

**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: CS/SB 2386

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

SUBJECT: State Financial Matters

DATE: March 26, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	Coburn	WPSC	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
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:**

This legislation increases oversight of payments into and out of the State Treasury. Specifically, this bill:

- Directs all agencies and the judicial branch to use electronic payment disbursements and receipts for all state payments where possible.
- Directs the CFO to adopt and disseminate to state agencies uniform minimum procedures for agreements that provide state or federal financial assistance to a recipient.
- Requires an agency awarded funding on a noncompetitive basis for certain services as mentioned in the GAA to maintain documentation to support a cost analysis.
- Requires provisions to be included in state purchasing agreements or state term contracts, including:
  - Scope of work that clearly identifies the tasks a contractor must perform;
  - Identification of quantifiable, measurable and verifiable units of deliverables that require the deliverables to be accepted in writing;
  - Specification of financial consequences that the agency must apply for contractor noncompliance; and
  - Specification of the ownership rights of intellectual property related to the contract.

- Requires state agencies to provide specific information to the Department of Financial Services (DFS) relating to the purchase of commodities or services.
  - The nature of the commodities or services purchased;
  - The term of the contract;
  - The final obligation made by the agency;
  - A summary of time constraints that apply;
  - The justification for not using the competitive sealed bid process
- State agencies must submit the required information to the Department of Financial Services within three days after executing the contract.
- Requires state agencies to review and renegotiate contract renewals and reprocurments with savings to be placed in reserve in OPB.
- Continues the current limits on travel by state employees with approval requirements.
- Directs agencies to improve enforcement of the Preferred Pricing Clause (PPC) in state contracts and introduce penalties for misrepresentation.
- Appropriates \$311,915 from the General Revenue Fund and authorizes 5 FTE positions for the Department of Financial Services to implement this act.

This bill substantially amends ss. 17.29, 43.16, 215.322, 216.3475, 287.056, 287.057, 287.0571, and 287.058 of the Florida Statutes. This bill creates s. 215.971 and numerous unnumbered section of law.

## **II. Present Situation:**

### **Electronic Receipts**

Currently, the Chief Financial Officer (CFO) is granted the authority under s. 17.29, F.S., to create policies and procedures relating to the processing of payments for salaries, other personal services, or any other applicable appropriation. Under s. 215.322, F.S., state agencies, units of local government, and the judicial branch are given the authority to accept electronic payment in the form of debit cards, credit cards, and charge cards for goods, services, and information. Prior approval by the CFO is required by the statute. The CFO is tasked with adopting rules governing the establishment and acceptance of debit cards, credit cards, and charge cards. Procedures can provide for a convenience fee charge, but the fee must not exceed the cost to the state agency. Agencies must submit information about debit card, credit card, and charge card use to the CFO. The CFO provides a methodology the agencies must use when completing the cost-benefit analysis on the acceptance of electronic payment, including all cost reductions and other benefits to the agency from acceptance of electronic payment in the form of debit, credit, and charge cards.

The CFO is also responsible for the contracts between the agencies and the financial agencies or other appropriate intermediaries. Contracts can be established between one or more financial institutions, credit card companies, or other entities that may lawfully provide services for processing debit, credit, or charge cards for deposit. Agencies, local governments, and the judiciary must use one of the institutions authorized by the CFO.

Local governments are also authorized to accept credit, debit, and charge cards as forms of payment. The local government must verify validity of the card. The local government does not incur any liability as a result of such verification.

### **Contracts**

The maximum rate of payment for services funded under the General Appropriations Act, or that are awarded funding on a noncompetitive basis may not exceed the competitive prevailing rate for those services unless expressly authorized in the General Appropriations Act. Under s. 287.056, F.S., agencies must purchase commodities and contractual services from purchasing agreements established and state term contracts procured.

If a purchase of commodities exceeds the threshold amount provided in s. 287.017, F.S., no purchase of commodities may be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies, unless:

- The agency head determines in writing that an immediate danger to public health, safety, or welfare or other substantial loss to the state requires emergency action.
- The purchase is made by an agency from a state term contract procured by a department or an agency after receiving approval from the department.
- Commodities or contractual services are available only from a single source
- When it is in the best interest of the state.
- Prescriptive assistive devices for the purpose of medical, developmental, or vocational rehabilitation of clients.
- The following contractual services and commodities are currently not subjective to the competitive-solicitation requirements:
  - Artistic Services
  - Academic program reviews
  - Lectures by individuals
  - Auditing services
  - Legal Services
  - Health Services
  - Services provided to persons with mental or physical disabilities by not-for-profit corporations
  - Medicaid Services
  - Family placement services
  - Prevention services related to mental health
  - Training and Education services provided to injured employees
  - Contracts entered into pursuant to s. 337.11, F.S.
  - Services or commodities provided by governmental agencies

Each agency must have an employee who acts as the contract manager. The agency has the responsibility of creating procedures to ensure the contract has been rendered in accordance with the contract terms.

For procurements of contractual services in excess of the threshold amount provided in s. 287.017, F.S., except for health and mental health services, there must be a written agreement including the following provisions:

- Bills for fees or other compensation for services or expenses must be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
- Bills for any travel expenses must be submitted in accordance with s. 112.061, F.S.
- Unilateral cancellation by the agency for refusal by a contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract.
- Dividing the contract into units of deliverables that must be received and accepted in writing by the contract manager prior to payment.
- Specifying the criteria and the final date by which such criteria must be met for completion of the contract.
- Specifying that the contract may be renewed for a period that may not exceed three years or the term of the original contract, whichever period is longer, specifying renewal price, and specifying that renewals shall be contingent on satisfactory performance evaluations by the agency.

If there is a purchase order with no written agreement, the above provisions must be included in the purchase order and may be included by reference rather than included in full.

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

Section 1 amends s. 17.29, F.S., to authorize the Chief Financial Officer to adopt rules requiring that payments made for state goods, services, or anything of value be made electronically. Expands the method state agencies may use for accepting payment to include electronic fund transfers. An exception is made for accommodation of individuals who are not able to receive payments by electronic means in situations where there are technological, financial, or other hardships. If “administratively necessary,” the Chief Financial Officer may make payments by state warrant.

Section 2 amends s. 43.16, F.S., to conform to correct a cross reference.

Section 3 amends s. 215.322, F.S., to allow state agencies, units of local government, and the judicial branch to accept electronic funds transfers. The Chief Financial Officer is tasked with adopting rules for acceptance of electronic fund transfers. The Chief Financial Officer may adopt rules for uniform security safeguards for cardholder data. The Chief Financial Officer will be responsible for establishing contracts with financial institutions to provide electronic fund transfers. State agencies may reasonably accommodate those persons with technological, financial or other hardships, if deemed “administratively necessary.”

Section 4 creates s. 215.971, F.S., to require the Chief Financial Officer to adopt and disseminate uniform minimum procedures to state agencies for agreements containing state or federal assistance to a recipient or subrecipient.

Section 5 amends s. 216.3475, F.S., to require certain agencies awarded funding on a noncompetitive basis to maintain specified documentation supporting a cost analysis. The analysis must include a detailed budget submitted by the person or entity awarded funding and the agency's review of the individual cost elements from the submitted budget for allowability reasonableness, and necessity.

Section 6 amends s. 287.056, F.S., to specify what provisions must be present in state agency purchasing agreements. A provision specifying the scope of work clearly establishing all tasks the contractor is required to perform should be present. Another provision is required to divide the contract into units of deliverables that must be received and accepted in writing by the contract manager before the payment. A deliverable must be directly related to the scope of work and specify the minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

Section 7 amends s. 287.057, F.S., to narrow the types of services exempt from competitive bid requirements for the purchase of contractual services, including auditing services, certain academic program reviews, certain health services, and Medicaid services. Agencies must document compliance with s. 216.3475, F.S., if their purchase exceeds the threshold amount and the services are not competitively procured.

An agency's contract manager is required to attend training regarding accountability in contracts and grant management conducted by the Chief Financial Officer. The Chief Financial Officer must establish and disseminate uniform procedures to the agencies for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested, and providing written certification by contract managers of the agency's receipt of goods and services.

Section 8 provides that contracts for academic program reviews, auditing services, health services, and Medicaid services will be subject to transactions fees and surcharges only to the extent such contracts are subject to the fees and surcharges on June 30, 2010.

Section 9 amends s. 287.0571, F.S., to correct a cross reference.

Section 10 amends s. 287.058, F.S., to specify particular provisions which must be included in the contract. A provision is required to divide the contract into quantifiable, measurable, and verifiable units of deliverables. Each deliverable must be directly related to the scope of work and specify the required minimum level of serves to be performed. A provision specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract is required. Another provision is required to address property rights of any intellectual property related to the contract and the specific rights of the state regarding intellectual property if the contractor fails to provide the services.

Section 11 amends s. 295.187, F.S., to correct cross references.

Section 12 amends s. 394.47865, F.S., to correct cross references.

Section 13 amends s. 402.40, F.S., to correct cross references.

Section 14 amends s. 402.7305, F.S., to correct cross references.

Section 15 amends s. 408.045, F.S., to correct cross references.

Section 16 amends s. 427.0135, F.S., to correct cross references.

Section 17 amends s. 570.07, F.S., to correct references.

Section 18 requires each agency to provide the following information to the Department of Financial Services regarding the agency's contracted activities: 1) the nature of the commodities or services purchased, 2) the term of the contract, 3) the final obligation made by the agency, 4) a summary of any time constraints applying to procurement, 5) justification for not using competitive sealed bid process, and 6) other information regarding the contract which the Department of Financial Services requires.

Section 19 requires each state agency to review and renegotiate existing contracts renewals to reduce contract payments by 3 percent. Any savings accrued through renegotiation are to be placed in reserve by the Executive Office of the Governor.

Section 20 restricts the expenditure of funds for travel by state employees. Funds may only be used for travel for activities that are critical to the state agency's mission. They may not be used for travel to foreign countries, other states, conferences, staff-training activities, or other administrative functions unless approved in writing by the head of the state agency as critical to the agency's mission. An exception is made for law enforcement purposes, military purposes, emergency management activities, and public health activities.

Section 21 requires each state agency to review its contracts to determine if each contractor complies with the applicable preferred pricing clause. Contracts which include a preferred-pricing clause and were executed, renewed, extended, or modified on or after July 1, 2010, must require an affidavit by the contractor attesting that the contract is in compliance with the preferred pricing clause. The term "preferred-pricing clause" is defined.

Section 22 appropriates \$311,915 from the General Revenue Fund and authorizes 5 FTE positions for the Department of Financial Services to implement this act.

Section 23 provides an effective date for July 1, 2010.

#### **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:

Vendors doing business with the state will be required to accept payment via EFT or other electronic means. Some of the current limitations of the FLAIR EFT Authorization File may create additional work by some vendors if system upgrades cannot be made. For large companies and many local governments, all payments from the state will be sent to only one bank account. This may require that such entities set up new processes to move funds from one bank account to another after they receive a state payment.

C. Government Sector Impact:

The Department of Financial Services is appropriated 3 FTEs and approximately \$311,000 to implement the provisions of the act.

Other state agencies may incur costs reviewing and negotiating existing contracts but are expected to realize savings as a result of renegotiation or enforcement of preferred pricing agreements.

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 the Policy and Steering Committee on Ways and Means on March 26, 2010:**

- Directs all agencies and the judicial branch to use electronic payment disbursements and receipts for all state payments where possible.
- Requires state purchasing agreements and state term contracts to include provisions which:
  - Define the scope of work that a contractor must perform;

- Identify quantifiable, measurable and verifiable units of deliverables and requires those deliverables to be accepted in writing prior to payment.
- Specify the financial consequences for contractor noncompliance.
- Specify the ownership rights of any intellectual property related to the contract.
- Narrows the exemptions to the competitive procurement laws.
- Requires state agencies to provide specific information to the Department of Financial Services (DFS) when an agency elects not to use the competitive procurement process to award a contract for commodities or services.
- Requires state agencies to review and renegotiate contract renewals and reprocurements with savings to be placed in reserve in OPB.
- Continues the current limits on travel by state employees with approval requirements.
- Directs agencies to improve enforcement of the Preferred Pricing Clause (PPC) in state contracts and introduce penalties for misrepresentation.
- Appropriates funds and positions to the Department of Financial Services to implement this act.

B. Amendments:

None.