

**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.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 2342

INTRODUCER: Senator Baker

SUBJECT: Public Printing

DATE: March 11, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	<b>Pre-meeting</b>
2.			JU	
3.			WPSC	
4.				
5.				
6.				

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**I. Summary:**

The bill amends the public printing requirements of Ch. 283, F.S., to mandate, without competitive solicitation, a five-year contract with a current contract vendor, unless:

- the agreement has been terminated before the date of expiration by a material and substantial breach by the private vendor;
- the private vendor has been declared in default pursuant to the administrative rule on contractor default; and
- all administrative and appellate remedies of the private vendor have been exhausted or waived.

Though written to apply generally, the bill’s provisions appear to be directed to the current contract to provide printing and distribution of the Department of Highway Safety and Motor Vehicle’s Florida Driver’s Handbook.

This bill substantially amends section 283.58 of the Florida Statutes.

**II. Present Situation:**

**Public Printing**

Chapter 283 of the Florida Statutes regulates public printing. Section 283.58, F.S., specifies the conditions in which an agency may agree to allow a vendor to publish, without charge, public information. Agencies have the authority to:

- Enter into agreements for the publication of public information materials, by which the costs of publication or production will be borne by the vendor or the vendor agrees to provide

additional compensation in return for the right of the vendor to select, sell, and place advertising that publicizes products or services related to and harmonious with the subject matter of the publication.<sup>1</sup>

- Retain the right to approve all elements of any advertising placed in such public information materials, including the form and content.<sup>2</sup>

Any public information materials produced pursuant to these provisions and containing advertising of any kind must include a statement providing that the inclusion of advertising in the material does not constitute an endorsement by the state or the agency of the products or services so advertised.<sup>3</sup>

### **Contract Renewals for Commodities and Services**

Chapter 287, F.S., specifies procedures to be followed in the procurement of personal property and services. Section 287.058(1)(f), F.S., provides that every procurement of contractual services above \$25,000 should be evidenced by a written agreement that includes a provision specifying that the contract may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever period is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, and specifying that renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.

### **Printing of the Florida Driver's Handbook and Related Litigation**

In 2005, the Department of Highway Safety and Motor Vehicles (HSMV or department) entered into an agreement with the National Safety Commission (NSC), whereby NSC would print and distribute the Florida Driver's Handbook at no cost to the state. The handbook featured advertisements for driving schools owned by NSC.

In 2007, the Legislature passed a General Appropriations Act which included proviso<sup>4</sup> and implementing act<sup>5</sup> language requiring that HSMV print and distribute the 2008 handbook without advertisements. Governor Crist subsequently vetoed the proviso language to Specific Appropriation 2814. During the 2007 Special Session C, the Legislature in Senate Bill 2C reduced funds appropriated to HSMV by approximately \$500,000, and then appropriated \$500,000 contingent on the original proviso language becoming law by June 30, 2008, and specified that the funds would not be released until the Legislative Budget Committee approved the HSMV expenditure plan to produce materials without advertisements.

In October of 2007, the Florida Providers for Traffic Safety (FPTS)<sup>6</sup> filed suit in Leon County Circuit Court to challenge the Governor's veto; the judge entered a writ of mandamus directing

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<sup>1</sup> Section 283.58(1)(a), F.S.

<sup>2</sup> Section 283.58(1)(b), F.S.

<sup>3</sup> Section 283.58(2), F.S.

<sup>4</sup> Chapter 2007-72, L.O.F., item 2814; SB 2800

<sup>5</sup> Chapter 2007-73, L.O.F., section 46; SB 2802

<sup>6</sup> "A coalition of non-profit and for-profit safety organizations working to promote traffic safety, ethics, & integrity in the Florida Driver Improvement industry," from their website at <http://www.fpts.us/>, last visited on March 13, 2010.

the Secretary of State to expunge the veto, thus NSC filed suit in October of 2007, arguing that the proviso amounted to an unconstitutional impairment of contract, and filed a related motion for emergency temporary injunction. The judge in this suit entered a temporary injunction, which halted implementation of the proviso language.

In March of 2008, on the basis that it was unlikely that legal issues would be resolved by the time the proviso language would expire on June 30, 2008, NSC and HSMV entered into a settlement agreement in which the department agreed not to go forward with a plan to conduct a procurement for the printing and distribution of the 2008 handbook, and NCS would dismiss its case against HSMV. They also agreed to amend the handbook contract to allow NSC to distribute it through December 31, 2009, and that there would be no unilateral termination of the agreement, and that the only ground to cancel the agreement was for cause or by mutual agreement.

However, FPTS subsequently filed suit against HSMV in Leon County, which settled in January 2010. The settlement agreement specifies that, among other things, the current contract with NSC that expires on December 31, 2010, will not be renewed, that the department will use its best efforts to produce a handbook free from advertising, and that there is no prohibition on taking substantive portions of the handbook and distributing it without advertising, as long as it is properly described.

### **The Current Florida Driver's Handbook**

As of March 11, 2010, a search for the handbook on the DHSMV website takes one to a web page that states:

This link takes you to the Department's handbook sponsor's web site. The inclusion of advertising does not constitute an endorsement or the accuracy of the ad by the State of Florida or the Florida Department of Highway Safety & Motor Vehicles of the products or services advertised.

Following the website link takes one to the website of the private entity hosting the handbook, with options to:

- Open a pdf version of the entire handbook;
- Follow links to sections of the handbook available in both print and audio files; and
- Pay shipping and handling to have a hard copy of the handbook sent.

### **III. Effect of Proposed Changes:**

The bill amends s. 283.58, F.S., to allow a vendor that prints public information materials to include a safety message related to the subject matter of the publication.

The bill provides that an agency's approval of any advertising may not be unreasonably withheld, and that an agency may not prohibit advertising by a person or entity because the person or entity is regulated by the department.

The bill provides that notwithstanding any provision of the procurement statutes in Ch. 287, F.S. to the contrary, if an agency enters into an agreement under which no payment is made by the

state thereby resulting in cost savings to the state, and the term of the agreement expires between June 30, 2010, and January 1, 2011, the agency is required to enter into a new agreement with the same party to the expiring agreement, upon substantially the same terms and conditions as the expiring agreement, but with a term beginning on July 1, 2010, or the day following expiration of the expiring contract, whichever is later. Payment may not be made by the state under the new agreement, and the new agreement must result in cost savings to the state. The term of the new agreement must be 5 years, with one renewal option for an additional 5-year term, and renewal may be exercised upon the mutual consent of the parties.

The agency is not relieved of its obligation to enter into the new agreement thus described unless all of the following conditions exist:

- The agreement has been terminated before the date of expiration by a material and substantial breach by the private vendor;
- The private vendor has been declared in default pursuant to rule 60A-1.006, Florida Administrative Code; and
- All administrative and appellate remedies of the private vendor have been exhausted or waived.

Though applicable generally, the provisions in the bill appear to be directed to the issues surrounding production and distribution of the Florida Driver's Handbook.

#### **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:**

The value to the current vendor of the advertising placed in the Florida Driver's Handbook appears to be greater than the costs of producing the handbook. Presumably, that value will persist over the five year contract required by this bill.

**C. Government Sector Impact:**

The department expends no funds in producing and supplying the Florida Driver's Handbook in this fashion, though it has incurred litigation costs associated with the handbook. The bill appears to mandate actions that may be in conflict with the settlement agreement between HSMV and FPTs, which could potentially result in further litigation involving HSMV, and attendant costs.

**VI. Technical Deficiencies:**

Line 57 specifies that the bill's requirements apply notwithstanding any provision of Chapter 287, F.S., to the contrary, but on line 79 cites Rule 60A-1.006, F.A.C., as a condition that, if met, could relieve an agency of its responsibility to enter into the required agreement. The specific authority for Rule 60A-1.006, F.A.C., is one section of the Administrative Procedure Act and two sections of Ch. 287, F.S.; the laws implemented by that rule are one section of the Administrative Procedure Act and three sections of Ch. 287, F.S. The bill simultaneously prohibits the application of Ch. 287, F.S., and potentially requires application of an administrative rule implementing provisions of Ch. 287, F.S.

**VII. Related Issues:**

The bill mandates a contract with a vendor without award by competitive solicitation, contrary to the requirements of s. 283.33(2), F.S., and Ch. 287, F.S.

The bill requires that the new agreement "shall" result in cost savings to the state. It is unclear whether HSMV's litigation costs related to the Florida Driver's Handbook are greater than the costs of producing and distributing the handbook a different way.

**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.