegation of powers under the Florida Constitution and authorizing law. They do not represent inherent powers of county agencies and municipalities.

There are several factors, however, which serve to cloud questions affecting the exercise of power by public officials. For example, an authorizing law may direct an officer to accomplish a specific task but may not specify the means by which the task is to be accomplished. Alternatively, although a particular law may address the specific task to be accomplished without defining the authorized methods of accomplishment, other laws may govern the manner in which the task is to be carried out and limit the methods of accomplishment available to the officer charged with responsibility for the specified activity.

Generally, two principles of law will serve to govern the propriety of an official action when the method of accomplishing an activity specifically authorized by law is in question. The first principle is that of

"exclusion" which holds that when a legislative body enumerates, as a matter of law, those methods of accomplishing acts which are authorized, it implicitly prohibits the use of other methods not so enumerated to secure performance of otherwise authorized acts. Thus, when a law specifies the methods by which a particular task may be accomplished, it generally is improper to accomplish the task by other methods (see AGO 78-95, 2004-09, and 2013-06, each employing the principle of statutory construction, "expressio unius est exclusio alterius," the express mention of one exemption implies the exclusion of others.).

Alternatively, in the absence of clear evidence to the contrary, the actions of a public official in construing law are presumed to be valid and will not be lightly overturned (see *Daniel v. Florida State Turnpike Authority*, 213 So.2d 585 (Fla. 1968)). Of course, the public officer must identify the basic authority provided in law for a particular activity when the officer undertakes to make an administrative construction as to how an activity may be accomplished. Presumptions of implied authority are not favored by the courts.

The effect of noncompliance with governing law, whether constitutional, legislative, or regulatory in nature, may be to void the subject transactions and to transfer liability for the action from the public office to the officer approving the transaction. Failure to recognize and report such noncompliance may have significant impact on the entity's financial statements and could constitute a substantial breach of generally accepted auditing standards. Consequently, it is vital to a proper audit of a local government's financial transactions that the auditor be well advised as to applicable law and that all facets of a transaction be considered before the auditor reaches a determination of compliance or noncompliance.

The auditor's responsibility to determine compliance with applicable law, rules, and contracts may be more simply expressed by recognizing the roles of the various parties:

- The task to be accomplished is defined as a provision of law, either generally or specifically, by legislative bodies acting within their constitutional authority.
- Federal, state, or local authorities with oversight authority (such as the Auditor General) may further define the task and the method of accomplishment through duly adopted rules when those authorities are so empowered.
- The officers charged with carrying out the task may choose, from among the authorized methods of accomplishment, how they will execute their responsibilities or, if no particular means of accomplishment are specified, they may exercise reasonable judgment as to the manner of accomplishment.

The auditor will examine the transactions executed by the officers and make two basic determinations:

1. Was the activity specifically authorized by law or was it authorized by necessary implication?
2. Was the manner of accomplishment authorized by law and reasonable in the circumstances?

Failure to find an affirmative response to either of these questions may result in a noncompliance finding. However, the process of conducting an audit is guided by generally accepted auditing standards and generally accepted government auditing standards and not by specific "cookbook" type procedural instructions. Therefore, the auditor's professional judgment is an extremely important element in properly formed compliance determinations.

Rules of the Auditor General

The Auditor General has implemented the provisions of Section 218.39, F.S., by adopting Chapter 10.550, Rules of the Auditor General, which prescribe standards for the auditor's examination of and reports on the financial statements of local governmental entities within the State. These Rules have been adopted by and incorporated within the Rules of the State Board of Accountancy

(Rule 61H1-20.0093). The audit report package must, as required by the Rules of the Auditor General, include:

- A table of contents.
- The auditor's report on the financial statements and report on internal control and compliance based on an audit of the financial statements.
- The auditor's report based on an examination conducted in accordance with the American Institute of Certified Public Accountant (AICPA)'s *Professional Standards*, AT-C §315, regarding certain compliance requirements.
- A management letter as defined by Section 10.554(1)(i), Rules of the Auditor General.
- The financial statements reported on, together with related notes to the financial statements and any required supplementary information.
- A written statement of explanation or rebuttal by the audited local government concerning the auditor's findings and recommendations, including corrective action to be taken.
- Any other auditor's reports, related financial information, and auditee prepared documents required pursuant to Uniform Guidance, the *Florida Single Audit Act*, and other applicable Federal and State law.

Compliance Concepts

As previously noted, Section 218.39, F.S., requires a financial and compliance audit of each county and county agency (except that a separate audit of the board of county commissioners is optional), as well as municipalities and special districts meeting specified criteria. An independent certified public accountant engaged to conduct an audit of a local governmental entity in accordance with Section 218.39, F.S., must include procedures in the audit designed to detect and report noncompliance with laws and regulations.

The concept of "compliance auditing" is certainly not a new concept. However, it has been typically understood to mean testing of the established control policies and procedures as a basis for reliance thereon rather than for determining whether an entity, its officers, and employees complied with governing law. While such tests of controls are appropriate and necessary in a governmental environment, compliance testing must also include procedures to determine whether the organization is complying with the provisions of laws and regulations, as well as loan, contractual grant, or other assistance agreements.

The objectives of testing compliance with laws and regulations are to:

- Determine whether there have been events of noncompliance that may have a material effect on the organization's financial statements or the allowability of program expenditures as defined by applicable laws and rules, including those applicable to each of its major financial assistance programs.
- Determine whether the organization has established appropriate internal controls to achieve compliance.
- Provide a basis for reporting on the organization's compliance with such laws and regulations.

Compliance Auditing Standards

Audits of local governments are subject to all of the generally accepted auditing standards applicable to governmental engagements including, but not limited to, the so called "expectation standards." In Florida, as specified by Chapter 10.550, Rules of the Auditor General, all audits of local governmental entities (as defined in Section 218.31(1), F.S.) are to be made in accordance with generally accepted

government auditing standards, as amended. Additionally, as discussed in more detail under the heading **Audit Scope and Reports**, auditors conducting audits of local governmental entities pursuant to Section 218.39, F.S., are required to determine the audited entity's compliance with certain statutory provisions and Chapter 10.550, Rules of the Auditor General, requires that such determinations be accomplished by an examination pursuant to *AICPA Professional Standards*, AT-C §315.

A potential cause of deficiencies in audit reports of governmental entities would be a lack of understanding of the control environment, which, in many respects, is unique to these organizations. Another is the failure to identify, through appropriate auditing procedures, instances of noncompliance with laws and other guidelines that may have a material effect on the financial statements.

In financial statement audits, the discovery of noncompliance with laws or regulations having a direct and material effect on the financial statements typically results from tests performed in areas related to financial matters. However, such audits may also disclose noncompliance with laws or regulations not having a direct and material effect on the financial statements.

Although not applicable to local governmental entity audits conducted in accordance with Section 218.39, F.S., and Chapter 10.550, Rules of the Auditor General, AU-C §935 establishes standards and provides guidance on performing and reporting (in accordance with generally accepted auditing standards and *Government Auditing Standards*, and a governmental audit requirement that requires an auditor to express an opinion on compliance) on an audit of an entity's compliance with applicable compliance requirements. It requires the auditor to adapt and apply the AU-C sections of *AICPA Professional Standards* to a compliance audit, defines terms related to compliance audits and used in the SAS, and identifies the elements to be included in an auditor's report on a compliance audit. In addition, AU-C §935 includes an appendix that identifies AU-C sections that are not applicable to a compliance audit. Some notable auditing standards that apply to compliance audits and are incorporated by reference into AU-C §935 by reference include:

- AU-C §240, "Consideration of Fraud in a Financial Statement Audit," establishes standards and provides guidance to auditors in fulfilling the responsibility for planning and performing an audit of financial statements to obtain reasonable assurance about whether the financial statements are free of material misstatement caused by fraud.³
- AU-C §260 and 265 provide guidance in identifying and evaluating control deficiencies during an audit, and then communicating any significant deficiencies or material weaknesses to management and those charged with governance.
- AU-C §300 through 499, referred to as the "Risk Assessment and Response to Assessed Risk," are intended to provide guidance on the auditor's assessment of the risks of material misstatement in a financial statement audit and the design and performance of audit procedures responsive to the assessed risks.⁴
- AU-C §520, "Analytical Procedures," provides guidance that must be considered in the planning and overall review phases of the audit.

Generally Accepted Accounting Principles

For audits conducted in accordance with Section 218.39, and Chapter 10.550, Rules of the Auditor General, the auditor must report on whether the financial statements are presented in accordance with generally accepted accounting principles.

Those requirements, which on their surface seem reasonably straightforward and uncomplicated, actually pose complex questions as to actions required of the preparer of the statements and of the

³ AU-C §240 paragraphs .26 and .32b do not apply to compliance audits.

⁴ Certain portions of AU-C §315 and 330 do not apply to compliance audits.

auditor. In large part, these questions arise because of the tremendous increase in the number of principles promulgated to govern governmental accounting and financial reporting.

It is not the purpose of this Practice Aid to explore all of the matters affecting the preparation or audit of the required financial statements. However, the nature of the applicable accounting principles as well as the identification of the governmental activities to be included within the required statements must be addressed before the statements can be properly prepared or audited. Key questions affecting both the preparer and the auditor, which must be answered before the statements can be prepared or properly audited, are:

- What body of principles constitutes the generally accepted accounting principles referred to in Chapter 10.550, Rules of the Auditor General?
- What activities and functions constitute the financial scope of the entity to be included in the required financial statements?

Pursuant to the rule making authority contained in Section 11.45, F.S., the Auditor General, in consultation with the State Board of Accountancy, has separately promulgated rules governing audits of local governments which, in part, define generally accepted accounting principles (GAAP) as those generally accepted accounting principles as defined by the GASB *Codification of Governmental Accounting and Financial Reporting Standards*, Section 1000, applicable to state and local governments (Section 10.554(1)(g), Rules of the Auditor General). Therefore, it would be unacceptable for local governments required to have a financial audit pursuant to Section 218.39, F.S., to prepare financial statements on an “other comprehensive basis of accounting.” It is likely that statements prepared on a basis other than GAAP would be rejected by agencies with oversight authority.

Section 218.33, F.S., requires that each local government follow uniform accounting practices and procedures as promulgated by rules by the Florida Department of Financial Services to assure the use of proper accounting and fiscal management. The rules are required to include a uniform classification of accounts. Accordingly, the Department has published a Uniform Accounting System Manual for local governments. The Manual can be found on the Department’s Web site at https://myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/localgov/2021-2022-uas-manual.pdf?sfvrsn=7359c98f_2 and should be used by local governments as an integral part of their accounting systems and financial reports.

The Audit Entity

Defining the Entity - The proper definition of the reporting entity is essential to a fair and complete presentation of a local government's financial operations and a determination of applicable laws and compliance requirements. If the audit entity is not properly defined, required compliance tests may not be included in the scope of the audit, internal controls may not be adequately considered when the audit scope is established, and the omission of component unit operations may result in an incomplete presentation of financial data.

In addition to the obvious governmental activities carried out directly by management, other government functions may be carried out by related boards, districts, and consortiums. These separate organizations may take many forms. They may constitute autonomous organizations charged with carrying out governmental functions in the capacity of trustees; they may constitute quasi-independent authorities operating enterprise type functions; or they may be activities affecting only a portion of a county or municipality and organized as a special district. These component units may be created by general law, special act of the Legislature, local ordinance, inter-local agreements, or court orders.

Conversely, auditors should, in gaining an understanding of the local government to be audited, be aware that a number of organizations possessing the general characteristics of governmental entities do not meet the requirements established in law for identification as governmental entities.

Consequently, the authority of those organizations to carry out various duties and the limitations on the manner in which various transactions may be accomplished can vary significantly from those of governmental entities, notwithstanding that they may be subject to similar compliance requirements governing the receipt of public moneys.

Examples of such organizations may include:

- Hospitals and other health care facilities operating as not-for-profit corporations.
- Certain housing authorities.
- Various private organizations financed in whole or in part by government grants.

GASB Statement 14 - The Financial Reporting Entity, as amended by GASB Statements 34, 39, 61, 80, 90, and 97 requires that the financial statements of general-purpose governments include the financial operations of qualifying related governmental functions within a single comprehensive financial reporting structure. Component units of a general-purpose government should be reported within the financial statements of that governmental entity, notwithstanding that the financial activities of component units may also be separately reported and audited. The practitioner should give careful consideration to the requirements of Statement 14 (as amended) when determining whether to include or exclude a special district, or other potential component unit, related to the operations of a Florida county agency or municipality.

Chapter 10.550, Rules of the Auditor General, requires certain disclosures regarding the reporting entity. Rule 10.554(1)(i)4. states that the auditor's management letter shall include the name or official title and legal authority for the primary government and each component unit of the reporting entity as defined in publications cited in Rule 10.553 unless disclosed in the notes to the financial statements.

The Auditor General has placed particular emphasis on the proper reporting of component unit financial activities as it impacts the determination of whether dependent special districts have provided for a financial audit pursuant to Section 218.39(3)(a), F.S. When local governmental entities are units of local general-purpose government as defined in Section 218.31(2), F.S., financial statement preparers and auditors must give special consideration to the impact of special districts and other units of special purpose government operating within the geographic boundaries of the local general-purpose governmental entities.

Section 189.012(2), F.S., defines a dependent special district as a special district that meets at least one of the following criteria:

- (a) The membership of the governing body is identical to that of the governing body of a single county or a single municipality.
- (b) All members of its governing body are appointed by the governing body of a single county or a single municipality.
- (c) During their unexpired terms, members of the district's governing body are subject to removal at will by the governing body of a single county or a single municipality.
- (d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

Section 189.061, F.S., provides that the Florida Department of Economic Opportunity shall maintain an official list of special districts. The official list of special districts, which is located on the Department's Web site at <http://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts>, identifies dependent and independent special districts.

The criteria for dependency, as set forth in Section 189.012(2), F.S., closely parallel the component unit criteria set forth in GAAP; however, a special district may meet the statutory definition of a dependent district but not meet the GAAP definition of a component unit. Special districts meeting

the criteria for dependency status set forth in Section 189.012(2), F.S., should generally be considered as potential component units of either the county or municipal governmental entities within whose boundaries they exist unless persuasive evidence to the contrary is presented. Of course, the inclusion of a special district in the financial statements of a county or municipality requires that the special district make available to the county or municipality the financial information necessary for such inclusion. If the special district does not provide the required financial information, the auditor of the county or municipality is required to, in addition to modifying the scope and opinion as necessary, note such failure in the management letter (Section 218.39(3)(b), F.S, and Section 10.554(1)(i)5.c., Rules of the Auditor General). Any questions regarding the status of a special district as dependent or independent can be resolved by inquiry to the Florida Department of Economic Opportunity's Special District Accountability Program.

Techniques for properly ascertaining the component units to be included within the scope of the local government audit include researching the applicable laws to determine whether various organizations are related to county agencies or municipalities by:

- A general law of the State.
- A specific act of the Legislature applicable only to that entity.
- Intergovernmental agreements.
- The Florida Department of Economic Opportunity.

Assistance regarding the status of potential component units can also be obtained through inquiry to the Auditor General (phone: 850-412-2864; email: flaudgen_localgovt@aud.state.fl.us).

Great care must be exercised in defining the nature of component units and auditors may need to conduct extensive research of laws, ordinances, and contractual relationships to determine the nature and authority of local organizations appearing to exercise governmental responsibilities.

The judgment of the audited officials notwithstanding, it is the auditor's responsibility under Florida law to determine, for purposes of formulating the reports, whether the county or municipality has complied with the express requirements concerning the inclusion or exclusion of a subordinate governmental entity's financial operations in its audited financial statements.

COMPLIANCE REQUIREMENTS

Identifying Compliance Requirements

Responsibility for Identifying Compliance Requirements - The primary responsibility for identifying compliance requirements within the scope of the audit rests with the auditee and the auditee's representations in this respect must be obtained. Notwithstanding the responsibility of the local governments to identify applicable compliance requirements, the auditor must have sufficient knowledge to verify that management representations are accurate and fully identify compliance requirements within the scope of the audit. The failure by management to identify compliance requirements may well indicate that it is unaware of their existence and, as a result, has not properly administered the public money entrusted to its care.

Florida law places a responsibility on the auditor to identify and report on instances of noncompliance coming to the auditor's attention within the scope of the audit. Accordingly, the auditor should become familiar with the laws, regulations, and other forms of compliance requirements affecting a local government and the manner in which they influence the government's financial operations. The auditor should also be aware that there might be areas of compliance that cannot be quantified in terms of dollars, thus frequently making customary measures of materiality inapplicable.

Many compliance requirements are imbedded, or necessarily implied, in the laws requiring financial and financial related (compliance) audits of governmental agencies and programs. Similarly, such requirements may be included in laws governing the operations of not-for-profit organizations supported in whole or in part by government grants. Additionally, various governmental agencies with oversight and review authority for governmental audits may have adopted rules affecting the scope of governmental audits.

Basis of Legal Authority - Plenary Powers

The general rule is that local governments have only such authority as is affirmatively granted in law. Therefore, a determination must be made as to the extent of authority granted to the entity. Some entities are authorized only to act upon specific and limited authority, while others have been granted broad plenary powers that are commonly known as home rule powers. Further, some entities have received extremely broad grants of power, that fall short of home rule authority. This determination requires a careful analysis of all applicable laws relating to a particular governmental entity. Applicable law may include state constitutional provisions, state general law, special acts, court opinions, etc. When an entity has a specific grant of home rule powers, as in the case of counties and municipalities, the rule is generally that the governing board may exercise any powers for its governmental purpose except as is limited or prohibited by general law. In such cases, the governing board is presumed to have the authority to act unless a specific statute either restricts or prohibits certain actions or specifically outlines a particular method or manner of procedure to be followed. However, directions in general law as to the method of carrying out a specific duty, generally act to prohibit any other method. In either case, the governing board must comply with the specific statutory provision. Following are several sources that provide a familiarity with the concept of home rule powers: Attorney General Opinion 93-23; *State v. City of Sunrise*, 354 So.2d 1206 (Fla. 1978); *Speer v. Olson*, 367 So.2d 207 (Fla. 1979); *Miami v. Roccia*, 404 So.2d 1066 (Fla. 3rd DCA 1981); and *Rinzler v. Carson*, 263 So.2d 668 (Fla. 1972).

Special districts may be created and controlled by general law (found in the Florida Statutes) or special or local acts (found in the Laws of Florida) or both. Generally, special districts do not have the home rule powers possessed by counties and municipalities. While a general law found in the Florida Statutes may be applicable to all special districts of the same type, the general law may be superseded with respect to a particular special district by a special act or local law. Special districts have often been established to accomplish limited purposes. Hence, their powers and duties tend to be much narrower than those of counties or municipalities and may vary between similar types of special districts. Particular attention must be given to the law or other act that created a special district.

One constitutional principle applicable to all governmental entities is that they must expend their public funds solely for the support of the purposes of that particular entity. Other governmental or public entities or private parties may benefit from the expenditure of public funds, but this benefit must be incidental to the direct benefit of the expending authority. Further information on this subject is included in AGO 84-95 and *O'Neill v. Burns*, 198 So.2d 1 (Fla. 1967).

Enabling Legislation

The powers, duties, and geographic jurisdiction of the local government to be audited are found in authorizing law. Regardless of the nature of the audited entity, the powers and duties prescribed by law for the operation of the entity must be determined.

Effects of Exercise of Powers

The exercise of power by public officials is evidenced by the performance of acts that may have direct and measurable effects on the public resources entrusted to those public officials. However, even those official acts that have no direct and measurable impact on the management of public funds may result in the creation of liabilities with subsequent impact on public funding. Consequently, the auditor, when engaged in the conduct of a financial audit pursuant to Section 218.39, F.S., must be aware of, and consider, the effect of such actions taken by public officials.

Limitations of Exercise of Powers

As previously noted, governmental powers relate both to the substance of transactions and to the manner in which they may be carried out. The powers granted to public officials will customarily address such matters as the:

- Manner of appointing executive officers.
- Terms of office for officials.
- Power to raise revenues of various types.
- Contractual powers granted the governing authority.
- Power to borrow money.
- Power to do those other things necessary to implement the government's authorized purposes.

Each of these grants of specific power is tempered by limitations on the manner in which the power may be exercised.

As a consequence of these limitations on the exercise of power, the auditor must determine the answer to the following two basic questions when examining the evidence of any action by a public official:

1. Was the particular action (transaction) in furtherance of an authorized function, as specifically enumerated in law, of the governmental entity; and,
2. Was the action accomplished in the manner specifically authorized by law?

The importance of these fundamental questions to a determination of compliance with laws and regulatory pronouncements requires that the auditor gain a least a basic understanding of the hierarchy of law and the impact of law on the audit process as applied to local governments.

Hierarchy of Laws

The general structure of law affecting Florida governmental entities may be characterized as follows:

- The Florida Constitution.

- Laws of Florida.
- Florida Statutes.
- Administrative Rules and Regulations.
- Ordinances.
- Resolutions.

The auditor should be thoroughly familiar with applicable material cited in these references before attempting a local government audit in Florida.

As noted in the preceding tabulation, the Laws of Florida are cited as preceding Florida Statutes in the legal hierarchy. This is because the Laws of Florida may be of general or multi-jurisdictional application; they may be of limited application involving only a single political jurisdiction such as an individual county agency or officer; or they may address matters of a temporary nature. Only laws of general or statewide application are codified into the Florida Statutes. Laws of limited application and, frequently, laws of temporary impact are omitted from the statutory codification. Similarly, although county ordinances are required to be codified by county, there is no general or statewide codification of such laws. While municipalities are not required to codify their ordinances, many have done so.

Because not all laws and ordinances are codified for effective and convenient reference, it would be misleading to cite particular provisions of law as being universally controlling regarding particular powers of public officers or particular groups or types of transactions. Special legislative acts, interpretations by courts of competent jurisdiction, long standing constructions of law by public officials, and opinions issued by the Attorney General may all serve to modify the application of particular legal provisions.

The principal effect of the several sources of law on the audit engagement is that the auditor must expend considerable effort searching multiple legal references to identify the body of law applicable to the audited entity. Although it would be quite helpful to have a compiled legal reference encompassing all laws applicable to all phases of a local government audit, it is not within the realm of practicality to compile such a document. Accordingly, the scope of this Practice Aid is limited to examples and discussion of those laws of general application, as codified in the 2021 Florida Statutes, which appear germane to a basic compliance audit of local governments.

Research of Compliance Criteria

A. Florida Constitution

The Florida Constitution can be accessed at www.leg.state.fl.us/constitution.

B. Session Laws/Laws of Florida

Session Laws are published under the direction of the Office of Legislative Services' Division of Law Revision and Information following each session of the Legislature in hardbound volumes titled Laws of Florida. The publication includes general and local laws as enacted and resolutions as adopted. The laws published in the Laws of Florida have not been edited or compiled. A full publication of the session laws starting with 1997 is available at <http://laws.flrules.org/>.

C. Index to Special and Local Laws

Special and local laws are included under in the hardbound volumes titled Laws of Florida. Special and local laws enacted before 1971 are indexed in the *Special and Local Laws Index 1845 - 1970* (available on the Florida Department of State, Division of Library and Information Services, Web site at <https://dos.myflorida.com/library-archives/research/florida-information/legal-resources/florida->

[laws-and-regulations](#)). An index of special and local laws enacted subsequent to 1970 is reissued and updated annually to incorporate such laws enacted during the prior year and can be obtained by ordering online at <https://flalegstore.com> (see “Indexes and Tables”). The preface to the index contains detailed instructions for use and should be consulted prior to use.

D. Florida Statutes

The Florida Statutes are also published under the direction of the Office of Legislative Services’ Division of Law Revision and Information. They are published following legislative sessions annually. A full publication of the statutes is available at www.leg.state.fl.us/statutes.

The Preface contained in each hardbound volume of the Florida Statutes provides a thumbnail sketch of the continuous revision system of the Florida Statutes, the annual adoption of the Florida Statutes, and the editor’s construction of acts enacted during the same session of the Legislature. It also discusses the arrangement of chapters and titles, the numbering system; makes suggestions as to finding the law within the statutes; comments on history notes; provides guidance regarding cross-references; and directs attention to tables of section changes, tracing tables, tables of repealed and transferred sections, and miscellaneous materials.

E. Florida Statutes Annotated

Further information about a particular statutory provision may be acquired from the *Florida Statutes Annotated*, a compilation of the general acts of Florida, published by West Publishing Company, which is updated annually by a cumulative pocket part. These volumes are a valuable source of information concerning Florida law and contain detailed historical notes, cross-references to related laws, annotations to state and federal court cases construing the law, opinions of the Attorney General, and an extensive index. The *Florida Statutes Annotated* can be obtained by ordering online at <https://legal.thomsonreuters.com/en/products/law-books>.

F. Florida Administrative Code

The Florida Administrative Code is a compilation of the rules adopted by state agencies. The code is published and continuously updated by the Florida Department of State. The rules include descriptions of each agency’s organization, practices, and procedures, including a listing of the agency’s forms and instructions. The Florida Administrative Code can be found on the Florida Department of State Web site at www.flrules.org.

G. Rules of the Auditor General

These Rules are intended to implement, interpret, or make specific, certain statutory provisions that are within the authority of the Auditor General. Rules of the Auditor General, together with other audit-related guidance, applicable to local governmental entities are available on the Auditor General’s Web site at <https://flauditor.gov/pages/rules.html>.

H. Attorney General Opinions

Additional aid in interpreting Florida Statutes may be found in the Attorney General’s official opinions on questions of law. Although the opinions of the Attorney General do not have the weight of law, they are highly persuasive and should be consulted by the auditor when attempting to interpret Florida law. The Attorney General has a searchable database of all opinions since 1971 at www.myfloridalegal.com/opinions.

I. Codification of County Ordinances

All counties must maintain a current codification of all county ordinances (Section 125.68, F.S.). The Municipal Code Corporation in Tallahassee contracts with and publishes a codification of many of the

counties' ordinances. Many codifications of county ordinances can be found on the Municipal Code Corporation's Web site at www.municode.com (see "CODE LIBRARY").

J. Municipal Ordinances

There is no statute requiring codification of municipal ordinances, but it is provided by statute that every municipal ordinance shall, upon final passage, be recorded in a book kept for that purpose (Section 166.041(5), F.S.). Many municipal codifications can be found on the Municipal Code Corporation's Web site at www.municode.com (see "CODE LIBRARY").

K. Contractual Obligations

Generally, governments are subject to various compliance requirements as a result of debt issuances, grants, intergovernmental agreements and similar contractual arrangements. Care must be taken to become knowledgeable of these compliance requirements in order to test compliance as appropriate.

A review of applicable parts of the foregoing material prior to and during the compliance phase of the audit is essential. A review of other specialized and general legal publications dealing with state law and local government law may also be necessary. The State Constitution, Laws of Florida, and Florida Statutes can be found on the Florida Legislature's "Online Sunshine" Web site at www.leg.state.fl.us.

General Discussion Regarding Interpretation of Law

Obviously, the number of laws, regulations, or ordinances bearing on a particular local government audit is vast. From the above, it is clear the legal environment pertaining to such audits bear on financial and regulatory matters that differ in scope and applicability from government to government. Further complicating the task is that real-world application of a structure based only on text often requires interpretation.

In some cases, a law, regulation, or ordinance at issue may have been interpreted by the governmental entity administering the law, regulation, or ordinance, the Attorney General or the courts. If interpreted by the entity administering the law, regulation, or ordinance, the interpretation may have been done in a formal sense through the adoption of rules, ordinances, orders, or resolutions, or it may have been done informally by course of conduct.

In the hierarchy of interpretative analysis, an opinion of a court of competent jurisdiction is the primary resource. All judicial power of the State is vested in the Supreme Court, District Courts of Appeal, Circuit Courts and County Courts. It is the function of the courts to interpret and enforce the law by rendering decisions in cases properly submitted. Consequently, case law interpreting provisions of the Florida Constitution, Laws of Florida, Florida Statutes, rules, ordinances, resolutions or other applicable provisions of laws must be first considered in determining the meaning of applicable provisions of law.

Often, however, questions of interpretation that may be of importance to local governments, and their auditors, do not sustain judicial review. In such cases, Section 16.01(3), F.S., authorizes the Attorney General, upon written request, to "give an official opinion and legal advice in writing on any question of law relating to the official duties of the *requesting officer*." (e.s.) The specified requesting officer may be, among others, an officer of a county, municipality, other local government or political subdivision of the State. Attorney General Opinions may either be "formal" opinions that are circulated generally and are compiled and published, or "informal" or "letter" opinions that are not circulated generally and which are not compiled or published but are generally public records. While an Attorney General Opinion is not legally binding, it is persuasive in the absence of a determination by the courts. Attorney General Opinions can be found on the Attorney General's Web site at www.myfloridalegal.com/opinions.

In the absence of a specific rule duly adopted in accordance with the provisions of Section 120.54, F.S., or other formal interpretation of legislative intent, the auditor must evaluate the auditee's

interpretation of laws administered by the auditee. Auditors must bear in mind that an agency, or local government, is entitled to great deference in the administration of the laws with which it is charged unless its interpretation is clearly erroneous. *Daniel v. Florida State Turnpike Authority*, 213 So. 2d 585, (Fla.1968).

The interpretation of law is an art and frequently requires more than a simple reading of the language of a particular provision. The first step in the interpretation of a statute is to attempt to apply its plain meaning. If this does not resolve an issue, it is necessary to ascertain legislative intent, but this is often an area where differing, but reasonable, conclusions can be reached by interpreters. In such cases, the auditor must possess the competency to apply the legal rules of statutory interpretation (which are numerous, complex, and frequently based on arcane Latin phrases). If the auditor's level of competency is insufficient to make the interpretation or evaluation or the auditor prefers not to assume total responsibility for these determinations, the auditor should seek the advice of ***another professional responsible only to the auditor*** who has the competence and willingness to assume this responsibility, i.e., the ***auditor's own legal counsel***. There will be instances in which the auditor may not be able to conclusively determine whether or not a local governmental entity has complied with a particular provision of law, in which case the auditor should consider recommending that the audited entity seek legal clarification regarding the matter.

Effect of Laws on Audit

It is not the intent of this Practice Aid to suggest that the auditor should engage in the practice of law in connection with the audit of a local government; however, the auditor should be aware of the general principles of law governing the operation of the local government. If in doubt as to the application of particular principles of law or the impact of legislative direction, the auditor should seek competent legal guidance in forming opinions and comments. In this respect, the auditor should understand that questions of compliance must be determined with respect to the facts applicable to each transaction.

General Compliance Categories - Audits are, by their very nature, transaction driven. Therefore, it is convenient to address examples of transactions by grouping them into types of transactions normally subjected to audit scrutiny during a compliance audit. While the following classifications are not intended to address all situations encountered during a compliance audit of a local government, they should prove useful as examples of how the limitations imposed by law on the conduct of public affairs affect the audit process.

General Authority - In Florida, every sanctioned action by a public official must be based on specific or necessarily implied authority in law. Further, the public officials taking the action must identify the basis for the action in their public records. Before the auditor can begin to address the financial transactions in a local government audit, the auditor must acquaint himself with a number of factors about the local government that would not necessarily be audit concerns in a private sector audit.

Examples of laws addressing such matters include:

S. 1.01	Definitions (of statutory terms)
Ch. 50	Legal and official advertisements
Ch. 163	Intergovernmental programs
S. 218.33	Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures
S. 218.39	Financial audit reports

Accountability of Public Officers - Similarly, laws relating to the basic principle that the responsibility for justifying the propriety of official actions taken by public officials rests with those officials are exemplified by the following laws imposing accountability requirements on the public officials:

S. 11.47	Penalties; failure to make a proper audit or examination; making a false report; failure to produce documents or information
S. 17.041	County and district accounts and claims
S. 116.07 - .08	Account books to be furnished by county commissioners, kept by sheriffs and clerks
S. 116.34	Facsimile signatures
Ch. 119	Public records
S. 218.30 - .391	Local financial management and reporting
S. 218.33	Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures
Ch. 274	Tangible personal property owned by local governments

Duties and Compensation - Many laws affect the authority of public officers to serve, to perform the duties of their respective offices, and to be compensated for their efforts. As a general rule, a public officer may not be compensated for performing a specified service unless the officer can point to express authority for the compensation; however, the absence of authority for compensation for performing a particular act does not relieve the officer of responsibility to carry out the specified duty. Even though the officer can point to authority for personal compensation, that compensation may be limited by law in amount and be predicated upon the fulfillment of conditions precedent to such payment.

Examples of laws governing local government officials' conduct and compensation include:

S. 112.311 - .3261	Code of ethics for public officers and employees
S. 112.40 - .52	Suspension, removal, or retirement of public officers
Ch. 145	Compensation of county officials

Deputies and Employees - The duties imposed on public officers by law are personal to the officer unless powers are granted to the officer to appoint deputies or assistants to carry out all or a portion of the assigned duties. Authority to employ deputies and assistants is usually found in those provisions of law addressing the responsibilities of particular officers. Generally, deputies are empowered to carry out all duties assigned to the officer and possess all powers except the power to appoint deputies. Other employees may also be authorized to assist the officer.

The conditions of employment, benefits accruing to the deputy or other employee, conditions of work, and other factors affecting their employment are frequently the subject of specific pronouncements of law.

Although far too numerous and complex to list in detail, examples of such laws include:

S. 112.042 - .044	Discrimination in employment
S. 112.08 - .153	Group insurance
S. 112.171	Employee wage deductions
S. 112.175	Employee wages; withholding to repay educational loan
S. 112.21 - .215	Tax-sheltered annuities or custodial accounts and deferred compensation program for government employees
S. 112.60 - .67	Actuarial soundness of retirement systems
Ch. 115	Leaves of absence to officials and employees
Ch. 121	Florida Retirement System
Ch. 122	State and County Officers and Employees Retirement System
Ch. 440	Workers' compensation
Ch. 650	Social security for public employees

Public Moneys - Local governments are granted specific powers to raise revenues for their operations and various local government officials collect moneys as agents for other governmental entities, both state and local. Although these powers to raise and collect revenues are extensive, they are closely regulated in law. Generally, revenues collected by officers of local governments may be classified in

the broad categories of taxes, grants-in-aid, special assessments, impact fees, and user fees. Additionally, several local government officials are charged with the collection and subsequent disbursement of funds in a fiduciary capacity.

Careful distinctions should be made by the auditor as to which type of revenue is involved when examining particular categories of such transactions. Important procedural differences exist between the categories as to the authority for the levy and collection of such revenue and the courts have held that laws authorizing the levy and collection of revenues are to be strictly construed.

Because the power to levy taxes and special assessments within the scope of a local government audit is primarily reserved for the local government's governing body, the effect of laws governing taxation is addressed in the sections of this Practice Aid pertaining to the various types of local governments. However, regardless of the legislative authority to raise revenues, certain laws address the manner and places of collection, the recording of collections, the deposit and investment of collections, and the subsequent use of the collections, including distribution of such collections to particular governmental entities.

Examples of laws affecting such functions include:

- | | |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| S. 17.041 | County and district accounts and claims |
| S. 215.322 | Acceptance of credit cards, charge cards, debit cards, or electronic funds transfers by state agencies, units of local government, and the judicial branch |
| S. 218.415 | Local government investment policies |
| Ch. 280 | Security for public deposits |

Budget Required - While each local government is required by the Florida Statutes to adopt an annual operating budget, the form of such budgets and the methods of adoption and amendment vary according to the type of local government. Boards of county commissioners and other county constitutional officers have very detailed requirements in law for budget adoption, amendment, and compliance, while municipalities and special districts have minimal budget requirements in Florida law. At a minimum, the adopted budget for all local governments must show for each fund budgeted revenues and expenditures by organizational unit that are at least at the level of detail required for the annual financial report under Section 218.32(1), F.S. Additionally, local governments are required to post tentative and final budgets, as well as certain budget amendments, on their official Web sites⁵ within 2 and 30 days, respectively.

Disbursement of Public Moneys - General principles of law governing the use of public moneys include the requirements that expenditures be made solely to advance the authorized public purposes of the governmental entity, that they be necessary to carry out those authorized public purposes, and that they be reasonable in the circumstances. Additionally, specific provisions of law may govern the method of procurement of goods and services, the timing of payments, the required documentation of disbursements and expenditures, and the required levels of authorization. Although many laws governing these matters are specifically directed to individual governmental entities, other laws are general in their application and apply to many, if not all, local governments.

Examples of such general laws include:

- | | |
|------------|------------------------------------------------------------------------------------------------------------------------|
| S. 112.061 | Per diem and travel expenses of public officers, employees, and authorized persons; statewide travel management system |
| S. 215.425 | Extra compensation claims prohibited; bonuses; severance pay |

⁵ If a municipality does not operate an official Web site, it must transmit its tentative or final budget, and certain budget amendments, to the manager or administrator of the county in which the municipality is located for posting on the county's Web site (see Sections 166.241(3) and (8), F.S.). The proposed budget of a dependent special district must be contained within the general budget of the local governing authority to which it is dependent and be clearly stated as the budget of the dependent district or, with the concurrence of the local governing authority, a dependent district may be budgeted separately (see Section 189.016(5), F.S.).

S. 215.43 - .431 Issuance of public bonds, notes, and other securities
S. 218.70 - .80 Local Government Prompt Payment Act

Other Matters - In addition to the examples noted in the preceding paragraphs, other provisions of law are included in the Florida Statutes that may impact the conduct of a local government financial audit.

Examples include:

S. 286.011 Public meetings and records; public inspection; criminal and civil penalties
Ch. 705 Lost or abandoned property
Ch. 717 Disposition of unclaimed property

The preceding examples are exemplary of the diversity and complexity of general laws affecting the operations of local government in Florida. In addition to the examples cited, there are several general laws addressing the basis for and manner of execution of particular transactions. Additionally, general law contains many exceptions that permit the general rule expressed in those laws to be amended or succeeded by laws of local application. For example, Sections 112.061(14) and 166.021(9)(b), F.S., include provisions that authorize local governments to enact ordinances or resolutions to amend or replace some or all of the travel and per diem expense requirements included in Section 112.061, F.S. Further, it will frequently be difficult to properly identify the nature of particular transactions without extended research and, as a result, it may be difficult to determine which law or laws are controlling in respect to such transactions.

Laws of Local Application

In addition to general direction as to the form and authority of local government contained in the Florida Constitution and the authority and direction afforded by laws of general application, codified as the Florida Statutes, several other sources of law must be considered when determining the scope and conduct of a local government audit.

To clearly understand the impact of these additional sources of law, the auditor should be aware of the legislative process governing the formulation of laws affecting local governments. The effects of session laws with general statewide impact has been described earlier; however, other session laws included in the Laws of Florida, but not codified in the Florida Statutes, must be considered when planning and executing an audit of a local government.

Special Acts - During each session of the Legislature, bills are passed that affect governmental entities of less than statewide jurisdiction. These laws are called "Special Acts" and the subject matter of these laws may be either original or amendatory in nature. They may address purposes and subjects not addressed in the laws codified in the Florida Statutes or they may act to amend the requirements of general law as to particular acts or jurisdictions. Since they are usually more specific as to the subject matter addressed, they usually control the conduct of the specific functions addressed.

These laws remain in full force and effect, subject only to the terms of any predetermined expiration dates within the laws themselves, until repealed or amended by subsequent legislation. If amended by subsequent legislation, any portion of the original enactment not addressed by the amendatory legislation will continue in full force and effect.

Amendatory legislation may take the form of special acts or may be addressed in general law. One example of such changes would be a special act redefining the competitive bidding dollar thresholds of the original special act creating a dependent special district. The cited provisions of the earlier law would be amended, but all other provisions of the earlier special act would remain in full force and effect. Another example would be the full repeal of all special acts affecting county officers' compensation, except those specially exempted, as is provided in Section 145.131, F.S.

All special acts remain in full force and effect until repealed or amended and subsequent amendatory acts may affect only one or a few sections of an earlier law. Because multiple amendments may be made to a particular special act over a period of several years, it is necessary when planning and performing a local government audit to trace the current status of all special acts affecting the local government, from the creation of the governmental entity to the end of the audit period, and sometimes beyond.

Florida Administrative Rules - Several officials within the scope of a local government audit perform functions subject to rules adopted by state agencies pursuant to the provisions of Chapter 120, F.S. Examples include the clerk of the circuit court in relation to the collection of documentary stamp taxes, the property appraiser in relation to financial and appraisal practices, the tax collector, and the supervisor of elections.

Additionally, local governmental entities within the definition of "Agency" per Section 120.52(1), F.S., may be subject to the provisions of Chapter 120, F.S., when adopting rules governing their operations. Such rules, when properly adopted, have the force of law. An adopted rule is presumptively valid unless overturned by a court of competent jurisdiction.

The determination of whether or not a particular local government official is subject to rules promulgated by other agencies will depend on a proper identification of the functions assigned to that official and the proper identification of the provisions of law governing that particular function. Once it is determined that the official is charged with a function subject to oversight and control by an agency with rule making powers, the auditor should review the rules promulgated by that agency.

Applicable rules may be codified in the Florida Administrative Code or, if promulgated by a local government, may be filed with that local government. Although the primary responsibility to identify compliance requirements applicable to particular functions or transactions rests with the audited local government, the auditor has a responsibility to make reasonable inquiries and searches to verify the completeness of those representations.

Ordinances - Another type of law affecting county and municipal government are ordinances that are enacted under the general authority provided by Article VIII of the Florida Constitution and the implementing provisions of general state law. They may consist of "laws of local application," also known as "population acts," passed by the Legislature prior to 1971 and converted to local rules or ordinances under the provisions of Chapter 71-29, Laws of Florida, or they may be local ordinances enacted or amended by the governing board of the county or municipality. Ordinances may address a multitude of subjects germane to county or municipal government including taxation, law enforcement, expenditures, and personnel matters, to mention a few. The scope of their application will vary greatly depending on the form of government, whether charter or non-charter for counties, and upon the provisions of various special acts affecting the county or municipality. Ordinances are presumed to be valid enactments of law unless found to be otherwise by the courts.

As required by Section 125.68, F.S., most county ordinances are to be codified by individual counties. Compilations of, or references to, ordinances currently in force should be readily available to the auditor at the respective county courthouses. As previously indicated, there is no such requirement for ordinances adopted by a municipality; however, many municipalities have codified their ordinances.

The process of identifying special acts and ordinances that may impact the audit scope can be difficult; however, failure to do so can result in serious misconceptions as to the requirements of law affecting a particular county agency or municipality and can expose the auditor to substantial liability.

Publications useful in identifying applicable special acts and ordinances are described in other sections of this Practice Aid.

AUDIT SCOPE AND REPORTS

Audit Proposals

The selection of auditors to perform audits of local governments is governed by Section 218.391, F.S. In selecting auditors to audit the local government, the auditor selection committee, established pursuant to Section 218.391, F.S., must: establish factors to use for the evaluation of audit services, including, but not limited to, ability of personnel, experience, and ability to furnish the required services; publicly announce and provide interested firms with requests for proposals; evaluate proposals from qualified firms; and rank firms in order of preference. If compensation is one of the evaluation factors recommended by the committee, it cannot be the sole or predominant factor. If a local government fails to select the auditor in accordance with the requirements of sub-sections 218.391(3) – (6), F.S., the local government must again perform the auditor selection process in accordance with Section 218.391, F.S., to select an auditor for subsequent fiscal years.

As provided in Section 218.31(17), F.S., the local government financial audit required pursuant to Section 218.39, F.S., must include an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements (financial related audit). The requirements of this latter clause in the definition of a local government audit can, and likely will, require considerable preparation for the audit and require expansion of the audit procedures normally employed in a financial audit. Consequently, the requirement will substantially increase the time requirements necessary for the proper performance of the audit.

Practitioners responding to requests for proposals should be extremely careful about determining the scope of the engagement (including compliance audit requirements), the involvement of other governmental agencies in the audit process, and the reports required to be prepared. They should also carefully determine whether personnel to be assigned to the engagement have met the requisite continuing education requirements.

It is clear that the Legislature intends for the auditors to demonstrate, through the selection process, their ability to capably perform the audit and for the local governments to rely on such ability, more so than compensation, in making the auditor selection. Before accepting an engagement, the general laws and regulations applicable to the local government, as well as the charter, special acts, and ordinances for the local government should be given consideration. These documents are public records that are generally available at the local government or the local public library. Special acts are State special and local laws passed each year by the Legislature. The specific special acts that apply to the local government may be difficult to locate; however, the research techniques described in this Practice Aid should assist in this task. Knowledge on the part of the auditor of all of these sources of compliance requirements is vital to demonstrating the auditor's ability to perform the required audit.

Audit Scope

The minimum scope of the audit is established by Section 218.39, F.S., and Chapter 10.550, Rules of the Auditor General. Any expansion or clarification of the scope may be determined by officials of the audited local government or may be specified by other provisions of law, various governmental bodies and oversight groups, or grantors of financial assistance. More likely, it will be determined by a combination of those groups.

Three principal questions must be considered in determining the scope of the audit:

1. What operations, organizations, and transactions are to be considered within the scope of the audit?
2. What laws, rules, contractual guidelines, or other benchmarks establish compliance requirements to be considered in developing audit procedures?

3. Based on the auditor's understanding of internal controls, what are the assessed levels of control risk?

Other factors relevant to the planning process include:

- Relationships with and responsibilities of the cognizant federal agency and state coordinating agency.
- *Government Auditing Standards*, particularly independence issues.
- Initial year audit considerations.
- Joint audit considerations and reliance on other auditors (Group auditors).
- Higher level audit services.
- Subrecipients and related grantor monitoring.

Auditors should familiarize themselves with the guidance provided in relevant AICPA and federal publications before undertaking an audit involving federal financial assistance awards, including the Uniform Guidance and AICPA Audit Guide *Government Auditing Standards and Single Audits*.

Auditors should also familiarize themselves with the requirements of the *Florida Single Audit Act* (Section 215.97, F.S.), and the related audit and reporting requirements found in Chapter 10.550, Rules of the Auditor General. Information necessary to the performance of a *Florida Single Audit Act* audit, including the Catalog of State Financial Assistance and the State Project Compliance Supplement, can be found on the Florida Department of Financial Services' Web site at <http://apps.fldfs.com/fsaa/>.

A "Florida Single Audit Question and Answer" document and sample reports can be found on the Auditor General's Web site at <https://flauditor.gov/pages/fsaa.html>.

Since Florida Single Audits may be performed in conjunction with Federal Single Audits, the Auditor General Web site has separate illustrative documents for Florida Single Audits performed in conjunction with Federal Single Audits conducted in accordance with the Uniform Guidance.

A description of the contemplated scope of the audit should be clearly communicated to the client. This is normally accomplished through the use of an engagement letter.

General Requirements Affecting Scope

The task of determining the scope of the audit to measure the extent of compliance with laws and regulations requires the exercise of professional judgment. As noted previously, this judgment cannot be confined to areas of material financial statement significance. Auditors must thoroughly understand and evaluate their responsibilities as imposed by Section 218.39, F.S., in light of the compliance perspective and conduct the engagement with due professional care.

Before the scope of a local government audit can be determined, the auditor must understand the scope and ramifications of local government in Florida. Several provisions of Florida law have direct application to the determination of the scope of such audits. Examples of general law affecting the scope of such audits are discussed below.

Section 218.39(1), F.S., states, in part, that:

"If, by the first day in any fiscal year, a local governmental entity . . . has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its

accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

- (a) Each county.
- (b) Any municipality with revenues or the total of expenditures and expenses in excess of \$250,000.
- (c) Any special district with revenues or the total of expenditures and expenses in excess of \$100,000.

...”

Section 218.39(1)(g), F.S., provides that each municipality with revenues or the total of expenditures and expenses between \$100,000 and \$250,000, as reported on the fund financial statements, that has not been subject to a financial audit for the 2 preceding fiscal years must have an audit completed. Similarly, Section 218.39(1)(i), F.S., provides that each special district with revenues or the total of expenditures and expenses between \$50,000 and \$100,000, as reported on the fund financial statements, that has not been subject to a financial audit for the 2 preceding fiscal years must have an audit completed. Additionally, Section 218.39(1)(h), F.S., provides that each community redevelopment agency (CRA) with revenues or a total of expenditures and expenses in excess of \$100,000, as reported on the trust fund financial statements, must provide for a financial audit each fiscal year. Dependent special districts, excluding CRAs with revenues or a total of expenditures and expenses in excess of \$100,000, may provide for the audit through inclusion in the audit of the local government upon which it is dependent; however, independent special districts may not satisfy the audit requirement through inclusion in another governmental entity’s audit, regardless of whether the district is appropriately included as a component unit of another entity.

Financial audits conducted pursuant to Sections 163.387(8) and 218.39, F.S., must be conducted in accordance with the Rules of the Auditor General. Accordingly, Chapter 10.550, Rules of the Auditor General, was adopted to prescribe the standards and required report contents for such audits. These Rules are updated annually, primarily to accommodate changes in the law, generally accepted accounting principles, or generally accepted government auditing standards. The Rules may be obtained from the Auditor General’s Web site at <https://flauditor.gov/pages/rules.html>. The required contents of the audit report, including Federal and Florida Single Audit required contents, are set forth in Section 10.557, Rules of the Auditor General.

Annual Financial Reports

Section 218.32, F.S., requires that local governments submit to the Florida Department of Financial Services an annual financial report (AFR), detailing the revenues, expenditures/expenses, and total debt of the local government. The AFR must be signed by the chair and chief financial officer of the local government attesting to its accuracy. The AFR must be submitted electronically within 45 days after completion of the audit report but no later than 9 months after the fiscal year end. The report must be submitted with a copy of the audit report (management letter version including management rebuttal) and with the Florida Department of Financial Services’ checklist. As with the audit requirement in Section 218.39, F.S., dependent districts may satisfy the AFR requirement through inclusion in the AFR of the local government upon which it is dependent.

Pursuant to Section 163.387(8)(c), F.S., a copy of the CRA audit report prepared pursuant to Section 163.387(8), F.S., must accompany the AFR submitted by the county or municipality that created the CRA to the Florida Department of Financial Services.

Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act

The auditor performing an audit of a local government has responsibilities under Florida law and the Rules of the Auditor General for evaluating and reporting on the financial wellbeing of the local government. Section 218.503(1), F.S., lists several conditions, the existence of any one of which could lead to a determination by the Governor that the local government is in a "state of financial emergency." The auditor, upon making a determination that such a condition exists, should immediately inform management of the condition so that proper notification of the condition can be made to the Governor and the Legislative Auditing Committee. Additionally, Section 10.554(1)(i)5.a., Rules of the Auditor General, requires that the auditor include in the management letter a statement as to whether or not the local government has met one or more of the conditions of 218.503(1), F.S. If any of those conditions are reported, the statement must describe the specific condition(s) that occurred and, pursuant to Section 10.554(1)(i)5.b.2), Rules of the Auditor General, must indicate whether such condition(s) resulted from a deteriorating financial condition as described below. If the auditor feels that there are mitigating circumstances that minimize or render inconsequential the condition(s), those mitigating circumstances should be described in the management letter. Guidance on evaluating and reporting conditions specified in Section 218.503(1), F.S, may be found on the Auditor General's Web site at https://flauditor.gov/pages/tech_localgovt.html.

Deteriorating Financial Conditions

Section 218.39(5), F.S., requires that the auditor notify each member of the governing body of a local governmental entity for which (a) deteriorating financial conditions exist that may cause a condition described in Section 218.503(1), F.S., and (b) a fund balance deficit in total or for that portion of a fund balance not classified as restricted, committed, or nonspendable, or a total or unrestricted net assets (position) deficit, as reported on the fund financial statements of entities required to report under governmental financial reporting standards or on the basic financial statements of entities required to report under not-for-profit financial reporting standards, for which sufficient resources of the local governmental entity, charter school, charter technical career center, or district school board, as reported on the fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include fund balance or net position that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Property, plant, and equipment, the disposal of which would impair the ability of a local governmental entity, charter school, charter technical career center, or district school board to carry out its functions, are not considered resources available to cover reported deficits.

Section 10.556(8), Rules of the Auditor General, requires auditors to use financial condition assessment procedures in determining whether or not deteriorating financial conditions exist. The Auditor General has compiled and made available on its Web site at https://flauditor.gov/pages/fca_procedures.html information needed for local government financial trend and benchmark analysis, as well as suggested procedures for financial condition assessment. The auditor may use the procedures suggested by the Auditor General or appropriate alternative procedures. Section 10.554(1)(i)5.b., Rules of the Auditor General, requires auditors to include in the management letter a statement that financial condition assessment procedures have been applied and, if deteriorating financial conditions are noted, a description of such conditions. Recommendations to address any deteriorating financial conditions disclosed by the auditor should also be included in the audit report.

Other Audit Authorities

Federal Agencies - Those local governments receiving federal grant moneys may be required to file audit reports with grantor agencies or, if the Federal Single Audit requirement is in effect, with the cognizant federal agency. A review of the requirements of the Federal Single Audit Act Amendments of 1996 will determine whether there is a single audit requirement and whether there will be a cognizant agency assigned. Typically, the federal agency providing the largest amount of grant

moneys will act as the cognizant agency. The duties of the cognizant agency are to review the Federal Single Audit and act as a clearinghouse for all of the reports filed for Federal Single Audit purposes. For a determination of the cognizant agency, the auditor should request the auditee to contact the Office of Management and Budget in Washington, DC.

The cognizant agency should be contacted by the auditor for assistance with any audit scope or procedural questions that may arise. If the auditor has a particular concern about an aspect of the audit, it is usually a good practice to confer with the cognizant agency regarding the scope and procedures before initiating fieldwork. This should be done in writing to establish documentation of the understanding of the scope and procedures.

State Agencies - Several state agencies have limited oversight responsibilities regarding audits of local governments. The most important of these are the Auditor General, who promulgates the rules for the audits and performs a desk review of the audits, and the Florida Department of Financial Services which promulgates the financial reporting requirements for the annual financial report required by Section 218.32, F.S.

Additionally, financial assistance from state departments may be subject to the reporting requirements of the *Florida Single Audit Act* and related rules prescribed by the Auditor General and the Florida Department of Financial Services. The grant contract should be reviewed for audit requirements. Considerations should be given to the form of any required supplemental statements, audit opinions and reporting deadlines. If uncertainties exist as to the audit requirements, then the Department should be contacted for further clarification (phone: 850-413-3060; email: FSAA@MyFloridaCFO.com).

Specific Audit Requirements

Federal Awards - Specific audit requirements applicable to federal awards programs may be found in the Uniform Guidance, the Compliance Supplement for Single Audits of State and Local Governments, and in the grant documents applicable to awards not covered by the Compliance Supplement. Requirements identified in these publications may be divided into the categories of general requirements, applicable to the general operations of the local government, and program specific requirements.

Additional guidance concerning the audit of these programs may be found in the AICPA's Audit Guide *Government Auditing Standards and Single Audits*.

State Financial Assistance - The provision of state financial assistance to local governments gives rise to many compliance requirements, including the *Florida Single Audit Act*. These requirements, which may arise from either law or regulatory pronouncements as a result of accepting such financial assistance, are generally the subject of a contractual agreement between a state agency and the local government. Pursuant to the *Florida Single Audit Act*, in conducting the audit, the auditor must determine the nature and extent of state financial assistance awards to the local government, the source of such moneys, and the requirements imposed upon the use and accountability for such funds.

The Florida Department of Financial Services has promulgated Rules, Chapter 69I-5, Florida Administrative Code, "State Financial Assistance," which defines the types of state financial assistance; provides guidance in determining when state financial assistance is expended; defines recipient/sub recipient and vendor relationships; provides criteria for determining major state projects using a risk based approach; provides criteria for selecting state projects for audit based upon inherent risk; and establishes the format and provides an example of the required Schedule of Expenditures of State Financial Assistance (see <https://www.flrules.org/gateway/chapterhome.asp?Chapter=69I-5>).

The auditor is required to use the risk-based approach in determining which state projects to audit. The risk-based approach includes consideration of the amount of state financial assistance expended

and the inherent risk of the project. The auditor must document in the working papers the risk analysis approach used.

The Florida Department of Financial Services publishes the Catalog of State Financial Assistance (CSFA), which is a compendium of State projects. The CSFA provides the project's CSFA number; project name; administrating agency; program activities; legal authorization; project objectives; classes of financial assistance; and restrictions (see <https://apps.fldfs.com/fsaa/catalog.aspx>). In addition, the Department has also published the State Projects Compliance Supplement, which describes general and specific compliance requirements and suggested audit procedures for the Florida Single Audit (see <https://apps.fldfs.com/fsaa/compliance.aspx>).

The auditor's use of the State Projects Compliance Supplement is mandatory and satisfies the requirements of Section 215.97, F.S. In addition, the auditor should perform reasonable procedures to ensure that the requirements in the Supplement are current and to determine whether there are any additional provisions of contracts and grant agreements that should be covered by the audit. Determining the nature, timing, and extent of the audit procedures necessary to meet the audit objectives of the Florida Single Audit is the auditor's responsibility.

An important step auditors should always utilize to identify all state financial assistance provided to a local government is to e-mail the Florida Department of Financial Services (send e-mail to floridasingleauditconfirmations@myfloridacfo.com). The Department will respond with a listing of state financial assistance received by the client during the audit period.

The Auditor General has promulgated audit and reporting requirements in Chapter 10.550, Rules of the Auditor General, to implement the requirements of Section 215.97, F.S., the *Florida Single Audit Act* for local governments. These Rules prescribe the contents of the *Florida Single Audit Act* audit report.

Bond Covenants - Bond covenants found in bond indentures or resolutions constitute a major source of compliance requirements applicable to the audits of many local governments. As the demands for government services and infrastructure improvements increase, bond covenants are assuming more prominence in the audit process. The effect of noncompliance with bond covenants can be two-fold. Noncompliance may serve to create substantial immediate liabilities for the local government, and even technical noncompliance may adversely affect the local government's credit rating.

Bond resolutions typically establish compliance requirements that are diverse and all-encompassing with respect to the subject purposes of the bonds. For example, they may address such matters as authorized expenditures, sources of revenue and the mandatory imposition of taxes, restrictions on various non-ad valorem revenue sources, depositories, authorized investments, debt service requirements, mandatory reserves, accounting procedures, and audit requirements.

Other Specific Audit Requirements - In addition to the financial audit requirements for local governments, Florida law imposes several specific reporting requirements on the auditor or on the local government body related to specific local government activities or transactions. These reporting requirements may be provided as a part of the financial audit or may be the subject of separate reports depending on the specific language in law or rules promulgated by a state agency. Examples of these specific reporting requirements include:⁶

- Annual statement of certain revenues and expenditures (court-related) and statement of compliance (Section 29.0085(1) and (2)(a), F.S.).
- Landfill management escrow account (Section 403.7125(2)(b), F.S.).

⁶ Pursuant to Section 1 of Chapter 2021-63, Laws of Florida, the affidavit of compliance regarding impact fees is no longer required to be included in the audit report. Pursuant to Section 163.31801(8), F.S., and Section 10.558(1), Rules of the Auditor General, the affidavit must be filed with either the annual financial report or the audit report.

The auditor engaged to perform the financial audit of a local government should, prior to submitting the audit proposal, determine whether any such audit requirements are intended by the local government to be included in the scope of the financial audit.

Auditor's Reports

General Reporting Requirements - In addition to the auditor's report on the financial statements required by AU-C §700, other reports are required to comply with the Chapter 10.550, Rules of the Auditor General. Because audits of local governments must be performed in accordance with the requirements of *Government Auditing Standards* and Florida law, a report on compliance and internal controls for the operations of the local governments will be required at a minimum.

Internal Control and Compliance Report - The report on compliance and internal controls must meet the standards prescribed in *Government Auditing Standards*, and AU-C §315 and 330. The report does not require the expression of an opinion, but it must address the local government's internal controls and the implementation of control procedures, and whether or not the auditor relied on those controls in performing the audit procedures. It must also address compliance for the local government's operations as a whole.

Deepwater Horizon Oil Spill Supplemental Schedule (if applicable) - If the local government received or expended moneys related to the Deepwater Horizon oil spill, Section 10.557, Rules of the Auditor General, requires the local government to prepare a schedule of receipts and expenditures of such funds and the auditor to include an examination report on the fair presentation of the schedule. (See Section 10.557(3)(f) and (m), Rules of the Auditor General).

Federal Single Audit - If the local government is subject to a Federal Single Audit, the auditor must include an opinion report on the schedule of expenditures of federal awards and a report on compliance with requirements applicable to each major federal financial assistance program and internal control over compliance in accordance with the Uniform Guidance. Examples of the required reports may be found in the AICPA's Audit Guide *Government Auditing Standards and Single Audits*.

Florida Single Audit - If the local government is subject to the *Florida Single Audit Act*, the audit report must include the following additional reports:

- A schedule of expenditures of state financial assistance.
- A report that includes an opinion as to whether the schedule of expenditures of state financial assistance is presented fairly in all material respects in relation to the financial statements taken as a whole.
- A report on internal control related to major State projects and on compliance with laws, rules and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on a major state project. This report shall describe the scope of testing of internal control and the results of those tests and shall include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, rules, and the provisions of contracts or grant agreements that could have a direct and material effect on each major State project.
- A schedule of findings and questioned costs relating to state financial assistance (see Section 10.554(1)(l) Rules of the Auditor General).
- A summary schedule of prior audit findings (see Section 10.554(1)(m) Rules of the Auditor General).
- A corrective action plan as defined in Section 215.97(8)(i), F.S.

Compliance Attestations – Pursuant to the laws listed below, auditors conducting audits of local governmental entities pursuant to Section 218.39, F.S., or an audit of a CRA pursuant to Section 163.387(8), F.S., are required to determine the audited entity's compliance with certain provisions, if applicable:

- Section 28.35(5), F.S., regarding the clerk of the court's compliance with the various requirements prescribed by Sections 28.35 and 28.36, F.S.
- Section 61.181(10), F.S. regarding the clerk of court's operation of a depository for alimony and child support payments.
- Section 218.415(22), F.S., regarding the investment of surplus funds.
- Section 288.8018(1), F.S., regarding funds received or expended related to the Deepwater Horizon oil spill.
- Section 365.173(2)(d), F.S., regarding the Emergency Communications Number 911 System Fund.
- Section 163.387(8), F.S., regarding the CRA's compliance with Sections 163.387(6) and (7), F.S., pertaining to expenditure of redevelopment trust fund moneys and disposition of moneys remaining in the trust fund at fiscal year-end.

For these statutory requirements, Section 10.556(10), Rules of the Auditor General, requires auditors of local governmental entities to prepare a report based on an examination conducted in accordance with *AICPA Professional Standards*, AT-C §315. In other words, in addition to the various auditor's reports cited on the previous page, the auditor needs to issue separate compliance attestation reports (individual or combined) relating to the six compliance provisions addressed above, as applicable.

See sample compliance attestation report in Appendix II. In evaluating whether the local governmental entity has complied in all material respects, the auditors should consider the nature and frequency of noncompliance identified and whether such noncompliance is material relative to the nature of the compliance requirements. A Local Government Compliance Supplement is published by the Auditor General to assist auditors of local governmental entities through the suggestion of specific examination procedures. The Local Government Compliance Supplement is intended to serve as a resource for auditors and is not intended to supplant the judgment, or risk assessments, of the auditors engaged to perform the audit. The Local Government Compliance Supplement is available on the Auditor General Web site at https://flauditor.gov/pages/tech_localgovt.html.

The Management Letter - The management letter required by Section 218.39(4), F.S., and Section 10.557(3)(g), Rules of the Auditor General, is an integral part of the local government's audit report. It is not intended to be a private communication to management; rather, it is intended as a device to permit the reporting of:

- Matters coming to the auditor's attention that are not material to the presentation of the financial statements, and that are not clearly inconsequential considering both quantitative and qualitative factors.
- Opportunities for improving management procedures.
- Progress made in correcting previously noted control deficiencies or management weaknesses.
- Certain other matters as described in the Section 10.554(1)(i), Rules of the Auditor General.

See sample management letters in Appendices III and IV, and on the Auditor General's Web site at https://flauditor.gov/pages/tech_localgovt.html.

Audit Findings - Section 10.557(4)(b), Rules of the Auditor General, identifies the specific information that each auditor must include in any audit findings, whether reported in one of the various reports or schedules, or in the management letter. This information includes criteria or specific legal requirement, condition found, cause, effect or potential effect (including perspective and prevalence), recommendation, view of responsible auditee official when there is disagreement, and reference numbers. This is similar to the information required for a Federal Single Audit finding.

Section 218.39(8), F.S., requires the Auditor General to notify the Legislative Auditing Committee of any audit report prepared pursuant to Section 218.39, F.S., which indicates that an audited entity has failed to take full corrective action in response to a recommendation that was included in the two

preceding financial audit reports. The Committee can take various actions as provided in Section 218.39(8), F.S. Section 10.554(1)(i)1., Rules of the Auditor General, requires auditors to provide a statement as to whether or not corrective actions have been taken to address findings made in the preceding audit report and to identify those findings that were also included in the second preceding audit report.

Auditee Responses and Filing Requirement - Pursuant to Section 10.558, Rules of the Auditor General, a written statement of explanation or rebuttal concerning the deficiencies, including corrective action to be taken, must be filed with the governing body of the local governmental entity within 30 days of the delivery of the auditor's findings. A copy of the audit report must be delivered to each member of the governing body of the primary government and to the head of each component unit. One paper copy and one electronic copy of the audit report, including the local government's response must be submitted to the Auditor General within 45 days after delivery of the audit report, but no later than 9 months after the end of the fiscal year of the local government.

INDIVIDUAL TYPES OF LOCAL GOVERNMENTS

Introduction

Local government officials in Florida have been assigned, collectively, a myriad of functions and duties necessary to carry out programs and responsibilities related to the orderly conduct of government. However, as previously mentioned, the powers delegated to these officials are limited. The purpose of this section of the Practice Aid is to generally describe the functions assigned to the various officers and to illustrate the nature of general laws providing the authority for the actions of those officials.

As a general guide to the auditor, illustrative references to laws of general application affecting the operations of all types of local governmental entities are presented in this section. The references cited are not exhaustive of the laws that may impact a particular local governmental entity and are presented solely to illustrate the broad range of powers, and restrictions on the exercise of those powers, embodied in Florida general law. No attempt has been made to address all general laws affecting a particular official, or the provisions of special acts, ordinances, and regulatory pronouncements that may serve to modify the provisions of law cited in the following paragraphs. Subsequent sections of this Practice Aid will address provisions of general law affecting the particular types of local governmental entities.

The auditor should not, without performing his or her own review to determine the completeness and currency of the material subsequently presented, rely on the citations as representing currently applicable provisions of law.

Organization

All section and chapter numbers cited are from the 2021 Florida Statutes, unless specified otherwise. Laws of general application are described under the heading “Effect of Laws on Audit” in this Practice Aid. Although those laws may be again cited in respect to particular officers for illustrative purposes, there has been no attempt made to identify all laws of general application with respect to individual officers.

Comments and citations in the following subsections are grouped within each listed governmental entity, as appropriate in the circumstances, in the order indicated below. Because of the diversity of law affecting local governments, not all categories are mentioned for each official.

- Powers and Duties
- Accountability
 - Recordkeeping
 - Reporting
 - Audits
 - Public Money
 - Record Requirements
 - Other Requirements
- Authority to Collect Public Moneys
- Budgetary Authority
- Officers’ Compensation
- Employment-Related Authority
- Other Expenditure Authority
- Provision of Facilities
- External Oversight and Approval
- Effect of and Penalties for Noncompliance
- Other Requirements

COUNTIES

Introduction

General Organization of County Government - Florida county government is based on organizational concepts going back to English common law. The board of county commissioners, as the local legislative body, has been delegated many powers to govern within particular geographical boundaries. Other powers of government have been reserved for separately elected officers provided for in Article VIII of the Constitution of Florida.

Additionally, the board of county commissioners of each county, or its equivalent body in charter counties, is granted limited power to form other governmental entities, such as municipal service taxing or benefit units, either through the creation of dependent districts or through the creation, in cooperation with other governmental entities, of limited purpose governmental entities. Further, certain special purpose governmental entities may be classified as dependent special districts of a county even though they were created by the Legislature or the courts. Regardless of the method of creation, these limited purpose governmental entities will fall within the scope of the county audit.

The power to tax for county purposes is generally reserved for the board of county commissioners, either directly or by virtue of its oversight and approval responsibilities for dependent special districts. However, the responsibility for determining the values of real and tangible personal property subject to taxation is reserved, by law, to the county property appraiser. Similarly, the responsibility for collection of most taxes and many special assessments has been delegated by law to the county tax collector.

Additional governmental duties have generally been reserved by law to other elected officers. For example, law enforcement responsibilities rest with the county sheriff, clerical and accounting duties of the board of county commissioners are assigned to the clerk of the circuit court serving ex officio as clerk and accountant to the board, and responsibility for registering voters and conducting elections is placed by law with the supervisor of elections.

Although the clerk of the circuit court serves as clerk and accountant to the board of county commissioners, the principal duties of the office pertain to the operation of the State court system and the provision of a public record of various documents. The clerk may also serve ex officio in a number of other capacities.

Some of these constitutionally defined officers also perform assigned duties on behalf of other governmental entities including the State, school districts, municipalities, and both independent and dependent special districts.

Article V, Section 16, of the Florida Constitution authorizes the division by special or general law of the clerk of the circuit court's duties between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Currently, Orange County is the only county for which the duties have been divided, with the Orange County Comptroller performing the non-court functions.

The authority exercised by the several officers and the board of county commissioners is, generally, complementary in nature and provides a system of checks and balances. However, the relationships are complex and the auditor should carefully study the duties and responsibilities of the several county officers before undertaking the audit of a county agency. Further, the auditor should understand that the general scheme of county government outlined above may be significantly modified by special acts granting charters to individual counties.

County Reporting Entity - Section 11.45(1)(c), F.S., defines a county agency as "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 a body or officer expressly stated in this paragraph are separately placed by law.”

The structure of county government in Florida presents a situation that requires careful consideration of the reporting entity as defined by GAAP and how the boards of county commissioners and constitutional officers fit within such definition. Section 218.39(2), F.S., requires that the county audit report be a single document that includes a financial audit of the county as a whole and an audit of each county agency, except that a separate audit of the board of county commissioners is optional. The audit of the county as a whole must include the board of county commissioners, each of the other county constitutional officers, and any component units. Section 10.557(4)(a), Rules of the Auditor General, based on the presumption that the board of county commissioners and other constitutional officers are part of the county's primary government as defined by GAAP, provides that each separate county agency audit report includes financial statements that represent only a partial presentation of the reporting entity (county). The Rule also provides that the audit report be prepared in accordance with *AICPA Professional Standards AU-C §805* (see also Section 16.92 of the *AICPA Audit and Accounting Guide: State and Local Governments*). For counties that have adopted a charter, the charter provisions should be considered in determining the status of the constitutional officers, or their equivalents, created by such charters.

Compliance Considerations for County Audits - It is particularly important that the auditor realize, while gaining an understanding of the county government environment, that county officials serve in several capacities and that their duties and responsibilities are governed by different laws governing the numerous duties assigned to each respective official. Consequently, determination of compliance with laws and other rules and regulations are dependent upon the proper identification of those laws, rules and regulations applicable to particular duties.

It is not feasible within the scope of this Practice Aid to identify all of the duties which may be placed upon a county's elected or appointed officials. Such duties may be imposed by the constitution, laws of general application, laws of local application, court orders, or contractual agreements. The auditor must carefully determine the duties and responsibilities imposed on each of the officials within the scope of the audit to obtain an adequate understanding of the control environment. However, a few of the more common duties are illustrated in the following paragraphs.

The board of county commissioners serves as the governing legislative and executive body of non-charter counties and may have similar responsibilities in charter counties as determined by the terms of the particular charters. However, the county commissioners may also serve *ex officio* as members of governing boards of dependent special districts, by virtue of their positions as members of independent special district boards, as property appraisal value adjustment board members, and on the governing boards of any number of other organizations constituting county government.

The commissioners' actions while carrying out such *ex officio* duties must be judged by the specific laws governing those activities and the laws relating to their responsibilities as county commissioners may be of little, if any, relevance in judging the propriety of their actions.

Similarly, the clerk of the circuit court may, in addition to official duties in that capacity, serve in other capacities, such as the clerk and accountant to the board of county commissioners, clerk of the county court, agent for the Trustees of the Internal Improvement Trust Fund (a State controlled function), and as an agent of the Florida Department of Revenue. Laws governing the clerk's performance of these diverse responsibilities are, in some instances, consistent as to required actions, and, in other instances, divergent in their requirements. Consequently, the auditor must first determine the authority in law for the particular transaction under examination and then determine the capacity in which the clerk was serving when the transaction was executed.

For example, requirements governing the administration of public moneys received by the clerk when serving in the capacity of clerk and accountant to the board of county commissioners may be found in

Chapter 136, F.S., and additional administrative requirements for public moneys received by the clerk while acting in the capacity of clerk of the circuit court are prescribed in Chapters 28 and 219, F.S. However, the provisions of Chapters 28 and 219, F.S., are not applicable to the board of county commissioners.

The tax collector's duties include the collection of ad valorem and non-ad valorem taxes levied on real and personal property within the county, but the tax collector also serves as an agent of the Florida Department of Highway Safety and Motor Vehicles for the sale of motor vehicle licenses, as an agent for the Florida Department of Environmental Protection for the licensing of watercraft, as an agent for the Florida Division of Drivers' Licenses, and as an agent of the Florida Fish and Wildlife Conservation Commission for the sale of hunting and fishing licenses. The tax collector may also serve as the collector of special assessments levied by the county's dependent special districts or by multi-county independent special districts depending on the provisions of law governing such collections.

Similarly, the property appraiser's duties may extend to the preparation of special tax rolls for special assessment districts in addition to the duty of determining the value of real and personal property within the county for purposes of assessing ad valorem taxes imposed by the various taxing authorities.

Finally, the supervisor of elections may be charged with election responsibilities at large and also be required to control the election process of various special districts. Only the duties assigned by law to the sheriff appear to be wholly general in their application.

In summary, there is no substitute for obtaining a clear understanding of the various laws affecting the conduct of official duties for each official within the scope of the audit. Because of the diversity of duties assigned to each county agency or officer, it is critical to such an understanding that the auditor obtain representations from the audited public officials concerning the various laws governing the individual entities' operations. The auditor must also take appropriate steps to verify the completeness and accuracy of such representations as part of procedures employed to gain an understanding of the control environment of the county.

County Budget Requirements - Each county agency must adopt a plan of operation annually before it is authorized to expend any moneys for the ensuing fiscal year. Those plans, the annual budgets, are required by a variety of laws and may be subject to approval by the elected officer, the board of county commissioners, elected or appointed governing bodies of dependent special districts, state agencies, or some combination of authorities with oversight responsibility. Notwithstanding the diversity of requirements governing the budgets, two factors are controlling. First, the requirement for an annual budget is usually embedded in the governing law; secondly, the budget must be reduced to writing and be publicly adopted by the appropriate authorities.

Depending on the provisions of law, the budgets may take different forms, however, they serve to limit the subsequent expenditure of moneys by the individual governmental agencies and, thus, form a critical element of the agencies' financial and compliance representations.

Examples of general law governing the formulation, adoption, and execution of budgetary authority include:

Ch. 129	County annual budget
S. 218.35	County fee officer budgets

Board of County Commissioners

Key Characteristics

- Governing board of county.
- Power vested in board acting as a whole.
- Principal revenues:
 - Ad valorem taxation.
 - Special assessments.
 - Financial assistance grants.
 - User fees.
 - State shared revenues.
- Broad responsibilities and expenditure powers.
- Power to incur debt.
- Accountable for most county property, including real estate.

Powers and Duties - The board of county commissioners is the legislative and administrative body charged with the general operation of county government. It is the unit of county government charged with general responsibility for health and welfare, transportation, county administration, and numerous other responsibilities. It is the only unit of county government empowered to impose taxes and it may exercise its discretionary legislative powers to enact ordinances to the extent that such ordinances do not conflict with general or special law applicable to the county.

Although the board of county commissioners, or equivalent body, possesses broad powers, it may not usurp the powers specifically granted to other county constitutional officers by the State Constitution and law. For example, unless otherwise provided by law, the responsibility for law enforcement activities within county government is assigned to the sheriff; the responsibility for court functions is reserved to the clerk of the courts, etc. The auditor should be careful to determine where responsibility for a particular function is placed in law when determining the scope of an audit and when determining the audit procedures to be employed.

The powers granted to the board of county commissioners, generally, may be found in Chapter 125, F.S.; however, many other laws affect the conduct of county business. The exercise of any power granted to the board of county commissioners must be exercised by the board sitting as a whole. Individual commissioners have no legislative powers; however, they may, after appropriate designation by the board as a whole, perform certain administrative functions.

Examples of the specific powers granted to the board of county commissioners include:

Ch. 124	Commissioners' districts
S. 125.001-125.59	County commissioners: powers and duties
S. 125.001	Board meetings; notice.
S. 125.01	Powers and duties
S. 125.01(1)	Power to carry on county government
S. 125.01(1)(a)	Rules of procedure; selection of officers; time and place of meetings
S. 125.01(1)(b)	Prosecution and defense of legal causes
S. 125.01(1)(c)	County buildings
S. 125.01(1)(d)	Fire protection
S. 125.01(1)(e)	Hospitals, ambulance service, health and welfare programs
S. 125.01(1)(f)	Recreation and cultural facilities and programs
S. 125.01(1)(g)	Comprehensive plans

S. 125.01(1)(h)	Zoning and business regulation
S. 125.01(1)(i)	Housing and related technical codes
S. 125.01(1)(j)	Housing, slum clearance, community redevelopment; conservation, flood and beach erosion, air pollution; navigation and drainage; cooperation with government agencies and private enterprises
S. 125.01(1)(k)1.	Waste and sewerage collection and disposal, water supply, and conservation
S. 125.01(1)(k)2.	Disposal of solid waste
S. 125.01(1)(l)	Air, water, rail and bus terminals; port facilities; public transportation systems
S. 125.01(1)(m)	Roads, bridges, tunnels, traffic and parking; use of related revenues
S. 125.01(1)(n)	License and regulate vehicles for hire to operate in unincorporated areas of county
S. 125.01(1)(o)	Sale of alcoholic beverages in unincorporated areas
S. 125.01(1)(p)	Agreements with other governmental agencies
S. 125.01(1)(q)	Municipal Service Taxing or Benefit Units (MSTU and MSBU)
S. 125.01(1)(r)	Levy and collect taxes, borrow and expend money, and incur indebtedness.
S. 125.01(1)(s)	Investigation of county affairs
S. 125.01(1)(t)	Ordinances and resolutions
S. 125.01(1)(u)	Civil service systems
S. 125.01(1)(v)	Require operating budgets from every county official
S. 125.01(1)(w)	Any other acts not inconsistent with law or specifically prohibited by law
S. 125.01(1)(x)	Employ independent accounting firm to audit the county and its agencies and governmental subdivisions
S. 125.01(1)(y)	Propositions on ballot, no special elections for straw ballots, expense for district items to be paid by district
S. 125.01(1)(z)	Industrial development bonds
S. 125.01(1)(aa)	Use of ad valorem taxes to purchase land for protection or preservation reasons
S. 125.01(1)(bb)	Florida Building Code
S. 125.01(1)(cc)	County tourism promotion agency, use of names
S. 125.01(2)	County commissioners shall be the governing body of any municipal service taxing or benefit unit created pursuant to paragraph (1)(q).
S. 125.01(3)(a)	Authority to employ personnel, expend funds, enter into contractual obligation, and purchase or lease and sell or exchange real or personal property
S. 125.01(3)(b)	The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.
S. 125.01(4)	Does not prohibit a county from prohibiting saltwater fishing from real property owned by that county, nor does it prohibit the imposition of excise taxes by county ordinance
S. 125.01(5)(a)	Power to establish special districts
S. 125.01(5)(b)	Special district shall be composed of county commissioners
S. 125.01(5)(c)	Authorization for the levy by a special district of any millage designated in the ordinance
S. 125.01(6)(a)	Identify a service or program rendered specially for the benefit by a petition of 10 percent of the qualified electors
S. 125.01(6)(b)	Response to petition
S. 125.01(7)	Revenues derived specifically from or on behalf of the municipal service
S. 125.56	Inspection Fees; Florida Building Code Enforcement and Florida Fire Prevention Code
S, 125.60-125.69	Self-government by charter
S. 125.80-125.88	Optional county charters
Ch. 157	Drainage by counties
S. 163.3171	County organization and intergovernmental relations - authority
S. 252.38	Emergency management powers of political subdivisions

Limitations have also been placed on the exercise of certain powers, usually those relating to taxing powers or to powers reserved to state agencies. Examples of specific provisions of law limiting board of county commissioners' powers include:

- S. 125.01(1)(q) Total millage for municipal purposes imposed within MSTU shall not exceed 10 mills.
- S. 125.01(4) Board does not have power to regulate the taking or possession of saltwater fish, as defined in 379.101, F.S.
- S. 125.01(7) No county revenues (except MSTU, special district, unincorporated area, service area, or program area) shall be used to fund any county service or project when no real and substantial benefit accrues to the property or residents within a municipality(ies).
- S. 125.0103 No county shall adopt or maintain an ordinance or rule, which has the effect of imposing price controls upon a lawful business activity not under contract with the county. Ordinances and rules imposing price controls; findings required; procedures.
- S. 125.0107 No county may adopt any ordinance relating to the possession or sale of ammunition.
- S. 200.071 Total ad valorem tax millage may not exceed 10 mills, except for voted levies and MSTU's. Limitation of millage; counties.
- S. 336.025 Local option fuel tax on motor and diesel fuel shall not exceed 6-cents, or up to an additional 5-cents on motor fuel if passed by ordinance and used for transportation capital improvement.

Accountability - The board of county commissioners is required, as are other public officers, to provide strict accountability for the public resources entrusted to its care. Florida law requires each public officer to enter into the public records of the office sufficient information to document the propriety of official actions. The particular laws governing the provision of accountability and the content of public records range from general requirements to laws addressing the specific content of particular records.

Examples of the diverse legal requirements governing accountability include:

Accountability-Reporting:

- S. 29.0085 Annual statement of certain revenues and expenditures to the State Chief Financial Officer (CFO) from the county
- S. 112.08(2)(b) Approval of self-insurance plan for health, accident and hospitalization
- S. 215.08-215.09 Delinquent tax collector reports- state attorney and commissions
- S. 163.31801(8) Affidavit signed by the CFO or executive officer of the county stating all impact fees were collected and expended by the county, or were collected and expended on its behalf, in full compliance with the spending period provision in the local ordinance or resolution, and that funds expended from each impact fee account were used only to acquire, construct, or improve specific infrastructure needs

- S. 218.32 Annual financial reports; local governmental entities
- S. 218.38 Notice of bond issues required; verification
- S. 218.39 Financial audit reports
- S. 218.391 Auditor selection procedures
- S. 288.8018(1) Gulf Coast audits – Funds received or expended related to Deepwater Horizon oil spill
- S. 403.7049 Determination of full cost for solid waste management; local solid waste management fees

Accountability-Public Money:

- S. 136.01 County Depositories
- S. 136.03 County funds to be paid into depositories; triplicate receipts to be issued

S. 136.06	Withdrawal of funds from depositories; direct deposit; transfer of funds
S. 136.08	Accounts subject to examination by authorized persons
S. 136.091	Exemption for county self-insurance programs
S. 218.415	Local government investment policies
Ch. 219	County public money; Handling by State and County

Accountability-Record Requirements:

S. 125.17	Clerk of the circuit court shall be clerk and accountant to the board of county commissioners
S. 136.05	County board to keep set of books; overdrawing prohibited
S. 218.33	Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures

Accountability-Other Requirements:

S. 125.35	County authorized to sell real and personal property and lease real property
S. 125.355	Proposed purchase of real property; confidentiality of records; procedure
S. 125.37	Exchange of county property
S. 125.379	Disposition of county property for affordable housing
S. 125.38	Sale of county property to the US or state
S. 125.39	Nonapplicability to county lands acquired for specific purposes
S. 137.04	County commissioners to give bond
Ch. 153 and 367	Water, sewer, and wastewater systems
S. 154.001-154.067	County health departments
S. 154.07-154.13	County public health trusts
Ch. 155	Hospitals
Ch. 218, Pt VII	Local Government Prompt Payment Act
Ch. 257	Public libraries and State Archives
Ch. 274	Tangible personal property owned by local governments
Ch. 336	County road system
S. 336.022	County transportation trust fund; controls and administrative remedies
Ch. 348	Expressway and bridge authorities
S. 365.171-365.173	Emergency communication number E911 (state plan, act and fund)
Ch. 388	Mosquito control
S. 401.101-401.121	Emergency medical services grants
S. 403.7125	Financial assurance for closure - landfill management escrow account for proper closure of the landfill
Rule 62-701.630, FAC	Solid Waste Management Facilities – financial assurance
S. 406.08	Medical examiners- payment of fees, salaries, expenses, transportation costs; facilities
S. 420.9075	Local housing assistance plans; partnerships)
S. 893.165	County alcohol and other drug abuse treatment or education trust funds
S. 932.7055	Disposition of liens and forfeited property

Authority to Collect Public Moneys - The assessment and collection of moneys in any form, whether through the imposition of taxes, fees, or imposts, is strictly regulated by law and no public official is authorized to collect moneys in his or her official capacity except as specifically authorized by law. Examples of such laws affecting the board of county commissioners are presented below:

S. 125.01	Powers and duties (general authority to incur expenditures for authorized purposes)
S. 125.01(1)(m)	Use of excess road revenues
S. 125.01(6)	Power to identify and create special revenue sources
S. 125.0104	Tourist development tax; procedure for levying; authorized uses; referendum; enforcement
S. 163.31801	Impact fees; short title; intent; minimum requirements; audits; challenges

S. 197.3632	Uniform method for the levy, collection, and enforcement of non-ad valorem assessments
Ch. 200	Determination of millage
Ch. 202	Communications Services Tax Simplification Law
Ch. 205	Local business taxes
S. 206.47	Distribution and use of constitutional fuel tax pursuant to State Constitution
S. 206.60	County tax on motor fuel
Ch. 211	Tax on production of oil and gas and severance of solid minerals
Ch. 212	Tax on sales, use, and other transactions
S. 215.322(5)	Acceptance of credit cards, charge cards, debit cards, or electronic funds transfers by state agencies, units of local government, and the judicial branch
S. 215.55-215.552	Federal Use of State Lands Trust Fund: county distribution; requests by counties; land within military installations
Ch. 218, Pt II	Revenue Sharing Act of 1972
Ch. 218, Pt VI	Participation in half-cent sales tax proceeds
S. 316.0083	Mark Wandall Traffic Safety Program; administration; report (red light camera program)
S. 403.7215	Tax on gross receipts of commercial hazardous waste facilities
S. 893.165	County alcohol and other drug abuse treatment or education trust funds
S. 938.13	Misdemeanor convictions involving drugs or alcohol; additional costs
S. 938.15	Criminal justice education for local government; additional costs

Budgetary Authority - Before the governing body of a county may expend any public resources available to the local government, a budget must have been proposed and publicly adopted showing the moneys expected to be available and the proposed uses of such moneys. This requirement is a key factor in the operation of county government and failure to comply with the laws governing county budgets can submit the individual commissioners to personal liability for unauthorized expenditures. Detailed procedures governing budgetary requirements are established in law. Citations to applicable budgetary laws are presented below:

S. 129.01(1)	Requirements to prepare budgets for such funds required
S. 129.01(2)(a)	Budget approval by board of county commissioners
S. 129.01(2)(b)-(e)	Budget system
S. 129.011	Consolidation of funds
S. 129.02	Requisites of budgets
S. 129.021	County officer budget information
S. 129.025	County budget officer
S. 129.03	Preparation and adoption of budget
S. 129.06	Execution and amendment of budget
S. 129.07	Unlawful to exceed budget; certain contracts void; commissioners contracting excess indebtedness personally liable.
S. 129.08	County commissioner voting to pay illegal claim or excess indebtedness
S. 129.09	County auditor not to sign illegal warrants
S. 129.201	Budget of supervisor of elections; manner and time of preparation and presentation
S. 129.202	Budget of supervisor of elections; matters related to allocation, expenditure, etc. of amounts in budget

Board of County Commissioners' Compensation - The Legislature has determined that a consistent methodology shall be used to determine compensation and has regulated that determination process by law. However, the auditor should be alert to exceptions to these laws when auditing charter government counties. Examples of laws governing board members' compensation include:

S. 145.012	Applicability
S. 145.022	Guaranteed salary upon resolution of board of county commissioners

S. 145.031	Board of County Commissioners - amounts of compensation
S. 145.121	Other income to be income of the office (of the county official)
S. 145.131	Repeal of other laws relating to compensation; exceptions
S. 145.14	Compensation of other county officials; guarantee
S. 145.141	Deficiency to be paid by board of county commissioners
S. 145.17	Supplemental compensation prohibited
S. 145.19	Annual compensation increases based on state career service employees; limitation

Employment-Related Authority - Generally, the powers assigned to a public governing body are personal in nature and may not be delegated to others. However, when specifically authorized by law, the governing body may employ assistants to advise it as to recommended courses of action, to perform ministerial functions or, upon specific authorization of law, to perform certain duties requiring the exercise of discretionary powers. Examples of such provisions of law are presented below:

S. 27.34	Limitations on payment of salaries and other related costs of state attorney offices other than by the State
S. 27.54	Limitation on payment of expenditures other than by the State
S. 112.0801	Group insurance; participation by retired employees
S. 112.18-112.191	Special disability and death benefits- firefighters, law enforcement officers, paramedics, emergency medical technicians or correctional officers
S. 112.661	Retirement Systems – Investment policies
S. 125.01(1)(b)	Authority to retain counsel and set compensation
S. 125.01(3)(a)	Authority of the board of county commissioners to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property
S. 125.70-125.74	County administration, purpose, application, appointment, qualifications, compensation, powers and duties

Other Expenditure Authority - The authority to incur expenditures for any purpose must be contained in law, either by specific reference or by necessary implication. Although it is not feasible to address all laws affecting such authority, their diversity is illustrated by the examples presented below:

S. 29.008	County funding of court-related functions
S. 29.0081	County funding of additional court personnel
Ch. 75	Bond validation
S. 112.061	Per diem and travel expenses of public officers, employees, and authorized persons; statewide travel management system
S. 112.061(14)	Per diem and travel expenses – applicability to counties; county officers, district school boards, special districts, and metropolitan planning organizations
S. 125.01	Powers and duties (general authority to incur expenditures for authorized purposes)
S. 125.031	Lease or lease-purchases of property for public purposes
S. 125.27	Countywide forest fire protection; authority of the Florida Forest Service; state funding; county fire control assessments; disposition; equipment donations
S. 129.06	Execution and amendment of budget
Ch. 130	County bonds
S. 130.01	Purposes for which county bonds may be issued
S. 130.02	Commissioners may levy tax to service debt
S. 130.08	Disposition of proceeds of bonds sold
S. 130.09	Cancellation of exchanged evidences of indebtedness
S. 130.10	Tax for interest and sinking fund
Ch. 132	General refunding law

S. 154.306(1)	Financial responsibility for certified residents that are qualified indigent patients who are treated at an out-of-county hospital or regional referral hospital
Ch. 159	Bond financing
S. 163.31801	Impact fees; short title; intent; minimum requirements; audits; challenges
S. 218.385	Sale of local government bonds
Ch. 344	County road and bridge indebtedness
S. 409.2673	Shared county and state health care program for low income persons
Ch. 951	County and municipal prisoners

Provision of Facilities - The housing and equipping of county officers and of certain other officers performing duties of benefit to the county are the board of county commissioners' responsibility. Such facilities may include both county-owned and leased facilities. Many laws affect the provision of such facilities and address both financial and safety related matters. Examples of such laws are presented below:

S. 125.01(1)(c)	Provide and maintain county buildings
S. 125.012	Project Facilities; general powers and duties- Power to construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, repair, and operate any project as defined in 125.011
S. 125.013	General obligation bonds; revenue bonds
S. 125.016	Ad valorem tax
Ch. 255	Public property and publicly owned buildings
S. 287.055	Consultants' Competitive Negotiations Act - acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; contingent fees prohibited; penalties

External Oversight and Approval - Although the county commissioners have broad legislative powers and are the governing body of the county, the board is subject to external oversight and control in a number of instances. In addition to the oversight powers of the Legislature, the board is, for example, subject to the laws presented below:

S. 218.37	Power and Duties of Division of Bond Finance; advisory council
S. 218.38	Notice of bond issues required; verification
S. 218.39	Financial audit reports
Ch. 218, Pt V	Local Governmental Entity and District School Board Financial Emergencies

Effect of and Penalties for Noncompliance - It is critical that the county commissioners perform assigned duties in the specific manner prescribed by law. Failure to carry out assigned duties in the manner specified can have serious consequences. Examples of the penalties prescribed for noncompliance are presented below. However, this list is not exhaustive or even definitive as to the range of actions that may be imposed by oversight bodies and the courts. It is not the auditor's function to suggest that specific penalties or sanctions might be applied to a public officer. The references provided are merely for the purpose of indicating that a broad range of sanctions may impact the county commissioners.

S. 101.295	Penalties for violation
S. 129.07	Unlawful to exceed the budget
S. 129.08	County commissioner voting to pay illegal claim or for excess indebtedness
S. 215.11	Defaulting officers; Florida Department of Financial Services to report to clerk
S. 839.04	County officers not to speculate in county warrants or certificates
S. 839.13	Falsifying records
S. 839.14	Officer withholding records from successor
S. 839.26	Misuse of confidential information

Clerk of the Circuit Court

Key Characteristics

- Serves many county functions, multitude of laws govern duties and responsibilities, no inherent powers.
- Operations are generally financed by appropriations by the State or board of county commissioners.
- Duties and responsibilities as clerk of courts and county recorder strictly regulated by law.
- Duties and responsibilities as clerk to the board, county auditor and custodian of county funds regulated by general or special law.
- Expenditure authority subject to approved budgets.
- Has custodial responsibility for equipment used in operations.

Powers and Duties - The clerk of the circuit court is a constitutional officer who is charged with a multiplicity of duties by law (see Article V, Section 16, and Article VIII, Section 1, of the State Constitution). In addition to serving as clerk of the circuit court, he or she may also serve as clerk and accountant to the board of county commissioners, county auditor, clerk of the county court, as an agent of the Florida Department of Revenue, and as an agent of the Trustees of the Internal Improvement Trust Fund regarding the sale of state lands. In some counties, a portion of the duties assigned the clerk as they relate to the duties and responsibilities to the board may be transferred, by special act of the Legislature, or by local county charter, to a county comptroller or to some other county officer.

It is important that the auditor understand the clerk's duties and in what capacity he or she is performing those duties when determining the scope of the audit and the nature of the audit procedures to be applied. Consequently, this Practice Aid presents the clerk's responsibilities, whether as clerk or in an ex officio capacity, under the following captions.

Clerk of the Circuit Court - The clerk's duties as clerk of the circuit court are generally described in Chapter 28, F.S. As examples of the duties assigned by law, when serving in that capacity the clerk shall have custody of court records, perform specified duties regarding the dissolution of marriages, keep a progress docket for court cases, keep the minutes of court proceedings, serve as the county recorder, keep all probate records, and receive court registry funds. He or she will receive in a fiduciary capacity, and account for, in the manner specified by law, those moneys received in connection with court proceedings, including fines, costs, and civil penalties, which are to be distributed to third parties pursuant to law. The majority of court-related funds collected by the clerk are considered State funds and most must be remitted to the State monthly. Funding for the clerk's court-related duties is derived from State appropriations.

Additionally, the clerk is responsible for issuing marriage licenses and has specified duties relating to the issuance of tax deeds on properties with unpaid taxes.

Clerk of the County Court - The clerk of the circuit court also serves as clerk of the county court. His or her duties regarding that court, as provided in Chapter 34, F.S., are similar to those provided regarding the circuit court.

Clerk and Accountant to the Board of County Commissioners - The clerk of the circuit court serves, ex officio, as clerk and accountant to the board of county commissioners. In those capacities, he or she is required to keep the minutes of the county commission, keep the accounts of the county, invest county funds, and perform such other duties as provided by law. He or she is required to keep the county seal and affix it to any paper or instrument as determined to be proper or necessary.

The clerk also serves as county auditor. In that capacity, the clerk is required to examine all proposed expenditures of the county commission and, after determining that the proposed expenditure is for an authorized purpose, he or she is to countersign the county warrant in payment thereof.

Generally, the county commission may not delegate its discretionary authority to approve expenditures and the clerk's responsibility to pre-audit and approve county expenditures may not be thwarted. Consequently, the auditor should carefully review a county's authority to disburse moneys "lump sum" to third parties to be subsequently disbursed for purposes determined by the exercise of discretionary judgment of the third parties. Such procedures have generally been held by the courts to be improper.

Apart from a clear and unequivocal duty to pre-audit county expenditures, most other functions served by the clerk in the capacity of clerk and accountant to the board of county commissioners are directly related to the board of county commissioners' powers and duties. Therefore, the auditor should be fully cognizant of the powers and duties of that body when auditing the clerk of the circuit court and should determine the working relationships between those officers, including a determination of which particular duties have been assigned to the clerk by the board of county commissioners.

Examples of laws governing the clerk's powers and duties when engaged in carrying out the various responsibilities assigned by law include:

Ch. 28	Clerk of the circuit courts
S. 28.12	Clerk of the board of county commissioners
S. 28.222	Clerk to be county recorder
S. 28.35(3)	Court-related functions
S. 28.36	Budget procedure
Ch. 34	County Courts
Ch. 40	Juries; payment of jurors and due process costs
Ch. 43	Courts; general provisions
Ch. 44	Mediation alternatives to judicial action
Ch. 45	Civil procedure; general provisions
Ch. 55	Judgments
Ch. 57	Court costs
Ch. 61	Dissolution of marriage; support; time-sharing
Ch. 72	Tax matters
Ch. 73	Eminent domain
Ch. 74	Proceedings supplemental to eminent domain
Ch. 75	Bond validation
Ch. 79	Habeas corpus
Ch. 88	Uniform Interstate Family Support Act
Ch. 92	Witnesses, records, and documents
S. 125.17	Clerk as accountant to the board of county commissioners

Accountability - Regardless of which capacity the clerk is serving in, he or she is subject to specific accountability requirements applicable to all phases of his or her operation. In addition to accountability for fees and service charges charged for the performance of official duties, the clerk receives money in trust, is the custodian of evidence and abandoned property, and is charged with the preparation of numerous reports. Although it is not feasible within the scope of this Practice Aid to identify all accountability requirements that may impact a particular clerk's office, the references to several such requirements are presented below:

Accountability-Reporting:

S. 25.075	Uniform case reporting system
S. 25.077	Negligence case settlements and jury verdicts; case reporting
S. 28.211	Clerk to keep docket
S. 28.36	Budget procedure

S. 29.0085	Annual statement of certain revenues and expenditures
S. 40.355	Accounting and payment (for payment of witnesses)
S. 43.41	Report of judicial disposition
S. 98.093	Duty of officials to furnish information relating to deceased persons, persons adjudicated mentally incapacitated, and persons convicted of a felony
S. 116.03-.04	Officers to report fees collected and failure of officer to make sworn report of fees
S. 201.12	Duties of clerks of the circuit courts (excise tax on documents)
S. 218.32	Annual financial reports; local governmental entities
S. 218.35(5)	County fee officers; financial matters
S. 218.36	County officers; record and report of fees and disposition of same
S. 218.39	Financial audit reports
S. 218.391	Auditor selection procedures
S. 316.1955	Enforcement of parking requirements for persons who have disabilities

Accountability-Public Money:

S. 28.2401	Service charges and filing fees in probate matters
S. 28.2402	Cost recovery; use of the circuit court for ordinance or special law violations
S. 28.244	Refunds
S. 28.246	Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds
S. 28.33	Investment of county funds by the clerk of the circuit court
S. 34.045	Cost recovery; use of the county court for ordinance or special law violations
S. 34.191	Fines and forfeitures; dispositions
S. 40.32	Clerks to disburse money; payments to jurors and witnesses
S. 43.18	Money paid into court; withdrawal
S. 43.19	Moneys paid into court; unclaimed funds
S. 61.181	Depository for alimony transactions, support, maintenance, and support payments; fees
S. 116.01	Payment of public funds into treasury
S. 116.21	Unclaimed moneys; limitation
Ch. 136	County depositories
S. 142.01	Fine and forfeiture fund; disposition of revenue; clerk of the circuit court
S. 142.03	Disposition of fines, forfeitures, and civil penalties to municipalities
S. 218.415	Local government investment policies
Ch. 219	County public money, handling by state and county
S. 316.660	Disposition of fines and forfeitures collected for violations
S. 318.1215	Dori Slosberg Driver Education Safety Act
S. 318.15	Failure to comply with civil penalty or to appear; penalty
S. 318.21	Disposition of civil penalties by county courts
Ch. 717	Disposition of unclaimed property
Ch. 903	Bail
Ch. 938	Court Costs (Parts I through IV)

Accountability-Record Requirements:

S. 28.24	Service charges
S. 28.245	Transmittal of funds to Florida Department of Revenue; uniform remittance form required
S. 28.246(2)	System of accounts receivable for court-related fees, charges, and costs
S. 28.30	Records; destruction; reproduction; electronic recordkeeping
S. 28.31	Notice to county commissioners of intent to destroy; approval of board
Ch. 71	Reestablishment of documents
S. 116.07	Account books to be kept by sheriffs and clerks
S. 116.08	County commissioners to furnish books
S. 116.09	Penalty for failure
Ch. 119	Public records

S. 218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures

Authority to Collect Public Moneys - The clerk, in the performance of assigned official duties, may collect moneys for the performance of authorized services or in a trust capacity.

In the course of carrying out the assigned duties of the office, the clerk may perform functions for other governmental entities for which the clerk's office may be compensated. An example is the sale of documentary stamps and the collection of certain excise taxes as agent for the Florida Department of Revenue pursuant to the provisions of Chapter 201, F.S.

Alternatively, some moneys received by the clerk are always considered to be trust collections when received. For example, payments received for child support, registry of the court, foreclosure sales, tax deed sales, and excise taxes are always to be accounted for as trust collections, notwithstanding that specified fees and costs may be deducted from such collections and transferred to the clerk's operating accounts. Some civil penalties, fines, and forfeitures stipulated by law and collected by the clerk shall be deposited and accounted for as revenues in the fine and forfeiture fund established pursuant to Section 142.01, F.S. However, the clerk has no authority to establish fees or costs other than those authorized by law for performing a particular function.

Additionally, when a fee or cost is prescribed by law for the performance of a particular service, the clerk may not waive or defer the collection of the prescribed charge except as specifically provided by law. Thus, when auditing the clerk, the auditor should request the clerk to identify the specific legal authority permitting the imposition or waiver of any fee or cost.

The fines, penalties, fees and charges the clerk is allowed to assess and collect in connection with the performance of official duties and their related dispositions are too numerous to list in this Practice Aid. Although it is not feasible to list all fines, penalties, fees and charges authorized in connection with the clerk's assigned duties, examples of such fines, penalties, fees and charges may be found in the following sections of law:

S. 27.52	Determination of indigent status
S. 27.561-.562	Effect of nonpayment and disposition of funds
S. 28.101	Petitions and records of dissolution of marriage; additional charges
S. 28.24	Service charges
S. 28.2401	Service charges and filing fees in probate matters
S. 28.2402	Cost recovery; use of the circuit court for ordinance or special law violations
S. 28.241	Filing fees for trial and appellate proceedings
S. 28.244	Refunds
S. 28.246	Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds
S. 28.37	Fines, fees, service charges and costs remitted to the State
S. 34.041	Filing fees
S. 34.045	Cost recovery; use of the county court for ordinance or special law violations
S. 40.24	Compensation and reimbursement policy
S. 44.108	Funding of mediation and arbitration
S. 45.031	Judicial Sales Procedure
S. 199.133-.135	Levy of nonrecurring tax and due date and payment of nonrecurring tax
Ch. 201	Excise tax on documents
S. 215.322	Acceptance of credit cards, charge cards, debit cards, or electronic funds transfers by state agencies, units of local government, and the judicial branch
Ch. 316	State Uniform Traffic Control
S. 318.121	Preemption of additional fees, fines, surcharges, and costs
S. 318.14	Non-criminal traffic infractions; exception; procedures
S. 318.18	Amount of penalties
S. 382.022	Marriage application fees

S. 741.01	County court judge or clerk of the circuit court to issue marriage license; fee
Ch. 938	Court costs
S. 939.185	Assessment of additional court costs and surcharges

Budgetary Authority - The clerk has multiple responsibilities for budget preparation and reporting. As with other county officers, the clerk is required by Section 218.35, F.S., to prepare a budget. The budget is to be prepared in two parts, one showing funds necessary to perform court-related and noncourt-related functions (including recording) and, separately, the budget relating to the requirements of the clerk as clerk of the board of county commissioners, county auditor, custodian or treasurer of all county funds, and other county-related duties. The clerk's court-related and noncourt-related budgets are prepared and approved on a county fiscal year basis (October 1 to September 30).

In addition to the annual budget required by Section 218.35, F.S., the clerk is required by Section 28.36, F.S., to prepare and submit to the Clerks of Court Operations Corporation (CCOC) a budget for the clerk's court-related functions as listed in Section 28.35(3)(a), F.S. The budget must conform to specific requirements included in Section 28.36, F.S., as well as budget instructions provided by the CCOC. CCOC evaluates the clerks' budgets and submits the proposed budgets to the Legislative Budget Commission for approval.

Unless otherwise specified, the clerk also serves as county budget officer and is responsible for preparation of the county budget pursuant to the provisions of Chapter 129, F.S. Examples of laws governing the budget process include:

S. 28.36	Budget procedure
S. 129.021	County officer budget information
S. 129.025	County budget officer
S. 129.03	Preparation and adoption of budget
S. 129.09	County auditor not to sign illegal warrants
S. 218.35	County fee officers; financial matters

Clerk's Compensation - A clear distinction must be drawn between the fees authorized to be charged by the clerk for performing official duties and the amounts of compensation allowable to the clerk as personal compensation.

Chapter 145, F.S., provides a uniform basis for compensating county officers and considers all fees received for performing official acts to be income of the office. The allowable compensation for clerks of the circuit court, including their compensation for performing ex officio duties, should be determined as prescribed in Chapter 145, F.S. Specific reference to the clerk may be found in Section 145.051, F.S.

Employment-Related Authority - The clerk is empowered to employ assistants and deputize them by the express provisions of Section 28.06, F.S. Such deputies may exercise any power granted to the clerk except the power to appoint deputies.

Other Expenditure Authority - The authority to incur expenditures in support of authorized functions is necessarily implied in laws granting the clerk various powers. Expenditures by the clerk must be necessary to the performance of prescribed duties and reasonable in the circumstances. Because of the unique requirements of law establishing responsibility for the payment of the clerk's expenses from different budgets (e.g., expenses incurred as clerk for court-related functions are payable from State appropriations, but expenses of services as clerk and accountant to the board may be payable directly from funds budgeted by the board of county commissioners), it is necessary to determine where various costs are budgeted in order to determine their propriety. For example, the clerk may not expend moneys for purposes not set forth in the budgets of the office and, generally, may not incur expenditures to provide physical facilities for the clerk's operations.

Evidence of expenditure authority may be found in a number of laws governing the conditions precedent to, and setting the conditions of, expenditures. Examples of such laws include:

- | | |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| S. 28.35(3) | Authorized expenditures from court-related filing fees, service charges, court costs and fines; limitations on functions funded by State appropriations. |
| S. 40.26 | Meals and lodging for jurors |
| Ch. 75 | Bond validation |
| S. 112.061 | Per diem and travel expenses of public officers, employees, and authorized persons; statewide travel management system |
| S. 145.051 | Clerk of circuit court; county comptroller |
| S. 218.35 | County fee officers; financial matters |
| S. 218.36 | County officers; record and report of fees and disposition of same |

External Oversight and Approval - Several governmental agencies are charged with oversight responsibilities for the clerk's operations. Examples of such oversight responsibilities are detailed in the laws cited below:

- | | |
|-------------|---------------------------------------------------------------------|
| S. 25.075 | Uniform case reporting system |
| S. 28.35 | Florida Clerks of Court Operations Corporation |
| S. 28.35(5) | Audits of court-related budget and performance measure requirements |
| S. 201.11 | Administration of law by Florida Department of Revenue (excise tax) |

Effect of and Penalties for Noncompliance - It is critical that the clerk perform assigned duties in the specific manner prescribed by law. Failure to carry out assigned duties in the manner specified can have serious consequences. Examples of the penalties prescribed for noncompliance are illustrated below. However, this list is not exhaustive or even definitive as to the range of actions that may be imposed by oversight bodies and the courts. It is not the auditor's function to suggest that specific penalties or sanctions might be applied to a public officer. The references provided are merely for the purpose of indicating that a broad range of sanctions may impact the clerk.

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|-----------|----------------------------------------------------------------------------------|
| S. 129.09 | County auditor not to sign illegal warrants |
| S. 215.11 | Defaulting officers; Florida Department of Financial Services to report to clerk |
| S. 839.04 | County officers not to speculate in county warrants or certificates |
| S. 839.12 | Officer failing to keep record of costs |
| S. 839.13 | Falsifying records |
| S. 839.14 | Officer withholding records from successor |
| S. 839.16 | Fraud of clerk in drawing jury |
| S. 839.26 | Misuse of confidential information |

Other Requirements - The diverse nature of the clerk's responsibilities cannot be overemphasized. Although this Practice Aid displays a few citations to laws impacting the clerk's operations, they are not exhaustive of the provisions of law governing the clerk's various activities.

When determining the nature and extent of audit procedures to be applied in the audit of the clerk's accounts and records, the auditor should carefully research all laws and rules governing the duties and responsibilities imposed on the clerk.

County Comptroller

Key Characteristics

In some counties, a portion of the duties assigned the clerk of the circuit court may be transferred, by special act of the Legislature, or by local county charter, to a county comptroller or to some other county officer.

Powers and Duties - The auditor should look to the Legislative act or county charter for comptroller responsibilities for that county and review the compliance section in this Practice Aid relating to Clerk of the Circuit Court for applicable law references.

County Comptroller's Compensation - The county comptroller's compensation is set by Section 145.051, F.S.

Sheriff

Key Characteristics

- Official responsible for law enforcement within the county.
- Serves as executive officer of the courts.
- Frequently responsible for custody of prisoners as chief correctional officer of the county.
- Operations are financed by appropriations made by the county commission pursuant to approved budgets.
- May receive and administer financial assistance grants.
- Responsible for collecting, and accounting for, moneys while serving in a fiduciary capacity pursuant to many provisions of law.
- Designated a local unit of government for property accountability.

Powers and Duties - Chapter 30, F.S., generally describes the sheriff's duties and responsibilities; however, many other sections of the law have application to the sheriff. The sheriff's duties and responsibilities can be categorized into three broad areas:

1. Law enforcement.
2. Court Services.
3. Corrections.

Generally, the sheriff's powers regarding criminal law enforcement are to keep the peace in the county, encourage law abidance, protect the lives and property of individuals and apprehend criminals. Sheriffs perform these duties through patrols, traffic enforcement, and investigations. These law enforcement duties frequently involve the exercise of arrest powers.

In addition to his or her other duties of criminal law enforcement, the sheriff has extensive other duties assigned by law. For example, many judicial-related duties are performed by the sheriff functioning as the chief executive officer of the courts. The sheriff is the county officer charged with enforcing judgments of the court. In this capacity, the sheriff is responsible for execution of writs and service of process, warrants, and other papers issued by all Florida courts, the county commission, and other governmental agencies. Many sections of the law pertain to the sheriff in the capacity of process server. In addition, the sheriff provides bailiffs for the orderly procession of courtroom proceedings and may provide bailiffs for courthouse security. Bailiffs are officers of the court and perform duties prescribed by law and as may be directed by the presiding judge.

In addition to his or her other duties, the sheriff frequently serves, in accordance with Section 951.061, F.S., and pursuant to county ordinance, as the county's chief correctional officer. In this capacity, the sheriff must hold prisoners awaiting trial and those who have been sentenced to the county jail. While in the sheriff's custody, prisoners are to be provided adequate room, board and medical care. When serving in this capacity, the sheriff is responsible for the custody of all county and municipal prisoners. The sheriff, as chief correctional officer of the county system, is responsible for the custody of prisoners until they are released on bail, they have completed their sentences, their charges are dismissed, they are found not guilty by the court, they are transferred to another institution, or they are released under other conditions.

The sheriff is also assigned other duties related to the orderly conduct of the governmental process. For example, election polling places are to be staffed by special deputy sheriffs appointed by the sheriff. Their function is to carry out lawful requests of the poll workers and maintain law and order at the polling places. These deputies are not compensated by the sheriff, but rather by the supervisor of elections. The sheriff is required to attend all meetings of the county commission to preserve order and execute lawful orders of the county commission. The sheriff also serves as the ex officio timber agent for the county. These duties require the investigation of all trespassing cases and filing complaints when appropriate.

The sheriff's operations are generally financed through a budget submitted by the sheriff and approved by the board of county commissioners. Although the sheriff collects fees for many of his or her services, they are remitted to the board of county commissioners monthly as county revenues. In addition to the moneys received from the county pursuant to appropriations as set forth in the approved budget, the sheriff may receive, either directly or as a pass-through entity, financial assistance for the pursuit of special projects. Further, he or she may receive property useful to his or her office as the result of court ordered confiscations. Unlike other county officers, tangible personal property purchased by or awarded to the sheriff is titled to the sheriff and not to the county commission. As a result, the sheriff is bound to keep tangible personal property records in accordance with rules established by Chapter 274, F.S., and Florida Department of Financial Services Rule 69I-73, Florida Administrative Code.

It is not feasible within the scope of this Practice Aid to address all laws that may impact the sheriff's operations. However, the citations presented below may serve to illustrate the range and diversity of laws that affect the sheriff. The auditor should remember that the sheriff is allowed considerable discretion in carrying out his or her duties; however, when the law prescribes a particular process or procedure for accomplishing an enumerated duty, the sheriff may not deviate from the prescribed procedures.

Courts:

S. 26.49 Executive officer of circuit court

Law Enforcement:

S. 23.1225 Mutual aid agreements
S. 30.01 Bond of sheriffs; small counties
S. 30.02 Bond of sheriffs; large counties
S. 30.06 Liability of sureties
S. 30.10 Place of office
S. 30.12 Power to appoint sheriff
S. 30.14 Succession of office
S. 30.15 Powers, duties, and obligations
S. 30.22 When sheriff may accept service
S. 30.30 Writs, process; duties and liabilities in levying
S. 30.53 Independence of constitutional officials
S. 30.56 Release of traffic violator on recognizance or bond; penalty for failure to appear

Process and Service of Process:

S. 48.011 Process; how directed

S. 48.021 Process; by whom served
S. 48.031 Service of process generally; service of witness subpoenas

Legal and Official Advertisements:

Ch. 50 Legal and official advertisements

Judgments:

S. 55.03 Judgments; rate of interest, generally

Final Process:

S. 56.041 Executions; collection and return
S. 56.051 Executions; collection when against principal and sureties
S. 56.22 Execution sales
S. 56.27 Executions; payment of money collected
S. 56.275 Disposition of unclaimed money collected

Court Costs:

S. 57.081 Costs; right to proceed where prepayment of costs and payment of filing fees waived

Attachment:

S. 76.13 Writ; form
S. 76.151 Writ; execution on property changing possession
S. 76.16 Writ; levy in other counties
S. 76.17 Writ; levy upon property removed from county pending levy

Garnishment:

S. 77.082 No reply filed
S. 77.14 Disposition of property surrendered by garnishee

Replevin:

S. 78.08 Writ; form
S. 78.10 Writ; execution on property in buildings or enclosures
S. 78.12 Writ; execution on property removed from jurisdiction

Lost or Abandoned Property:

S. 705.101(4) Definitions - law enforcement officer
S. 705.105 Procedure regarding unclaimed evidence
S. 705.106 Recovery from person wrongfully in possession

Property: General Provisions:

S. 715.07 Vehicles or vessels parked on private property; towing
S. 715.107 Storage of abandoned property
S. 715.109 Sale or disposition of abandoned property

Procedure after Arrest:

S. 907.04 Disposition of defendant upon arrest

Forfeiture of Contraband and Seizure:

S. 932.703 Forfeiture of contraband article; exceptions
S. 932.704 Forfeiture proceedings
S. 932.7055 Disposition of liens and forfeited property
S. 932.7061 Reporting seized property for forfeiture

Jail and Jailers:

S. 950.001 Regional jails; establishment, operation
S. 950.02(1) Removal to jail of another county

- S. 950.03 County jailers to receive United States prisoners
- S. 950.04 Penalty for neglect of duty in keeping prisoners of the United States
- S. 950.061 Unlawful for male and female prisoners to be confined together
- S. 950.09 Malpractice by jailers

County and Municipal Prisoners:

- S. 951.032 Financial responsibility for medical expenses
- S. 951.033 Income and assets; payment of subsistence costs
- S. 951.06 Employment of correctional officers; duties; salary
- S. 951.061 Designation of sheriff as chief correctional officer; duties
- S. 951.062 Contractual arrangements for operation and maintenance of county detention facilities
- S. 951.13 Transferring from one county to another
- S. 951.15 Credit on fines and costs
- S. 951.175 Provision of programs for women
- S. 951.176 Provision of education
- S. 951.21(3) Gain-time for good conduct for county prisoners
- S. 951.23 County and municipal detention facilities; definitions; administration; standards and requirements
- S. 951.2302 Inspection of county and municipal detention facilities; penalties for noncompliance with jail standards
- S. 951.24 Extend the limits of confinement for county prisoners
- S. 951.26 Public safety coordinating councils
- S. 951.27 Blood tests of inmates
- S. 951.28 Transmitting prisoner information to reduce public assistance fraud

Special Powers and Duties: Conducting Elections and Ascertaining the Results:

- S. 102.014 Poll worker recruitment and training
- S. 102.021 Compensation of inspectors, clerks, and deputy sheriffs
- S. 102.031 Maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters
- S. 102.091 Duty of sheriff to watch for violations; appointment of special officers
- S. 102.101 Sheriff and other officers not allowed in polling place

Special Powers and Duties: Election Code: Violations; Penalties

- S. 104.051 Violation; neglect of duty, corrupt practices
- S. 104.101 Failure to assist officers at polls
- S. 104.11 Neglect of duty by sheriff or other officer

Tax Collections, Sales, and Liens:

- S. 197.412 Attachment of tangible personal property in case of removal

Tax on Sales, Use, and Other Transactions

- S. 212.14 Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum
- S. 212.15 Taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review
- S. 212.16 Importation of goods; permits; seizure for noncompliance; procedure; review

Gambling:

- S. 849.17 Confiscation of machines by arresting officer
- S. 849.18 Disposition of machines upon conviction
- S. 849.22 Fees of clerk of circuit court and sheriff
- S. 849.232 Property right in gambling devices; confiscation
- S. 849.37 Disposition and appraisal of property seized under this chapter
- S. 849.38 Proceedings for forfeiture; notice of seizure and order to show cause

S. 849.39	Delivery of property to claimant
S. 849.43	Judgment of forfeiture
S. 849.45	Fees for service
S. 849.46	Exercise of police power

Accountability - The sheriff is subject to many general and specific accountability requirements. As with other constitutional officers, the sheriff is subject to laws providing for accountability for public resources and must enter sufficient information into the public records to demonstrate the propriety of any official actions.

The general rule of law affecting records of public officers provides that their records are to be open to public inspection, unless specifically exempted by law. However, unlike other constitutional county officers, the sheriff is subject to a number of specific exceptions to the public records laws. For example, several aspects of the sheriff's investigation, arrest, and personnel records are confidential. Additionally, as provided in Section 30.50(2), F.S., when drawing moneys from the official accounts of the office for investigations, the sheriff may enter into the public records only such information as he or she may consider proper to divulge.

Notwithstanding the accountant-client privilege conferred by law, exempt records will probably not be made available to the auditor. If they are inadvertently presented for examination, great care should be taken not to disclose the contents of such records, either by notation in the work papers and reports, or through oral communications. Conversely, if the sheriff claims confidentiality as a defense against the production of records necessary to a proper audit, the auditor should request the sheriff to identify the particular sections of law exempting the subject records from public inspection.

In the event of dispute concerning the availability of public records, the auditor should either secure the advice of private counsel retained by the auditor or request the sheriff to secure the opinion of the Attorney General as to the status of the particular records in question.

Reporting - The reporting requirements imposed on the sheriff are diverse and pertain to both financial and non-financial matters. For example, in addition to the financial reporting requirements imposed by Chapters 30 and 218, F.S., the sheriff must provide periodic reports to the courts; to the supervisor of elections; to the Florida Department of Law Enforcement regarding the qualifications of deputies; and to various agencies regarding persons convicted of felony offenses, confiscated property, including firearms. Additionally, as is required of other county officers, the sheriff must file a number of reports concerning the routine operations of the office such as the withholding of taxes from employee compensation and the amounts contributed or withheld for retirement and social security contributions.

Public Money - The sheriff's operations involve the collection of large amounts of public moneys, both for operating purposes and as trust collections. Examples include amounts received from the board of county commissioners, cash bail bonds, fees and costs, and moneys received for other sheriffs. The sheriff is generally subject to the provisions of Chapter 219, F.S., when handling public moneys; however, there are several other more explicit, provisions of law governing accountability for moneys received by the sheriff.

Record Requirements - Laws impacting the sheriff's operations require that he or she keep records in accordance with the provisions of law. Because of the significant impact of noncompliance on the administration of the criminal justice system, the failure to keep records required by law, and in the manner prescribed, should be viewed as a most serious matter. Determination of the types of records required, the particular forms prescribed, and the content of the records will require considerable research on the part of the auditor. However, such research is essential to gaining an adequate understanding of the internal controls of the sheriff's operations.

Unlike other county constitutional officers, the sheriff is designated as “governmental unit” as defined by Chapter 274, F.S., regarding accountability for tangible personal property of the office. Therefore, the auditor should include procedures in the audit to determine the proper presentation of such property in the sheriff’s financial statements, to determine the adequacy of internal control procedures and records applicable to such property, and to determine whether the sheriff has complied with the provisions of Chapter 274, F.S., and Florida Department of Financial Services Rule 69I-73, Florida Administrative Code.

Another matter of particular importance in the audit of a sheriff is the adequacy of the sheriff’s procedures for controlling evidence received during the investigation of criminal activity and the procedures established to control confiscated and abandoned property. Although these items are not customarily reported on the financial statements, inadequate control (particularly of narcotics and other controlled substances) can have serious legal and political effects. Consequently, the auditor should carefully review record systems and internal control procedures established to account for and safeguard such items. Multiple statutory requirements also apply to property seized by the sheriff, including advertisement in print or online of the seized property.

Other examples of laws addressing the requirements to keep records relate to such matters as inmate personal property, personnel, and the execution of various duties imposed on the sheriff by law.

Other Requirements - Because of the diverse responsibilities placed on the sheriff by law, a number of accountability requirements are also imposed. It is not feasible to separate many of these requirements from the laws conferring the power or duty to act; however, the auditor should, when reviewing the laws conferring power on the sheriff, also be alert to the accompanying accountability requirements.

Examples of laws pertaining to accountability include:

Accountability-Reporting:

- S. 30.49 Budgets
- S. 218.32 Annual financial reports; local governmental entities
- S. 218.39 Financial audit reports
- S. 218.391 Auditor selection procedures
- S. 499.68 Reports of thefts, illegal use, or illegal possession

Accountability-Public Money:

- S. 30.21 Failure to pay over money
- S. 30.52 Handling of public funds
- S. 116.01 Payment of public funds into treasury
- S. 116.21 Unclaimed moneys; limitation
- Ch. 136 County Depositories
- S. 218.415 Local government investment policies
- Ch. 219 County public money, handling by state and county

Accountability-Record Requirements:

- S. 30.50(4) Payment of salaries and expenses
- S. 112.061 Per diem and travel expenses of public officers, employees, and authorized persons; statewide travel management system
- S. 112.063 Reimbursement of county employees for education expenses
- S. 116.07 Account books to be kept by sheriffs and clerks
- S. 116.08 County commissioners to furnish books
- Ch. 119 Public records
- S. 218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures
- Ch. 274 Tangible personal property owned by local governments
- Rule 69I-73, FAC Florida Department of Financial Services, Tangible Personal Property Owned by Local Governments

Authority to Collect Public Moneys - The authority to collect public moneys may be found in many provisions of law, usually in connection with the grant of some power of the office or in connection with the imposition of a particular responsibility. Generally, the moneys for operating the sheriff's office are provided by the board of county commissioners through appropriations in the county budget, which, in turn, are based on the budget submitted to the board by the sheriff. Additionally, certain moneys are collected by the sheriff and remitted to the board, which, although not usually part of the sheriff's operating budget, are restricted to expenditure for law enforcement purposes. Frequently, expenditures of these moneys are dependent in part on the sheriff's approval. To ensure budgetary compliance, sheriffs should adopt formal policies and procedures that address the collection and expenditure of moneys that are not included in the operating budget approved by the board of county commissioners.

Additionally, the sheriff may be granted federal, state, or local financial assistance for particular projects related to the operation of the office. Examples include grants for interagency crime prevention task forces, narcotics control, security, and youth projects. These moneys are frequently subject to special audit requirements, including but not limited to Federal or State Single Audit requirements. It is important to ensure that these grant expenditures are appropriately reported in the County's single audit reports.

Usually the sheriff will collect large amounts of money in a fiduciary capacity. These moneys include, for example, appearance or bail bonds, amounts deposited for remittance to other law enforcement officers, moneys seized as evidence, and fees collected for service of process and other legally mandated activities. If the sheriff serves as the chief correctional officer, he or she will also be the custodian of prisoner welfare and personal moneys. Each of these classifications of trust moneys requires strict and separate accountability. Further, the disposition or use of these moneys is strictly controlled by law. Internal controls over such fiduciary funds may be significantly different from the sheriff's controls over the operating accounts and, if so, should be separately assessed and documented.

In many instances, the sheriff will also operate (or contract with an independent third-party) prisoner canteens or commissaries, or receive proceeds from inmate phone call service providers. Although there is no requirement in law that he or she provide such services, the sheriff has accountability responsibilities under law if such services are provided. When a third-party provider is used, the auditor obtain the contract with the third-party provider and assess and document the controls in place at the third-party provider using a SOC-1, Type 2 report or alternative procedures due to the generally high volume of transactions being processed outside of the sheriff's normal control policies. If a SOC-1, Type 2 report is not available from the third-party provider, assessment of the controls in place may require substantial additional audit effort.

Examples of laws governing the collection of public moneys include:

S. 30.231	Sheriffs' fees for service of summons, subpoenas, and executions
S. 30.24	Transportation and return of prisoners
S. 30.27	Constructive mileage not to be charged
S. 30.51	Fees and commissions
S. 102.021	Compensation of inspectors, clerks, and deputy sheriffs
S. 215.322	Acceptance of credit cards, charge cards, debit cards, or electronic funds transfers by state agencies, units of local government, and the judicial branch

Budgetary Authority - The sheriff's budgetary requirements may generally be found in Chapters 30 and 129, F.S. Section 30.49, F.S., prescribes the functional categories to be established in the budget and requires the sheriff's sworn statement that the proposed expenditures are reasonable and necessary to the proper and efficient operation of the sheriff's office.

The board of county commissioners or, if established, the county budget commission may alter or amend the budget submitted by the sheriff and give written notice to the sheriff of such action; however, appeal processes are provided for in the law. Once the budget receives final approval, the board of county commissioners must appropriate the moneys necessary to fund the budget. Once

adopted, the budget is subject to amendment as provided in Chapter 129, F.S.; however, it may only be amended upon the sheriff's request. Additionally, the sheriff's reserve for contingency in the county budget is appropriated upon the sheriff's request.

Once appropriated, moneys are remitted to the sheriff for deposit to his or her bank accounts as provided in Sections 30.50 and 30.51, F.S. Moneys appropriated to the sheriff may be expended solely for the purposes appropriated and set forth in the sheriff's budget, as amended. Pursuant to Section 30.49(12), F.S., a sheriff may transfer funds between the fund and functional categories and object and sub object code levels after the overall budget has been approved by the board of county commissioners or county budget commission. Any unspent moneys remaining at the end of the fiscal year are to be returned to the board of county commissioners. In determining the expenditure of appropriations, the sheriff must charge all expenditures to the proper fiscal year and may hold his or her books open for thirty days after the end of the fiscal year to accomplish the proper accounting for expenditures.

Examples of law governing the sheriff's budgetary authority include:

S. 30.49	Budgets
S. 30.50	Payment of salaries and expenses
S. 129.03	Preparation and adoption of budget
S. 932.7055	Disposition of liens and forfeited property

Sheriff's Compensation - The sheriff's compensation is set by Section 145.071, F.S. However, before any elected officer is entitled to compensation, he or she must meet all commissioning and bonding requirements applicable to the elected office. Although deputies employed by the sheriff must be certified law enforcement officers, the sheriff is exempt from that requirement by virtue of being an elected official. The sheriff may draw compensation either monthly, twice per month, or biweekly; however, should the sheriff serve for only a portion of a month, for example when beginning or ending his or her term of office, he or she is entitled to only a pro rata portion of the compensation for that month.

Examples of other laws impacting the sheriff's compensation include:

S. 30.20	False return
S. 30.48	Salaries
S. 34.08	Compensation of sheriff
S. 121.052	Membership class of elected officers
S. 122.08	Requirements for retirement; classification
S. 145.012	Applicability
S. 145.071	Sheriff
S. 145.16	Special laws or general laws of local application prohibited
S. 145.19	Annual percentage increases based on increase for state career service employees; limitation
S. 943.253	Exemption; elected officers

Employment-Related Authority - The sheriff is empowered to employ assistants and deputies under the powers granted by Chapter 30, F.S. These assistants may or may not be deputized. If they are deputized, they possess all of the sheriff's powers including, in special circumstances, the power to deputize others for limited purposes. With a few limited exceptions, all individuals who have been deputized must qualify as law enforcement officers as provided by general law. Additionally, employees charged with the care and custody of prisoners in the jail must qualify as correctional officers.

Because of the hazards associated with law enforcement, special classes of retirement benefits are provided for employees classified as "high hazard" and the costs of such participation in the retirement system differ from those associated with normal public employee benefits.

Additionally, because of the hazards of law enforcement work, special restrictions have been placed on access to personnel records of law enforcement officers. The auditor should discuss such limitations with the sheriff and consider whether the limitations will materially affect the scope of the examination.

Examples of laws controlling personnel matters include:

S. 30.07	Deputy sheriffs
S. 30.073	Appointment; probation; regular appointment
S. 30.074	Regular appointee status
S. 30.075	Review boards
S. 30.076	Appeal
S. 30.078	Continuation of appointment after a change in sheriff
S. 30.079	Effects of act; no property interest or expectancy in office; sheriff's authority
S. 30.09	Qualification of deputies; special deputies
S. 30.2905	Program to contract for employment of off-duty deputies for security services
S. 111.065	Law enforcement or correctional officers, legal action against; employer payment of costs and attorney's fees or provision of attorney
S. 112.19	Law enforcement, correctional, and correctional probation officers; death benefits
Ch. 115	Leaves of absence to officials and employees
S. 121.0515	Special risk class (Florida Retirement System)
S. 122.01	State and County Officers and Employees' Retirement System; consolidation; divisions
S. 122.34	Special provisions for certain sheriffs and full-time deputy sheriffs
S. 321.25	Training provided at patrol schools
S. 943.13	Officers' minimum qualifications for employment or appointment
S. 943.131	Temporary employment or appointment; minimum basic recruit training exemption
S. 943.16	Payment of tuition or officer certification examination fee by employing agency; reimbursement of tuition, other course expenses, wages, and benefits
S. 943.22	Salary incentive program for full-time officers
S. 943.25	Criminal justice trust funds; source of funds; use of funds

Other Expenditure Authority - The sheriff is granted authority to make any expenditure authorized by the adopted budget that is both reasonable and necessary to the efficient operation of the office. However, the manner in which certain expenditures are to be accomplished has been set forth in law and, for other expenditures, authorizing law permits expenditures for purposes generally prohibited. For example, the sheriff may purchase insurance covering unauthorized activities by deputies (false arrest insurance). Additionally, he or she may expend money for investigative purposes, to the limits imposed by his or her budget, without documenting how individual expenditures are reasonable and necessary. The auditor should make appropriate inquiries to ensure that all bank accounts set up in the sheriff's name, such as donations or officer recognition accounts, are included in the sheriff's financial records and subject to applicable compliance requirements.

Examples of laws governing the sheriff's expenditures for purposes other than salaries include:

S. 30.50	Payment of salaries and expenses
S. 30.501	Bailiffs' meals and lodging
S. 30.555	Liability insurance
S. 112.061	Per diem and travel expenses of public officers, employees, and authorized persons; statewide travel management system
S. 142.15	Prisoner confined in different county
S. 627.7491	Official law enforcement vehicles; motor vehicle insurance requirements
S. 896.107	Rewards for informants

Provision of Facilities - The board of county commissioners is responsible for providing office and other facilities for the sheriff, either through building ownership or through the use of leased properties. However, unlike most other county constitutional officers, the sheriff is responsible for the acquisition of tangible personal property necessary for the proper and efficient operation of the office, as provided in Section 30.49, F.S. Additionally, the sheriff may acquire property through confiscations and forfeitures. All tangible personal property acquired by the sheriff is subject to accountability as provided in Chapter 274, F.S., and Florida Department of Financial Services Rule 69I-73, Florida Administrative Code.

External Oversight and Approval - Although the sheriff is an independent constitutional officer, he or she is subject to some oversight by other agencies of government, the provisions of Section 30.53, F.S., notwithstanding. For example, as previously noted, the sheriff's budget is subject to review and approval by the board of county commissioners and his or her financial operations are subject to independent audit; his or her employment of deputies must conform to standards established by the Criminal Justice Standards and Training Commission (e.g., see Sections 943.085, 943.12, 943.135, and 943.1701, F.S.); and his or her operation of a detention facility must conform to the guidelines set by the Florida Model Jail Standards Working Group pursuant to Section 951.23(4), F.S. Additionally, in his or her duties as executive officer of the courts, he or she is subject to oversight by the courts.

Effect of and Penalties for Noncompliance - Because of the sensitive nature of the duties and responsibilities assigned the sheriff by law, faithful performance by the sheriff or his or her deputies is of the utmost importance. The courts have frequently emphasized the importance of faithful performance by law enforcement officers and several provisions of law address the consequences of noncompliance with the requirements of law governing the duties of law enforcement officers.

Examples of such legal requirements, and the associated penalties for noncompliance, include:

S. 30.20	False return
S. 30.21	Failure to pay over money
S. 215.11	Defaulting officers; Florida Department of Financial Services to report to clerk
S. 839.04	County officers not to speculate in county warrants or certificates
S. 839.12	Officer failing to keep record of costs
S. 839.13	Falsifying records
S. 839.14	Officer withholding records from successor
S. 839.19	Failure to execute process generally
S. 839.20	Refusal to execute criminal process
S. 839.21	Refusal to receive prisoner
S. 839.23	Officer taking insufficient bail
S. 839.24	Penalty for failure to perform duty required of officer
S. 932.7062	Penalty for noncompliance with reporting requirements

Tax Collector

Key Characteristics

- The tax collector is a county officer who serves under the general oversight of several state agencies.
- The tax collector is responsible for the collection of all ad valorem taxes levied by the county, the school board, some special taxing districts, and all municipalities within the county, along with certain special assessments levied and user fees.
- The tax collector is responsible for acting as the agent for various state agencies for the sale of vehicle and watercraft licenses and registrations, hunting and fishing licenses, and, in certain counties, for the testing for and issuance of motor vehicle licenses.
- In performing the duties assigned by law, the tax collector is subject to strict accountability concerning the receipt, deposit, investment, and remittance of amounts collected.

Powers and Duties - The county tax collector is a constitutional officer elected by the voters of each county as provided in Article VIII, Section 1 (d) of the State Constitution, except when a different manner of selection is mandated by county charter or special law approved by vote of the electors of the county. The tax collector's duties and responsibilities are provided in various general laws of Florida and through administrative rules authorized by these general laws.

The tax collector is responsible for collecting and distributing all ad valorem taxes levied by the boards of county commissioners, district school boards, municipalities, and special local and regional taxing districts within the individual counties. The tax collector is frequently also responsible, as provided by law, for collecting non-ad valorem assessments and special assessments levied upon real and personal property within the county. The tax collector is also responsible for the collection and distribution of the county's business tax and tourism development tax.

In addition to the duties imposed on the tax collector by law to collect and distribute ad valorem taxes, non-ad valorem and special assessments, the tax collector serves, as provided by law, as the agent for various state agencies in the sale of automobile licenses and in various other matters relating to the purchase and sale of motor vehicles, the licensing of watercraft, the sale of hunting and fishing licenses, and the collection of sales and use taxes. In some counties, the tax collector is responsible for the testing for and issuance of motor vehicle driver's licenses.

The tax collector may finance the operations of the office from commissions and fees collected or may receive funding through the county budget in accordance with applicable provisions of general or special law.

Examples of the tax collector's powers and duties include.

Powers-General:

S. 50.011	Publication of legal notices ⁷
Ch. 192	Taxation: general provisions
S. 193.074	Confidentiality of returns
S. 194.181	Parties to a tax suit (Tax Collector defendant in suits relating to collections, tax certificates or tax deeds)
Ch. 197	Tax collections, sales, & liens
Ch. 205	Local business taxes
S. 215.34	State funds; noncollectible items; procedure
S. 288.037	Florida Department of State; agreement with county tax collector
Ch. 320	Motor vehicle licenses
S. 320.03	Registration; duties of tax collectors; International Registration Plan
S. 320.031	Mailing of registration certificates, license plates, and validation stickers
Ch. 322	Driver licenses
S. 322.02	Legislative intent; administration
S. 322.135	Driver license agents
Ch. 328	Vessels: Title Certificates; Liens; Registration
Ch. 379	Fish and Wildlife Conservation
S. 379.3511	Appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits
S. 832.06	Prosecution for worthless checks given tax collector for licenses or taxes; refunds

Powers-Taxation:

S. 153.60	County commissioners ex officio governing board
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⁷ Section 50.011, F.S. was amended in 2022 to allow certain legal notices to be considered to be published when they are included on a government agency website. Prior to this amendment, publication was generally required to be in print form in a newspaper.

S. 157.23	Objections to report of committee fixing assessments; notice; hearing; equalization; assessments; collection by tax collector
S. 157.29	Levy of tax for maintaining and repairing drains; assessment and collection of tax; sale of land for unpaid taxes
S. 163.570	Special region taxation
S. 190.021	Taxes; non-ad valorem assessments
S. 196.31	Taxes against state properties; notice
S. 197.102	Tax collections, sales, and liens – Definitions
S. 197.122	Lien of taxes; application
S. 197.123	Erroneous returns; notification of property appraiser
S. 197.131	Correction of erroneous assessments
S. 197.146	Uncollectible personal property taxes; correction of a tax roll
S. 197.152	Collection of unpaid or omitted taxes; interest amount; taxable value
S. 197.212	Minimum tax bill
S. 197.217	Judicial sale; payment of taxes
S. 197.2301	Payment of taxes prior to certified roll procedure
S. 197.2421-.2526	Property tax deferral and related matters
S. 197.254	Annual notification to taxpayer
S. 197.262	Deferred payment tax certificates
S. 197.263	Change in ownership or use of property
S. 197.322	Delivery of ad valorem tax and non-ad valorem assessment rolls; notice of taxes; publication and mail
S. 197.323	Extension of roll during adjustment board hearings
S. 197.332	Duties of tax collectors; branch offices
S. 197.333	When taxes due; delinquent
S. 197.343	Tax notices; additional notice required
S. 197.344	Lienholders; receipt of notices and delinquent taxes
S. 197.3631	Non-ad valorem assessments; general provisions
S. 197.3635	Combined notice of ad valorem taxes and non-ad valorem assessments; requirements.
S. 197.402	Advertisement of real or personal property with delinquent taxes
S. 197.403	Proof of publication
S. 197.412	Attachment of tangible personal property in case of removal
S. 197.413	Delinquent personal property taxes; warrants; court order for levy and seizure of personal property; seizure; fees of tax collectors
S. 197.416	Continuing duty of the tax collector to collect delinquent tax warrants; limitation of actions
S. 197.417	Sale of personal property after seizure
S. 197.432	Sale of tax certificates for unpaid taxes
S. 197.433	Duplicate certificates
S. 197.443	Cancellation of tax certificates; correction of tax certificates
S. 197.444	Cancellation of tax certificates; suit by holder
S. 197.446	Payment of back taxes as condition precedent to cancellation of tax certificate held by county
S. 197.447	Cancellation of tax liens held by the county on property of the United States and the State of Florida
S. 197.462	Transfer of tax certificates held by individuals
S. 197.482	Expiration of tax certificate
S. 197.492	Errors and insolvencies report
S. 197.502	Application for obtaining tax deed by holder of tax sale certificate; fees
S. 197.522	Notice to owner when application for tax deed is made
S. 298.365	Collection of annual installment tax; lien
S. 298.54	Maintenance tax
S. 373.0697	Basin taxes
S. 373.539	Imposition of taxes

Accountability - The tax collector is subjected to more specific requirements of accountability than any other officer in the county, with the possible exception of the clerk of the circuit court. These requirements are established by general law and by administrative rules. The requirements deal with the reporting of transactions to various authorities, the procedures to be employed in the receipt, investment, and disposition of public moneys, miscellaneous requirements to maintain corollary records, and explicit requirements governing the forms to be used and accounted for in executing various transactions or recording those transactions in summary form.

When determining the tax collector's compliance with accountability requirements, the particular requirements applicable to the taxes or fees collected must be given careful consideration. For example, requirements and limitations applicable to the collection of ad valorem taxes are substantially different from the accountability requirements applicable to the sale of motor vehicle licenses.

Reporting - As prescribed by law and administrative rule, the tax collector is required to file monthly, or more often, reports of taxes and fees collected with various county, state, and other governmental entities, must periodically report his or her accountability for pre-numbered documents and licenses supplied by other governmental entities, and must periodically report the collection and use of fees collected as compensation of the office for the various services rendered. Additionally, as is required of other county officers, the tax collector must file a number of reports concerning the routine operations of the office such as the withholding of taxes from employee compensation, and the amounts contributed or withheld for retirement and social security contributions.

Public Money - Collections of public money must be safeguarded and accounted for with meticulous care. A number of laws deal specifically with this requirement and specify particular procedures and time intervals for the collection, deposit, investment, and distribution of moneys collected by the tax collector.

Record Requirements – The tax collector's records are prescribed by general law, for example Chapter 219, F.S., by laws imposing specific fees and taxes, and by rules of administrative procedure. In many instances, particular pre-numbered forms will be prescribed to document the collection of taxes and fees.

Examples of accountable forms and licenses provided by other agencies include motor vehicle decals and license plates, sales tax receipts, hunting and fishing licenses, and watercraft decals. Other accountable forms may be specified by special acts or local ordinances. Also, the agencies furnishing such forms commonly require explicit periodic reports showing the use or disposition of the forms provided.

Failure to properly account for such forms (e.g., hunting and fishing or motor vehicle license forms) may result in the assessment of penalties against the tax collector equal to the value represented by the missing forms. Such charges are likely to be considered a personal liability of the tax collector.

Other Requirements – The tax collector's accountability requirements extend beyond the collection of moneys. Because the failure to pay taxes and fees when due can create liens on real and personal property that may ultimately result in the seizure and sale of such property, the tax collector must keep and periodically publish records of property on which the applicable taxes have not been paid.

Although it is not feasible within the scope of this Practice Aid to compile a comprehensive list of the laws and rules prescribing accountability requirements applicable to the tax collector, examples of laws establishing accountability requirements include:

Accountability-Reporting:

- S. 116.03 Officers to report fees collected
- S. 218.32 Annual financial reports; local governmental entities
- S. 218.36 County officers; record and report of fees and disposition of same
- S. 218.39 Financial audit reports
- S. 218.391 Auditor selection procedures

Accountability-Public Moneys:

Ch. 136	County depositories
S. 218.415	Local government investment policies
Ch. 219	County public money, handling by state and county
S. 219.075	Investment of surplus funds by county officers
Ch. 280	Security for public deposits

Accountability-Record Requirements:

S. 195.022	Forms to be prescribed by Florida Department of Revenue
S. 197.414	Record of warrants and levies on tangible personal property
S. 213.053	Confidentiality and information sharing
S. 218.33	Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures

Authority to Collect Public Moneys - The tax collector draws authority to collect public moneys from a variety of general and special laws addressing the several types of collections received by the tax collector. Additionally, those laws prescribe, both generally and specifically, the manner in which such collections shall be administered. The Governmental Accounting Standards Board has, euphemistically, described taxpayers as involuntary resource providers. The emphasis is, as the courts have repeatedly recognized, on the term "involuntary." Consequently, provisions of law addressing not only the extent of fees or taxes levied but the manner of administering such revenue measures are narrowly construed by the courts and failure by public officials to carefully follow the express requirements of these laws can have serious effects. (See *Wilson v. School Board of Marion County District*, 424 So.2d 16 (Fla. 5th DCA 1982)).

Those laws may prescribe, in addition to the amounts to be collected, as a few examples, the form of receipt, the deposit and investment of the collections pending distribution to the taxing authorities, authorized depositories, timing of remittances, form of remittance advices, requirements for direct deposit, insurance provisions, and bonding requirements.

Determination of the requirements applicable to particular classes of collections requires that the auditor be thoroughly familiar with the laws governing the imposition of the fees or taxes and structure audit procedures to assess the degree of compliance with those requirements. For example, it is good auditing practice to confirm with the several governmental entities imposing the fees or taxes the nature and quantities of accountable forms provided to the tax collector and the amounts of money received from the tax collector, notwithstanding that such information should be on record in the tax collector's office.

Public moneys collected by the tax collector are, for the most part, in the nature of trust collections received on behalf of other governmental entities. However, the normal practice of compensating the tax collector for services rendered is through the periodic payment of commissions on taxes collected and remitted, and through the imposition of fees collected at the time the service is rendered.

There are several laws governing the tax collector's entitlement to and calculation of commissions on taxes. These laws identify the various factors to be considered, such as the value of the taxes collected, the agencies responsible for payment, and the conditions precedent to the payment of the commissions. The auditor should carefully consider all of these factors before attesting to the propriety of commissions received by or due to the tax collector. In many circumstances, the findings of the auditor will be afforded great weight in determining the final settlement of commissions due the tax collector.

Fees received at the time of service are frequently commingled with trust collections in the initial accounting for such collections; however, the auditor should carefully evaluate the internal control procedures and accounting records used by the tax collector to distinguish and record fee income apart from trust collections. Chapter 219, F.S., provides helpful guidance in this respect.

Examples of the laws governing the collection and accountability of public moneys include:

Collection of Public Moneys-Generally:

- S. 125.0105 Service fee for dishonored check
- S. 215.322(5) Acceptance of credit cards, charge cards, debit cards or electronic funds transfers by state agencies, units of local government, and the judicial branch

Collection and Distribution of Public Moneys-Ad Valorem Taxes, Non-Ad Valorem Assessments and Special Assessments:

- S. 130.12 Collector to pay taxes to trustees or other officials or boards
- S. 192.001 Taxation and Finance – Definitions
- S. 192.0105 Taxpayer rights
- S. 192.037 Fee timeshare real property; taxes and assessments; escrow
- S. 192.047 Date of filing
- S. 192.091 Commissions of property appraisers and tax collectors
- S. 192.102 Payment of property appraisers' and collectors' commissions
- S. 193.092 Assessment of property for back taxes
- S. 197.162 Tax discount payment periods
- S. 197.182 Florida Department of Revenue to pass upon and order refunds
- S. 197.222 Prepayment of estimated tax by installment method
- S. 197.272 Prepayment of deferred taxes
- S. 197.282 Distribution of payments
- S. 197.312 Payment by mortgagee
- S. 197.363 Special assessments and service charges; optional method of collection
- S. 197.3632 Uniform method for the levy, collection, and enforcement of non-ad valorem assessments
- S. 197.373 Payment of portion of taxes
- S. 197.374 Partial payment of current year taxes
- S. 197.383 Distribution of taxes
- S. 197.4155 Delinquent personal property taxes; payment program
- S. 197.432 Sale of tax certificates for unpaid taxes
- S. 197.4325 Procedure when payment of taxes or tax certificates is dishonored
- S. 197.442 Tax collector not to sell certificates on land on which taxes have been paid; penalty
- S. 197.472 Redemption of tax certificates
- S. 197.4725 Purchase of county-held tax certificates
- S. 197.473 Disposition of unclaimed redemption moneys
- S. 197.542 Sale at public auction
- S. 197.603 Declaration of legislative findings and intent

Collection of Public Moneys-Motor Vehicles:

- S. 319.22 Transfer of title
- S. 319.27 Notice of lien on motor vehicles or mobile homes; notation on certificate; recording of lien
- S. 319.32 Fees; service charges; disposition
- S. 320.01 Definitions, general
- S. 320.02 Registration required; application for registration; forms
- S. 320.03 Registration; duties of tax collectors; International Registration Plan
- S. 320.04 Registration service charge
- S. 320.06 Registration certificates, license plates, and validation stickers generally
- S. 320.0607 Replacement license plates, validation decal, or mobile home sticker
- S. 320.0609 Transfer and exchange of registration license plates; transfer fee
- S. 320.08 License taxes
- S. 320.081 Collection and distribution of annual license tax imposed on the following type units
- S 320.131 Temporary tags
- S. 320.203(2) Disposition of biennial license tax moneys
- S. 681.117 Fee (motor vehicle sales warranties)

Collection of Public Moneys-Vessels:

- S. 328.01 Application for certificate of title
- S. 328.03 Certificate of title required
- S. 328.11 Duplicate certificate of title
- S. 328.66 County and municipality optional registration fee
- S. 328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers
- S. 328.73 Registration; duties of tax collectors

Collection of Public Moneys-Hunting and Fishing Licenses:

- S. 379.352 Recreational licenses, permits, and authorization numbers to take wild animal life, freshwater aquatic life, and marine life; issuance; costs; reporting
- S. 379.353 Recreational licenses and permits; exemptions from fees and requirements
- S. 379.354 Recreational licenses, permits and authorization numbers; fees established
- S. 379.357 Fish and Wildlife Conservation Commission license program for tarpon; fees; penalties

Collection of Public Moneys-Local Business Taxes:

- S. 205.053 Business tax receipts; dates due and delinquent; penalties

Collection of Public Moneys-Tourist Development Taxes:

- S. 125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement

Collection of Public Moneys-Penalties and Interest:

- S. 197.172 Interest rate; calculation and minimum
- S. 197.301 Penalties
- S. 213.26 Contracts with county tax collectors

Budgetary Authority - The tax collector shall, as provided in Section 195.087, F.S., concurrently submit an annual budget to the Florida Department of Revenue and to the board of county commissioners, unless otherwise provided in that section of law. The budget, when approved by the Florida Department of Revenue, constitutes the tax collector's spending authority for the ensuing fiscal year unless amended as provided by law.

Tax Collector's Compensation - The tax collector's personal compensation, as distinguished from amounts of compensation for services rendered by the office, is established, generally, under the provisions of Chapter 145.11, F.S. However, different rules may apply to tax collectors opting to accept guaranteed salary provisions and to those officials charged with tax collection responsibilities in charter government counties.

The tax collector's compensation may be payable from the fees and commissions earned by the office or it may, pursuant to special acts, be payable from board of county commissioners (or the equivalent governing body) appropriations. In such instances, the tax collector may pay over all fees and commissions to the board of county commissioners and the expenses of operating the tax collector's office are included in the county budget. However, unless specifically exempted, the tax collector's budget would be subject to approval by the Florida Department of Revenue.

Examples of other laws impacting the tax collector's compensation include:

- S. 121.052 Membership class of elected officers
- S. 137.02 Bond of tax collector
- S. 145.012 Applicability
- S. 145.022 Guaranteed salary upon resolution of board of county commissioners
- S. 145.11 Tax collector (salary)
- S. 145.121 Other income to be income of the office
- S. 145.16 Special laws or general laws of local application prohibited
- S. 145.17 Supplemental compensation prohibited

- S. 145.19 Annual percentage increases based on increase for state career service employees; limitation
- S. 298.401 Property appraisers and tax collectors; compensation; characterization of services

Employment-Related Authority - The tax collector is expressly empowered to employ deputies by the provisions of Section 197.103, F.S. The tax collector, when serving ex officio as the agent of various state departments is also authorized to designate sub-agents to accomplish the purposes prescribed by law.

Chapter 219.03, F.S., permits the tax collector to bond such assistants and the expenses of such bonds are proper expenses of the office. Other examples of law governing the employment of assistants include:

- S. 121.061 Funding (Florida Retirement System)
- S. 122.35 Funding (State and county officers and employees retirement system)
- S. 197.103 Deputy tax collectors; appointment
- S. 443.131 Contributions (unemployment compensation)

Other Expenditure Authority - The tax collector may make other expenditures for the operation of the office to the extent reasonable and necessary and within the expenditure limitations imposed by the approved budget. However, the tax collector's discretion is not absolute in such matters. For example, the board of county commissioners is generally responsible for providing facilities needed by the county constitutional officers. Also, the question of how equipment purchases necessary to the tax collector's work are to be accomplished is not clearly spelled out in law.

Additionally, the tax collector is subject to the provisions of several general laws prescribing how certain transactions will be accomplished. Examples include payments for retirement benefits and workers compensation. Unexpended revenues, at year-end, are required to be refunded ratably to the agencies that paid commissions to the Tax Collector, unless the office is funded through the county budget.

External Oversight and Approval - Tax collectors are subject to extensive oversight and control by the Florida Department of Revenue, the Florida Department of Highway Safety and Motor Vehicles, the Florida Department of Financial Services, the Florida Department of Environmental Protection, and the Florida Fish and Wildlife Commission. Such oversight extends to the prescription of accounting and reporting practices, administration of various tax collection programs, budget approval, and financial reporting. The auditor should be familiar with the administrative rules of these departments.

Examples of laws prescribing such oversight requirements include:

- S. 129.03 Preparation and adoption of budget
- S. 195.002 Supervision by Florida Department of Revenue
- S. 195.027 Rules and regulations (property assessment administration and finance)
- S. 195.084 Information exchange
- S. 195.087 Property appraisers and tax collectors to submit budgets to Florida Department of Revenue

Effect of and Penalties for Noncompliance - As noted previously, it is critical that the tax collector perform assigned duties in the specific manner prescribed by law. Failure to carry out assigned duties in the manner specified can have serious consequences. Examples of the penalties prescribed for noncompliance are illustrated below. However, this list is not exhaustive, or even definitive, as to the range of actions that may be imposed by oversight bodies and the courts. It is not the auditor's function to suggest that specific penalties or sanctions might be applied to a public officer. The references provided are merely for the purpose of indicating that a broad range of sanctions may impact the tax collector.

S. 215.08	Delinquent collectors to be reported to state attorney
S. 215.09	Delinquent collectors; forfeiture of commissions
S. 215.10	Delinquent collectors; suspension
S. 215.11	Defaulting officers; Florida Department of Financial Services to report to clerk
S. 839.04	County officers not to speculate in county warrants or certificates
S. 839.06	Collectors not to deal in warrants, etc.; removal
S. 839.13	Falsifying records
S. 839.14	Officer withholding records from successor
S. 839.26	Misuse of confidential information

Property Appraiser

Key Characteristics

- The property appraiser is the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied.
- Governmental entities levying ad valorem taxes within the county must base their levies on the nonexempt property values determined by the property appraiser.
- The property appraiser is charged with preparing the tax rolls, which provide the basis for subsequent actions by the tax collector and the clerk of the circuit court.

Powers and Duties - The property appraiser is charged under Chapter 192, F.S., with determining the value of real and tangible personal property located within the county (see definition of “County property appraiser” in Section 192.001(3), F.S.). The assessment includes all property located within the county (except inventory) whether or not the property is taxable, wholly or partially exempt or subject to classification reflecting a value less than its just value at its present highest and best use (see Section 192.011, F.S.). The property appraiser is also charged with determining the taxes for each parcel of property subject to the ad valorem taxes and non-ad valorem assessments levied by the several taxing authorities within the county. Determinations of just value by the property appraiser are subject to both administrative and judicial review as provided in Chapter 194, F.S.

Each property appraiser shall prepare the following assessment rolls as provided in Chapter 193, F.S.:

- Real property assessment roll.
- Tangible personal property assessment roll. This roll shall include taxable household goods and all other taxable tangible personal property.

These rolls may include properties that are exempt from the levy of ad valorem taxes and properties belonging to other governmental entities.

The property appraiser may also be responsible, when required by law or by contractual arrangement, for the preparation of special assessment rolls on real property situated within the county.

The property appraiser is also charged with receiving and approving applications for specific exemptions from ad valorem taxation as provided in Chapter 196, F.S.

The property appraiser functions as an independent constitutional officer subject to the general oversight of the Florida Department of Revenue. He/she receives compensation from the several taxing authorities in the county, based on the budget approved by the Department, as provided in Sections 192.091, and 298.401, F.S., as applicable. All municipal and school district taxes shall be considered as taxes levied by the county for purposes of this computation.

The property appraisers’ duties include, in summary, the following:

- Preparation of the county tax roll.

- Certification of assessed property values to separate taxing districts within the county (e.g., special districts, school boards, municipalities).
- Determination of exempt property, including the processing of homestead exemptions.
- Provision of services to assist the public in the identification of all property situated within a respective county.
- Provision of other special assessment services as required by law.
- Maintain maps and mapping services.

Examples of laws providing for the property appraiser's powers and duties include:

General Powers and Duties:

Ch. 192	Taxation: general provisions
Ch. 193	Assessments
Ch. 194	Administrative and judicial review of property taxes
Ch. 195	Property assessment administration and finance
Ch. 196	Exemption

Specific Powers and Duties:

S. 153.53	Establishment of districts in unincorporated areas
S. 153.69	County property appraiser ex officio tax assessor for district
S. 193.016	Property appraiser's assessment; effect of determinations by value adjustment board
S. 193.023	Duties of the property appraiser in making assessments
S. 193.052	Preparation and serving of returns
S. 193.074	Confidentiality of returns
S. 193.085	Listing all property
S. 193.092	Assessment of property for back taxes
S. 193.114	Preparation of assessment rolls
S. 193.122	Certificates of value adjustment board and property appraiser; extensions on the assessment roles
S. 194.011	Assessment notice; objections to assessments
S. 194.015	Value adjustment board
S. 194.037	Disclosure of tax impact
S. 196.011	Annual application required for exemption
S. 196.111	Property appraisers may notify persons entitled to homestead exemption; publication of notice; costs
S. 196.141	Homestead exemptions; duty of property appraiser
S. 197.3631	Non-ad valorem assessments; general provisions
S. 197.3632	Uniform method for the levy, collection and enforcement of non-ad valorem assessments
S. 200.065	Method of fixing millage
S. 200.069	Notice of proposed property taxes and non-ad valorem assessments
S. 298.365	Collection of annual installment tax; lien
S. 298.54	Maintenance tax

It is not the intent of this Practice Aid to suggest that auditors should, within the scope of the financial audits required by Section 218.39, F.S., attempt to determine the propriety of the valuations established by the property appraiser or the completeness of the tax or special assessment rolls.

Accountability - As with other public officers, the property appraiser is subject to strict requirements of accountability. In addition to the financial reporting required by Chapter 218, F.S., the property appraiser is subject to the rules of the Florida Department of Revenue when preparing tax and assessment rolls and to the requirements of Chapter 219, F.S.

Examples of laws establishing property appraiser accountability requirements include:

Accountability-Reporting:

- S. 116.03 Officers to report fees collected
- S. 218.32 Annual financial reports; local governmental entities
- S. 218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures
- S. 218.36 County officers; record and report of fees and disposition of same
- S. 218.39 Financial audit reports
- S. 218.391 Auditor selection procedures

Accountability-Public Money:

- Ch. 136 County depositories
- S. 218.415 Local government investment policies
- Ch. 219 County public money, handling by state and county

Accountability-Record Requirements:

- S. 195.022 Forms to be prescribed by Florida Department of Revenue
- S. 195.084 Information exchange
- S. 213.053 Confidentiality and information sharing

Authority to Collect Public Moneys - The property appraiser's authority to collect moneys is essentially limited to the collection of amounts necessary to fund his or her approved budget as provided in Chapter 192, F.S. Although the appraiser may receive some other public moneys, such other collections are usually incidental to office operations. Examples of such income are interest earnings and sales of maps or similar documents.

Budgetary Authority - The property appraiser shall, as provided in Section 195.087, F.S., concurrently submit an annual budget to the Florida Department of Revenue and to the board of county commissioners.

The budget, when approved by the Florida Department of Revenue, constitutes the property appraiser's spending authority for the ensuing fiscal year unless amended as provided by law. Section 192.091, F.S., outlines the procedures that the appraiser should follow in order for the various taxing authorities of that county to pay their proportionate share of the annual budget.

Property Appraiser's Compensation - The property appraiser's compensation is established in Chapter 145, F.S. In addition, the property appraiser is entitled to a special supplement to salary if qualified through examination and continuing education as an expert appraiser.

Examples of other laws impacting the property appraiser's compensation include:

- S. 121.052 Membership class of elected officers
- S. 137.03 Bond of property appraisers
- S. 145.012 Applicability
- S. 145.121 Other income to be income of the office
- S. 145.16 Special laws or general laws of local application prohibited
- S. 145.17 Supplemental compensation prohibited
- S. 145.19 Annual percentage increases based on increase for state career service employees; limitation
- S. 192.115 Performance review panel

Employment-Related Authority - The property appraiser is authorized by Section 193.024, F.S., to appoint deputies to assist in carrying out the duties assigned by law. The terms of employment, including the compensation to be paid, are at the property appraiser's discretion subject to the limitations imposed by the approved budget. Employees participate in State retirement plans and are

subject to other conditions of employment normally applicable to county employees as described in previous sections of this Practice Aid.

Other examples of laws governing the employment of assistants include:

- S. 121.061 Funding (Florida Retirement System)
- S. 122.35 Funding (State and county officers and employees retirement system)
- S. 443.131 Contributions

Other Expenditure Authority - The property appraiser may make other expenditures for the operation of the office to the extent reasonable and necessary and within the expenditure limitations imposed by the approved budget. However, the property appraiser's discretion is not absolute in such matters. For example, the board of county commissioners is generally responsible for providing facilities needed by the county constitutional officers. Also, the question of how equipment purchases necessary to the property appraiser's work are to be accomplished is not clearly spelled out in law.

Additionally, the property appraiser is subject to the provisions of several general laws prescribing how certain transactions will be accomplished. Examples include payments for retirement benefits and workers compensation.

At the end of each fiscal year, the property appraiser is required to remit the excess revenues over expenditures to the governmental entities that funded his or her budget (Section 218.36, F.S.).

External Oversight and Approval - Property appraisers are subject to extensive oversight and control by the Florida Department of Revenue. Such oversight extends to the prescription of accounting and reporting practices, administration of various tax valuation programs, budget approval, and financial reporting. The auditor should familiarize himself with the Department's administrative rules, particularly as to ad valorem tax administration.

Examples of laws prescribing such oversight requirements include:

- S. 129.03 Preparation and adoption of budget
- S. 195.002 Supervision by Florida Department of Revenue
- S. 195.027 Rules and regulations
- S. 195.084 Information exchange
- S. 195.087 Property appraisers and tax collectors to submit budgets to Florida Department of Revenue

Effect of and Penalties for Noncompliance - As noted previously, it is critical that the property appraiser perform assigned duties in the specific manner prescribed by law. Failure to carry out assigned duties in the manner specified can have serious consequences. Examples of the penalties prescribed for noncompliance are illustrated below. However, this list is not exhaustive or even definitive as to the range of actions that may be imposed by oversight bodies and the courts. It is not the auditor's function to suggest that specific penalties or sanctions might be applied to a public officer. The references provided are merely for the purpose of indicating that a broad range of sanctions may impact the property appraiser.

- S. 215.11 Defaulting officers; Florida Department of Financial Services to report to clerk
- S. 839.04 County officers not to speculate in county warrants or certificates
- S. 839.13 Falsifying records
- S. 839.14 Officer withholding records from successor
- S. 839.26 Misuse of confidential information

Supervisor of Elections

Key Characteristics

- County officer charged with conducting elections within the county, except certain independent special district elections separately provided for by special acts.
- Functions under the general budget of the county.

Audit Impact

The “Audit Impact” information in this section does not represent or establish professional standards in auditing and is not an authoritative professional reference source. Accordingly, it should be used only in conjunction with generally accepted auditing standards and other authoritative guidance. The purpose of this information is to provide general guidance on the applicable laws or other issues noted and possible audit impact. Each engagement will require the auditor to perform their own risk assessment and evaluation of the specific entity and its environment to determine which specific laws are relevant and impact that entity and the related audit.

Powers and Duties - The supervisor of elections’ general powers and responsibilities are specified in Chapters 97 through 107, F.S. These sections of law prescribe qualifications for voting, registration of candidates, limitations on and requirements for reporting of campaign financing, the conduct of elections, and the reporting of the results of elections. Those laws also describe the various voting records that must be kept by the supervisor of elections.

The supervisor's general duties include the responsibility to:

- Obtain and maintain uniformity in the application, operation, and interpretation of the election laws.
- Provide uniform standards for the proper and equitable implementation of the registration laws.
- Actively seek and collect data and statistics necessary to scrutinize the effectiveness of election laws.
- Provide technical assistance and education to voters, candidates, and election personnel.

It is generally not appropriate, within the scope of the financial audit required by Section 218.39, F.S., to question the propriety of the supervisor's procedures and actions in the election process. The conduct of those duties rests within the jurisdiction of the Secretary of State and the courts.

Violations of election-related laws are extremely serious and can materially impact the operation of government. Consequently, if the auditor encounters events that bring the propriety of the supervisor of elections’ registration, election, or other non-financial transactions into question, he or she should contact independent legal counsel or the Florida Department of State for advice as to a proper course of action.

An example of the laws describing the supervisor of elections’ duties and responsibilities is Section 98.015, F.S., which addresses supervisor of elections; election, tenure of office, compensation, custody of registration-related documents, office hours, successor, seal; appointment of deputy supervisors; duties; public records exemptions.

Accountability - Accountability requirements placed on the supervisor of elections are diverse and extensive. However, most of those requirements relate to the conduct of the election and registration processes and are not of great concern to the auditor performing a financial audit.

To the extent that a supervisor of elections receives public moneys, the supervisor is subject to the same general laws as control the receipt, deposit, and disbursement of public funds by other county officers. However, other than filing fees (Section 105.031, F.S.), collection of moneys for the sale of

registered voter lists, and verification of petition signatures, the supervisor of elections' finances are, in some counties, handled in the same manner as county departments under the board of county commissioners control.

The audit approach may be significantly impacted by who is responsible for accounting and reporting of the supervisor of elections' financial transactions. Regardless of whether such financial transactions are administered by the board of county commissioners or by supervisor of elections' staff, the supervisor of elections is a separate constitutional officer and Section 218.39, F.S., requires a separate audit of the supervisor of elections. If supervisor of elections' staff are responsible for accounting and reporting of the supervisor of elections' financial transactions, the auditor may encounter "a small office environment" and will often have to be concerned with separation of duties as well as the qualifications of the supervisor of elections' staff responsible for financial accounting and reporting. Examples of law establishing accountability requirements for the supervisor of elections are presented below. The intent of the examples is to identify selected provisions of the law that may have auditing implications. After each citation, a brief description of the audit impact is presented. Although certain audit approaches may be suggested, the auditor must ultimately determine appropriate procedures using professional judgment. The possible audit procedures suggested herein generally should not be considered as "safe harbors."

Accountability-Recordkeeping

- S. 97.0585 Public records exemption; information regarding voters and voter registration; confidentiality
- S. 98.075 Registration records maintenance activities; ineligibility determinations
- S. 218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures

These sections of law address records the supervisor of elections must maintain, including a uniform classification of accounts established by the Florida Department of Financial Services.

Audit Impact: The auditor should perform appropriate tests to determine whether the supervisor of elections is properly recording transactions in accordance with the uniform classification of accounts established by the Florida Department of Financial Services.

Accountability-Reporting

- S. 218.32 Annual financial reports; local governmental entities
- S. 218.36 County officers; record and report of fees and disposition of same

These sections identify significant supervisor of election reporting requirements. Section 218.32, F.S., requires the county as a whole to annually file a financial report with the Florida Department of Financial Services (this is done electronically); however, the supervisor of elections is not required to file an annual financial report with the Department. Section 218.36, F.S., requires supervisor of elections to annually report specified financial information to the board of county commissioners within 31 days of the close of the fiscal year.

Audit Impact: The auditor should ensure that the supervisor of elections' financial transactions were properly included in the annual financial report for the county as a whole. The auditor should also ensure that the supervisor of elections filed the required report with the board of county commissioners

Accountability-Audits

- S. 218.39 Financial audit reports
- S. 218.391 Auditor selection procedures

These sections address the supervisor of elections financial audit requirement and auditor selection procedures.

Audit Impact: The auditor should ensure that the audit is conducted, and the audit report prepared and filed, in accordance with Section 218.39, F.S. The auditor may be contracted to perform an audit of the county as a whole and all county officers or be contracted only to perform an audit of the supervisor of elections. In either case, the auditor should consider whether the process used to select the auditor, and the auditor’s contract for services, are consistent with Section 218.391, F.S.

Accountability-Public Money

Ch. 136	County depositories
S. 218.415	Local government investment policies
Ch. 219	County public money, handling by state and county

These sections establish requirements for safeguarding of money collected by the supervisor of elections, and requirements for investing public money.

Audit Impact: Chapters 136 and 219, F.S. will impact all supervisors of elections no matter the size of the supervisor of elections’ operations. Section 218.415, F.S., may also have an impact especially for supervisors of elections’ who maintain their own accounting staff and bank and/or investment account(s). The auditor should ensure that the supervisor of elections is maintaining public moneys in a qualified public depository. The auditor will also need to identify applicable local laws and policies relating to investments and assess their significance to the audit. For example, depending on the materiality of investments, the auditor may need to determine whether the supervisor of elections’ investments were limited to those prescribed in Section 218.415(17), F.S., and, if not, whether the supervisor of elections had established a written investment policy that complies with Section 218.415, F.S. The Rules of the Auditor General require the auditor to prepare an attestation report regarding the supervisor of elections’ compliance with Section 218.415, F.S.

Authority to Collect Public Moneys - Although the supervisor of elections’ operations are funded through county appropriations pursuant to an approved budget, the supervisor of elections is required to collect, account for, and distribute public moneys related to the election process. Principal sources of such moneys are qualifying fees paid by candidates and fees received for verifying signatures on petitions.

Examples of laws authorizing the supervisor of elections to collect fees include:

S. 99.092	Qualifying fee of candidate; notification of Florida Department of State
S. 99.093	Municipal candidates; election assessment
S. 99.097	Verification of signatures on petitions

Audit Impact: Sections 99.092, 99.093, and 99.097, F.S., authorize the supervisor of elections to charge fees for certain specified services. Depending on the materiality of revenues from such fees, the auditor may need to perform audit procedures to determine compliance with these statutes.

Budgetary Authority - Section 129.03, F.S., requires the preparation of a tentative budget for the ensuing fiscal year and the submission of the budget to the board of county commissioners on or before June 1 of each year. However, the board of county commissioners may, by resolution, require the tentative budget to be submitted by May 1 of each year. The law specifies the fiscal year of the budget, the specific expenditure items to be itemized in the budget, and the manner in which the budget is to be included in the general county budget and subsequently amended.

The board of county commissioners may amend, modify, increase, or reduce any or all items of expenditure in the proposed budget submitted by the supervisor of elections by giving written notice of its action, after approval of the budget. Subsequent amendments to the supervisor of elections’

budget must be approved by the board of county commissioners and written notice provided to the supervisor of elections.

Other examples of laws pertaining to budgets include:

- S. 129.201 Budget of supervisor of elections; manner and time of preparation and presentation
- S. 129.202 Budget of supervisor of elections; matters related to allocation, expenditure, etc., of amounts in budget

Audit Impact: The supervisor of elections' budget is generally considered to be a significant audit issue. The related laws identify the budget authority, preparation, amendment, and submission processes. The budget comparison is a required reporting element. Generally, the budget as amended, and actual expenditure results, should be considered by the auditor in various audit processes.

Supervisor of Elections' Compensation - The supervisor of elections' compensation is governed by Section 145.09, F.S. However, certain requirements must be met before the supervisor is entitled to draw the full compensation provided by law. These conditions relate primarily to certification requirements established by the Division of Elections of the Florida Department of State for eligibility for the special qualification salary increment.

Examples of other laws impacting the supervisor of elections' compensation include:

- S. 121.052 Membership class of elected officers
- S. 145.012 Applicability
- S. 145.022 Guaranteed salary upon resolution of board of county commissioners
- S. 145.121 Other income to be income of the office
- S. 145.16 Special laws or general laws of local application prohibited
- S. 145.17 Supplemental compensation prohibited
- S. 145.19 Annual percentage increases based on increase for state career service employees; limitation
- S. 215.425 Extra compensation claims prohibited; bonuses; severance pay

Audit Impact – The supervisor of elections' salary, like all of the constitutional officers, is considered a significant audit issue, if not from a dollar perspective certainly from a qualitative perspective. The laws noted above provide guidance to the auditor in this evaluation including the base salary and any additional compensation if applicable. In evaluating the salary, it will be important for the auditor to understand the type of county being audited (Chartered, Home Rule, etc.) and identify the appropriate salary approved for the supervisor of elections. Recent law changes now allow the supervisor of elections to voluntarily reduce his or her salary and this should be taken into account, when applicable.

Employment-Related Authority - The supervisor of elections is specifically empowered to appoint deputies by Section 98.015(8), F.S. The supervisor of elections' deputies and other employees are subject to the same laws that govern the employment of other county employees.

Other examples of laws governing the supervisor of elections' employees include:

- S. 121.061 Funding (Florida Retirement System)
- S. 122.35 Funding (State and county officers and employees' retirement system)

Audit Impact: Payroll is generally the supervisor of elections' single highest dollar value operating expenditure. As such it will be important for the auditor to evaluate all aspects of the payroll process from hiring to separation. The laws noted above relate to contributions to the Florida Retirement System. Funding level information for the specific categories of employees is available from the Florida Retirement System on an annual basis and is useful in evaluating this portion of personnel costs. The auditor can use this information in a variety of ways. Therefore, obtaining a full understanding of the process is vital to ensuring that personnel expenditures are properly audited.

Other Expenditure Authority - The supervisor of elections may incur, subject to limits imposed in the approved budget, expenditures that are necessary and reasonable for the operation of the office. However, such expenditures must be incurred in the manner provided by law when a particular methodology is prescribed. As an example, Section 112.061, F.S., prescribes the conditions under which costs of official travel may be reimbursed and Section 101.294(5), F.S. prescribes that a certification from a vendor must be provided when acquiring voting system, voting system component, or voting system upgrade. Another example is Section 116.01, F.S., regarding payment of public funds into the State or county treasury.

The supervisor of elections may also receive directly, or through the county's board of county commissioners' federal moneys from the Elections Assistance Commission under the Help America Vote Act to be expended in voter education, poll worker training and voting equipment. Expenditures are governed by grant agreements and contracts, and the auditor should be aware of such expenditures required to be audited pursuant to the Federal Single Audit Act Amendments of 1996 and the Uniform Guidance.

Audit Impact: For the auditor to properly audit the supervisor of elections' expenditures, he or she must obtain a full understanding of the budgeted expenditures. This would generally be the first step in evaluating and determining whether the expenditures are appropriate and serve an appropriate public purpose. Due to the sensitive nature of travel and the related costs, the auditor should determine what, if any, specific procedures are needed to address such costs during the audit. The auditor also needs to be aware of the county's grant reporting process to ensure that there is no duplicate reporting of grant revenues.

S. 129.202(1)(f) Budget of supervisor of elections; matters related to allocation, expenditure, etc., of amounts in budget - Unexpended balances are required to be refunded to the board of county commissioners at year-end.

Audit Impact: The auditor will need to ensure that the appropriate filing with the board of county commissioners occurred and that unexpended funds were properly submitted timely to the board of county commissioners. The auditor will need to gain an understanding of the process for handling the submission of excess funds between the board of county commissioners and the supervisor of elections.

S. 125.01(1)(c) Powers and Duties - This law provides that the board of county commissioners is responsible for providing county buildings, which would include facilities necessary for the supervisor of elections' operations. The supervisor of elections does not retain title to the facilities or any other capital assets. Instead, title to capital assets is retained by the board of county commissioners, although the supervisor of elections acts as custodian of capital assets.

Audit Impact: The auditor needs to be familiar with all facilities and other capital assets used by the supervisor of elections to properly evaluate the audit impact, if any. The auditor will need to gain an understanding of reporting of capital purchases by the supervisor of elections and the related reporting to the board of county commissioners to ensure the proper information flow and ultimate reporting of any capital assets in the board of county commissioners' capital asset listing.

S. 97.012 Secretary of State as chief elections officer - General oversight authority, including the promulgation of rules governing the election process, is assigned to the Secretary of State.

Audit Impact: Generally, this would not have an impact on the financial statement audit. However, the auditor should be aware of this law and review correspondence between the supervisor of elections and the Secretary of State to determine whether there have been any violations of this law and, if so, how that might impact the audit.

Effect of and Penalties for Noncompliance - As noted previously, it is critical that the supervisor of elections perform assigned duties in the specific manner prescribed by law. Failure to do so can

have serious consequences. Examples of laws specifying penalties for noncompliance are illustrated below. However, this list is not exhaustive or, even definitive, as to the range of actions that may be imposed by oversight bodies and the courts. It is not the auditor's responsibility to suggest that specific penalties or sanctions might be applied to a public officer. The references provided are merely for the purpose of indicating that a broad range of sanctions may impact the supervisor of elections.

S. 215.11	Defaulting officers; Florida Department of Financial Services to report to clerk
S. 839.04	County officers not to speculate in county warrants or certificates
S. 839.13	Falsifying records
S. 839.14	Officer withholding records from successor
S. 839.26	Misuse of confidential information

Audit Impact: The auditor would need to be aware of any issues related to penalties and noncompliance and the related impact to the financial statement audit. The auditor should consider making inquiries regarding this issue through the supervisor of elections and staff, and at the board of county commissioners' level. The auditor has a responsibility to evaluate any known instances of noncompliance and related penalties in preparing the report on internal controls and compliance, and the management letter required by Chapter 10.550, Rules of the Auditor General.

MUNICIPALITIES

Introduction

The primary emphasis in Florida government for many years was the provision of services needed in rural, agriculturally oriented counties and communities. However, with the tremendous growth of the State's population, the focus of governmental services has been redirected towards urban lifestyles and the myriad of services demanded by the increasingly urban populations.

Municipalities (cities, towns, and villages) provide the governmental services needed by densely populated geographic areas. When citizens congregate in their living environment, they need services that are not provided in rural areas. The determination of services to be provided, and at what levels, must be made ultimately by those citizens affected. Therefore, the concept of municipal government is born. In response to those needs State law provides for the formation of municipalities within structured legal confinements.

There are over 400 municipalities in Florida, each imposing taxes and fees to finance local governmental services. These municipalities must interact with federal, state and county governments. Although these municipalities are subject to general State law and, in many instances, special acts of the Legislature, they generally operate under Legislative charters and have adopted ordinances to carry out their obligations to serve the citizens. One of the auditor's purposes is to determine the municipalities' compliance with these legal requirements.

As required by Section 218.39, F.S., each municipality with revenues or the total of expenses and expenditures over \$250,000, as reported on the fund financial statements, must obtain an independent financial audit performed in accordance with Chapter 10.550, Rules of the Auditor General. If the municipality has not been notified that the financial audit will be performed by the Auditor General, the municipality must retain an independent certified public accountant to perform the financial audit. Municipalities with revenues or the total of expenses and expenditures between \$100,000 and \$250,000, as reported on the fund financial statements, must obtain such an audit, unless the municipality has been audited within the two preceding fiscal years.

Municipalities are typically created by a special act of the Florida Legislature in which a charter for the incorporation of the municipality is enacted. Municipal charter amendments could only be accomplished by a special act of the Legislature until the Legislature enacted the Municipal Home Rule Powers Act (Act) in 1973. The Act provided that all then-existing special acts pertaining to the power or jurisdiction of a municipality became ordinances of the municipality subject to modification or repeal, and specified the methods by which a municipality could amend its charter (Section 166.031, F.S.) and adopt ordinances and resolutions (Section 166.041, F.S.).

The auditor should review the indices to special and local laws, published by the Office of Legislative Services, Division of Law Revision and Information, to determine the existence of any special or local laws enacted by the Florida Legislature and pertaining to the municipality being audited. However, it is important to remember that any such laws enacted before the Act may have been amended or repealed by action of the municipality.

Laws Affecting Municipalities

Examples of constitutional and statutory law addressing municipal government matters include:

Powers – General:

A7 s10, St Const	Pledging credit
A7, s12 St Const	Local bonds
A8 s1(f)-(g), Const	Enforcement of ordinances; conflicts with county ordinances
A8 s2, St Const	Establishment of municipalities; powers; annexation
Ch. 165	Formation of local governments
S. 166.021	Powers
S. 166.031	Charter amendments
S. 166.041	Procedures for adoption of ordinances and resolutions
S. 166.042	Legislative intent, <i>Home Rule Powers</i>
Ch. 171, Pt I	Municipal annexation or contraction

Powers - Specific:

A3 s14, St Const	Civil service system
A7 s18, St Const	Laws requiring municipalities to spend funds or limiting their ability to raise revenues or receive state tax revenue
S. 125.0101	County may contract to provide services to municipalities and special districts
S. 166.0415	Enforcement by code inspectors; citations
S. 166.0495	Interlocal agreements to provide law enforcement services
S. 166.0497	Alteration, amendment, or expansion of established downtown development district; procedures
Ch. 166, Pt IV	Eminent domain
Ch. 170	Supplemental and alternative method of making local municipal improvements
Ch. 180	Municipal public works

Accountability - Reporting:

S. 163.31801(8)	Affidavit signed by the CFO of the municipality stating that all impact fees were collected and expended by the municipality, or were collected and expended on its behalf, in full compliance with the spending period provision in the local ordinance or resolution, and that funds expended from each impact fee account were used only to acquire, construct, or improve specific infrastructure needs
S. 163.387(8)	Redevelopment trust fund; audit of the trust fund
S. 166.241	Fiscal years, budgets, appeal of municipal law enforcement agency budget, and budget amendments
S. 218.32	Annual financial reports; local government entities
S. 218.322	County and municipal transportation program data
S. 218.38	Notice of bond issues required; verification
S. 218.39	Financial audit reports
S. 218.391	Auditor selection procedures
Ch. 218, Pt V	Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act
S. 288.8018(1)	Gulf Coast audits – Funds received or expended related to Deepwater Horizon oil spill
S. 403.7032(3)	Recycling report
S. 403.7049	Determination of full cost of solid waste management; local government solid waste management fees

Accountability - Records:

S. 218.33	Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures
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Accountability - Public Moneys:

Ch. 218, Pt IV Investment of local government surplus funds
S. 218.415 Local government investment policies
Ch. 280 Security for public deposits

Accountability - Other Requirements:

S. 112.63 Actuarial reports and statements of actuarial impact; review
S. 112.661 Investment policies (pension plans)
S. 112.664 Reporting standards for defined benefit retirement plans or systems
Ch. 175 Firefighter pensions
Ch. 185 Municipal police pensions
C. 218, Pt VII Local Government Prompt Payment Act
Ch. 257 Public libraries and state archives
S. 365.171-.173 Emergency communications number "E911"

Authority to Collect Public Moneys:

A7 s1, St Const Taxation; appropriations; state expenses; state revenue limitation
A7 s2, St Const Taxes; rate
A7 s3, St Const Taxes; exemptions
A7 s8, St Const Aid to local governments
A7 s9, St Const Local taxes
S. 125.01(6) Countywide services extended to municipalities or establishment of MSTU or MSBU
S. 163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges
S. 166.0445 Family day care homes; local zoning regulation
S. 166.201 Taxes and charges
S. 166.211 Ad valorem taxes
S. 166.221 Regulatory fees
S. 166.222 Building code inspection fees
S. 166.223 Special assessments levied on recreational vehicle parks regulated under chapter 513
S. 166.231-.232 Municipalities; public service tax
S. 166.233 Public service tax; effective dates; procedures for informing sellers of tax levies and related information
S. 166.234 Public service tax; administrative provisions (including audits), rights and remedies
S. 166.251 Service fee for dishonored check
S. 166.271 Surcharge on municipal facility parking fees
Ch. 170 Supplemental and alternative method of making local municipal improvements
Ch. 173 Foreclosure of municipal tax and special assessment liens
S. 180.13 Administration of utility; rate fixing and collection of charges
S. 180.14 Franchise for private companies; rate fixing
S. 180.191 Limitation on rates charged consumer outside city limits
Ch. 200 Determination of millage
Ch. 202 Communications Services Tax Simplification Law
Ch. 205 Local business taxes
S. 206.605 Municipal tax on motor fuel
S. 206.61 Municipal taxes, limited
S. 215.322(5) Acceptance of credit cards, charge cards, debit cards, or electronic funds transfers by state agencies, units of local government, and the judicial branch
Ch. 218, Pt II Revenue Sharing Act of 1972
S. 218.335 Authority to charge interest on overdue payments
Ch. 218 Pt VI Participation in half-cent sales tax proceeds
S. 316.0083 Mark Wandall Traffic Safety Program; administration; report (red light camera program)

S. 553.721 Surcharge (on building permit fees)
S. 938.15 Criminal justice education for local government

Authority to Incur Debt:

A7 s12, St Const Local bonds
A7 s14, St Const Bonds for pollution control and abatement and other water facilities
Ch. 75 Bond validation
Ch. 132 General refunding law
Ch. 159 Bond financing
Ch. 166, Pt II Municipal borrowing
S. 170.11- .20 Bonds issued for improvements to be paid by special assessment
S. 180.08-.11; .25-.26 Revenue certificates
S. 215.431 Issuance of bond anticipation notes
S. 218.385 Local government bonds; sale
S. 218.386 Bonds; finder's fees prohibited

Budgetary Authority and Limitations:

S. 166.241 Fiscal years, budgets, appeal of municipal law enforcement agency budget, and budget amendments

Facilities:

Ch. 255 Public property and publicly owned buildings

Expenditures:

S. 27.34 Limitations on payment of salaries and other related costs of state attorneys' offices other than by the state
S. 27.54 Limitation on payment of expenditures other than by the state
S. 112.061 Per diem and travel expenses of public officers, employees, and authorized persons; statewide travel management system (also see Section 166.021(9)(b), F.S.)
S. 112.08-.0805 Group insurance for public officers, employees, certain volunteers and retired employees
S. 112.171 Employee wage deductions
S. 112.18-.191 Special disability and death benefits - firefighter and law enforcement officers
Ch. 112, Pt III Code of ethics for public officers and employees
S. 163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges
S. 166.045 Proposed purchases of real property; confidentiality of records; procedure
S. 166.215 Remittance of funds
S. 170.15 Expenditures for improvements
S. 180.16 Acquisition by municipality of property of private company
S. 180.20 Regulation by private companies; rates; contracts
S. 180.23 Contracts with engineers, attorneys and others; boards
S. 180.24 Contracts for construction; bond; publication of notice; bids
S. 287.055 Consultants' Competitive Negotiation Act
Ch. 951 County and municipal prisoners

SPECIAL DISTRICTS

Introduction

ALERT for special district audits.

The Florida Legislature, for independent and dependent special district audits effective for the fiscal year ended September 30, 2021, amended Section 218.32, F.S., to require that additional specified information be included in the annual financial report, and amended Section 218.39, F.S., to require that the same additional specified information be reported in the audit report required by Section 218.39, F.S.

The additional specified information included in the audit report does not have to be audited but must be included in the management letter in accordance with Section 10.554(1)(i)6. – 8., Rules of the Auditor General. The additional specified information is described under the heading “Chapter 218, Florida Statutes” in this Practice Aid.

Although we may tend to think of government in Florida as consisting of state, county and municipal entities, there exists a fourth category of governmental entities, special districts or “authorities,” organized for limited special purposes and serving a great diversity of needs. In many cases, special districts are larger in scope than the more readily recognized county or municipal governments existing within their service areas. For purposes of this Practice Aid, special districts are those entities, without regard to style or description, that meet the definitions of a special district set forth in Section 189.012(6) and 218.31(5), F.S.

Florida is not unique in the use of special districts and authorities to accomplish limited governmental responsibilities. The most common types of special districts nationwide include those dealing with natural resources (water and soil management) and fire safety and protection and snow removal, road maintenance and schools are often called “Townships.” Special districts reported include both those dependent on another governmental entity and those that function as independent entities with special governmental responsibilities.

According to the official list of special districts, located on the Florida Department of Economic Opportunity’s Web site at <http://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts>, there are over 1,300 independent special districts, and more than 600 dependent special districts, in the State. These special districts have responsibility for over 80 different governmental functions including, but not limited to:

- Airports/Air Navigation Facilities.
- Community Development and Community Redevelopment.
- Fire Control and Rescue.
- Health Facilities.
- Housing and Housing Finance.
- Industrial Development.
- Mosquito Control.
- Municipal-Type Services and Improvements.
- Recreational Facilities/Programs.
- Soil and Water Conservation.
- Water and/or Wastewater Systems.
- Water Management.

As required by Section 218.39(1), F.S., each special district with revenues or the total of expenses and expenditures in excess of \$100,000, annually, must provide for an independent financial audit. Pursuant to Section 218.39(1)(h), F.S., special districts with revenues or the total of expenses and expenditures in excess of \$50,000, but not more than \$100,000, must obtain such an audit unless the special district has been audited within the two preceding fiscal years. These financial audits must be performed in accordance with the Chapter 10.550, Rules of the Auditor General

Audits of special districts pose unusual challenges for practitioners accepting such engagements. Each special district has characteristics that are similar to other governmental entities and those that are unique to that particular district. Further, the auditing requirements can be complex and time-consuming; particularly those relating to the compliance determination aspects of the audit. Special district financial audits must be conducted in accordance with generally accepted government auditing standards and Chapter 10.550, Rules of the Auditor General (which is updated annually).

Determining the Nature of the Special District

Before the practitioner can determine the scope of the audit of a special district, he or she must make several determinations concerning that entity. These include the relationship of the district to other governmental entities, the authorized functions of the district, and the nature of the services provided by the district. The best way to start this research is to obtain the district's enabling legislation and all amendments thereto. The district's creating document can be found on the Florida Department of Economic Opportunity's official list of special districts (see <http://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts>).

Classification of Special Districts - Prior to 1989, special districts could be created in a variety of ways. Uniform guidelines of governance or oversight had not been adopted by the Legislature. In 1989, after extensive review of the problems affecting the operation of special districts, the Legislature substantially amended Chapter 189, F.S. Those amendments established requirements for, among others matters, creation of special districts, selection of governing officials, tax levy and collection, incurrence of debt, financial responsibility, and oversight by state agencies.

Special districts created by special acts of the Legislature (Laws of Florida) are included within the purview of Chapter 189, F.S. Municipal service taxing units and municipal service benefit units created under the provisions of Chapters 125 and 166, F.S., some housing authorities, planning authorities, and some utility authorities are not considered to be special districts subject to Chapter 189, F.S. Notwithstanding that such entities are not subject to the provisions of Chapter 189, F.S., they may be subject to the audit provisions of Section 218.39, F.S., and other oversight laws.

Before undertaking any audit engagement, the practitioner should ascertain, by reference to authoritative documentation (enabling act, or other authorizing document), the legal basis for the entity to be audited. Generally, such a determination will establish whether the entity was established pursuant to:

- A general law of the State (Florida Statutes).
- A specific act of the Legislature applicable only to that entity (Laws of Florida).
- The home rule powers granted to non-charter counties and incorporated in Chapter 125, F.S., or by specific authority of the charter for those counties operating under the charter form of government.
- The home rule powers granted to municipalities pursuant to Chapter 166, F.S.
- Inter-local agreement as authorized by Chapter 163, F.S.

The auditor should also test for representative requirements and determination of legal status as per the *AICPA Audit and Accounting Guide - State and Local Governments*.

Once identified as such, special districts, as defined in Sections 189.012(6) and 218.31(5), F.S., must

be further classified, for audit purposes, as either dependent or independent special districts. Dependent special districts are those special districts that meet at least one of the criteria specified in Section 189.012(2), F.S., whereas independent special districts are those special districts that do not meet the definition of a dependent special district (see Section 189.012(3), F.S.) This further classification is critical to the proper reporting of the entities' operations within the financial statements of the proper governmental entity. The classification or status of a special district can be verified online through the Florida Department of Economic Opportunity's official list of special districts at <http://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts>.

Section 218.39(3)(a), F.S., provides that, for the purposes of the financial audit requirement, a dependent special district, excluding CRAs with revenues or a total of expenditures and expenses in excess of \$100,000 as reported on the trust fund financial statements, may be included within the audit of another local governmental entity upon which it is dependent (local governing authority). An independent special district, on the other hand, may not provide for an audit required by Section 218.39, F.S., by being included within the audit of another local governmental entity, but rather must be audited separately.

Section 218.39(3)(b), F.S., provides that, a special district that is a component unit, as defined by generally accepted accounting principles, of a local government entity shall provide the local governmental entity, within a reasonable time period as established by the local governmental entity, with financial information necessary to comply with this section. The failure of a component unit to provide this financial information must be noted in the financial audit report of the local governmental entity.

If the appropriate classification of the special district is not determined prior to commencing the audit engagement, unnecessary duplication of audit work may occur, confusion as to the specific responsibilities of the practitioners auditing the district as contrasted with the duties of the practitioners auditing the oversight body can result, and the proper reporting of the district's operations could be thwarted. Additionally, the unauthorized retention of auditors may result in the improper expenditure of public funds.

District Functions and Services - It is also essential that the practitioner gain an adequate understanding of the functions assigned to, and the nature of services provided by, the special district. Many special districts offer services to the general public that meet the general definition of enterprise type activities; however, other special districts offer services for fees which are intended to defray only a small portion of their costs, the remainder of their revenues being derived from various forms of taxation or assessment.

Additionally, in an effort to serve the perceived desires of citizens, special district officials may undertake projects that are not authorized by law or attempt to impose taxes or assessments without proper authority. Because of the limitations placed on the raising of governmental revenues, it is critical that the practitioner fully research the authority for such activities to assist in the determination of proper auditing and reporting procedures.

For example, the operations of several special districts, primarily recreation districts, have been accounted for and reported as self-supporting enterprises using proprietary accounting standards when they were actually governmental operations primarily supported by annual assessments levied against property owners of the districts. Because of the improper choice of accounting procedures, the property owners' annual assessments were unnecessarily increased to cover depreciation charges. In other instances, the results of special district operations have been misclassified and erroneously reported, thus concealing from the Legislature and the public the actual nature of those operations.

A proper understanding of applicable law is essential to a full understanding of the nature of special district operations since every action undertaken by district managers is dependent upon a showing of expressed authority for those actions.

Legal Basis for Special District Operations

General Considerations - Because of the limited authority granted to most special districts and the requirements of law governing their operations, the practitioner will find the audit process to be driven, in large part, by the authorizing laws applicable to the district. There are certain common characteristics of law that must be considered in the planning of special district audit engagements. Generally, each independent special district has a specific authorizing law or court order that established the district. Similarly, each dependent special district is subject to a law, ordinance, or resolution of the oversight body creating it.

These laws, ordinances, resolutions, and court orders provide specific and limited grants of power to the special district and serve to guide and regulate virtually every authorized action undertaken by the district's officials. The practitioner should, in planning the audit engagement, give appropriate consideration to the requirements of law peculiar to the entity being audited. In this respect, it is irrelevant whether the special district is an independent special district or a dependent special district to be included within the scope of the oversight entity's financial audit.

Authorized Activities - Each special district is organized to carry out a limited number of activities. They are not governmental entities with broad general powers. Because of these limited powers, the authority of special districts to raise money and to incur expenditures is limited. Generally, such powers are limited to a few revenue sources and expenditure authority is narrowly construed. By way of example, a special district may be empowered to levy special assessments for the purpose of improving or constructing roads in a specified area. That grant of authority would probably not contemplate special district officials expending the proceeds of the special assessments to acquire parks and other recreational areas.

Because of the generally narrow construction by the courts of the powers granted to special districts (e.g., See *Roach v. Loxahatchee Groves Water Cont. Dist.*, 417 So.2d 814 (Fla. 4th D.C.A. 1982)) and the potential liabilities which may arise from an improper exercise of power by the district's officials, the practitioner must carefully determine the nature of the services authorized to be provided by the district and the extent of the implementing powers granted to the district. Once determined, these powers should form the principal basis for developing the compliance examination procedures to be employed during the audit.

Creation Method - Each special district is, as noted earlier, created pursuant to legislative authority (i.e.: Florida Statute, Circuit Court Order, Laws of Florida, Federal Laws). Implementation of legislative provisions may permit the organization of some special districts pursuant to local ordinances or by court order. The particular law authorizing the special district will determine its status as an independent or dependent special district. The authorizing law may also provide for unique oversight authority to be exercised by other governmental entities, even though the special district subject to the oversight is classified as an independent special district. (See, e.g., Chapter 189, F.S., relating to the Florida Department of Economic Opportunity and Chapter 298, F.S., relating to judicial oversight of reclamation plans of water control districts and the permitting authority granted various other governmental entities.) This should be disclosed in the financial statements reporting entity footnote.

Authorized Functions - The powers of special districts are those specified in applicable law. The extension of special district activities to other functions is generally prohibited by the doctrine of "exclusion." This limitation on powers has been construed narrowly by the courts unless the authorizing law specifically states to the contrary.

Put simply, before a special district may undertake to act regarding a particular project or function, it must point to clear authority in law for the undertaking. The mere similarity of the project contemplated to those authorized in the enabling act may not be sufficient to justify the expenditure of the district's funds for the contemplated project or activity.

Governing Board Powers and Duties - Limitations of special district powers relate both to the substance of transactions and to the manner in which they may be carried out. The powers granted to the governing body of a special district will customarily address such matters as:

- The manner of appointing governing officials.
- The terms of office for officials.
- The power to raise revenues of various types.
- The power to employ staff.
- The contractual powers granted to the governing authority.
- The power to borrow money and/or issue bonds.
- The power to do those other things necessary to implement the district's authorized purposes.

The preceding list is by no means indicative of all powers afforded the governing authorities; however, it serves to illustrate the limitation on the exercise of power by the governing officials.

As an example of the limitations on such powers, a question was brought before the Attorney General concerning the authority of the governing board of a fire control district to borrow money for particular purposes. The fire control district was empowered by law to issue and sell bonds for the purpose of construction of new buildings or the purchase of new firefighting equipment. In an attempt to implement the express legislative purpose of the district, the governing board proposed to issue debt instruments to finance the purchase of land and the construction of buildings. However, the Attorney General ruled that the power to borrow money for the purchase of land was not among the authorized powers of the governing board and there was no necessarily implied authority for the governing body to borrow money to carry out district purposes. (See AGO 073-374).

It is not practicable in this Practice Aid to explore the full range of possibilities whereby a governing authority may undertake actions that are not within the grants of power established by law. Nonetheless, the practitioner should exercise extreme care in the examination of transactions tested during the audit to determine that those transactions are within the apparent authority of the governing body, were executed in the specific manner prescribed by law, and were for authorized and necessary purposes of the special district. Such determinations cannot be made except through careful research of applicable law and rules.

Funding Sources – The manner in which the power to tax is exercised has been the subject of close legislative scrutiny and control. The law is replete with restrictions of the power and there are many court cases interpreting the valid exercise of the power. As with other powers granted to special districts, the power to raise revenues is strictly limited and has been construed narrowly by the courts. This will generally be explicitly detailed in the enabling legislation or amendments thereto.

Generally, authorizing laws will enumerate the nature and limits of revenue raising powers granted to special districts and they may also regulate the manner in which authorized revenues may be raised. Such taxing powers may include ad valorem taxation, special assessments, or various fees. They may also include the operation of enterprise type activities. Regardless of the nature of the authority provided, the power must be exercised in strict compliance with the provisions of law as interpreted by the courts. To do otherwise may subject the special district to adverse judicial actions.

In general, the power to tax is limited, in the case of ad valorem taxation, to the express limits provided by the State Constitution or such lesser amounts as may be authorized by general law.

The power to levy special assessments is typically limited to the cost of acquiring and/or maintaining specified improvements as defined in and subject to the restrictions of the authorizing law; but not to exceed the benefits determined to accrue, as a result of the improvements or maintenance, to the properties against which the assessments are made. Typically, in respect to acquisitions of capital improvements, once the asset is acquired the power to tax for that purpose expires. Therefore, if an

asset is donated to a special district, the district may not be able to use its special assessment authority, approved regarding that asset, to acquire another asset or class of assets.

The authority to levy special assessments or taxes is also limited by the benefits assessed to the property subject to taxation *Moran v. State ex rel Montgomery*, 149 So. 477 (Fla. 1933). “The power of the state or a subordinate agency thereof to levy special assessments or taxes for drainage or reclamation purposes is not unlimited, such levies generally being restricted by the amount of benefits shown from the plan of reclamation, and when this amount is reached, the power to tax is cut off. In other words, *the foundation of their right to levy special assessments or taxes in connection with a water control improvement is the particular benefit received by the property charged.*

For example, the Drainage and Water Control Law (Chapter 298, F.S.) specifically provides that the amount of reclamation taxes levied by a water control district organized thereunder cannot exceed the amount of benefits assessed against the land involved. Although such reclamation taxes may be collected in annual installments assessed by the board of supervisors, the total amount of such tax cannot exceed the amount of the benefits as shown by *the plan of reclamation*. 20 Fla.Jur, Drains and Sewers, §41 (emphasis supplied, footnotes omitted)

Regardless of the type of revenue raised, certain duties are placed on the governing body as conditions precedent to imposing tax levies or fees on the residents of the special districts. Principal among these responsibilities is the responsibility to afford the residents of the districts and landowners subject to taxation the right of due process. These duties include adequate notification and a proper hearing. Evidence of these requirements may be found in Chapter 189, F.S., or other laws requiring:

- Advertising the taxes or assessments proposed.
- Court approval for assessments to be levied.
- Preparation of budgets and adoption of the budgets at public meetings.
- Submitting tax rolls to appropriate county officials, etc.

Other requirements precedent to the imposition of a tax or special assessment may be imposed by general or special laws, local ordinances, or rules. The particular requirements applicable to a special district may be found in the law authorizing the operations of the district, general statutory law, rules promulgated by governmental entities with oversight responsibility, or combinations of these authorities.

To illustrate the possible effect of failure to comply with the specific requirements of law governing the levy and collection of taxes authorized for restricted purposes, the reader is referred to the case of *Wilson v. Marion County School Board*, 424 So.2d 16 (Fla. 5th DCA 1982). As a result of a suit brought by a taxpayers group, the District School Board of the County was required to refund to the taxpayers approximately \$5 million because the court found the District had not adequately complied with the express language in law governing the levy of taxes for restricted capital improvement purposes.

Expenditure Limitations - As with the limitations placed on the power to tax, authorizing law places limitations on special districts’ authority to expend moneys. To reiterate, the limitations imposed are, generally, that moneys may be expended only when:

- There exists an authorized lawful public purpose to be served by the expenditure.
- The expenditure is necessary and reasonable in terms of the authorized public purpose to be served.

In applying these criteria, the practitioner should also remember that the manner in which an expenditure is incurred may be nearly as critical to a determination of legal compliance as the existence of an authorized public purpose to be served by the transaction. Generally, legislative direction as to the manner in which a transaction is to be accomplished precludes any other means of accomplishing the specified result.

For example, if a law specifies that a purchase may be made only after securing written competitive bids, the award of the purchase without securing the required bids as a precedent to the award could result in the purchase being invalidated. Similarly, the employment of staff and payment of compensation in excess of limits prescribed by law could act to create unauthorized expenditures of public funds. The practitioner must, for the reasons enumerated above, ascertain through appropriate audit examination that expenditures within the scope of the examination were incurred solely to serve authorized public purposes and that those expenditures were executed in the manner specified by applicable law and rules.

Testing and reporting on compliance with laws and regulations is a requirement and an essential component of Auditing under *Government Auditing Standards* and Chapter 10.550, Rules of the Auditor General.

Special District Geographic Boundaries

In the exercise of its powers, the governing body must generally undertake functions that are solely or primarily of benefit to the residents or property owners of the special district and authorized subdivisions thereof. Generally, the boundaries of a special district are defined in the authorizing law. However, the identification of the precise area to be served may be difficult without the aid of an individual properly versed in the mapping of land. At a minimum, the practitioner should request from special district officials maps clearly portraying the area subject to district control, including the separate identification of any subdivisions thereof. (Original map and any amendments must be sent to the Florida Department of Economic Opportunity when the district is formed (within 30 days of adoption and any amendment thereafter annually (Section 189.016(1) and (2), F.S.).

For many special districts, the geographic applicability of the governing law will be depicted as a single plane area equal to the area within the described boundaries of the district. In some special districts, the practitioner will find separately described contiguous areas within a single plane that are subject to differing methods or limits of taxation or expenditure. Frequently, such subdivisions must be given separate audit consideration when determining the propriety of taxation and related expenditures of the special district.

In a few extreme cases, to illustrate the range of organizational structures of special districts, the practitioner may find that a proper understanding of the law will require a multi-plane depiction of the district with overlapping boundaries of subdistricts, each with its own limitations on taxing and expenditure powers.

These factors can cause extensive complications in the audit process because of the distinct possibility that tax levies may be misapplied, duplicate taxation may occur, or some lands may be inadvertently omitted from the tax rolls of a subdistrict. All of these examples can result in the improper distribution of tax burdens and violation of bond covenants. Additionally, such overlapping geographic areas can present significant problems in determining the propriety of expenditures since an expenditure which might be improper in one subdistrict may be authorized as an expenditure of another subdistrict and the boundaries of the latter may overlap to some extent the boundaries of the former.

In any event, it is essential to the audit process that the practitioner determine and understand the possible and actual effects of separate geographic areas on the exercise of special district powers.

Relationship of the Special District to Oversight Bodies

Although the independent status of a special district may separate its accountability responsibilities from other governmental entities, the purposes for which special districts are organized frequently result in conditions of interdependence with other governmental entities. These conditions may result from either functional, regulatory, or financial interdependency, or combinations thereof. A common result of such relationships is that one or more governmental entities will exercise oversight authority through the adoption of rules governing various aspects of special district operations.

Examples of such activity include rules governing:

- Accountability and reporting adopted by federal, state, and local governmental entities relating to the administration of financial assistance.
- Qualifications of law enforcement officers adopted by the Florida Department of Law Enforcement and applicable to special districts organized to provide for public safety in certain geographic areas.
- The Florida Department of Management Services governing pension funds and which Rules are applicable to the officers and employees of special districts subject to the Florida Retirement System.
- The Florida Department of Environmental Protection applicable to various activities of the State's water management districts.
- Audit testing and reporting required by Chapter 10.550, Rules of the Auditor General.

The auditor must perform adequate research to become familiar with such requirements before beginning the audit. The primary responsibility for identifying such requirements rests with the auditee; however, an auditor should perform adequate research and inquire of related federal and state agencies and associated local governments concerning any special audit or reporting requirements applicable to the special district.

Laws Affecting Special Districts

The following examples are intended to illustrate how particular provisions of law impact auditing procedures necessary to measure compliance with law. The examples are not intended to be either authoritative interpretations of law or all-inclusive of the many provisions of law that may directly affect the performance of audit engagements for special districts.

It is not practicable within the limits of this Practice Aid to identify all elements of law affecting special district operations; however, the practitioner may, after identifying those provisions of law applicable to the special district subject to audit, use these examples as a guide to appropriate analysis techniques for those pertinent provisions.

Because of the scope of the guidance provided, examples of general law directly affecting the operations of independent special districts have been selected from Chapters 189 and 298, F.S. Two additional examples of general law are cited to illustrate how general law may impact the way special districts carry out their assigned responsibilities. These are Sections 112.061 and 287.055, F.S. However, the auditor must consider the possible effects of the provisions of all applicable special legislative acts (Laws of Florida). Frequently, such special acts will supersede or modify the effect of general laws. Special Districts' Special Acts were to be codified by December 1, 2004, and filed with the Florida Department of Economic Opportunity within 30 days of adoption (Section 189.019, F.S.). Special Districts must also comply with Chapter 10.550, Rules of the Auditor General (which are updated annually), and, for taxing districts, Florida Department of Financial Services Rule 69I-73, Florida Administrative Code. Practitioners must test compliance in accordance with these rules.

The intent of the examples is to identify selected provisions of the law that may have auditing implications. After each citation, a brief description of the audit impact is presented. Although certain audit approaches may be suggested, the ultimate determination of appropriate procedures must rest within the judgment of the individual practitioners. *The possible audit procedures suggested herein generally should not be considered as "safe harbors."*

Audit Impact

The "Audit Impact" information in this section is suggested and does not represent or establish professional standards in auditing and is not an authoritative professional reference source. Accordingly, it should be used only in conjunction with generally accepted auditing standards and

other authoritative guidance. The purpose of this information is to provide general guidance on the applicable laws or other issues noted and possible audit impact. Each engagement will require the auditor to perform their own risk assessment and evaluation of the specific entity and its environment to determine which specific laws are relevant and impact that entity and the related audit.

Chapter 189, Florida Statutes - Special Districts, General Provisions

This chapter was substantially amended in 1989 and then further amended to provide uniform guidelines for the formation and operation of special districts subject to its provisions. Chapter 189, F.S., establishes various coordinating, oversight and regulatory functions to be performed by various state agencies. These provisions may generally be classified as follows:

- General Requirements.
- Creation, Merger and Dissolution.
- Elections.
- Bonding Requirements.
- Coordination and Oversight Requirements.
- Reports and Audits.

General Requirements

S. 189.011 Statement of legislative purpose and intent

This section of law sets forth the Legislature's reasons for amending Chapter 189 and the intended outcome of those requirements.

Audit Impact: The auditor should review this Section to enhance his or her understanding of the audit environment.

S. 189.012 Definitions

This section defines the activities that shall be considered as special districts, differentiates between independent and dependent special districts, states that the term "department" refers to the Florida Department of Economic Opportunity, and defines the term "Water Management District."

Audit Impact: A clear understanding of these definitions is essential to the proper definition of audit scope, the determination of required reports, and the relationship of the audited entity to other governmental entities.

S. 189.013 Special districts; creation, dissolution, and reporting requirements; charter requirements

Establishes requirement for special districts, regardless of other provisions of law, to comply with certain provisions of this Chapter.

Audit Impact: This section is a good example of how a latter enacted provision of general law may supersede or supplement earlier enacted provisions of either general law or special acts. For example, in this particular instance, it appears that a special district would be bound by the reporting requirements specified in this chapter regardless of other provisions contained in special acts. However, in the absence of clear and irreconcilable conflict between the various provisions of law, it is unlikely that this section would be construed to repeal the earlier enacted provisions of law. Rather, the requirements of this chapter would be considered supplemental requirements.

S. 189.031 Legislative intent for the creation of independent special districts; special act prohibitions; model elements and other requirements; local general-purpose government/Governor and Cabinet creation authorizations

This section expresses further legislative intent as to the conditions precedent to the formation of independent special districts.

S. 189.061 Preparation of official list of special districts.

This section requires the Florida Department of Economic Opportunity to compile and maintain an official list of special districts.

Audit Impact: There is no discernible audit impact to this provision of law since one legislature may not, under general law, bind successive legislatures; however, the section does provide a clear statement concerning basic elements of concern in the formation and operation of special districts.

S. 189.021 Refund of certain special assessments

S. 189.05 Collection of non-ad valorem assessments

S. 189.052 Assessments levied on facilities regulated under Florida Statute Chapter 513

These sections provide for uniform procedures for collecting and refunding special assessments that do not meet the criteria for classification as ad valorem taxes.

Audit Impact: Creates a compliance requirement to be considered in the examination of a special district's procedures for assessing and collecting special assessments. It supersedes the requirements of general law or special acts providing for other means of collection.

Creation, Merger and Dissolution

S. 189.02 Dependent special districts

Provides that dependent special districts created after September 30, 1989, shall be created only by county or municipal ordinance with authority over the affected area.

Audit Impact: This section addresses the manner of creation of a dependent special district and would require the auditor to gain an understanding of the creating ordinance.

S. 189.022 Status Statement

The charter of a newly created dependent special district shall contain, and where practical and feasible, the charter of an existing dependent special district shall be amended to contain, a reference to the status of the special district as dependent. When necessary, the status statement shall be amended to conform to the department's determination or declaratory statement regarding the status of the special district.

Audit Impact: This section requires dependent special districts to identify themselves as such in their charters, which will assist the auditor in determining the district's dependent status. Also, the auditor may want to verify the district's compliance with this requirement.

S. 189.062 Special procedures for inactive districts

S. 189.071 Merger and dissolution procedures

S. 189.076 Financial allocations

These sections of law establish uniform procedures to be followed in the merger or dissolution of a special district. They also provide for the disposition of assets and assumption of indebtedness of the affected special districts.

Audit Impact: These sections supersede the provisions of earlier enacted general and special law and serve to control the disposition of assets and assumption of debt of the affected special districts. The auditor should ascertain that any mergers or dissolutions were, in fact, accomplished in accordance with these provisions and carefully consider the methods adopted by the successor governmental entity as to the use of assets and satisfaction of debt of the predecessor district(s).

Elections

- S. 189.04 Elections; general requirements and procedures
- S. 189.041 Elections; special requirements and procedures for districts with governing boards elected on a one-acre/one-vote basis
- S. 189.063 Education programs for new members of district governing bodies

These sections of law establish, generally, the requirements to be met when selecting members to serve on the governing boards of special districts when the creating acts specify that the board members be elected.

Audit Impact: The auditor should review the procedures used to elect board members and ascertain that they appear to be those specified in law. All actions impacting the raising and expenditure of moneys will, ultimately, require the governing board's approval. Consequently, if a majority of those board members voting to take specific actions were improperly elected, it is conceivable that the approval for such actions could be set aside with adverse effects on district affairs. *Clearly, it is not the responsibility of the auditor to pass judgment on the validity of the election process; however, if a violation of applicable election law was blatantly apparent, the auditor might be held responsible for a failure to report such conditions in a compliance audit.*

Bonding Requirements

- S. 189.042 Special district bond referenda

Provides, by reference, criteria for the conduct of elections governing the approval of bond issues when such elections are required by the State Constitution, general law or special acts.

Audit Impact: Because bond issues have major impact on the audit procedures of special districts, the auditor should review all aspects of district operations supporting the incurrence of debt. The special district's failure to comply with the express requirements of law precedent to incurring bonded debt can have severe effect on the district's financial position.

- S. 189.051 Bond Issuance

Specifies certain conditions applicable to bonds not issued pursuant to referendum and requires reporting of such issues to the Florida Department of Economic Opportunity; establishes time limits for compliance.

Audit Impact: Establishes a number of compliance requirements for the issuance of certain bonds. The auditor should consider audit procedures adequate to determine compliance with these requirements.

Requires one of the following:

- Bonds rated one of the highest four (4) ratings.
- Privately placed/sold to accredited investors.
- Bonds were backed by a letter of credit, etc.
- Bonds were accompanied by an independent financial advisor.

Coordination and Oversight Requirements

- S. 189.068 Special districts; oversight review procedures

These sections establish an oversight review process for special districts by the local general-purpose governments and require the Florida Department of Economic Opportunity to compile and disseminate specified information germane to the operations of special districts subject to the provisions of this chapter. The information to be compiled is diverse in nature and will touch on virtually all aspects of a special district's operations.

Audit Impact: Although the duties are imposed by law on the Florida Department of Economic Opportunity rather than on the special districts, the auditor should review the information compiled by the Department and compare the matters addressed in those records with his or her knowledge of district operations. This audit step is especially germane to the study and evaluation of the special district's system of internal control.

S. 189.065 Special districts; oversight of state funds use

Establishes the responsibility of each state agency providing funds to a special district to provide oversight as to the use of those funds.

Audit Impact: No direct impact on the audit of a special district; however, the reports required to be filed with the Florida Department of Economic Opportunity could provide a valuable source of information concerning grants of financial assistance to the audited district and the related compliance requirements imposed by law or grantee rules.

S. 189.08(2) Special district public facilities report

This section of law requires that independent special districts prepare extensive and comprehensive reports of their existing and planned service capacity, including proposed plans for financing any scheduled improvements for next seven years and scheduled replacements within the next ten years with annual update amendments. (Note: A plan of reclamation pursuant to Chapter 298, F.S., and/or a Water Management Plan pursuant to Section 190.013, F.S., satisfies this requirement).

Audit Impact: The requirements of this section will be time consuming; however, failure to do so will have broad impact on the State's mandatory planning processes. Therefore, the district's compliance should be annually monitored by the auditor. Additionally, the Report should provide information germane to the district's financial position and its future economic health. Auditor should verify submission to local governmental authority annually for changes and every fifth year for an update report. Report should include a 7-year capital plan and appropriate plan of financing such. The auditor should consider recommending correlation of the 7-year plan to the annual budget and possibly a multi-year budget for planning purposes. Any noncompliance noted by the Auditor must be reported in the Management Letter.

S. 189.081 Activities of special districts; local government comprehensive planning

Requires that construction, expansion, or major alteration of a public facility must be consistent with the applicable local government comprehensive plan; provides for limitations on that requirement.

Audit Impact: This section establishes requirements for special district public facility projects, noncompliance with which could render the projects unauthorized and subject to challenge by taxpayers.

S. 189.014 Designation of registered office and agent

This section of law addresses the filing requirements for designation of registered office and agent of the special district.

Audit Impact: Determination of compliance with the requirements of this section is valuable to the audit process. Within 30 days after the first meeting of its governing board, each special district in

the State shall designate a registered office and registered agent and file such information with the local governing authority or authorities with the department. If changes are made to the special district's registered office and/or agent, such information shall be filed with the local governing authorities. Any noncompliance noted by the auditor should be reported in the Management Letter.

Reports and Audits

S. 189.015 Meetings; notice; required reports

Provides that the governing body of a special district shall file lists of scheduled meetings, provides advertising requirements, provides for emergency meetings, and restricts the nature of business that may be transacted at an emergency meeting. Reaffirms that meetings are governed by the provisions of Chapter 286, F.S. Limits places where meetings may be held.

Audit Impact: Determination of compliance with the provisions of this section is particularly important to the audit process because of the requirements to provide for due process in the conduct of government business. Actions taken at meetings that do not meet the requirements of this section, are likely to be declared invalid by the courts, if challenged. Such invalidation could have material adverse effects on a special district's operations. Auditor should verify timely submission to the local governmental authority and proper advertisement of the schedule of meetings and/or scheduled meeting. Any noncompliance noted by the Auditor must be reported in the Management Letter.

*S. 189.016 Reports; budgets, audits

This section addresses the filing of required reports, the determination of status as a dependent or independent special district, and audit requirements.

Audit Impact: This section imposes several requirements that directly address the responsibility of the auditor. Specifically, this statute requires enabling legislation submission and requires budget adoption and amendment procedures as well as submission of various reports. Any change to enabling legislation must be submitted within 30 days after adoption to the Florida Department of Economic Opportunity. This law establishes the annual budget requirement and provides guidance for budget amendments. Budgets must be adopted by resolution and include all balances carried forward. Tentative budgets must be balanced and posted on the special district's official Web site at least 2 days before the budget hearing and must remain on the Web site for at least 45 days. Final budgets must be posted to the special district's official Web site within 30 days after adoption and must remain on the Web site for at least 2 years.

A special district's governing body may amend the budget up to 60 days after fiscal year-end. Budget amendments within a fund (i.e., amendments that do not change total appropriations of the fund) may be approved by Board motion. Budget amendments that change total appropriations must be approved by Board resolution, posted to the special district's official Web site within 5 days after adoption, and remain on the Web site for at least 2 years. Failure to comply with the requirements of this section would, in most instances, constitute serious occurrences of noncompliance within the scope of required audits. The auditor should verify appropriate and timely reporting. Non-Compliance noted should be reported in the Management Letter and/or Compliance Report.

S. 189.066 Effect of failure to file certain reports or information

This section addresses the failure of special districts to file certain reports, including annual financial reports and audit reports. It provides for actions that may be taken to compel special districts to comply with reporting requirements.

Audit Impact: This section addresses reports of paramount interest to the auditor. The auditor should determine whether the reports were properly filed and whether there are any penalties that have may be assessed.

S. 189.019 Codification

Establishes the requirement that most special districts must submit to the Legislature no later than December 1, 2004, a codification of its current legislative authority. Auditor must verify the status of the project and timely filing of codification (within 30 days of adoption) with the Florida Department of Economic Opportunity.

*S. 189.069 Special District Reporting of Information on Official Web site

By the end of the first full fiscal year after its creation, each special district shall maintain an official Web site containing the information required by this section. Special districts shall submit their official Web site addresses to the Florida Department of Economic Opportunity.

Independent special districts shall maintain a separate Internet Web site (S. 189.069(1)(a)). Dependent special districts shall be prominently displayed on the home page of the Web site of the local general-purpose government upon which it is dependent with a hyperlink to such web pages as are necessary to provide the information required by this section (S. 189.069(1)(b)). Dependent special districts may maintain a separate Web site providing the information required by this section.

A special district shall post the following information, at a minimum, on the district's official Web site (S. 189.069(2)(a)):

1. The full legal name of the special district.
2. The public purpose of the special district.
3. The name, official address, official e-mail address, and, if applicable, the term and appointing authority for each member of the governing body of the special district.
4. The fiscal year of the special district.
5. The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts mat reference chapter 190, as the uniform charter, but must include information relating to any grant of special powers.
6. The mailing address, e-mail address, telephone number, and Internet Web site uniform resource locator of the special district.
7. A description of the boundaries or service area of, and the services provided by, the special district.
8. A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority of the levy of the tax, fee, assessment, or charge. For the purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.
9. The primary contact information for the special district for the purposes of communication from the department.
10. A code of ethics adopted by the special district, if applicable and a hyperlink to generally applicable ethics provisions.
11. The budget of the special district and any amendments thereto in accordance with S. 189.016, which requires that the final adopted budget and amendments thereto remain on the Web site for at least 2 years.
12. The final, complete audit report for the most recent completed fiscal year, and audit reports required by law or authorized by the governing body of the special district. If a special district submitted its most recent final, complete audit report to the Auditor General, this requirement may be satisfied by providing a link to the audit report in the Auditor General's Web site.
13. A listing of regularly scheduled public meetings as required by S. 189.015(1).
14. The public facilities report, if applicable.
15. The link to the Florida Department of Financial Services' Web site as set forth in S. 218.32(1)(g).

16. At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the Web site for at least 1 year after the event.

Audit Impact: This section is significant because it is part of the budget and financial reporting requirements and the Legislature and citizenry's interest in government transparency. As such, the auditor should consider testing for compliance with the Web site reporting requirements.

S. 189.0695 Independent special districts; performance reviews

Requires that each independent special fire control district that is not located in a rural area of opportunity as defined in Section 288.0656(2), F.S., and each independent special hospital district as defined in Section 189.0695(2)(d)2., F.S., periodically provide for a performance review. Also requires that the Office of Program Policy Analysis and Government Accountability conduct a performance review for each independent special fire control district that is located in a rural area of opportunity, each independent mosquito control district as defined in Section 388.011, F.S., and each soil and water conservation district as defined in Section 582.01, F.S.

Audit Impact: The auditor should be aware of whether the independent special fire control district or hospital district, as applicable, has complied with the performance review requirement. Auditor should also determine whether the results of the performance review conducted by the Office of Program Policy Analysis and Government Accountability for the special district, as applicable, affect the financial audit.

Chapter 218, Florida Statutes

This chapter defines the requirements of taxation and local government reporting that apply to all Florida governmental entities including special districts. Although the entire chapter is important, Part III of Chapter 218, F.S., contains most of the financial management and reporting issues. Most of these provisions are discussed in the Audit Scope and Reports section of this Practice Aid.

*S. 218.32 Annual Financial Report

Essentially all independent special districts must submit an annual financial report (as defined) and a copy of its financial audit report to the Florida Department of Financial Services within 45 days of completion of the audit but no later than 9 months after the respective year end.

Effective for the fiscal year ended September 30, 2021, the following information is required to be included in the annual financial report:⁸

- For a dependent special district or an independent special district, the following information:
 - a. The total number of district employees compensated in the last pay period of the district's fiscal year being reported (see information required in Section 218.32(1)(e)2.a., F.S.).
 - b. The total number of independent contractors to whom nonemployee compensation was paid in the last month of the district's fiscal year being reported (see information required in Section 218.32(1)(e)2.b., F.S.).
 - c. All compensation earned by or awarded to employees, whether paid or accrued, regardless of contingency (see information required in Section 218.32(1)(e)2.c., F.S.). (Total wage compensation for the fiscal year being audited).
 - d. All compensation earned by or awarded to nonemployee independent contractors, whether paid or accrued, regardless of contingency (see information required in Section 218.32(1)(e)2.d., F.S.). (Amounts paid that would be reported on a Form 1099 for the fiscal year-end).

⁸ It is suggested that if the required information is not applicable to the special district, this should be indicated in the annual financial report. For example, if the special district had no employees, the annual financial report should indicate that above items a and c are not applicable for the special district and explain why.

- e. Each construction project with a total cost of at least \$65,000 approved by the district that was scheduled to begin on or after October 1 of the fiscal year being reported, together with the total expenditures for such project (see information required in Section 218.32(1)(e)2.e., F.S.).
 - f. A budget variance⁹ report based on the budget adopted under Section 189.016(4), F.S., before the beginning of the fiscal year reported if the district its budget pursuant to Section 189.016(6), F.S. (see information required in Section 218.32(1)(e)3., F.S.).
- For an independent special district that imposes ad valorem taxes, the following information: (see information required in Section 218.32(1)(e)4., Florida Statutes):
 - a. The millage rate or rates imposed by the district.
 - b. The total amount of ad valorem taxes collected by or on behalf of the district.
 - c. The total amount of outstanding bonds issued by the district and terms of such bonds.
 - For an independent special district that imposes non-ad valorem special assessments, the following information (see information required in Section 218.32(1)(e)5., Florida Statutes):
 - a. The rate or rates of such assessment imposed by the district.
 - b. The total amount of special assessments collected by or on behalf of the district.
 - c. The total amount of outstanding bonds issued by the district and the terms of such bonds.

Audit Impact: The auditor should review the annual financial report to determine whether it includes the required information and ensure that such information is also included in the management letter (see further information below regarding the Section 218.39, F.S., financial audit reports requirement).

S. 218.38 Notice of bond issues required; verification.

(1)(a) Each unit of local government shall furnish the Division of Bond Finance of the State Board of Administration a complete description of all of its new general obligation bonds and revenue bonds, shall also provide the division with advance notice of the impending sale of any new issue of bonds, and shall also provide the division with a copy of the final official statement, if any is published, all as required by rules of the division.

Audit Impact: Auditor must review proper filing. Any noncompliance noted by the auditor must be reported in the management letter.

S. 218.39 Financial audit reports

This section addresses the special district financial audit requirement.

Audit Impact: The auditor should ensure that the audit is conducted, and the audit report prepared and filed, in accordance with Section 218.39, F.S. In addition, the auditor should ensure that the information required to be included in the annual financial report by Section 218.32(1)(e)2. – 5., F.S., is also included in the audit report in accordance with Section 218.39(3)(c), F.S., and, specifically, in the management letter pursuant to Section 10.554(1)(i)6. – 8., Rules of the Auditor General. The auditor is not required to audit the information but should obtain the information from management and include explanatory verbiage that the auditor provides no assurance on the information.¹⁰

⁹ Section 218.32(1)(e)3., F.S., does not define the term "budget variance." However, this term is typically used when referring to the difference between budget and actual amounts. Further, since the budget variance report is only required when the special district amends its final adopted budget under Section 189.016(6), F.S., it is also reasonable to conclude that the variance is derived from a comparison of the amended budget amount to the actual amount.

¹⁰ It is suggested that if the required information is not applicable to the special district, this should be indicated in the management letter. For example, if the special district had no employees, the management letter should

S. 218.391 Auditor selection procedures

This section addresses the special district financial audit auditor selection procedures. This includes selection of auditors to conduct separate audits of CRAs with revenues or a total of expenditures and expenses in excess of \$100,000 pursuant to Sections 163.387(8) and 218.39(1)(h), F.S.

Audit Impact: The auditor should consider whether the process used to select the auditor, and the auditor's contract for services, are consistent with Section 218.391, F.S.

Chapter 298, Florida Statutes

The principal thrust of this chapter relates to most drainage and water control districts; however, the nature of the general guidance illustrates frequent expressions of Legislative intent as to the limitations placed on the powers of special districts in general. Compliance with this statute, if applicable, must be tested by the auditor.

The examples presented have been generally grouped under the following headings:

- General District Operations.
- Governance.
- Funding Sources.
- Expenditure Authority.
- Miscellaneous Provisions.
- Other General Laws.

The reader should recognize that the provisions of law cited may affect several activities of the special districts' operations; however, the classifications presented represent an attempt to provide a logical grouping of the provisions from an audit planning perspective. The reader should also be aware that later pronouncements of general law may supersede some of the direction contained in provisions of earlier enactments. The reader is particularly cautioned to read specific district law in conjunction with the provisions of Chapter 189, F.S.

General District Organization

S. 298.001 Districts designated as "water control" districts

Characterizes nature of special districts operating under authority of this chapter.

Audit Impact: Indicates, broadly, the nature of operating functions of the district.

S. 298.01 Formation of water control district

Establishes Legislative intent as to continuation of districts previously created, establishes procedures for creation of additional districts, establishes judicial responsibility.

Audit Impact: Identifies general basis for determination of continued district existence if district was created prior to July 1, 1980.

S. 298. 225 Water control plan; plan development and amendment.

indicate that the related information (number of employees and total compensation paid employees) is not applicable for the special district and explain why.

This section provides the basis for the modification of water control plans. It also establishes requirements that must be complied with in the event that the boundaries, plans of reclamation, or other requirements affecting water control plans are modified by the court of competent jurisdiction.

Audit Impact: The auditor should be careful to ascertain whether any changes in district boundaries or plans of reclamation have been approved by the Courts, as well as any other matters subject to review pursuant to this section. Changes in boundaries or plans of reclamation may have serious impact on taxing and spending authority, or the board of supervisors' authority to carry out various other functions. By October 1, 2000, the board of supervisors of each district must develop or revise the district's water control plan to reflect the minimum requirements of Section 298.225(3), F.S.

The auditor should routinely research the case files of the appropriate circuit courts for evidence of decisions affecting district operations. When such cases are found, the auditor should carefully consider the impact on each affected district function. If district personnel assert that operational changes of a nature covered by this section have been made, the auditor should require evidence of court approval of the asserted changes. Further, the auditor should ascertain that district personnel complied with mandated procedures precedent to court approval when the subject changes were initiated by the board of supervisors.

S. 298.76 Special or local legislation; effect

This section of law is one of the most important provisions of Chapter 298, F.S. It specifically provides conditions under which special laws may be enacted to modify or, in effect, repeal the provisions of this chapter regarding particular districts. Similar conditions prevail regarding virtually all special districts within the State. That is, the Legislature has preserved the power to significantly modify the provisions of general law, as it would otherwise apply to the special districts.

Audit Impact: It cannot be stressed too strongly that the auditor must make a thorough search of the law, both general and special, before attempting to determine whether district operations were in substantial compliance with applicable provisions. Failure to do so can result in inadequate audit and expose the auditor to considerable risk.

Governance

S. 298.11 Landowners' meetings; election of board of supervisors; duties of Florida Department of Environmental Protection

S. 298.12 Annual Election of supervisors; term of office; vacancy

These sections provide for the election of supervisors, specify the term of office, and provide alternative selection procedures. Special acts may prescribe alternative or supplementary procedures. Generally, these sections provide for the selection of members of the district's governing board. However, the procedures enumerated may be modified or superseded by the express provisions of special acts pertaining to the district.

Audit Impact: The auditor should ascertain that the selection of board members was made in accordance with the express provisions of law governing the selection of board members. Failure to properly elect the board members could serve to invalidate future transactions approved by the board. At a minimum, the auditor should be alert to advertising, residency, land ownership, and quorum requirements that may affect the selection process.

S. 298.13 Supervisor's oath of office

General requirement for all officeholders as a condition precedent to assuming office.

Audit Impact: Auditor should determine that all board members elected during the audit period have documented their qualifications to assume the office elected or appointed to.

S. 298.14 Organization of board; annual reports to landowners; compensation of members of board

This section of law provides for the election of officers, provides for their compensation, identifies the basis for reimbursement of travel expenses, provides for the adoption of an official seal, requires the keeping of minutes, provides for public inspection of its minutes, and provides for annual reports to the landowners of district actions.

Audit Impact: This section of law establishes the initial requirements of the Chapter pertaining to the recording and reporting of public business. It also fixes the general responsibility for later defined actions of the governing board by requiring the identification of those individuals who will be responsible for specific activities (e.g., the board president and secretary). Further, it provides specific expenditure guidance as to board members compensation. The auditor should examine the minutes to determine that this provision of law has been complied with and to determine the basis for any payments to board members. Unless otherwise specifically authorized by law, this Section provides limits on the amount of such payments.

S. 298.15 Record of Proceedings

This section expands upon the general requirements to keep minutes of board actions and specifies, generally, the form and content of the minute book. It also requires the filings of copies of the minutes with the appropriate clerk of the circuit court and with the Florida Department of Environmental Protection.

Audit Impact: The proper recording of official transactions is critical to the administration of district business. Two key points of law are germane to the audit considerations relating to the documentation of district business:

- 1) Generally, the governing board may not delegate the authority to make discretionary decisions to others. The powers afforded the officials of the governing board are to be personally exercised when discretionary judgment is required.
- 2) The official minutes of the governing board are generally considered to be the best evidence of the board's intent regarding the various matters requiring board approval.

For these reasons, the auditor's examination should always include careful examination of the official minutes as a basis for determining board intent in a particular matter. The recorded board members votes may also provide a basis for subsequent legal proceedings if the subject transactions are found to be improper and not within the board's authority. Generally, the auditor should prepare carefully constructed notes evidencing review of the minutes and those actions having impact on the audit.

S. 298.16 Appointment of district engineer; engineer's duties

This section requires that the board of supervisors appoint a chief engineer, provides a time frame within which the initial appointment must be made, authorizes the employment of assistants, prescribes the general authority and duties of the chief engineer, authorizes certain other actions with the board's consent, and places a specific duty upon the chief engineer to prepare a proposed plan of reclamation. The required report is described at some length as to both form and content.

Audit Impact: Once again, the law acts both to authorize and limit the exercise of powers by the board of supervisors and its appointed officers and employees. This section also exemplifies the manner in which Legislative direction is provided as to the manner in which particular duties are to be carried out.

Because virtually all subsequent district transactions will relate to the report and proposed plan submitted by the engineer for the reclamation of lands situated within the district, the auditor must be thoroughly familiar with the particulars of the adopted plan in effect during the audit period. The contents of that plan will have direct impact on the district's authority to raise moneys, to expend moneys, and to accomplish its authorized purposes. In effect, the adopted plan becomes the district's principal authoritative document as to the scope of its operations.

The auditor should also verify that other requirements of the section were complied with.

S. 298.17 Appointment and duties of treasurer of district; appointment of deputies; bond of treasurer; audit of books, disbursements by warrant; form of warrant

This section provides for the appointment of a Treasurer, a fiscal agent, and, with the board of supervisors' consent, necessary assistants. They also provide that the board shall fix the officers' compensation and provide necessary space and supplies for the duties assigned the Treasurer and Secretary. Other provisions of these sections relate to annual audits, the collection and deposit of moneys, the paying out of moneys, the form of the warrants to be used, the nature of required surety bonds, and the deposit of interest accruing to the district.

Audit Impact: As noted in earlier comments, Legislative direction may be express in nature or necessarily implied. The provisions of law referenced embody both such elements. In the first instance, the provisions of the section relating to surety bonds of the officers and the form of the warrants are clearly express direction as to the form or basis for the documents. Other provisions provide express directions as to what is to be accomplished (i.e., the receipt and deposit of moneys) but leave the manner of accomplishment to the administrative discretion of the officers and the board. Finally, there is, by way of example, a necessarily implied authority to make at least limited investments of the public funds of the district; thus, to permit the receipt of interest.

The auditors should carefully review each provision of the sections and identify those powers and duties that will impact the audit. In doing so it may be necessary to also review court decisions interpreting various aspects of the sections, both as may directly relate to the particular section of law under review and those cases which establish general precedents. Published opinions of the Attorney General may also provide useful interpretations of particular points of law. At a minimum, the auditor should initiate audit procedures to verify that specific directions embodied in the law were complied with. (For example, the requirement for an annual audit, the filing of the audit report with the Auditor General, the form of the warrants used by the district, and the form and place of filing of the required bonds).

Once the legal requirements have been determined, the auditor must test to ensure the district complied with the requirements. Noncompliance with the requirements must be reported by the auditor in accordance with Chapter 10.550, Rules of the Auditor General.

S. 298.18 Supervisors to employ attorney for district; duty of attorney

Similar to earlier cited sections of law, this section provides for the appointment of a district attorney by the board of supervisors and fixes the duties of the attorney.

Audit Impact: Auditor should review the attorney's employment contract to determine whether the proper compensation was paid.

S. 298.19 Appointment and duties of superintendent of plant and operations and overseers

This section is similar to several preceding sections authorizing the employment of officers and assistants. However, unlike the earlier sections, this section is permissive in nature rather than mandatory. When the authority to employ is exercised, the authority must be exercised by the board. Because of the provisions of the section which state "...and said board also may employ..." it is doubtful that the discretionary authority to employ may be delegated to others.

Audit Impact: The auditor should determine that employment authorizations are evidenced in the board's minutes, at least on a test basis.

S. 298.26 District engineer to make annual reports to supervisors; approval of reports; water-control plan

This section provides for the submission, at least annually, of reports by the chief engineer. The final report of surveys of the district and adjacent lands, when adopted by the board, shall constitute the plan of reclamation. The section also provides for the filing and recording requirements applicable to such reports.

Audit Impact: The auditor should determine that the required reports have been prepared, adopted, and filed as required by law. These reports are critical to an adequate determination of whether the board has approved and expended available moneys only for authorized projects as described in the plan of reclamation.

- S. 298.77 Readjustment of assessments; procedure, notice, hearings
- S. 298.78 Lien; release

These sections of law relate to two of the most carefully regulated activities of government. They provide for the determination of a basis for taxation and, alternatively, the basis for the forced transfer of title to land from private to public ownership. Accordingly, the specific procedures to be followed in carrying out the duties are described in great detail in these provisions and, by necessary implication, any other method of accomplishing the assigned tasks would likely be held improper.

Audit Impact: Generally, the propriety with which the duties assigned the commissioners were exercised will not be a subject for audit concern because the courts, by virtue of adopting the report of the commissioners, will have passed judgment on the adequacy of the commissioners' performance in determining values and assessing benefits. Nonetheless, the auditor should be fully familiar with the required procedural directions of law for a full understanding of these processes. Subsequent board of supervisors' action relating to the levy of special assessments, the issuance of debt instruments, and implementation of the adopted plan of reclamation must be executed within the limitation of assessed benefits. These limitations, as determined by the commissioner's report, are limitations on the amounts that may be assessed to each specific parcel of land within the district.

- S. 298.36 Lands belonging to state assessed; drainage tax record
- S. 298.365 Collection of annual installment tax; lien (leave disclosed as type of tax assessed is applicable). Auditor should disclose specific section of statute under which assessment was levied.
- S. 298.366 Delinquent taxes; penalties
- S. 298.401 Property appraisers and tax collectors; compensation; characterization of services
- S. 298.41 Taxes and costs a lien on land against which taxes levied; subdistricts
- S. 298.465 District taxes; delinquent; discounts

These sections of law prescribe the procedures and limitations to be observed in the levy of special assessments for the purpose of implementing the plan of reclamation. The law specifies the minimum and maximum levies that may be imposed, the timing of such levies, the responsibilities of various officials for the recording and collection of the authorized assessments, and the form of the tax list to be prepared by the district. It also provides that the taxes levied shall be a lien against the properties affected. The detailed provisions of these sections should be read for a fuller understanding of the express powers and limitations granted to and imposed on the district regarding the levy of special assessments.

Audit Impact: District activities relating to the assessment of taxes to carry out the adopted plans of reclamation are among the most critical areas of audit concern. Because of longstanding legal precedents regarding the imposition of taxation, one of the problems leading to the very foundation of this country, and the extreme concerning of the courts for due process, it is vital that the auditor determine whether board actions were implemented strictly in accordance with law. For further emphasis of this caveat, the auditor is referred to the case of *Wilson v. Marion County District School Board*, 424 So.2d 16, whereby the district school board was required to refund the proceeds of a tax issue to payors because the tax was not levied in the express manner required by law.

The provisions of Chapter 298, F.S., relating to the levy and collection of special assessment taxes, cited above, contain a number of provisions of direct audit interest. Among those are the requirements that:

- The tax is to be levied promptly after approval by the courts of the report of the commissioners establishing the benefits to be derived from the adopted plan of reclamation.
- The levy of the total tax may not exceed the amount determined necessary by the supervisors for construction or acquisition of the improvements outlined in the adopted plan of reclamation plus a ten percent provision for contingencies.
- The special assessments levied may not exceed the assessed benefits determined for each parcel of land within the boundaries of the district or plan of reclamation as appropriate. In this respect, it appears that Legislative intent is to limit the assessment of taxes to a particular parcel to an amount not in excess of the benefits assessed to that particular parcel of land.
- A public record of the taxes levied is prescribed as to form and as to responsibility for its preparation and filing with other public officials.
- Procedures for the collection of the taxes are specified, procedures to be followed in the event of non-collection, and the compensation to be paid to county officers for such services are also specified.

In summary, a detailed procedural guideline is provided in these Sections for the assessment and collection of special assessments. The auditor should design audit procedures to measure the extent to which district officials have complied with these express directions of law. Failure to comply with these procedures could expose the district to potential lawsuits for recovery of taxes improperly levied and place the auditor in jeopardy if the possible noncompliance is not disclosed.

Law Section:

- S. 298.47 Supervisors may issue bonds
- S. 298.48 Sale of bonds and disposition of proceeds
- S. 298.49 Interest upon matured bonds
- S. 298.50 Levy of tax to pay bonds, sinking fund
- S. 298.51 Defaults, receivership for district
- S. 298.52 Refunding and extending bonds
- S. 298.54 Maintenance Tax (should disclose specific section of statute under which tax was assessed, if applicable)
- S. 298.56 Bonds issued secured by lien on lands benefited; assessment and collection of taxes may be enforced
- S. 298.63 Bonds to secure loans from Secretary of Interior

These sections of law establish and limit the powers of the district to issue debt, particularly in the form of bonds. Among the more important provisions are those that establish and limit district power in respect to:

- The aggregate value of the bonds to be issued.
- The principal value of individual bonds.
- The maximum periods of indebtedness.
- Limitations on the sale price of the bonds.
- The form of the bonds.
- The authority to appoint paying agents
- The requisite approvals precedent to issue.
- The duties and responsibilities of district officers.

- The bonds to be provided by district officials as a condition precedent to administering the bond proceeds.
- The levy of special assessment taxes necessary to retire the bonds and pay interest thereon.
- Provisions for actions in the event of default.
- The authority to issue refunding bonds and conditions precedent thereto; and, other provisions too numerous to list.

Audit Impact: As in many instances, the Legislature has deemed it appropriate to provide specific direction to the public officers charged with exercising district powers as to the manner by which those limited grants of power may be exercised. As has previously been mentioned, the auditor should carefully review the detailed provisions of law affecting the transactions being examined and ensure that the audit procedures to be employed will be adequate to determine whether the officials of the district have executed the transactions in accord with all applicable provisions of law.

As an illustration of the problems that may be encountered, the authority to issue bonds depends on several conditions precedent to board approval of the issue. These conditions can be as far ranging as the following:

- Have the supervisors charged with approving the bonds been properly elected?
- Have the supervisors properly adopted a plan of reclamation outlining the improvements to be financed from the bond proceeds?
- Have the supervisors ascertained that the report of the commissioners establishing the benefits to be described from implementation of the plan of reclamation was approved by the court and the appropriate court decree issued?
- Have the supervisors levied and documented the total tax from which the bonds will be paid?
- Have the supervisors properly determined the bonding capacity of the district; taking into consideration such factors as:
 1. The previous acquisition of any improvements outlined in the plan of reclamation
 2. The previous collection of any amounts set forth in the total tax levied
 3. The limitations imposed by the total benefits assessed

The auditor should include in his or her procedure steps to verify that the district's officials have made appropriate determinations of such matters.

Recognizing the complexity of such issues, many districts will subject proposed bond issues to court validation procedures as provided in Chapter 75, F.S. When an auditor finds that a particular issue has been validated by the courts, he may generally assume a "safe harbor" exists as to the propriety of the issue. However, such an assumption will not act to relieve the auditor of the responsibility for examining the propriety of acts subsequent to the approval of the issue.

Examples of such acts include the actual issuance and sale of the bonds; the accountability for, and ultimate use of, the proceeds; the timely payment of principal and interest; the establishment of required funds; etc. Many of these subsequent acts will be the subject of explicit covenants described in the adopted bond resolutions. The auditors should secure copies of all bond resolutions for outstanding or recently retired issues and familiarize themselves with the terms and requirements of each resolution.

S. 298.54 Maintenance tax

This section of law relates to the third type of special assessment permitted to be levied by the board. In addition to the uniform tax levied for the purpose of defraying organizational costs of the district and the special assessments authorized to construct or otherwise acquire the improvements outlined in the adopted plan of reclamation, the board is generally authorized to levy a special assessment for

the purpose of maintaining the improvements acquired and for defraying the current expenses of the district. The Section provides various criteria governing the levy, including the basis of apportionment and the timing of board actions. It also provides direction as to the collection of the assessment and establishes the assessments levied as liens.

Audit Impact: Similar to the procedures applicable to other taxes, the auditor should determine that the assessment was properly levied, documented in the minutes, apportioned to the various parcels in the manner provided by law, and the proceeds expended only for the purposes enumerated in the law. (Taxing authority statute cite should be disclosed in the footnotes.) Auditor should test proper statute authority was exercised to levy tax.

Expenditure Authority

- S. 298.20 Supervisors to fix compensation for work and employees
- S. 298.21 Supervisors may remove officers and employees

These two sections establish the board's authority and responsibility to determine and fix the compensation of officers and employees. They also provide a specific exemption from statutory fees established for county public officers who perform services for the district. Compensation of those officers in respect to services rendered on behalf of the district is limited to such reasonable amounts as may be determined by the courts or as may otherwise be provided within this chapter. Section 298.21, F.S., establishes the board's authority to remove officers and employees. Unless otherwise provided by law, this power may establish an "at will" employment basis for those officers and employees.

Audit Impact: These Sections of law further reinforce the board of supervisors' duty and power to administer the affairs of the district. They also serve to limit the powers and duties of other district officers and employees under the concept that duties specifically assigned to the board may not be further delegated. As a result, the auditor should look to the official minutes of the district for recorded confirmation of any amounts paid as compensation of officers or employees. The auditor should also verify the recorded approval in the official minutes of personnel actions relating to the employment or termination of personnel.

- S. 298.22 Powers of supervisors
- S. 298.225 Water control plan; plan development and amendment
- S. 298.23 Supervisors authorized to take land for rights-of-way, etc.; payment
- S. 298.59 Supervisors authorized to obtain consent of United States
- S. 298.62 Lands may be acquired for rights-of-way and other purposes

These sections of law define the board's authority to carry out various reclamation activities and the conditions under which the district may acquire lands through condemnation. They also provide for the charging of fees under specified conditions and provide a basis for the adoption of rules governing district operations.

Audit Impact: These sections of law have a great potential for impact on the audit because expenditures incurred by the district that are not for purposes authorized under these sections, either expressly or by necessary implication, may be held to be improper. In that respect, the auditor is reminded of the legal doctrine of "exclusion," that is, the enumeration of a series of authorized actions may act to exclude any actions not so enumerated. Further, Section 298.22(10), F.S., expressly states that the district "May implement and authorize the comprehensive water control activities, including flood protection, water quantity management, and water quality protection and improvement, described in the water control plan."

Because of the complex nature of reclamation plans the related impact on the use of special assessment taxes and bond proceeds, the auditor should exercise extreme caution in the review of operations involving the construction or acquisition of drainage improvements. Principal audit procedures relating to expenditures must, as a prerequisite, involve a detailed review of the approved plans of reclamation, verification of the plans to court records, review of district maps, and an understanding of the process by which benefits are assessed to the various land parcels situated within the district.

The district's authority to implement rules should also be given careful scrutiny by the auditor. In that regard, the auditor should familiarize himself with the provisions of Chapter 120, F.S., the Administrative Procedures Act. Generally, if the district is situated in two or more counties, the rules should be incorporated in the Florida Administrative Code. The auditor should also remember that an adopted rule is considered to be valid unless declared to be otherwise by the courts or an appropriate administrative agency.

- S. 298.24 Bridge construction
- S. 298.25 Type of bridges over drains in large counties

These sections of law provide guidance as to the nature of and financial responsibility for the construction of bridges over works of the district.

Audit Impact: Although the determination of construction sufficiency is not practicable within the scope of the audit contemplated by Section 218.39, F.S., the auditor should consider audit procedures to determine that the appropriate party has been charged with the cost of constructing any bridges that fall outside the express responsibilities of the district.

Miscellaneous Provisions

- S. 298.61 Sureties on bonds; penalties payable to district; bonds cover defaults of specified persons

This section of law provides guidance as to the qualifications of sureties, the recipient of payments in the event of loss or nonperformance, and the officers and employees covered.

Audit Impact: This section acts primarily to define procedures applicable to the requirements for bonds set forth in other sections of law. Standing alone, it has little direct audit impact; however, it serves to establish audit criteria for consideration when evaluating compliance with the requirements for bonds enumerated in other sections of the law.

- S. 298.70 Florida Department of Environmental Protection authorized to borrow money
- S. 298.71 Florida Department of Environmental Protection may issue notes; suit by holder; judgment
- S. 298.72 Florida Department of Environmental Protection may use proceeds of drainage tax to pay loans
- S. 298.73 Matured written obligations receivable in payment of taxes

These sections of law pertain to the authority of the Florida Department of Environmental Protection to effect drainage improvements within districts.

Audit Impact: Generally, these sections will not create an audit impact. However, the practitioner should be aware of the provisions if the Florida Department has exercised its powers to construct drainage improvements.

- S. 298.28 Watercourses to be connected with drainage of district; connecting drains after completion of plan of drainage
- S. 298.57 Landowner in district may construct drains across land of intervening landowner; proceedings
- S. 298.66 Obstruction of drainage canals, etc., prohibited; damages; penalties
- S. 298.74 Drainage of Lakes

These sections prescribe the method by which drainage improvements may be connected to works of the districts. They also provide certain legal remedies.

Audit Impact: No discernible audit impact.

- S. 298.301 District water control plan adoption; district boundary modification; plan amendment;

- notice forms; objections; hearings; assessments
- S. 298.305 Assessing land for development; apportionment of assessment
- S. 298.329 When works insufficient, supervisors have power to make new or amended plan; additional levy; issuance of bonds; procedure
- S. 298.333 Assessments and costs; a lien on land against which levied
- S. 298.341 When unpaid assessments delinquent; penalty
- S. 298.345 Enforcement of non-ad valorem assessments
- S. 298.349 Uniform initial acreage assessment for payment of expenses
- S. 298.353 Unit development; powers of board of supervisors to designate units of district; financing assessments for each unit

These sections prescribe the circumstances and methods for non-ad valorem assessments by the districts.

Audit Impact: These sections are of primary importance to the auditor as they form the basis for the auditor’s determination of legality of the assessments made by the district.

Other General Laws

- S. 112.061 Per diem and traveling expenses of public officers, employees, and authorized persons; statewide travel management system

This law applies to virtually all governmental entities and contains detailed guidance concerning the requirements for reimbursement of travel related expenditures incurred by public officers and employees. It also relates to reimbursement of travel expenses incurred by certain other travelers. The law prescribes limits of reimbursement, provides for specific approval of such reimbursement, establishes criteria for the calculation of reimbursements, and provides for the recording of specific data in support of reimbursement claims. The law allows for a special district to adopt its own policy regarding reimbursement of meal, mileage, and per diem rates. Adherence to the remaining provisions of the law is required and remains unchanged.

Audit Impact: The auditor should carefully review the express provisions of this law and should perform test procedures to measure compliance with the several mandatory provisions of the Section. However, particular attention should be given to any provisions of special acts that may serve to modify the applicability of this Section of general law. Auditor should test compliance with this statute and report any noncompliance noted. The auditor should ensure the special district’s travel reimbursement policy was properly adopted and that reimbursements were for allowable expenditures and properly documented. Also, the special district should adopt a written travel policy in accordance with Section 112.061, F.S. The auditor should test compliance with such policy and note any noncompliance in the management letter.

- S 286.011 Public meetings and records; public inspection; criminal and civil penalties.

Audit Impact: This law, known as the “Sunshine Law,” requires that minutes of Board meetings be kept to document Board action. These minutes can serve as an important audit tool. Board meeting minutes should be read, summarized and agreed to audit records.

- S. 287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties

This law governs the acquisition procedures for services rendered by the enumerated professionals. It also requires a special district to adopt formal administrative procedures for the selection of the specified professional services.

Audit Impact: The auditor should determine whether any of the enumerated professionals have been retained during the audit period, review the procedures employed by the special district for selecting

particular professionals, and determine whether the selection processes were in compliance with the law. In considering the provisions of this Section, the auditor should consider these provisions as supplementary to other Legislative direction.

The following statutes are listed to illustrate the types of law that must be considered during the audits of special districts in Florida.

The following list of laws is exemplary in nature and should not be relied upon as an exhaustive list of general laws relating to the creation or operation of special districts. Additionally, many general laws of local application and special laws may affect the operations of special districts. The practitioner is reminded that there can be no substitute for a proper review of the laws applicable to a particular engagement.

Laws Affecting the Creation and Powers of Districts:

Ch. 125	County Government (includes municipal service taxing units)
Ch. 153	Water and Sewer Systems
Ch. 154	Public Health Facilities
Ch. 155	Hospitals
Ch. 159	Bond Financing
Ch. 163	Intergovernmental Programs
Ch. 165	Formation of Local Governments
Ch. 166	Municipalities
Ch. 189	Special Districts: General Provisions
Ch. 190	Community Development Districts
Ch. 191	Independent Fire Control Districts
Ch. 298	Drainage and Water Control
Ch. 373	Water Resources
Ch. 388	Mosquito Control
Ch. 418	Recreation Districts
Ch. 582	Soil and Water Conservation
Ch. 633	Fire Prevention and Control

Laws Affecting the Manner in Which Duties are Executed:

Ch. 112	Ethics, Retirement System Provisions, and Travel by Public Officers and Employees
S. 163.31801	Impact fees; short title; intent; minimum requirements; audits; challenges
Ch. 189	Uniform Special District Accountability Act
*Ch. 200	Limits on the levy of ad valorem taxes (The auditor should compare millage to the millage cap stated in the enabling act. The auditor should also consider comparing the total assessed taxes per Florida Department of Revenue Form DR420 to the tax amount collected for reasonableness.)
Ch. 218	Required financial reporting; audit requirements
Ch. 274	Tangible personal property owned by local governments
Ch. 287	Certain purchasing restrictions
Ch. 717	Disposition of Unclaimed Property

Other Resources:

- Chapter 10.550, Rules of the Auditor General (<https://flauditor.gov/pages/rules.html>)
- Florida Department of Economic Opportunity, Florida Special District Handbook Online (www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-information-program/florida-special-district-handbook-online)
- Uniform Chart of Accounts and Annual Financial Report information (<https://www.myfloridacfo.com/Division/AA/LocalGovernments/default.htm>)
- *Florida Single Audit Act* (<https://apps.fldfs.com/fsaa/>)

*High importance to auditor

**Appendix I
Reporting Requirements**

Submission Requirement	Applies to	Statute/Rule Reference	Due Date	Submit To
Actuarial Reports	Municipalities and Special Districts with Defined Benefit Plans	112.63 Rule 60T-1.003 Florida Administrative Code	At least every 3 years, within 60 days of receipt from actuary	Florida Department of Management Services, Division of Retirement
Advance Notice Impending Sale of Bond Issue and Final Official Statement	Counties, Municipalities, Special Districts	218.38(1)	Prior to sale	State Board of Administration, Division of Bond Finance
Financial Audit Report	Counties, Municipalities, Special Districts	218.32 218.39 Rules of the Auditor General 10.550	Within 45 days of delivery of audit report, but no later than 9 months after fiscal year end	Auditor General (1 paper copy and 1 electronic copy (pdf)); Dept. of Financial Services, Bureau of Financial Reporting
Annual Financial Report	Counties, Municipalities, Independent Special Districts	218.32	With audit report - 45 days after audit completion, but no later than 9 months after fiscal year end	Florida Department of Financial Services, Bureau of Financial Reporting
Audit of Community Redevelopment Agencies	Community Redevelopment Agencies with revenues or expenditures/expenses in excess of \$100,000	163.387(8)	Annually	Auditor General (1 paper copy and 1 electronic copy (pdf)); Dept. of Financial Services, Bureau of Financial Reporting
Bond Information Form/Bond Disclosure Form	Counties, Municipalities, Special Districts	218.38	Within 120 days after delivery of bonds	State Board of Administration, Division of Bond Finance
Creation Documents and Amendments	Special Districts	189.016	Within 30 days after adoption	Florida Department of Economic Opportunity

Submission Requirement	Applies to	Statute/Rule Reference	Due Date	Submit To
Disclosure of Public Financing and Maintenance of Improvements	Community Development Districts	190.009	At all times public financing is imposed (Community Development)	Florida Department of Economic Opportunity; County; Existing and Prospective Residents; Residential Developers
Public Depositor Ann Report to the State CFO (Form DFS-J1-1009)	Counties, Municipalities, Special Districts	280.17(6)	Annually by November 30	State Chief Financial Officer
Public Facilities Initial Report and Notices of Any Changes	Independent Special Districts	189.08(2)	Initial report and updated every 7 years at least 12 months before the submission date of the evaluation and appraisal notification letter	Local General-Purpose Government
Registered Agent, Registered Office and Changes	Special Districts	189.014 189.016	Within 30 days after first board meeting or upon making a change	Florida Department of Economic Opportunity; Local Governing Authorities
Regular Public Meeting Schedule	Special Districts	189.015	Quarterly, semiannually or annually	Local Governing Authority
Annual Report ¹¹	Community Redevelopment Agencies	163.371(2)	Annually by March 31	Local Governing Authority
Resolution for Investment of Surplus Funds in Local Government Surplus Funds Trust Fund	Counties, Municipalities, Special Districts	218.407(2)	Upon determination to invest in the trust fund	State Board of Administration and if appropriate, a copy shall be provided to a professional money management firm authorizing investment of its surplus funds in the trust fund
Special District Map and Amendments	Special Districts	189.016	Within 30 days after adoption	Florida Department of Economic Opportunity

¹¹ The annual report must include the information prescribed in Section 163.371(2)(a) – (c), F.S.

Submission Requirement	Applies to	Statute/Rule Reference	Due Date	Submit To
Truth in Millage Compliance Report	Counties, Municipalities, Special Districts	200.068	No later than 30 days following the adoption of the property tax levy ordinance or resolution	Florida Department of Revenue

Appendix II
Sample Compliance Attestation Report (AT-C §315)

INDEPENDENT ACCOUNTANTS' REPORT ON COMPLIANCE WITH
FLORIDA STATUTE SECTION 218.415 – INVESTMENTS OF PUBLIC FUNDS

Honorable Mayor and City Council
City of _____

We have examined the City of _____'s (the City's) compliance with Section 218.415, Florida Statutes during the fiscal year ended _____, 20XX. City management is responsible for the City's compliance with those requirements. Our responsibility is to express an opinion on the City's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the City complied, in all material respects, with the requirements referenced above. An examination involves performing procedures to obtain evidence about whether the City complied with the specified requirements. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on the City's compliance with specified requirements.

In our opinion, the City of _____ complied, in all material respects, with the aforementioned requirements during the fiscal year ended _____, 20XX. ***(If the auditor's examination disclosed that the entity did not comply with the subject law, revise this paragraph as appropriate to describe the noted noncompliance.)***

This report is intended solely for the information and use of the Florida Auditor General, the City Council of the City of _____, and applicable management, and is not intended to be and should not be used by anyone other than these specified parties.

_____, Florida
March XX, 20XX

Appendix III
Sample Management Letter - Schedule Format

Auditor's Findings, Comments and Recommendations
(Management Letter)

Material Weaknesses

Significant Deficiencies

(If there are no significant deficiencies, delete this section;
do not state that there are no significant deficiencies)

Material Compliance Violations

Immaterial Compliance Violations

Other Comments and Recommendations

Requirements of the Rules of the Auditor General

1. Name and official title and legal authority for the primary government and each component unit (unless disclosed in the notes to the financial statements).
2. A statement describing the results of the auditor's determination as to whether or not the local governmental entity met one or more of the conditions described in Section 218.503(1), Florida Statutes, and, if applicable, identification of the specific condition(s) met. (Negative assurance not allowed)
3. A statement that the auditor applied financial condition assessment procedures per Section 10.556(8), Rules of the Auditor General and, if a deteriorating financial condition(s) is noted, a statement that the local governmental entity's financial condition is deteriorating and a description of conditions causing the auditor to make this conclusion.
4. If appropriate, a statement indicating the failure of a special district that is a component unit of the reporting entity, to provide the financial information necessary for proper reporting of the component unit within the audited statements of the reporting entity.
5. For a dependent special district or an independent special district, or a local government entity that includes the information of a dependent special district as provided in Section 218.39(3)(a), Florida Statutes, the following information is provided by management (with explanatory verbiage that the auditor provides no assurances on the information):¹²
 - a. Total number of district employees compensated in the last pay period of the district's fiscal year being reported (see information required in Section 218.32(1)(e)2.a., Florida Statutes).
 - b. Total number of independent contractors to whom nonemployee compensation was paid in the district's fiscal year being reported (see information required in Section 218.32(1)(e)2.b., Florida Statutes).

¹² It is suggested that if the required information as addressed in items 5 through 7 of this sample management letter is not applicable to the special district, this should be indicated in the management letter. For example, if the special district had no employees, the management letter should indicate that the related information (number of employees and total compensation paid employees) is not applicable for the special district and explain why.

- c. All compensation earned or awarded to employees, whether paid or accrued, regardless of contingency (see information required in Section 218.32(1)(e)2.c., Florida Statutes).
 - d. All compensation earned or awarded to nonemployee independent contractors, whether paid or accrued, regardless of contingency (see information required in Section 218.32(1)(e)2.d., Florida Statutes).
 - e. Each construction project with a total cost of at least \$65,000 approved by the district that is scheduled to begin on or after October 1 of the fiscal year being reported, together with the total expenditures for such project (see information required in Section 218.32(1)(e)2.e., Florida Statutes).
 - f. A budget variance¹³ report based on the budget adopted under Section 189.016(4), Florida Statutes, before the beginning of the fiscal year being reported if the district amends a fits budget pursuant to Section 189.016(6), Florida Statutes (see information required in Section 218.32(1)(e)3., Florida Statutes).
6. For an independent special district that imposes ad valorem taxes, the following information is provided by management (with explanatory verbiage that the auditor provides no assurance on the information) as required in Section 218.32(1)(e)4., Florida Statutes:
- a. Millage rate or rates imposed by the district.
 - b. Total amount of ad valorem taxes collected by or on behalf of the district.
 - c. Total amount of outstanding bonds issued by the district and the terms of such bonds.
7. For an independent special district that imposes non-ad valorem special assessments, the following information is provided by management (with explanatory verbiage that the auditor provides no assurance on the information) as required in Section 218.32(1)(e)5., Florida Statutes:
- a. Rate or rates of such assessments imposed by the district.
 - b. Total amount of special assessments collected by or on behalf of the district.
 - c. Total amount of outstanding bonds issued by the district and the terms of such bonds.
8. Water Management Districts only – A) a statement as to whether or not monthly financial statements were provided to the governing board and if made available for public access on its Web site; B) a statement describing the results of the auditor’s determination as to whether or not the district provided a link on its Web site to the Florida Department of Financial Services’ Web site; and C) a statement describing the results of the auditor’s determination as to whether or not the district posted its tentative and final budgets on its Web site. (Negative assurance not allowed)

Status of Prior Year Findings and Recommendations

Address the status of each prior year finding and recommendation indicating whether or not corrective action has been taken to address each recommendation. If there were no comments in the prior year, state this fact. If an audit finding in the preceding financial audit report is uncorrected, the auditor must determine whether the finding was also included in the second preceding financial audit report. Uncorrected findings in the current audit report must cite the finding reference numbers used in the preceding and, as applicable, second preceding financial audit reports.

¹³ Section 218.32(1)(e)3., F.S., does not define the term "budget variance." However, this term is typically used when referring to the difference between budget and actual amounts. Further, since the budget variance report is only required when the special district amends its final adopted budget under Section 189.016(6), F.S., it is also reasonable to conclude that the variance is derived from a comparison of the amended budget amount to the actual amount.

NOTES

- Only include the sections that are relevant.
- Need to identify management letter comments by reference numbers to facilitate identification. *Although not required, a tabulation such as the following showing current audit report findings and the corresponding finding numbers that were also identified in the two preceding financial audit reports may be useful in demonstrating compliance with this rule.*

Tabulation of Uncorrected Audit Findings		
Current FY Finding No.	2020-21 FY Finding No.	2019-20 FY Finding No.
2022-001	2021-001	2020-001

Appendix IV
Sample Management Letter - Letter Format
Counties as a Whole, Municipalities, and Special Districts

To the *(Board of Directors, Commissioners, Council Members, or other title as appropriate)* *(name of entity)*, Florida.

Report on the Financial Statements

We have audited the financial statements of the *(name of entity)*, Florida, as of and for the fiscal year ended _____, 20XX, and have issued our report thereon dated _____, 20XX. *(If the auditor's report on the financial statements includes any departures from an unmodified opinion, disclose such departures in the management letter.)*

Auditor's Responsibility

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; *(if applicable)* the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and Chapter 10.550, Rules of the Auditor General.

Other Reporting Requirements

We have issued our Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of the Financial Statements Performed in Accordance with *Government Auditing Standards*; *(if applicable)* Independent Auditor's Report on Compliance for Each Major Federal Program and State Project and Report on Internal Control over Compliance; *(if applicable)* Schedule of Findings and Questioned Costs; and Independent Accountant's Report(s) on an examination conducted in accordance with *AICPA Professional Standards*, AT-C Section 315, regarding compliance requirements in accordance with Chapter 10.550, Rules of the Auditor General. Disclosures in those reports and schedule, which are dated _____, 20XX, should be considered in conjunction with this management letter.

Prior Audit Findings

Section 10.554(1)(i)1., Rules of the Auditor General, requires that we determine whether or not corrective actions have been taken to address findings and recommendations made in the preceding financial audit report. Corrective actions have been taken to address findings and recommendations made in the preceding financial audit report *(If there were no recommendations made in the preceding financial audit report, state such in the management letter. If an audit finding in the preceding financial audit report remains uncorrected, the auditor must determine whether the finding was also included in the second preceding financial audit report. Uncorrected findings in the current financial audit report must cite the corresponding finding reference numbers used in the preceding and, as applicable, the second preceding financial audit reports.)*

(Although not required, a tabulation such as the following showing current financial audit report finding numbers, along with the finding numbers corresponding to the findings identified in the two preceding financial audit reports, may be useful in demonstrating compliance with this rule.)

Tabulation of Uncorrected Audit Findings		
Current FY Finding No.	2020-21 FY Finding No.	2019-20 FY Finding No.
2022-001	2021-001	2020-001

Official Title and legal Authority

Section 10.554(1)(i)4., Rules of the Auditor General, requires that the name or official title and legal authority for the primary government and each component unit of the reporting entity be disclosed in this management letter, unless disclosed in the notes to the financial statements. The ***(name of entity)*** was established by ***(insert appropriate reference to the specific legal authority that established the entity)***. The ***(name of entity)*** included the following component units: ***(Identify by name each component unit and the specific legal authority for its creation. If there were no component units related to the entity, state such in the management letter. Information regarding the specific legal authority for the entity and its component units, if any, is only required to be in the management letter if not already disclosed in the notes to the financial statements, although disclosure of such information in the notes to the financial statements is preferable.)***

Financial Condition and Management

Sections 10.554(1)(i)5.a. and 10.556(7), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the ***(name of entity)*** met one or more of the conditions described in Section 218.503(1), Florida Statutes, and to identify the specific condition(s) met. In connection with our audit, we determined that the ***(name of entity)*** did not meet any of the conditions described in Section 218.503(1), Florida Statutes. ***(If the entity met any of the conditions in Section 218.503(1), Florida Statutes, revise the language as appropriate; specify in the management letter which of the conditions described in Section 218.503(1), Florida Statutes, were met; and state whether or not the condition resulted from a deteriorating financial condition, as defined in Section 10.554(1)(f), Rules of the Auditor General.)***

Pursuant to Sections 10.554(1)(i)5.b. and 10.556(8), Rules of the Auditor General, we applied financial condition assessment procedures. It is management’s responsibility to monitor the ***(name of entity)***’s financial condition, and our financial condition assessment was based in part on representations made by management and review of financial information provided by same. ***(If the financial condition assessment procedures disclose a deteriorating financial condition, include a statement that the local governmental entity’s financial condition is deteriorating and a description of the deteriorating financial condition. Findings regarding deteriorating financial condition***

shall be prepared in accordance with Section 10.557(4)(b), Rules of the Auditor General. The auditor may want to make a statement that the assessment was done as of the fiscal year end.)

Section 10.554(1)(i)2., Rules of the Auditor General, requires that we communicate any recommendations to improve financial management. In connection with our audit, we did not have any such recommendations **(or, if applicable, state the recommendations)**.

Special District Component Units

Section 10.554(1)(i)5.c., Rules of the Auditor General, requires, if appropriate, that we communicate the failure of a special district that is a component unit of a county, municipality, or special district, to provide the financial information necessary for proper reporting of the component unit, within the audited financial statements of the county, municipality, or special district in accordance with Section 218.39(3)(b), Florida Statutes. In connection with our audit, we did not note any special district component units that failed to provide the necessary information for proper reporting in accordance with Section 218.39(3)(b), Florida Statutes. **(If the auditor becomes aware of a special district that did not comply with Section 218.39(3)(b), Florida Statutes, revise the language as appropriate, indicating the name of the special district that failed to provide the necessary information.)**

Specific Information (For a dependent special district or an independent special district, or a local government entity that includes the information of a dependent special district) ¹⁴

As required by Section 218.39(3)(c), Florida Statutes, and Section 10.554(1)(i)6., Rules of the Auditor General, the **(name of district)** reported the following information as required in Section 218.32(1)(e)2.a.-3., Florida Statutes (include explanatory verbiage that the auditor provides no assurances on the information):

1. ____ District employees were compensated in the last pay period of the fiscal year ended _____, 20XX.
2. ____ independent contractors were paid in the last month of the fiscal year ended _____, 20XX.
3. Compensation earned by or awarded to employees, whether paid or accrued, regardless of contingency, totaled \$_____ for the fiscal year ended _____, 20XX.
4. Compensation earned by or awarded to nonemployee independent contractors, whether paid or accrued, regardless of contingency, totaled \$_____ for the fiscal year ended _____, 20XX.
5. Construction projects with a total cost of at least \$65,000 approved by the District that are scheduled to begin on or after October 1, 20XX, together with the total expenditures for such projects for the fiscal year ended _____, 20XX, were as follows (provide list):
6. Budget variances¹⁵ based on the budget adopted under Section 189.016(4), Florida Statutes, for the fiscal year ended _____, 20XX, were as follows: **[Note: This information is only**

¹⁴ It is suggested that if the required special district information as addressed in this example management letter is not applicable to the special district, this should be indicated in the management letter. For example, if the special district had no employees, the management letter should indicate that the related information (number of employees and total compensation paid employees) is not applicable for the special district and explain why.

¹⁵ Section 218.32(1)(e)3., F.S., does not define the term "budget variance." However, this term is typically used when referring to the difference between budget and actual amounts. Further, since the budget variance report

7. *required if the District amends its budget pursuant to Section 189.016(6), Florida Statutes.]*

Note: If the required information for a dependent special district is fulfilled by inclusion in the primary local government's audit report, a statement to that effect should be made in the dependent special district's audit report, and vice versa.

Specific Information (For an independent special district that imposes ad valorem taxes)

As required by Section 218.39(3)(c), Florida Statutes, and Section 10.554(1)(i)7., Rules of the Auditor General, the **(name of district)** reported the following information as required in Section 218.32(1)(e)4., Florida Statutes (include explanatory verbiage that the auditor provides no assurances on the information):

1. The District imposed a millage rate *(or rate)* of _____.
2. The total amount of ad valorem taxes collected by or on behalf of the District for the fiscal year ended _____, 20XX, was \$_____.
3. The total amount of outstanding bonds issued by the District as of _____ 30, 20XX, was \$_____. The terms of such bonds included *(describe the terms)*.

Specific Information (For an independent special district that imposes non-ad valorem special assessments)

As required by Section 218.39(3)(c), Florida Statutes, and Section 10.554(1)(i)8., Rules of the Auditor General, the **(name of district)** reported the following information as required in Section 218.32(1)(e)5., Florida Statutes (include explanatory verbiage that the auditor provides no assurances on the information):

1. The District imposed a non-ad valorem special assessment rate *(or rates)* of _____.
2. The total amount of special assessments collected by or on behalf of the District for the fiscal year ended _____, 20XX, was \$_____.
3. The total amount of outstanding bonds issued by the District as of _____ 30, 20XX, was \$_____. The terms of such bonds included *(describe the terms)*.

Monthly Financial Statements (For water management districts only)

Sections 10.554(1)(i)9.a. and 10.556(9), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the District provided monthly financial statements to its governing board and made such monthly statements available for public access on its Web site. In connection with our audit, we determined that the District provided monthly financial statements to its governing board and made such monthly statements available for public access on its Web site. *(If the District did not comply with these requirements, revise the language as appropriate.)*

Transparency (For water management districts only)

Sections 10.554(1)(i)9.b. and 10.556(9), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the District provided a link on its Web site to the Florida Department of Financial Service's Web site to view the

is only required when the special district amends its final adopted budget under Section 189.016(6), F.S., it is also reasonable to conclude that the variance is derived from a comparison of the amended budget amount to the actual amount.

District's annual financial report submitted to the Department. In connection with our audit, we determined that the District provided a link on its Web site to the Florida Department of Financial Service's Web site. ***(If the District did not comply with this requirement, revise the language as appropriate.)***

Sections 10.554(1)(i)9.c. and 10.556(9), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the District posted its tentative and final budgets on its Web site. In connection with our audit, we determined that the District posted its tentative and final budgets on its Web site. ***(If the District did not comply with this requirement, revise the language as appropriate.)***

Additional Matters

Section 10.554(1)(i)3., Rules of the Auditor General, requires us to communicate noncompliance with provisions of contracts or grant agreements, or abuse, that have occurred, or are likely to have occurred, that have an effect on the financial statements that is less than material but warrants the attention of those charged with governance. In connection with our audit, we did not note any such findings ***(or, if applicable, state the findings and recommendations)***. ***(Auditors should use professional judgment to determine whether and how to communicate internal control deficiencies that are not material weaknesses or significant deficiencies or instances of fraud, noncompliance with provisions of laws or regulations, noncompliance with provisions of contracts or grant agreements, or abuse that do not warrant the attention of those charged with governance.)***

Purpose of this Letter

Our management letter is intended solely for the information and use of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, the Florida Auditor General, Federal and other granting agencies ***(refer to other governmental agencies if appropriate)***, the ***(Board of Directors, Commissioners, Council Members, or other title as appropriate)***, and applicable management, and is not intended to be and should not be used by anyone other than these specified parties.

(name of CPA firm)

(City, State)

(date of management letter)

[NOTE: This example management letter for counties as a whole, municipalities, and special districts is intended to provide guidance concerning the preparation of a management letter pursuant to Chapter 10.550, Rules of the Auditor General for Local Governmental Entity Audits. This example management letter should be amended as appropriate based on the auditor's professional judgment regarding the particular circumstances of the audit; Chapter 10.550, Rules of the Auditor General for Local Governmental Entity Audits; and applicable auditing and attestation standards. An example management letter for county constitutional officers is available on the Auditor General's Web site at https://flauditor.gov/pages/tech_localgout.html.]

Appendix V Hierarchy of Laws

A. Florida Constitution

The Florida Constitution sets forth the fundamental law of the State and includes many specific provisions relating to matters desired to endure and be placed beyond purely legislative control. The Constitution may be divided into three main parts: first, the Declaration of Rights, an enumeration of fundamental rights for the citizens of Florida; second, the framework of state government including the powers and duties of the legislative, executive and judicial branches of the government; and third, a group of provisions that relate to voting rights, local government organizations, taxation and finance, homestead exemption, local option as to intoxicating liquors, and various other miscellaneous matters. The current Florida Constitution is the Constitution of 1968, as amended, which became effective January 7, 1969, and replaced the Constitution of 1885.

The Florida Constitution is the paramount law adopted by the State, subject only to limitations imposed by the Constitution of the United States. All State governmental powers are subject to the restrictions imposed by the Florida Constitution and applicable provisions of the Federal Constitution. The Constitution(s) prevail(s) where a statute, rule, or ordinance conflicts therewith. It is a general rule, however, that statutes and ordinances are presumed constitutional until held unconstitutional by a court, and rules are presumed valid until held invalid. The Constitution is available online at www.leg.state.fl.us/constitution.

B. Laws of Florida

The Florida Constitution provides procedures by which the legislature may enact State laws. Enacted laws are known as session laws and include both general laws and special or local laws. A general law is one that operates universally throughout the State or uniformly upon subjects, as they may exist in the State. A special or local law is one relating to, or designed to operate upon, particular persons or things or in a specifically indicated area of the State. Many laws relating to special districts, municipalities and counties are of the special or local type. All session laws are numbered, compiled and published along with memorials and resolutions in hardbound volumes entitled Laws of Florida. These volumes may be acquired from the Office of Legislative Services, Division of Law Revision and Information, Room 612, Pepper Building, 111 West Madison Street, Tallahassee, FL 32399-1400. Laws dating back to 1997 are available online at <http://laws.flrules.org>.

C. Florida Statutes

General session laws are edited and compiled into the Florida Statutes by the Office of Legislative Services, Division of Law Revision and Information, pursuant to Section 11.241, F.S. Section 11.242(4), F.S., specifies the content of the Florida Statutes. Section 11.242(5), F.S., elaborates on editorial powers and restrictions relating to the compilation of the general session laws into the statutes. Section 11.242(5), F.S., states in part:

(5) In carrying on the work of statutory revision and in preparing the Florida Statutes for publication:

(a) All amendments made to any section or chapter, or any part thereof, of the Florida Statutes or session laws of this state by any current session of the Legislature, whenever such amendments in express terms refer to sections or chapters of said statutes or session laws, shall be incorporated with the body of the text of the Florida Statutes.

(b) All sections, chapters, or titles of the Florida Statutes or session laws of this state which are expressly repealed by any current session of the Legislature shall be omitted.

(c) All laws of a general and permanent nature which are of general application throughout the state enacted by any current session of the Legislature shall be compiled and included, assigning thereto in all appropriate places such chapter and section identification, by the decimal system of numbering heretofore embodied in the Florida Statutes, as is appropriate and proper, but all chapters and sections so compiled shall be indicated with a history note, clearly showing that said section or chapter was not a part of the revision at the time of its adoption and giving the proper legislative session law chapter and section number. The matter included under the authority of this subsection shall be incorporated as enacted in any current session and shall be prima facie evidence of such law in all courts of the state.

(d) Any two or more sections, chapters, or laws, or parts thereof, may be consolidated.

(e) Any section, chapter, or law, or part thereof, may be transferred from one location to another.

(f) The form or arrangement of any section, chapter, or law, or part thereof, may be altered or changed by transferring, combining, or dividing the same.

(g) Subsections, sections, chapters, and titles may be renumbered and reference thereto may be changed to agree with such renumbering.

(h) Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of the statutes or laws, may be freely made.

(i) All statutes and laws, or parts thereof, which have expired, become obsolete, been held invalid by a court of last resort, have had their effect or have served their purpose, or which have been repealed or superseded, either expressly or by implication, shall be omitted through the process of reviser's bills duly enacted by the Legislature.

(j) All statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority, shall be omitted through the process of reviser's bills duly enacted by the Legislature. Rulemaking authority shall be deemed unused if the provision has been in effect for more than 5 years and no rule has been promulgated in reliance thereon.

(k) All statutes and laws general in form but of such local or limited application as to make their inclusion in the Florida Statutes or any revision or supplement thereof impracticable, undesirable, or unnecessary shall be omitted therefrom, without effecting a repeal thereof.

(l) All things relating to form, position, order, or arrangement of the revision, not inconsistent with the Florida Statutes system, which may be found desirable or necessary for the improvement, betterment, or perfection of same, may be done.

Considerable judgment and effort is obviously required in compiling the Florida Statutes. Thus, pursuant to Section 11.242(5)(c) and (k), F.S., only laws of a general and permanent nature are included in the Florida Statutes and laws general in form but of local, limited or temporary application are omitted from the Florida Statutes. As a result, a substantial body of law is omitted from the Florida Statutes.

Specific sections of the Laws of Florida that are omitted from the Florida Statutes, can be determined by consulting the tracing tables found in the index volume of the Florida Statutes. In addition, as a result of drafting techniques known as “incorporation by reference,” “incorporation,” “reference,” “cross-reference,” or “referencing,” there are still more omissions from both the individual session laws and Florida Statutes. This technique of making a reference has the effect of bringing the text of the referenced material into the text where the reference is contained. Consequently, *the text of the referenced material must be consulted* for a full understanding of the law containing the reference. The Florida Statutes may be acquired from the Office of Legislative Services and are available online at www.leg.state.fl.us/statutes.

D. Administrative Rules and Regulations

In general, an administrative agency charged with administering a law has the first opportunity to construe the law being administered. The agency may interpret the statutes on an ad hoc basis or it may adopt rules as defined in Section 120.52(16), F.S., if it is subject to Chapter 120, F.S. Administrative rules promulgated in furtherance of a statute must be consistent with the provision thereof and may not amend, add to, or repeal the statute.

A valid rule or regulation of an administrative agency has the force and effect of law and should be consulted when appropriate. Chapter 120, F.S., the Administrative Procedure Act, relates to rule making and the decisional process of agencies. For purposes of determining the applicability of Chapter 120, F.S., the term “agency” is defined in Section 120.52(1), F.S., which states:

120.52 Definitions.—As used in this act:

(1) “Agency” means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

This definition does not include any municipality or legal entity created solely by a municipality; any legal entity or agency created in whole or in part pursuant to part II of chapter 361; any metropolitan planning organization created pursuant to s. 339.175; any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority or commission under chapter 343 or chapter 349; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

Note that a “special district” (see Sections 189.012(6) and 218.31(5), F.S.) may be an agency pursuant to Section 120.52(1)(b) or (c), F.S. Section 120.52(1)(c), F.S., provides that counties, municipalities and other governmental entities in the State “having jurisdiction in one county or less than one county” are agencies to the extent they are expressly made subject to Chapter 120 “by general or special law or existing judicial decisions.”

In general, all rules adopted by each agency, together with indexes, are published in the Florida Administrative Code, which is updated monthly. However, rules of certain agencies are excluded from the Florida Administrative Code, pursuant to Section 120.55(1)(a)2, F.S., which provides:

Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

This provision of law has been construed to exclude from publication in the Florida Administrative Code the rules of agencies whose territorial boundaries are confined to a county or some portion of a county. Consequently, if a municipality, special district, or other governmental entity has been determined to be “an agency” and if the territorial boundary of the municipality, special district, or other governmental entity only occupies a portion of a county, then its rules will not be published in the Florida Administrative Code.

The Florida Administrative Code is available online at www.flrules.org.

E. County Ordinances

Pursuant to Article VIII, Subsection 1(a), Florida Constitution, counties are political subdivisions of the State and are, in general, subject to legislative control. These subdivisions are organized as either non-charter governments or charter governments. Except when otherwise provided by county charter, the governing body of each county is a board of county commissioners. The governing board, however styled, is a legislative body in that it has the power to adopt ordinances. The territorial effect of county ordinances differs depending upon whether the county is organized as a charter or non-charter county. Article VIII, Subsection 1(f), Florida Constitution, states, in pertinent part:

The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, *but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.*(e.s.)

In the case of a chartered government, Article VIII, Subsection 1(g), states, in pertinent part:

The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. *The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.* (e.s.)

Chapter 125, F.S., deals with the county government. Section 125.01(1)(t), F.S., states in part:

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

...

(t) Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.

...

Pursuant to Article VIII, Subsection 1(i), Florida Constitution, "Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law."

Section 125.66, F.S., related to the exercise of the ordinance-making powers conferred by Section 1, Article VIII, Florida Constitution, requires counties to adhere to the procedures contained therein. In Section 125.66(2)(b), F.S., one of the specified procedures is that:

Certified copies of ordinances or amendments thereto enacted under this regular enactment procedure shall be filed with the Florida Department of State by the clerk of the board of county commissioners within 10 days after enactment by said board and shall take effect upon filing with the Department. However, any ordinance may prescribe a later effective date.

Additionally, Section 125.68, F.S., requires:

Codification of ordinances; exceptions; public record.—

(1)(a)...counties shall maintain a current codification of all ordinances. Such codification shall be published annually by the board of county commissioners.

...

(2) All ordinances shall be public records, and copies of such ordinances shall be available to the public. A reasonable charge may be made for the provision of copies, but such charges shall not exceed the actual costs incidental to providing such copies.

Further, Section 125.018, F.S., requires that:

All rules and regulations promulgated and all impositions and exactions made by authority hereof shall be just and reasonable and consistent with public interest, and their application shall be subject to review by certiorari in any court of proper and competent jurisdiction. *All rules and regulations shall be published and dispensed by the county at cost to all applicants therefor.* (e.s.)

The provisions of Sections 125.66, 125.67 and 125.68, F.S., should be read in light of Attorney General Opinion 69-99 and Article VIII, Subsections 1(f) and 1(g) and 6(d) of the Florida Constitution. In substance, the Attorney General Opinion concludes that a non-charter county government has the power to repeal special or local laws applicable only to the unincorporated areas of the county pursuant to the home rule provisions of the Florida Constitution.

The Municipal Code Corporation (www.municode.com) in Tallahassee contracts with and publishes a codification of many of the counties' ordinances.

F. Municipal Ordinances

Pursuant to Article VIII, Section 2, Florida Constitution, municipalities may be established or abolished and the charters amended pursuant to general or special law. Subsection 2(b), dealing with municipal powers, states:

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

Section 166.042, F.S., states:

(1) It is the legislative intent that the repeal by chapter 73-129, Laws of Florida, of chapters 167, 168, 169, 172, 174, 176, 178, 181, 183, and 184 of Florida Statutes *shall not be interpreted to limit or restrict the powers of municipal officials* but shall be interpreted as a *recognition of constitutional powers*. It is, further, the legislative intent to recognize *residual constitutional home rule powers in municipal government*, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities by the chapters enumerated above but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe.

(2) Nothing contained in s. 5, Chapter 73-129, Laws of Florida, shall be interpreted to impair any claim against a municipality of to affect the validity of any bonds or obligations issued under authority of any of the chapters enumerated in subsection (1). (e.s.)

In general, the municipal legislative body acts by either adopting an ordinance or resolution. Differences in the terms become clear when the statutory definition of the terms is considered. The terms are defined in Section 166.041(1)(a) and (b), F.S., as follows:

(a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a *general and permanent nature and enforceable as a local law*.

(b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body. (e.s.)

While both legislative acts and county ordinances are filed with the Florida Department of State and general session laws and county ordinances are statutorily required to be codified, the same is not true for municipal ordinances or resolutions.

Section 166.041(5), provides:

(5) *Every ordinance or resolution shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the presiding officer and clerk of the governing body.* (e.s.)

Appendix VI
List of Legal Reference Web Sites

The following are legal reference Web site links pertaining to Florida local governmental entity audits:

Attorney General Opinions

www.myfloridalegal.com/opinions

Codifications of County and Municipal Ordinances

www.municode.com

Florida Administrative Code

www.flrules.org

Florida Constitution

www.leg.state.fl.us/constitution

Florida Department of Financial Services Rules – Tangible Personal Property

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=69I-73>

Florida Department of Financial Services Rules – State Financial Assistance

<https://apps.fldfs.com/fsaa/rules.aspx>

Florida Statutes

www.leg.state.fl.us/statutes

Laws of Florida

<http://laws.flrules.org>

Rules of the Auditor General

<https://flauditor.gov/pages/rules.html>

Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>