

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 Governmental Operations Committee

BILL: CS/CS/SB 392

INTRODUCER: Governmental Operations Committee, Community Affairs Committee, Senators Storm and Ring

SUBJECT: Local Government Transparency

DATE: March 27, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/CS
2.	Wilson	Wilson	GO	Fav/CS
3.			FT	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides for transparency in local and state government contracts. The bill creates definitions for the purposes of the act and directs the Department of Financial Services (department) to develop and maintain a portal linking to websites maintained by the local governments and state agencies subject to the requirements of the act. Each local government with a website is required to electronically post specific information on contracts of \$5,000 or more which are executed between the local government or a county officer and a corporation or an individual. Website access must be provided to the public free of charge.

The bill directs the department to create a uniform reporting format to be used by all local governments when reporting contract information. A 3-year staggered implementation schedule is provided with the first local governments posting contract information by December 31, 2009.

The bill creates s. 218.315, F.S.

II. Present Situation:

The Federal Funding Accountability and Transparency Act of 2006 is at the forefront of the effort to require accountability in government spending. At the national level the federal government's accountability website, USASpending.org is online and available to the public. This website provides for accountability in federal spending by allowing the general public to electronically track federal financial assistance and expenditure awards of \$25,000 or more to corporations, associations, partnerships, limited liability companies and partnerships, sole proprietorships, and any other legal business entities, states or localities.

Several states are following the federal government's lead and have passed legislation implementing "transparency in government" provisions. At a minimum, these states require that all contract and grant award information be posted on a centralized Internet website which must be available to the public at no cost. The goal of the transparency measures is to provide for increased accountability in government by allowing the public to have electronic access to expenditure information.

Minnesota - The Minnesota State Auditor's Office maintains a searchable database website¹ containing financial information on counties, cities, school districts, townships and special districts. The website allows the user to select the county or city, the year for which the user wants to see financial information, as well as the revenue and expense category. Information on school districts, townships, and special districts is less explicit but the user can still see net revenues and expenditures through 2005.

The 2007-2008 Minnesota Legislature enacted Chapter 148, an act relating to governmental operations, which provides in part for the creation of a website with a searchable database on state contracts and grants. The legislation required that by January 1, 2008, the Commissioner of Administration maintain a database for state contracts in excess of \$25,000. Contract information such as the name and address of the receiving entity, the name of the agency entering into the contract, the purpose of the contract, and the amount and source of contract funds must be posted within 30 days of the date the contract is entered into. Contract information must be maintained in the database for a period of 10 years.

Texas - The Texas Legislature enacted HB 3430 which requires the State Comptroller to establish and post on the Internet a database of state expenditures, including contracts and grants. The general public must be able to electronically search the database but confidential information exempted under state law is protected. The database² must include the amount, date, payer and payee of expenditures, and a listing of state expenditures by category with a link to the warranty or check register level. The Department of Information Resources must provide a link to the database on the public home page of the TexasOnline Project,³ and each state agency that maintains a generally accessible website must provide a link to the database on the agency site. In addition, HB 3430 directed the Legislative Budget Board⁴ to electronically post on the Internet each major contract⁵ of a state agency and each request for proposal or invitation to bid.

¹ <http://www.auditor.state.mn.us/default.aspx?page=ComparisonTools>

² <http://www.cpa.state.tx.us/comptrol/pendlist/cashdrill.php>

³ See <http://www.texasonline.com>

⁴ The Legislative Budget Board is a permanent joint committee of the Texas Legislature and is responsible for developing

Missouri - In July 2007, Governor Matt Blunt issued Executive Order 07-24 directing the Missouri Commissioner of Administration to establish the Missouri Accountability Portal as a free, Internet-based searchable database of financial transactions relating to the purchase of goods and services, and the distribution of funds for state programs. The Division of Purchasing and Management in the Missouri Office of Administration maintains its own website of current state contracts. Using a website developed by one of the state's contract technology providers, the Division of Information Technology Services was able to take the codes from the state's centralized financial system and link them to the codes in the purchasing database to create an on-line contract link for the general public.

The site can be accessed and searched by category, by vendor receiving payment, and by contract, and the drill-down features on the site allow access to payment details.⁶ Information on the site is updated daily at the close of business and except for routine maintenance, the site is available 24 hours a day, 7 days a week.

Florida - In Florida, "transparency in government" efforts have been mostly directed toward local governments. Some transparency is currently provided through the Local Government Annual Financial Reporting website of the Department of Financial Services, and most local governments in Florida maintain websites that can be searched for budget information, annual financial reporting information, and contract bids and awards information. During the 2007 Regular Session, members of the Florida Senate filed three specific bills relating to transparency in state and local government. The bills provided for open access to information relating to state and local governments' revenues and expenditures, including information on contracts and grants.

Although none of the filed bills was enacted into law, the Florida Senate passed legislation which required, in part, that local governments electronically post all revenues and expenditures on the local government's website if one is available, or if not, on the county government's website. The reporting requirements were to take effect in 2009 and were phased in over a 3-year period, beginning with larger local governments. To provide transparency in local government budgeting, each local government was required to electronically post its anticipated revenues, proposed budget, and tentative millage, and within 10 days after the adoption of the budget, the adopted budget and millage rate. Finally, local governments were required to electronically post all contracts that are public records on each local government's official website, if available, or otherwise on the county government's official website. Contract information was to be posted beginning in November, 2007 on a phased-in schedule with all reporting entities to be phased over a 2-year period. An exemption from the posting requirements was provided for school district employment contracts.

Local Government Annual Financial Reports - Uniform Accounting

Section 218.32 (1), F.S., requires that local governments submit to an Annual Financial Report to the department which covers their operations for the preceding fiscal year. The department

budget and policy recommendations for legislative appropriations for all agencies of state government.

⁵ Includes amendments, modifications, renewals, or extensions and applies to contracts with a value of more than \$50,000. (see s. 322.020, Government Code, Texas Statutes, as designated by the 2007 Regular Session)

⁶ <http://mapyourtaxes.mo.gov/map/>

makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database and makes that information available to the public in an electronic format. The department developed a Uniform Accounting System Manual to be used by local governments as the standard for recording and reporting financial information to the state. The manual contains a uniform classification of accounts to be used by local governments in reporting revenues and expenditures.

III. Effect of Proposed Changes:

The bill creates the following definitions:

- "Contract" means a legally binding agreement between a governmental entity and a person requiring a payment of \$5,000 or more.
- "Corporation" means all corporations registered to do business in the state, whether for profit or not for profit; foreign corporations qualified to do business in the state or actually doing business in the state, whether for profit or not for profit; limited liability companies under chapter 608, partnerships under chapter 620, a sole proprietorship under s. 440.02; or any other legal business entity, whether for profit or not for profit.
- "County officer" means a sheriff, tax collector, property appraiser, supervisor of elections, and a clerk of the circuit court.
- "Local government" means counties, municipalities, water management districts, and special taxing districts with the authority to levy ad valorem assessments or non-ad valorem assessments. School districts are excluded from the definition.
- "Individual " means a person, but excludes an employee of a governmental entity or an employee of the federal government.

Local Governments - Electronic posting requirements

Each local government with a website must electronically post specific information on contracts of \$5,000 or more which are executed between a local government or a county officer and a corporation or an individual. The information must be posted using basic categories of expenditures as provided in a uniform format to be developed by the department. Where possible, local governments must provide a link to an electronic copy of the contract. Any public record that is exempt from inspection or copying under the provisions of ch. 119, F.S., or other provisions of general law is exempt under the act.

Each local government must designate one central office to maintain all contract information except that contract information required to be reported by a county officer shall be maintained by the county. For local governments without a website, the contract information must be maintained in a local government office that is reasonably accessible to the public during normal business hours. The office must be able to provide contract information to a member of the general public as a public records request.

The Department of Financial Services - Uniform format requirements

The bill directs the department to develop and maintain a portal that links to websites maintained by local governments that post contract information. The department must develop a uniform

reporting format to be used by all local governments when electronically posting contract information. The uniform format must include:

- The name of the local government or county officer that is a party to the contract;
- The name of each corporation or individual that is a party to the contract;
- The date and the amount of the contract;
- The purpose of the contract; and
- The basic expenditure categories reported by local governments in the annual financial report submitted to the department under s. 218.32, F.S.

Implementation Schedule

Local governments must begin posting contract information on the following schedule:

- On or before December 31, 2009, all five water management districts, any county with a population of 300,000 or more, any municipality with a population of 50,000 or more, and any special taxing district within such county or city. (18 counties and 49 cities)
- On or before December 31, 2010, any county with a population of at least 50,000 but fewer than 300,000, any municipality with a population of at least 10,000 but fewer than 50,000, and any special taxing district within such county or city. (24 counties and 112 cities)
- On or before December 31, 2011, all other counties, cities, and special taxing districts. (25 counties and 161 cities)

The population estimates used by counties and cities to meet the schedule requirements are those to be reported on April 1, 2009, by the Legislature's Office of Economic and Demographic Research to the Executive Office of the Governor.

Rulemaking Authority

The department is provided with rulemaking authority to implement provisions of the act relating to the development and maintenance of the state portal that links to local websites, and the development and distribution of the uniform reporting format.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires cities and counties to take actions to list certain contract information. Ordinarily, provisions such as this which direct the undertaking of an act by a unit of local government would be considered a mandate which may or may not be funded. Paragraph (3)(a) requires each named unit of local government to post contract information using basic expenditure categories. This is additional workload and it is uncertain whether the effort required will cost additional money or produce only a productive cost, that is, additional workload upon existing professional staff.

Paragraph (3)(b) and Subsection (4) of the bill, however, contain two limiting conditions that may moderate some of this effect. Lines 67 and 84 of CS for SB 392 contain the

limiting statements of ". . .To the extent possible . . ." and ". . . Except as provided in this section . . ." which blunt somewhat the imperative of the word "shall" which immediately follows these phrases. The term "section" effectively refers to the entire bill based upon its coding. Since this implies some judgment to be exercised by the affected unit of government, it could permit different perspectives on whether the duties of the local governments are mandatory or simply strongly suggestive. The "possibility" of achieving this objective may be easy or difficult, but the unit of local government will be the judge of that.

B. Public Records/Open Meetings Issues:

The bill provides an exemption for contracts that are exempt from inspection or copying under ch. 119, F.S. The text of its drafting covers the exemption of more material than may be necessary. Florida law shields personally identifying information and names the circumstances in many cases with individual specificity. In addition, Social Security numbers and bank card information are exempted specifically. The way the text on lines 87 through 104 reads would permit a unit of government to exempt the entirety of any document that contained "exempt" information instead of redacting only those discreet entries which are personally identifying. The introductory phrase "(t)To the extent possible . . ." could be used by a government to shield the posting of the entire document even though only one data field contained the identifying material. A clarifying amendment is suggested which would read: "The portion of a public record that is confidential or exempt from inspection and copying shall be redacted prior to posting." Corrective language was incorporated into the expansion of the reporting requirements on state agencies but was not extended to units of local government.

The bill exempts its application from government employees. Once such personnel terminate from that employment status and become retirees, or become employed elsewhere, the status of this information becomes less clear. There are two principal reasons for this. First, retirees from public organizations are receiving continuing benefits from a retired payroll which is distinguishable from that for active employees. And, second, the Florida Retirement System, and probably all other local government pension plans, are contractual rights plans by statute, special act or ordinance⁷. If those pension agreements are contracts and the recipients are no longer employees, then a unit of government may have little discretion in posting their contents. A unit of government interpreting this result as its duty will have to take steps to avoid the posting of personal identifying information otherwise shielded by law, such as Social Security numbers or bank or credit card data.

The consequences of this are more than ones of volume. Chapter 121, F.S., already shields the bulk disclosure of retiree information for members in the FRS in order to prevent telemarketing and mass merchandizing of retirees and survivors with products that may be unsuitable for the preservation of their income.⁸ It is unclear from the text of this bill whether the public organizations will be able to shield the bulk disclosure of this

⁷ Section 121.011(3)(d), F.S.

⁸ Section 121.031(5), F.S.

information under current law if this bill becomes law as it will require the editing of each file prior to posting.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

When implemented, the local government websites will provide the general public with accountability in local government contract spending.

C. Government Sector Impact:

State - The Department of Financial Services estimates that \$65,000 in non-recurring revenue will be needed by July 1, 2009, to develop and implement the uniform reporting requirements of the bill. The department also reports that between \$10,000 and \$15,000 will be required for website development should the bill be expanded to include state agencies.

Local - The financial impact of the bill is indeterminate but local governments can expect to incur costs to comply with the reporting requirements of the bill for both website maintenance and staff. In addition, local governments that choose to make electronic copies of contracts available may incur additional costs related to the technology required to do so. As noted, above, it is arguable whether that duty is considered mandatory or not.

VI. Technical Deficiencies:

As noted, above, the reference to the posting of exempt documents is not crafted in a way that will reach to the shielding of only personal identifying information. A corrective amendment is suggested so that the local and state sections of the bill read identically.

VII. Related Issues:

Senate Bill 2082 attempts to provide additional protections to elderly retirees who also may be subject to annuity fraud.

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 Governmental Operations on March 26, 2008:

The CS for the CS extends the application of the bill to state agencies.

CS by Community Affairs on March 19, 2008:

The CS makes substantial revisions to the original bill. The Department of Financial Services is directed to develop and maintain a state portal that links to local government websites, and to develop a uniform reporting format to be used by local governments when electronically posting contract information. Local governments are required to electronically post contract information on a staggered schedule. Provisions are included for local governments without a website to make contract information available to the general public.

- B. **Amendments:**

None.