

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 Ethics and Elections Committee

BILL: SB 1554
 INTRODUCER: Senators Gelber, Smith, and others
 SUBJECT: Public procurement
 DATE: March 16, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	GO	_____
4.	_____	_____	JU	_____
5.	_____	_____	WPSC	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1554 makes it a 2nd degree felony for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process, to fail to advertise, publicly announce, or electronically post a solicitation for the procurement of commodities or contractual services which he or she is *already* obligated to do by statute or rule.

The bill takes effect July 1, 2010.

This bill substantially amends s. 838.22 and reenacts s. 921.0022(3)(g) of the Florida Statutes.

II. Present Situation:

Chapter 287, Florida Statutes, generally governs the procurement and bid solicitation process for commodities and contractual services for most state executive agencies. Unless otherwise provided or exempt, it mandates that such contracts exceeding \$25K be subject to the competitive bidding/proposal/request process.¹ Specific exemptions to this competitive-solicitation process include contracts for:²

1. Artistic services.
2. Academic program reviews.
3. Lectures by individuals.
4. Auditing services.

¹ See generally, ss. 287.017 (1)(b), 287.057, F.S.

² Section 287.057(5)(f), F.S.

5. Legal services.
6. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.
7. Services provided to persons with mental or physical disabilities by certain not-for-profit corporations.
8. Medicaid services by certain health care providers.
9. Family placement services.
10. Prevention services relating to mental health.
11. Training and education services provided to injured employees pursuant to s. 440.491(6).
12. Contracts entered into by the Department of Transportation pursuant to s. 337.11.
13. Services of commodities *provided by* governmental agencies.

III. Effect of Proposed Changes:

Senate Bill 1554 makes it a 2nd degree felony for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by a state, county, municipal, or special district agency, or other public entity, to fail to advertise, publicly announce, or electronically post a solicitation for the procurement of commodities or contractual services which he or she is *already* obligated to do by statute or rule.

The bill also makes a technical change, reenacting s. 921.0022(3)(g), Florida Statutes, for purposes of incorporating the new offense created in the bill into the Offense Severity Ranking Chart.

The bill takes effect July 1, 2010.

Other Potential Implications:

Notwithstanding the inherent evidentiary *difficulty* in proving a corrupt intent with respect to an omissive crime --- that is, a *failure* to act as oppose to an *affirmative* act, one impact of the bill will likely be to encourage agencies and local governments to reexamine and very narrowly interpret the competitive-solicitation contracting exemptions in Florida law.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (“CJIC”) provides the final, official estimate of the prison bed impact, if any, of legislation. The CJIC has not provided an official projection with respect to the bill, but it is on their March 17 meeting agenda with the likely projected impact being “insignificant.”

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.)

None.

B. Amendments:

None.