
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 22, 1998 Revised: _____

Subject: Persons Not Authorized for Employment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute requires contractors falling within the definition of a “qualified bidder,” “responsible bidder,” “qualified offerer,” or “responsible offerer” under the state procurement statute to comply with any contract conditions prohibiting the employment of persons not legally authorized for such employment. This committee substitute also requires notice to certain government contractors that the employment of persons not legally authorized for such employment is cause for cancellation of the contract.

This committee substitute amends sections 287.012 and 287.057, Florida Statutes.

II. Present Situation:

Part I of ch. 287, F.S., governs the procurement of commodities, insurance, and contractual services by the executive branch of state government. Section 287.001, F.S., expresses the legislative finding that it “is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services; that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained; and that adherence by the agency and the contractor to specific ethical considerations be required.”

As used in this part, an “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other units of the executive branch of state government (s. 287.012(1), F.S.). A “contractor” is defined as a person who contracts to sell commodities or contractual services to an agency (s. 287.012(6), F.S.). This statute also defines the terms “qualified bidder,” “responsible bidder,” “qualified offerer,” or “responsible offerer,” to

mean a person who has the capability to perform fully the contract requirements and has the integrity and reliability that will assure good faith performance (s. 287.012(13), F.S.).

The process for procurement of commodities or contractual services is established, in principal part, in s. 287.057, F.S. In particular, subsection (1) of this section requires that contracts for the purchase of goods or contractual services in excess of \$15,000 be awarded through competitive sealed bidding. The process calls for issuance of an invitation to bid, evaluation of bids, and award of the contract to the qualified and responsive bidder who submits the lowest responsive bid.

III. Effect of Proposed Changes:

Section 287.012, F.S., is amended to require that contractors who fall within the definition of a “qualified bidder,” “responsible bidder,” “qualified offerer,” or “responsible offerer” under the provisions applicable to state agency contracts for commodities, insurance, and contractual services must comply with any contract conditions prohibiting the employment of persons not legally authorized for such employment.

Section 287.057, F.S., is amended to require notice to contractors in the contracting documents that the employment of persons the contractor, through the actions of the owner, chief executive officer, chief financial officer, or any person with authority to hire and manage the operations of the contractor’s business, knows are not legally authorized for such employment shall be cause for cancellation of the contract.

This section is further amended to add a new subsection, specifying that any contract with a contractor who so knowingly employs persons not legally authorized for such employment shall be subject to cancellation. The subsection provides for cancellation of the contract through the filing for declaratory judgment in the circuit court in which the agency, as defined in s. 287.012(1), F.S., maintains its principal place of business.

The committee substitute provides an effective date of October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A contractor may face cancellation of a contract with an agency, as defined in s. 287.012(1), F.S., if the contractor knowingly, through the actions of its owner, principal officers, or any person with hiring and management authority, employs persons not legally authorized for such employment. The precise impact of this committee substitute on state government contractors, however, is indeterminate. (See “Related Issues” section, below.)

C. Government Sector Impact:

An agency, as defined in s. 287.012(1), F.S., attempting to cancel a contract with a contractor found to have hired persons not legally authorized for such employment will incur costs through the filing for declaratory judgment in circuit court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This committee substitute does not define the term “persons not legally authorized for such employment.” The term may encompass, among others, persons who are not legally authorized to work because of their age, immigration status, or failure to hold required licenses. Consequently, the scope of the measure and the potential impact of the measure on state agencies and state agency contractors are not immediately clear. In addition, the committee substitute does not specify how compliance with the prohibition against employment of unauthorized persons will be monitored by state agencies that contract with private businesses.

This committee substitute also does not define the terms “knows” or “knowingly” with respect to a contractor’s employment of persons not legally authorized for such employment. In other situations, some sections of the Florida Statutes specifically define similar terms. (See, e.g., s. 68.082(1), F.S., relating to false claims against the state; s. 409.920(1), F.S., relating to Medicaid provider fraud; s. 671.201(25), F.S., relating to the Uniform Commercial Code; and s. 847.012(1), F.S., relating to distribution of harmful materials to persons under 18 years of age.) Specifically defining such terms in the context of this committee substitute may help to clarify whether the measure is intended to address actual or constructive knowledge on the part of the contractor.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
