

II. Present Situation:

Article V, s. 16 of the Florida Constitution, allows the duties of the clerk to be divided by special or general law between two officers with one serving as clerk of the court and the other serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Article VIII, s. 1(d) of the Florida Constitution, designates the clerk of the circuit court as the ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds unless otherwise provided in a county charter or a special act approved by vote of the electors.

There are statutory provisions addressing the duties of the clerk as a county officer and auditing functions for county funds. Section 129.09, F.S., makes a clerk who, “acting as a county auditor,” personally liable for any payment using county funds in excess of the amount allowed by law and for paying an illegal charge or unauthorized claim against the county. This section also creates a misdemeanor offense for a clerk who willfully and knowingly signs a warrant for such payment. Section 136.08, F.S., authorizes the county auditor and the auditor general to inspect the accounts of each county board and county accounts in each qualified public depository.

Part III of ch. 218, F.S., relating to local government financial management and reporting, requires a county annual financial report covering each county agency be submitted to the Department of Financial Services. Under s. 218.39, F.S., the auditor general, or an independent certified public accountant retained by the county if it is not notified of an audit by the auditor general, completes an annual financial audit within 12 months after the end of a fiscal year. Section 125.01(1)(x), F.S., also authorizes a board of county commissioners to employ an independent certified public accounting firm to audit the county’s funds, accounts, and financial records. Copies of the audit report must be filed with the clerk and maintained for public inspection. The clerk is required to forward a copy of the audit report to the auditor general.

In *Alachua County v. Powers*, 351 So. 2d 32, 43 (Fla. 1977), the Florida Supreme Court provided clarification of the duties of the clerk when serving as auditor, accountant, and custodian of county funds. The court held the “clerk is county auditor, accountant and custodian of all funds of the county pursuant to constitutional and statutory provisions.” According to the court, the clerk’s office conducts pre-audits as county auditor, and performance audits are made by an independent certified public accountant or auditing firm, and the auditor general or an independent accounting firm performs post-audit functions regarding county funds. The court affirmed the trial court’s determination that the clerk is “to act as county auditor in all auditing functions except when the board employs an independent auditing firm...”

The issue of the clerk’s duties as auditor is the subject of *Brock v. Board of County Commissioners of Collier County*, Case No. 04-941-CA, that is currently on appeal to the Second District Court of Appeal.¹ The trial court found no specific constitutional or statutory grant of authority that requires the clerk to prepare and certify the accuracy of a county’s financial statements. Instead, the court held that a clerk’s authority to prepare financial statements on

¹ This case has been consolidated with Case Nos. 05-953-CA and 05-1506-CA (20th Cir. Ct. 2007).

behalf of the county is derived only by a delegation of authority from a board of county commissioners.²

Community Development Districts (CDDs)

CDDs are required in certain circumstances, as described in s. 190.006(3)(a), F.S., to elect a board of supervisors. The election shall be held in conjunction with a primary or general election unless the CDD bears the cost of a special election. Section 190.006(3)(c), F.S., provides the amount of the filing fee for a candidate is 3 percent of \$4,800 or if board members receive compensation for their services as provided for in s. 190.006(8), F.S., the cap is 3 percent of the maximum annual compensation.

III. Effect of Proposed Changes:

Section 116.07, F.S., relating to the powers and duties of county and state officers, is amended to require sheriffs, clerks of the circuit court, and ex officio clerks of the boards of county commissioners to keep financial statements, in addition to books of account and of record, in accordance with part III of ch. 218, F.S.

Section 116.075, F.S., is created to provide that the clerk of the circuit court, as the county auditor, shall prepare a county's annual financial report. The clerk is also authorized to perform reviews and tests as necessary to determine the adequacy of internal controls and compliance with contracts and applicable laws and rules necessary to prepare the annual financial report. The CS clarifies that the clerk is not authorized to perform audits on the offices of county officers unless provided by charter or special act approved by the voters.

Section 136.05, F.S., is amended to specify that the clerk of the circuit court, as the accountant of the board of county commissioners, shall keep an accurate and complete set of books for county funds.

Section 190.006, F.S., is amended to increase the filing fee to 3 percent of \$7,500 for candidates seeking election to the board of supervisors of certain CDDs. Also, the cap on the amount of remuneration each supervisor is entitled to receive annually is increased from \$4,800 to \$7,500. (The amount per meeting remains at \$200.)

This CS takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² *Brock*, Case No. 04-941-CA at 3-4.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Pursuant to Art. VIII, s. 1(f) of the Florida Constitution, counties not operating under a charter have all powers of self-government as provided by general or special law. Counties operating under a charter have all the powers of self-government not inconsistent with general law, or with a special law approved by the electors.³

This CS designates the clerk as the county auditor. Currently, there are some counties that have delegated the authority to prepare financial statements on behalf of the county to the clerk. Article VIII, s. 1(d) of the Florida Constitution, states that “[w]hen not otherwise provided by county charter or special law approved by vote of the electors,” the clerk is the ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a minimal negative impact due to the fact that the clerk will be the county auditor under this CS and independent accounting firms may be used less often to audit county funds.

C. Government Sector Impact:

This CS designates the clerk as the county auditor which should result in less use of independent accounting firms for audits in some counties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³ Art. VIII, s. 1(g) of the Florida Constitution.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 9, 2008:

The CS deletes language amending s. 218.31, F.S., defining the term “county auditor” as the clerk of the circuit court. The CS creates s. 116.075, F.S., and the language in the bill that amended s. 218.32, F.S., to require the county auditor to prepare the annual financial report of the county is moved to this new section. The CS clarifies that the clerk is not authorized to perform audits on the offices of county officers unless provided by charter or special act approved by the voters. The CS increases the filing fee for candidates seeking election to the board of supervisors of certain community development districts and the annual cap on remuneration for such supervisors.

- B. **Amendments:**

None.