

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 21, 1998 Revised: _____

Subject: Governmental Procurement of Property and Services

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>Krasovsky</u>	<u>RC</u>	<u>Favorable</u>
3.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

The bill adds the Legislature to the list of state agencies affected by public entity crimes and further requires that all purchases of commodities and services by the Legislature are to be subject to the sealed, competitive bid procedures contained in chapter 287, Florida Statutes.

This bill amends sections 287.0015 and 287.133, Florida Statutes.

II. Present Situation:

Chapter 287, F.S., provides procedures for the government procurement of property and services. Generally, the Division of Purchasing in the Department of Management Services is the state agency charged by statute with implementing the development of such guidelines which include the development of large scale commodity purchasing arrangements for the multiple state, county, and special district entities which may use this service.

Section 287.113, F.S., governs the circumstances under which a person or business entity may be disqualified from doing business with a public agency following a criminal conviction for a prohibited business transaction with any public entity. The Department of Management Services is required to maintain a list with the identity of such persons who shall remain disqualified from doing business in excess of Category Two purchasing thresholds (\$15,000 and greater plus indexing) for a period of 36 months.

Article III, s. 4, State Constitution, provides that each house of the Legislature “shall determine its rules of procedure” and “shall be the sole judge for the interpretation, implementation, and enforcement of this section.”

Chapter 120, F.S., the Administrative Procedures Act, governs the conduct of state agency rulemaking actions that interpret or implement law or policy. The legislative chapter does not apply to the legislative or judicial branches of government or to agencies and functions of the executive branch which are specifically enumerated.

Rules 2.413 through 2.423 of the Joint Legislative Management Committee (JLMC)¹ provide procedures for the procurement of commodities and services similar to those contained in chapter 287, F.S., generally, and in s. 287.057, F.S., specifically. Rule 2.413(1) states: "All purchasing for the Legislature shall be in compliance with chapter 11, Florida Statutes; Joint Rule Three; and the policies adopted by the Joint Legislative Management Committee."

III. Effect of Proposed Changes:

Section 1. Section 287.133, F.S., is amended to extend organizational application of the public entity crime statute to the Legislature.

Section 2. Section 287.0015, F.S., is amended to require the Legislature to follow the same requirements when using competitive bidding to procure commodities and services as are applicable to executive branch agencies.

Section 3. The bill takes effect July 1, 1998.

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 method for the resolution of bid disputes and contract awards in procurement decisions is through the Administrative Procedures Act. The Legislature and judicial branch, however, are exempted from its application since they do not fall under the definitional coverage of the

¹Under the provisions of Senate Bill 1574, the Joint Legislative Management Committee will be dissolved and its central administrative functions reallocated to a newly created Office of Legislative Services or assigned to the President of the Senate, the Speaker of the House of Representatives, or both.

chapter. The term “agency” is defined in s. 120.52, F.S., as inclusive of all executive departments of state government exercising their statutory authority and specifically enumerated units of local government only.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be additional notice of purchasing opportunities for private business interests which do not now have a commercial relationship with the Legislature.

C. Government Sector Impact:

The Division of Purchasing may assume a greater share of purchasing and procurement functions on behalf of the Legislature. In this circumstance there may be some opportunity for internal staff attrition due if duplicate functions are evident.

There may be some additional costs in terms of time to provide the publication notices of intended legislative purchasing decisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Since the Legislature has itself adopted procedures which mimic the provisions of s. 287.057, F.S., there may in fact be no change to current practice. As discussed above, nonetheless, there remains a possibility that an aggrieved vendor may wish to protest an adverse decision through chapter 120, F.S. Because of the exempt nature of the legislative purchasing process, no chapter 120 protest action can be maintained presently.

Inclusion of the Legislature to chapter 287, F.S., also means that branch is affected by the statutory exceptions from its application. Legal services and services provided by government agencies are among the services specifically exempted from competitive sealed bid requirements. That exemption is provided in the JLMC rules and would continue to occur even if this bill became law. Except for the addition of consulting services contained in JLMC Rule 2.419(6)(b), which is not included in s. 287.057, F.S., this bill will not change current practice.

Under the provisions of s. 287.095, F.S., no competitive proposals are required for the purchase of products or services from the corporation managing inmate industrial and training programs created in part II of chapter 946, F.S.

VIII. Amendments:

#1 by Governmental Reform and Oversight:

Effective on July 1, 1998, state agencies are prohibited from entering into contracts or continuing contracts for legal services that base the contractor's compensation on the successful prosecution or settlement of any action, claim, or proceeding.

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