

DON GAETZ
President of the Senate



WILL WEATHERFORD
Speaker of the House



Joint Legislative Auditing Committee

Senator Joseph Abruzzo, Chair
Representative Lake Ray, Vice Chair

Meeting Packet
Monday, April 1, 2013
10:30 A.M. to 12:00 P.M.
309 Capitol

AGENDA

JOINT LEGISLATIVE AUDITING COMMITTEE

DATE: April 1, 2013

TIME: 10:30 a.m. to 12:00 p.m.

PLACE: Room 309 Capitol

MEMBERS:

Senator Joseph Abruzzo, Chair
Representative Lake Ray, Vice Chair

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

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

Consideration of a request for an audit of the City of Hampton received from Representative Van Zant

Consideration of a request for an audit of the City of Starke received from Representative Van Zant

Consideration of a request for an audit of the Delray Beach Community Redevelopment Agency received from Senator Clemens



Florida House of Representatives

Representative Charles Van Zant

District 19

District Office:
3841 Reid Street, Suite 5
Palatka, FL 32177
(386) 312-2272

March 21, 2013

House Office Building:
402 South Monroe Street
Tallahassee, FL 32399-1300
(850) 717-5019

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

Dear Chair Abruzzo,

After several years of increasing citizen's complaints regarding the law enforcement tactics of the Hampton Police Department plus alleged misuse of public money, I hereby request the Joint Legislative Auditing Committee to conduct an in-depth audit of the City of Hampton in Bradford County, Florida.

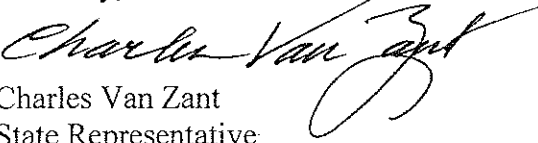
Owning a little more than 1000' of US 301 that is questionably in their jurisdiction, they have for years put the general public at risk with high speed pursuits in order to collect speeding tickets. Presently, they have pulled off of US 301 due to complaints and meetings that myself and other representatives have held with FHP, the Bradford County Sheriff, and the Bradford County Delegation meetings the past two years.

However, for the more than \$600,000 that this city has received during 2010, 2011, and 2012, from only citations, plus all other city revenue, there is no visible evidence that constituent services, infrastructure, or capital improvements of any city property have occurred in this very "tiny" city. The population is 400-500. The police chief and staff often numbered 15 or more during this time frame. That is a policeman for every 31 persons.

I believe an intense accounting of these monies from January 2010 through December of 2012 is warranted, and I have enclosed numerical supporting data. The serious question needs to be answered: Where did all this money disappear to?

Senator Abruzzo, I sincerely appreciate you taking the time out to discuss this with me, and I hereby attest that this letter is a formal request from me to perform an in-depth audit of the City of Hampton, Florida from January 2010 through December 2012.

Sincerely,


Charles Van Zant
State Representative
District 19

City of Hampton Florida (population 441)

"Distrustful Financial Situations"

Using years 2010 thru 2012

After numerous complaints from citizens and local businesses, it is suspected that the City of Hampton is either misusing or misappropriating government funds according to local government accounting standards.

- (1) It is alleged that the employees are not always required to submit time sheets to obtain payroll checks issued by the city. This is verified by an Internal Affairs report conducted by the Bradford County Sheriff's Office at the request of Chief John Hodges (8/30/2011 case #BCSO11OFF000946).
- (2) It is known that the city clerk Joan Hall is the wife of city commissioner Charles Hall. Also employed by the city is her son Adam Hall. It is also alleged that their daughter, unknown name, is paid periodically for supposed functions performed.
- (3) The citizens of Hampton who are required to pay their water bills are often required to take them to the city clerk, Jane Hall's Home instead of city hall. No receipts are given from her home.
- (4) From January 1, 2010 to December 31, 2012, the city received approximately \$616,959.99 in traffic fine revenue. The city clerk routinely calls the Bradford County Court house the first of each month needing their monthly traffic ticket revenue. Numerous complaints have been made for non- payment of bills. Such complaints have come from the local ford dealer (Murray Ford), DGG Taser (Jacksonville) and for purchase of new park equipment, which was purchased through a grants process. These are only a few, shown for example. Although unverified, it is rumored that several worthless checks have been issued.
- (5) Citizens complain that city clerk spends thousands at local stores for the personal use her and her family. This included purchasing fuel for personal vehicles. This complaint was made from an anonymous source fearing retaliation.
- (6) The city has not held proper elections in numerous election cycles /years. They have not elected a mayor in more than four years, leaving them with a four member board.

The above information is just a short list of some of the more significant allegations against the City of Hampton, Florida

STAFF ANALYSIS

Date: March 27, 2013

Subject: Request for an Audit of the City of Hampton

Analyst Coordinator

DuBose KD

DuBose KD

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Representative Charles Van Zant for an audit of the City of Hampton, located in Bradford County. He has concerns related to accountability of the revenues received as a result of aggressive traffic enforcement.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in s. 11.45(2) or (3), F.S.

Section 11.45(3)(a), F.S., provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), F.S., provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the report.

Request for an Audit of the City of Hampton

Representative Charles Van Zant has requested the Committee to direct an audit of the City of Hampton (City) to determine the accountability and use of revenues that the City has received as a result of aggressive traffic enforcement along U.S. 301. He provided documentation that supports the City's receipt of \$616,959.99 over the past three calendar years, yet he indicates that there is "no visible evidence that constituent services, infrastructure, or capital improvements of any city property

have occurred in this very 'tiny' city." He also provided a list of specific concerns related to questionable activities of the City Clerk, the City's failure to pay certain bills, allegations that the City has issued worthless checks, instances in which employees are not required to submit time sheets, and the elections process.

Background

The City of Hampton (City) is a Florida municipality, originally incorporated as the Town of Hampton in 1870¹ and then reincorporated as the City by Chapter 10599, *Laws of Florida* (1925). The City operates under a mayor-council form of government and provides services to its citizens including public safety, sanitation, streets and other general governmental activities. In addition, the City owns and operates a water and sewer system.² The City is governed by an elected five-member city council; the five city council members elect one member to serve as the mayor and one to serve as the council vice chair.³ Located in Bradford County, the estimated population of the City in 2012 was 477.⁴

Revenues and Expenditures/Expenses

Based on annual financial reports (AFRs) filed with the Department of Financial Services (DFS) for the past three years, the City reported the following financial information for all of its funds:

Fiscal Year	Total Revenues	Total Expenditures/ Expenses	Total Debt
2008-09	\$371,697	\$378,627	\$41,503
2009-10	\$404,511	\$430,113	\$35,000
2010-11	\$868,631	\$874,329	\$32,000

The AFR for the 2011-12 fiscal year has not yet been submitted; it is required to be filed by June 30, 2013.

In general, according to the information the City reported to the DFS, the majority of its revenue is received as a result of traffic enforcement. The City, which includes a small portion of U.S. 301 between Gainesville and Jacksonville, has a reputation for aggressively enforcing speed limits and other traffic violations. In early 2012, after receiving numerous complaints regarding the number of traffic citations issued, the City's Police Chief announced that he was pulling his officers off of U.S. 301.⁵ Several months later, he reversed his decision but indicated that his officers would not be writing the volume of citations as they had earlier since the police force had been downsized.⁶ The following table shows the percentage of revenue the City has received, broken down by type of revenue,⁷ for the three most recent years that have been reported to the State. Traffic citations were the primary source of revenue in two of the three years. The exception was in the 2010-11 fiscal year when the City

¹ Florida League of Cities website.

² *City of Hampton, Florida; Financial Statements and Independent Auditors' Reports as of and for the Year Ended September 30, 2011*; Reddish & White, Certified Public Accountants.

³ Section 1, Article VII of Chapter 10599, *Laws of Florida* (1925).

⁴ *Florida Estimates of Population 2012*, University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research.

⁵ The Bradford County Telegraph, Inc., 2/1/12 (online).

⁶ StarkeJournal.com, 5/16/12.

⁷ Excludes other financing sources (i.e., debt proceeds).

received Florida Recreation Development Assistance Program (FRDAP) grants which were used to complete two park projects.

General Fund:⁸ Percent of Revenue Received by Type			
Type of Revenue	FY 2008-09	FY 2009-10	FY 2010-11
Ad Valorem Taxes	0.91%	0.85%	0.34%
General Government Taxes	25.50%	22.58%	11.73%
Permits, Fees and Licenses	7.29%	9.42%	3.48%
State Grants	0.36%	8.71%	34.86%
State Shared Revenue	12.47%	8.83%	5.66%
Judgments and Fines – As Decided by Traffic Court	51.82%	49.47%	33.64%
Contributions and Donations from Private Sources	0%	0%	8.03%
Miscellaneous Revenues	1.65%	0.15%	2.25%

The City reported that a significant portion of its revenues were spent on costs associated with its law enforcement efforts for the three most recent years reported to the State. Again, except for the 2010-11 fiscal year in which the park projects were built, the majority of expenditures were for the cost of law enforcement personnel, operating expenses, and capital outlay as shown in the following table:

General Fund: Percent of Expenditures by Type			
Types of Expenditures	FY 2008-09	FY 2009-10	FY 2010-11
Legislative (<i>Personal Services</i>)	3.51%	3.19%	1.20%
Financial and Administrative (<i>Personal Services</i>)	7.30%	5.58%	1.78%
Financial and Administrative (<i>Operating Expenses</i>)	14.82%	17.00%	7.61%
Law Enforcement (<i>Personal Services, Operating Expenses, Capital Outlay</i>)	41.42%	53.82%	34.33%
Fire Control (<i>Operating Expenses</i>)	0%	0%	0.09%
Road and Street Facilities (<i>Personal Services, Operating Expenses; also includes Capital Outlay in FY 2010-11</i>)	18.78%	15.63%	6.31%
Parks and Recreation (<i>Operating Expenses, Capital Outlay; also includes Debt Service in FY 2010-11</i>)	14.16%	4.78%	48.69%

⁸ The general fund is a type of governmental fund. Governmental funds are used to account for activities primarily supported by taxes, grants, and similar revenue sources. The general fund typically serves as the chief operating fund of a government and is used to account for all financial resources not accounted for in some other fund.

In addition to the general fund, the City also maintains an enterprise fund⁹ for its water and sewer system. The two tables that follow provide the amounts of revenues and expenses reported by the City for the three most recent years reported to the State.

Enterprise Fund: Revenues			
Type of Revenue	FY 2008-09	FY 2009-10	FY 2010-11
State Grants – Water Supply	\$0	\$0	\$63,333
Service Charge – Water Utility	\$37,775	\$47,621	\$51,732
Other Miscellaneous Revenues	\$0	\$1,976	\$8,217
Proprietary – Other Non-Operating Sources	\$978	\$0	\$0
Total Revenues	\$38,753	\$49,567	\$123,282

Enterprise Fund: Expenses			
Type of Expense	FY 2008-09	FY 2009-10	FY 2010-11
Water Utility Services – Personal Service	\$41,839	\$41,507	\$37,360
Water Utility Services – Operating Expenses	\$29,623	\$63,104	\$32,488
Water Utility Services – Capital Outlay	\$32,450	\$0	\$25,119
Water Utility Services – Debt Service	\$2,250	\$2,100	\$0
Total Expenses	\$106,162	\$106,711	\$94,967

The City has no other funds.

Financial Audit

In accordance with s. 218.39(1)(b), F.S., the City is required to obtain an annual financial audit conducted by an independent certified public accountant which the City retains and pays from its public funds. The most recent audit that has been submitted to the Auditor General is for the 2010-11 fiscal year and included the following:

Management's Discussion and Analysis: Financial Highlights

- “The City’s net assets increased by \$321,550 (or 96%) overall as a result of this year’s operations. While net assets of the government activities increased by \$293,235 (or 88%), net assets of the water services increased by \$28,315.
- In the City’s business-type activity (water services), revenues increased to \$51,732 (or 9% increase from the prior year) while operating expenses decreased by \$11,744 to \$94,967. Grant revenue of \$63,333 was received during the year from the CDBG grant for water capital improvements. As a result, the net assets increased by \$28,315.
- The City completed the 2 park projects during the year. The projects were funded largely from the FRDAP grants from the state of Florida totaling \$271,222.

⁹ An enterprise fund may be used when a fee is charged to external users for goods or services, and it is required to be used when certain criteria are met.

- The City’s police department received donations of police vehicles and auxiliary equipment worth approximately \$56,000 during the year.”

Audit Findings

- Audit Finding #1: Due to limited personnel, the City does not adequately separate the duties in the accounting department. The City has hired an independent accountant to perform the bank reconciliations, as well as other accounting tasks; however, the bookkeeper still performs many of the reconciliations.
- Audit Finding #2: The City did not make the monthly transfer to the Sinking Fund bank account each month as required by the bond resolution. As a result, the City paid the annual bond payment out of the operating account.
- Audit Finding #3: The Water Fund has not been covering its costs without support from the General Fund.
- Audit Finding #4: Although the 1979 Bond Resolution requires the City to transfer, on a monthly basis, \$45 to a reserve account until this account equals \$5,422, and thereafter whenever such account is less than \$5,422, the balance in the reserve account was \$146.
- Audit Finding #5: The bank reconciliations were not always performed in a timely manner, and some transactions that have not cleared the bank were so old that they are not likely to ever clear the bank.
- Audit Finding #6: The City does not use the approved budget to control spending in the law enforcement department. As a result, the law enforcement department often expends more than the approved budget.
- Audit Finding #7 (Significant Deficiency):¹⁰ The City does not have staff with the accounting knowledge and experience to prepare the financial statements in accordance with generally accepted accounting principles (GAAP).
- Audit Finding #8 (Significant Deficiency): The auditors noted many disbursements that were coded incorrectly as to department and expense type. Also, a deposit was incorrectly dated by over a month. The auditors recommend that the bookkeeper review the output periodically for obvious errors. In addition, the independent accountant assigned the month-end reconciliations should also review the general ledger for obvious errors.
- Audit Finding #9: The City does not have a system in place to track the audit findings.
- Audit Finding #10: A bank account of the City’s water fund was not recorded on the City’s general ledger.
- Audit Finding #11 (Significant Deficiency): The auditors noted that the bookkeeper was performing reconciliations instead of the independent bookkeeper. In one instance, one of the bank accounts was reconciled to the wrong monthly statement.
- Audit Finding #12 (Significant Deficiency): The auditors noted that the bookkeeper sometimes records transactions using the accrual method and sometimes records disbursement using the cash basis method. Consequently, the accounts payable at the end of a given month can contain numerous errors.

Findings #1 through #5 and #7 have been included in at least three successive audits, and on February 18, 2013, as authorized by s. 218.39(8),F.S., the Committee took action against the City for failing to

¹⁰ Based on audit standards, some audit findings may be classified as either a material weakness or a significant deficiency. In general terms, when these conditions occur there is a greater likelihood that fraud could be committed and not detected on a timely basis. A significant deficiency is less severe than a material weakness, yet important enough to merit the attention of those charged with governance.

correct these findings. As a result of the Committee's action, the City Commission is required to provide a written statement to the Committee explaining why full corrective action has not been taken or describing the corrective action that is planned. If a statement is not provided, or the statement provided is deemed to be inadequate, the Chair of the City Commission may be requested to appear before the Committee.

The audit for the 2011-12 fiscal year has not yet been submitted; it is required to be filed by June 30, 2013.

Traffic Enforcement

The following table provides Florida Uniform Traffic Citation Statistics compiled by the Department of Highway Safety and Motor Vehicles (DHSMV) for the City during the past two calendar years:

Type of Violation	Number of Citations	
	2011	2012
Criminal (i.e., DUI)	116	26
Non-Criminal (Moving)	8,819	3,044
Non-Moving Infractions	580	113
Total	9,515	3,183

Records from the Bradford County Clerk of Circuit Court provide the following breakdown of civil traffic fines that were collected for the City for a three-year period:

Collections for Civil Traffic Fines Received ¹¹			
Calendar Year	Traffic Fines Received	Local Law Fines Received	Total Received
2010	\$185,343.19	\$11,904.00	\$197,247.19
2011	\$253,244.14	\$15,380.00	\$268,624.14
2012	\$142,756.66	\$8,332.00	\$151,088.66
Total Received	\$581,343.99	\$35,616.00	\$616,959.99

For perspective, a comparison of the number of traffic citations issued by the City's Police Department was made to the number of traffic citations issued by police officers in other small municipalities. Many smaller municipalities do not maintain a police force, but rather contract for law enforcement services with their County Sheriff. Municipalities with populations ranging from 391 to 1,138 were reviewed. The DHSMV compiles statistics on citations issued within municipal boundaries when a citation is issued by a municipality's police department; it does not compile the number of citations issued by a Sheriff's Department within a municipality when it is under contract to provide law enforcement. The following table lists all municipalities for which the number of traffic citations was available from the DHSMV for both the 2011 and 2012 calendar years. The only other municipality in which the number of traffic citations exceeded the number issued by the City of Hampton was the City of Waldo. AAA has designated two "traffic traps" in the nation, the City of

¹¹ The total amount of fines collected as reported by the City to the DFS for the 2008-09, 2009-10, and 2010-11 fiscal years was \$145,581, \$170,060, and \$234,746, respectively, for a total of \$550,387. The City's fiscal year is October 1 – September 30.

Lawtey (U.S. 301) and the City of Waldo (U.S. 301 and State Road 24).¹² Both appear on the list below.

Florida Uniform Traffic Citation Statistics
Total Violations Made During Period 01/2011 – 12/2012¹³

Municipality	County	Population¹⁴ <i>(Based on 2012)</i>	City Police Traffic Violations 2011	City Police Traffic Violations 2012	Two-Year Total
Manalapan	Palm Beach	410	501	277	778
Hampton	Bradford	477	9,515	3,183	12,698
Altha	Calhoun	543	48	13	61
Briny Breezes	Palm Beach	604	6	8	14
Paxton	Walton	640	1	1	2
Melbourne Village	Brevard	664	724	813	1,537
Sea Ranch Lakes	Broward	670	10	25	35
Vernon	Washington	691	15	96	111
Coleman	Sumter	703	6	30	36
Cedar Key	Levy	712	27	132	159
Welaka	Putnam	717	30	29	59
Lawtey	Bradford	730	4,472	3,357	7,829
Shalimar	Okaloosa	731	855	806	1,661
White Springs	Hamilton	770	64	95	159
Webster	Sumter	774	75	55	130
Key Colony Beach	Monroe	802	42	122	164
Jupiter Island	Martin	817	109	287	396
Medley	Miami-Dade	858	5,388	5,356	10,744
Jennings	Hamilton	906	347	787	1,134
Cottrandale	Jackson	909	2,702	2,737	5,439
Golden Beach	Miami-Dade	924	3,816	4,156	7,972
Gulf Stream	Palm Beach	928	148	135	283
Center Hill	Sumter	944	363	228	591
Waldo	Alachua	969	10,744	10,599	21,343
Mexico Beach	Bay	1,095	45	115	160
Howey-in-the-Hills	Lake	1,097	770	682	1,452
Bronson	Levy	1,106	2,047	7	2,054

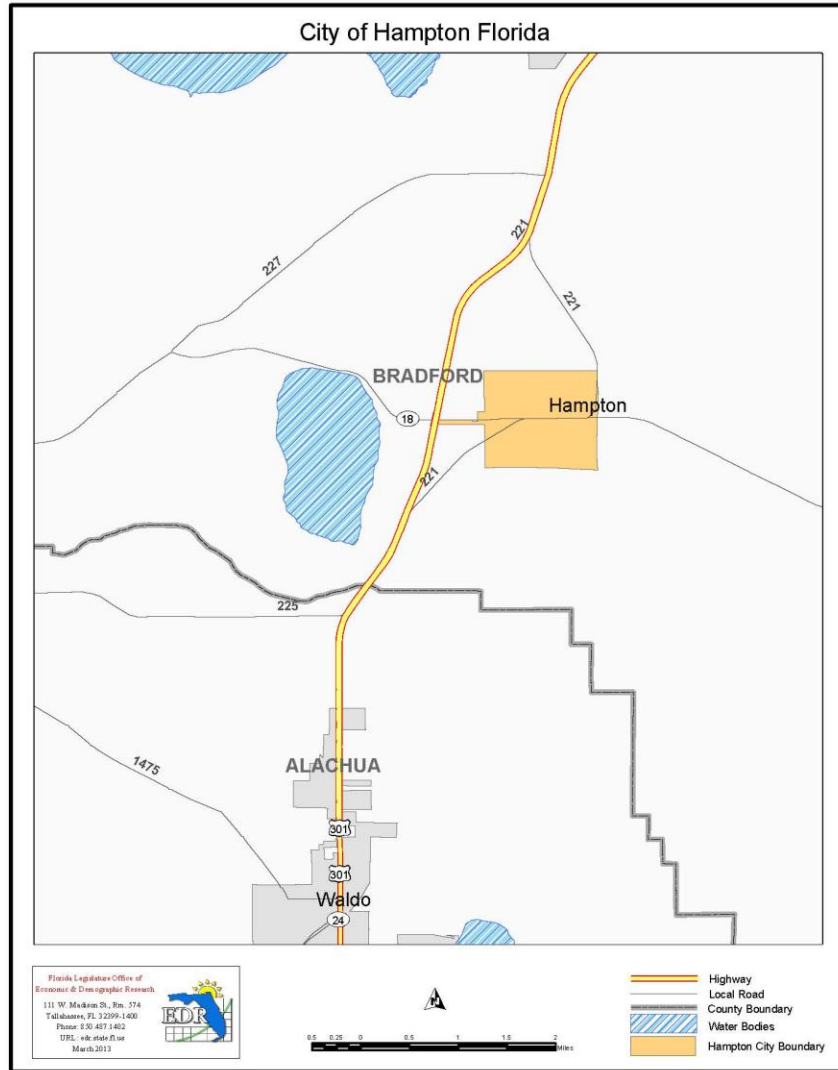
The City is approximately one square mile.¹⁵ As can be seen in the map on the following page, the boundaries of the City are basically a square with a narrow strip of land leading to the west which provides access to U.S. 301. The City's traffic enforcement efforts on U.S. 301 appear to generate the most complaints.

¹² AAA website.

¹³ These figures include criminal, non-criminal (moving), and non-moving infractions.

¹⁴ *Florida Estimates of Population 2012*, University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research.

¹⁵ Florida Legislature Office of Economic and Demographic Research.



Investigations

In 2012, the Florida Department of Law Enforcement conducted an investigation after receiving a complaint alleging that the City’s police department was operating outside of its jurisdiction. Concerns were raised that a strip of land in an area where the police department enforces traffic infractions was never properly annexed into the boundaries of the City. The investigation concluded that no state laws or municipal ordinances were violated related to the issue of municipal annexation, and the investigation was closed.

In 2011, at the request of the City's Police Chief, the Bradford County Sheriff's Office conducted an investigation related to possible fraud involving the falsifying of payroll documents submitted by one of the City's police officers. The investigator reported that the "payroll records from Hampton were found to be nonexistent for the majority of the time period and a further inquiry indicated that [the officer] had not been required or had simply not submitted weekly payroll records however, he had been paid for 40 hrs. per week since being employed in February of this year."¹⁶ Due in part to the lack of records, the investigator was unable to determine that there was any fraudulent intent, and the case was closed.

Other Considerations

If the Committee directs the Auditor General to conduct an audit of the City, his office would conduct an operational audit and take steps to avoid duplicating the work efforts of Reddish and White CPAs, the City's auditors, for the financial audit. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with s. 11.45 (2)(j), F.S., the Auditor General will be required to conduct an 18-month follow-up audit to determine the City's progress in addressing the findings and recommendations contained within the previous audit.

The Auditor General has no enforcement authority. If there are indications that fraud is being committed, the appropriate law enforcement authority will be contacted. Implementation of corrective action to address any audit findings is the responsibility of the City's board and management, as well as the citizens living in the City. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General and a process is provided in s. 218.39(8)(a), F.S., for the Committee's involvement. First, the City Commission may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated. If the statement is not determined to be sufficient, the Committee may request the Chair of the City Commission to appear before the Committee. Ultimately, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold selected state revenues from the City that it would ordinarily be entitled to receive.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an operational audit of the City of Hampton, Committee staff recommends that the Committee allow the Auditor General to set the: (1) scope of the audit, providing that the concerns of Representative Van Zant are addressed, and (2) timing of the audit as audit resources are available, consistent with his work plan and so as not to jeopardize the timely completion of statutorily mandated assignments.

¹⁶ Bradford County Sheriff's Office Offense Report dated 8/30/2011.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within his approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
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Florida House of Representatives

Representative Charles Van Zant

District 19

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3841 Reid Street, Suite 5
Palatka, FL 32177
(386) 312-2272

March 21, 2013

House Office Building:
402 South Monroe Street
Tallahassee, FL 32399-1300
(850) 717-5019

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

Dear Chair Abruzzo,

Following numerous contacts from constituents plus officials regarding the excessive fees and utility rates imposed by the City of Starke in Bradford County, Florida, I believe that an in-depth audit of the city's billing methods and utility rates is warranted. Several inconsistent happenings have caused me to come to my conclusion.

First, several city commissioners came to see me together in Tallahassee during the 2009 Legislative Session requesting Legislative relief from a 30 year "rolling" contract the city had signed with Florida Municipal Power Association (FMPA). They said they wanted out and that this contract was "killing them". By this time, it was too late to file any legislation that would have helped them so I promised to come to Starke after Session and discuss their dilemma and how to help them.

At that meeting, three months or so later, I was told that Florida Power Corporation was offering to help them and that they would not need me after all and they would contact me if they needed my help. They also told me they were going to cancel their contract with FMPA.

Although their response puzzled me, I only know that they have continued buying power from FMPA and that citizens continue to pay "extra" fees for electricity and believe they have been overcharged.

Since that time, I have received many complaints that the City of Starke is using the "extra" money to pay for items normally paid for by taxes. If this is true, then several scenarios may be happening.

- Suppose you are a small business owner and rent or lease your business space within the City of Starke. Your electric bill comes due with the additional charges added. Unbeknown to you, some of this money above that necessary for actual electric purchase, administration and distribution is used to purchase other city items, equipment, and or pay city employee salaries that are normally paid from tax proceeds. Yet, you believe that your lease/rent at least covers the owner's property taxes and there is no indication on your electric bill that any of this money is tax.
- In addition I have had complaints that the local merchants have such large electric bills that citizens who trade with them are actually having to support the City of Starke's added charges through increased costs for food and other necessities.
- Let's say you are a church or other 501(c) 3 tax exempt eleemosynary. Question...when you pay the City of Starke electric bill, are you actually paying the "extra" money as tax when in fact you only see it as part of your electric bill and are an established tax-free organization?

Enclosed is a shortened list of allegations that have been summarized and serve as additional basis for my request that the City of Starke, Florida have an intense audit on their income, expenditures, and methods of handling their citizen's money. The serious question needs to be answered: Has the City of Starke been using added electric charges as a tax? Also, are there discrepancies that may indicate city employees may have mishandled city funds or discrepancies that would warrant other investigation?

Senator Abruzzo, I sincerely appreciate you taking the time to discuss this with me, and I hereby attest that this letter is a formal request from me to intensely audit the City of Starke, Florida.

Sincerely,



Charles Van Zant
State Representative
District 19

City of Starke, Florida (population 5,769)

"Suspicious Financial Transactions"

Covering the last six years (2006 – 2012)

- (1) It is alleged that cash money is received for payment of utilities payments then counted. It's placed into a plastic bank bag. The bag is then placed onto the city clerk, Linda Johns, desk. It is then later deposited by her to the bank. This only occurs 2-3 times a month, usually on the busiest bill pay days. This is out of the routine on how deposits are made the rest of the month. The bank deposit numbers are not verified by the tellers who placed deposits in original bag....leaving reasonable suspicions.
- (2) The annual audit has been performed by the same auditor for more than 20 years. They have also been paid to perform regular or daily accounting for the city. They then audit their own work in total conflict. It will be easy to pull past years payments to Douglas & Douglas CPA (Starke). They also do the personal taxes of the local police chief and the city clerk.
- (3) Sometime between 2006 -2008, the city hired an independent consultant to try and end a thirty year contract with Florida Municipal Power Association (FMPA). This was supposed to be because of the overpriced utility bills. The final report revealed that it was not the price being charged by utility company to the city. It was the way the city was billing the customer, and the way profits were being manipulated by the city. Funds being transferred from utilities and placed in others to pay for functions of the city.
- (4) Proposed city budgets are different than what is presented to commissions and police chief for approval. This is then advertised and submitted to state.
- (5) The commissioners have received numerous complaints for bills not being paid or either paid late. The city has paid thousands in late fees.
- (6) It is alleged by employees that the clerk routinely moves funds from accounts that are set aside or allocated for other areas without approval of the board.
- (7) The clerk receives approximately \$20,000.00 to \$30,000.00 dollars in donations from numerous sources. There is no true accountability in how these funds are received or how they are spent. This is under the guise of *shop with a cop*. These funds are placed into a general city account and then expended at will, with no accountability, nor audited.
- (8) City credit cards have been used for personal purchases. Only when caught has any repayment been made. Cards have been reported stolen by the city clerk to the local police department. She failed to cooperate with the investigation, giving the required information requested. This can be verified with Starke Police Department reports.

The above information is just a short list of some of the more significant allegations against the City of Starke, Florida

STAFF ANALYSIS

Date: March 27, 2013

Subject: Request for an Audit of the City of Starke

Analyst Coordinator

DuBose ^{KD}

DuBose ^{KD}

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Representative Charles Van Zant for an audit of the City of Starke, located in Bradford County. He has concerns related to excessive fees and utility rates, the accountability of public funds, and other issues.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in s. 11.45(2) or (3), F.S.

Section 11.45(3)(a), F.S., provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), F.S., provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the report.

Request for an Audit of the City of Starke

Representative Van Zant has requested the Committee to direct an audit of the City of Starke (City). He has received numerous constituent complaints related to the rates charged by the City for electricity usage and related fees. Many believe that the City is using surplus funds received for electricity to fund other operations of the City that would normally be expected to be funded by taxes and other revenue sources. He also has concerns related to the City's handling of cash payments, the use of City

credit cards for personal expenses, the budget process, activities of the City Clerk, the late or non-payment of City bills, and the City's auditor.

Background

The City of Starke (City) is a Florida municipality originally incorporated as the Town of Starke in 1870 and then reincorporated as the City by Chapter 13426, *Laws of Florida* (1927).¹ Located in Bradford County, the estimated population of the City in 2012 was 5,437.² The City operates under a mayor-commissioner form of government and is governed by an elected five-member city commission. The five city commissioners annually elect one commissioner to serve as the mayor and one to serve as the mayor pro tem.³ The City provides law enforcement, fire control, electric, gas, water, and sewer/wastewater services.

City Electricity

The City no longer operates its own power plant; however, it is a member of the Florida Municipal Power Agency (FMPA). As described on its website, the FMPA “is a wholesale power agency owned by municipal electric utilities. FMPA provides economies of scale in power generation and related services to support community-owned electric utilities.” The FMPA has 30 members.⁴

The FMPA was created in 1978 through an Interlocal Agreement signed by the governing bodies of municipal electric utilities in Florida. It is a governmental entity and is authorized under Florida law to undertake specific joint electric projects, provide related services, and to issue tax-exempt bonds and other obligations to finance the costs of such projects.⁵

The City participates in two of the FMPA's electric generation projects, the St. Lucie Project and the All-Requirements Power Contract. The St. Lucie Project contract entitles the City to a specified amount of electricity annually for a specified price. In 1997, the City entered into an All-Requirements Project (ARP) contract and pledged to purchase all electricity through the ARP. Later that year the City discontinued generating its own electricity.

The ARP contract is a 30-year rolling contract. According to the 2010-11 FMPA Annual Report, the City has given the FMPA notice that the term of its ARP contract will not renew automatically each year after the initial contract term. The terms of the City's contract are now fixed and will terminate on October 1, 2035.

¹ *Financial Statements and Independent Auditors' Report, City of Starke, Florida, September 30, 2011*; DDF CPA Group.

² *Florida Estimates of Population 2012*, University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research.

³ Part I, Article II of the Code of Ordinances, City of Starke, Florida (located at www.municode.com).

⁴ Florida Municipal Power Agency website.

⁵ *Ibid.*

Electricity-Related Issues

In 2009, a complaint against the City Clerk was filed with the Commission on Ethics (Commission), alleging that she allowed her son's business⁶ to continue receiving City electricity even though the business failed to pay its bill for a five-month period. Although probable cause was found, in 2011 the Commission dismissed the complaint. According to a newspaper article, "an investigator indicated that although the utility account for the cleaning business was several months late and remained open, other overdue accounts were also spared from being cut off [and] that city commissioners had expressed a desire for leniency in handling past due business accounts."⁷

In 2012, the Bradford County School District filed a complaint against the City with the Public Service Commission (PSC) related to the electric rate charged by the City, specifically the calculation of the fuel adjustment surcharge (or power cost adjustment). According to a local newspaper, "the school district believes it – and ultimately every other Starke electric customer – has been overcharged under the city's rate structure, which hasn't changed in almost 30 years, and the district is taking action."⁸ Although the PSC does not regulate most of what municipal electric utilities do, it does have some authority related to the rate structure for municipal power customers. The case was placed on the PSC docket; however, in January 2013 PSC staff indicated that, in their opinion, the PSC did not have jurisdiction over any of the matters raised in the complaint. The City withdrew the complaint in February 2013. Prior to filing the complaint, the Superintendent of Bradford County Schools (Superintendent) reportedly attempted to work with the City Commission in an attempt to obtain a reduced rate for the school district. When that was not successful, the Superintendent "asked" the city to be released to another electric provider since comparisons showed the district could save around \$200,000 annually with Clay Electric. She was rejected again.⁹

There are indications of some improvements to the electric rates charged by the City over the past couple of years. Reportedly, the City's rates were among North Florida's most expensive in 2008 and 2009. As of late 2011 they had dipped below the rates in the Cities of Gainesville and Jacksonville and were about even with the rates of Progress Energy.¹⁰ However, at that time the rates for Clay Electric Cooperative were approximately \$12 less per 1000 kilowatt hours than the rates for Starke (\$116.70 vs. \$104.87).¹¹ A City employee attributed the reduced power costs in Starke to a reduction in line losses and improved electric meter accuracy. Based on 2012 data reported by the Florida Power & Light Company, the residential rate per 1000 kilowatts in the City of Starke was slightly below the average price of the state's 55 electric utilities.¹² The residential rate charged by Clay Electric continued to be substantially less than those charged by the City of Starke. Also, there is no indication

⁶ According to an article in The Bradford County Telegraph, Inc., dated October 31, 2011, the Clerk was the President of this business until July 2011. The following actions related to the business occurred during the period she served as President: (1) the Department of Revenue filed warrants or liens for unpaid unemployment taxes or solid waste fees, (2) the Florida Division of Corporations administratively dissolved the company for failing to pay annual filing fees, and (3) a bank filed notice that it intended foreclose on the land and building. In addition, the Clerk and the reinstated corporation (after it was administratively dissolved by the Division of Corporations) were sued for monies owed based on a 2007 promissory note.

⁷ The Bradford County Telegraph, Inc., 12/29/11 (online).

⁸ The Bradford County Telegraph, Inc., 2/9/12 (online).

⁹ Ibid.

¹⁰ StarkeJournal.com, 9/20/11.

¹¹ Ibid.

¹² Florida Power & Light Company website.

that the City has recalculated the fuel adjustment surcharge which was the basis of the District School Board's complaint to the PSC.

Representative Van Zant's concerns regarding the use of revenues generated from electricity being used for other purposes appears to be accurate. For example, as reported in a local newspaper, "facing a \$400,000 deficit in its 2012 budget, the city commission asked the police department for further cuts ... but [the] Police Chief... said he couldn't do it without cutting personnel. In the end, the commission closed the deficit as it had in the past - by transferring revenue from utilities. The amount transferred was significantly less than in prior years, however due to cuts that were made to the police department and the elimination of most recreation expenses."¹³ In addition to electricity, other utilities provided by the City include gas, water, and sewer/wastewater.

Florida's "Municipal Home Rule Powers Act" provides that unless expressly prohibited by Florida's Constitution, general or special law, or county charter, municipalities are granted broad powers to carry out their functions.¹⁴ Neither the Constitution nor state laws appear to restrict the use of revenues a municipality collects from the sale of electricity. The City is located in Bradford County which is not a charter county. Therefore, unless the City Commission is prohibited by local ordinance from using electricity revenues for non-electricity or non-utility related purposes, there does not appear to be a violation of any laws or rules.

Revenues and Expenditures/Expenses

Based on annual financial reports (AFRs) filed with the Department of Financial Services (DFS) for the past three years, the City reported the following financial information for all of their funds:

Fiscal Year	Total Revenue	Total Expenditures	Total Debt
2008-09	\$17,311,017	\$17,239,505	\$11,294,454
2009-10	\$17,140,252	\$17,073,375	\$11,125,593
2010-11	\$17,094,992	\$16,271,043	\$9,811,546

Representative Van Zant has raised concerns specifically about the rates charged for electricity. The amounts collected for electricity usage and the amount spent for electric utilities for the three years reviewed are shown below.

¹³ The Bradford County Telegraph, Inc., 12/29/11 (online).

¹⁴ Section 166.021(4), F.S.

Comparison of Electric Rates Charged to Cost of Providing Electricity¹⁵			
Fiscal Year	Service Charges Collected	Total Spent <i>(Personnel, Operating Expenses, Debt Service, and Capital Outlay)</i>	Amount of Revenue in Excess of Amount Spent
2008-09	\$10,481,903	\$9,698,758	\$783,145
2009-10	\$10,270,280	\$9,548,331	\$721,949
2010-11	\$9,230,911	\$8,222,040	\$1,008,871

The AFR for the 2011-12 fiscal year has not yet been submitted; it is required to be filed by June 30, 2013.

Financial Audit

In accordance with s. 218.39(1)(b), F.S., the City is required to obtain an annual financial audit conducted by an independent certified public accountant which the City retains and pays from its public funds. The most recent audit that has been submitted to the Auditor General is for the 2010-11 fiscal year and included the following:

Management's Discussion and Analysis: Financial and Other Highlights

- “As of September 30, 2011, the City’s governmental funds reported combined ending fund balances of \$1,753,909. Fund balance increased by \$41,275 from the prior year. Approximately 9% of the fund balance, \$155,122, is unassigned for spending at the City’s discretion. The remaining fund balance, \$1,598,787, has been assigned by the City Clerk or City Commission or is restricted by providers.
- The City paid down outstanding bonds and notes payable in the amount of \$1,771,551 and overall the City’s total debt decreased by \$1.6 million during the current fiscal year.
- The City’s Utilities System Revenue Fund net assets increased \$518,912, largely due to capital grant awards assisting in long-term debt payments.
- The City has been able to level fluctuations in electric customers monthly power cost adjustment due to the implementation of a rate stabilization policy.”

Audit Findings

- 11-01 – Fixed Asset Records/Inventory (Material Weakness)¹⁶: As noted in two previous audit reports, a physical inventory of utility system fixed assets was not performed as required by the Florida Administrative Code.

¹⁵ These amounts were provided by the City to the DFS and reflect activity within the City’s enterprise fund that are specifically designated for electric utility services. Users of the City’s electric service also pay utility service taxes which are deposited into the City’s general fund; they are not available to be used by the City to offset the cost of providing electricity.

¹⁶ Based on audit standards, some audit findings may be classified as either a material weakness or a significant deficiency in internal control over financial reporting. In general terms, when these conditions occur there is a greater likelihood that fraud could be committed and not be detected on a timely basis. A material weakness is more severe than a significant deficiency, yet both are important enough to merit the attention of those charged with

- 11-02 – Financial Health of the Utilities System: For the fourth consecutive year, the utility system has experienced declining revenues. Although the City has compensated by decreasing expenditures, it continues to see a decline in unrestricted net assets and it has been difficult to meet cash flow demands.
- 11-03 – Payroll Controls (Material Weakness): The auditors noted numerous conditions that they believe are weaknesses in internal control due to a lack of oversight.
- 11-04 – Criminal Justice Education: The City’s Police Department used funds collected pursuant to s. 938.15, F.S., for the purchase of computer-related items for police vehicles. These funds are intended for education and training for the officers; the auditor believes the use of these funds was in violation of the law.
- 11-05 – Gross Receipts Tax: The City is not charging the amount of gross receipts tax on electric services as specified in law. Rather, the City is undercharging the amount by 1.5%, which results in a reduced amount remitted to the State to fund the Public Education Capital Outlay and Debt Service Trust Fund.
- 11-06 – Utility Billing (Material Weakness): The auditors noted weaknesses in the internal controls over utility billings related to the detection of mathematical errors and manual verification of computer calculations.
- 11-07 – Local Option Gas Tax Funds: The auditors raised concerns regarding the use of an accumulation of local option gas tax funds. The use of the funds is restricted to paving expenditures, yet the funds are commingled with other funds.
- 11-08 – Fund Balance Reserves: The City has not prioritized the order in which assigned funds will be used to meet current operating needs as required by governmental auditing standards.

Findings 11-01 and 11-02 have been included in at least three successive audits, and on February 18, 2013, as authorized by s. 218.39(8), F.S., the Committee took action against the City for failing to correct these findings. As a result of the Committee’s action, the City Commission is required to provide a written statement to the Committee explaining why full corrective action has not been taken or describing the corrective action that is planned. If a statement is not provided, or the statement provided is deemed to be inadequate, the Chair of the City Commission may be requested to appear before the Committee. Finding 11-04 was also included in the previous year’s audit.

Although the auditors determined that the City did not meet any of the financial emergency conditions described in s. 218.503(1), F.S.,¹⁷ they determined that some unfavorable financial conditions existed. As required by the Rules of the Auditor General, the auditors applied financial condition assessment procedures and determined that 6 of the 18 financial conditions evaluated for the City revealed unfavorable results. The auditors stated that “the unfavorable results are primarily a result of deficit spending due to declining revenues of the utility system and general funds. These unfavorable trends could impair the City’s ability to maintain existing service levels with current revenue sources, to fund capital purchases and to borrow funds.”

governance. Three of the City’s audit findings were classified as material weaknesses; no significant deficiencies were reported.

¹⁷ Financial emergency conditions include, in part, the inability to timely make bond debt service payments, pay uncontested claims, pay wages and salaries to current employees, pay retirement benefits to former employees, and transfer funds for payroll taxes and social security contributions. When these conditions are reported by an auditor both the Governor’s Office and the Committee are required to be notified; the Governor’s Office then evaluates the situation to determine if state financial assistance is needed. Under current law, if state financial assistance is needed, the entity is determined to be in a state of financial emergency.

The audit for the 2011-12 fiscal year has not yet been submitted; it is required to be filed by June 30, 2013.

City Budget Information

Although required by law, no budget information was able to be located on the City's official website. Chapter 2011-144, *Laws of Florida*, which became effective October 1, 2011, requires municipalities to post their tentative budget, adopted budget, and budget amendments on their official website within a specified period of time.

Previous Attempt to Obtain an Auditor General Audit of the City

In 2011, Committee staff were contacted by a citizen of Starke who was interested in an audit of the City by the Auditor General. Florida law and Joint Rules of the Legislature provide some options for individuals who believe an Auditor General audit is needed, providing that the Auditor General is authorized to conduct an audit of the specific entity. The citizen decided to pursue a petition audit request, as authorized by s. 11.45(5)(a), F.S. This option, which is only available for an audit of a municipality, requires the Committee to direct the Auditor General to conduct an audit of a municipality whenever petitioned to do so by at least 20 percent of the registered electors. The law specifies that the petition must be submitted to the Supervisor of Elections for verification within one year after the petition is originated. Although Committee staff received periodic updates of the progress of the petition, apparently the required number of signatures was not obtained within one year of its origination as the Committee never received the petition.

Other Considerations

If the Committee directs the Auditor General to conduct an audit of the City, his office would conduct an operational audit and take steps to avoid duplicating the work efforts of the DDF CPA Group, the City's auditors for the financial audit. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with s. 11.45 (2)(j), F.S., the Auditor General will be required to conduct an 18-month follow-up audit to determine the City's progress in addressing the findings and recommendations contained within the previous audit.

The Auditor General has no enforcement authority. If there are indications that fraud is being committed, the appropriate law enforcement authority will be contacted. Implementation of corrective action to address any audit findings is the responsibility of the City's board and management, as well as the citizens living in the City. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General and a process is provided in s. 218.39(8)(a), F.S., for the Committee's involvement. First, the City Commission may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated. If the statement is not determined to be sufficient, the Committee may request the Chair of the City Commission to appear before the Committee. Ultimately, the Committee may direct the Department of Revenue and the Department of

Financial Services to withhold selected state revenues from the City that it would ordinarily be entitled to receive.

If there are any concerns relating to the work of a licensed CPA firm, such concerns should be directed to the Florida Board of Accountancy (Board). Pursuant to Chapter 473, F.S., the Board was created in the Department of Business and Professional Regulation to regulate the practice of public accounting and adopt rules to implement the provisions of law, including rules relating to competence and technical standards and discipline. Such rules include references to rules of the Auditor General. Every CPA and CPA firm in the state is governed and controlled by this law and these rules. Neither the Auditor General's Office nor the Committee have the jurisdiction to review and comment on the professional judgment applied by a CPA firm.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an operational audit of the City of Starke, Committee staff recommends that the Committee allow the Auditor General to set the: (1) scope of the audit, providing that the concerns of Representative Van Zant are addressed, and (2) timing of the audit as audit resources are available, consistent with his work plan and so as not to jeopardize the timely completion of statutorily mandated assignments.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

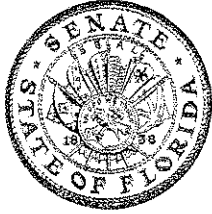
If the Committee directs the audit, the Auditor General will absorb the audit costs within his approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
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Delray Beach CRA
Audit Request: Sen. Clemens



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS

27th District

March 21, 2013

Chair Abruzzo
Joint Legislative Auditing Committee
222 Senate Office Building
404 S. Monroe St
Tallahassee, Fl 32399

Dear Chair Abruzzo:

I respectfully request that the Joint Legislative Auditing Committee direct the Auditor General to look into the Delray Beach CRA concerning how funds are distributed.

Please feel free to contact myself or my staff, should you have any questions.

Best Regards,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Jeff Clemens
Senate District 27

RECEIVED
MAR 21 2013

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

STAFF ANALYSIS

Date: March 27, 2013

Subject: Request for an Audit of the Delray Beach Community Redevelopment Agency

Analyst Coordinator

White ^{DW}

DuBose ^{KD}

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Senator Jeff Clemens to have the Committee direct the Auditor General to audit the Delray Beach Community Redevelopment Agency (CRA). The request refers to concerns relating to how the CRA funds are being distributed. Some citizens have questioned the allowability of how certain CRA funds are being expended.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in Section 11.45(2) or (3), F.S.

Section 11.45(3)(a), F.S., provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), F.S., provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the report.

Request for an Audit of the Delray Beach Community Redevelopment Agency

Senator Jeff Clemens has requested the Committee to direct the Auditor General to audit the Delray Beach Community Redevelopment Agency (CRA). The request refers to concerns relating to how the CRA funds are being distributed.

Review of an e-mail received by Committee staff and news articles related to the CRA disclosed that several citizens have questioned the allowability of using CRA funds to support the activities of a certain 501(c)(3) non-profit organization, stating that such use appears to be contrary to a 2010 Florida Attorney General Opinion relating to the use of CRA funds. Several of the news articles mention that CRA funds are also being provided to other non-profit organizations; however, questions have only been raised concerning funds provided to one specific non-profit organization. In addition, one citizen referred to a City Commission meeting in February 2013 in which the mayor raised a question of impropriety relating to the CRA and its use of tax dollars. Based on review of the video of this meeting, it appears that the concerns generally related to the request for proposal process followed by the CRA.

Background

City of Delray Beach, Florida (City): The City was incorporated as a municipality in 1927 under Section 12677, Law of Florida.¹ The City is located in Palm Beach County, operates under a Commission-Manager form of government, and is governed by an elected mayor and four elected commissioners. The City provides citizens with the following services: general government, public safety (police, fire, and emergency medical), public works, parks and recreation, beach lifeguards, water, sewer, garbage and trash, and community improvement and inspection. In addition, the City provides certain services, such as water and fire protection, to unincorporated areas and adjacent municipalities on a contractual basis.²

Delray Beach Community Redevelopment Agency (CRA): The CRA was created as a dependent special district of the City of Delray Beach on June 18, 1985, under the authority granted by Chapter 163, Part III, F.S., and by City Ordinance 46-85. The CRA is governed by a seven-member Board of Commissioners appointed by the Delray Beach City Commission, and its purpose is to promote and guide the physical and economic redevelopment of approximately 1,900 acres in the center of the City.³ The CRA's primary revenue source is tax increment financing (TIF),⁴ and the revenue generated is deposited into a community redevelopment trust fund and restricted for specific uses.

Review of Attorney General Opinion and Laws Relating to Community Redevelopment

Chapter 163, Part III, F.S., is known as the "Community Redevelopment Act of 1969." Section 163.387(1)(a), F.S., requires funds allocated to, and deposited in, the CRA trust fund to be used to finance or refinance any community redevelopment a CRA undertakes pursuant to the approved

¹ Note 1 to the financial statements included in the City of Delray Beach's Comprehensive Annual Financial Report for the fiscal year ended September 30, 2011 (page 28).

² Introductory Section included in the City of Delray Beach's Comprehensive Annual Financial Report for the fiscal year ended September 30, 2011 (page ii).

³ Note A to the financial statements included in the Delray Beach Community Redevelopment Agency's Audited Financial Statements and Supplementary Financial Information for the fiscal year ended September 30, 2011 (page 14).

⁴ Revenue is collected from the two governmental entities that levy property taxes within the legally defined redevelopment area, the City of Delray Beach and Palm Beach County. The tax increment revenue is calculated by applying the adopted millage rate of each governmental entity to the increase in current year taxable assessed valuations over the 1985 base year assessed valuations for all properties located within the CRA boundaries. Each governmental entity is required to pay 95 percent of the incremental property taxes to the CRA. (Note F to the financial statements included in the Delray Beach Community Redevelopment Agency's Audited Financial Statements and Supplementary Financial Information for the fiscal year ended September 30, 2011 (page 24).)

community redevelopment plan. “Redevelopment” is defined in Section 163.340(9), F.S., as undertakings, activities, or projects in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight; or for the reduction or prevention of crime; or for the provision of affordable housing, and may include slum clearance and redevelopment in a community redevelopment area; or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed; or rehabilitation or conservation in a community redevelopment area; or any combination or part thereof, in accordance with a community redevelopment plan. Section 163.387(6), F.S., describes certain allowable items for which CRA trust fund monies may be expended.

Attorney General Opinion No. 2010-40, dated September 27, 2010, addresses the use of community redevelopment funds for promotional activities. The City of Sanford asked if its CRA was allowed to “expend funds for festivals or street parties designed to promote tourism and economic development, advertisements for such events, grants to entities which promote tourism and economic development, and grants to non-profit entities providing socially beneficial programs?” The Opinion stated, in part, that “...to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process. Accordingly, I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of a redeveloped area would be prohibited. *However, grants to entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act.*” [emphasis added]

Financial-Related Information of the CRA

In accordance with Sections 218.39 and 163.387(8), F.S., the CRA has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA) and has timely submitted the audit reports to the Auditor General’s Office as required. These audits have been performed separately from the City for at least the past three years. Pursuant to Section 218.39(8), F.S., these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, F.S. The Auditor General has issued *Rules of the Auditor General, Chapter 10.550 - Local Governmental Entity Audits* and has adopted the auditing standards set forth in the publication entitled *Government Auditing Standards (2003 Revision)* as standards for auditing local governmental entities pursuant to Florida law.

The audit for the 2011-12 fiscal year has not yet been received by the Auditor General’s Office; it is required to be submitted no later than June 30, 2013. Excerpts from the CRA’s audited financial statements for the fiscal years ended September 30, 2011, and September 30, 2010, are shown in the following table:

	FY 2010-11	FY 2009-10
CRA Fund		
Total Revenue	\$ 11,123,427	\$ 12,601,301
Total Expenditures	<u>11,677,982</u>	<u>15,925,841</u>
Excess (Deficiency) of Revenues Over (Under) Expenditures	(554,555)	(3,324,540)
Other Financing Sources (Uses)	<u>67,918</u>	<u>601,247</u>
Change in Fund Balance	(486,637)	(2,723,293)
Fund Balance, Beginning	<u>8,727,811</u>	<u>11,451,108</u>
Fund Balance, Ending	<u>\$ 8,241,174</u>	<u>\$ 8,727,815</u>

- The CRA did not meet any of the conditions of financial emergency as defined within Section 218.503, F.S., for the fiscal years ended September 30, 2011 and 2010.⁵
- The audit findings in the FY 2010-11 audit report are listed below (the first finding is considered by the auditors to be a significant deficiency as defined by *Government Auditing Standards*, issued by the Comptroller General of the United States):⁶
 - Review, Approval and Tracking of Property Records (#2011-01): This finding related to improvements needed in updating and maintaining detailed property records for capital assets. The auditors recommended that the CRA implement certain procedures and reviews to ensure that all property transactions are properly accounted for and recorded.
 - Segregation of Duties in Accounts Payable (#2011-02): This finding related to the Finance Coordinator performing certain incompatible duties relating to accounts payable. The auditors recommended that, in order to strengthen internal control over financial reporting, certain duties be assigned to another employee.

Implementation of corrective action to address any audit findings is the responsibility of the CRA's board and management, as well as the citizens living in the within the CRA and the City.

The CRA budget for the 2012-13 fiscal year includes \$310,735 for funding to support the operations of the non-profit organization in question. The final amended CRA budget for the 2011-12 fiscal year included \$304,795 for this non-profit organization.⁷

⁵ *Management Letter* - CRA's Financial Audit Reports for the fiscal years ended September 30, 2011 and 2010.

⁶ Pages 39-41 of the CRA's audit report for the fiscal year ended September 30, 2011.

⁷ Budget information obtained from the Delray Beach CRA website (www.delraycra.org - under "About Us" then "CRA Funding").

Other Considerations

If the Committee directs the Auditor General to conduct an audit of the CRA, his office would conduct an operational audit and take steps to avoid duplicating the work efforts of the CRA's auditors performing the financial audit. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with s. 11.45 (2)(j), F.S., the Auditor General will be required to conduct an 18-month follow-up audit to determine the City's progress in addressing the findings and recommendations contained within the previous audit.

While, during the course of an audit, the Auditor General may question the use of CRA funds for certain purposes, his office does not issue legal opinions. Therefore, ultimately an opinion regarding the use of CRA funds for specific purposes as it relates to this CRA may need to be requested from the Attorney General's Office.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an operational audit of the Delray Beach Community Redevelopment Agency, Committee staff recommends that the Committee allow the Auditor General to set the: (1) scope of the audit based on the issues and concerns surrounding the CRA that have not already been included in audit reports, providing that the concerns of Senator Clemens are addressed, and (2) timing of the audit as audit resources are available, consistent with his work plan and so as not to jeopardize the timely completion of statutorily mandated assignments.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within his approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
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