

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 Policy and Steering Committee on Ways and Means

BILL: PCS/SB 42-A

INTRODUCER: Policy and Steering Committee on Committee on Ways and Means

SUBJECT: State Contracts

DATE: January 7, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>Kelly</u>	<u>WPSC</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides greater legislative oversight in state contracting by limiting the authority of state agencies to execute certain types of contracts or including certain contractual provisions, absent specific legislative authorization. Contracts which are executed in violation of these provisions are deemed to be null and void. State officers and employees, acting on behalf of the state, who violate these provisions commit a misdemeanor of the first degree.

This bill amends s. 216.311 and 287.0582, F.S., and creates s. 216.312, F.S.

II. Present Situation:

Section 216.311, F.S., prohibits a state agency or a branch of government from contracting to spend moneys in excess of the amount appropriated to that entity unless specifically authorized by law. The law further provides that any contract that violates this prohibition is null and void, and any person who willfully violates this prohibition commits a misdemeanor of the first degree.

Section 287.0582, F.S., prohibits an executive branch officer or employee, acting on behalf of the state, from contracting for the purchase of services or tangible personal property for a period in excess of 1 fiscal year unless the contract includes a specific statement, relating to the contract being contingent upon an appropriation by the legislature.

III. Effect of Proposed Changes:

Section 1 amends s. 216.311, F.S., to prohibit a state agency or branch of government from entering into a contract that requires the payment of liquidated damages or other amounts related to the breach or early termination of a contract unless the legislature has specifically authorized the agency to include that type of provision. A contract in violation of this prohibition is null and void and the person who executed on behalf of the state has committed a misdemeanor of the first degree.

An agency that violates the prohibitions in this section will lose its authority to exercise budget flexibility granted in ss. 216.181 and 216.292, F.S.

Section 2 creates s. 216.312, F.S., to allow greater legislative oversight of particular contracts. The contracts subject to this provision include those contracts that authorize the non-state party to make expenditures in anticipation of revenues and contracts that require the non-state party to make initial expenditures without receiving compensation within 90 days of the expenditure.

Section 3 transfers and renumbers s. 287.0582, F.S., as s. 216.313, F.S, and the new section is amended to prohibit executive and judicial branch officers and employees from contracting for the purchase of services or tangible personal property unless the contract specifically identifies the specific appropriations of state funds from which payment will be made, unless the legislature specifically authorizes the agency or branch to enter into such a contract, absent a specific appropriation.

Section 3 also prohibits a contract which requires the state to make future-year payments to offset payments not made in the current year due to insufficiency of current-year appropriations to pay for current-year costs under the contract.

For each state contract, the agency head of the entity entering the contract must certify compliance with the law.

Section 4 provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

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.)

None.

B. Amendments:

None.