

BEN ALBRITTON
President of the Senate



DANIEL PEREZ
Speaker of the House



Joint Legislative Auditing Committee

Representative Chase Tramont, Alternating Chair
Senator Jason Brodeur, Alternating Chair

Meeting Packet

Monday, November 17, 2025
102 House Office Building (Reed Hall)

3:30 p.m. – 5:30 p.m.

The Florida Legislature
COMMITTEE MEETING AGENDA
JOINT LEGISLATIVE AUDITING COMMITTEE

Representative Chase Tramont, Chair
Senator Jason Brodeur , Vice Chair

MEETING DATE: Monday, November 17, 2025

TIME: 3:30 p.m. - 5:30 p.m.

PLACE: 102 House Office Building

MEMBERS:

Senator Jason Brodeur
Senator Tracie Davis
Senator Stan McClain
Senator Jason W. B. Pizzo
Senator Corey Simon
Senator Tom A. Wright

Representative Kimberly Daniels
Representative Peggy Gossett-Seidman
Representative Sam Greco
Representative Yvonne Hayes Hinson
Representative Rachel Saunders Plakon
Representative Taylor Michael Yarkosky

-
1. Consideration of a request for an Auditor General operational audit of Baker County submitted by the Board of County Commissioners and the Clerk of Court
 2. Consideration of a request for an Auditor General operational audit of Concorde Estates Community Development District submitted by Senator Arrington
 3. Consideration of a request for an Auditor General operational audit of the Town of Melbourne Beach submitted by Representative Miller
 4. Consideration of a request for an Auditor General operational audit of the City of Apalachicola submitted by Senator Simon
 5. Consideration of a request for an Auditor General operational audit of the City of Cape Coral's Building Department submitted by Senator Martin and Representative Giallombardo

**1. Baker County
Audit Request**



STACIE D. HARVEY
CLERK TO BOARD

Baker County Board of Commissioners

55 NORTH THIRD STREET
MACCLENNY, FLORIDA 32063
(904) 259-3613 • (904) 259-7610
www.bakercountyfl.org



OLIVER J. ANDERSON
CHAIRMAN

May 20, 2025

Representative Chip LaMarca
Senator Jay Collins
Joint Legislative Auditing Committee
111 West Madison Street
Tallahassee, Florida 32399-1400

Re: Baker County Audit Request

Dear Representative LaMarca and Senator Collins:

The Baker County Board of County Commissioners respectfully and urgently requests the Joint Legislative Auditing Committee ("JLAC") conduct an operational and financial audit of the management of Baker County's financial operations and records.

As the JLAC may already be aware, Baker County has been experiencing ongoing and significant concerns regarding the Baker County Clerk of Court and Comptroller's inability to complete annual audits, financial reports and reconciled accounts as required by Florida law. These deficiencies negatively affect Baker County's compliance with state mandates and impair transparency and fiscal accountability.

The Board of County Commissioners, after considerable deliberation related to the lack of information provided as the *ex officio* Clerk to the Board, has reached a level of concern directly tied to the financial affairs of Baker County. These concerns are exacerbated by persistent delays, poor communication regarding public funds and a lack of corrective action to address known deficiencies.

In the paramount interest of public trust, fiscal integrity and our statutory responsibilities to the public, we strongly believe a comprehensive operational and forensic audit conducted by a trusted State resource under your direction is necessary. Such an audit will not only provide a transparent analysis, but potentially propose recommendations for known deficiencies. We understand the gravity of this request and we are committed to ensuring that public funds are managed with the highest standards of accountability and competence.

RONALD MANN
DISTRICT 1

JIMMY ANDERSON
DISTRICT 2

TYLER MOBLEY
DISTRICT 3

JAMES G. BENNETT
DISTRICT 4

MARK HARTLEY
DISTRICT 5

We appreciate your time and consideration of this request and are prepared to fully cooperate with any further action designated by your office.

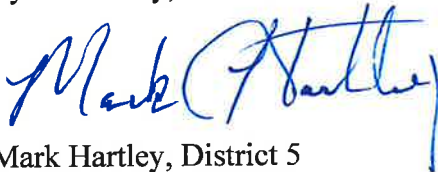
Sincerely,



Oliver J. Anderson, Chair, District 2



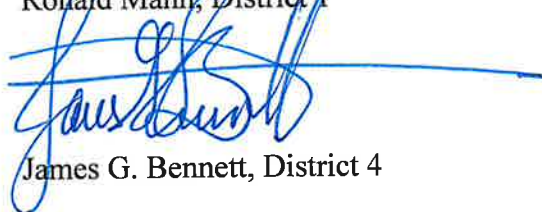
Tyler Mobley, District 3



Mark Hartley, District 5



Ronald Mann, District 1



James G. Bennett, District 4

Copies to:

Representative Kimberly Daniels
Representative Peggy Gossett-Seidman
Representative Sam Greco
Representative Yvonne Hayes Hinson
Representative Rachel Saunders Plakon
Representative Taylor Michael Yarkosky
Representative Chuck Brannan

Senator Jason Brodeur
Senator Tracie Davis
Senator Stan McClain
Senator Jason W. B. Pizzo
Senator Corey Simon
Senator Tom A. Wright
Senator Jennifer Bradley



STACIE D. HARVEY
CLERK OF COURTS
BAKER COUNTY, FLORIDA



VIA UNITED STATES MAIL, FIRST CLASS

May 21, 2025

Joint Legislative Auditing Committee
111 West Madison Street
Tallahassee, Florida 32399-1400



Representative Chip LaMarca, Alt. Chair
214 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

Senator Jay Collins, Alt. Chair
313 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: Response to Baker County Commission Audit Request dated May 20, 2025

Dear Representative LaMarca and Senator Collins,

As the Clerk of the Circuit Court for Baker County, Florida, I wish to join the request of the Baker County Board of County Commissioners (the "Commission") sent to your attention on May 20, 2025. I firmly believe a comprehensive operational audit of all aspects and levels of Baker County Government will serve the best interests of the people of Baker County; however, I do not believe the justification for that audit arises from the allegations against me and my office. Instead, I would call your attention to a pattern of disregard for the proper role of this office and, more troublingly, the requirements of our Constitutional mandates and limitations relating to the authority of the Clerk and the County Commission. The friction between this office and the Commission is rooted in ugly politics. I welcome a full and comprehensive operational audit so the people of this county can finally see that reality.

In its letter, the Commission alleges "Baker County has been experiencing ongoing and significant concerns regarding the Baker County Clerk of Court and Comptroller's inability to complete" the functions of my office. The Commission neglected to include, however, that the reasons for these delays are directly attributable to the lack of information, communication, and cooperation I have received for the last several years from the Commission and its staff. These delays appear to me to be orchestrated specifically to create the impression that this office is derelict in its duties.

The Commission complains that my office has not been forthcoming with information. That is untrue. The Commission has instead refused to address me directly or work with me and

my staff to address its concerns in a fashion that would allow for detailed and comprehensive explanation of public accounting principles. Instead, the Commissioners wait until their board meetings to air concerns and then do so in such a way that demonstrates a fundamental lack of understanding of how public finance, and the office of the Clerk under our Constitution, works.

The Commission complains that my office has been responsible for delays, however there is no mention that as recently as the very meeting at which they approved the letter sent to you, my staff was required to wait an additional two weeks to present budget amendments necessary for the 2023-24 audit because the Commission staff arbitrarily began enforcing a 2015 policy for providing notice of agenda items. (Commission staff did not appear concerned about that same policy with respect to the letter to you approved on the same agenda). The Commission and its staff knew the budget amendments were a critical final step to closing out the FY 2023-24 audit, that delaying those amendments would delay completion of the entire audit, and nevertheless enforced a dormant, never-used, ten-year-old policy to ensure that very delay would happen.

Glaringly, the Commission has failed to inform you that I have already taken steps through legal counsel to eliminate the roadblocks the Commission's staff has been placing before me. I am prepared to file suit against the Commission to obtain control over the County's finance systems, as my staff and I have been locked out of that system during critical work periods. I have been denied requests to the Commissioners to have administrative control over the system. Copies of the letter I sent to the Commission requesting a Chapter 164 session and my attorney's legal opinion concerning the Commission's withholding of that authority from me are attached.

The Commission professes that its audit request is made to serve "the paramount interest of public trust, fiscal integrity and [their] statutory responsibilities to the public," yet the Commission has turned a deaf ear not only to my very real concerns about the political nature of this dispute, but to the Constitution itself and Florida Statutes which clearly and unequivocally set forth the roles of the Clerk to preserve and protect the public treasury against abuses by overreaching commissioners and others who would misappropriate funds. Those same foundational documents limit the authority of the Commissioners, but some of them feel compelled to run roughshod over those rules and limitations to smear me and my office.

I am prepared to take further legal action on my own against the Commission to compel their compliance with the clear requirements of the Constitution and laws of this State. At the same time, I welcome your committee's assistance and services in the form of a comprehensive operational audit. I believe you will see, as I have, that the ways the Commission is attempting to operate outside the purview of the Clerk and strong-arm this office are an affront to the separation of powers created by our sacred and foundational laws, and their behavior should not be permitted to continue.

I am ready and eager to meet with your staff and auditors to facilitate a thorough audit of all my operations and to further discuss my concerns relating to the operations of other areas of Baker County's government and offices.

Respectfully,



Stacie D. Harvey, Baker County Clerk of Court

Enclosures as stated.

Copies with enclosures to:

Representative Kimberly Daniels, JLAC
Representative Peggy Gossett-Seidman, JLAC
Representative Sam Greco, JLAC
Representative Yvonne Hayes Hinson, JLAC
Representative Rachel Saunders Plakon, JLAC
Representative Taylor Michael Yarkosky, JLAC
Representative Chuck Brannan
Senator Jason Brodeur, JLAC
Senator Tracie Davis, JLAC
Senator Stan McClain, JLAC
Senator Jason W.B. Pizzo, JLAC
Senator Corey Simon, JLAC
Senator Tom A. Wright, JLAC
Senator Jennifer Bradley

Copies without enclosures to:

Commissioner Ronald Mann, Baker County
Commissioner Jimmy Anderson, Baker County
Commissioner Tyler Mobley, Baker County
Commissioner James G. Bennett, Baker County
Commissioner Mark Hartley, Baker County
Baker County Attorney Rich Komando
Joel F. Foreman



STACIE D. HARVEY

CLERK OF COURTS
BAKER COUNTY, FLORIDA



March 31, 2025

Dear Commissioners,

As you know, in recent months there have been a series of conflicts between the Commission and my office. While I have made suggestions to correct the issues causing some of these conflicts, the County has not agreed to any of them. Rather than work together, you have instructed the County Manager to demand I release my constitutional functions to her supervision. Members have also used a bully pulpit to suggest to the people of our County that my office is somehow responsible for delaying the County audit, and you have set me or my office on your published agenda as if to summon me before the Board to endure these members' behavior. Until our conflicts are resolved and this office is afforded proper respect, I do not intend to appear before the Board of County Commissioners.

I have received the advice of my counsel as to how best to proceed at this point. I am sharing his memo to me for your review.

Simply put, I intend to do my job as Clerk in accordance with the laws of this state. I expect the Board of County Commissioners and County Administration will do the same. That means I alone will supervise finance as that is my constitutional duty. I will not permit or otherwise authorize any oversight of finance by any other office or agency. I will pre-audit and post-audit funds and accounts as I deem necessary, and will do so with unimpeded access to the County's financial records. I expect the Board to immediately deliver control over the finance systems to this office. If you refuse to deliver that control, then you should prepare to fully fund my budget request when I install similar systems and servers for the Clerk's office.

As I am the Clerk to the Board, all minute-keeping functions for the Board of County Commissioners are charged as a matter of law to this office. I will no longer permit anyone else to keep the Board's minutes. All such functions should be released to this office immediately, and the Board should not approve any minutes that were not prepared through this office.

Finally, I ask that you retract all statements and suggestions that have been made in open meetings and behind closed doors suggesting that my office has been directly or indirectly responsible for delays in the completion of the County's annual audit. The auditor, unlike the Clerk of Court, works for the Board of County Commissioners. This is true as a matter of law and as a matter of the County's engagement with the auditor. If there are delays it is up to you to work with the auditor to resolve them.

If the Board will not immediately address these issues, you will leave me with very few alternatives. I have the ability to authorize a lawsuit to bring these issues before a court to be resolved, but I do not want to see our taxpayers' dollars spent on a dispute like that. I am told that other clerks and counties have spent millions of dollars suing each other for these same reasons. Given how clear the rules



STACIE D. HARVEY
CLERK OF COURTS
BAKER COUNTY, FLORIDA



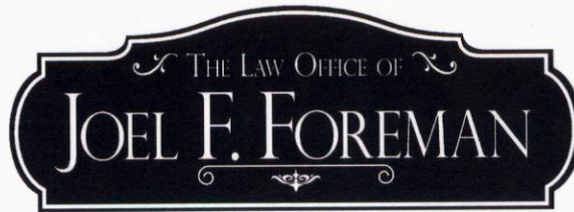
are for the duties of the County Commission and the Clerk of Court, it would be disappointing to have to go to court over it.

I hope you will carefully consider my demands and bring your agency and this office in line with the clear requirements of our state constitution and laws.

Regards,

Stacie D Harvey

Stacie D. Harvey
Clerk of Court/Comptroller



137 NW MADISON STREET | LAKE CITY, FLORIDA 32055 | 386.752.8420

MEMORANDUM

To: Hon. Stacie D. Harvey, Baker County Clerk of Court

From: Joel F. Foreman

Re: Constitutional and Statutory Duties of the Clerk
Separation of Powers between the County Commission and Constitutional Officers

Date: March 20, 2025

You have requested my review of recent events between your office and the Baker County Board of County Commissioners concerning operational control over Baker County's finances and the March 11, 2025 email you received from the County Manager that read as follows:

At the BOCC's direction, Robin and I are working on a plan to bring County Finance back under my supervision.

I know it may not be a fun conversation, but I believe it is necessary to move forward. I would like to meet with you both on Monday to discuss the duties that would be taken over on our end.

You responded immediately that finance was your responsibility and that it would not be handed over to the Board of County Commissioners.

We have expressed concern to the Commissioners and County staff that there is a lack of understanding or recognition of the division of duties and responsibilities between the County Commission and Clerk of Court.

Most recently you asked me to appear before the County Commission to request that you be given administrative control over the County's finance software and servers because your office was ultimately responsible for the issuance of warrants, and the pre- and post-audit functions associated with them. Because you did not have administrative control, it was not possible for your office to validate and ensure the continuing integrity of County finance records relating to those warrants. Those concerns appear to have fallen on deaf ears, with the County Commission not only declining to transfer administrative control to you, but instead pressing the issue of whether the Clerk should have control over the County's finances at all.

The March 11, 2025, demand from the County Manager, which she says was sent at the behest of the Board of County Commissioners, to bring "County Finance back under [the County Manager's] supervision" is marked escalation by the County Commission, and reveals once again a lack of understanding of the Clerk's role in such matters under Florida's constitution and general law. As we have previously discussed, and as I further outline below, absent circumstances not present in this case, any effort on the part of the County Commission or even your office to transfer or surrender the exclusive powers of the Clerk to the County Commission or its staff is unconstitutional and illegal. You were correct to reject the County Manager's demand, but this escalation of tensions between the Clerk's office and the County Commission makes it clear to me that the bright lines that exist in the law need to be made clearer to the County Commissioners and those lines must be observed on all sides going forward.

THE ROLE OF THE CLERK OF COURT AS TO THE BOARD OF COUNTY COMMISSIONERS UNDER FLORIDA'S CONSTITUTION AND GENERAL LAW

The Clerk of the Circuit Court is one of five elected county officers established by the Florida Constitution. The Clerk is therefore a "Constitutional Officer." The other four constitutional officers are the Sheriff, Tax Collector, Property Appraiser, and the Supervisor of Elections. (Art. VIII, Sec. 1(d), Fla. Const.). The governing body of county government is the Board of County Commissioners, with powers and duties set forth in the constitution, Florida Statutes chapter 125, and numerous other provisions of general law. The offices of the Constitutional Officers are distinct from the county government, and each is vested with sovereign power over the duties assigned by the Florida Constitution, by the Florida Statutes, or by county charter in counties that have one. Baker County is not a charter county.

Generally, duties assigned by law to a specific officer are non-delegable to the Board of County Commissioners. When it comes to finance, even issues like oversight of payroll for the Board of County Commissioners' staff remain with the Clerk because the Clerk has a pre- and post-audit duty to ensure every warrant (check) issued by the County is for a legal purpose and use.

Article V, Section 16 of the Florida Constitution establishes the office of the Clerk of the Circuit Courts. "There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1." The position of the Clerk includes acting as Clerk of the Circuit Court, ex officio clerk of the Board of County Commissioners, *auditor* and *accountant*, *recorder*, and *custodian* of all county funds.

More importantly, Article VIII, section 1 of the Florida Constitution, which establishes counties as political subdivision of this state, sets out the framework for county government and the duties of officers in service to it.

Section 1: Counties

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

...

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. Unless otherwise provided by special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. 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.

This is at its core a constitutional issue, fundamental to the powers of both the Board of County Commissioners as the governing board for a political subdivision of this state and the office of the Clerk as created by that constitution. The constitution charges the Clerk to be "auditor, recorder, and custodian of all county funds". The care, custody, and disbursement of all county funds must be done in compliance with general law. Finally, the constitution restricts the Board of County Commissioners in a non-charter county against making any ordinance that is contrary to general law.

Simply stated, the constitution says the Clerk is in charge of all county funds, the constitution says those funds must be expended in accordance with general law, and the constitution says a Board of County Commissioners in a non-charter county may not adopt any ordinance inconsistent with general law. A Board of County Commissioners therefore cannot intercede in with the Clerk's responsibilities, even by county ordinance. The Constitution itself limits the mechanisms for deviating the Clerk's responsibilities to audit county funds and to be the custodian of those funds to be only "by county charter or special law approved by vote of the electors."

As for any efficiency argument, the Clerk, as a Constitutional Officer, is entitled to full and proper funding to perform its required duties. For all duties and responsibilities to be performed by the Clerk as mandated by the Constitution, by statute, or otherwise required, the Board must fund the office so that the Clerk can perform such functions. Absent full and proper funding by the Board of the Clerk's

Constitutional and statutory duties, a Clerk may seek relief through litigation begun in either the local Circuit Court, or through litigation filed directly with the Florida Supreme Court through a special writ proceeding.

Since 1977, Florida's courts, including the Florida Supreme Court and at least three different District Courts of Appeal, have consistently upheld the Clerk's constitutional responsibilities to audit county funds and to be the custodian of those funds. In fact, even county funds that have not been placed in the Clerk's custody are within the scope of the Clerk's audit responsibilities.

In *W & F Ltd. v. Dunkle*, 444 So. 2d 554 (Fla. 4th DCA 1984) (citing *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1977) (italics added)), the court found that the Clerk, "as auditor, is required by law to refuse to sign and deliver a county warrant for an unlawful expenditure, even though approved by the board of county commissioners. Although an appropriation of county funds may serve a county purpose, there must be some type of *pre-audit review of the disbursement* in order to be sure that the funds will not be used for an unlawful purpose."

There is no provision in the constitution that allows for a Board of County Commissioners to manage its own finances. The Clerk is clearly set aside in this constitutional role as an important check and balance over the Board. As we have previously shared with the County Commission, Florida law is designed to ensure a Clerk (and only the Clerk) is motivated by a threat of personal liability.

Florida Statutes section 129.09 provides:

129.09 County auditor not to sign illegal warrants.—Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

The responsibility for pre-auditing cannot be avoided or delegated away by the Clerk's office under this statute. Even if the county wished to voluntarily take on duties of the Clerk's office and the Clerk were to consent to that, the result would not be efficiency, but duplication. This is true because the County Commission is without power to pass ordinances or act in conflict with general law and the Clerk is charged by general law to fulfill her duties.

"The Florida Constitution creates a system of checks and balances with regard to county expenditures that acts to protect public funds from improper disposition. While it is the board of county commissioners that authorizes the expenditure of public funds, it is the clerk of the court who actually approves the warrant for payment." Patrick Kinni (Leon County Attorney), *Brock v. Board of County Com'rs of Collier County: A Case for Reconciliation*, Florida Bar Journal, December 2012.

Stated simply, the Board of County Commissioners cannot "bring County Finance back under [the County Manager's] supervision" because the Florida Constitution denies them that power and there will be no gain in efficiency but duplication of expenses because even if the County's staff supervises

finance the Clerk will remain obligated to perform her constitutional duties and the County will remain obligated to pay for the Clerk to perform those functions.

Through our various conversations, and through now three conflicts with the County Commission in the time since I have been working with your office, it is evident there is a prevailing attitude or belief that the Clerk of Court works *for* the Board of County Commissioners rather than working *with* the Board. This is evident in the way your office is summoned to appear before the Board on its agendas, how you are spoken to and about at Board meetings, and the demeanor of those who purport to give you directives. The County Manager's email communications are not reflective of two agencies of government working together, but one agency treating the other as a subordinate. The law is clear in that the Clerk is an office separate and apart from the Board of County Commissioners just as the Sheriff, Tax Collector, Property Appraiser, and Supervisor of Elections are. The Clerk's office is run by the Clerk to perform the constitutional functions of that office under the Clerk's supervision because the Clerk can be held personally liable for certain functions of that office.

There are three outstanding issues at the moment that you have attempted to resolve with the County Commission in a diplomatic fashion.

1. Taking and keeping minutes of the Board of County Commissioners. This is a duty reserved to the Clerk by the constitution, but one the Board has refused to recognize as it takes and keeps its own minutes. You have asked for this to be rectified, but your requests have fallen on deaf ears.

To resolve this issue, the County should surrender all minute-taking functions to the Clerk's office to be completed by the Clerk or a deputy Clerk as assigned by the Clerk. If the County will not agree, the Clerk may authorize a civil action to compel the County Commission to operate in recognition of and deference to the Clerk's constitutional duty.

2. Administrative Control over the County's Finance Systems and Servers. There is no room for doubt that the Clerk of Court in each County is the custodian of all County funds. As such, there should be no room for doubt that administrative control over any finance software used for the management of those funds should belong to the Clerk. Further, the Clerk is well within her discretion to distrust or reject any records maintained at the administrative level by anyone other than the Clerk.

To resolve this issue, if the County will not relent and hand over this control to the Clerk, the Clerk may deploy her own duplicate finance system held entirely under the Clerk's control. This will alleviate issues surrounding the keeping of records and remove the risk that a County staff member could alter or amend a record outside the knowledge or control of the Clerk. Further, the Clerk may authorize a civil action to compel the County Commission to turn over administrative control of the county finance system and recognize the Clerk's constitutional duty to serve as custodian of all County finances.

3. Performance of the County's Annual Audit. In recent weeks members of the County Commission have cast blame on the Clerk's office for failing to timely complete the annual audit for the Board of County Commissioners. This particular issue is confusing, because the Clerk does not complete this audit. The County Commission, in coordination with the County's other constitutional officers including the Clerk, participated in the statutorily mandated auditor

selection process and hired James Moore and Company to serve as the County's auditor. Although the Clerk is also an auditor for the County's various funds, the annual audit is not a function of the Clerk, as the Clerk's office is also subjected to audit under the same scope of work. I cannot be certain if this most recent attack is the product of a lack of understanding of the difference between these two functions, or a calculated attack meant to discredit the Clerk's office in the eyes of the public to make the Board of County Commissioners' efforts to "take back" finance more palatable to the voting public.

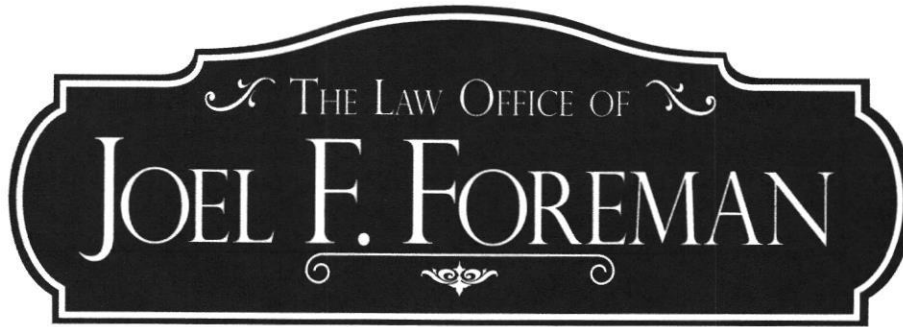
In any event, the Clerk should set the record straight about who is responsible for completing the audit and educate the public that the County's annual audit is distinct from the auditing functions filled by the Clerk throughout the year.

RECOMMENDATION

I have been assisting your office since 2020 and in that time have observed a steady erosion of the relationship between the Clerk's office and the Board of County Commissioners. To your credit, through each instance you have insisted on trying to restore that relationship and bring the County Commission and Clerk's office back to a place of working together.

In spite of your best efforts, there remains an attitude that the Clerk works for the Board of County Commissioners. That must change if you are going to perform your duty under Florida law as a check on the County Commission's spending power. I am recommending you take each of the following steps:

1. Write to the Board of County Commissioners, including this memorandum, advising the Board that you will not permit the County Manager to supervise finance, that your duties are constitutional and provided by common law, that you are not authorized to delegate your duties, and that the Board is obligated to fund your office in the performance of its constitutional duties.
2. Demand the Board of County Commissioners release all minute-keeping functions to your office and that the Board of County Commissioners discontinue all practices for the taking and keeping of minutes that are not completed under your supervision and control.
3. Demand the Board of County Commissioners place you in full administrative control of the County's finance software and servers, providing a deadline for performance of ten (10) days from the date of your demand.
4. Demand the Board of County Commissioners retract any suggestion, allegation, accusation, or inference that you or your office are directly or indirectly responsible for any delays in the completion of the County's annual audit, and demand that the Board set the record straight about who is responsible for performing the annual audit.
5. If the Board of County Commissioners does not meet your demands, authorize this office to file an appropriate suit to compel the Board of County Commissioners to confine itself and its operations to the clear requirements of the Florida Constitution and the general laws of this state and recognize the powers and duties of the Clerk to act as a check on the Commission's powers.



137 NW MADISON STREET | LAKE CITY, FLORIDA 32055 | 386.752.8420

VIA CERTIFIED MAIL; UNITED STATES MAIL, FIRST CLASS; AND EMAIL

May 6, 2025

Hon. Jimmy Anderson, Chair
Baker County Board of County Commissioners
55 North 3rd Street
Macclenny, FL 32063
jimmy.anderson@bakercountyfl.org

RE: Notice pursuant to Florida Statutes Chapter 164
Notice of Dispute and Demand for Conflict Assessment Meeting

Dear Chairman Anderson,

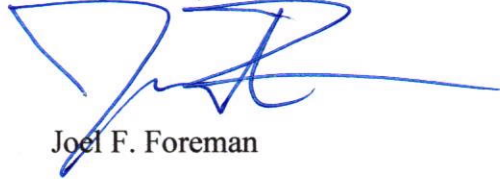
As you know, I have the pleasure of representing Stacie Harvey, Clerk of the Circuit Court for Baker County, Florida. I am writing at the direction of my client to invite the County to participate in conflict resolution in advance of potential litigation concerning the Clerk's custody of the County's funds, particularly with respect to the County Commission's refusal to give the Clerk top-level administrative control over the County's finance system.

Attached is a draft complaint I have prepared which largely tracks with prior requests we have made to the Commission. Our last effort at securing control over the finance system to the Clerk resulted in the County Manager contacting the Clerk to advise her that the County Commission intended to instead place all responsibility for the County's finances with the manager. The disconnect between the County Commission and the Clerk on these important issues is widening rather than improving, and the Clerk is satisfied that legal action has become necessary to address these issues.

The attached complaint includes all matters which the Clerk would like to address in pre-filing dispute resolution negotiation as required by Chapter 164. The Clerk stands ready to meet in good faith, but it is necessary that the Board of County Commissioners appoint a designee and delegation for those initial negotiations. To comply with the statute, we must have a conflict assessment meeting within 30 days of your receipt of this letter. Other deadlines are set forth in section 164.1053 relating to that conflict assessment meeting and steps the parties may take after.

The Clerk needs to advance this issue toward resolution. Thank you in advance for giving this matter your direct attention.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'JF Foreman', with a long horizontal flourish extending to the right.

Joel F. Foreman

CC: Clerk Harvey
County Attorney

**IN THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, IN AND FOR
BAKER COUNTY, FLORIDA**

**STACIE HARVEY, CLERK OF THE
CIRCUIT COURT OF BAKER COUNTY,
FLORIDA,**

CASE NO: _____

Plaintiff,

v.

**BOARD OF COUNTY COMMISSIONERS
FOR BAKER COUNTY, FLORIDA,**

Defendant.

_____/

COMPLAINT

Plaintiff, **STACIE HARVEY**, as **CLERK OF THE CIRCUIT COURT OF BAKER COUNTY, FLORIDA** (“Harvey”, the “Clerk”, or “Plaintiff” herein) sues Defendant, the **BOARD OF COUNTY COMMISSIONERS OF BAKER COUNTY, FLORIDA** (“Defendant” or “Board”).

PRELIMINARY STATEMENT/ALLEGATIONS

1. This is an action for declaratory judgment and supplemental relief pursuant to Chapter 86, F.S. and supplemental relief.
2. Plaintiff is the duly elected Clerk of the Circuit Court of Baker County, Florida.
3. Defendant is the duly elected governing board of Baker County, Florida pursuant to Article VIII, Section (1)(e) of the Florida Constitution and Florida Statutes Chapter 125.
4. At all times pertinent hereto and herein, Defendant acted in concert with and with the support of its personnel, pursuant to established practice, policy, and procedure, while they engaged in the activities alleged herein.

5. The Plaintiff is a constitutional officer deriving her authority and responsibility from both constitutional and statutory provisions.

6. Article V, Section 16, Florida Constitution, contains the following provisions:

There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII Section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law 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. There may be a clerk of the county court if authorized by general or special law.

7. Article VIII, Section 1(d), Florida Constitution, provides for the election of the Clerk of Circuit Court, along with other officers, and also provides:

When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

8. There is no applicable general law or special law approved by the electors which varies the duty of the Clerk in Baker County.

9. Baker County does not operate under a county charter and is a non-charter county under Article VIII, Section 1(f), Florida Constitution.

10. By virtue of the provisions of Sections 28.12 and 125.17, F.S., the Clerk is, as a matter of law, accountant of the board of county commissioners of Baker County and the Clerk is required to keep the minutes and accounts of the Board.

11. The Plaintiff, in her capacity as Clerk of the board, auditor, recorder and custodian of county funds, is responsible for custody of and accounting for all county funds and deposits.

12. The Clerk is a county officer pursuant to Article VIII, Section 1(d), Florida Constitution and, as an officer, is delegated a portion of the sovereign power of the County.

13. Pursuant to Section 28.06, F.S., the Clerk is responsible for the efficient and effective operation of her office and has the authority to appoint deputies to assist her in her constitutional and statutory duties.

14. The Clerk is the custodian and auditor of all of the accounts of the County.

15. Pursuant to Section 116.07, F. S.:

All....clerks of the circuit court and ex officio clerks of the boards of county commissioners of this state shall keep books of account and of record in accordance with s. 218.33.

16. If the Clerk neglects or refuses to comply with the duties imposed by Section 116.07, F.S., pursuant to Section 116.09, F.S., the Clerk is subject to suspension from office by the Governor of the State of Florida.

17. Pursuant to Section 136.05, F.S., the board of county commissioners shall keep an accurate and complete set of books, showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month for each and every fund carried by said board, and no check or warrant shall ever be drawn in excess of the known balances to the credit of that fund as kept by the said board.

18. The Clerk is the county auditor. Pursuant to Section 136.08, F.S.,:

The accounts of each and every board and the county accounts of each and every depository, mentioned or provided for in this chapter shall at all times be subject to the inspection and examination by the county auditor...

19. Section 218.33, F.S., provides, in pertinent part, that each local governmental entity, including the County, shall follow uniform accounting practices and procedures as promulgated by rule of the auditor general of the State of Florida, to ensure the use of proper accounting and fiscal management by such units.

20. The purpose of the Clerk of Court as ex-officio auditor of the county is to provide a check and balance system that ensures proper receipt, safekeeping, custody accounting and expenditure of public funds.

21. All funds and monies remitted and payable to the County are public funds.

22. Pursuant to Section 219.02, F.S., it shall be the duty of each public officer to keep safely all the public money collected by him or her.

23. Pursuant to Section 116.01 (1), F.S., every county officer within this state authorized to collect funds due the county shall pay all sums officially received by the officer into the county treasury not later than seven (7) working days from the close of the week in which the officer received the funds.

24. Officers, officials, employees and personnel, in their capacity as County officers, officials, employees and personnel, maintain and control bank accounts containing county funds or have received or collected monies that are public funds or public monies, which funds or monies have not been delivered into the custody of the Clerk as custodian of County funds.

25. The Defendant has maintained, and has directed that its personnel shall continue to maintain, the financial accounting software and computer servers (the “finance system”) that keep the records of the County’s accounts, including payrolls, payables, and deposits, among other funds.

26. The Clerk has requested that she be granted top-level administrative access and control to the County finance system, and has explained that as custodian and auditor of the County’s funds the Clerk cannot discharge her duties without assurances that the finance system and its data is not subject to alteration or manipulation after the Clerk has performed her duties.

27. In spite of her willingness to permit the County to share this top-level administrative control with her, the Clerk has been unsuccessful in her efforts to persuade the Defendant to surrender control of the financial system to the Clerk.

28. The Defendant knows that this administrative control is critical to the Clerk's ability to fully perform her constitutionally mandated duties to the people of Baker County, but still refuses to transfer control.

29. The Defendant, after being asked to release control of the finance system to the Clerk, instead directed its County Manager, Sara Little, to contact the Clerk and advise the Clerk that county finance would be placed under the County Manager's supervision.

30. On March 11, 2025, the County Manager wrote to the Clerk:

"At the BOCC's direction, Robin and I are working on a plan to bring County Finance back under my supervision.

"I know it may not be a fun conversation, but I believe it is necessary to move forward. I would like to meet with you both on Monday to discuss the duties that would be taken over on our end."

31. The Clerk is the custodian of all county funds whatsoever and wheresoever situated, and her custody is not subject to deprivation by action of the Defendant or delegation of the Clerk's constitutional duties to personnel of the County.

32. The Clerk informed the County Manager that "County Finance" was the Clerk's responsibility, and that the Clerk would not cooperate with the Defendant's unconstitutional assertion of authority.

33. As of the date of this filing, the Clerk does not have top-level administrator access to the finance system, and her ability to fully discharge her duties is being knowingly, willingly, and purposefully obstructed by the Defendant.

DECLARATORY JUDGEMENT

34. This is an action for declaratory judgment and supplemental relief pursuant to Chapter 86, F.S.

35. The allegations set forth in paragraphs 1 through 33 are herein incorporated by this reference.

36. All conditions precedent to this suit have occurred or have been waived.

37. The Clerk, in her capacity as Clerk of the board, auditor, recorder and custodian of county funds, is responsible for custody of and accounting for all county funds and deposits.

38. Pursuant to Section 136.05, F.S., the board of county commissioners shall keep an accurate and complete set of books, showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month for each and every fund carried by said board, and no check or warrant shall ever be drawn in excess of the known balances to the credit of that fund as kept by the said board.

39. The Clerk is the county auditor. Pursuant to Section 136.08, F.S.,: The accounts of each and every board and the county accounts of each and every depository, mentioned or provided for in this chapter shall at all times be subject to the inspection and examination by the county auditor... practices and procedures as promulgated by rule of the auditor general of the State.

40. The purpose of the Clerk of Court as ex-officio auditor of the county is to provide a check and balance system that ensures proper receipt, safekeeping, custody accounting and expenditure of public funds, including the funds and monies of the District.

41. By virtue of the Defendant's assertions and positions with respect to county finance and control over the finance system, Plaintiff is in doubt about the Clerk's rights, duties and obligations under Florida law as those relate to Baker County, Florida.

42. By virtue of the actions taken and not taken by the County through the Defendant board, the Clerk is unable to fully and faithfully perform her constitutional and statutory duties. The Clerk has been precluded and prevented from properly conducting the duties, functions and mission of the office of the Clerk.

43. To comply with the requirements of state law, the Clerk must have complete accounts and records of all funds received, and all expenditures made by the County, and County employees, officers and officials, and her access to and review of those records cannot be subject to permission granted or denied by employees of the Defendant, but must be absolute and beyond the reach of any employees of the Defendant.

44. By virtue of the actions of the Board of County Commissioners, its employees, officers, and officials, pursuant to established practice, policy and procedure, the Clerk is unable to properly complete her duties and has been left in doubt as to the accuracy and completeness of the County's records, which remain at all times before and after the Clerk performs her duties subject to modification or alteration by the County's employees holding top-level administer access to the finance system.

45. The Clerk is entitled to a declaration of her rights to obtain resolution of the present and ongoing disputes between the Plaintiff and Defendant as outlined herein.

46. The Clerk is entitled to declaratory relief from uncertainty with regard to her rights and status occasioned by the actions of the Defendant and its officers, employees, officials, and personnel concerning public monies and records of the finance system pertaining to the control thereof.

47. The Clerk is entitled to declaratory relief from uncertainty with regard to her rights and status, and a declaration of her rights under Florida constitutional and statutory provisions as

to her ability to conduct audits of departments and divisions of the Board of County Commissioners of Baker County, Florida; to audit and examine all accounts operated, controlled or maintained by the County, or any of its employees or personnel; to audit and examine all accounts containing County funds whatsoever and wheresoever situated; and, to obtain custody of all County funds in all accounts, inclusive of the finance system, whatsoever and wheresoever situated.

48. The Clerk is entitled to a declaration of her rights under Florida constitutional and statutory provisions to conduct audits of departments and divisions of the Board of County Commissioners of Baker County, Florida; to custody of all County funds whatsoever and wheresoever situated; to custody of all records associated with all County funds, inclusive of the finance system, whatsoever and wheresoever situated.

WHEREFORE, the Plaintiff, STACIE HARVEY, CLERK OF THE CIRCUIT COURT OF BAKER COUNTY, FLORIDA, demands judgment against the Defendant, BOARD OF COUNTY COMMISSIONERS OF BAKER COUNTY, FLORIDA:

- (i) declaring the rights of the Clerk to custody of all County funds;
- (ii) declaring that the Clerk has the unconditional and unrestricted right, duty and obligation to audit and examine at any time, all bank accounts containing County funds;
- (iii) declaring that the Clerk has the right and duty to maintain custody of all County funds in all accounts whatsoever and wheresoever situated and such custody includes control of the County's finance system;
- (iv) and granting such other further and necessary relief.

Dated this ____ day of _____, 2025.

THE LAW OFFICE OF JOEL F. FOREMAN

DRAFT COMPLAINT FOR CIRCULATION

Joel F. Foreman
FBN 13483
137 NW Madison Street
Lake City, Florida 32055
Tel. 386-752-8420
Email: joel@foreman.law
Attorney for the Hon. Stacie Harvey, Clerk



137 NW MADISON STREET | LAKE CITY, FLORIDA 32055 | 386.752.8420

MEMORANDUM

To: Hon. Stacie D. Harvey, Baker County Clerk of Court

From: Joel F. Foreman

Re: Information Technology Services to Constitutional Officers
Recommended Course of Action

Date: January 14, 2025

In recent months the Clerk's office has experienced a series of issues when dealing with the County's information technology department, including issues affecting the Clerk's ability to provide timely service to the public and the Clerk's confidence in the integrity of the County financial records the Clerk is required to audit.

The Clerk has employed the services of a private sector contractor to provide information technology services to the Clerk's office. The transition of those services has been mostly accomplished after the Clerk and County negotiated a memorandum of understanding that the County's IT staff would work with the Clerk's vendor with each side recognizing the interests of the other in keeping systems safe and reliable.

There is one issue that was not resolved during the negotiations of the memorandum that does need to find resolution either through cooperation with the County or action by the Clerk.

The County currently hosts and has full administrative control over the Fund Management System used both by the County to manage its finances as well as by the Clerk to perform periodic audits of the County's various accounts. The Clerk's office does not have administrative control of this system and therefore cannot control or limit who can access or modify the records created or held on that system. Stated differently, because the Clerk is not the administrator, the Clerk has no way of knowing if or when a record has been changed or modified or whether such change is reflective of an official act of the County Commission or County Administration. Further, because the Clerk is not the administrator, the Clerk can be denied access to the Fund Management System either by action of the County's designee who can choose to block the Clerk or by the software itself.

The Clerk has expressed her dissatisfaction with this arrangement and lacks confidence in the integrity and reliability of the Fund Management System so long as the County or its designee holds the administrator role over the system. In order to perform audit functions and have full confidence in the integrity of the records and data on the system, the Clerk has requested that the Clerk's vendor be given

the administrator role and the system be hosted on servers managed by the Clerk's vendor. This request was denied by the County, which takes the position that the system is the property and function of the County and will not be relinquished to the Clerk.

Article V, Section 16 of the Constitution of the State of Florida reads:

SECTION 16. Clerks of the circuit courts.—There shall be **in each county a clerk of the circuit court** who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law 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**. There may be a clerk of the county court if authorized by general or special law.

Article VIII, Section 1 of the Constitution of the State of Florida reads:

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a **clerk of the circuit court**. Unless otherwise provided by special law approved by vote of the electors or pursuant to Article V, section 16, the **clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds**. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

The Clerk is thus constitutionally charged in two separate instances with being “auditor” to the County and “custodian of all county funds”. The Clerk is held accountable for how all County funds are disbursed and accounted at any given time. Florida Statutes further defines the Clerk's duties to the Board of County Commissioners:

Fla. Stat. sec. 28.12 Clerk of the board of county commissioners.—The clerk of the circuit court shall be **clerk and accountant of the board of county commissioners**. He or she shall **keep the minutes and accounts** and perform such other duties as provided by law. The clerk shall have custody of the seal and affix the same to any paper or instrument as required by law.

It is evident from this provision that it is the Clerk's duty to maintain the accounts of the County including maintenance of the records reflecting the conditions of those accounts from time to time. The Clerk cannot reasonably be expected to perform this statutory function if the Clerk does not have control over the maintenance and alteration (if any) of the information reflected in those accounting records.

Florida Law holds Clerks *personally liable* and may criminally charge them for payment of an illegal warrant. Section 129.09 provides:

129.09 County auditor not to sign illegal warrants.—Any clerk of the circuit court, **acting as county auditor**, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to

pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be **personally liable for such amount**, and if he or she shall sign such warrant willfully and knowingly he or she shall be **guilty of a misdemeanor of the second degree**, punishable as provided in s. 775.082 or s. 775.083.

This heightened penalty to the Clerk as auditor for failing in the Clerk's duties as auditor clearly reflects the Legislature's expectation that each Clerk have full command over the finances of the County. There is no other logical explanation for why a Clerk would be held to such a high standard that a Clerk could be held personally liable and criminally charged for failing in the performance of this official duty. It is inapposite that a Clerk would be held to this very high standard but then lack administrative control over the very records the Clerk is expected to have command over.

While the arguments of the County that it paid for the system and therefore must have administrative control of it may seem logical, they do not pass muster when viewed at the operational level. In order for the Clerk, as a county officer pursuant to the Florida constitution, to meet constitutional and statutory mandate, the County must provide to the Clerk such records of accounts as the Clerk may require to attest to the County's expenditures. Without administrator control over the records the Clerk is auditing (that is, without the ability to be sure the records are not subject to alteration without the Clerk's knowledge) the Clerk will not have the requisite confidence in the records to attest to the legality of any warrants. Rather than run the risk of personal liability and criminal prosecution, the Clerk can decline to sign such warrants and claims as may require reliance on the County's financial records. This is problematic for both the County and Clerk.

If the County will not give the administrator's role to the Clerk or the Clerk's designee, and if the Clerk only wishes to perform duties of the office in reliance upon records beyond the control of the County after they are created, then the Clerk can require records to be furnished from time to time by the County and then managed through a system that is within the control of the Clerk. The Clerk's office has obtained a quote of \$118,000.00 for the deployment of a system housed with and administered by the Clerk's office with a \$200 per hour support fee from the system vendor. The Clerk may, if it is viewed as necessary to the Clerk's constitutional and statutory duties, establish this system for the Clerk's office and then require the County to provide data from time to time such that the Clerk will perform audit and finance functions on the Clerk's system only.

To be clear, this expense would be entirely duplicative insofar as the only component added by this expense would be the Clerk's administrative control over the Fund Management System. However, so long as the Clerk harbors reservations about the integrity and reliability of the data on the Fund Management System when it is operated outside the Clerk's administrative control, and if the County will not turn that administrative role over to the Clerk's office, then duplication of the system to bring all such data within the Clerk's control is the only option for addressing the issue.

STAFF ANALYSIS

Date: November 14, 2025

Subject: Request by the Baker County Board of County Commissioners and the Baker County Clerk of the Circuit Court for an Audit of Baker County

Analyst

Coordinator

White ^{DW}

DuBose ^{KD}

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from the Baker County Board of County Commissioners and the Baker County Clerk of the Circuit Court to have the Committee direct the Auditor General to conduct an audit of Baker County.

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), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, 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(6), *Florida Statutes*, provides that, whenever a local governmental entity requests the Auditor General to conduct an audit of all or part of its operations and the Auditor General conducts the audit under his or her own authority or at the direction of the Legislative Auditing Committee, the expenses of the audit shall be paid by the local governmental entity. The Auditor General shall estimate the cost of the audit. Fifty percent of the cost estimate shall be paid by the local governmental entity before the initiation of the audit and deposited into the General Revenue Fund of the state. After the completion of the audit, the Auditor General shall notify the local governmental entity of the actual cost of the audit. The local governmental entity shall remit the remainder of the cost of the audit to the Auditor General for deposit into the General Revenue Fund of the state. If the local governmental entity fails to

comply with paying the remaining cost of the audit, the Auditor General shall notify the Legislative Auditing Committee.

Section 11.45(2)(j), *Florida Statutes*, 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 audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Audit of Baker County

The Baker County Board of County Commissioners (Board) and the Baker County Clerk of the Circuit Court (Clerk) have requested the Committee to direct an operational audit of Baker County's financial operations and records.^{1, 2} The Board stated in its letter that "Baker County has been experiencing ongoing and significant concerns regarding the Baker County Clerk of Court and Comptroller's inability to complete annual audits, financial reports and reconciled accounts as required by Florida law. These deficiencies negatively affect Baker County's compliance with state mandates and impair transparency and fiscal accountability."³ The Clerk stated in her letter that she "wish[es] to join the request of the [Board and] firmly believe[s] a comprehensive operational audit of all aspects and levels of Baker County Government will serve the best interests of the people of Baker County; however, [she] do[es] not believe the justification for that audit arises from the allegations against [her] and [her] office. Instead, [she] would call [the Committee members'] attention to a pattern of disregard for the proper role of [the Clerk's] office and, more troublingly, the requirements of [the] Constitutional mandates and limitations relating to the authority of the Clerk and the [Board]...[She] welcome[s] a full and comprehensive operational audit so the people of [Baker] [C]ounty can finally see that reality."⁴

Background

Baker County (County) is a non-charter, general purpose local government established by Chapter 1,185, *Laws of Florida*, in 1861⁵ under the legal authority of the Constitution of the State of Florida.⁶ The County, located in northeast Florida just west of Duval County/City of Jacksonville,⁷ has an estimated population of 28,899.⁸ The County is governed by an elected five-member Board of County Commissioners (Board), each of whom represents a district but is elected countywide.⁹ The Board establishes policies and appoints a County Manager to implement the policies and manage the operation of the County.¹⁰ The Commission adopts the millage rate annually and approves the budget, which

¹ Letter from the Honorable Oliver J. Anderson, the Honorable Ronald Mann, the Honorable Tyler Mobley, the Honorable James G. Bennett, and the Honorable Mark Hartley, Baker County Board of County Commissioners, to Committee Chair Chip LaMarca dated May 20, 2025 (on file in Committee Office).

² Letter from the Honorable Stacie D. Harvey, Baker County Clerk of Court, to Committee Chair Chip LaMarca dated May 21, 2025 (on file in Committee Office).

³ See *supra* note 1.

⁴ See *supra* note 2.

⁵ *Publications of the Florida Historical Society, Volumes 1-2*; 1908, page 30.

⁶ *Note 1 to the Financial Statements, Baker County, Florida, Financial Statements, September 30, 2023*, page 17, available at: https://flauditor.gov/pages/county_efile%20rpts/2023%20baker%20county.pdf (last visited November 14, 2025)

⁷ Baker County, Florida Wikipedia page, available at: https://en.wikipedia.org/wiki/Baker_County,_Florida (last visited November 13, 2025).

⁸ University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population by County and City 2024 (Table 1 only)*, page 5, available at: <https://edr.state.fl.us/Content/population-demographics/data/Estimates2024.pdf> (last visited November 13, 2025).

⁹ Baker County's website, available at: <https://www.bakercountyfl.org/commissioners.php> (last visited November 13, 2025).

¹⁰ *Id.*

determines the expenditures and revenue necessary to operate all County Departments.¹¹ The powers and duties of the Board are established by Chapter 125, *Florida Statutes*.^{12, 13} The County's basic services include administration, law enforcement and corrections, fire services, road and bridge maintenance, and garbage.¹⁴ Taxes and charges for services finance most of these activities.¹⁵

The County has the following elected Constitutional Officers, whose offices are also established by Article VIII of the *Constitution of the State of Florida*: Clerk of the Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector.¹⁶ The Board and the offices of the Constitutional Officers operate as separate County agencies in accordance with applicable provisions of the *Florida Statutes*.¹⁷ Florida law specifically relating to the Clerk includes:

- Section 1(d) of Article VIII of the Florida Constitution, provides, in part, “[u]nless otherwise provided by special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.”
- Section 28.12, *Florida Statutes*, provides, “The clerk of the circuit court shall be clerk and accountant of the board of county commissioners. He or she shall keep the minutes and accounts and perform such other duties as provided by law.”
- Section 116.07, *Florida Statutes*, provides, “All...clerks of the circuit court and ex officio clerks of the boards of county commissioners of this state shall keep books of account and of record in accordance with s. 218.33.”¹⁸ Section 116.08, *Florida Statutes*, provides, “The county commissioners shall furnish the books provided for in s. 116.07.”
- Section 125.17, *Florida Statutes*, provides, “The clerk of the circuit court for the county shall be clerk and accountant of the board of county commissioners. He or she shall keep their minutes and accounts, and perform such other duties as their clerk as the board may direct. The clerk shall have custody of their seal, shall affix the same to any paper or instrument to which it shall be proper or necessary that the same shall be affixed, and may give copies of writings in his or her custody as the clerk of said board, attested by his or her signature and authenticated by said seal.”
- Section 129.09, *Florida Statutes*, provides, “Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”

¹¹ *Id.*

¹² *Id.*

¹³ Section 125.01, *Florida Statutes*, states “[t]he legislative and governing body of a county shall have the power to carry on county government” and then describes its authorized powers, preceded by the phrase “[t]o the extent not inconsistent with general or special law.”

¹⁴ *Management’s Discussion and Analysis, Baker County, Florida, Financial Statements, September 30, 2023*, page 4.

¹⁵ *Id.*

¹⁶ See *supra* note 6.

¹⁷ *Id.*

¹⁸ Section 218.33, *Florida Statutes* (Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures), provides, in part, that each local governmental entity, including the County, shall follow uniform accounting practices and procedures as promulgated by rule of the Florida Department of Financial Services to ensure the use of proper accounting and fiscal management by such units.

- Section 136.08, *Florida Statutes*, provides, “The accounts of each and every board and the county accounts of each and every depository, mentioned or provided for in this chapter, shall at all times be subject to the inspection and examination by the county auditor and by the Auditor General.”

Concerns and Events

Baker County Board of County Commissioners (Board)

As stated previously, the Board stated in its audit request letter that “Baker County has been experiencing ongoing and significant concerns regarding the Baker County Clerk of Court and Comptroller's inability to complete annual audits, financial reports and reconciled accounts as required by Florida law. These deficiencies negatively affect Baker County's compliance with state mandates and impair transparency and fiscal accountability.”¹⁹ Further, the Board stated that, “after considerable deliberation related to the lack of information provided as the *ex officio* Clerk to the Board, [it] has reached a level of concern directly tied to the financial affairs of Baker County. These concerns are exacerbated by persistent delays, poor communication regarding public funds and a lack of corrective action to address known deficiencies. In the paramount interest of public trust, fiscal integrity and our statutory responsibilities to the public, we strongly believe a comprehensive operational and forensic audit conducted by a trusted State resource under your direction is necessary. Such an audit will not only provide a transparent analysis, but potentially propose recommendations for known deficiencies.”²⁰

Baker County Clerk of the Circuit Court (Clerk)

As stated previously, the Clerk stated in her letter that she wishes to join the Board's request for an operational audit but does not believe the justification for the audit “arises from the allegations against [her] and [her] office” but instead “to a pattern of disregard for the proper role of [the Clerk's] office and, more troublingly, the requirements of [the] Constitutional mandates and limitations relating to the authority of the Clerk and the County Commission.”²¹ The Clerk further stated that the Board: (1) “alleges...concerns regarding [her] inability to complete the functions of [her] office...[but has] neglected to include...that the reasons for these delays are directly attributable to the lack of information, communication, and cooperation...received for the last several years from the [Board] and its staff;” and (2) has “refused to...work with [her] and [her] staff to address its concerns in a fashion that would allow for detailed and comprehensive explanation of public accounting principles...[but rather] wait[s] until board meetings to air concerns and then...in such a way that demonstrates a fundamental lack of understanding of how public finance, and the [Clerk's] office...under [the] Constitution, works.”²² In addition, she stated that she has “taken steps through legal counsel to eliminate the roadblocks the [Board]'s staff has been placing before [her]” and is “prepared to file suit against the [Board] to obtain control over the County's finance systems, as [she and her] staff have been locked out of that system during critical work periods.”²³ In addition, the Clerk included copies of certain correspondence related to ongoing issues between the Board and her office, including: (1) a memo to her from her attorney which provides his legal opinion concerning operational control over Baker County's finances and the County Manager's recent email about “working on a plan to bring County Finance back under [her] supervision;”²⁴ and (2) a letter from her attorney to the Board Chair requesting a “Notice of Dispute and

¹⁹ See *supra* note 1.

²⁰ *Id.*

²¹ See *supra* note 2.

²² *Id.*

²³ *Id.*

²⁴ Memorandum dated March 20, 2025, to the Honorable Stacie D. Harvey, Baker County Clerk of Court from Joel F. Foreman re: Constitutional and Statutory Duties of Clerk and Separation of Powers between the County Commission and Constitutional Officers (on file in Committee Office).

Demand for Conflict Assessment Meeting”²⁵ (further discussed below under the subheading *Circuit Court Case Between the Clerk and the Board*). The memo states, in part, “The March 11, 2025, demand from the County Manager, which she says was sent at the behest of the Board of County Commissioners, to bring ‘County Finance back under [the County Manager’s] supervision’ is marked escalation by the County Commission, and reveals once again a lack of understanding of the Clerk’s role in such matters under Florida’s constitution and general law. As we have previously discussed, and as I further outline..., absent circumstances not present in this case, any effort on the part of the County Commission or even your office to transfer or surrender the exclusive powers of the Clerk to the County Commission or its staff is unconstitutional and illegal. You were correct to reject the County Manager’s demand, but this escalation of tensions between the Clerk’s office and the County Commission makes it clear to me that the bright lines that exist in the law need to be made clearer to the County Commissioners and those lines must be observed on all sides going forward.”²⁶

Circuit Court Case Between the Clerk and the Board

In a letter to the Board Chair dated May 6, 2025, the Clerk’s attorney “invited the County to participate in conflict resolution in advance of potential litigation concerning the Clerk’s custody of the County’s funds, particularly with respect to the [Board]’s refusal to give the Clerk top-level administrative control over the County’s finance system” and stated “[t]o comply with [Chapter 164, *Florida Statutes*]²⁷, we must have a conflict assessment meeting within 30 days of your receipt of this letter.”²⁸ The letter further stated “Our last effort at securing control over the finance system to the Clerk resulted in the County Manager contacting the Clerk to advise her that the County Commission intended to instead place all responsibility for the County’s finances with the manager. The disconnect between the County Commission and the Clerk on these important issues is widening rather than improving, and the Clerk is satisfied that legal action has become necessary to address these issues.”²⁹ The County did not provide a response to the letter, and the requested conflict resolution meeting was not scheduled.

On July 2, 2025, a sworn *Complaint* was filed in the Circuit Court, Eighth Judicial Circuit, in and for Baker County, by the Clerk against the Board and stated, in part, that:³⁰

1. “The Plaintiff [Clerk], in her capacity as Clerk of the board, auditor, recorder and custodian of county funds, is responsible for custody of and accounting for all county funds and deposits...[and] the custodian and auditor of all the accounts of the County.”
2. “The Defendant [Board] has maintained and has directed that its personnel shall continue to maintain, the financial accounting software and computer servers (the ‘finance system’) that keep the records of the County’s accounts, including payrolls, payables, and deposits, among other funds.”
3. “The Clerk has requested that she be granted administrative access and control over the County finance system, and has explained that as custodian and auditor of the County’s funds the Clerk cannot discharge her duties without assurances that the finance system and its data is not subject to alteration or manipulation after the Clerk has performed her duties.”

²⁵ Letter dated May 6, 2025, to the Honorable Jimmy Anderson, Chair, Baker County Board of County Commissioners from Joel F. Foreman re: Notice pursuant to Florida Statutes Chapter 164 and Notice of Dispute and Demand for Conflict Assessment Meeting (on file in Committee Office).

²⁶ See *supra* note 24.

²⁷ Chapter 164, *Florida Statutes*, is the “Florida Governmental Conflict Resolution Act.”

²⁸ See *supra* note 25.

²⁹ *Id.*

³⁰ *Complaint*, Case No. 2025-71-CA, *Stacie Harvey, Clerk of the Circuit Court of Baker County, Florida, v. the Board of County Commissioners for Baker County, Florida*.

4. “In spite of her willingness to permit the County to share administrative control with her, the Clerk has been unsuccessful in her efforts to have the Defendant [Board] surrender its control of the financial system to the Clerk.”
5. “The Defendant County knows that this administrative control is critical to the Clerk's ability to perform her constitutionally mandated duties to the people of Baker County, but the County refuses to transfer control.”
6. “The County, after being asked to release control of the finance system to the Clerk, instead directed its County Manager to contact the Clerk and advise the Clerk that all county finance would be placed under the County Manager's supervision. Such a transfer would be a violation of Florida Law.”
7. “The Clerk is the custodian of all county funds whatsoever and wheresoever situated, and her custody is not subject to deprivation by action of the Defendant through its board or otherwise, or delegation of the Clerk's constitutional duties to personnel of the County.”
8. “The Clerk informed the County Manager that "County Finance" was the Clerk's responsibility, and that the Clerk would not cooperate with the Defendant's unconstitutional assertion of authority.”
9. “As of the date of this filing, the Clerk does not have administrative control of the finance system, and her ability to fully discharge her duties is being knowingly, willingly, and purposefully obstructed and compromised by the Defendant, all to the detriment of the people of Baker County, Florida.”

The sworn *Complaint* further stated that “[t]his is an action for declaratory judgment and supplemental relief pursuant to Chapter 86, F.S.” and “demands judgment against the Defendant [Board]:”³¹

- (i) declaring the rights of the Clerk to custody of all County funds;
- (ii) declaring that the Clerk has the unconditional and unrestricted right, duty and obligation to audit and examine, at any time, all bank accounts containing County funds;
- (iii) declaring that the Clerk has the right and duty to maintain custody of all County funds in all accounts whatsoever and wheresoever situated and such custody includes control of the County's finance system;
- (iv) compelling the elected and appointed officials, agents, employees, and others situated within the respective offices of the parties to adhere to the requirements of Florida Law;
- (v) and granting such other further and necessary relief.”

On August 26, 2025, a *Joint Motion for Abatement* was filed, requesting “an order of temporary abatement of this action while the parties engage in mediation pursuant to the Florida Government Conflict Resolution Act (Act) [Section 164.101, *Florida Statutes*]...until such time as the parties report to the court that no resolution of their dispute has been accomplished pursuant to the Act and the case should be restored to the court’s docket.”³² Because the conflict resolution process under the Act has not yet begun, on November 13, 2025, the Clerk filed an *Unopposed Motion to Compel Conflict Resolution*, requesting the Court “for entry of an order compelling the County to participate in and complete the conflict resolution processes provided by the Act or otherwise report the results of the parties’ settlement efforts not later than January 31, 2026.”³³

³¹ *Id.*

³² *Joint Motion for Abatement*, Case No. 2025-71-CA, *Stacie Harvey, Clerk of the Circuit Court of Baker County, Florida, v. Board of County Commissioners for Baker County, Florida*.

³³ *Unopposed Motion to Compel Conflict Resolution*, Case No. 2025-71-CA, *Stacie Harvey, Clerk of the Circuit Court of Baker County, Florida, v. Board of County Commissioners for Baker County, Florida*.

Financial Operations and Reporting Concerns

The County has experienced issues with its financial operations for the past few years and has submitted its required financial reports³⁴ for these fiscal years substantially late.³⁵ The County implemented a new accounting system at the end of the 2020-21 fiscal year and experienced issues with the conversion, including loss of certain data.³⁶ Dealing with the conversion issues, in addition to keeping up with day-to-day operations, resulted in the delayed reporting.³⁷ Based on Committee staff's discussions with the Clerk and review of recent correspondence provided in response to the Committee's request for updated status of corrective action for certain prior year audit findings, the Board and the Clerk have taken steps to address issues with its financial operations, including:^{38, 39}

1. The County has contracted with a CPA firm to provide staff training and assist with cleaning up the accounting system, review the cash to accrual basis entries to ensure accuracy of the financial records, and assist with preparing the fiscal year-end schedules and related adjusting entries required for both the 2023-24 and 2024-25 audits; and
2. The County has recently filled both the Finance Director and the Assistant Finance Director positions in the Clerk's Office.

Additional information related to the issues with the County's financial operations is included below under the subheadings *Delinquent Financial Reports*, *Audit Findings*, and *Repeat Audit Findings*.

Financial Audits

Section 218.39(2), *Florida Statutes*, provides that the County's audit report must be a single document that includes a financial audit of the County as a whole, and for each County agency other than the Board of County Commissioners, an audit of its financial accounts and records, including reports on compliance and internal controls, management letters, and financial statements as required by rules adopted by the Auditor General.

Delinquent Financial Reports

The County has not completed the most recently required annual audit of its accounts and records by an independent certified public accountant (CPA), as required by Section 218.39(1), *Florida Statutes*. The audit report and the Annual Financial Report (AFR) to the Department of Financial Services (DFS) for the 2023-24 fiscal year were due no later than June 30, 2025. On November 12, 2025, Committee staff received correspondence from the Clerk, which included an email from the County's auditors stating: (1) the audit for the Board, the Clerk, and the Sheriff were approximately 80, 90, and 85-95 percent

³⁴ The County is required to submit annually an electronic Annual Financial Report to the Department of Financial Services and a financial audit report to the Auditor General pursuant to Sections 218.32 and 218.39, *Florida Statutes*, respectively.

³⁵ Source: Committee's database.

³⁶ Letters dated August 5, 2022, and September 7, 2023, to the Joint Legislative Auditing Committee from Stacie D. Harvey, Baker County Clerk of Court, available on the Committee's website under "Audit Findings Not Corrected - Correspondence," "County Offices - Boards of County Commissioners."

³⁷ *Id.*

³⁸ Letter dated October 13, 2025, to the Joint Legislative Auditing Committee from Stacie D. Harvey, Baker County Clerk of Court, available on the Committee's website under "Audit Findings Not Corrected - Correspondence," "County Offices - Boards of County Commissioners."

³⁹ Telephone conversation with the Clerk on October 30, 2025.

complete, respectively; and (2) the audit procedures for the Property Appraiser, the Tax Collector, and the Supervisor of Elections have been completed, with no outstanding items.⁴⁰

For most of the past ten years, the County has failed to timely submit its required financial reports, with the three most recent audit reports submitted substantially late.^{41, 42} As shown in the following table, the County submitted its audit report to the Auditor General by the statutory due date one time during this period. During the remaining years, the County submitted the audit report from 13 to 362 days late. Therefore, the County has complied with these financial reporting requirements only one time in the past ten years.

Baker County - Timeliness of Audit Report Submissions				
	Fiscal Year	Audit Report Due Date	Audit Report Received Date	Number of Days Late
1	2014-15	6/30/2016	9/9/2016	71
2	2015-16	6/30/2017	11/9/2017	132
3	2016-17	6/30/2018	11/5/2018	128
4	2017-18	6/30/2019	6/30/2019	0
5	2018-19	6/30/2020	7/13/2020	13
6	2019-20	6/30/2021	8/6/2021	37
7	2020-21	6/30/2022	2/8/2023	223
8	2021-22	6/30/2023	6/26/2024	362
9	2022-23	6/30/2024	4/15/2025	289
10	2023-24	6/30/2025	Not Yet Received	137 ⁴³

The Committee has taken action against the County for its failure to comply with the statutory reporting requirements in Section 218.32(1)(a) and 218.39(1), *Florida Statutes*, for the 2021-22 and 2022-23 fiscal years. If the delinquent reports were not submitted by the effective date set by the Committee, this action involved directing the Department of Revenue (DOR) and the Department of Financial Services (DFS) to withhold any state funds that were not pledged for bond debt service satisfaction that the County would have otherwise been entitled to receive until the County submitted the delinquent financial report(s).⁴⁴ A begin enforcement letter was sent by the Committee to the DOR and the DFS for both the 2021-22 and 2022-23 fiscal years. The County ultimately lost \$66,212.80 in half-cent sales tax funds before the County submitted the delinquent financial reports for the 2021-22 fiscal year. The County submitted the delinquent financial reports for the 2022-23 fiscal year prior to any state funds being withheld.

Timely financial reporting is necessary for effective decision-making by the Board and the elected Constitutional Officers and their respective management, as well as to provide transparency and accountability to citizens residing within the County and others doing business with the County

⁴⁰ Email dated November 12, 2025, from the Clerk, which included an email dated November 11, 2025, from audit staff of James Moore & Co.

⁴¹ The Committee enforces compliance with Sections 218.32(1) and 218.39(1), *Florida Statutes*, which requires most local governmental entities to submit an annual financial audit report (audit) and an annual financial report (AFR) to the state. A county is required to submit an audit and an AFR each year.

⁴² Source: Committee's database.

⁴³ As of 11/14/2025.

⁴⁴ DOR withholds County Revenue Sharing and Half-Cent Sales Tax funds from entities that would otherwise receive these funds. County Revenue Sharing funds are restored to the entity if it files the required financial report(s) prior to the end of the state's current fiscal year. Half-Cent Sales Tax funds, once withheld, are transferred to the state's general revenue fund pursuant to state law and are not available to be restored to the entity. As applicable, DFS withholds grant funds and other funds, such as reimbursements from state agencies to the entity. These funds are released to the entity once the required report(s) are filed.

Audit Findings:

The County's most recent audit report, for the 2022-23 fiscal year, included the following nine findings for the Board and the Clerk:

Number	Finding
Board of County Commissioners:⁴⁵	
2023-001 <i>Material Weakness⁴⁶</i>	<u>Cash to Accrual Basis Audit Adjustments and Preparation of Financial Statements:</u> For the year ended September 30, 2023, various significant adjustments were required to be made to the accounting records subsequent to the start of the audit process related to year-end accrual entries. In addition, management did not retain an individual with expertise to oversee preparation of the financial statements. The financial statements would be materially misstated if significant adjustments were not made. The auditors recommend that management select and apply the appropriate accounting principles to record year-end accrual basis adjustments to prepare the financial statements in accordance with generally accepted accounting principles (GAAP). In addition, the auditors recommend that management retain or train individuals or contractors to assist in the reconciliation of all year-end balances in accordance with GAAP.
2023-002 <i>Material Weakness</i>	<u>Timeliness of Year-End Close and Financial Reporting:</u> The audit was completed well after the statutory deadline. The state mandates that financial audits be completed within nine months after fiscal year-end to ensure stakeholders receive accurate and timely information. The auditors state that, while an accounting system conversion contributed to various delays in year-end closing procedures, other responsibilities of core finance personnel and limited overall staffing also adversely impacted the County's ability to produce timely financial reports. This issue (as it related to the prior year audit) contributed to the County forfeiting its June 2024 half-cent sales tax distribution totaling \$66,212.80. The auditors recommend that the County review and improve its financial reporting processes to ensure timely completion, which includes optimizing internal procedures and a consideration of the need to increase staffing and resources dedicated to the accounting function.
2023-003 <i>Material Weakness</i>	<u>Timeliness of Bank Reconciliations:</u> Bank reconciliations were not consistently completed on a timely basis. Several reconciliations were delayed by multiple months, increasing the risk of undetected errors or fraudulent transactions. Limited staffing and competing priorities within the finance department contributed to delays in completing reconciliations. Additionally, a lack of formalized procedures for monitoring and enforcing reconciliation deadlines further exacerbated the issue. Timely completion of bank reconciliations is a fundamental internal control to ensure the accuracy of financial records, detect errors, and prevent or identify fraudulent transactions. The auditors recommend that management implement a structured process to ensure that all bank reconciliations are completed within a defined timeframe. The auditors state that this may include assigning specific responsibilities, establishing monitoring procedures, and providing additional training or resources as necessary to improve efficiency.
2023-004 <i>Material Weakness</i>	<u>Preparation of Schedule of Expenditures of Federal Awards:</u> County management was unable to independently prepare an accurate Schedule of Expenditures of Federal Awards (SEFA) without significant assistance. Federal regulations, and similar rules to meet Florida Single Audit requirements, require entities expending federal funds to prepare an accurate and complete SEFA to support the Single Audit process. The initial SEFA provided to the auditors contained inaccuracies, including missing or misclassified federal expenditures. The auditors state that: (1) a lack of internal expertise and training related to federal grant reporting requirements contributed to the inability to prepare the SEFA accurately; and (2) insufficient documentation and reconciliation processes hindered management's ability to compile complete and accurate information. The inability to prepare an accurate SEFA without auditor assistance increases the risk of noncompliance with federal reporting requirements and may result in audit findings or questioned costs; it also diminishes management's ability to oversee federal and state grant activity effectively. The auditors recommend that County management establish procedures to ensure the accurate and timely preparation of the SEFA. This may include providing training on federal and state grant reporting requirements, implementing reconciliation processes to verify completeness and accuracy, and/or contracting with outside assistance for SEFA preparation.

⁴⁵ *Schedule of Findings and Questioned Costs and Independent Auditors' Management Letter, Baker County, Florida, Financial Statements, September 30, 2023, pages 57-59 and 66-67, respectively.*

⁴⁶ A material weakness is "a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis." American Institute of Certified Public Accountants (AICPA). (2021). *U.S. Auditing Standards – AICPA (Clarified)*, AU-C Section 265.07. Available at: <https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00265.pdf> (last visited November 13, 2025).

Number	Finding
2023-005 <i>Significant Deficiency</i> ⁴⁷	Internal Control Monitoring over EMS Billing System: For the year ended September 30, 2023, the County contracted with an organization to perform billing services for its EMS billing and no SOC-1 for the company was available for review during the audit as the company had not procured one to date. The County did not install various internal controls needed to ensure proper billing and collection of EMS services. Monitoring over the outsourced billing company was not performed during the fiscal year under audit. The auditors recommend that management develop internal controls to perform oversight over the activities of the outsourced EMS billing company and/or utilize a SOC-1 report from the outsourced EMS billing company and perform the complimentary user entity controls contained within that report.
2023-006	Solid Waste Fund: The auditors noted that the Solid Waste Fund required significant transfers from the General Fund to subsidize the operations of the Solid Waste Fund. The auditors recommend that the County perform an analysis of the annual costs required to operate the Solid Waste Fund and consider the need to adjust solid waste rates in order to cover the associated service cost.
2023-007	Budgetary Compliance: The auditors noted that funds were expended in excess of budgeted amounts due to a timing difference in grant expenditures that was not factored as part of the budget process. Based upon that budget approach, the County's expenditures exceeded appropriations in the EMS fund by \$149,036, the Drivers Education trust fund by \$468, the Equitable Sharing fund by \$38,900, and the ARPA fund by \$1,975,533. Additionally, the General Fund actual expenditures exceeded the budget by approximately \$399,000. The auditors recommend that the County budget on an accrual basis in order to ensure expenditures do not exceed appropriations.
2023-008	Budgetary Operations: The auditors noted difficulties in tracing the approved budget amendments to the calculated differences between the original and final budget. The auditors recommend that the County develop a method of tracking the budgetary amendments via a crosswalk of columns for each amendment. In addition, the auditors noted that budgetary amounts were provided during the year that did not agree to the BOCC-approved budget in various instances. The auditors recommend that the County carefully review the budget and implement measures to address to ensure agreement.
Clerk of the Circuit Court: ⁴⁸	
2023-001 <i>Material Weakness</i>	Audit Adjustments and Year-End Reconciliation: Audit adjustments were required to correct account balances for proper year-end cutoff related to various internal balances that were not adjusted for final year-end accrual adjustments at the start of fieldwork. To ensure the financial statements are accurately presented, the auditors recommend that management ensure all year-end balances are reconciled and adjusted as necessary on the accrual basis to prepare the financial statements in accordance with generally accepted accounting principles.

Repeat Audit Findings

Four of the Board's audit findings (#2023-001, #2023-005, #2023-006, and #2023-007) and the Clerk's audit finding (#2023-001) noted above have been reported in three or more successive audit reports⁴⁹ and were reported to the Committee by the Auditor General.⁵⁰ Any audit findings that are included in at least three successive audit reports are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee's involvement. The first step authorized in the process for counties is for the Committee to send a letter to the chair of the governing body to request an updated status of the county's effort to correct these repeat audit findings.

The Committee did request a status update from the Board and the Clerk for these findings. The longest recurring finding, the Board Finding #2023-001, *Cash to Accrual Basis Audit Adjustments and*

⁴⁷ A significant deficiency is "a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness yet important enough to merit attention by those charged with governance." American Institute of Certified Public Accountants (AICPA). (2021). *U.S. Auditing Standards – AICPA (Clarified)*, AU-C Section 265.07. Available at: <https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00265.pdf> (last visited November 13, 2025).

⁴⁸ *Independent Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Special-Purpose Financial Statements Performed in Accordance with Government Auditing Standards and Independent Auditors' Management Letter; Baker County Clerk of Courts; Special-Purpose Financial Statements and Independent Auditors' Report; September 30, 2023*, pages 20 and 22.

⁴⁹ See *supra* notes 45 and 48 and Committee database.

⁵⁰ Most recently for the 2022-23 fiscal year; see email from the Auditor General to Committee Chairs Collins and LaMarca, dated July 9, 2025 (on file in Committee Office).

Preparation of Financial Statements, has been reported in seven successive audit reports. The Committee has requested and received a written status update for four of the past five fiscal years.⁵¹ Based on a review of the County's written response to the Committee, it does not appear that the County has made much progress in correcting this repeat audit finding until recently when it contracted with a CPA firm to provide staff training and assistance with the financial reporting process.

Fiscal Year Audit Report	County's Response to Audit Finding Related to Cash to Accrual Basis Audit Adjustments and Preparation of Financial Statements ⁵²
2018-19	Due to the County's cumbersome and antiquated finance system, it is unable to perform "cut-off" deadlines or timelines. The County Comptroller and Assistant to Clerk are investigating a new finance system to properly record entries according to generally accepted accounting principles.
2019-20	The County is in the process of implementing a new accounting system to help track and record accrual basis adjustments. Subsequently, the County will seek additional help with cash to accrual basis adjustment outside the audit process. As the County is in the process of implementing this new finance system the remediation of this finding is still in process.
2020-21	The County is aware of this crucial step when preparing the financial statements. As previously identified, the County implemented a new accounting system at the end of FY 2020-21 and has had great difficulty with the conversion. The County anticipates a completion date in FY 2023-24.
2021-22	N/A Letter was not sent because County's FY 2021-22 audit report was submitted on 6/26/2024. Therefore, there had not been sufficient time for corrective action.
2022-23	To improve the quality and accuracy of the financial information, the County has contracted with a CPA firm who will provide additional staff training and review the cash to accrual basis entries to ensure accuracy of the financial records. The CPA firm is also assisting with preparing the year-end schedules and related adjusting entries required for the audit. The following changes are effective for the 2024-25 fiscal year audit.

The Committee has not yet received the notification from the Auditor General related to the repeat findings reported in the 2023-24 audit report because the audit report has not yet been submitted to the Auditor General; however, the Auditor General is expected to send the Committee a second notification that lists the repeat findings for late-filed audit reports.

Summary of Certain Financial Information Included in the County's Audit Report for the Fiscal Year ended September 30, 2023:

- The County's overall net position decreased by \$2,926,934.⁵³
- Total ending net position was approximately \$58.9 million, which includes negative unrestricted net position of approximately \$4.6 million.⁵⁴
- "The governmental activities generated \$44.5 million in revenues and incurred \$47.5 million of expenses [, which] resulted in a decrease in net position of approximately \$2.9 million. This compares with a prior year increase in net position of approximately \$10.8 million. The largest factor in the positive fluctuation in net position compared to prior year related to favorable changes in the County's net pension liability related to participation in the Florida Retirement System (FRS)."⁵⁵

⁵¹ This finding has been reported successively in audit reports for the 2016-17 thru 2022-23 fiscal years. The third successive audit, and the first time it was reported by the Auditor General to the Committee, was the audit report for the 2018-19 fiscal year.

⁵² The Committee's letter and the County's response letter for each year are available on the Committee's website under "Audit Findings Not Corrected - Correspondence," "County Offices - Boards of County Commissioners."

⁵³ See *supra* note 14.

⁵⁴ *Id.*

⁵⁵ See *supra* note 14, page 7.

- “The General Fund’s total fund balance increases by \$3,623,690, compared with an increase of approximately \$2,595,207 last year. The most significant cause of this fluctuation was an increase in ad valorem taxes.”⁵⁶
- “[The] County has relied on property taxes, intergovernmental resources, and accumulated reserves to fund its operations. The County is addressing the reliance upon reserves for operational cost going forward. The County has utilized grants, road, EMS, and park impact fees to help fund the infrastructure needs. The Board of County Commissioners adopted a General Fund millage rate of 7.2916 mills for fiscal year 2024, equal to the millage rate adopted for fiscal year 2023.”⁵⁷

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit and take steps to avoid duplicating the work efforts of other audits being performed of County operations. 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 Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine the County’s progress in addressing the findings and recommendations contained within the previous audit.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the County’s governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the County’s governing board and management, as well as the citizens living within the boundaries of the County. 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 Section 218.39(8), *Florida Statutes*, for the Committee’s involvement. First, the County 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 Board of County Commissioners to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the County until the County complies with the law.

III. Effect of Proposed Request and Committee Staff Recommendation:

If the Committee directs the Auditor General to perform an audit, the audit should be an operational audit, as defined in Section 11.45(1)(g), *Florida Statutes*, of Baker County’s financial operations and records . Pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, the Auditor General shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of the Board and the Clerk are considered.

⁵⁶ *Id.*

⁵⁷ See *supra* note 14, page 8.

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, in accordance with Section 11.45(6), Florida Statutes, the County will be required to pay for the expenses of the audit. The Auditor General will be required to estimate the cost of the audit, and the County will be required to pay fifty percent of the estimated cost before the audit begins. After the audit is completed, the Auditor General is required to notify the County of the actual cost of the audit. The County will be required to pay the balance of the cost to the Auditor General. All funds received from the County are required to be deposited in the General Revenue Fund of the State of Florida. If the County fails to pay the full cost of the audit, the Auditor General is required to notify the Committee.

V. Related Issues:

None.

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

**2. Concorde Estates
CDD Audit Request**



Florida Senate

Kristen Arrington

Senator, District 25

District Office:

3 Courthouse Square
Room 219
Kissimmee, FL 34741
(407) 846-5187

Tallahassee Office:

226 Senate Building
404 S. Monroe St.
Tallahassee, FL 32399-1300
(850) 487-5025

Staff:

Zoe Karabenick
Legislative Aide

Tiffani Chavez
Legislative Aide

Monica Smith
District Legislative
Aide

Ana Villalobos
District Legislative
Aide

Committees:

Vice Chair of
Commerce & Tourism
Committee

Appropriations
Committee on
Agriculture,
Environment, and
General Government

Appropriations
Committee on
Transportation,
Tourism, and Economic
Development

Environment and
Natural Resources

Fiscal Policy

Governmental
Oversight and
Accountability

Transportation

July 23, 2025

The Honorable Chip LaMarca
1827 Northeast 24th Street
Lighthouse Point, FL 33064-7742

Dear Chairman LaMarca,

I am writing to formally request that the Judicial Legislative Auditing Committee initiate a thorough audit and review of the Concorde Estates Community Development District (CDD) located in Osceola County.

My office has received numerous complaints from constituents residing in Concorde Estates concerning serious and sustained issues related to the governance, financial management, and transparency of the CDD board. These complaints raise significant questions regarding compliance with Florida law and the proper stewardship of public funds.

Among the most pressing allegations are reports of excessive and potentially unlawful compensation paid to the CDD President and members of his immediate family. These payments, totaling up to over \$500,000, appear to violate Florida Statute 190.006(8), which limits board member compensation to no more than \$200 per meeting and a maximum of \$4,800 per year, unless otherwise authorized by referendum.

Additionally, there is substantial concern regarding the alleged misuse of CDD funds. Records indicate that more than \$900,000 was spent within a 20-day period, an amount equivalent to the entire operating budget for the previous fiscal year. There has been no sufficient explanation from the board regarding the necessity or justification for this level of expenditure.

Residents have reported that members of the board and the management company issued private loans to the CDD totaling upwards of \$300,000, with interest rates reportedly ranging between 20 and 30 percent. These rates exceed the legal limit of 18 percent as established under Chapter 687.02 of the Florida Statutes. The board has not provided a clear rationale for obtaining these loans or documentation demonstrating fiscal necessity.

Furthermore, there are indications that certain board members have improperly self-assessed zero dollars for their non-ad valorem assessments, asserting they prepaid their obligations. This claim appears to contradict both the procedures outlined in Chapter 190 of Florida Statute and the expectations for equitable treatment of assessments across the community.

Email: Arrington.Kristen@flsenate.gov



Florida Senate

Kristen Arrington

Senator, District 25

District Office:
3 Courthouse Square
Room 219
Kissimmee, FL. 34741
(407) 846-5187

Tallahassee Office:
226 Senate Building
404 S. Monroe St.
Tallahassee, FL. 32399-1300
(850) 487-5025

Staff:
Zoe Karabenick
Legislative Aide

Tiffani Chavez
Legislative Aide

Monica Smith
District Legislative Aide

Ana Villalobos
District Legislative Aide

Committees:
Vice Chair of
Commerce & Tourism
Committee

Appropriations
Committee on
Agriculture,
Environment, and
General Government

Appropriations
Committee on
Transportation,
Tourism, and Economic
Development

Environment and
Natural Resources

Fiscal Policy

Governmental
Oversight and
Accountability

Transportation

Of additional concern is the existence of a contract with a landscaping company allegedly owned by the CDD President. Reports indicate that this company lacked a valid business address, had a nonfunctioning phone number, did not provide proof of insurance, and had no formal agreement on file with either the CDD or the Concorde Estates Homeowners' Association. Payments were made to this company despite the presence of another contracted vendor already providing landscaping services.

My office has also received complaints regarding failures to comply with public records laws, including a lack of documentation to explain a \$64,000 overpayment to the CDD President. To date, there has been no confirmation as to whether those funds have been reimbursed to the district.

According to guidance provided by the Department of Economic Opportunity, a formal request from a legislative office is required for the Judicial Legislative Auditing Committee to initiate a review of a CDD. In light of the extensive and credible nature of these complaints, I respectfully submit this request for an investigation into the financial and operational conduct of the Concorde Estates CDD.

It is essential that residents living in communities governed by CDDs have full confidence in the transparency, accountability, and legality of their governing boards. I urge the Committee to give this matter its full and prompt consideration to help restore trust in this governing entity and ensure compliance with state law.

Thank you for your time and attention. Should the Committee require any additional information, documentation, or constituent testimony, my office remains available to provide full cooperation.

Respectfully,

Senator Kristen Arrington

STAFF ANALYSIS

Date: November 14, 2025

Subject: Request for an Audit of the Concorde Estates Community Development District

Analyst Coordinator

White ^{DW} DuBose ^{KD}

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Senator Kristen Arrington to have the Committee direct the Auditor General to conduct an audit of the Concorde Estates Community Development District.

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), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, 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), *Florida Statutes*, 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 audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Operational Audit of the Concorde Estates Community Development District

Senator Arrington has requested the Committee to direct a thorough audit and review of the Concorde Estates Community Development District and stated that her office has "received numerous complaints from constituents residing in Concorde Estates concerning serious and sustained issues related to the governance, financial management, and transparency of the CDD board. These complaints raise significant questions regarding compliance with Florida law and the proper stewardship of public funds."¹

¹ Letter from Senator Kristen Arrington to Committee Chair Chip LaMarca dated July 23, 2025 (on file in Committee Office).

Background

Concorde Estates Community Development District (CDD), an independent special district located in Osceola County (County), was established on November 3, 2003, by adoption of Osceola County Ordinance 03-33 by the Osceola County Board of County Commissioners, pursuant to the Uniform Community Development District Act of 1980 (Chapter 190, *Florida Statutes*).² The Act provides, among other things, the power to manage basic services for community development, borrow money and issue bonds, and levy and assess non-ad valorem assessments for the financing and delivery of capital infrastructure.³ The CDD was established for the purpose of financing and managing the acquisition, construction, maintenance and operation of a portion of the infrastructure necessary for community development within the CDD's boundaries.⁴ The CDD is funded through the levy of non-ad valorem assessments on property owners in the CDD, including debt service assessments and operation and maintenance (O&M) assessments.⁵ O&M special assessments are levied by the District prior to the start of the fiscal year which begins October 1st and ends on September 30th and are imposed upon all benefited lands located in the District.⁶ Debt service special assessments are imposed upon certain lots and lands as described in each resolution imposing the special assessment for each series of bonds issued by the District. In addition, certain debt service assessments are collected upon the closing of those lots subject to short-term debt and are used to prepay a portion of the bonds outstanding.⁷ Generally, the non-ad valorem assessments appear on property owners' annual property tax bill received from the County Tax Collector's office.⁸

The CDD is governed by a Board of Supervisors (Board), which is composed of five members who are each elected on an at-large basis by qualified electors that reside within the CDD's boundaries.⁹ Each Board member serves a four-year term with staggered expiration dates.¹⁰ The Board exercises all powers granted to the CDD pursuant to Chapter 190, *Florida Statutes*.¹¹ In the 2011-12 fiscal year, the Developer for the CDD, D.R. Horton, Inc. (Developer), deeded their property in lieu of foreclosure to Maxcy Development Group Holdings - Concorde Estates, Inc., a Special Purpose Entity (SPE).^{12, 13}

² Note 1 to the Financial Statements, *Concorde Estates Community Development District Financial Statements for the Year Ended September 30, 2023*, page 13, available at:

https://flauditor.gov/pages/specialdistricts_efile%20rpts/2023%20concorde%20estates%20community%20development%20district.pdf (last visited November 7, 2025).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Concorde Estates Community Development District's website, *Questions* webpage, available at: <https://www.concordeestatescdd.org/questions>; under *The Cost of a CDD* (last visited November 10, 2025).

⁹ See *supra* note 2.

¹⁰ Concorde Estates Community Development District's website, *Election Information* webpage, available at: <https://www.concordeestatescdd.org/election-information> (last visited November 10, 2025).

¹¹ Specifically Sections [190.011](#) and [190.012\(1\)](#), *Florida Statutes* - general and special powers, respectively, per Osceola County Ordinance 03-33, page 3.

¹² See *supra* note 2.

¹³ The SPE, a separate legal entity, was created by the Trustee, on behalf of the bondholders, "to own, manage, and dispose of land taken in lieu of foreclosure from the Developer and a significant landowner of the District. The District, [the] Trustee, and the SPE entered into a tri-party agreement whereby the SPE assumed responsibility for delinquent operating and maintenance assessments owed to the District and agreed to pay future operating and maintenance assessments. The Trustee has directed the District to temporarily defer collection of the debt service assessments encumbering the SPE property. These assessments will be held in abeyance until the District receives notice from the Trustee to the contrary. If funds are no longer available in the Trust Estate and another funding source has been secured, the SPE may convey the property to the District (with the District's consent), the Trustee or another SPE." [Source: Note 8 to the Financial Statements, *Concorde Estates Community Development District Financial Statements for the Year Ended September 30, 2023*, page 23.]

The Board has final responsibility for: (1) allocating and levying assessments; (2) approving budgets; (3) exercising control over facilities and properties; (4) controlling the use of funds generated by the CDD; (5) approving the hiring and firing of key personnel; and (6) financing improvements.¹⁴

Concerns

As stated previously, in her request letter, Senator Arrington has received numerous complaints from constituents residing in the CDD concerning “serious and sustained issues related to the governance, financial management, and transparency of the CDD board.”¹⁵ Specifically, Senator Arrington stated the following concerns:

- Compensation to CDD Board President: “Among the most pressing allegations are reports of excessive and potentially unlawful compensation paid to the CDD Board President (President) and members of his immediate family. These payments, totaling up to over \$500,000, appear to violate Florida Statute 190.006(8), which limits board member compensation to no more than \$200 per meeting and a maximum of \$4,800 per year, unless otherwise authorized by referendum.”¹⁶

Documentation provided by CDD residents states: (1) “numerous checks have been written out directly to [the] President, in amounts...from \$5,000, \$10,000, \$15,000, \$25,000, and even \$120,173.57;” and (2) the payments are “for work not done in the community.”¹⁷

- A \$25,000 invoice from Robinson’s Wetlands, dated March 29, 2024, for “Stormwater Yearly Cleanup” states “PAID By [President] 03/29/24,” and the check to pay such invoice was made payable to the President by the CDD management company. However, records of the Florida Department of State, Division of Corporations (Sunbiz.org), indicate that Robinson’s Wetlands was administratively dissolved on September 23, 2022. The documentation states “[s]upporting bank records confirm [the President] deposited this \$25,000 check into his [bank] account on March 29, 2024.”¹⁸
- The *Balance Sheets* as of November 30, 2023, December 31, 2023, and January 31, 2024, prepared by the CDD’s management company at the time, include a \$64,508.27 “Due from [President] for overpayment.” However, the *Balance Sheet* as of March 31, 2024, does not include this receivable. (Note: The financial records for February 2024 are noted as “not currently available.”) The documentation provided by CDD residents states that the receivable was “removed entirely with no proof of repayment, supporting documentation, or reconciliation.” A formal public records request to the CDD management company and CDD attorney was made “for records pertaining to a financial irregularity concerning a reported overpayment to the [President],” which included a request for explanations regarding: (1) why such a payment would have been issued to a CDD supervisor [the President in this instance], (2) whether such overpayment violated statutory limits, and (3) whether such overpayment was addressed with corrective action by the Board.¹⁹ [Committee Staff Note: It is our understanding that no explanations have been provided to date.]
- Both the President’s partner and his son received weekly payments of \$800 and \$1,000, respectively, from January 2023 through December 2024, as well as a Christmas bonus of \$500 in December 2023. However, documentation provided by CDD residents states: (1) these two individuals “never performed verifiable work within the community;” and (2) [p]ayroll records

¹⁴ See *supra* note 2.

¹⁵ See *supra* note 1.

¹⁶ *Id.*

¹⁷ *Checks Written Out Directly to CDD [Board] President...* information provided to Senator Arrington’s office by CDD residents (on file in Committee Office).

¹⁸ *Id.*

¹⁹ *Formal Public Records Request - Overpayment and Repayment Inquiry Regarding CDD Board President...*, dated June 18, 2025, to the current CDD management company and the CDD attorney from the HOA Treasurer for Parkview at Lakeshore, the homeowners’ association (HOA) for Concorde Estates CDD residents (on file in Committee Office).

claim that [his son] worked 50 hours every single week during this two-year period - without missing even a single week.”²⁰

- Alleged Misuse of CDD Funds: “Records indicate that more than \$900,000 was spent within a 20-day period, an amount equivalent to the entire operating budget for the previous year. There has been no sufficient explanation from the board regarding the necessity or justification for this level of expenditure.”²¹

Documentation provided by CDD residents indicates the following:²²

- Per the December 2024 bank statement for the CDD’s “Association Checking,”²³ the CDD’s operating bank account:
 - \$1,987,593.28 was deposited into the bank account by the Osceola County Tax Collector’s Office during December 2024, this includes \$1,947,087.73 deposited on December 11, 2024;
 - The “Daily Balance” for December 10, 2024, was \$15,888.20;
 - 45 electronic debit items, totaling \$923,537.57, and one check for \$669.54 cleared the bank account from December 1-31, 2024;
- The CDD’s budget for the 2024-25 fiscal year was \$2.14 million.²⁴ The total debit amounts on the December 2024 bank statement represent approximately 40 percent of the CDD’s total budget.
- Review of the *Cash Disbursement* report and the *General Ledger, Trial Balance with Details* report for December 2024, generated by the CDD management company at the time, indicates that a majority of the cash disbursements made from the operating bank account occurred on or after December 11, 2024:²⁵
 - Multiple payments were made to the same vendor, including:
 - 1) 4 payments totaling \$60,000 to Robinson’s Wetlands, this includes 3 payments totaling \$49,000 made on a single day (referenced above under the subheading “Compensation to CDD Board President”)
 - 2) 11 payments totaling \$397,246.25 to Aquatic Weeds Inc., this includes 7 payments totaling \$142,510 made on a single day
(Note: The financial reports include notes for 3 of the checks, totaling \$254,350, stating “fraud item was voided, should have been reported, fraud was recovered 1/7/2025.”)
 - 3) 3 payments totaling \$34,671.36 to Exceptional Bookkeeping Solutions
 - Two payments, totaling \$370,000, were made for the repayment of the private loans (referenced below under the subheading “Private Loans”).
 - One payment for \$6,000 was made to Angel’s Landscaping on December 12, 2024 (vendor referenced below under the subheading “Landscaping Contract”).
 - One payment for \$16,000 was made to the CDD’s former management company, whose services to the CDD ended in April 2024.
- Private Loans: “Residents have reported that members of the board and the management company issued private loans to the CDD totaling upwards of \$300,000, with interest rates reportedly ranging between 20 and 30 percent. These rates exceed the legal limit of 18 percent as established under Chapter

²⁰ *Nepotism in Concorde Estates CDD* information provided to Senator Arrington’s office by CDD residents (on file in Committee Office).

²¹ See *supra* note 1.

²² *Excessive Spending in December 2024* information provided to Senator Arrington’s office by CDD residents (on file in Committee Office).

²³ This is the operating account per the *General Ledger, Trial Balance with Details* report, generated by the CDD management company.

²⁴ *Concorde Estates Community Development District Operating Budget, Fiscal Year 2025*; available on the Concorde Estates Community Development District’s website, *Finances* webpage, at: <https://www.concordeestatescdd.org/finances>, under *Financial Documents* “FY2025” (last visited November 10, 2025).

²⁵ Per review of the December 2024 bank statement, most of these payments appear to have been made by ACH transfer rather than by check; for most of the electronic debits, the bank statement lists “Concorde Estates Vendor Pay” plus a unique reference number.

687.02 of the Florida Statutes. The board has not provided a clear rationale for obtaining these loans or documentation demonstrating fiscal necessity.”²⁶

Documentation provided by CDD residents indicates the following:²⁷

- The invoice from the CDD attorney for reduced attorney fees of \$5,000 (\$2,500 for each loan) “for research, preparation and closing on [the two] short term loan[s]” was dated September 4, 2024. There are reportedly questions about the reason these loans were needed.
 - A \$200,000 loan from the current CDD management company was repaid in December 2024, including \$40,000 in interest. It states, “Conflict of Interest: After issuing this loan to the CDD, [this company] was later voted in as the District Manager in 2025.”
 - A \$100,000 loan from an individual was repaid in December 2024, including \$30,000 in interest. It states: (1) the “[individual] is the current son-in-law of the [CDD attorney]” and (2) “Excessive Interest: The \$30,000 interest fee represents a 30% return in less than one year, significantly higher than typical municipal lending standards.”
 - A formal public records request to the CDD management company and CDD attorney was made for documentation and explanations pertaining to these two loans, including: (1) Board meeting minutes referencing the loans; (2) the names of Board members or officials who signed and approved the loans; (3) loan agreement/promissory note for each loan indicating loan terms such as maturity date and interest rate; (4) explanation of why the interest rates exceeds the usuary limit established in Florida law; and (5) whether the CDD attorney formally disclosed to the CDD Board her conflict of interest with one of the loans. [Committee Staff Note: It is our understanding that no documentation or explanations have been provided to date.]
- Non-Ad Valorem Assessments: “[T]here are indications that certain board members have improperly self-assessed zero dollars for their non-ad valorem assessments, asserting they prepaid their obligations. This claim appears to contradict both the procedures outlined in Chapter 190 of Florida Statute[s] and the expectations for equitable treatment of assessments across the community.”²⁸

Documentation provided by CDD residents indicates the following:²⁹

- “Management company ledgers confirm non-payment of non-ad valorem assessments and bond obligations for 2022, 2023, and 2024” for certain Board members.
- “Upon investigation of the Osceola County Tax Collector’s public records, it was verified that three out of five board members were assessed zero dollars (\$0) for both their non-ad valorem operation and maintenance assessments and bond payments. When confronted with this information, the board members claimed they had prepaid their CDD assessments directly to [the now former] management company... However, no proof of payment was ever provided to the community. As a result, the community retained... a licensed Florida real estate attorney, who issued a demand letter on September 10, 2024 to the CDD’s legal counsel... Despite the seriousness of the matter, no formal response was received from the [CDD] attorney. However, communications were received from [the now former CDD management company]” which documented that the three Board members subsequently made payments relating to the assessments owed.³⁰

²⁶ See *supra* note 1.

²⁷ *Improper and Predatory Short-Term Loans* information provided to Senator Arrington’s office by CDD residents, and *Formal Public Records Request - Financial Documentation for Two Loans Dated September 2024*, dated June 18, 2025, to the current CDD management company and the CDD attorney from the HOA Treasurer for Parkview at Lakeshore, the homeowners’ association (HOA) for Concorde Estates CDD residents (on file in Committee Office).

²⁸ See *supra* note 1.

²⁹ *Zero Assessment to Board Members of Non-Ad Valorem Operation and Maintenance Assessments* information provided to Senator Arrington’s office by CDD residents (on file in Committee Office).

³⁰ The first payments were submitted on September 12, 2024, with final payments submitted on September 23, 2024.

- “The records clearly demonstrate that these CDD board members did not fulfill their financial obligations to the community until they were formally challenged by legal counsel retained by residents.”
- Landscaping Contract: “[E]xistence of a contract with a landscaping company allegedly owned by the CDD President. Reports indicate that this company lacked a valid business address, had a nonfunctioning phone number, did not provide proof of insurance, and had no formal agreement on file with either the CDD or the Concorde Estates Homeowners' Association. Payments were made to this company despite the presence of another contracted vendor already providing landscaping services.”³¹

Documentation provided by CDD residents indicates the following:³²

- “Upon closer review, it was discovered that Angel’s Landscaping is a fictitious company tied to [the CDD Board President.] Evidence show that no such company exists, and that invoices were falsified using the identity of an unrelated individual.”
- 19 invoices dated from May 25 to November 14, 2024, were submitted for payment in amounts ranging from \$2,400 to \$14,000, totaling \$102,399.44. All of these invoices include an “INVOICE BY:” section with an individual’s name, who has confirmed: (1) she had no dealings with Angel’s Landscaping; (2) she teaches seminars at a college where the CDD Board President also teaches; and (3) she has filed a police report against the CDD Board President for misuse of her identity.
- The CDD management company admitted that it has no bids, no contracts, and no insurance documentation for this vendor.
- A formal public records request to the CDD management company and CDD attorney was made for documentation and clarifications pertaining to this landscaping company, including: (1) an explanation of why payments were issued directly to the CDD Board President instead of the vendor; and (2) documentation supporting the \$14,000 invoice for “Wetlands South Stormwater Yearly Drainage “dated September 18, 2024 - specifically, confirmation of “whether the CDD coordinated with or had authorization from the South Florida Water Management District...the government agency responsible for stormwater infrastructure in [the CDD].”³³ [Committee Staff Note: It is our understanding that no documentation or explanations have been provided to date.]
- Public Records Law Violations: Complaints have been received “regarding failures to comply with public records laws, including a lack of documentation to explain a \$64,000 overpayment to the CDD President. To date, there has been no confirmation as to whether those funds have been reimbursed to the district.”

Additional concerns received include:

- CDD Budget: There is no evidence that the Board has held the final budget hearing and approved the CDD’s proposed budget for the 2025-26 fiscal year. The hearing has reportedly been rescheduled several times, most recently from October 23, 2025,³⁴ to December 1, 2025. The description of the upcoming December 1st meeting, as listed on the CDD’s website, has recently been revised from “CDD Budget Meeting” to “CDD Board Meeting.”³⁵ Section 189.016(3), *Florida Statutes*, provides, in part,

³¹ See *supra* note 1.

³² *Conflict of Interest and Fraudulent Activity: Angel’s Landscaping* information provided to Senator Arrington’s office by CDD residents (on file in Committee Office).

³³ *Formal Public Records Request – Angel’s Landscaping Contract, Payments, and Stormwater Cleaning Clarification*, dated June 18, 2025, to the current CDD management company and the CDD attorney from the HOA Treasurer for Parkview at Lakeshore, the homeowners’ association (HOA) for Concorde Estates CDD residents (on file in Committee Office).

³⁴ Concorde Estates Community Development District’s website, *Board Meetings* webpage, available at: <https://www.concordeestatescdd.org/meetings> (last visited November 10, 2025).

³⁵ *Id.* [Committee staff note: The CDD’s website, as of October 24, 2025, indicated that the upcoming December 1, 2025, meeting would be a “CDD Budget Meeting.”]

that: (1) the governing body of each special district shall adopt a budget by resolution each fiscal year; and (2) the adopted budget must regulate expenditures of the special district, and an officer of a special district may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget. Section 190.008(2)(a), *Florida Statutes*, requires that: (1) on or before each June 15, the district manager prepare a proposed budget for the ensuing fiscal year to be submitted to the Board for Board approval; (2) the Board indicate its approval of the budget by resolution, which shall provide for a hearing on the budget as approved; (3) notice of the budget hearing be published in a newspaper of general circulation in the area of the district for a specified time period and contain a designation of the day, time, and place of the public hearing; (4) at the conclusion of the budget hearing, the Board, by resolution, adopt the budget as finally approved, and (5) the budget be adopted prior to October 1 of each year.³⁶

- The budget hearing for the CDD's 2025-26 fiscal year proposed budget was held on the June 4, 2025, and the agenda packet included: (1) Resolution 2025-15, to set the date, time, and location of the required final public hearing on the approved proposed budget (August 4, 2025 at 10:00 a.m.); and (2) a letter to CDD property owners, dated May 23, 2025, which included the *Summary of O&M Assessments* tables for the 2025-26 fiscal year (as *Exhibit A*).³⁷ While the proposed budget for the 2025-26 fiscal year, posted on the CDD's website, states on its cover that it was "[p]rinted on 6/4/25" it was: (1) not included in the agenda packet for the June 4, 2025 meeting; and (2) allegedly not available to the residents or uploaded to the CDD's website until October 1, 2025.³⁸ Also, there are no minutes available on the CDD's website for the June 4, 2025, meeting, which document the actions taken at this Board meeting.
- Based on an internet search of newspapers of general circulation in the CDD's area, review of the CDD's website, and discussion with a Board member, it does not appear that the CDD published the required notice of the budget hearing as required by law.
- As noted below under the heading "Audit Findings," the CDD's auditors reported that the CDD significantly exceeded budgeted appropriations in the general fund, and the budget was not amended within 60 days of year end for the 2022-23 fiscal year (the most recent financial audit report submitted to the Auditor General). These excess expenditures were "funded by excess revenues, loan proceeds and available fund balance."³⁹ In addition, the CDD's auditors reported that Board meeting minutes for the year were not maintained.
- Collection of CDD fees: Residents are concerned because the Board and the management company have voiced their intent to "Direct Collect"⁴⁰ the CDD fees. Currently, some residents have "little trust for the current managing board or their chosen management company" and "don't trust that [a] payment to the management company would actually be handled as 'appropriately' as [a] payment to the tax office."⁴¹ Review of the budget documents available on the CDD's website disclosed that Section 2 of *Exhibit A* (noted above under the bullet titled "CDD Budget") states:⁴²

"For Fiscal Year 2025/2026, the District intends to use the Direct Collect Method, under which the District Management Company will collect assessments levied on developed lands and platted lots owned by end users within the District. For platted lands owned by entities other than end users, the

³⁶ As mentioned previously, the CDD's fiscal year is from October 1 to September 30.

³⁷ Concorde Estates Community Development District's website, available at: <https://www.concordeestatescdd.org/calendar/8202527/cdd-budget-meeting-jun-2025> (last visited November 10, 2025).

³⁸ Concorde Estates Community Development District's website, *Finances* webpage, available at: <https://www.concordeestatescdd.org/finances>, under *Financial Documents* "FY2026" (last visited November 10, 2025).

³⁹ *Note 2 to the Financial Statements, Concorde Estates Community Development District Financial Statements for the Year Ended September 30, 2023*, page 17.

⁴⁰ Section 190.021(2), *Florida Statutes*, provides that the district in its discretion is not prohibited from using the method prescribed in either s. 197.363 or s. 197.3632 for collecting and enforcing assessments.

⁴¹ Email received in August 2025 by Senator Arrington's office from CDD residents.

⁴² See *supra* note 37 [letter to the CDD property owner, dated May 23, 2025, which includes the *Summary of O&M Assessments* tables for the 2025-26 fiscal year].

District will collect the assessments directly. In cases of non-payment, the District may initiate foreclosure proceedings or may include the delinquent assessments on the following year's tax bill. IT IS IMPORTANT TO PAY YOUR ASSESSMENT. FAILURE TO DO SO MAY RESULT IN A TAX CERTIFICATE BEING ISSUED AGAINST YOUR PROPERTY, WHICH COULD LEAD TO LOSS OF TITLE. FOR ASSESSMENTS NOT COLLECTED BY THE TAX COLLECTOR OR DISTRICT MANAGEMENT COMPANY, FAILURE TO PAY MAY RESULT IN FORECLOSURE PROCEEDINGS, WHICH COULD ALSO RESULT IN LOSS OF TITLE. Please note that the District's current method of collection, whether by the uniform method, direct payments or otherwise, does not prevent the Resident from choosing an alternative collection method in the future."

It appears that the CDD decided not to "Direct Collect" the assessments for the 2025-26 fiscal year. Correspondence received from Osceola County staff indicates that the CDD has certified a tax roll to the County, which was included in the County's certification to the Osceola County Tax Collector. Such "will be included on the non-ad valorem tax roll tax roll for 2025 due for collection by the [T]ax [C]ollector starting 11/01/2025."

In addition, there is an active investigation by the Florida Department of Law Enforcement relating to certain financial-related issues of the CDD. If the Committee directs the Auditor General to conduct an audit, the Auditor General may need to delay all or part of the audit until the completion of the investigation. Any such decision will be made in consultation with the investigators to ensure that the Auditor General's audit fieldwork does not interfere with an ongoing investigation.

Financial Audit

The CDD has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA). The CDD has submitted the audit reports to the Auditor General's Office in accordance with Section 218.39(1), *Florida Statutes*.⁴³ The most recent financial audit report submitted to the Auditor General is for the 2022-23 fiscal year and included seven findings.⁴⁴ The audit report was not timely filed.

*Summary of Certain Financial Information Included in CDD's Audit Report:*⁴⁵

- "The liabilities of the [CDD] exceeded its assets at September 30, 2023 by \$10,761,263, an increase in the deficit of \$1,671,582 in comparison with the prior year."
- "At September 30, 2023, the [CDD]'s governmental funds reported a total fund balance deficit of \$(11,140,304), an increase in the deficit of \$443,235 in comparison with the prior year."
- "The fund balance in the general fund decreased because of additional expenditures. The debt service fund balance decreased because the [CDD] did not collect special assessment revenue to pay the long-term debt."

General Fund financial information (excerpts) for the past five years is shown in the following table:

⁴³ Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, *Florida Statutes*. 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* (2018 Revision) as standards for auditing local governmental entities pursuant to Florida law.

⁴⁴ *Concorde Estates Community Development District, Financial Statements, September 30, 2023*.

⁴⁵ *Management's Discussion and Analysis; Concorde Estates Community Development District, Financial Statements, September 30, 2023*, pages 3 and 5.

General Fund	FY 2022-23 ⁴⁶	FY 2021-22 ⁴⁷	FY 2020-21 ⁴⁸	FY 2019-20 ⁴⁹	FY 2018-19 ⁵⁰
Revenues:					
Special Assessments	\$1,718,786	\$1,075,565	\$ 931,050	\$ 954,705	\$ 743,257
Investment and Misc. Income	<u>1,865</u>	<u>3,169</u>	<u>2,885</u>	<u>8,690</u>	<u>20,485</u>
Total revenues	<u>1,720,651</u>	<u>1,078,734</u>	<u>933,935</u>	<u>963,395</u>	<u>763,742</u>
Current Expenditures:					
General government	641,640	386,866	335,784	349,364	232,067
Physical environment	1,406,608	923,050	493,379	534,207	545,585
Culture and recreation	338,362	422,869	57,566	92,919	89,025
Public safety	0	0	0	0	12,202
Capital Outlay Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>176,494</u>	<u>9,490</u>
Total expenditures	<u>2,386,610</u>	<u>1,732,785</u>	<u>886,729</u>	<u>1,152,984</u>	<u>888,369</u>
Excess (deficit) of revenues over expenditures	<u>\$ (665,959)</u>	<u>\$ (654,051)</u>	<u>\$ 47,206</u>	<u>\$ (189,589)</u>	<u>\$ (124,627)</u>
Loan Proceeds	\$ 900,000	\$ 0	\$ 0	\$ 0	\$ 0
Fund Balance, end of year	<u>\$ 136,148</u>	<u>\$ 198,253</u>	<u>\$ 852,304</u>	<u>\$ 739,598</u>	<u>\$ 929,187</u>

As shown, the CDD's expenditures have increased over the past few years, in particular for the expenditure account codes of "General government" and "Physical environment."

Review of the CDD's Annual Financial Report (AFR) submitted to the Department of Financial Services (DFS) pursuant to Section 218.32, *Florida Statutes*, indicates that "Financial and Administrative - Operating"⁵¹ and "Other Physical Environment - Operating"⁵² expenditures approximately doubled between the 2021-22 and 2022-23 fiscal years as shown in the following table. As discussed previously, there are concerns regarding increased expenditures and alleged misuse of CDD funds.

⁴⁶ *Statement of Revenues, Expenditures and Changes in Fund Balance, Budget to Actual - General Fund, Concorde Estates Community Development District, Financial Statements, September 30, 2023*, page 12.

⁴⁷ *Statement of Revenues, Expenditures and Changes in Fund Balance, Budget to Actual - General Fund, Concorde Estates Community Development District, Financial Statements, September 30, 2022*, page 12, available at:

https://flauditor.gov/pages/specialdistricts_efile%20rpts/2022%20concorde%20estates%20community%20development%20district.pdf (last visited November 7, 2025).

⁴⁸ *Statement of Revenues, Expenditures and Changes in Fund Balance, Budget to Actual - General Fund, Concorde Estates Community Development District, Financial Statements, September 30, 2021*, page 12, available at:

https://flauditor.gov/pages/specialdistricts_efile%20rpts/2021%20concorde%20estates%20community%20development%20district.pdf (last visited November 7, 2025).

⁴⁹ *Statement of Revenues, Expenditures and Changes in Fund Balance, Budget to Actual - General Fund, Concorde Estates Community Development District, Financial Statements, September 30, 2020*, page 12, available at:

https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20concorde%20estates%20community%20development%20district.pdf (last visited November 7, 2025).

⁵⁰ *Statement of Revenues, Expenditures and Changes in Fund Balance, Budget to Actual - General Fund, Concorde Estates Community Development District, Financial Statements, September 30, 2019*, page 12, available at:

https://flauditor.gov/pages/specialdistricts_efile%20rpts/2019%20concorde%20estates%20community%20development%20district.pdf (last visited November 7, 2025).

⁵¹ Defined as "Cost of providing financial and administrative services...includes budgeting, accounting, auditing (internal and external), property appraisal, tax collecting, personnel, purchasing, communication, pension administration, printing, stores, property control, and grants development [Source: DFS' *Uniform Accounting System Manual, 2023 Edition, For Florida Local Governments Effective Beginning Fiscal Year 2022-23*, page 153].

⁵² Includes all other costs primarily related to the physical environment, which are not provided for under the other account codes such as "Electric Utility Services" and "Water/Sewer Combination Services" [Source: *See supra* note 51, page 157.]

General Fund Expenditures	FY 2022-23 ⁵³	FY 2021-22 ⁵⁴	FY 2020-21 ⁵⁵
Legislative - Personnel Services	\$ 19,800	\$ 16,000	\$ 10,765
Financial and Administrative - Operating	541,541	213,061	219,706
Legal Counsel - Operating	52,752	81,904	74,589
Comprehensive Planning - Operating	27,547	75,901	30,723
Total General Government	<u>\$ 641,640</u>	<u>\$ 386,866</u>	<u>\$ 335,784</u>
Electric Utility Services - Operating	\$ 132,718	\$ 147,253	\$ 140,461
Water/Sewer Combination Services - Operating	129,224	143,108	91,572
Flood Control/Stormwater Management - Operating	32,902	47,267	10,940
Other Physical Environment - Operating	1,111,764	585,422	250,407
Total Physical Environment	<u>\$1,406,608</u>	<u>\$ 923,050</u>	<u>\$ 493,379</u>

As shown in the following table, review of the CDD's budget-to-actual expenditures for the 2022-23 and 2021-22 fiscal years⁵⁶ indicates that the CDD has incurred expenditures substantially in excess of its budget during both fiscal years:

General Fund	FY 2022-23 ⁵⁷			FY 2021-22 ⁵⁸		
	Budgeted Amounts - Final	Actual Amounts	Variance with Final Budget Positive (Negative)	Budgeted Amounts - Final	Actual Amounts	Variance with Final Budget Positive (Negative)
Revenues:						
Special Assessments	\$1,566,395	\$1,718,786	\$152,391	\$1,137,475	\$1,075,565	\$ (61,910)
Investment and Misc. Income	3,311	1,865	(1,446)	4,482	3,169	(1,313)
Total revenues	<u>1,569,706</u>	<u>1,720,651</u>	<u>150,945</u>	<u>1,141,957</u>	<u>1,078,734</u>	<u>(63,223)</u>
Expenditures:						
General government	454,366	641,640	(187,274)	469,702	386,866	82,836
Physical environment	701,890	1,406,608	(704,718)	665,788	923,050	(257,262)
Culture and recreation	413,450	338,362	75,088	170,967	422,869	(251,902)
Total expenditures	<u>1,569,706</u>	<u>2,386,610</u>	<u>(816,904)</u>	<u>1,306,457</u>	<u>1,732,785</u>	<u>(426,328)</u>
Excess (deficit) of revenues over expenditures	<u>0</u>	<u>(665,959)</u>	<u>(665,959)</u>	<u>(164,500)</u>	<u>(654,051)</u>	<u>(489,551)</u>
Other Financing Sources (Uses):						
Transfers out (to Debt Service Fund)	0	(296,146)	(296,146)	0	0	0
Loan Proceeds	0	900,000	900,000	0	0	0
Total other financing sources and uses	<u>0</u>	<u>603,854</u>	<u>603,854</u>	<u>0</u>	<u>0</u>	<u>0</u>
Fund balance, beginning of year	<u>198,253</u>	<u>198,253</u>	<u>0</u>	<u>852,304</u>	<u>852,304</u>	<u>0</u>
Fund balance, end of year	<u>\$ 198,253</u>	<u>\$ 136,148</u>	<u>\$ (62,105)</u>	<u>\$ 687,804</u>	<u>\$ 196,253</u>	<u>\$(489,551)</u>

Audit Findings

The CDD's most recent audit report, for the 2022-23 fiscal year, included the following seven findings:⁵⁹

⁵³ *Annual Financial Report, Fiscal Year 2022-2023* submitted by the CDD to DFS on March 7, 2025 (due no later than June 30, 2024) (on file in Committee Office).

⁵⁴ *Annual Financial Report, Fiscal Year 2021-2022* submitted by the CDD to DFS on March 29, 2024 (due no later than June 30, 2023) (on file in Committee Office).

⁵⁵ *Annual Financial Report, Fiscal Year 2020-2021* submitted by the CDD to DFS on June 21, 2022 (due no later than June 30, 2022) (on file in Committee Office).

⁵⁶ These are the two most recent fiscal years for which the CDD has submitted a financial audit report to the Auditor General.

⁵⁷ See *supra* note 46.

⁵⁸ See *supra* note 47.

⁵⁹ *Management Letter and Appendices A-C; Concorde Estates Community Development District, Financial Statements, September 30, 2023*, pages 25-29.

Number	Finding
23-01 <i>Material Weakness</i> ⁶⁰	<u>Controls Over the Preparation of Financial Statements</u> : The auditors noted significant adjustments were required to correctly report the financial statements in accordance with generally accepted accounting principles (GAAP). All activity of the debt service fund was not properly recorded, and adjustments were required to balance the fund financial statements. As a result, errors in the financial statements could go undetected. The auditors recommend that procedures be put in place to properly track activity of each fund, as well as year-end closing processes to post all necessary adjustments.
23-02 <i>Material Weakness</i>	<u>Account Reconciliations and Documentation</u> : The auditors noted several accounts that were not reconciled timely, and balances were not adjusted. Additionally, documentation of various transactions was not maintained. As a result, errors in financial reporting could go undetected. The auditors recommend that procedures be put in place to reconcile accounts monthly, and all supporting documentation be maintained.
23-03	<u>Timely Completion of Annual Audit</u> : Florida Statutes requires the annual audit be submitted to the state, no later than nine months after the CDD's fiscal year end. Due to delays in reconciling accounts, the audit was not completed timely.
23-04 <i>Material Weakness</i>	<u>Debt Service Assessments</u> : The auditors noted no assessment revenue from the tax roll was allocated to the debt service fund. The bond and note indentures require the CDD to levy assessments for repayment of bond principal and interest. Additionally, the annual budget and assessments levied include amounts for debt service assessments. As a result, errors in the financial statements could go undetected, and insufficient revenues are available to pay debt service.
23-05	<u>Records of Board Meetings</u> : The auditors noted that Board meeting minutes for the year were not maintained.
23-06	<u>Budgets</u> : During the year, the CDD significantly exceeded budgeted appropriations in the general fund, and the budget was not amended within 60 days of year end. The auditors recommend that the CDD establish policies to review budgeted expenditures and formally amend the budget within 60 days as required by Florida Statutes.
13-01	<u>Financial Condition Assessment</u> : The CDD's financial condition has deteriorated. In prior years, the Developer failed to pay debt service assessments, causing the CDD to be unable to pay certain debt service payments when due. An event of default was declared, and the debt was subsequently restructured with the agreement of the bondholders. The restructured agreement requires no current payments and the CDD is now funded; however, the overall effect of these actions on the CDD's financial condition cannot be determined at this time.

Repeat Audit Findings

The *Financial Condition Assessment* audit finding noted above has been reported in 11 successive audit reports.⁶¹ Any audit findings that are included in at least three successive audit reports are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee's involvement. The first step authorized in the process for municipalities is for the Committee to send a letter to the special district's registered agent to request an updated status of the special district's effort to correct the repeat audit findings. Because the CDD has not yet submitted its FY 2023-24 audit report to the Auditor General, it is not known whether there will be any repeat findings reported. However, the Auditor General is expected to send the Committee a second notification that lists the repeat findings for any late-filed FY 2023-24 audit reports.

Based on the CDD's audit report for the 2022-23 fiscal year, the Auditor General notified the Committee that Finding #13-01, *Financial Condition Assessment*, had been reported in three or more successive audit reports,⁶² and the Committee requested a status update from the CDD for this finding. The Committee began requesting a written status update once the finding was included in the third successive audit report.⁶³ Based on a review of the CDD's written responses to the Committee, it does appear that the CDD has demonstrated

⁶⁰ A material weakness is "a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis." American Institute of Certified Public Accountants (AICPA). (2021). *U.S. Auditing Standards – AICPA (Clarified)*, AU-C Section 265.07. Available at: <https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00265.pdf> (last visited November 7, 2025).

⁶¹ The finding was reported in the audit reports for FY 2012-13 thru FY 2022-23. Source: Committee database and *Concorde Estates Community Development District, Financial Statements*, for each of these years.

⁶² Email from the Auditor General to Committee Chairs Collins and LaMarca, dated July 9, 2025 (on file in Committee Office).

⁶³ The third successive audit report was the audit report for the 2014-15 fiscal year.

its commitment to correcting the original cause for this repeat audit finding. However, there is concern for resolution of this finding in the future because: (1) the CDD's expenditures in the general fund for the 2022-23 fiscal year significantly exceeded budgeted appropriations, and (2) many of the concerns noted in Senator Arrington's request letter are related alleged misuse of CDD funds during the 2023-24 and 2024-25 fiscal years.

Fiscal Year Audit Report	CDD's Response to Audit Finding Related to Financial Condition Assessment ⁶⁴
2022-23	<p>Prior year correspondence stated that the CDD had been pursuing resolution to the financial emergency condition for a number of years. Pursuant to Resolution 2018-12, CDD counsel at that time was authorized to pursue foreclosure on properties with delinquent non-ad valorem assessments and filed a foreclosure lawsuit against all delinquent landowners with delinquent assessments against their property. On November 1, 2017, the CDD's Series 2011B Bonds matured and were due and owed. The CDD then filed an amended foreclosure complaint to include the Series 2011B Bonds against all landowners with delinquent Bond Special Assessments against their property, with the exception of one landowner who filed for bankruptcy and is currently protected by the automatic stay. An Agreed Final Judgment of Foreclosure was entered on May 18, 2022, covering 36 lots (28 undeveloped lots and 8 developed lots). Twenty-seven (27) of the 28 undeveloped lots were scheduled for sale on June 21, 2023. With no third-party bidders, title was taken by the CDD. As negotiated and agreed to by the bondholders, the 28 lots are to be held in a limited liability corporation managed by Lerner Real Estate Advisors, which continues to market them nationwide. Additional details regarding the status of all lots are included in the response letter. All lots, developed and undeveloped, continue to be subject to all future annual operations and maintenances assessments and Series 2011A-2 debt services assessments for FY 2021-22 and beyond. In addition to the above-noted litigation, the CDD has added all lots subject to the foreclosure action to the tax rolls, so future collection of assessments and bond repayment will be done through the Tax Collector's office. <u>Most recent status:</u> As of this year, contracts for the first group of 7 undeveloped lots were executed, with closing anticipated shortly. Negotiations for the remaining 19 lots are ongoing. Upon the closing of the 7 undeveloped lots, the new CDD Manager in collaboration with the CDD's general counsel will resume a dialogue and a collection process with the remaining owners of the 6 developed lots on the outstanding debt. On May 7, 2025, the CDD transitioned to Florida District Management as its management company. As is typical with management transitions, additional time was required to obtain and reconcile historical records, establish new accounting systems, and ensure continuity in financial reporting. Since assuming management, Florida District Management has: (1) completed a full review and reconciliation of CDD financial accounts; (2) implemented stronger internal controls and payment procedures; (3) enhanced communication with vendors, bondholders, and auditors; and (4) improved board-level financial reporting and transparency. While the corrective process has taken longer than originally anticipated, significant progress has been made. The CDD anticipates that the foreclosure dispositions and related bondholder settlements will bring the matter to full resolution within the current fiscal year (FY 2025-26). The CDD is confident the identified financial emergency conditions will not recur.</p>

Delinquent Financial Reports

For the past three fiscal years, the CDD has failed to timely submit its required financial reports.^{65, 66} As shown in the following table, the CDD was substantially late in submitting its audit report to the Auditor General for these years.

Concorde Estates CDD - Timeliness of Audit Report Submissions				
	Fiscal Year	Audit Report Due Date	Audit Report Received Date	Number of Days Late
1	2021-22	6/30/2023	3/29/2024	273
2	2022-23	6/30/2024	3/7/2025	250
3	2023-24	6/30/2025	Not Yet Received	137 ⁶⁷

Timely financial reporting is necessary for effective decision-making by the CDD's governing body and management, as well as to provide transparency and accountability to citizens residing within the CDD's boundaries and others doing business with the CDD.

⁶⁴ The Committee's letter and the CDD's response letter for each year are available on the Committee's website under "Audit Findings Not Corrected - Correspondence."

⁶⁵ The Committee enforces compliance with Sections 218.32(1) and 218.39(1), *Florida Statutes*, which requires most local governmental entities to submit an annual financial audit report (audit) and an annual financial report (AFR) to the state. The CDD meets the audit threshold and is required to submit an audit and an AFR each year.

⁶⁶ Source: Committee's database.

⁶⁷ As of 11/14/2025.

The Committee has taken action against the CDD for its failure to comply with the statutory reporting requirements in Section 218.32(1)(a) and 218.39(1), *Florida Statutes*, for the 2021-22 and 2022-23 fiscal years. If the delinquent reports were not submitted by the effective date set by the Committee, this action involved directing the Department of Commerce (FloridaCommerce) to proceed with legal enforcement or to declare the CDD inactive. While a begin enforcement letter was sent by the Committee to FloridaCommerce for each year of state action, the CDD submitted the delinquent financial reports prior to FloridaCommerce filing the Petition for Enforcement in Leon County, Florida, Circuit Court.

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit as defined in Section 11.45(1)(i), *Florida Statutes*, and take steps to avoid duplicating the work efforts of other audits being performed of CDD's operations, such as the annual 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 Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine the CDD's progress in addressing the findings and recommendations contained within the previous audit report.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the CDD's governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of CDD's governing board and management, as well as the citizens living within the boundaries of CDD. 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 Section 218.39(8), *Florida Statutes*, for the Committee's involvement. First, the CDD 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 President of CDD's governing board to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Commerce to proceed with legal enforcement or to declare the CDD inactive.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an operational audit of the Concorde Estates Community Development District as addressed herein, the Auditor General, pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Senator Arrington as included in her request letter are considered.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

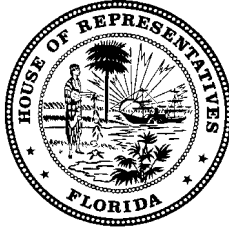
If the Committee directs the audit, the Auditor General will absorb the audit costs within her approved operating budget.

V. Related Issues:

None.

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

3. Melbourne Beach Audit Request



Florida House of Representatives

Representative Monique Miller

District 33

District Office:

2539 Palm Bay Rd
Palm Bay, FL, 32905
321-497-8170

Tallahassee Office:

1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5033

August 5, 2025

Dear Chair LaMarca & Vice Chair Collins,

I am writing to respectfully request that the Joint Legislative Audit Committee (JLAC) direct the Auditor General to conduct an operational audit of the City of Melbourne Beach over several concerns including: procurement & contract management, including historical handling of infrastructure maintenance, public safety oversight and compensation, and general concerns about policies related to records management access to city data, systems, and facilities by public officials and employees.

In recent months, the City of Melbourne Beach has experienced considerable contention and growing concern among its residents regarding the city's processes related to contract procurement and payments made to construction contractors. Allegations and questions have been raised about the integrity, efficiency, and transparency of these procedures, prompting a need for an objective and thorough review.

This request for an audit is not made lightly. It is supported by municipal elected officials and concerned citizens on both sides of the issue. Despite differing views on certain aspects of the situation, these stakeholders are united in their desire for clarity and accountability, and they have agreed to accept the outcome of this independent audit.

An audit conducted by the Auditor General would provide the community with a neutral assessment of the city's financial practices, identify any potential issues or areas for improvement, and offer a pathway toward restoring confidence in local governance.

I strongly believe that transparency and accountability are the cornerstones of good government, and this audit will serve to reinforce those principles for the residents of Melbourne Beach. Thank you for your consideration of this important request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Monique Miller", with a stylized flourish at the end.

Rep. Monique Miller

Cc: Speaker Daniel Perez & President Ben Albritton

STAFF ANALYSIS

Date: November 15, 2025

Subject: Request for an Audit of the Town of Melbourne Beach

Analyst Coordinator

DuBose^{KD} DuBose^{KD}

I. Summary

The Joint Legislative Auditing Committee (Committee) has received a request from Representative Monique Miller to have the Committee direct the Auditor General to conduct an operational audit of the Town of Melbourne Beach.

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), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, 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), *Florida Statutes*, 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 audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Audit of the Town of Melbourne Beach

Representative Miller has requested the Committee to direct an audit of the Town of Melbourne Beach related to the following areas:

- Procurement;
- Contract management;
- Infrastructure maintenance;
- Public safety oversight and compensation; and
- Policies related to records management access to [town] data, systems, and facilities by public officials and employees.¹

She stated that “[i]n recent months the [Town] of Melbourne Beach has experienced considerable contention and growing concern among its residents regarding the [town’s] processes related to contract procurement and payments made to construction contractors. Allegations and questions have been raised about the integrity, efficiency, and transparency of these procedures, prompting a need for an objective and thorough review.”²

In addition, she stated that the audit request “is supported by municipal elected officials and concerned citizens on both sides of the issue. Despite differing views on certain aspects of the situation, these stakeholders are united in their desire for clarity and accountability, and they have agreed to accept the outcome of this independent audit.”³

Background

The City of Melbourne Beach was originally incorporated by Chapter 9833, *Laws of Florida, Acts of 1923*. In 1967, the designation was changed from the City of Melbourne Beach to the Town of Melbourne Beach (Town).⁴ The Town is located in Brevard County and has a population of 3,306.⁵

The Town operates under a commission-manager form of government and is governed by an elected mayor and four commissioners.⁶ The Mayor and the Commissioners are elected at large and serve a term of three years.⁷ The Mayor is a voting member and presiding officer of the Town Commission (Commission) and the titular head of the Town government for ceremonial purposes, and for the purpose of civil process.⁸

The powers of the Commission include, but are not limited to: (1) appointing, and when necessary for the good of the Town, suspending or removing, the Town Manager, Town Clerk,⁹ or Town Attorney; (2) approving any additions or deletions of staff positions upon the recommendation of the Town

¹ Letter from Representative Monique Miller to Chair LaMarca and Vice Chair Collins, Joint Legislative Auditing Committee, dated August 5, 2025 (on file in Committee Office).

² *Id.*

³ *Id.*

⁴ Chapter 67-1716, *Laws of Florida*.

⁵ University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population by County and City 2024 (Table 1 only)*, page 5, available at: <https://edr.state.fl.us/Content/population-demographics/data/Estimates2024.pdf> (last visited November 14, 2025).

⁶ Town of Melbourne Beach, Florida Charter, Article II, Secs. 2.01 and 2.02; and Article III, Sec. 3.01, available at: https://codelibrary.amlegal.com/codes/melbournebeach/latest/melbournebeach_fl/0-0-0-16586 (last visited November 14, 2025).

⁷ *Id.* Secs. 2.02 and 2.03.

⁸ *Id.* Sec. 2.07.

⁹ During the Town’s election on November 4, 2025, voters approved amendments to the Town’s Charter that remove the Town Commission’s authority to: (1) Appoint, Suspend, or Remove Town Clerk; and (3) Fix Salary of Town Clerk. Elections results are available at: <https://enr.electionsfl.org/BRE/3869/Summary/> (last visited November 14, 2025).

Manager; (3) providing policy direction to, and exercising control over the Town Manager as may be required in his or her role as administrative head of the Town; (4) approving an annual Town budget and any amendments to the budget, together with such other fiscal reports and programs as may be required, and periodically reviewing the financial status of the Town relative to the current budget; and (5) performing other duties as may be prescribed by ordinance or resolution consistent with the concept of management of the Town expressed in the Town's Charter.¹⁰ The Town provides the following services: general government, public safety, physical environment, and recreation.¹¹

Concerns and Related Information

Per Representative Miller's staff, "[o]ver the past several months, there has been significant contention between the citizens of [the Town of] Melbourne Beach over the [Town]'s handling of several services and issues. The root of this mistrust mostly surrounds its contract procurement processes with vendors including BSE Consulting, a vendor which does infrastructure improvements. One faction believes that several hundred thousand dollars [have] been improperly paid, without the [Town] receiving services. This distrust built between the [Town] and the citizens has let to a myriad of [public record] requests, lawsuits, and allegations of corruption which has result[ed] in the [Town] Manager leaving, numerous [Town] employees either quitting or being fired, and contention between neighbors."¹² The staff member also stated that the audit should determine if any payments were made improperly and, if so, who is responsible.¹³

Committee staff note: Often when the Committee receives a request from an authorized source¹⁴ for an operational audit of a local government, at least one of several situations has occurred. This includes: (1) Committee staff have received complaints from affected individuals, including at times elected officials, regarding alleged wrongdoing; (2) Media outlets have reported related issues; (3) The Committee is familiar with the entity through its statutory enforcement of late-filed financial reports or long-term repeat audit findings; or (4) An entity's most recent financial audit report includes one or more related findings that have not risen to the level of Committee enforcement.¹⁵ None of these situations currently apply to the Town of Melbourne Beach (Town).¹⁶ However, Committee staff have received concerns related to the Town's Mayor. These concerns are summarized and provided because of the Mayor's repeated comments related to one of the Town's vendors, which appears to be one of the main reasons for the audit request.

¹⁰ *Id.* Article III, Sec. 3.01.

¹¹ *Management's Discussion and Analysis, Town of Melbourne Beach, Florida, Financial Statements, September 30, 2024*, page 4, available at: https://flauditor.gov/pages/mun_efile%20rpts/2024%20melbourne%20beach.pdf (last visited November 15, 2025).

¹² Email from Representative Miller's staff, dated August 21, 2025 (on file in Committee Office).

¹³ *Id.*

¹⁴ The Committee is authorized to consider audit requests submitted by a member of the Legislature, the governing board of a local governmental entity, or residents of a municipality who have submitted a petition that meets the statutory threshold.

¹⁵ In accordance with Section 218.39(8), *Florida Statutes*, only audit findings that have been included in three or more successive audit reports are reported to the Committee for potential enforcement.

¹⁶ The Town has timely submitted its required annual financial audit report to the Auditor General for the past nine years. The Town's most recent audit report did not include any findings. In certain prior years, the Committee has required the Town to submit a written status update regarding audit findings that had been reported in three or more audit reports. The letters the Committee sent to the Town and the Town's response are available on the Committee's website and are available at: https://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=correspondence.cfm&Directory=committees/joint/Jcla/&Tab=committees&EntityTypeId=12#corrMenu (last visited November 14, 2025) Note: To access letters, scroll to the bottom of the webpage, select 'Municipalities,' and then select 'Melbourne Beach.'

Town's Mayor

The primary concerns regarding the Mayor appear to relate to her public records requests, lawsuits against the Town, and treatment of Town staff.

- Extensive Public Records Requests:

The Mayor has a history of requesting extensive public records, both in terms of the number submitted and the volume of records requested for certain requests.¹⁷ As discussed below, lawsuits have been filed related to some of her public records requests. Reportedly, in response to one public records request, Town staff explained to her that the documentation requested would be over one million pages.

- Lawsuits filed against the Town:

For background, the Mayor and her spouse are listed as the sole Managers for Funoe, LLC (LLC) in public records available from the Florida Department of State, Division of Corporations.^{18, 19, 20} The Mayor and the LLC appear to have filed a total of six lawsuits against the Town.^{21, 22} Prior to

¹⁷ The petition filed for one public records related lawsuit (Case Number 05-2023-CA-044349-XXXX-XX) included a list of over 120 public records requests that the Mayor had made prior to her election. Examples of requests include copies of all documents and records for permitted and unpermitted accessory structures for the last 15 years (with list of items to be included but not limited to); all public records of any kind in the custody of the Town; all public records in the custody of any consultants; and one request that the Town had identified as containing 34 individual requests. An email from the Mayor to the Town Attorney, dated September 30, 2024, states that “it was agreed that my prior pending PRRs – prior to being elected – would not be revoked, but held in abeyance. I would like to revoke that abeyance now. Now that all the records are scanned it should be a lot faster” (documents on file in Committee Office).

¹⁸ Available at:

<https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FUNOE%20L170002593120&aggregateId=flal-117000259312-1efed0e7-00c0-4939-bd5c-7901c1659604&searchTerm=funoe&listNameOrder=FUNOE%20L170002593120> (last visited November 15, 2025)

¹⁹ During at least three Commission Meetings, the Mayor has made statements related to the LLC. These meetings include: (1) The Meeting Minutes for the Regular Town Commission Meeting on March 19, 2025, for Agenda Item 13.I Town Staff/Board Reports reflect that the Mayor stated that “it is not her company, it’s her family’s,” see page 13, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250319-rtcm-signed-minutes.pdf> (last visited November 15, 2025); (2) The Meeting Minutes for the Regular Town Commission Meeting on May 21, 2025, for Agenda Item 7. Public Comments reflect that in response to a comment that she is denying the lawsuit, the Mayor responded that “it is a 4 member LLC,” see page 2, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250521-rtcm-signed-minutes.pdf> (last visited November 15, 2025); and (3) The video for the Regular Town Commission Meeting on October 15, 2025, when the Commission was about to consider a motion to disclose a settlement offer, the Mayor stated that “I will not be voting on this due to conflict which is that I am a principal of Funoe, LLC, which has 4 members and which is the plaintiff in these...,” see approximately 1:59, available at: https://www.youtube.com/watch?v=NWpyaw_RhKM&t=18439s (last visited November 15, 2025).

²⁰ The LLC’s most recent Annual Report, dated March 9, 2025, is electronically signed by the Registered Agent for the LLC, Deborah Fricke as Vice President, available at:

<https://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=flal-117000259312-1efed0e7-00c0-4939-bd5c-7901c1659604&transactionId=117000259312-436fcfb-e039-432a-a2d9-cd1f31417c21&formatType=PDF> (last visited November 15, 2025).

²¹ Case Numbers for lawsuits filed against the Town by Alison Dennington: 05-2022-CA-053294-XXXX-XX, 05-2023-CA-044349-XXXX-XX, and 05-2023-CA-051904-XXXX-XX. Details regarding these lawsuits are available on the Brevard County Clerk of the Circuit Court’s website at: https://vmatrix1.brevardclerk.us/beca/beca_splash.cfm (last visited November 15, 2025). To access the history and records associated with each lawsuit: (1) accept the disclaimer; (2) select ‘General Public Court Records Search;’ and (3) enter the Mayor’s name and select the date range to include the 2022 and 2023 calendars. Once the list of cases appears, select the Case Number hyperlink.

²² Case Numbers for lawsuits filed against the Town by Funoe LLC: 05-2022-AP-025737-XXXX-XX, 05-2025-CA-019574-XXCA-BC, and 05-2025-CA-023102-XXCA-BC. Details regarding these lawsuits are available on the Brevard County Clerk of the Circuit Court’s website at: https://vmatrix1.brevardclerk.us/beca/beca_splash.cfm (last visited November 15, 2025). To access the history and records associated with each lawsuit: (1) accept the disclaimer; (2) select ‘General Public Court Records Search;

her time as Mayor, she filed some of the lawsuits as an individual.²³ Since she became the Town's Mayor, in November 2023, the lawsuits have been filed by the LLC.²⁴

Four lawsuits relate to contesting a municipal election²⁵ and public records requests.^{26, 27, 28} In addition, two lawsuits are associated with a prior code enforcement violation.²⁹ One lawsuit appealed the *Findings of Fact, Conclusions of Law, and Order* entered by the Town's Code Enforcement Special Magistrate.³⁰ Another lawsuit alleged a Breach of Contract, Slander of Title, and sought Declaratory Relief.³¹ The only outstanding lawsuits are those filed by the LLC.

During the Public Comments portion of Commission meetings, residents have expressed frustration with the cost of the Mayor's lawsuits.³² As of March 2025, the Town's costs for Attorney's fees for the lawsuits was \$150,169.25.³³

During the Commission's meeting on October 15, 2025, the Town Attorney discussed a settlement offer he had requested and received from the LLC.³⁴ The settlement offer would resolve all three outstanding lawsuits and includes, in part, the requirement for the Town to pay the LLC \$56,350.47 in outstanding attorney costs.^{35, 36, 37} The Town Attorney asked the Commission about how they wanted to proceed and provided the members with options, such as scheduling a shade meeting or

and (3) select the tab labeled 'Business Name;' (4) in the field 'Business Name,' select the drop down for 'Begins with,' enter 'Funoe' and select the date range to include the 2022 through 2025 calendar years. Once the list of cases appears, select the Case Number hyperlink.

²³ See *supra* note 21.

²⁴ See *supra* note 22.

²⁵ Case Number 05-2022-CA-053294-XXXX-XX; Complaint filed November 18, 2022.

²⁶ Case Number 05-2023-CA-044349-XXXX-XX; Petition filed August 24, 2023.

²⁷ Case Number 05-2023-CA-051904-XXXX-XX; Petition filed October 20, 2023.

²⁸ Case Number 05-2025-CA-023102-XXCA-BC; Petition filed on March 28, 2025.

²⁹ Per the *Findings of Fact, Conclusions of Law, and Order*, dated March 30, 2022, issued by the Code Enforcement Special Magistrate, "The Respondent caused the shed, which was pre-built, to be moved to and erected on the Property without applying for or obtaining a building permit from the Town of Melbourne Beach. In response to a complaint about the shed, the Town of Melbourne Beach issued a Notice of Violation to Respondent based on alleged violations of... the Town's Land Development Code, and... *Florida Building Code, Building* (on file in Committee Office).

³⁰ Case Number 05-2022-AP-025737-XXXX-XX; Notice of Appeal filed on April 29, 2022.

³¹ Case Number 05-2025-CA-019574-XXCA-BC; Complaint filed March 10, 2025.

³² For example, see pages 2-5 of the Meeting Minutes for the Regular Town Commission Meeting on April 16, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250416-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

³³ Email from Town staff to Committee staff, dated November 12, 2025. Per the Finance Director, this was the date of the last public records request. Additional charges have been incurred since then that are not included in the total.

³⁴ Meeting Minutes for the Regular Town Commission Meeting on October 15, 2025, are not yet available. Video of the meeting is available at: https://www.youtube.com/watch?v=NWpyaw_RhKM&t=18435s (last visited November 15, 2025); this portion of the meeting begins at 1:42:05 and ends at 2:19:40.

³⁵ *Id.*

³⁶ A local attorney has written the Town a letter asking a series of questions regarding the Mayor's participation in the settlement discussion including "Why was [the Mayor] permitted to remain in a meeting during litigation settlement discussions regarding a lawsuit in which she, through... LLC is the plaintiff?" Letter from J. Andrew Weerts, Attorney at Law, to Town of Melbourne Beach Commission Members, dated October 22, 2025 (on file in Committee Office).

³⁷ The Mayor stated that the fees were from the point of the breach. The Town Attorney stated that the fees are from August 28, 2024, to present. Source: See *supra* note 34.

accepting the settlement offer that night.³⁸ However, the only motion the Commission voted on was to disclose the settlement offer, which was approved 4-0.³⁹

- Treatment of the Town's staff:

As previously mentioned, the Town operates under a commission-manager form of government.⁴⁰ Therefore, the Mayor has no authority, as an individual, related to the Town's staff. The Commission, as a whole, has authority to hire and fire the Town Manager and Town Attorney. Individuals speaking during the Public Comments portion of the Commission meetings have made statements regarding the Mayor's treatment of staff, often describing her behavior as bullying.⁴¹

In August 2024, the Town's Building Official submitted his Letter of Resignation to the then Town Manager.⁴² His letter stated that his "decision to resign stems from and is based on the following issues and concerns:" (1) Toxic Work Environment; (2) Bombardment of False Claims; (3) Interpersonal Conflicts; (4) Lack of Professional; and (5) Erosion of Professional Standards.⁴³ He specifically named the Mayor as the basis for the concerns and referred to the month that she was elected as the Town's Mayor.⁴⁴

In response, the Town's then Vice Mayor (Vice Mayor) introduced a New Business Agenda Item for the Commission's Regular Meeting on September 18, 2024.⁴⁵ The Meeting Packet included a written statement from her that read, in part, "My research has found an accusation of this degree requires an immediate investigation that includes interviewing all employees. It is discriminatory and violates state and federal law. I have also been asked by concerned residents why this investigation has not already been started due to the serious nature of the allegations. Our Town has a policy that addresses workplace behavior of Town employees. This is different because the claim is against an elected official's behavior towards a Town employee. But the employee has the same rights for respectful interactions within the workplace from Town elected officials."

The Vice Mayor had requested the Town's "legal team to immediately put together the necessary process and a plan of action..."⁴⁶ However, the Commission approved a motion "to decline legal pursuit of this matter, but to proceed with an anonymous survey prepared by the Town Attorney to

³⁸ See *supra* note 34.

³⁹ *Id.*

⁴⁰ See *supra* note 6.

⁴¹ For example, see page 6 of Meeting Minutes for the Regular Town Commission Meeting held on September 18, 2024, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/240918-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁴² See pages 236-237 of Meeting Agenda Packet for the Regular Town Commission Meeting on September 18, 2024, available at: https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/240918_rtc_agenda_packet.pdf (last visited November 15, 2025).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See page 3 of Meeting Agenda for the Regular Town Commission Meeting on September 18, 2024, available at: https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/240918_rtc_agenda.pdf (last visited November 15, 2025).

⁴⁶ See page 234 of Meeting Agenda Packet for the Regular Town Commission Meetings held on September 18, 2024, available at: https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/240918_rtc_agenda_packet.pdf (last visited November 15, 2025).

every single employee of the Town.”⁴⁷ This decision followed significant discussion between the Commission members and Public Comments.⁴⁸

In March 2025, the Commission had further discussions about the survey and tasked the Town Manager “with researching... companies and cost to perform the survey specific to municipalities.”⁴⁹ The Town contracted with a company to conduct the anonymous survey, and the results were released October 2025.^{50, 51} Numerous employees stated that they had either been bullied by the Mayor or had witnessed such behavior.⁵²

In addition, the Mayor has been censured twice by the Commission. First, in October 2024, with the Commission’s approval of Resolution No. 2024-10.^{53, 54} The censure was for “actions and behavior unbecoming of an elected official” and included whereas clauses related to her treatment of the Commissioners and Town staff members and behavior at Commission meetings.⁵⁵ Second, in June 2025, with the Commission’s approval of Resolution No. 2025-10.^{56, 57} The resolution which stated, in part, that the Mayor “continues to exhibit the types of behavior that she pledged to correct...”⁵⁸,

⁴⁷ See pages 13-14 of the Meeting Minutes for Regular Town Commission Meeting on September 18, 2024, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/240918-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁴⁸ See pages 9-13 (Agenda Item 12A New Business) of Meeting Minutes for the Regular Town Commission Meeting on September 18, 2024, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/240918-rtcm-signed-minutes.pdf> (last visited November 15, 2025). In addition, video of the meeting is available at <https://www.youtube.com/watch?v=VzYwWsJOffY> (last visited November 15, 2025); this portion of the meeting begins at 2:46:10 and ends at 3:45:55.

⁴⁹ See pages 4-5 of the Meeting Minutes for Regular Town Commission Meeting on March 19, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250319-rtcm-signed-minutes.pdf> (last visited November 15, 2025). During the meeting, but prior to the motion that was approved, the Town Attorney had stated that he had prepared questions for the Commissioners’ review, the Mayor stated that she did not “want an open-ended survey that gives the opportunity for staff to complain about public officials,” and a motion that failed was considered to “just close this issue out, we do not conduct the survey and this topic is considered closed.”

⁵⁰ The Town Manager provided updates on the progress in selecting a company to conduct the survey during the Regular Town Commission Meetings on June 18, 2025; July 16, 2025; and August 20, 2025. Source: Meeting Minutes for those dates available at: <https://www.melbournebeachfl.org/Town-Boards/Agendas-and-Minutes> (last visited November 15, 2025).

⁵¹ *Engagement Survey 2025, Reported on 10/29/2025, Data from 6/19/2025 – 10/30/2025, Melbourne Beach, Florida*. Survey conducted by People element (Excerpts from report available in Committee Office).

⁵² *Id.*

⁵³ To view the meeting materials for this item, including the resolution, see page 67-69 of the Agenda Packet for the Regular Town Commission Meeting on October 23, 2024, available at: <https://www.melbournebeachfl.org/files/content/city/v/195/town-boards/agendas-and-minutes/241023-rtcm-agenda-packet.pdf> (last visited November 15, 2025).

⁵⁴ See pages 17-20 (Agenda Item 12.F. New Business (moved from Agenda Item 6.A. Proclamations/Presentations/Awards)) of the Meeting Minutes for the Regular Town Commission Meeting on October 23, 2024, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/241023-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁵⁵ See *supra* note 53.

⁵⁶ To view the meeting materials for this item, including the resolution, see page 129-131 of the Meeting Agenda Packet for the Regular Town Commission Meeting on June 18, 2025 available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250618-rtcm-agenda-packet.pdf> (last visited November 15, 2025).

⁵⁷ See pages 9-11 (Agenda Item 11.B. New Business) of the Meeting Minutes for the Regular Town Commission Meeting on June 18, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250618-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁵⁸ See *supra* note 56.

Town's Engineer

The Mayor has expressed concerns related to the Town's relationship with one of the Town's vendors, B.S.E. Consultants, Inc. (BSE),⁵⁹ during multiple Commission meetings and in emails. Town staff explained that BSE provides engineering services for Town infrastructure needs such as road repair and stormwater projects.⁶⁰ The company prepares the bid book,⁶¹ the project goes out to bid, and another company does the actual construction work.⁶²

A partial review of the Commission's Minutes disclosed the following comments made by the Mayor as summarized in the Minutes:

- November 20, 2024: The Mayor "spoke about how the Town RFP'd for an Engineer, received 2 responses, neither met the requirements,⁶³ so the Town couldn't use those but you can hold onto them. We need to go out for RFP because they have been the engineer for years and it has expired. Engineering Services have not been bid since 2017. There is no contract."⁶⁴
- December 18, 2024: The Mayor "wanted to bring up, related to BSE, that the Town is not in compliance with law/code paying and billing monthly services every month. Wants to call an emergency meeting to deal with this issue. Could at least put out an RFQ or bid for engineering services and in the meantime, the Town Attorney can say if the Town is operating legally."⁶⁵
- February 19, 2025: The Mayor "expressed her frustration with getting to see the contract."⁶⁶
- March 5, 2025: The Mayor "spoke about how she wishes they could talk about the situation the Town Manager put them in with the BSE contract."⁶⁷
- March 19, 2025: The Mayor "spoke about the charter having provisions for how minutes are done... because not having a contract with BSE was a big issue. Believes more detailed minutes are better for the residents so they know what is going on without having to listen to entire meetings."⁶⁸
- May 21, 2025: The Mayor "said many residents have complained over the years, many employees have left and filed grievances. In the grievances they mention intentional denial and hiding of public

⁵⁹ Per Town staff, BSE is the engineering firm the Town has used the most. They have responded when needed, while other firms may prefer larger jobs. Source: Phone call with Town staff on November 12, 2025.

⁶⁰ Phone call with Town staff on October 30, 2025.

⁶¹ The bid book is a set of documents that the company submits to the Town related to a construction project. It is used to solicit contractors during the competitive selection process, such as an Invitation to Bid.

⁶² See *supra* note 60.

⁶³ As noted on a following page, the Commission referred to both companies as highly qualified.

⁶⁴ See page 16 of the Meeting Minutes for the Regular Town Commission Meeting on November 20, 2024, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/241120-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁶⁵ See page 6 of the Meeting Minutes for the Regular Town Commission Meeting on December 18, 2024, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/241218-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁶⁶ See page 18 of the Meeting Minutes for the Regular Town Commission Meeting on February 19, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250219-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁶⁷ See page 3 of the Minutes for the Town Commission Workshop on March 5, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250305-tcw-signed-minutes.pdf> (last visited November 15, 2025).

⁶⁸ See page 4 of the Meeting Minutes for the Regular Town Commission Meeting on March 19, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250319-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

records... one of the essential functions of the Town Manager is to monitor franchise agreements and contracts and she believes there has been active concealment.”^{69, 70}

In addition, the Mayor repeatedly declined to approve the Monthly Finance Report presented to the Commission, stating at times that it was because of the BSE issue.⁷¹

Selected emails show the Mayor shared her concerns regarding BSE to a representative of the Florida Department of Government Efficiency (DOGE)⁷² and the Town’s auditor.⁷³ During the auditor’s presentation of the Town’s 2023-24 fiscal year audit report, the Meeting Minutes state that “The Mayor wanted the auditors to investigate the \$350,000⁷⁴ paid to BSE without a contract for engineering services. Clarified that a contract is required so this should have been looked into. [The auditor] said they did look back to make sure nothing major was missed. To the vendor [BSE], it was about \$15,000 paid in fiscal year ’23 and \$40,000 in ’24.”⁷⁵ There was considerable discussion, with the auditor explaining that “the objective of a financial audit is to express an opinion on the financial statements. It is not an internal controls audit.”^{76, 77, 78}

As explained in the following paragraphs, the Town did not have a contract with BSE until this year. However, in April 2017, the then Town Manager sent an email to BSE and a second company that had participated in an RFQ for Engineering Services that stated “The Town Commission last evening decided to QUALIFY both companies because both are Highly qualified. What this means is that as projects come up we will be selecting from either of the (2) companies and we will hopefully utilize

⁶⁹ See page 10 of the Meeting Minutes for the Regular Town Commission Meeting on May 21, 2025 available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250521-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁷⁰ During this meeting, the Mayor made a motion to terminate the Town Manager for cause immediately. The motion failed for lack of a second. Later, the Town Manager resigned; her last day was October 2, 2025.

⁷¹ The meetings include, but may not be limited to, Regular Commission Meetings on December 18, 2024; January 15, 2025; February 19, 2025; March 19, 2025; April 16, 2025; May 21, 2025; June 18, 2025; July 16, 2025; and August 20, 2025. Minutes of these meetings are available at: <https://www.melbournebeachfl.org/Town-Commission> (last visited November 11, 2025). To access, select the link for ‘Agendas, Packets, Minutes and supporting documents,’ and then select ‘Town Commission.’ and the respective meeting.

⁷² Email from the Mayor to Jason Puwalski, Department of Government Efficiency, Executive Office of the Governor, dated April 15, 2025 (on file in Committee Office).

⁷³ Email from the Mayor to Zach Chalifour (Town’s auditor), dated April 17, 2025 (on file in Committee Office).

⁷⁴ In an email dated April 14, 2025, the Mayor requested that the Town’s Finance Director provide her with the total the Town had spent on engineering in all years, 2017 thru 2025. She received a response, with the amounts on April 15, 2025. This may be the amount the Mayor is referencing.

⁷⁵ See Page 2 of the Town Commission Workshop Minutes for April 30, 2025 available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250430-tcw-signed-minutes.pdf> (last visited November 15, 2025).

⁷⁶ *Id.*, page 3.

⁷⁷ The meeting video is available at: <https://www.youtube.com/watch?v=0OlVMLQ-cL8> (last visited November 15, 2025).

⁷⁸ After the Town Commission Workshop, the Mayor sent the Town’s Auditor an email, dated May 11, 2025, with the subject “Formal Complaint and Public Records Request Regarding Town Audit,” which, in part, references the BSE payments. She stated that she planned to file formal complaints with several offices, including the Committee, and the auditor’s accreditation board. The Committee has not received any communication from the Mayor. On May 29, 2025, the Town Attorney sent the Town’s Auditor an email which stated, in part, “the email from the Mayor was not sent as a representative of the Town and was sent in her individual capacity. The Town Commission has not authorized any formal complaint or public records request for James Moore” (the Town’s audit firm). (Emails on file in Committee Office).

both companies as circumstances warrant.”⁷⁹ Committee staff understand that the Town had been following this policy until recently.⁸⁰

Minutes for the April 19, 2017, Town Commission Regular Meeting include the following statements and actions:⁸¹

- The Town Manager stated that “the Town does not have an engineering firm to call on when services are needed. In response to an RFQ, two proposals were received. Both firms are highly qualified with the only difference being a slight difference in fee.”
- A Commissioner made a motion to qualify both firms, and the motion was seconded.
- After a recess to do some research, the then Town Attorney stated that “what the Commission is effectively doing, under CCNA [Consultants Competitive Negotiation Act], is awarding the ability to enter into continuing contracts for professional services, because there is no current project. He read the definition of “continuing contract”... Firms providing services under a continuing contract should not have to bid against each other, one or the other is chosen.”
- The Motion carried 5-0.

In February 2025, the Commission approved a motion that, in part, requested the “Town Manager and Town Attorney to work together to come up with an RFQ for professional engineering services.”⁸² At the Commission’s Regular meeting in April 2025, the then Town Manager included an agenda item for the Commission to consider the four proposals received in response to the RFQ.⁸³ After some discussion, the Commission scheduled a Special Meeting for the next week.⁸⁴ During the Special Meeting, the Commission approved a motion to qualify all four companies (Construction Engineering Group; B.S.E. Consultants, Inc.; Bowman Consulting Group, Ltd.; and EDC) with the Mayor dissenting.⁸⁵ Each Commissioner ranked the companies, and then the Commission unanimously approved a motion to proceed with an agreement with all four companies.^{86, 87}

The contract with BSE was executed on June 24, 2025, with an initial term from June 24, 2025, to June 24, 2030.⁸⁸

⁷⁹ Email from Tim Day, Town Manager to Eric Flavell (Bowman Consulting) and Scott Glaubitz (B.S.E. Consultants), dated April 20, 2017 (on file in Committee Office).

⁸⁰ Phone call with Town staff on October 30, 2025.

⁸¹ Page T15 of the Meeting Minutes for the Regular Town Commission Meeting on April 19, 2017 (on file in Committee Office).

⁸² See Page 20 of the Meeting Minutes for the Regular Town Commission Meeting on February 19, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250219-rcm-signed-minutes.pdf> (last visited November 15, 2025).

⁸³ See Pages 13-14 of the Meeting Minutes for Regular Town Commission Meeting on April 15, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250416-rcm-signed-minutes.pdf> (last visited November 15, 2025).

⁸⁴ *Id.*

⁸⁵ See Page 4 of the Meeting Minutes for the Special Town Commission Meeting on April 23, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250423-stcm-signed-minutes.pdf> (last visited November 15, 2025).

⁸⁶ *Id.*, pages 4-5.

⁸⁷ During a Commission Meeting on July 16, 2025, one of the Commissioners confirmed that number of contracts had dropped from four to three, including BSE, Bowman, and Haley Ward. See page 8 of the Meeting Minutes for the Regular Town Commission Meeting on July 16, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250716-rcm-signed-minutes.pdf> (last visited November 15, 2025).

⁸⁸ Professional Services Contract Between Town of Melbourne Beach, Florida and B.S.E. Consultants, Inc. (on file in Committee Office).

Prior to the execution of the contract with BSE, the Commission had discussed a stormwater project, referred to as Basin 1, during multiple meetings.⁸⁹ During the July 16, 2025, Regular Town Commission Meeting, the Town Attorney stated that “BSE did the bid book, so they can send that out for RFP or [the Commission can] have another engineering firm redo the work.”⁹⁰ The Commission approved a motion to “ask BSE to move forward with the RFP.”⁹¹ At the November 5, 2025, Special Meeting, the Commission approved an agreement with the Contractor, that had previously been selected, to begin work on the project.⁹² The agreement, including the document prepared by BSE, are provided as an Addition to the Packet.⁹³

Public Safety

The requested audit scope includes “Public safety oversight and compensation.” This may relate to the Town’s Volunteer Fire Department.⁹⁴ The Town has a paid Fire Chief, a part-time Fire Maintenance Tech, and 32 Volunteer Firefighters.⁹⁵ At the Commission’s Special Budget Meeting on September 3, 2025, the Fire Chief provided an update on his application for the FEMA Staffing for Adequate Fire and Emergency Response (SAFER) grant.^{96, 97} His intent is for the Town to hire paid firefighters for some of its positions.⁹⁸ Discussions during that meeting,⁹⁹ the July 16, 2025 Commission Regular Meeting,¹⁰⁰ and emails¹⁰¹ show that the Mayor has been challenging the Fire Chief’s data, used at least in part, to

⁸⁹ For example, see pages 5-6 of the Meeting Minutes for the Town Commission Workshop on March 5, 2025; see pages 2-5 of the Meeting Minutes for the Special Town Commission Meeting on March 19, 2025; and, see pages 6-8 of the Meeting Minutes for the Regular Town Commission Meeting on May 21, 2025, available at: <https://www.melbournebeachfl.org/Town-Commission> (last visited November 15, 2025).

⁹⁰ See page 7 of the Meeting Minutes for the Regular Town Commission Meeting on July 16, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250716-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

⁹¹ *Id.*

⁹² Meeting Minutes for the Special Town Commission Meeting on November 5, 2025, are not yet available. Video of the meeting is available at: https://www.youtube.com/watch?v=yanPCtSY_Mk&t=3643s (last visited November 13, 2025); this portion of the meeting begins at 1:00:29 and ends at 1:10:05.

⁹³ Available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/251105-stcm-packet-additions.pdf> (last visited November 15, 2025).

⁹⁴ Committee staff are aware of issues related to a former Police Chief and records pertaining to the personnel who were issued a key fob for access to an area of Town Hall.

⁹⁵ Email from Town staff to Committee staff, dated November 14, 2025 (on file in Committee Office).

⁹⁶ Town Commission Meeting Minutes for the Special Budget Meeting on September 3, 2025, are not yet available. Video of the meeting is available at: <https://www.youtube.com/watch?v=y99YdjY95Es&t=9206s> (last visited November 15, 2025); this portion of the meeting begins at approximately 1:00:24 and ends at 2:07:29.

⁹⁷ FEMA’s website states that the SAFER grant “was created to provide funding directly to fire departments and volunteer firefighter interest organizations to help them increase or maintain the number of trained, “front line” firefighters available in their communities.”

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Pages 12-13 of the Meeting Minutes for the Regular Town Commission Meeting on July 16, 2025, available at: <https://www.melbournebeachfl.org/files/assets/city/v/1/boards-amp-commission/town-commission/250716-rtcm-signed-minutes.pdf> (last visited November 15, 2025).

¹⁰¹ For example, an email from the Mayor to the Fire Chief and other Town staff, dated July 21, 2025, states “I cannot stress enough how important I think it is for you [to] adequately correct ALL your data presentations, through retraction... and a redo of ALL prior presentation material...” An email from the Mayor to a DOGE staff member, dated August 19, 2025, states in part that the Fire Chief “took approximately 50 incidents from 2024..., then spent untold hours on Town paid time going through and back-dating 38 of the 50 incidents to make the “response” times longer, he then added color coding to make... longer times RED to stand out, and he then has been telling the town residents our response times are too slow for not meeting the...National Fire Standard “Guidelines”... He has been wanting a paid department since at least 2019 even though we do not really need one.” (Emails on file in Committee Office). Note: At the July 16, 2025, Town Commission Regular Meeting, page 13 reflects that the Commission discussed and advised the Fire Chief to add another column to his report to include the dispatch time. He had included

support the grant request. In July 2025, the Fire Chief responded to several emails from the Mayor in which he stated in part “There is no amount of data or spreadsheets that is going to convince me or my volunteers that we don’t currently have a problem with the way that our Department is operating. My argument was never based on response times, that was just a result of your request for data after my first presentation. My argument is that I don’t think the way we are operating is adequate or in the best interest of our residents and our firefighters... [and] my volunteers don’t believe that the way we are operating is adequate. Indialantic canceled our automatic aid agreement because they don’t believe the way we are operating is adequate, and Brevard County won’t enter into an automatic aid agreement with us because they don’t believe the way we are operating is adequate. I understand you are passionate about saving the taxpayers money, it’s you that they go to and complain when taxes go up.”^{102, 103} Reportedly, the Mayor contacted FEMA to report suspected fraud in the data submitted in support of the Town’s application for the SAFER grant.¹⁰⁴

Committee Staff Comment

During the review of Town Commission Meetings and selected public records, Committee staff did see indications of the contention, referenced by Representative Miller, involving the Town’s elected officials and citizens. For example, certain individuals do support the Mayor’s public records requests and lawsuits while other individuals do not.

Financial Audit

The Town has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA). The Town has submitted the audit reports to the Auditor General’s Office in accordance with Section 218.39(1), *Florida Statutes*.¹⁰⁵ The most recent financial audit report submitted to the Auditor General is for the 2023-24 fiscal year was timely filed and included no findings.^{106, 107}

the alarm time, which is the time the person calls 911; the dispatch time is how long it takes them to send the alert to the members of the Fire Department.

¹⁰² Email from the Fire Chief to the Mayor, dated July 23, 2025 (on file in Committee Office).

¹⁰³ The Town’s 2025-26 fiscal year budget includes three paid firefighters. Town staff stated that the Town can’t hire them prior to getting the grant, or the grant will not pay for them.

¹⁰⁴ The Town has been contacted by a law firm representing a local television station regarding a September 12, 2025, public records request for “emails to/from Mayor Dennington regarding FEMA and/or the SAFER grant between June 1, 2025, and September 11, 2025.” After multiple emails to the Town, on November 10, 2025, the law firm asked to provide the requested records within the next 7 days. On September 4, 2025, a representative from FEMA sent an email to the Mayor which stated “Thank you again for reaching out to us about your concerns. Below is the information you requested: To formally report fraud, contact the Department of Homeland Security Office of Inspector General at...” with a phone number and webpage referenced. (Emails on file in Committee Office).

¹⁰⁵ Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, *Florida Statutes*. 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* (2018 Revision) as standards for auditing local governmental entities pursuant to Florida law.

¹⁰⁶ *Town of Melbourne Beach, Florida, Financial Statements, September 30, 2024*; available at: https://flauditor.gov/pages/mun_cfile%20rpts/2024%20melbourne%20beach.pdf (last visited November 15, 2025).

¹⁰⁷ Source: The Committee’s database includes, in part, the dates local governmental entities have filed their annual financial audit report.

*Financial Highlights Included in the Town's Audit Report:*¹⁰⁸

- “The assets of the Town... exceeded its liabilities at the close of the 2024 fiscal year by \$13,032,089 (net position). Of this amount \$7,958,598 is net investment in capital assets while restricted net position is \$327,962. \$4,745,529 (unrestricted net position) may be used to meet the government’s ongoing obligations to citizens and creditors.
- The total net position increased \$570,203 from the previous year.
- As of the close of fiscal year 2024, the Town’s governmental funds reported combined ending fund balances of \$6,440,488, an increase of \$550,859 in comparison with the prior year. While \$1,342,606 represents the portion restricted by outside parties, \$1,685,517 is assigned for capital improvements and town parks, and \$3,190,579 of the governmental funds balance is available for spending at the government’s discretion (unassigned fund balance). An additional \$181,050 of governmental fund balance is non-spendable for current obligations, and \$40,736 is committed for stormwater utility.
- At the end of the 2024 fiscal year, unassigned fund balance for the general fund was \$3,190,579 or 76.2% of total general fund expenditures.
- The Town’s total long-term liabilities decreased by \$338,986 during the fiscal year. This reflects primarily the repayment of outstanding balances for bonds and notes.”

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit as defined in Section 11.45(1)(i), *Florida Statutes*, and take steps to avoid duplicating the work efforts of other audits being performed of the Town’s operations, such as the annual 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 Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine the Town’s progress in addressing the findings and recommendations contained within the previous audit report.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the Town’s governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the Town’s governing board and management, as well as the citizens living within the boundaries of the Town. 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 Section 218.39(8), *Florida Statutes*, for the Committee’s involvement. First, the Town 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 Mayor to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department

¹⁰⁸ *Management’s Discussion and Analysis, Town of Melbourne Beach, Florida, Financial Statements, September 30, 2024, page 4.*

of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the Town until the Town complies with the law.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an operational audit of the Town of Melbourne Beach, the Auditor General, pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Representative Miller are considered.

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 her approved operating budget.

V. Related Issues

None.

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

4. Apalachicola Audit Request



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education Pre-K - 12, *Chair*
Education Postsecondary, *Vice Chair*
Appropriations Committee on Criminal and
Civil Justice
Appropriations Committee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Criminal Justice
Fiscal Policy
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR COREY SIMON

3rd District

September 17, 2025

Dear Representative Tramont,

I am writing to formally request your support in initiating an audit, through the JLAC Committee, of the Town of Apalachicola's government expenditures, including a focus on utility transfers. Given the critical role that transparent and accountable financial management plays in maintaining public trust, I believe a thorough examination of the town's fiscal practices is warranted.

Recent concerns raised by constituents and preliminary reviews suggest potential irregularities in the allocation and transfer of funds, particularly those related to utility services. An audit through your Committee would provide clarity on these matters, ensuring that taxpayer resources are being utilized appropriately and in accordance with state regulations.

I am confident that your support will help address these concerns and strengthen public confidence in Apalachicola's governance. Please let me know a convenient time to discuss this matter further or any steps needed to move this request forward.

Thank you for your attention to this important issue and for your continued service to our state.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Simon", with a stylized flourish at the end.

Senator Corey Simon
Senate District 3

□ 303 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003

BEN ALBRITTON
President of the Senate

JASON BRODEUR
President Pro Tempore

STAFF ANALYSIS

Date: November 14, 2025

Subject: Request for an Audit of the City of Apalachicola

Analyst Coordinator

DuBose^{KD} DuBose^{KD}

I. Summary

The Joint Legislative Auditing Committee (Committee) has received a request from Senator Corey Simon to have the Committee direct the Auditor General to conduct an audit of the City of Apalachicola.

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), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, 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), *Florida Statutes*, 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 audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Audit of the City of Apalachicola

Senator Simon has requested the Committee to direct an audit of the City of Apalachicola's expenditures, to include a focus on utility transfers.¹ He stated that "[r]ecent concerns raised by constituents and preliminary reviews suggest potential irregularities in the allocation and transfer of funds, particularly those related to utility services."² In addition, he stated that "[a]n audit... would provide clarity on these matters, ensuring that taxpayer resources are being utilized appropriately in accordance with state regulations."³

Background

The City of Apalachicola (City) was originally named Cottonton.⁴ In 1828, it was incorporated as West Point and, in 1831, the City was renamed Apalachicola.⁵ The present charter was enacted in 1947 with approval of Chapter 24374, *Laws of Florida*.⁶ The City is located in Franklin County in northwest Florida, along the Apalachicola Bay and River, and has an estimated population of 2,470.⁷

The City operates under a commission-manager form of government⁸ and is governed by an elected mayor and four commissioners.⁹ The Mayor and the City Commission members are elected at large and serve a term of four years.¹⁰ The Mayor presides at the City Commission meetings and is authorized to vote but does not have veto power.¹¹

All powers of the City, except as otherwise provided by the City's Charter or the Constitution of the State of Florida, are vested in the City Commission and it may, by ordinance or resolution, prescribe the manner in which any power of the City shall be exercised.¹² The City Commission appoints and may remove the City Manager, who serves as the administrative head of the City.¹³ The City provides the following services: fire and police protection, public works activities, park and recreation, transportation,

¹ Letter from Senator Corey Simon to Representative Tramont, Chair, Joint Legislative Auditing Committee, dated September 17, 2025 (on file in Committee Office).

² *Id.*

³ *Id.*

⁴ Official Website of the Historic City of Apalachicola Florida, *Apalachicola History* webpage, available at: <https://www.cityofapalachicola.com/community/apalachicola-history/> (last visited November 14, 2025).

⁵ *Id.*

⁶ Apalachicola, Florida - Code of Ordinances, available at: https://library.municode.com/fl/apalachicola/codes/code_of_ordinances?nodeId=PTICH (last visited November 14, 2025).

⁷ University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population by County and City 2024 (Table 1 only)*, page 8, available at: <https://edr.state.fl.us/Content/population-demographics/data/Estimates2024.pdf> (last visited November 14, 2025).

⁸ *Code of Ordinances, City of Apalachicola, Florida*, Article II, Section 8, available at: https://library.municode.com/fl/apalachicola/codes/code_of_ordinances (last visited November 14, 2025).

⁹ *Id.* Section 9.

¹⁰ *Id.*

¹¹ *Id.* Section 16.

¹² *Id.* Section 10.

¹³ *Id.* Article III, Section 24.

and general administrative services.¹⁴ The City also operates a water, sewer, and garbage utility, and docking facilities.¹⁵

Concerns and Related Information

Potable Water Quality

In June 2025, a state of local emergency was declared by the Franklin County Board of County Commissioners (Board) on behalf of the City.^{16, 17} As stated in the resolution:

- The City is experiencing a water emergency and has requested that the Board issue a state of local emergency on their behalf;
- The water system in the City is not functioning properly resulting in poor water quality which is causing a significant negative economic impact;
- As a result of this water emergency, a citywide precautionary boil water notice has been issued;
- Certain specialized equipment and personnel may be required to adequately respond to the needs of the residents and visitors of the City; and
- Other measures may have to be taken to mitigate the potential for further threatening conditions within the City.¹⁸

In addition, the resolution stated that the Board “resolves that it is necessary to declare a state of emergency... because the County will be impacted to such an extent that resources from the State will be needed to assist with the emergency response and recovery...”¹⁹

Reportedly, in general, the water in the area is not of the highest quality.²⁰ However, the situation appeared to reach a crisis in June 2025. Numerous news reports and social media postings showed images of City water in customers’ homes that was discolored, and even black at times, and customers reported a foul, sulfur or rotten-egg, smell.^{21, 22}

¹⁴ *Note 1 to the Financial Statements, City of Apalachicola, Florida Audited Financial Statements and Independent Auditor’s Report, For the Year Ended September 30, 2024*, page 19. Available at: https://flauditor.gov/pages/mun_efile%20rpts/2024%20apalachicola.pdf (last visited November 14, 2025).

¹⁵ *Id.*

¹⁶ The resolution declaring the state of local emergency was signed by the Chair of the Franklin County Board of County Commissioners (Board), Ricky Jones, and the City’s Mayor, Brenda Ash, and later ratified by the full Board. It was initially in effect for a seven-day period, from June 13-20, 2025; however, it was extended multiple times by the Board.

¹⁷ Resolution 2025-001.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ At an informational workshop held by the City on June 12, 2025, a representative of the Florida Rural Water Association stated that this is a problem with areas of the aquifer in coastal locations. Multiple customers made comments at the workshop regarding the poor long-term water quality, predating the events that began with Hurricane Helene. For example, one individual stated that it had already been terrible and another stated that he was told by a family member who had lived there for years that the water was not safe to drink.

²¹ For example, James Call, ‘*Stinks up the house*’: *Apalachicola in crisis with city water unfit to drink, bathe in*, Tallahassee Democrat, June 30, 2025, and Jeff Burlew, ‘*Please help us*’: *Residents in Apalachicola plead as water crisis leads to tourist exodus*, Tallahassee Democrat, June 26, 2025 (both on file in Committee Office). In addition: Facebook group, Apalachicola City Water Crisis.

²² A letter from the Department of Health to the DEP stated that “[t]he sulfur-like odors are most likely due to hydrogen sulfate that has built up in the system... when [hydrogen sulfate] is released into the air, it can remain in the air up to 42 days... Exposure to low levels... could cause some irritation to the eyes, nose, and throat as well as breathing difficulty and headaches.” Letter from Dr. Gladys A. Liehr, CPM, FCCM, PMP, Director and Lead Toxicologist, Division of Disease

On June 12, 2025, the City Commission held an informational workshop to provide customers with information about the water crisis and to offer them an opportunity ask questions.²³ A representative of the Florida Rural Water Association (representative)²⁴ explained the series of events that triggered the crisis and the situation at that time:

- Wind damage from Hurricane Helene, which made landfall on September 26, 2024, later caused the aerator (scrubber) to fail. The scrubber is a component in the City's ground storage tank, and it works to release odor.
- Another component in the ground storage tank, the mixer, was also not operational.
- Typically, water flows from the City's three wells into the ground storage tank; however, one of the wells was offline for repair and another well, although operational, was having some air issues.
- The result was that the two operational wells were overburdened in trying to meet the demands of three wells. This, in combination with the ground storage tank issues, lead to the discoloration and odor. The representative stated that, therefore, there were a lot of total suspended solids in the wells that were not being removed.

In addition, the City's Water Department Supervisor stated that, before he and his crew took over, the wells were not maintained properly for 30 years.²⁵ Although the City was not under a Florida Department of Environmental (DEP) Consent Order related to its water system in June 2025, for many years it had been. The City's recent history of Consent Orders is discussed in the next section.

The representative stated that the primary standards of the City's water enforced by the U.S. Environmental Protection Agency (EPA) have been met,²⁶ which relate to limiting the levels of contaminants in drinking water.²⁷ The aesthetics of water, such as what the City was facing with the appearance and smell of its water, are not enforced by the EPA; however, they are enforced by the DEP. The representative stated that the odor and taste of the City's water, at that time, were not preferable and were not palatable.

Many customers who spoke at the informational workshop were frustrated with the City's delay in ordering the scrubber.²⁸ The scrubber failed shortly after Hurricane Helene, in October 2024, and the Mayor stated that the former City Manager received quotes for the replacement in November 2024.²⁹ However, it was not ordered until March 2025.³⁰ There were multiple delays in the expected delivery, due at least in part to change orders;³¹ however, on October 27, 2025, the City announced on its Facebook

Control and Health Protection, Florida Department of Health, to Elizabeth Orr, Director, Northwest District, Florida Department of Environmental Protection (DEP), dated June 28, 2025 (on file in Committee Office).

²³ Video of workshop available at: <https://vimeo.com/event/5195994> (last visited November 14, 2025).

²⁴ The Florida Rural Water Association is a member organization that was formed for the benefit of small water and wastewater systems throughout the state. It provides a variety of services to its members.

²⁵ See *supra* note 23.

²⁶ *Id.*

²⁷ National Primary Drinking Water Regulations, available at: <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations> (last visited November 14, 2025).

²⁸ See *supra* note 23.

²⁹ *Id.*

³⁰ *Id.*

³¹ The City Commission approved two change orders related to piping for the scrubber. Initially, the intent was to reuse these items; however, it was discovered that they had been damaged. Source: Minutes, Special Meeting of the City Commission on September 3, 2025, available at: <https://www.cityofapalachicola.com/wp-content/uploads/2025/10/9.3.2025-CC-SM-Minutes.pdf> (last visited November 14, 2025).

page that it had arrived. The Mayor acknowledged that the City dropped the ball with this issue but also stated that the severity of the issue was not communicated to the Commission the way it should have.³² On June 10, 2025, the City issued a system-wide precautionary boil water notice because the chlorination levels were not being maintained.³³

DEP Consent Orders Related to Potable Water

Since 2012, the DEP has issued two Consent Orders related to the City's water system.³⁴ A Consent Order is one of two enforcement documents available to the DEP to address violations in an entity's water or wastewater system.³⁵ It is negotiated between the DEP and the entity.³⁶ Initially, the DEP sent the City a non-compliance, or warning, letter which listed the violations or potential violations.³⁷ This resulted in a Consent Order in each case, and the violations were eventually corrected.

Consent Orders Related to TTHMs in Potable Water System:

A 2019 summary provided by the DEP states that "[t]he case regards drinking water exceedances of the class of disinfection byproducts called total trihalomethanes (TTHM...) which are known carcinogens, limited by the EPA Safe Drinking Water Act and Florida rule and statute to levels below 80 ug/L in samples taken from specific points in distribution. In 2011, the [City's] system began to exceed the allowable level... in their routine TTHM samples. By July 2011, it became clear that the system's TTHM levels were high enough that their running annual average for TTHMs would exceed the [allowable level]. In order to assist the system in gaining correction of the exceedances, the [DEP] began enforcement action [in] July... that year. After negotiations, a Consent Order was executed between the [DEP] and the City [in] March... 2012. The Consent Order required that the City submit an application for construction of TTHM treatment no later than one year from the Consent Order's effective date."³⁸

The City failed to meet the Consent Order deadline.³⁹ Additional comments and action from the DEP included:

- At the time of the initial deadline "there had been nearly no action on the permit application or the planning required to complete it. In fact, a contract with the engineer had not even been signed...
- An amended Consent Order was drafted, giving [the] City another year for permitting and still the 3 years from permit issuance to complete and clear the project. The [DEP]... included concrete interim milestones for the planning and application progress...the amended Consent Order was executed [in] July... 2013, making the permit application due no later than July... 2014...
- [T]he permit application was finally received by the [DEP] 4.5 months late [in] December...2014...the permit was finally issued [in] June...2015, giving the City until June...2018 to install and clear the project...

³² See *supra* note 23.

³³ Available at: <https://www.cityofapalachicola.com/city-news/precautionary-boil-water-notice/> (last visited November 14, 2025).

³⁴ Meeting with members of the DEP staff on October 27, 2025.

³⁵ *Id.*

³⁶ *Id.*

³⁷ For example, Non-Compliance Letter from David Hines, Potable Water Enforcement, Northwest District, Florida Department of Environmental Protection, to Honorable Van Johnson, Mayor, City of Apalachicola, dated July 19, 2011 (on file in Committee Office).

³⁸ Email from David Hines, DEP NW District Potable Water, to Committee staff, dated January 30, 2019 (on file in Committee Office).

³⁹ *Id.*

- [The] City again reported late in 2017 that it would be unable to meet the stipulated completion deadline, mainly due to a lack of funding, a search for which to our recollection had not yet, or barely had, begun...[T]he Consent Order's June... 2018 project completion deadline passed and [the] City [is] now in default of the Consent Order, accruing \$100/day in stipulated penalties...
- [The EPA] has taken particular interest in this case, due to the longstanding TTHM violations, over seven years of quarterly Public Notices to the system's customers, and [the] City's history of delayed action.⁴⁰ As a result, [the] Apalachicola Water System is on EPA's ETT list (formerly known as Significant Non-Compliance list)...⁴¹
- In July 2020, the DEP and the City entered into a second amended Consent Order, which replaced and superseded the original and amended Consent Order.⁴² It, in part, required the City to pay the DEP \$63,400 for stipulated penalties for failure to comply with the previous amended Consent Order for 634 days, from June 2018 until February 2020.⁴³ In addition, the City was required to pay \$1,000 for costs and expenses incurred by the DEP during the investigation and the preparation and tracking of the second amended order.⁴⁴
- In lieu of the stipulated cash penalty, the City was authorized to propose an in-kind project with a value of one and a half times the amount of the stipulated penalty.⁴⁵ If the in-kind project met the criteria in the Consent Order and was approved by the DEP, the City would not be required to pay the stipulated penalty.⁴⁶
- Initial in-kind project proposals were rejected;⁴⁷ however, in May 2021, the DEP approved the City's in-kind project to replace 30 fire hydrants at a cost of \$101,250.⁴⁸
- In August 2022, the City and the DEP entered into a third amended Consent Order.⁴⁹
- In February 2023, the DEP closed the enforcement file for the Consent Order.⁵⁰

The City was under the Consent Order related to unsafe levels of TTHM for almost 11 years, from March 2012 until February 2023. As noted above, the penalties were waived because of the in-kind project completed; however, the City paid \$1,000 to the DEP for department costs.⁵¹

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² State of Florida Department of Environmental Protection v. City of Apalachicola, OGC File No. 11-1557C, *Second Amended Consent Order* (on file in Committee Office).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ One request was denied because it was purchased prior to the proposal to replace existing equipment; the other proposal was rejected because it did not meet the dollar threshold required. Letters from Elizabeth Mullins Orr, Interim Director/Director, Northwest District, Florida Department of Environmental Protection, to Honorable Kevin Begos, Mayor, City of Apalachicola, dated October 20, 2020, and March 8, 2021 (on file in Committee Office).

⁴⁸ Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to Honorable Kevin Begos, Mayor, City of Apalachicola, dated May 14, 2021 (on file in Committee Office).

⁴⁹ State of Florida Department of Environmental Protection v. City of Apalachicola, OGC File No. 11-1557D, *Third Amended Consent Order* (on file in Committee Office).

⁵⁰ Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to Honorable Brenda Ash, Mayor, City of Apalachicola, dated February 27, 2023 (on file in Committee Office).

⁵¹ Email from Brandy M. Smith, Assistant Director, Northwest District, Florida Department of Environmental Protection, to Committee staff on October 30, 2025 (on file in Committee Office).

Consent Order Related to Operations and Maintenance Violations of Potable Water System:

- In February 2022 the EPA and the DEP completed a drinking water inspection and found multiple violations.⁵² The City failed to:⁵³
 - Complete and maintain records for all required backflow prevention device testing and installation;
 - Maintain:
 - an updated and State-approved Bacteriological Sampling Plan;
 - an updated and State-approved Lead and Copper Rule Sampling Plan;
 - a minimum free chlorine residual or a minimum combined chlorine residual compliant with DEP Rule;
 - the components of the wells and storage tanks in good operating condition;
 - calibration of the chlorine analyzer at the Water Treatment Plant;
 - Submit all required Monthly Operation Report information, as well as to submit as required within the first ten days following each month;
 - Retain all required records; and
 - Properly secure access to the Water Treatment Plant and elevated storage tank.
- In December 2022, the City and the DEP entered into a Consent Order.⁵⁴ Prior to the Consent Order, the DEP requested that the City undertake certain actions to resolve the violations.⁵⁵ Significant actions were completed and are listed in the Consent Order.⁵⁶ In addition, the Consent Order required the City to: (1) comply with certain elevated storage tank maintenance requirements within one year; (2) pay the DEP \$8,000 for civil penalties and the DEP's investigation and consent order preparation and tracking costs within 30 days; and (3) pay stipulated penalties if the City failed to timely comply with either of these requirements.⁵⁷
- In April 2023, the DEP closed the enforcement file for the Consent Order.⁵⁸

The DEP had assessed the City \$7,000 in penalties and \$1,000 in department costs; however, most of this was waived upon completion of the project.⁵⁹ The City paid \$100 to the DEP.⁶⁰

DEP Final Order Related to the Wastewater Treatment Plant and Recent Action

The second type of enforcement document available to the DEP to enforce violations in an entity's water or wastewater system is a Final Order.⁶¹ This occurs when the DEP is unable to negotiate with an entity and, therefore, does not execute a Consent Order; it is not considered a good sign.⁶² In February 2022, the DEP sent the City a Final Order which addressed domestic wastewater issues related to the City's

⁵² State of Florida Department of Environmental Protection v. City of Apalachicola, OGC File No. 22-2461, *Consent Order (on file in Committee Office)*.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to the Honorable Brenda Ash, Mayor, City of Apalachicola, dated April 21, 2023 (on file in Committee Office).

⁵⁹ See *supra* note 51.

⁶⁰ *Id.*

⁶¹ See *supra* note 34.

⁶² *Id.*

treatment plant.⁶³ It included Orders for Corrective Action, with numerous specific tasks and deadlines, which contained the following counts against the City:⁶⁴

- Failure to Install, Maintain, or Use a Required Pollution Control System or Device;
- Failure to Prepare Submit, Maintain, or Use Required Reports or Other Required Documentation;
- Failure to Conduct Required Monitoring or Testing; and
- An Unpermitted or Unauthorized Discharge of Effluent Limitation Exceedance That Resulted in a Surface Water or Groundwater Violation.

The DEP demonstrated its effort to execute a Consent Order with the City prior to issuing the Final Order. For background, in September 2019, the DEP issued a Warning Letter related to violations;⁶⁵ in June 2020 they sent the City a proposed Consent Order;⁶⁶ in August 2020, they sent the City a revised proposed Consent Order;⁶⁷ in February 2021, they sent the City a second revised proposed Consent Order;⁶⁸ and finally, in December 2021, they sent the City a third revised proposed Consent Order.⁶⁹ The City declined to sign any of the proposed Consent Orders; therefore, the next step was the Final Order.

The City has not yet completed all of the corrective action required by the Final Order.⁷⁰ In 2022, the City paid the DEP \$10,500 for department costs associated with the Final Order.⁷¹

In September 2025, the DEP sent the City a Warning Letter with eight violations observed during an August 2025 wastewater compliance evaluation inspection.⁷² The DEP is preparing a Consent Order to address the violations and, if agreement can be reached with the City, the parties can execute it.⁷³

State Revolving Loan

A DEP report stated that, “[i]n December 1994, the [DEP] awarded a \$7.6 million Clean Water [State Revolving Fund] loan to the City for the upgrade of the City’s wastewater treatment plant. In addition, the Legislature authorized a \$3,870,000 appropriation for an interest bearing Debt Repayment (Escrow) Account. The Escrow Account earnings were to be used to assist the City’s loan repayment.”⁷⁴

⁶³ Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to Travis Wade, City Manager, City of Apalachicola, dated February 10, 2022 (on file in Committee Office).

⁶⁴ State of Florida Department of Environmental Protection v. City of Apalachicola, OGC File No. 20-0841, *Final Order* (on file in Committee Office).

⁶⁵ Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to Van W. Johnson, Sr., Mayor, City of Apalachicola, dated September 10, 2019 (on file in Committee Office).

⁶⁶ Letter from Elizabeth Mullins Orr, Interim Director, Northwest District, Florida Department of Environmental Protection, to Honorable Kevin Begos, Mayor, City of Apalachicola, dated June 3, 2020 (on file in Committee Office).

⁶⁷ Letter from Elizabeth Mullins Orr, Interim Director, Northwest District, Florida Department of Environmental Protection, to Honorable Kevin Begos, Mayor, City of Apalachicola, dated August 17, 2020 (on file in Committee Office).

⁶⁸ Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to Honorable Kevin Begos, Mayor, City of Apalachicola, dated February 15, 2021 (on file in Committee Office).

⁶⁹ Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to Travis Wade, City Manager, City of Apalachicola, dated December 9, 2021 (on file in Committee Office).

⁷⁰ See *supra* note 34.

⁷¹ See *supra* note 50.

⁷² Letter from Elizabeth Mullins Orr, Director, Northwest District, Florida Department of Environmental Protection, to Honorable Brenda Ash, Mayor, dated September 18, 2025 (on file in Committee Office).

⁷³ See *supra* note 34.

⁷⁴ *Review of City of Apalachicola Water and Sewer Fund Revenues and Expenditures and Compliance with the Clean Water State Revolving Fund Debt Purchase Agreement CS12042709P*, Division of Water Facilities Funding, Report: A-1617DEP-

In November 2008, the DEP entered into a Clean Water State Revolving Fund Debt Purchase Agreement (Debt Purchase Agreement) with the City to develop a payment plan for the remaining unpaid loan principal amount of approximately \$6.1 million. This Debt Purchase Agreement required the City to: (1) establish a Debt Service Account with a Depository and make monthly deposits to support its share of the required semiannual loan repayments; (2) pledge revenues for the deposits for its share of the debt; (3) generate the pledged revenues from the operations of the City's Water and Sewer Systems after payment of operation and maintenance expenses and satisfaction of all yearly bond debt service obligations; and (4) maintain rates and charges for the services furnished by the water and sewer systems which were to be sufficient to provide revenues equal or exceeding 1.15 times the sum of the City's share of the semiannual payments.⁷⁵

The DEP's Office of Inspector General performed two internal audits related to the City's compliance with the Debt Purchase Agreement.

Findings reported in the first audit report, released in November 2012, included:⁷⁶

- The City had not established the required Debt Service Account;
- As of June 2012, the City had not made any of its share of the debt repayments; and
- Although the City passed an ordinance in 2008 to raise its Water and Sewer Rates by 3% annually, the increase had not provided the City sufficient funds to pay its share of debt payments.

Findings reported in the second audit report, released in November 2017, included:⁷⁷

- In August 2016, a representative of the DEP notified the City that the loan was in default. The loan payment had reached the point where the City could no longer fund the City's entire portion of the loan payment.
- Although the City had implemented 3% annual rate increases for Water and Sewer, the City reported that this amount barely covered the increased costs of operations.
- The City began billing sewer customers a monthly sewer user fee during the 2013-14 fiscal year to help fund the required semiannual debt payments.
- Even though faced with financial challenges, the City provided a significant rate reduction for all residential senior citizen accounts, which was not income based. This was reported as unique when compared to other municipal providers in the region.
- In addition, residential rates were charged to certain charitable organizations, and billing anomalies were noted that could have been attributed to meter, connection, or billing errors.

The City struggled to make the debt payments and was reluctant to use funds it had set aside for water and sewer.⁷⁸ In 2020, the DEP negotiated a loan modification which provided the City with a 0% interest

032, Office of Inspector General, Internal Audit Section, Florida Department of Environmental Protection, November 13, 2017 (on file in Committee Office).

⁷⁵ *Review of Revenues and Expenditures for the City of Apalachicola Water and Sewer Funds Related to the Clean Water State Revolving Fund Debt Purchase Agreement*, Division of Water Resource Management, Report: A-1112DEP-058, Office of Inspector General, Internal Audit Section, Florida Department of Environmental Protection, November 20, 2012 (on file in Committee Office).

⁷⁶ *Id.*

⁷⁷ See *supra* note 72.

⁷⁸ See *supra* note 34.

rate at the maximum term the DEP could provide.⁷⁹ It requires a semi-annual payment of \$185,685.⁸⁰ Since then, the City has been making the loan payments on time, owes approximately \$900,000, and has several more payments until the loan is paid in full.⁸¹

The grants and loans provided by the DEP to entities are on a reimbursement basis.⁸² The entities are required to provide the DEP with invoices that are eligible to be paid in order to receive reimbursement.⁸³

The Apalachicola Stewardship Act

The City's *Area of Critical State Concern Work Plan, June 2023 (Work Plan)*⁸⁴ states that "Apalachicola was designated as a Florida State Area of Critical State Concern in 1985, pursuant to Section 380.0555, Florida Statutes.⁸⁵ Initially, the Apalachicola Bay Area designation included the City of Apalachicola, the City of Carrabelle, and unincorporated Franklin County (excluding Alligator Point). In 1993, all but the City of Apalachicola were removed from the designation... The legislative intent of this designation was to protect the natural and economic resources of the Apalachicola Bay Area through comprehensive land planning, promoting economic growth, improving water quality, and promoting resource protection. In the last several years, additions have been made to the act to address the need for providing affordable housing in close proximity to places of employment...and protecting and improving water quality through federal, state, and local funding of water quality improvement projects including the construction and operation of wastewater management facilities that meet state requirements..."

"The Apalachicola Stewardship Act⁸⁶ was passed... during the 2023 legislative session to create a framework for long-term state investments in the City... as an Area of Critical State Concern... This legislation authorizes the [DEP] to expend up to \$5 million each fiscal year for the purpose of entering into financial assistance agreements with the City... to implement projects that improve surface water and ground water quality with the Apalachicola Bay [Area of Critical State Concern], including the construction of stormwater management facilities, and central sewage collection facilities, installation of onsite sewage treatment and disposal systems, direct and indirect potable use, and other water quality and water supply projects for a period of five years."⁸⁷ The funding authority associated with the legislation is effective from the 2023-24 through the 2027-28 fiscal years.⁸⁸ Although there was no appropriation during the first two years, the General Appropriations Act for the 2025-26 fiscal year includes \$5 million to the DEP to enter into financial assistance agreements with the City to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities, building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater restoration

⁷⁹ *Id.*

⁸⁰ Note 6 to the Financial Statements, Audited Financial Statements and Independent Auditor's Report For the Year Ended September 30, 2024, page 31.

⁸¹ See *supra* note 34.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Available at: https://www.cityofapalachicola.com/wp-content/uploads/2023/09/ACSC-Work-Plan-Updated-FINAL_6-30-23.pdf (last visited November 14, 2025).

⁸⁵ The other four designated areas of critical state concern are: Big Cypress Area (portions of Collier, Miami-Dade, and Monroe Counties), Green Swamp Area (portions of Polk and Lake Counties), City of Key West and the Florida Keys Areas (Monroe County), and Brevard Barrier Island Area (portions of Brevard and Indian River Counties. Source: Department of Commerce's website, available at: <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited November 14, 2025).

⁸⁶ Chapter 2023-227, *Laws of Florida*.

⁸⁷ *Id.*

⁸⁸ See *supra* note 86.

projects and projects to protect water resources available to the Apalachicola Bay.⁸⁹ Committee staff note: The Auditor General performs post audits, which means that the auditors are reviewing records after transactions and other events have occurred. Therefore, depending on the timing of the audit, the City's compliance with requirements associated with this appropriation are not likely to be included within the scope of the audit. However, if the audit is directed, the Auditor General is also required to perform follow-up procedures to determine the City's effort to correct audit findings reported in the initial audit report.⁹⁰ It is possible that the scope of the follow-up audit may include aspects related to the City's compliance with the appropriation. As authorized in the legislation, the City is eligible for an additional \$10 million over the final two fiscal years, subject to appropriations and DEP project approval.

Grants and Other Funding

While certain funding provided and expected to be provided by the DEP has been previously discussed, the City's Monthly Grant Report dated October 2025 provides a more comprehensive list. According to the report, the following projects are being funded by the federal and state governments:⁹¹

Funding Source	Project
Florida Department of Agriculture and Consumer Services	Urban and Community Forestry - Capacity Grant Program – Lafayette Park Tree Canopy Improvements Project \$10,000 + \$10,000 City Match
Department of State, Division of Historical Resources	African American Cultural and Historical Grants - Apalachicola History & Culture African American Museum \$1,250,000 (\$1,000,000 Award, \$250,000 City Cash Matching Funds)
	Old City Hall Phase II Structural Damage \$395,000 + \$98,750 In-Kind Match (\$50,000 Cash Match)
	City Hall Phase III \$340,000 + \$30,000 City Cash Match
State Appropriations	Fire Hydrant Replacement Phase III \$275,000
	Spray Field & Solar Project \$130,000
	Inflow & Infiltration Study \$300,000
Florida Division of Emergency Management	Hazard Mitigation Grant Program Market Street Vacuum Station \$120,000 with Department of Commerce Match of \$37,500
	Hazard Mitigation Grant Program Critical Facilities Generators \$241,862 with Department of Commerce Match of \$26,064.75
	Hazard Mitigation Grant Program Wastewater Vacuum Station Portable Generator \$170,000
FEMA	Hurricane Michael - Bodiford Park Dock Repairs; Scipio Creek Marina Finger Dock Repairs; Battery Park; V Pier Dock Repairs
	Hurricane Helene – Odor Scrubber Replacement; Marina Electrical Repairs; Vac Station Pump Replacement; Emergency Preparedness
DEP	Resilient Florida - Critical Asset Flood Management \$2,403,500
	Resilient Florida Planning Grant – City of Apalachicola Adaptation Plan \$67,000
	Resilient Florida – Wastewater Plant Repairs \$13,381,516 + State and Local Fiscal Recovery Program (SLFRP) - Waste Water Treatment Plant (WWTP) Headworks & SBR Relocation, Replacement and Upgrades for Advanced Wastewater Treatment \$5,551,875 = Total \$18,933,391 for WWTP Relocation/Replacement
	IGA Lift Station Upgrades \$1.39 million
	Flo-Vac Monitoring System: \$1.2 million
	Drainage and Pipe Repairs \$177,000

⁸⁹ Chapter 2025-198, *Laws of Florida*. See line 1549, available at: <http://laws.flrules.org/2025/198> (last visited November 14, 2025).

⁹⁰ Section 11.45(2)(j), *Florida Statutes*.

⁹¹ Available at <https://www.cityofapalachicola.com/wp-content/uploads/2025/10/October-Grant-Report-2025.pdf> (last visited November 14, 2025).

Funding Source	Project
Florida Department of Commerce	Rural Infrastructure Fund – Drainage Basin Analysis Phase II + Camera Work of Stormwater Lines \$300,000
	Community Development Block Grant – Disaster Recovery (CDBG-DR) – Avenues Stormwater Repair Project \$3,891,869 (\$29,000 City Cash Match)
	Wells Rehab (Note: No dollar amount provided.)
	CDBG-DR – Hometown Revitalization (Riverfront) \$4,400,000 (\$70,000 Private Owner Match + \$313,365 City Cash Match)
	CDBG-DR – Hill Community Project \$935,753 (\$910,000 Funded + \$25,000 City Cash Match)

In addition, the City has several funding applications pending.⁹²

The City’s *Work Plan* states that “[t]he City of Apalachicola demonstrated its commitment to making improvements to its wastewater and potable water infrastructure systems by resolving outstanding challenges with the [DEP] and securing nearly \$34 million in funding to address long-standing concerns.”⁹³

Committee staff note: It is important for the City to properly manage the funding it receives for these and other projects. Otherwise, it may not be considered for certain future grants and appropriations. Another factor in qualifying for funding is the City’s compliance with financial reporting requirements. This will be discussed in a later section regarding the City’s financial audit report. At times, Committee staff have been contacted by state agencies when they are considering awards to local governments to verify compliance with the financial reporting requirements enforced by the Committee.

Attorney General Investigation

The Franklin County Sheriff stated that he called the Attorney General and the Florida Department of Law Enforcement asking for an investigation “into where all the money’s being spent in the [C]ity... People [have said] what’s going on, something doesn’t seem right...”⁹⁴ He also said, “the [C]ity’s water problems have been going on for years.”⁹⁵

On a social media post on June 26, 2025, Florida Attorney General James Uthmeier stated that “my office is launching a full investigation into the City of Apalachicola. Residents there are suffering. The water is dirty and unusable. There is a putrid foul odor, and it must be boiled before people can drink with it, cook with it, or even brush their teeth. Businesses are struggling. They can’t serve water to their patrons. There’s a real failure of leadership at the City level. Not only has the City received millions of dollars to fix their compromised water filtration system, but months and months have gone by with little to no response or activity whatsoever to fix this compromised system. Residents deserve better. There has been a clear failure of leadership. That’s why my office will be working with our statewide prosecution team along with the Florida Department of Law Enforcement, the Department of Health, the Department of Environmental Protection, and any state and federal authorities to determine if state or federal laws have been broken. The City... has received millions of dollars to make this right, but

⁹² *Id.*

⁹³ See *supra* note 84, page 7.

⁹⁴ Ana Goñi-Lessan and Jeff Burlew, *Attorney General Uthmeier launches investigation into City of Apalachicola’s water crisis*, Tallahassee Democrat, June 26, 2025 (on file in Committee Office).

⁹⁵ *Id.*

leaders have not delivered for the people. I will be referring this to Florida's DOGE⁹⁶ to see if there has been financial mismanagement and we will use any tool we have to bring any civil and criminal remedy necessary to deliver for Floridians."⁹⁷ Committee staff understand that this investigation is ongoing and that the Florida Department of Law Enforcement is conducting interviews.

Petition Audit Request

Prior to Senator Simon's request for an audit, certain residents of the City signed a petition for "the Auditor General to conduct an operational audit of the [C]ity's operations, management, and use of public resources + [C]ity water resources."⁹⁸ Section 11.45(5) *Florida Statutes*, authorizes registered electors of a municipality to petition for an Auditor General audit and, if at least 20% of the municipality's registered electors sign the petition as certified by the Supervisor of Elections, the Committee is required to direct the audit. The electors did not complete the petition process, as it became unnecessary once Senator Simon submitted the audit request; however, one of the individuals stated that "[w]hile the petition list is not yet verified at the 20% threshold, we believe it is important to convey the depth of concern in our community. Many residents feel broken and betrayed by the current leadership's actions and omissions...Our community has been misled and let down, and confidence in local leadership has eroded."⁹⁹

Other Citizen Concerns

Recently, the primary concerns of the City's residents and utility customers¹⁰⁰ appear to be related to the quality of the City's potable water, as previously discussed. Reportedly, additional concerns include the following:

- Frustration with the City's apparent lack of communication or mis-communication.¹⁰¹ While this has reached a peak during the City's water crisis this year,¹⁰² it appears to be a long-standing issue.
- Failure to timely provide requested public records or failure to provide them at all.
- Failure to maintain public records. For example: (1) on the night of a mayoral election in 2019, the City's server crashed, and the electronic records were deemed to be unrecoverable, the timing of which raised suspicions; (2) records identified by State archivists as needing to be retained were subsequently taken to the dump by Public Works staff; and (3) other documentation has gone missing.
- Qualifications of certain staff members, described as, at best, incompetent.
- Significant delays in public works projects, such as the recent installation of fire hydrants that were purchased and received years earlier.
- Overall allegations of misuse of funds.

⁹⁶ On February 24, 2025, Governor Ron DeSantis issued [Executive Order 25-44](#) to establish the Florida Department of Government Efficiency. The order, in part, directs state agencies, universities, and local governments to identify and eliminate unnecessary spending, maximize efficiency, and improve fiscal stewardship.

⁹⁷ Social media platform X, @AGJamesUthmeier. In addition, the Attorney General sent a letter to the City. Letter from James Uthmeier, Florida Attorney General, to Mayor Brenda Ash and City Commissioners, City of Apalachicola, dated June 26, 2025 (on file in Committee Office).

⁹⁸ Email from Chloe Broker to the Committee regarding Community Petition and Background Materials - Request for Operational Audit, dated October 8, 2025 (on file in Committee Office).

⁹⁹ *Id.*

¹⁰⁰ Some of the City's utilities customers reside outside of the City limits.

¹⁰¹ See *supra* note 23.

¹⁰² In an apparent response to customer frustration, the City's Home Page now includes documents related to the water crisis; most documents are dated June 2025 or later, available at: <https://www.cityofapalachicola.com/> (last visited November 14, 2025).

Possible Legislative Changes and Recent City Action

On August 21, 2025, the members of the Franklin County Legislative Delegation, Senator Simon and Representative Shoaf, passed a local bill that would expand the boundaries of the Eastpoint Water and Sewer District to include St. George Island and the entire utility system of the City.¹⁰³ Senator Simon stated that the bill “is just a “starting point [we] want to make sure that all things are on the table as we discuss these issues...when we’re looking at what has happened in the last eight months with [the] water situation... it’s clear that we can’t sit back and not do anything...and hopefully on the back end of this we have a really good policy that will put the taxpayers and our constituents in the best light possible.”¹⁰⁴ In addition, he referred to the amount of money the taxpayers of Franklin County, the City, and the State have invested in the City’s Water and Sewer system and he indicated that we can’t continue to funnel that money out.¹⁰⁵ Representative Shoaf stated he agreed with Senator Simon’s comments and that “I don’t want to be talking about the Apalachicola Water System, because I want the City to run it properly, but they haven’t.”¹⁰⁶ He also referred to “decades of mismanagement.”¹⁰⁷

Committee staff understand that the delegation is working on a concept and language for the local bill for consideration during the 2026 Legislative Session.

On October 28, 2025, the City Commission held a workshop to discuss the Local Bill Utility System – Options.¹⁰⁸ The agenda packet included a memorandum prepared by the City Attorney which provided options for the Commission to consider.¹⁰⁹ These options included: (1) hiring a City Utility Director to provide professional management of the system and retain the system under City ownership; (2) contracting for the management of the system with a private entity or other provider; or (3) entering into an Interlocal Agreement pursuant to Chapter 163, *Florida Statutes*.¹¹⁰ The City’s Facebook account includes a post which states that at the workshop “direction was given to staff to put together [a] Request for Qualifications (RFQ) to solicit proposals for contract management of the City’s water and sewer system.”¹¹¹

Committee Staff and Former Town Manager Comments

The City has faced a multitude of problems over the years, and they are not limited to the water and wastewater issues that have been described. If a local bill to remove the City’s utilities from the City’s management passes and is approved by the Governor, an operational audit of the City would still appear to be of value for stakeholders.

¹⁰³ Video available at: <https://thefloridachannel.org/videos/8-21-25-franklin-county-legislative-delegation/> (last visited November 14, 2025).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ The workshop agenda packet is available at: <https://www.cityofapalachicola.com/wp-content/uploads/2025/10/10-28-25-Workshop-Agenda-Packet.pdf> (last visited November 14, 2025).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Minutes of the workshop are not yet available. A video of the workshop is available on the City’s website; however, the audio is not currently working. The video is available at: <https://vimeo.com/event/5467024?fl=so&fe=fs> (last visited November 14, 2025).

In July 2025, the Interim City Manager¹¹² stated “[h]istorically, the [City] has ignored their responsibilities to maintain their assets... (the current City Hall...) is in bad shape. The high school should have been torn down years ago. The old [City] Hall was damaged in Hurricane Michael..., and it’s still not close to being rehabbed. The water and sewer systems are falling apart. They’ve ignored their responsibility to maintain because their ultimate goal was to be free. Let’s give everything away... Everybody wants a free lunch.”¹¹³

Financial Audit

The City has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA). The City has submitted the audit reports to the Auditor General’s Office in accordance with Section 218.39(1), *Florida Statutes*.¹¹⁴ The most recent financial audit report submitted by the City to the Auditor General is for the 2023-24 fiscal year. It was not timely filed and included four findings.^{115, 116}

Financial Highlights Included in the City’s Audit Report:

- “Total assets and deferred outflows of resources of the City exceeded total liabilities and deferred inflows of resources by \$42,776,517 (net position). Of this amount \$453,720 is unrestricted net position for governmental activities, \$499,554 is unrestricted net position for business-type activities, \$385,664 is restricted net position for governmental activities, \$1,227,047 is restricted net position for business-type activities and \$314,710 is assigned net position for governmental activities.
- Total net position increased by \$2,435,135. Of this amount, an increase of \$1,208,459 is attributable to governmental activities and an increase of \$1,226,676 is attributable to business-type activities.
- As of September 30, 2024, the general fund’s unassigned fund balance is \$1,862,210.
- Governmental activities’ revenues increased to \$7,0600,660, while governmental activities expenses decreased to \$5,852,201. Business-type activities’ revenues increased to \$4,200,082 while business-type activities’ expenses increased to \$2,973,406.”¹¹⁷

¹¹² The Interim City Manager was serving temporarily while the City Commission was searching for a new City Manager. He had previously served as the City Manager.

¹¹³ David Adlerstein, *The world according to Chris Holley*, The Apalachicola Times, July 21, 2025 (on file in Committee Office).

¹¹⁴ Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, *Florida Statutes*. 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* (2018 Revision) as standards for auditing local governmental entities pursuant to Florida law.

¹¹⁵ *City of Apalachicola, Florida, Audited Financial Statements and Independent Auditor’s Report, For the Year Ended September 30, 2024*.

¹¹⁶ Source: The Committee’s database includes, in part, the dates local governmental entities have filed their annual financial audit report.

¹¹⁷ *Management’s Discussion and Analysis, City of Apalachicola, Florida, Audited Financial Statements and Independent Auditor’s Report, For the Year Ended September 30, 2024*, page 5.

Audit Findings

The City's most recent audit report, for the 2023-24 fiscal year, included the following four findings:¹¹⁸

Number	Finding
2024-001 <i>Material Weakness</i> ¹¹⁹	Segregation of Duties: Due to the limited number of staff, the City lacks proper segregation of duties in various areas. Currently, the City Manager has the authority to issue and approve cash disbursements, reconcile cash accounts, input and edit accounting journal entries, and prepare financial information. This concentration of responsibilities increases the risk of error and unauthorized transactions. The absence of segregation creates opportunities for error and allows unauthorized transactions to go undetected for extended periods. The auditors recommend that the City implement segregation of duties wherever feasible and establish mitigating controls for instances where separation is not possible.
2024-002 <i>Material Weakness</i>	Financial Statements not Prepared in Accordance with Generally Accepted Accounting Principles (GAAP): The City is required to provide materially accurate financial information; however, adjustments were necessary for the financial statements to comply with GAAP. The auditors identified several journal entries that the City subsequently reviewed and approved. While the auditors acknowledge that some adjustments may be unavoidable, they recommend that the accounting staff continue to focus on minimizing the number of audit adjustments needed in the future audits.
2024-003 <i>Material Weakness</i>	Property and Equipment Records and Disposal Procedures: A documented physical inventory and inspection of property and equipment should be conducted at least annually as required by the state of Florida per Rule 691-73. Additionally, a reconciliation should be performed between current year additions on the property listing and the capital outlay accounts. The inventory log should be reviewed for errors, and a tagging system should be implemented throughout the City to effectively track the City's assets. The records for property and equipment were incomplete, failing to meet the requirements established by the state of Florida. Additionally, property and equipment are not being properly tagged. An inventory was not conducted for the year ending September 30, 2024, which could be reconciled with the general fixed asset records presented in the audit report. Failing to properly track assets may lead to undetected errors in property and equipment records, increasing the risk of theft or misplacement without the City's awareness. There is also a potential for overstating property and equipment values for assets not disposed of timely. Furthermore, the City may lack necessary documentation related to funding sources, making it difficult to verify asset disposal as required by grantors when applicable. The auditors recommend that the City enhance its procedures for tracking assets, including the proper disposal of assets, in accordance with the requirements set forth in Florida Rule 691-73.
2024-004	Late Submission of Data Collection Form: In accordance with Uniform Guidance 2 CFR 200.512(a), the audit package and data collection form shall be submitted 30 days after receipt of the auditor's report, or 9 months after the end of the fiscal year, whichever comes first. The data collection form in connection with the audit was not filed within 9 months after the fiscal year end. Management did not have procedures in place to ensure the timely filing of the data collection form to the Federal Audit Clearinghouse. Late filing will result in noncompliance with timely submission of financial information to the grantor agencies. The auditors recommend that management evaluate the current procedures in place to ensure the timely filing of the data collection form to the Federal Audit Clearinghouse.

Repeat Audit Findings

All of the audit findings noted above have been reported in three or more successive audit reports.¹²⁰ Any audit findings that are included in at least three successive audit reports are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee's involvement. The first step authorized in the process for municipalities is for the Committee to send a letter to the Mayor to request an updated status of the municipality's effort to correct these repeat audit findings. The Committee has not yet received the notification from the

¹¹⁸ *Schedule of Findings and Questioned Costs, Federal Award Programs, and Schedule of Findings, City of Apalachicola, Florida, Audited Financial Statements and Independent Auditor's Report, For the Year Ended September 30, 2024*, pages 47 and 57-58, respectively.

¹¹⁹ A material weakness is "a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis." American Institute of Certified Public Accountants (AICPA). (2021). *U.S. Auditing Standards – AICPA (Clarified)*, AU-C Section 265.07. Available at: <https://us.aicpa.org/content/dam/aicpa/research/standards/auditatest/downloadabledocuments/au-c-00265.pdf> (last visited November 14, 2025).

¹²⁰ *Independent Auditor's Management Letter, City of Apalachicola, Florida, Audited Financial Statements and Independent Auditor's Report, For the Year Ended September 30, 2024*, page 54.

Auditor General related to the repeat findings reported in the 2023-24 audit report because the audit report was filed late; however, the Auditor General is expected to send the Committee a second notification that lists the repeat findings for late-filed audit reports.

Based on the prior audit report, for the 2022-23 fiscal year, the Committee was notified that three of the above-noted findings had been reported in three or more successive audit reports.¹²¹ The Committee requested a status update for one of these findings, Finding 2024-003, *Property and Equipment Records and Disposal Procedures*. This finding, often referred to as a Fixed Assets finding, has been reported in eight successive audit reports. The Committee began requesting a written status update once the finding was included in the third successive audit report. Based on a review of the City's written response to the Committee, it does not appear that the City has demonstrated its commitment to correcting this repeat audit finding.

Fiscal Year Audit Report	City's Response to Audit Finding Related to Fixed Assets
2023-24	N/A The Committee is expected to request a written status update after receiving notification from the Auditor General.
2022-23	The City is working with all departments to provide accurate property and equipment records as it is aware of the urgency to correct this finding. Property records will be compared to the insurance property schedule to check for accuracy.
2021-22	Because of the past staffing issues relating to the City's Finance Department, the audit finding relating to property and equipment records has not been resolved at this time. However, the City has purchased a new accounting software which includes a property management module. The City understands the urgency to correct this audit finding. The City's new Finance Director will work diligently in the upcoming fiscal year to update all property records and properly tag all equipment as required.
2020-21	The City is currently in the process of seeking quotes from asset management firms who can assist the City in this task, as the City is aware that this finding has been ongoing and the City wants to get a resolution to the issue.
2019-20	The City has started the process of a complete fixed asset policy and procedures manual over fixed assets. The City is using the Florida Statutes and administrative code procedures as the bases for fixed asset records and policies. The City has updated the policies and procedures manual for fixed assets, and the outside auditor has approved the process. The City is also in the process of completing a full inventory for Fiscal Year 2022. That process will be completed this summer. The City has had a lot of turnover in the Finance Department in the last two years so the finding may return in FY 2021 but will be corrected for FY 2022.
2018-19	The City has started the process of a complete fixed asset policy and procedures manual over fixed assets... The City is using the Florida Statutes and administrative code procedures as the basis of its fixed asset records and policies. The City has updated the policies and procedures manual for fixed assets, and the City's outside auditor has approved the process. The comment will not be in the 2020 annual audit.
2017-18	N/A This was the second year the audit finding was reported. The Committee is not notified by the Auditor General until the finding occurs in three successive audit reports.
2016-17	N/A This was the first year the audit finding was reported. The Committee is not notified by the Auditor General until the finding occurs in three successive audit reports.

Committee staff acknowledge that the City has challenges due to its small size and staffing issues; however, the expectation is that after eight years, this finding should have been addressed. Because of the City's small size, the Committee does not routinely request a written status update for the other two findings reported in the 2022-23 audit report that were also reported in the 2023-24 audit report. These findings related to the City's lack of segregation of duties and issues with the preparation of the City's financial statements. Smaller municipalities often do not have the resources to hire additional staff or more experienced staff to address these two types of findings; however, the auditors are required by auditing standards to report such findings. Periodically, the Committee requests a written status update

¹²¹ The findings had a different number in the prior audit report, for 2022-23 fiscal year; however, they are otherwise identical to findings 2024-001, 2024-002, and 2024-003.

regarding these findings to ensure that smaller entities are taking steps, using existing resources, to mitigate material misstatements and potential fraud.

Delinquent Financial Reports

For most of the past ten years, the City has failed to timely submit its required financial reports.^{122, 123} As shown in the following table, the City submitted its audit report to the Auditor General by the statutory due date three times during this period.¹²⁴ During the remaining years, the City submitted the audit report from 43 to 264 days late. Although the City timely filed its audit report for both the 2017-18 and 2018-19 fiscal years, the City submitted its other required financial report that is enforced by the Committee late.¹²⁵ Therefore, the City has complied with these financial reporting requirements only one time in the past ten years.

City of Apalachicola – Timeliness of Audit Report Submissions				
	Fiscal Year	Audit Report Due Date	Audit Report Received Date	Number of Days Late
1	2014-15	6/30/2016	8/12/2016	43
2	2015-16	6/30/2017	6/28/2017	0
3	2016-17	6/30/2018	12/31/2018	184
4	2017-18	6/30/2019	6/28/2019	0 ¹²⁶
5	2018-19	6/30/2020	6/30/2020	0 ¹²⁷
6	2019-20	6/30/2021	11/5/2021	128
7	2020-21	6/30/2022	3/9/2023	252
8	2021-22	6/30/2023	3/20/2024	264
9	2022-23	6/30/2024	11/6/2024	129
10	2023-24	6/30/2025	9/10/2025	72

During certain years the Committee has taken action against the City for its failure to comply with the statutory reporting requirements in Section 218.32(1)(a) and 218.39(1), *Florida Statutes*. If the delinquent reports were not submitted by the effective date set by the Committee, this action involved directing the Department of Revenue and the Department of Financial Services to withhold any state funds that were not pledged for bond debt service that the City would have otherwise been entitled to receive until the City submitted the delinquent financial report(s). However, the City has not lost any state funds based on the Committee's action because the respective delinquent financial reports were submitted prior to the date state funds were to be withheld.

Timely financial reporting is necessary for effective decision-making by the City's governing body and management, as well as to provide transparency and accountability to City residents and others doing business with the City.

¹²² The Committee enforces compliance with Sections 218.32(1) and 218.39(1), *Florida Statutes*, which requires most local governmental entities to submit an annual financial audit report (audit) and an annual financial report (AFR) to the state. The City meets the audit threshold and is required to submit an audit and AFR each year.

¹²³ Source: Committee's database.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Although the audit report was timely filed this year, the City did not submit its Annual Financial Report to the Department of Financial Services until September 23, 2019, which is 85 days after the statutory due date. [Source: Committee's database]

¹²⁷ Although the audit report was timely filed this year, the City did not submit its Annual Financial Report to the Department of Financial Services until August 3, 2020, which is 34 days after the statutory due date. [Source: Committee's database]

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit as defined in Section 11.45(1)(i), *Florida Statutes*, and take steps to avoid duplicating the work efforts of other audits being performed of the City's operations, such as the annual 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 Section 11.45 (2)(j), *Florida Statutes*, 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 report.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the City's governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the City's governing board and management, as well as the citizens living within the boundaries of the City. Alternately, as previously mentioned, 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 Section 218.39(8), *Florida Statutes*, for the Committee's involvement. First, the City 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 Mayor to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the City until the City complies with the law.

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 Apalachicola, the Auditor General, pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Senator Simon are considered.

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 her approved operating budget.

V. Related Issues

None.

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



October 9, 2025

The Honorable Representative Chase Tramont
The Honorable Senator Jason Brodeur
Joint Legislative Auditing Committee
876 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399

Dear Chairs:

Please accept this letter as a formal request for a comprehensive audit of the City of Cape Coral's Building Department by the Joint Legislative Auditing Committee (JLAC). Allegations reveal concerning patterns of potential statutory violations, financial mismanagement, and discriminatory practices that warrant immediate legislative oversight.

In support of these claims, the Cape Coral Construction Industry Association (CCCIA) has provided extensive financial analysis and detailed documentation. The aforementioned has been incorporated in and following this letter and are as follows:

- Dropbox Folder with supporting documentation containing building fund reports, permitting issues and numerous city communications:
https://www.dropbox.com/scl/fo/c5qj4w0eh5agw85h5qieu/AOR_D2iwsH-SHmkFJmGVPew?rlkey=w17t3up6jcna8qvpl522f92h0&st=a7b8jmcx&dl=0
- CCCIA letter outlining specific Areas of Concern
- Detailed Notes

Your immediate attention to this matter is greatly appreciated.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mike Giallombardo", written over a horizontal line.

Mike Giallombardo
Florida House of Representatives
District 79

A handwritten signature in blue ink, appearing to read "Jonathan Martin", written over a horizontal line.

Jonathan Martin
Florida Senate
District 33

Encl.: 2



September 25, 2025

Representative Mike Giallombardo
214 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

Senator Jonathan Martin
315 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Urgent Request for Joint Legislative Auditing Committee Investigation of Cape Coral Building Department Fund Mismanagement

Dear Representative Giallombardo and Senator Martin:

On behalf of the Cape Coral Construction Industry Association (CCCIA) and the hundreds of licensed contractors, builders, and developers we represent, I am writing to formally request your assistance in securing a comprehensive audit of the City of Cape Coral's Building Department by the Joint Legislative Auditing Committee (JLAC).

Our extensive financial analysis and documentation reveal concerning patterns of potential statutory violations, financial mismanagement, and discriminatory practices that warrant immediate legislative oversight. The issues outlined below not only impact on our industry members but also directly affect Cape Coral residents through increased housing costs and delayed development.

Critical Areas of Concern

1. Apparent Violation of Florida Statute 553.80

Our financial analysis conducted by Chris Moran, CPA, indicates the City has potentially violated Florida Statute 553.80, which mandates that building permit fees must be reasonable and may only fund the cost of operating the building department. Key findings include:

- In 2014, the Building Department generated \$4,020,000 in revenue with direct costs of \$2,688,000 (67% of revenue)
- The Building Fund has operated with significant surpluses that appear to be improperly transferred to other city departments
- The "Interfund Service Fee" has grown dramatically from \$572,000 in FY 2014 to a peak of \$1,879,000 in FY 2020
- The Building Fund is now operating in deficit for FY 2025 despite years of surplus collection

2. Questionable Interdepartmental Transfers

We have documented numerous instances of building permit fees being diverted to seemingly unrelated expenses:

- \$264,910 budgeted in FY 2023 for "Building Fire Expense" despite no fire review requirements for single-family homes
- Fire Department representatives have stated they do not receive the fire plan review and inspection fees collected through permitting

- The FY 2023 fire budget was amended to \$419,930 to cover hurricane-related emergency pay, an inappropriate use of building permit funds

3. Systemic Operational Issues Affecting Industry and Consumers

Our members report consistent patterns of problematic practices:

- Arbitrary and inconsistent project valuations resulting in inflated permit fees
- Discriminatory treatment of contractors utilizing state-authorized private providers
- Preferential treatment creating an uneven playing field among builders
- Confusing, inconsistent, and burdensome permitting processes causing costly delays
- Aggressive enforcement tactics that undermine trust between the industry and City officials

Impact on Cape Coral Community

These practices directly harm Cape Coral residents by:

- Increasing housing costs during an affordability crisis
- Delaying construction timelines and housing availability
- Creating unnecessary regulatory burdens that stifle economic growth
- Undermining the transparent and fair application of building codes

Request for Action

We respectfully request that you initiate a formal JLAC investigation focusing on:

1. A forensic accounting audit of the Building Department Fund from 2014 to present
2. Review of all interdepartmental transfers and "service fees" charged to the Building Fund
3. Examination of Compliance with Florida Statute 553.80
4. Assessment of operational practices for consistency and statutory compliance

Our Building Industry Oversight Committee has compiled extensive documentation to support this request, which we are prepared to provide for the JLAC. Given the current deficit status of the Building Fund and ongoing impact on our community, we emphasize that time is of the essence.

The construction industry is vital to Cape Coral's economic growth and prosperity. A transparent, accountable, and statutorily compliant building department is essential for continued development and public trust.

Thank you for your leadership and commitment to good governance. We look forward to your response and stand ready to provide any additional information needed to facilitate this important investigation.

Respectfully,



Keith Quackenbush, 2025 President
Cape Coral Construction Industry Association

Encl. CCCIA Summary Notes Supporting Audit Request

Notes for Audit:

- Review of discrepancies/changes in method for Interfund Svc payment versus transfer out:
 - o The Interfund Service Fee – in FY 2014 it totaled \$572k and peaked at \$1,879k in FY 2020 (I don't have year-end to confirm). Today that budget is just under \$2.5 MIL and for the 2025-26 FY it will be budgeted at over \$3 MIL.
 - o In 2019-2020 fiscal year we were charged \$156,000 per month – 1.88 Mil Annually. Then in 2020-2021 fiscal year it dropped to \$114,000 per month – 1.38 Mil Annually. In prior years it was lower. We have continually asked for a breakdown of the charges included in this fee and were told to refer to the budget documents on the website or CAFR.
 - o When the BIOC asked about the dramatic increase in the fund transfer, we were told that the City's overhead that was applied to 7 funds previously, was redistributed to 5 funds, when the City eliminated the Golf Course and Sun Splash, regardless of the fact that the building fund can only pay for costs associated with enforcing the building code.
 - o In 2009 the City implemented new higher permit fees, determined by a Fee Study done by Maximus. The Fee Study included the costs all staff in the building division, time and motion for completing all tasks, as well as overhead for the various departments (HR, CM, CA, IT, etc.) related to processing permit applications. These costs were included in the new permit fee calculation so that when the city collects the permit fees they are then collecting the costs for these other departments. The Interfund Service Payment is the method the city uses to transfer the fees collected to those various departments. Shouldn't the amount being transferred be equal to the dollar amount that was used to calculate the cost for the permit fee VS what the City does which is using the actual costs for those departments and billing the Building Fund a share of those costs?
 - o Then, in the 2019-2020 budget we started getting charged a line item for the City Clerk. This has always been part of the Interservice Fund Transfer (per the City). They pulled it out and our fee still went up. Also, with the City no longer doing licensing, why do we still pay for a City Clerk in the building fund budget? What does the \$70,209 account for?
- Permit Fees:
 - o In 2005 when a fee study was done, Maximus did a time and motion study of all services, crossed to salaries and allocated costs for the city manager, city clerk, city attorney, HR, etc. This was calculated into the fee using the ICC table. The interfund service fee includes costs for overhead for the CM, CA, City Clerk and HR as well as other items. According to the City, those "overhead costs" are then charged to Enterprise funds (including the Building Fee fund). In 2021 the building department's portion of the interfund was 1.3 Mil, it is now up to 3.3 Mil. We were also told that 7 funds used to share these costs, but when the City eliminated Sun Splash and the Golf Course, they redistributed these costs amongst the 5 remaining funds, without calculating the actual costs related to enforcing the building code per State Statute. We have been told to look at the City's Annual Budget documents for the complete breakdown – Pages 434-441.
https://www.capecoral.gov/departments/financial_services/office_of_management_and_budget.php
 - o The building fund in 2022 was still carrying reserves over what was allowed by State Statute, so Council approved a permit fee reduction (all fees) of 25% in June 2020 to comply with HB477.
 - o Currently the fee reduction is in place, but due to the fund balance, Staff has included in the 2025-2026 budget that the reduction be removed. They are also looking to increase

fees higher based on the current ICC table – the BIOC has reminded them that a study has to be done to do that and a utilization report (required by Statute – which is not done, nor posted on their website).

- \$ 10 Mil transfer out for future Building Capital project:
 - o \$10m was transferred out of the Building Fund during FY 2022 (entered as a monthly xfer of \$833,333). This was done without discussion with the Building Industry Oversight Committee
 - o In Jan 2024 a building was purchased for the purpose of moving the Development Services Division. This building will have to be remodeled, and the parking requirements do not support the use for this department so additional land will be required for parking and/or a parking structure. The building capital fund was charged their proportionate share of the purchase costs for the building of \$908,726, leaving a balance of over \$9 MIL in the fund.
 - o An option to leave the building division in their location was presented to the City Manager by the DS Director that would costs \$588,000 to remodel their existing space to add more workstations; adds the ability to bring the inspectors and code division back to the building department; eliminates the rent for a trailer at \$63,000 annually. The City Manager rejected the plan.
- 2019: Need to get accounting for the computer software charge to Building. In May FY 2019, the fund was charged \$2,314,000 for Computer Software and we had asked for a complete accounting on the Tyler Software/EnerGov system and how the costs were distributed to each department. We received a copy of the proposal that was presented to City Council with no clear delineation of the costs distribution to the department citywide. This also applied to the maintenance fee we were charged for \$240,573 in 2020-2021 fiscal year – what is the total maintenance fee to the City and how is it being allocated to the departments. In addition, we paid for maintenance on a system that was not up and running for the industry to use.
 - o The City has contracted with outside agencies for services related to EnerGov (Plant Moral and others). We want a review of their contract and how the costs are being allocated since it is not only the Building Dept. that has had major issues with the implementation of the software.
- In 2019-2020 fiscal year we were charged \$67,000+ for a vehicle. We thought it was for building inspectors. In a recent meeting the building official happened to comment that it was for a truck for Fire! Why are we paying for this?
- In 2023 we had Chris Moran, CPA request an audit the building fund. The city stated they wanted to perform the audit with their internal audit office which is independent of the City Manager and reports to Council. We agreed, however the outcome clearly showed that it was not a true forensic accounting audit (report is included in backup).
- In FY 2023 we are budgeted for \$264,910 for Building Fire Expense and they cannot tell us what this is for. There is no fire review of single-family homes. On commercial projects, contractors pay a fire plan review and fire inspection fees – collected through permitting. Where does that money go? The Fire Dept. says they do not get it.
 - o In a previous meeting with the Fire Dept., they wanted an increase in fees because they said they were not receiving any monies for their services on permits; they were surprised when we told them that we pay them already.
 - o The FY 2023 budget for Fire was amended to \$419,930 to cover the costs of Emergency Pay due to the hurricane. In a recent meeting with the city the Fire Dept. rep stated that this was all the OT related to the hurricane. While we understand that Fire had a lot of

work, a lot of their time was spent on search and rescue which has nothing to do with Building Code. Is the Emergency Pay a valid charge to the Building Dept. due to the hurricane?

- Also, due to the Hurricanes, the City Council waived all permit fees through January/February for emergency permits and repair/remodel permits due to Hurricane Ian damage. With no revenue coming in, we are still paying for all of the costs associated with those permits. Should those costs then be reimbursed from the reserves of the General Fund or billed to the General Fund so not to adversely affect the Building Fund? They also charged ALL overtime, including Fire to the building fund after Hurricane Ian, even though some of that work was not code related. We have asked about reimbursements from the State and Federal funds they received and were told they were coming, but still nothing.
- In 2024 the city sent employees to Sarasota County to help them after the hurricanes. The costs for this were to be reimbursed to our building fund. To date, the reimbursement has not occurred.
- Due to FEMA regulations and the hurricanes, the city now has hired 2 Floodplain Managers. In addition, they purchased software called Forerunner. All of these costs are being billed to the building fund even though scope of work is not just building code related and the software is a tool for all citizens to use related to floor information. They are also using outside services that the building fund is paying for to meet the requirements of FEMA.
- The new reports we have been given have a new column "Current Encumbrances". Need documentation and accounting for this.
- In 2024-25, the building fund lost money each month, while they continue to use outside services, specifically a company called CAP (this is the company the new Building Official use to work for). We have requested competitive pricing from other companies. While the City Manager has placed a freeze on hiring, they still use outside services.
 - o We have been told by inspectors that the BO has one CAP employee there each day, even when City staff can complete the workload. We have been told that they are cutting these services back but still need them to meet review timelines.
- 2025-26 Proposed Budget: Due to the deficit in the Building Fund, staff has proposed in the next fiscal year budget, taking \$4 MIL plus from the Capital Project fund to balance the budget (make up the shortfall), in addition to removing the 25% fee reduction that was put in place in 2020.
- Recently city staff worked on implanting mobility fees in lieu of road impact fees. The original ordinance would have extraordinary circumstance as the fees were jumping over 200%. After 3-4 reiterations of the ordinance fee schedule, City Council voted on 9/25/25 to implement the 12.5% increase allowed by State Statute, over 4 years, however they voted using the original ordinance that referenced extraordinary circumstances. The mayor wanted them to bring back a "clean" ordinance, but they were told by the City Attorney that it was not required because the reference to "extraordinary circumstance" did not apply since the new fee chart met State Statute. The ordinance then was approved unanimously.

Analysis of Fund Reports by Chris Moran, CPA 2014-2023:

As you requested, I have analyzed the financial reports that the Cape Coral Construction Industry Association has received from the City of Cape Coral since 2014. I had done a previous analysis of the City's compliance with Florida Statutes 553.8 back in 2008. At that time the City was not able to document compliance with the statute. At the conclusion of that finding the City took certain steps to better document compliance with the statutes, including setting up a special revenue fund in the city's books to account for the building department fees and expenses.

To the best of my knowledge at that point in time the CCCIA felt like the city had made the effort to comply with the Florida Statutes by establishing a standalone special revenue fund.

In an overview of the financial reporting, prior to 2014, and during 2014, the city was following standard accounting procedure for the methodology that they had adopted. They recorded permit revenue, direct expenses, and a transfer to the general fund for overhead. In 2014 Revenue was \$4,020,000, building department costs were \$2,688,000 (67% of revenue) and transfer out was \$572,000 (14% of Revenue) and the opening fund balance at the start of the year 2014 was \$152,000.

In 2015 they used the same methodology, with the same basic percentages of direct expenses and overhead transferred. In 2016 revenue increased to \$6,447,000, an increase of over 30%, and the direct expenses and overhead were still approximately the same percentages of total revenue, but at the end of 2016, the fund balance in the building department fund was now \$4,464,000

The same methodology was used during 2017, and 2018 with the same basic percentages of direct expenses 60% and transfers out 12%. However, the revenue was increasing dramatically during those two years, and the ending fund balance at the end of 2018 was now \$9,600,000. So, in five years the fund balance had gone from \$152,000 to \$9,600,000.

Things changed in 2019, direct expenses were still around 60% of revenue, but the transfers increased from an average of 12% to over 36% and included as transfer out of \$2,314,000 for a computer system. In 2020 the city completely changed its methodology to account for building department fees. Direct expenses increased to over 84% of revenue but transfers were reduced to \$22,000. So, the city moved the transfer out as a direct expense and called it interfund SVC payment and stopped recording it as a transfer out. but the total costs went from 60% direct and 12% indirect for a combined cost of 72% to now 84% combined expenses.

2021 followed the same pattern as 2020 where the city was not really doing the overhead transfer out but instead including it as a direct expense of the department. At the end of 2021, the fund balance had grown to \$14,051,000. The growth in revenue was still considerable.

In 2022, once again things changed significantly total direct expenses including the \$1,523,000 line item "interfund Svc payment" was \$9,334,000 or 83% of revenue but the city has also transferred out \$10,000,000 to Bldg. Cap project fund.

In Overview, the city made changes in 2008 to better document compliance with the FS 553.80. They continued using the same methodology, along with the same basic percentages of expenses to revenues. The City had direct expenses charged to the "Building Fund" and made a transfer out to the general fund for administrative overhead. This methodology along with the actual percentages of expenses and transfers to total revenue appear reasonable. There were a few changes that started in 2017, basically the city started transferring out money for capital outlay.

The standard methodology changed significantly in 2019. In 2019, the City transferred out \$2,314,549 for a new computer system.

In 2020, the methodology changed again. The interfund transfer to the general fund, was included as a direct expense in the building fund, Two new expenses category was set up, titled "Building City Clerk" and Building Fire Expense.

2021 was basically the same type of expenses as 2020. In 2022, once again things changed significantly. A new expense category was established "Building Customer Service" total direct expenses are now averaging over 80% of revenue. Compared to 52% back in 2014. But the most significant new item was the transfer of \$10,000,000 to a Capital Project Fund. The proceeds transferred out, have not been used.

At this point in time, the city cannot document compliance with the Florida Statute. Specifically, the following:

(7)(a) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances must be carried forward to future years for allowable activities or must be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years.

They have consistently provided a schedule of fees that have exceeded the total estimated annual costs of allowable activities.

The local government may not carry forward an amount exceeding the average of its operating budget for enforcing the building code for the previous 4 fiscal years. The City has not been in compliance with this section since 2015. So, they were in violation for fiscal year, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023. The actual restricted fund balance as the end of 2022 was over \$16,200,000.

The Restricted fund balance for the building fund does not matter that the city transferred out \$10,000,000. The overall fund balance (restricted to be used to enforce the building code per FS) is \$14,051,000 plus the profit from 2022 of \$2,153,000 for a balance of over \$16,200,00. Transferring out \$10,000,000 into a capital project fund to be held for some building to be built in the future at some yet to be determined date does not suddenly release the restriction of the original source of the funds.

So even with the increase in total costs in relation to total revenue, the fund still generated a profit of over \$2,153,000 in 2022. And the city is sitting on a restricted fund balance of over \$16,204,000. Clearly the City is setting fees at a rate that is far exceeding the total estimated costs of allowable activities and is leading to increases in costs that were not being incurred in previous years. You still have the following issues to deal with. A detailed explanation of how the transfer out of \$2,314, 549 in 2019 needs to be obtained to determine how it was used to enforce the building code. The overall increases in direct expenses, and allocated overhead, need to be documented to ensure compliance.

I am not sure why the city is not able to provide the quality of services your organization has outlined to the city manager. Just do not let them use the transfer out, as an excuse to raise revenue, or to cut expenses. The overall increase in direct expenses from an historical standpoint of 72-75% to what is now over 83% needs to be examined in more detail. What new expenses is the building department paying for since the 2019 year, and why? As an outsider looking in, it appears that city has changed their entire approach to allocating expenses to the enforcement of the building code in 2019, and perhaps it has to do more with the ever-increasing fund balance in the fund. In only eight years the fund balance has gone from \$152,000 to over \$16,204,000

- 258 pages total
- 176 emails in total
- 4 emails specifically addressing permitting/inspection issues (expired permits, review inconsistencies, delays, and inspection problems).

Key Issues Identified

1. Expired Permits & Enforcement Threats

- Multiple notices reminded contractors that permits expire after 180 days without work or if work is suspended, according to the Florida Building Code.
- Contractors expressed concern about harsh enforcement measures: stop-work orders, violations, fines up to \$1,000/day, and potential license suspension or revocation.
- Confusion exists about permits incorrectly flagged as “expiring” even when Certificates of Occupancy (COs) have already been issued.

2. Reviewer Inconsistency & Subjectivity

- Builders complained of inconsistent and arbitrary requirements from permit reviewers, particularly in the electrical review process.
- Example: a reviewer unexpectedly demanded “total connected load” documentation for pool equipment, though this was never previously required. Contractors felt requirements varied by reviewer whim, creating inefficiency and confusion.

3. Delays Holding Up Projects & Closings

- A specific HVAC permit was rejected due to a new ordinance (PUE requirements) even though the plans were approved under prior rules. This delayed issuance of a CO and prevented scheduled homeowner move-ins.
- Pool builders and homebuilders referenced ongoing delays in reviews, approvals, and corrections, forcing repeated resubmissions and reliance on escalations to city staff for resolution.
- Contractors reported difficulty accessing accurate information about expired permits or compliance status (e.g., confusion on how to verify expired permits in the system).
- Builders asked for system improvements, like automatic removal of permits from the “expiring” list once a CO is issued, to reduce miscommunication.

4. Industry Frustration with City Responsiveness

- Some builders questioned whether associations like CCCIA could still advocate for them when encountering uncooperative permit reviewers.
- The tone of several emails reflects frustration over wasted time, administrative burden, and lack of consistent communication from the city permitting division.

Overall Theme

The permitting process in Cape Coral is described by industry professionals as **confusing, inconsistent, and burdensome**. Problems include arbitrary reviewer requests, delays caused by changing rules, mislabeling of permits in the system, and aggressive enforcement threats. These issues are impacting on contractors’ ability to close permits, complete projects, and meet client commitments, undermining trust between the building industry and the City’s permitting department.

STAFF ANALYSIS

Date: November 15, 2025

Subject: Request for an Audit of the City of Cape Coral's Building Department

Analyst Coordinator

White ^{DW} DuBose ^{KD}

I. Summary

The Joint Legislative Auditing Committee (Committee) has received a request from Representative Mike Giallombardo and Senator Jonathan Martin to have the Committee direct the Auditor General to conduct an operational audit of the City of Cape Coral's Building Department.

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), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, 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), *Florida Statutes*, 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 audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Audit of the City of Cape Coral's Building Department

Representative Giallombardo and Senator Martin have requested the Committee to direct an audit of the City of Cape Coral (City)'s Building Department and state that: (1) "[a]llegations reveal concerning patterns of potential statutory violations, financial mismanagement, and discriminatory practices that

warrant immediate legislative oversight,” and (2) “[i]n support of these claims, the Cape Coral Construction Industry Association (CCCCIA) has provided extensive financial analysis and detailed documentation.”¹ In addition, there is concern that the City is “re-reviewing private provider permits and thinks doing so is in violation of state statutes.”²

Background

The City of Cape Coral was incorporated in 1970 by Chapter 70-623, *Laws of Florida*.³ The City is located in Lee County and has a population of 220,236.⁴

The City operates under a Council-Manager form of government and is governed by an elected City Council consisting of eight members, including an elected Mayor, who are elected at large on a nonpartisan basis from districts.⁵ The Mayor and Council members serve a term of four years and are limited to two consecutive terms.⁶ The City Council is responsible for all policy-making functions of the City and retains the services of a City Attorney, a City Auditor, and a City Manager. The City Manager is responsible for the administration of the City.⁷ The City provides a comprehensive range of municipal services, including general government, public safety (police, fire, building), public works, community development, parks and recreation, planning and zoning, utilities (water, wastewater, reclaimed water services, stormwater utility services), transportation, education, and economic development.⁸

The City’s Development Services Department (Department) is “responsible for promoting the orderly growth and environment of the City through the planning and enforcement of codes [, which are] adopted to promote the health, safety, and welfare of the residents and visitors of the City.”⁹ In addition to Administration,¹⁰ the Department is staffed by 185 FTE positions and 4 contracted employees and has the following five divisions:^{11, 12}

- (1) Code Compliance - responsible for enforcing codes for residential and commercial properties, as well as occupational license ordinance violations:¹³

¹ Letter from Representative Mike Giallombardo and Senator Jonathan Martin to Chair Chase Tramont and Vice Chair Jason Brodeur, Joint Legislative Auditing Committee, dated October 9, 2025 (on file in Committee Office).

² Email received October 27, 2025, from staff in Representative Giallombardo’s office (on file in Committee Office).

³ Chapter 70-623, *Laws of Florida*.

⁴ University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population by County and City 2024 (Table 1 only)*, page 11, available at: <https://edr.state.fl.us/Content/population-demographics/data/Estimates2024.pdf> (last visited November 14, 2025).

⁵ *Letter of Transmittal and Note I.1. to the Financial Statements, Annual Comprehensive Financial Report, City of Cape Coral, Florida, For the Fiscal Year Ended September 30, 2024*, pages II and 38, available at: https://flauditor.gov/pages/mun_efile%20rpts/2024%20cape%20coral.pdf (last visited November 15, 2025).

⁶ City of Cape Coral’s website, available at: https://www.capecoral.gov/government/city_government/city_council/index.php (last visited November 14, 2025).

⁷ See *supra* note 5.

⁸ *Id.*

⁹ City of Cape Coral’s website, *Development Services* webpage, available at: https://www.capecoral.gov/department/community_development/index.php (last visited November 14, 2025).

¹⁰ Comprised of the Development Services Director, the Deputy Development Services Director, and three additional staff.

¹¹ *Monthly Building Activity Report, September 2025*, page 10; available on the City of Cape Coral’s website at: https://www.capecoral.gov/department/community_development/building_division/building_and_permit_reports.php#outer-3127 (last visited November 14, 2025).

¹² See *supra* note 9.

¹³ *Id.*

- Includes: (1) accepting and responding to code complaints and holding code compliance hearings; (2) addressing the maintenance of abandoned and vacant property; (3) offering citizens a lien reduction program; (4) collecting a rental property registration form and a one-time fee for every rental property located within the City; and (5) tracking unlicensed contractors.¹⁴
- (2) Permitting Services - responsible for the processing and issuance of all building permits for the City:¹⁵
- The City requires permits and inspections for safe building and land use, quality site planning, and coordinated development.¹⁶
- (3) Building - responsible for plan reviews, inspections, and certificates of occupancy for all building construction in the City:¹⁷
- Staff conduct plan reviews and inspections for structures throughout the City to ensure compliance with federal, state, and local laws, building codes, and floodplain management regulations.¹⁸
 - Codes Enforced by the Building Division are: (1) Cape Coral Code of Ordinances; (2) Cape Coral Engineering Design Standards; (3) Cape Coral Land Development Code (LDC); (4) Florida Statutes; (5) 2023 (8th Edition) Florida Building Codes; (6) 2027 (6th Edition) Florida Building Codes (effective for permits with application dates between December 31, 2017, and December 30, 2020); (7) Federal Floodplain Management Ordinance (Article 9 of the LDC); and (8) 2017 National Electric Code. The City is in a wind-borne debris region with a wind speed of 160 mph for residential, commercial, and other structures, which may be 170 mph, as referenced in Chapter 16 of the Florida Building Code.¹⁹
- (4) City Planning - Responsible for current planning and development review, long-range planning, environmental, Federal, and State grant management, Geographic Information System, and special projects:²⁰
- Comprised of three sections: (1) Current Planning, which focuses on new development in the City; (2) Comprehensive Planning, which oversees the long-term goals, objectives, and programs of the City; and (3) Housing and Grants, which interacts with the administration of State and Federal grants.²¹
 - “A central responsibility of the Planning Division is to implement the City’s Comprehensive Plan, as well as the Land Use and Development Regulations. The Planning Division is involved with a wide range of activities ranging from processing applications for development projects to conducting complex policy and research studies for the City.”²²

¹⁴ City of Cape Coral’s website, *Code Compliance* webpage, available at: https://www.capecoral.gov/departments/community_development/code_compliance_division/index.php (last visited November 14, 2025).

¹⁵ See *supra* note 9.

¹⁶ City of Cape Coral’s website, *Permitting Services Division* webpage, available at: https://www.capecoral.gov/departments/community_development/customer_service-permitting/index.php (last visited November 14, 2025).

¹⁷ See *supra* note 9.

¹⁸ City of Cape Coral’s website, *Building Division* webpage, available at: https://www.capecoral.gov/departments/community_development/building_division/index.php (last visited November 14, 2025).

¹⁹ *Id.*

²⁰ See *supra* note 9.

²¹ City of Cape Coral’s website, *City Planning Division* webpage, available at: https://www.capecoral.gov/departments/community_development/city_planning_division/index.php (last visited November 14, 2025).

²² *Id.*

- (5) Land Development - responsible for plan review, permitting, inspections, and certificates of completion for all commercial and residential land development projects and subdivision plats:²³
- Issues construction approvals and permits for all commercial land development activities in the City, except permitting for single-family homes and duplexes (issued directly through the Permitting Services Division).²⁴
 - Staff, during construction, assures compliance with the approved plans prior to issuing a Certificate of Completion.²⁵
 - Processes the following permit/plan types: (1) parking lot (reseal/restripe/remove/replace); (2) relocation of residential storm drain; (3) full demolition (residential and commercial); (4) underground fire line/dry standpipe; (5) land clearing and fill (commercial only); (6) spot dredge; (7) utility services relocation; (8) backflow prevention; (9) commercial driveway (ROW improvements); (10) site development plans (full and limited); (11) site improvement phase – misc.; (12) pre-application meeting; (13) preliminary subdivision plan; (14) engineering design standards deviation; and (15) PLAT.²⁶

Pursuant to Section 553.80(7)(a), *Florida Statutes*, a municipality may charge reasonable fees as set forth in a schedule of fees adopted by its governing body for the issuance of a building permit, and such fees shall be used solely for carrying out the municipality's responsibilities in enforcing the Building Code. The municipality is required to post all building permit and inspection fee schedules on its website.²⁷ Section 553.80(7)(a)1., *Florida Statutes*, states that "enforcing the Florida Building Code:" (1) includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction; and (2) may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

Section 553.80(7)(a), *Florida Statutes*, further provides that, when providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances must be carried forward to future years for allowable activities or must be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget, not including reserve amounts, for enforcing the Building Code for the previous four fiscal years. As required by Section 553.80(7)(a)2., *Florida Statutes*, a local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees, to upgrade technology hardware and software systems to enhance service delivery, to pay for the construction of a building or structure that houses a local government's building code enforcement agency, or for training programs for building officials, inspectors, or plans examiners associated with the enforcement of the Florida Building Code. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than four consecutive years.

²³ See *supra* note 9.

²⁴ City of Cape Coral's website, *Land Development Division* webpage, available at: https://www.capecoral.gov/department/community_development/land_development_division/index.php (last visited November 14, 2025).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 166.222(2), *Florida Statutes*.

In 2002, Section 553.791, *Florida Statutes*, was created to allow property owners and contractors to hire licensed building code officials, engineers, and architects, referred to as private providers,²⁸ to review building plans, perform building inspections, and prepare certificates of completion.²⁹ Private providers and their duly authorized representatives are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's or representative's license.³⁰ Pursuant to Section 553.791(2)(b), *Florida Statutes*, if an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department for not having to perform the services and reduce the building permit fees accordingly; in addition, a local government may not charge a fee for building inspections when an owner or contractor uses a private provider but may charge a "reasonable administrative fee." A "reasonable administrative fee" must be based on the cost that is actually incurred by the local government, including the labor cost of the personnel providing the service, or the cost attributable to the local government for the clerical and supervisory assistance required, or both.³¹

Section 553.791(17)(a) and (b), *Florida Statutes*, provides that a local enforcement agency, local building official, or local government: (a) may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by Section 553.791, *Florida Statutes* and (b) may establish, for private providers, private provider firms, and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure and insurance requirements set forth in Section 553.791, *Florida Statutes*. The City has established a registration process and requires private providers to complete and submit a one-time registration to the Permitting Services Division before commencing work, as well as keeping the registration records current. The City's website includes documents required to be submitted for registration, for submission of building permit applications, during inspections, and after inspections and before Certificates of Occupancy/Certificates of Completion.³²

Concerns

As stated previously, "[a]llegations reveal concerning patterns of potential statutory violations, financial mismanagement, and discriminatory practices that warrant immediate legislative oversight."³³ Also, there are concerns that the City is "re-reviewing private provider permits" which may be in violation of

²⁸ Section 553.791(1)(n) and (o), *Florida Statutes*, defines "private provider" and "private provider firm," respectively, as:

(1) "a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468;" and

(2) "a business organization, including a corporation, partnership, business trust, or other legal entity, which offers services under this chapter to the public through licensees who are acting as agents, employees, officers, or partners of the firm. A person who is licensed as a building code administrator under part XII of chapter 468, an engineer under chapter 471, or an architect under chapter 481 may act as a private provider for an agent, employee, or officer of the private provider firm."

²⁹ *Florida House of Representatives Staff Final Bill Analysis for CS/CS/CS/HB 267, Building Regulations*; Sponsor(s): Commerce Committee and Local Administration, Federal Affairs & Special Districts Subcommittee and Regulatory Reform & Economic Development Subcommittee, Esposito and others, dated June 6, 2024, pages 6-7; available at: <https://www.flhouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0267z1.RRS.DOCX&DocumentType=Analysis&BillNumber=267&Session=2024> (last visited November 14, 2025).

³⁰ *Id.*

³¹ Section 553.791(2)(b), *Florida Statutes*.

³² City of Cape Coral's website, Permitting Services Division's *Private Provider Process* webpage, available at: https://www.capecoral.gov/departments/community_development/customer_service-permitting/private_provider.php (last visited November 14, 2025).

³³ See *supra* note 1.

state statutes.³⁴ The concerns relate mostly to the City’s Building and Land Development Divisions, with specific concerns related to the allowability of using Building Fund monies to pay for code compliance officers in the Code Compliance Division.³⁵

Correspondence from the Cape Coral Construction Industry Association (CCCIA) outlines issues that are impacting industry members and directly affecting City residents through increased housing costs and delayed development.³⁶ Correspondence from the CCCIA states that the following issues are considered to be “Critical Areas of Concern.”³⁷

1. Apparent Violations of Section 553.80, *Florida Statutes*
 - Financial analysis conducted by a CPA indicates the City has potentially violated Section 553.80, *Florida Statutes*, which mandates that building permit fees must be reasonable and may only fund the cost of operating the building department.
 - Key findings include: (1) In 2014, the Building Department generated \$4,020,000 in revenue with direct costs of \$2,688,000 (67% of revenue); (2) The Building Fund has operated with significant surpluses that appear to be improperly transferred to other city departments; (3) The “Interfund Service Fee” has grown dramatically from \$572,000 in FY 2014 to a peak of \$1,879,000 in FY 2020; and (4) The Building Fund is now operating in [a] deficit for FY 2025 despite years of surplus collection.
2. Questionable Interdepartmental Transfers
 - Numerous instances of building permit fees being diverted to seemingly unrelated expenses
 - Example: \$264,910 was budgeted in FY 2023 for “Building Fire Expense” despite no fire review requirements for single-family homes. Fire Department representatives have stated they do not receive the fire plan review and inspection fees collected through permitting. The FY 2023 fire budget was amended to \$419,930 to cover hurricane-related emergency pay, an inappropriate use of building permit funds.
3. Systemic Operational Issues Affecting Industry and Customers
 - Consistent patterns of problematic practices such as: (1) arbitrary and inconsistent project valuations resulting in inflated permit fees; (2) discriminatory treatment of contractors utilizing state-authorized private providers; (3) preferential treatment creating an uneven playing field among builders; (4) confusing, inconsistent, and burdensome permitting processes causing costly delays; and (5) aggressive enforcement tactics that undermine trust between the industry and City officials.
4. Impact on Cape Coral Community
 - These practices directly harm City residents by: (1) increasing housing costs during an affordability crisis; (2) delaying construction timelines and housing availability; (3) creating unnecessary regulatory burdens that stifle economic growth; and (4) undermining the transparent and fair application of building costs.

³⁴ See *supra* note 2.

³⁵ Telephone conversations with Representative Giallombardo and staff on November 12, 2025.

³⁶ Letter from CCCIA to Representative Mike Giallombardo and Senator Jonathan Martin, dated September 25, 2025 (on file in Committee Office).

³⁷ *Id.*

Additional information relating to the allegations and concerns includes:

1. Alleged Financial Mismanagement³⁸

- There has been systematic violations of Section 553.80, *Florida Statutes*, by “treating restricted permit-fee revenue as a general slush fund.”
 - From 2019-2022, the Building Fund ballooned to \$16.2 million in excess reserves—far beyond the four-year average cap—then bled red every month in FY 2025.
 - Only after audit threats did the City admit to \$2.1 million in mischarged code-officer salaries, return \$9 million from a raided capital project fund, and repeal the 25% fee discount effective January 1, 2026—all without the required utilization study.
- “Unjustified Overhead” of \$3.3 million per year charged to Building Fund; allegedly there is “[n]o breakdown; includes improper billing for Fire Department vehicles, hurricane OT, and floodplain software unrelated to code enforcement.”³⁹
- A financial analysis conducted by a CPA, as referenced previously, stated, in part, “By 2022...with the fund balance at over \$14,050,000 the City transferred out \$10,000,000 with no explanation how that money was used to enforce the building code.”⁴⁰ The City purportedly intended to use these funds to construct a building; however, it has not been constructed to date.⁴¹
- In August 2024, the City Auditor’s Office conducted a performance audit of the Building Fund special revenue fund, which had been added to the Office’s approved Audit Plan at the request of the Financial Services Department.⁴² The report noted “opportunities for improvement in the following areas: [1] The fund balance was not in compliance with the [Florida Statutes] requirement for FY19 through FY21. (See Finding 2024-01); [2] Supporting documentation is not attached to all transactions in the financial system. (See Finding 2024-02); and [3] Payroll expenditures charged to the fund were inaccurate. (See Finding 2024-03).”⁴³ Management agreed with all three findings and provided responses and corrective action plans.⁴⁴

2. Operational Chaos and Private-Provider Suppression Allegations⁴⁵

- “[D]ay-to-day operations are confusing, inconsistent, and punitive, as proven by 176 contractor emails (258 pages) since November 2022. Specific examples include: (1) ...(Honc Docks & Lifts) —Permit #BLDM25-000769 failed for cross-bracing [which was] already installed, with [a City] Inspector...ghosting all follow-up attempts [to schedule inspection or advise on how to resolve – project frozen as a result]; (2) ...(Holiday Builders) —dozens of closed homes with COs⁴⁶ still flagged as “expiring” on the portal, risking \$1,000/day fines; and (3) ...(eAtlantic Engineering)—the City illegally demands revision fees [to accept private provider notices] and denies timely inspections to block state-authorized private providers under [Section]

³⁸ Emails received November 12, 2025, from staff in Representative Giallombardo’s office (on file in Committee Office).

³⁹ See *supra* note 38 and email received November 14, 2025, from staff in Representative Giallombardo’s office (on file in Committee Office).

⁴⁰ Letter to Michael Ilcyszyn, City Manager, City of Cape Coral, from Chris Moran, Moran & Smith LLP, dated September 30, 2023 (on file in Committee Office).

⁴¹ See *supra* note 35.

⁴² Report No. 24-04. *Building Fund Audit*; cover letter to Mayor Gunter and Council Members from Andrea R. Russell, City Auditor, dated August 21, 2024; available at:

https://www.capecoral.gov/government/city_government/city_auditor/audit_reports.php (last visited November 14, 2025).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See *supra* note 38.

⁴⁶ COs = Certificates of Occupancy.

553.791(17)(a), [*Florida Statutes*,]⁴⁷ while paying [a company in Miami-Dade County specializing in providing building department services exclusively to government clients⁴⁸] millions for identical services. These are not isolated incidents—they are institutional failures that stall projects, inflate costs, and erode trust.”

- There are new documentation demands when documentation was never required before, (arbitrary and inconsistent reviewer demands; for example, same plans are rejected by one reviewer, passed by another one), and retroactive ordinance enforcement (i.e., HVAC permit rejected due to new rules after plan approval). This is reportedly resulting in delayed closings, with homebuyers unable to move in.
3. “Call to Action: The City’s sudden \$6 million “surplus” is not reform—it is damage control. Higher fees are now locked in, evidence is at risk, and Cape Coral’s construction industry—its economic backbone—remains hostage to a department that treats permit payers as adversaries...[with the scope of the] audit covering: (1) all interfund transfers and overhead, (2) FS 553.80 reserve and fee compliance, (3) FS 553.791 private-provider treatment, and (4) permitting-portal accuracy and enforcement practices. CCCIA stands ready with 258 pages of testimony, CPA reports, financial ledgers, and members prepared to testify under oath. The law is clear. The evidence is overwhelming. It is time for accountability.”⁴⁹

Financial Audit

The City has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA). The City has submitted the audit reports to the Auditor General’s Office in accordance with Section 218.39(1), *Florida Statutes*.⁵⁰ The most recent financial audit report submitted to the Auditor General is for the 2023-24 fiscal year was timely filed and included no findings.^{51, 52}

There was one audit finding reported in the prior year as a significant deficiency in internal controls over financial reporting; the auditors reported the status of this audit finding as resolved in the 2023-24 fiscal year audit report:

2023-001 Permitting System Internal Controls: In February 2022, the City implemented a new permitting system module for permitting and licensing fee transaction processing. The prior audit noted the following related to the permitting and licensing internal controls and processes:

- Workflows and controls were not properly set up to require approvals within the system for adjustments or modifications to permit rates and fees.

⁴⁷ This section states, “A local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.” [relating to private providers].

⁴⁸ Allegedly, this company was a previous employer of a current building division employee.

⁴⁹ See *supra* note 38.

⁵⁰ Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, *Florida Statutes*. 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* (2018 Revision) as standards for auditing local governmental entities pursuant to Florida law.

⁵¹ *Annual Comprehensive Financial Report, City of Cape Coral, Florida, For the Fiscal Year Ended September 30, 2024*.

⁵² Source: The Committee’s database includes, in part, the dates local governmental entities have filed their annual financial audit report.

- Noted instances of end user controls not properly set up that would prevent an employee from processing transactions without proper authorization and approval within the system.
- The Development Services and Public Works utility permitting departments have policies in place requiring documentation within permit files for any changes to rates or fees including documentation of approval received for adjustments to rates and fees when required. Noted instances of transactions and adjustments lacking documentation of changes made or approval received for adjustments within the permit file as required; however, there were no errors or inappropriate transactions noted.
- Noted the Development Services and Public Works Departments allowed for an informal transition period following system implementation where normal procedures for documentation were lessened or, in some cases, waived to help eliminate backlog and allow for expedited processing of transactions.
- Noted absence of regular review procedures in place for review of transaction history reports and system audit logs for user changes or deletions made to permit rates and fees by department supervisors to detect potential errors or unauthorized changes made.
- An absence of formal documented user policies and procedures for the permitting system. Formal department policies and procedures specific to the system were not put in place prior to the implementation date; however, were subsequently put in place after the system was already in use.

Financial Highlights Included in the City's Audit Report:

- “For fiscal year 2024, the City’s total net position increased by \$196.1 million or 20.8%. The governmental activities net position increased by \$130.5 million or 49.0% and the business-type activities net position increased by \$65.6 million or 9.7%.”⁵³
- “The governmental activities revenue increased by \$76.1 million or 19.6%. In fiscal year 2024, the results of governmental activities produced an increase in net position of \$130.5 million, while in fiscal year 2023 governmental activities net position increased by \$13.2 million.”⁵⁴ The total revenue increased “as a result of an increase in revenues from charges for services, property tax, Federal Emergency Management Agency (FEMA) revenues from Hurricane Ian and investment earnings.”⁵⁵ Specifically:⁵⁶
 - “Charges for services increased \$22.7 million or 21.4% due to increases in the annual assessment rates for fire service and solid waste service.”
 - “Operating grants and contributions increased by \$21.7 million or 53.8% primarily due to hurricane-related revenues from the FEMA of over \$40 million.”
 - “Property tax revenue for fiscal year 2024 increased \$23.3 million or 19.2% to \$144.8 million, representing 31.3% of the total revenue from the City’s governmental activities. Despite a decrease in the millage rate of 5.3694 mills to 5.2188, the increase in revenue is attributable to the continued rise in taxable assessed property values to \$26.3 billion.”
- “The business-type activities revenue increased by \$32.0 million or 15.1%. In fiscal year 2024, the results of business-type activities produced an increase in net position of \$65.6 million, while in fiscal year 2023 net position increased by \$58.8 million.”⁵⁷ The total revenue increased “mainly due

⁵³ *Management’s Discussion and Analysis, Annual Comprehensive Financial Report, City of Cape Coral, Florida, For the Fiscal Year Ended September 30, 2024*, page 5.

⁵⁴ *Id.*

⁵⁵ *Id.*, page 10.

⁵⁶ *Id.*

⁵⁷ See *supra* note 53.

to increases in revenues from charges for services [water, sewer, wastewater], capital grants and contributions, and investment earnings.”⁵⁸

- “The City’s total expenses decreased by \$16.0 million or 3.0%.”⁵⁹ “The large decrease in total expenses [for fiscal year 2024] is due to the majority of Hurricane Ian expenses being included in fiscal year 2023.”⁶⁰
- “The General Fund, the primary operating fund, reflected on a current financial resource basis, reported an increase in fund balance of \$41.3 million, compared to a decrease of \$56.5 million in fiscal year 2023.”⁶¹

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit as defined in Section 11.45(1)(i), *Florida Statutes*, and take steps to avoid duplicating the work efforts of other audits being performed of the City’s operations, such as the annual 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 Section 11.45 (2)(j), *Florida Statutes*, 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 report.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the City’s governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the City’s governing board and management, as well as the citizens living within the boundaries of 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 Section 218.39(8), *Florida Statutes*, for the Committee’s involvement. First, the City 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 Mayor to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the City until the City complies with the law.

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 Cape Coral’s Building Department, the Auditor General, pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Representative Giallombardo and Senator Martin are considered.

⁵⁸ *Id.*, page 12.

⁵⁹ *See supra* note 53.

⁶⁰ *Id.*, page 11.

⁶¹ *See supra* note 53.

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 her approved operating budget.

V. Related Issues

None.

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