

# 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.)

BILL: SB 2472

SPONSOR: Senator Latvala

SUBJECT: Financial Matters

DATE: April 4, 2000

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill expands the acceptance of credit and debit cards to payment for goods and information when there is substantiated benefit to the public and the agency. The State Technology Office, in lieu of the Governor's Office of Planning and Budgeting, shall provide a review and recommendation to the Treasurer, and develop a cost-benefit methodology for state agency use when Internet procurement of such goods or service is effected.

This bill amends section 215.322, Florida Statutes.

## II. Present Situation:

Section 215.322, F.S., authorizes agencies of the executive and judicial branch, and local governments, to use alternate payment systems for the procurement of their services. The pervasive use of technology in public agencies has challenged many of the conventional methods of property acquisition. Most procurements are effected through the provisions of chs. 255 and 287, F.S., and require the posting of notices, the development of product or service criteria, and the prequalification of bidders through paper-intensive means.

The Department of Management Services (DMS), along with other state agencies, has begun the reformatting of its internal legacy systems to become more technologically sensitive to alternative means of purchasing needed public services on behalf of constituent customers. The DMS has developed a website presence through which all public agencies in Florida, and their contract vendors, may negotiate for the purchase of common commodities through remote access and expedited delivery. Part of this process includes the use of a state purchasing card. Some 11,200 unique customers may use this debit card for the acquisition of state contract approved items from participating contract vendors to reduce the float time from execution to payment.

Pursuant to s. 215.322(3), F.S., the Treasurer has adopted rules to specify procedures for the establishment of a credit card, charge card, and debit card operation, as well as acceptance of

credit card, charge card, and debit card payments by state agencies and the judicial branch for goods and services. *See* Rules 4C-4.001-.009, F.A.C. Rule 4C-4.003(6), F.A.C., defines a convenience fee as a fixed rate or variable rate charge assessed by a state agency or the judicial branch to a credit card, debit card or charge card payment to help defray the cost of a unique transaction. Section 215.322(3)(b), F.S., allows the imposition of a convenience fee upon the person making the payment to the governmental entity as long as the fee does not exceed the total cost to the governmental entity of contracting for such services.

Section 215.322(3)(c), F.S., also provides that service fees payable by the governmental entity shall be paid, when practicable, by state warrant or such other manner that is satisfactory to the Comptroller. Rule 4C-4.003(2), F.A.C., defines a service fee as a fee charged by the service provider for the service of processing transactions, authorization, settlement, and reimbursement of transactions. A service provider, is defined by Rule 4C-4.003(1), F.A.C., as an entity that processes credit cards, charge cards, and debit cards on behalf of merchants (i.e. governmental entities) and also provides the service of authorization, settlement, and reimbursement to merchants for their transactions.

There are no reported Florida state court decisions construing s. 215.322, F.S. However, the Attorney General has issued several opinions on this statute. One of those opinions, *AGO 98-44* (July 14, 1998), responded to a question from the clerk of a circuit court about whether the clerk could budget and use public funds to pay surcharges imposed by a credit card company. The Attorney General responded in the affirmative but noted that nothing in s. 215.322(5), F.S., actually required the clerk to collect the surcharge from the payor. If the clerk does not collect the surcharge from the payor and budgets the funds of the clerk's office to cover the cost of such surcharges, then the clerk must make a determination that the expenditure of such funds accomplishes a public purpose so as not to violate Section 10, Article VII of the Florida Constitution. The public purpose must be clearly identifiable, concrete and the primary objective of the expenditure or pledging of public funds or public credit, with any benefits to private interests being only incidental and secondary. *See O'Neill v. Burns*, 198 So.2d 1 (1967).

### III. Effect of Proposed Changes:

**Section 1.** The bill amends subsection (1) of s. 215.322, F.S., to extend the authority of state agencies, the judicial branch and units of local government to make their goods and information, in addition to their services, available to the public through the use of credit cards, charge cards, and debit cards. The bill provides this can be done when the benefits to the participating agency and the public substantiate the cost of accepting these types of payments.

The bill also permits, in subsection (2) of s. 215.332, F.S., the State Technology Office, renamed in Senate Bill 2474, to substitute for the Governor's Office of Planning and Budgeting as the designated reviewing and recommending authority when Internet collection means are used for electronic procurement.

The bill amends paragraph (b) of s. 215.332(3), F.S., to delete the requirement that the total amount of convenience fees charged by the governmental entity to the payor shall not exceed the total cost to the state of contracting for credit, charge, or debit card services.

The bill adds paragraph (e) to s. 215.332(3), F.S., to direct the Treasurer to undertake completion of a cost-benefit methodology to be used by state agencies for the assessment of the quantifiable and nonquantifiable benefits of alternative procurement and payment means to the public and affected individuals and businesses.

**Section 2.** The bill is effective 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.

##### **D. Other Constitutional Issues:**

The bill deletes, in subsection (1) of s. 215.322, F.S., the phrase “and to reduce the administrative costs of government” from the language which authorizes use of credit, charge, and debit cards. Arguably, reduction of administrative costs will no longer be required as long as the benefits to the participating agency and the public substantiate the cost of accepting credit, charge, and debit cards. If administrative costs actually increase, and the costs are not recouped through convenience fees, Section 10 of Article VII of the Florida Constitution will require the participating agency to prove that a clearly identifiable and concrete public purpose is the primary objective behind not recovering the fees from the payor. *See AGO 98-44* (July 14, 1998), citing *O’Neill v. Burns*, 198 So.2d 1, 4 (Fla. 1967).

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

The use of service fees, either explicitly listed as a supplemental charge or included in the bundled cost of the acquisition, will provide additional income to the financial intermediary.

##### **B. Private Sector Impact:**

Electronic payment systems inherently reduce the float associated between the time of execution and the receipt of payment from a few weeks to a few days. This reduces the costs of capital to a particular merchant whose credit line may be obligated for a shorter period, thus reducing interest expense.

**C. Government Sector Impact:**

The bill now provides the authority for, but does not require, the assessment of convenience fees which exceed the total costs to the state for contracting for credit, charge, and debit card services. The assessment of convenience fees, if any, will have to be weighed against the additional economies of scale resulting from greater purchasing power achievable through the consolidated purchasing power of the DMS. Rebuilding of the State of Florida's internal financial management system is the subject of a separate study in which alternative procurement plays a major role.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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