

**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.)

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Prepared By: The Professional Staff of the Commerce and Tourism Committee

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BILL: SB 596

INTRODUCER: Senator Storms and others

SUBJECT: Employee Compensation

DATE: January 25, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	<b>Pre-meeting</b>
2.	_____	_____	GO	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

SB 596 relates to the compensation of employees of nongovernmental organizations, quasi-governmental organizations, and not-for-profit organizations and provides that employees of such organizations may not receive a salary in excess of the salary paid to the highest statewide elected official as established in the General Appropriations Act.

This bill creates a general law not contained in a designated section of the Florida Statutes.

**II. Present Situation:**

**State Procurement**

The Department of Management Services (department) is the agency charged with overseeing statewide procurement activity, as provided under ch. 287, F.S. Thus, the mission of the department is:

- (1) To promote efficiency, economy, and the conservation of energy and to effect coordination in the purchase of commodities and contractual services for the state.
- (2) To provide uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users.
- (3) To procure and distribute federal surplus tangible personal property allocated to the state by the Federal Government.<sup>1</sup>

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<sup>1</sup> Section 287.032, F.S. (2011).

State agencies also engage in the procurement process directly. Specifically, s. 287,056, F.S., provides that “agencies shall, and eligible users<sup>2</sup> may, purchase commodities and contractual services from purchasing agreements established and state term contracts<sup>3</sup> procured to s. 287.057, F.S., by the department.” Thus, the statutory framework enables state agencies to enter into contracts for the provision of services by not-for-profit corporations, for-profit-corporations, counties, and municipalities in cases where the outsourcing of needed services would prove to be more cost-effective for the department.

### **Salaries of State Employees and Elected Officials**

The salaries of state employees in both the executive and judicial branches can be found online at MyFlorida.com.<sup>4</sup> A search query for three of Florida’s statewide elected officials, the Attorney General, Commissioner of Agriculture, and Chief Financial Officer, provide that each official is compensated annually in the amount of \$128,971.96.<sup>5</sup>

To date, the state’s fourth statewide elected official, the Governor, is compensated at \$.12 annually<sup>6</sup>; however, it should be noted that the General Appropriations Act for FY 2011-2012 provides that the Governor is to be compensated at the amount of \$130,273.<sup>7</sup> Moreover, the Lieutenant Governor is compensated annually in the amount of \$124,851.

Lastly, the salaries for non-elected state employees and state employees employed by the state university system are also provided online.<sup>8</sup> Based on the reports of agency and statewide public universities, the highest paid non-elected state employee is compensated in the amount of \$275,000, while the highest paid state university system employee is compensated at \$1,213,362.<sup>9</sup>

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

**Section 1** creates an undesignated section of the Florida Statutes and imposes salary limitations on employees of a nongovernmental organization, quasi-governmental entity, or not-for-profit organization that receives two-thirds or more of its budget from state-appropriated funds, including state-appropriated federal funds.

Specifically, employees of such enumerated organizations may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of the salary paid to the highest statewide elected official as established in the General Appropriations Act. An exception to this limitation exists for those organizations or entities that receive approval from the Legislative Budget Commission.

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<sup>2</sup> Rule 60A-1.005, F.A.C. (2011).

<sup>3</sup> A state term contract is a term contract that is competitively procured by the department pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S. See s. 287.012(27), F.S.

<sup>4</sup> Available at: <http://dmssalaries.herokuapp.com/salaries> (last visited January 24, 2012).

<sup>5</sup> *Id.*; See also ch. 2011-69, L.O.F.

<sup>6</sup> *Id.*

<sup>7</sup> Chapter 2011-69, L.O.F.

<sup>8</sup> Available at: [http://www.floridahasarighttoknow.com/search\\_state\\_payroll.html](http://www.floridahasarighttoknow.com/search_state_payroll.html) (last visited January 24, 2012).

<sup>9</sup> *Id.*

Currently, the salary of the highest-paid statewide elected official is \$128,971.96.<sup>10, 11</sup> As such, the effect of SB 596 would be to limit the base pay or base pay combined with any bonus or incentive payments of employees falling under this bill's restrictions to that amount. As created by this bill, state employees would not be directly subject to such salary limitations.

**Section 2** provides that this act shall take effect July 1, 2012.

#### 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:

#### **Impairment of Contracts**

Article 1, Section 10 of the United States Constitution provides that no state shall pass a law impairing the obligation of contracts.<sup>12</sup> The key inquiry when analyzing issues under the contract clause is whether the statute at issue impairs *performance* of the contract or impairs the *obligation* of the contract.<sup>13</sup> If the former, then a constitutional violation has likely not been triggered seeing that a remedy for the aggrieved party continues to exist in the form of a suit for breach of contract.<sup>14</sup> However, if the law is being used "to materially alter the scope of a contract" than it could be construed as unconstitutionally impairing the obligation of that contract.<sup>15</sup>

<sup>10</sup> See *supra*, note 4.

<sup>11</sup> Note that if the statute is construed to state that a nongovernmental, quasi-governmental entity, or not-for-profit organization may not be paid in excess of the highest salary paid to a statewide elected official, irrespective of whether the elected official receives such salary, then the correct amount would be \$130,273. See *supra*, note 7.

<sup>12</sup> See also FLA CONST. art. 1, s. 10

<sup>13</sup> See *Hays v. Port of Seattle*, 251 U.S. 233, 237 (1920) See also, *Jackson Sawmill Co. Inc. v. United States*, 580 F.2d 302, 312 (8th Cir. 1978), *cert denied*, 439 U.S. 1070 (1979) (holding that holders of municipal bonds issued by city to finance interstate bridge project did not have contract clause claim under the federal constitution in the absence of any statute impairing the obligations arising from the terms of the contract); *Compare, U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 29 (1977) (holding that the contract clause prohibited the retroactive repeal of a 1962 covenant that limited the ability of the Port Authority of New York and New Jersey to subsidize rail passenger transportation facilities from revenues and reserves funds that would be used to guarantee Port Authority bondholders).

<sup>14</sup> *E&E Hauling, Inc. v. Forest Preserve District of DuPage County, Ill.*, 613 F.2d 675, 679 (7th Cir. 1980) (referring to *St. Paul Gaslight Co. v. City of St. Paul*, 181 U.S. 142, 149 (1901)); See also, *Brooks v. Watchtower Bible & Tract Society, Inc.* 706 So. 2d 85, 90 (4th DCA 1998).

<sup>15</sup> *U.S. Trust Co. of New York*, 431 U.S. at 20-29.

As such, SB 596 could potentially trigger contract clause claims under both the federal and state constitution or breach of contract claims, if it is found that the ability of a state agency to carry out the terms of a contract with a nongovernmental organization, quasi-governmental entity, or not-for-profit organization is retroactively impaired.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

SB 596 applies to nongovernmental organizations and quasi-governmental entities; however, the absence of any statutory guidance to qualify the meaning of these terms may result in a confusing interpretation when determining what organizations and entities fall under such categories.

Additionally, a monitoring and auditing mechanism should be created to review the terms and execution of all contracts entered into by state agencies for compliance purposes. As such, rulemaking authority should be authorized to the appropriate agency to establish a framework for enforcing the provisions created by this bill.

**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.