

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/CS/CS/SB 392

INTRODUCER: Finance and Tax Committee; Governmental Operations Committee; Community Affairs Committee; and Senators Storms and Ring

SUBJECT: Transparency in Government Contracts

DATE: April 2, 2008 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Molloy | Yeatman | CA | Fav/CS |
| 2. | Wilson | Wilson | GO | Fav/CS |
| 3. | Fournier | Johansen | FT | Fav/CS |
| 4. | _____ | _____ | TA | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The committee substitute (bill) provides for transparency in local and state government contracts by requiring state agencies and local governments to electronically post specific information on contracts of \$5,000 or more. The bill creates definitions for purposes of the act, provides for the development of a uniform reporting format, creates a staggered implementation schedule for local governments, requires that copies of contracts be electronically posted when possible, and creates an exemption from reporting requirements for contractual rights relating to retirement for state and local government employees.

The bill creates s. 218.315, F.S., and creates an unnumbered section Florida law.

II. Present Situation:

The Federal Funding Accountability and Transparency Act of 2006 is at the forefront of the effort to require accountability in government spending. At the national level the federal government's accountability website, USASpending.org is online and available to the public. This website provides for accountability in federal spending by allowing the general public to

electronically track federal financial assistance and expenditure awards of \$25,000 or more to corporations, associations, partnerships, limited liability companies and partnerships, sole proprietorships, and any other legal business entities, states or localities.

Several states are following the federal government's lead and have passed legislation implementing "transparency in government" provisions. At a minimum, these states require that all contract and grant award information be posted on a centralized Internet website which must be available to the public at no cost. The goal of the transparency measures is to provide for increased accountability in government by allowing the public to have electronic access to expenditure information.

Minnesota - The Minnesota State Auditor's Office maintains a searchable database website¹ containing financial information on counties, cities, school districts, townships and special districts. The website allows the user to select the county or city, the year for which the user wants to see financial information, as well as the revenue and expense category. Information on school districts, townships, and special districts is less explicit but the user can still see net revenues and expenditures through 2005.

The 2007-2008 Minnesota Legislature enacted Chapter 148, an act relating to governmental operations, which provides in part for the creation of a website with a searchable database on state contracts and grants. The legislation required that by January 1, 2008, the Commissioner of Administration maintain a database for state contracts in excess of \$25,000. Contract information such as the name and address of the receiving entity, the name of the agency entering into the contract, the purpose of the contract, and the amount and source of contract funds must be posted within 30 days of the date the contract is entered into. Contract information must be maintained in the database for a period of 10 years.

Texas - The Texas Legislature enacted HB 3430 which requires the State Comptroller to establish and post on the Internet a database of state expenditures, including contracts and grants. The general public must be able to electronically search the database but confidential information exempted under state law is protected. The database² must include the amount, date, payer and payee of expenditures, and a listing of state expenditures by category with a link to the warranty or check register level. The Department of Information Resources must provide a link to the database on the public home page of the TexasOnline Project,³ and each state agency that maintains a generally accessible website must provide a link to the database on the agency site. In addition, HB 3430 directed the Legislative Budget Board⁴ to electronically post on the Internet each major contract⁵ of a state agency and each request for proposal or invitation to bid.

Missouri - In July 2007, Governor Matt Blunt issued Executive Order 07-24 directing the Missouri Commissioner of Administration to establish the Missouri Accountability Portal as a free, Internet-based searchable database of financial transactions relating to the purchase of

¹ <http://www.auditor.state.mn.us/default.aspx?page=ComparisonTools>

² <http://www.cpa.state.tx.us/comptrol/expendlist/cashdrill.php>

³ See <http://www.texasonline.com>

⁴ The Legislative Budget Board is a permanent joint committee of the Texas Legislature and is responsible for developing budget and policy recommendations for legislative appropriations for all agencies of state government.

⁵ Includes amendments, modifications, renewals, or extensions and applies to contracts with a value of more than \$50,000. (see s. 322.020, Government Code, Texas Statutes, as designated by the 2007 Regular Session)

goods and services, and the distribution of funds for state programs. The Division of Purchasing and Management in the Missouri Office of Administration maintains its own website of current state contracts. Using a website developed by one of the state's contract technology providers, the Division of Information Technology Services was able to take the codes from the state's centralized financial system and link them to the codes in the purchasing database to create an on-line contract link for the general public.

The site can be accessed and searched by category, by vendor receiving payment, and by contract, and the drill-down features on the site allow access to payment details.⁶ Information on the site is updated daily at the close of business and except for routine maintenance, the site is available 24 hours a day, 7 days a week.

Florida - In Florida, "transparency in government" efforts have been mostly directed toward local governments. Some transparency is currently provided through the Local Government Annual Financial Reporting website of the Department of Financial Services, and most local governments in Florida maintain websites that can be searched for budget information, annual financial reporting information, and contract bids and awards information. During the 2007 Regular Session, members of the Florida Senate filed three specific bills relating to transparency in state and local government. The bills provided for open access to information relating to state and local governments' revenues and expenditures, including information on contracts and grants.

Although none of the filed bills was enacted into law, the Florida Senate passed legislation which required, in part, that local governments electronically post all revenues and expenditures on the local government's website if one is available, or if not, on the county government's website. The reporting requirements were to take effect in 2009 and were phased in over a 3-year period, beginning with larger local governments. To provide transparency in local government budgeting, each local government was required to electronically post its anticipated revenues, proposed budget, and tentative millage, and within 10 days after the adoption of the budget, the adopted budget and millage rate. Finally, local governments were required to electronically post all contracts that are public records on each local government's official website, if available, or otherwise on the county government's official website. Contract information was to be posted beginning in November, 2007 on a phased-in schedule with all reporting entities to be phased over a 2-year period. An exemption from the posting requirements was provided for school district employment contracts.

Local Government Annual Financial Reports - Uniform Accounting

Section 218.32 (1), F.S., requires that local governments submit to an Annual Financial Report to the department which covers their operations for the preceding fiscal year. The department makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database and makes that information available to the public in an electronic format. The department developed a Uniform Accounting System Manual to be used by local governments as the standard for recording and reporting

⁶ <http://mapyourtaxes.mo.gov/map/>

financial information to the state. The manual contains a uniform classification of accounts to be used by local governments in reporting revenues and expenditures.

III. Effect of Proposed Changes:

The bill creates the following definitions:

- "Contract" means a legally binding agreement between a local government or a state agency and a corporation or a person which contract requires a payment of \$5,000 or more.
- "Corporation" means all corporations registered to do business in the state, whether for profit or not for profit; foreign corporations qualified to do business in the state or actually doing business in the state, whether for profit or not for profit; limited liability companies under chapter 608, partnerships under chapter 620, a sole proprietorship under s. 440.02; or any other legal business entity, whether for profit or not for profit.
- "County officer" means a sheriff, tax collector, property appraiser, supervisor of elections, and a clerk of the circuit court.
- "Expenditure" means a payment that a state agency makes to a corporation or an individual under a contract.
- "Local government" means counties, municipalities, water management districts, and special taxing districts with the authority to levy ad valorem assessments or non-ad valorem assessments. School districts are excluded from the definition.
- "Individual " means a person, but excludes an employee of a local government or a state agency, or an employee of the federal government, when such persons are acting in the capacity of employee.

Local Governments - Electronic posting requirements

Each local government with a website must electronically post specific information on contracts of \$5,000 or more which are executed between a local government or a county officer and a corporation or an individual. The information must be posted using basic categories of expenditures as provided in a uniform format to be developed by the department. Where possible, local governments must provide a link to an electronic copy of the contract. Any portion of the public record that is confidential or exempt from inspection and copying must be redacted prior to posting.

Each local government must designate one central office to maintain all contract information except that contract information required to be reported by a county officer shall be maintained by the county. For local governments without a website, the contract information must be maintained in a local government office that is reasonably accessible to the public during normal business hours. The office must be able to provide contract information to a member of the general public as a public records request.

The Department of Financial Services - Uniform format requirements

The bill directs the department to develop and maintain a portal that links to websites maintained by local governments that post contract information. The department must develop a uniform

reporting format to be used by all local governments when electronically posting contract information. The uniform format must include:

- The name of the local government or county officer that is a party to the contract;
- The name of each corporation or individual that is a party to the contract;
- The date and the amount of the contract;
- The purpose of the contract; and
- The basic expenditure categories reported by local governments in the annual financial report submitted to the department under s. 218.32, F.S.

Implementation Schedule

Local governments must begin posting contract information on the following schedule:

- On or before December 31, 2009, all five water management districts, any county with a population of 300,000 or more, any municipality with a population of 50,000 or more, and any special taxing district within such county or city. (18 counties and 49 cities)
- On or before December 31, 2010, any county with a population of at least 50,000 but fewer than 300,000, any municipality with a population of at least 10,000 but fewer than 50,000, and any special taxing district within such county or city. (24 counties and 112 cities)
- On or before December 31, 2011, all other counties, cities, and special taxing districts. (25 counties and 161 cities)

The population estimates used by counties and cities to meet the schedule requirements are those to be reported on April 1, 2009, by the Legislature's Office of Economic and Demographic Research to the Executive Office of the Governor.

Rulemaking Authority

The department is provided with rulemaking authority to implement provisions of the act relating to the development and maintenance of the state portal that links to local websites, and the development and distribution of the uniform reporting format.

State Agencies

The bill directs the Department of Financial Services to develop and maintain a contract expenditures report that provides the name of the state agency and the name of the corporation or individual that are parties to the contract; the date, amount, and purpose of the contract; and each expenditure made under the contract. The contract expenditures report must be maintained by the department in a searchable website containing a navigation bar that allows anyone with Internet access to search for expenditure reports by governmental function, state agency, or appropriation category.

State agencies are directed to record each contract executed between the agency and a corporation or an individual, and each payment made under the contract along with the contract

number in the department's FLAIR⁷ contract subsystem. To the extent possible, the agency must provide a link to an electronic copy of the contract but all information that is confidential and exemption from inspection and copying must be redacted prior to posting.

Executive Office of the Governor

The Executive Office of the Governor is directed to develop and maintain a portal that links to the state agency contract expenditures report maintained by the department.⁸

Exemptions

The bill provides an exemption to the reporting requirements for contractual rights relating to retirement for state and local government employees.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires state agencies, and cities and counties to take actions to list certain contract information and this will require the expenditure of funds. Article VII, s. 18(a), Florida Constitution, provides that no county or city shall be bound by any act of the Legislature requiring an expenditure of funds unless the Legislature determines that the act fulfills an important state interest and unless:

- A funding source is made available;
- Sufficient funds have been appropriated;
- The law requiring such expenditure is passed by a two-thirds vote of the membership of each house of the Legislature;
- The law is required to conform to a federal requirement; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

The bill does equally apply to state and local government. However, unless the Legislature determines an important state interest is met and the bill is passed with a two-thirds vote of the membership of each house of the Legislature, the bill may not be binding.

B. Public Records/Open Meetings Issues:

The bill provides that any portion of a public record that is confidential or exempt must be redacted prior to the posting of contracts by either a local government or a state agency.

⁷ Florida Accounting and Information Resource subsystem.

⁸ Go to: http://www.flgov.com/og_contracts as maintained by the Governor's Office of Open Government

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

When implemented, the Department of Financial Services contract expenditure report and the local government websites will provide the general public with accountability in local government contract spending.

C. Government Sector Impact:

State - The Department of Financial Services estimates that \$65,000 in non-recurring revenue will be needed by July 1, 2009, to develop and implement the uniform reporting requirements of the bill. The department also reports that between \$10,000 and \$15,000 will be required for website development should the bill be expanded to include state agencies.

Executive Office of the Governor: The Office of Open Government in the Executive Office of the Governor currently maintains a transparency website with a portal for contract information. A link to the contract expenditures report maintained by the Department of Financial Services will be created on this website.

Local - The financial impact of the bill is indeterminate but local governments can expect to incur costs to comply with the reporting requirements of the bill for both website maintenance and staff. In addition, local governments that choose to make electronic copies of contracts available may incur additional costs related to the technology required to do so. As noted, above, it is arguable whether that duty is considered mandatory or not.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. Additional Information:

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

CS by Finance and Tax Committee on April 2, 2008:

The CS for the CS for the CS clarifies that contractual rights of state and local government employees and retirees are exempt from the reporting requirements of the bill; clarifies that protected information must be redacted prior to a copy of a contract being posted, and clarifies that contract information relating to employees of state and local government is exempt only when the person is acting in the capacity as employee.

CS by Governmental Operations on March 26, 2008:

The CS for the CS extends the application of the bill to state agencies.

CS by Community Affairs on March 19, 2008:

The CS makes substantial revisions to the original bill. The Department of Financial Services is directed to develop and maintain a state portal that links to local government websites, and to develop a uniform reporting format to be used by local governments when electronically posting contract information. Local governments are required to electronically post contract information on a staggered schedule. Provisions are included for local governments without a website to make contract information available to the general public.

- B. **Amendments:**

None.