

**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 Committee on Appropriations

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BILL: SB 1764

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Transparency in Government Spending

DATE: March 11, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney		<b>GO SPB 7026 as introduced</b>
2.	Wilson/McKinnon	Hansen	AP	<b>Pre-meeting</b>
3.				
4.				
5.				
6.				

**I. Summary:**

SB 1764 amends the Florida Transparency Act (act) to:

- Require the creation of a single website through which all other websites required by the act may be accessed.
- Create style and formatting requirements for all websites required by the act.
- Require the creation of a website relating to state employee and officer data.
- Require the creation of a website relating to state fiscal planning data.
- Add search criteria and informational requirements to and amending suggested Joint Legislative Auditing Committee recommendations for, the existing state budget website.
- Require creation of a website for the state contract tracking system, including the documents and information required to be posted on the website, and changing the entities required to post documents and information on the website.
- Create a task force to develop and recommend a design for consolidating state transparency websites into one website.

The bill provides a 2013-2014 fiscal year appropriation of \$326,775 in recurring funds and \$386,292 in nonrecurring funds from the General Revenue Fund, as well as four full-time equivalent positions with associated salary rate of \$231,409, to the Department of Financial Services (DFS) for implementation of the state contract tracking system.

The bill substantially amends section 215.985, Florida Statutes.

## II. Present Situation:

### Transparency Florida Act

The Transparency Florida Act<sup>1</sup> (act) requires specified state fiscal information to be made publicly available via website or management system. A municipality or special district that has total annual revenues of less than \$10 million is exempt from the act.<sup>2</sup>

#### *State Budget Website*

The act requires the Executive Office of the Governor (EOG), in consultation with the Senate and House of Representatives appropriations committees, to establish and maintain a single website, directly accessible by the public through Florida's official Internet portal,<sup>3</sup> to provide information relating to each appropriation in the General Appropriations Act (GAA)<sup>4</sup> for each branch of state government and state agency<sup>5,6</sup>. Such information must include, but is not limited to:

- Disbursement data for each appropriation by the object code associated with the expenditure established within the Florida Accounting Information Resource Subsystem (FLAIR).<sup>7</sup> Expenditure data must include the name of the payee, the date of the expenditure, the amount of the expenditure, and the statewide document number.
- For each appropriation, any adjustments, including vetoes, approved supplemental appropriations included in legislation other than the GAA, budget amendments, other actions approved pursuant to chapter 216,<sup>8</sup> and any other adjustments authorized by law.

<sup>1</sup> Chapter 2009-74, s. 2, L.O.F. (codified at s. 215.985, F.S.).

<sup>2</sup> Section 215.985(11), F.S.

<sup>3</sup> The State of Florida's official internet portal is [www.myflorida.com](http://www.myflorida.com).

<sup>4</sup> As required by the Florida Constitution, the GAA provides itemization of expenditures for:

- State operations.
- State capital outlay.
- Aid to local governments and nonprofit organizations operations.
- Federal funds and associated state matching funds.
- Spending authorizations for operations.
- Spending authorizations for capital outlay (FLA. CONST., art. III, s. 19(b)).

<sup>5</sup> "State agency" is not defined by ch. 215, F.S.; however, ch. 216, F.S., includes a definition that may be applicable. Section 216.011(1)(qq), F.S., provides that for the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, "state agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purpose of chs. 215 and 216, F.S., the term includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Florida Clerks of Court Operations Corporation, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. For the purposes of implementing s. 19(h), Art. III of the Florida Constitution, the term includes the judicial branch. (Section 19(h), Art. III of the Florida Constitution governs long-range state planning document and department and agency planning document processes.)

<sup>6</sup> Section 215.985(3), F.S.

<sup>7</sup> The FLAIR is part of the Florida Financial Management Information System (*see* footnote 10). The FLAIR is a double-entry, computer-based, general ledger accounting system, operated by the Department of Financial Services, that is used to perform the state's accounting and financial management functions (*see* "Florida Accounting Information Resource," <https://flair.dbf.state.fl.us/> (last visited March 5, 2013)).

<sup>8</sup> Chapter 216, F.S., provides planning and budgeting requirements.

- The status of spending authority for each appropriation in the approved operating budget, including released, unreleased, reserved, and disbursed balances.
- Position and rate information for positions provided in the GAA.<sup>9</sup>

All data provided through the website must be data currently available in the Florida Financial Management Information System (FFMIS).<sup>10, 11</sup> The Office of Policy and Budget in the EOG must ensure that all data added to the state budget website remains accessible to the public for 10 years.<sup>12</sup>

The Joint Legislative Auditing Committee (JLAC) is required to propose additional state fiscal information to be provided on the state budget website.<sup>13</sup> Such additional information may include, but is not limited to, the following information for state agencies:

- Details of nonoperating budget authority established pursuant to s. 216.181, F.S.<sup>14</sup>
- Trust fund balance reports, including cash available, investments, and receipts.
- General revenue fund balance reports, including revenue received and amounts disbursed.
- Fixed capital outlay project data, including original appropriation and disbursements throughout the life of the project.
- A 10-year history of appropriations indicated by agency.
- Links to state audits or reports related to the expenditure and dispersal of state funds.
- Links to program or activity descriptions for which funds may be expended.

The act also requires the JLAC to recommend a format for collecting and displaying information from state universities, Florida College System institutions, school districts, charter schools, charter technical career centers, local governmental units, and other governmental entities.<sup>15</sup>

By November 1, 2012, and annually thereafter, the JLAC must develop a schedule for adding additional information to the website by type of information and governmental entity, including timeframes and development entity.<sup>16</sup> The JLAC must submit the schedule to the President of the

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<sup>9</sup> Section 215.985(3)(a), F.S.

<sup>10</sup> Section 215.985(3)(b), F.S. Section 215.93(1), F.S., establishes the Florida Financial Management Information System to provide the information necessary to carry out the intent of the Legislature. The system must include, but is not limited to, the:

- Planning and Budgeting Subsystem;
- Florida Accounting Information Resources Subsystem;
- Cash Management Subsystem;
- Purchasing Subsystem; and
- Personnel Information System. *Id.*

<sup>11</sup> Section 215.985(3)(b), F.S.

<sup>12</sup> Section 215.985(14), F.S.

<sup>13</sup> Section 215.985(4), F.S.

<sup>14</sup> Section 216.181, F.S., specifies provisions relating to approved budgets for operations and fixed capital outlay.

<sup>15</sup> Section 215.985(5), F.S. Section 215.985(2)(a), F.S., defines “governmental entity” to mean any state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, any department, division, bureau, commission, authority, district, or agency thereof, or any public school, Florida College System institution, state university, or associated board.

<sup>16</sup> Section 215.985(6), F.S.

Senate and the Speaker of the House of Representatives. Additional information may include, but is not limited to:

- Disbursements by the governmental entity from funds established within the treasury of the governmental entity, including, for all branches of state government, allotment balances in the FLAIR.
- Revenues received by each governmental entity, including receipts or deposits by the governmental entity into funds established within the treasury of the governmental entity.
- Information relating to a governmental entity's bonded indebtedness, including, but not limited to, the total amount of obligation stated in terms of principal and interest, an itemization of each obligation, the term of each obligation, the source of funding for repayment of each obligation, the amounts of principal and interest previously paid to reduce each obligation, the balance remaining of each obligation, any refinancing of any obligation, and the cited statutory authority to issue such bonds.
- Links to available governmental entity websites.<sup>17</sup>

The JLAC also must prepare an annual report detailing progress in establishing the website and providing recommendations for enhancement of the content and format of the website and related policies and procedures.<sup>18</sup> Those reports must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>19</sup>

In addition, the act requires:

- Each executive branch agency, the state court system, and the Legislature to establish, by August 31 of each fiscal year, allotments in the FLAIR for planned expenditures of state appropriations.<sup>20</sup>
- The JLAC to coordinate with the Financial Management Information Board<sup>21</sup> in developing any recommendations for including information on the website which is necessary to meet the requirements of s. 215.91(8), F.S.<sup>22,23</sup>
- Functional owners<sup>24</sup> of FFMIS and other governmental entities to provide information necessary to accomplish the purposes of the act.<sup>25</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> Section 215.985(15), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 215.985(8), F.S.

<sup>21</sup> The Financial Management Information Board is part of the Administration Commission and is composed of the Governor, the Chief Financial Officer, the Commissioner of Agriculture, and the Attorney General (s. 215.95(1), F.S.). Its duties include management and oversight of the Florida Financial Management Information System (s. 215.95(2), F.S.).

<sup>22</sup> Section 215.91(8), F.S.,

<sup>23</sup> Section 215.985(9), F.S.

<sup>24</sup> Section 215.94, F.S., provides that the functional owners of the subsystems of the Florida Financial Management Information System (*see* footnote 10) are as follows:

- For the Planning and Budgeting Subsystem: the EOG.
- For the FLAIR: the Department of Financial Services.
- For the Cash Management Subsystem: the Chief Financial Officer.
- For the Purchasing Subsystem: the Department of Management Services.
- For the Personnel Information System: the Department of Management Services.

<sup>25</sup> Section 215.985(10), F.S.

*Water Management District Websites*

The act requires each water management district<sup>26</sup> to provide a monthly financial statement to its governing board and make such statement available for public access on its website.<sup>27</sup>

*State Contract Management System*

The act requires the Chief Financial Officer<sup>28</sup> (CFO) to provide public access to a state contract management system that provides information and documentation relating to contracts procured by governmental entities.<sup>29</sup> Such data must include, but is not limited to:

- The contracting agency.
- The procurement method.
- The contract beginning and ending dates.
- The type of commodity or service.
- The compensation to be paid.
- Compliance information, such as performance metrics for the service or commodity.
- Contract violations.
- The number of extensions or renewals.
- The statutory authority for providing the service.<sup>30</sup>

Within 30 days after a major change to an existing contract or the execution of a new contract, agency procurement staff of the affected state governmental entity must update the necessary information in the state contract management system.<sup>31</sup> A major change to a contract includes, but is not limited to:

- A renewal, termination, or extension of the contract; or
- An amendment to the contract.<sup>32</sup>

<sup>26</sup> The state of Florida has five water management districts (WMDs). The WMDs' duties include:

- Administration of flood protection programs.
- Performance of technical investigations into water resources.
- Development of water management plans for water shortages in times of drought.
- Acquisition and management of lands for water management purposes under the Save Our Rivers program.
- Administration of regulatory programs to manage the consumptive use of water, aquifer recharge, well construction, and surface water management (*see* "Water Management Districts," Florida Department of Environmental Protection, <http://www.dep.state.fl.us/secretary/watman/> (last visited March 5, 2013).

<sup>27</sup> Section 215.985(12), F.S.

<sup>28</sup> The CFO is an elected constitutional Cabinet member (FLA. CONST., art. IV, s. 4(a) and (c)). The CFO serves as the chief fiscal officer for the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities (FLA. CONST., art. IV, s. 4(c) and s. 17.001, F.S.). The CFO also serves as the head of the Department of Financial Services (DFS), which executes the duties of the CFO (s. 20.121, F.S.).

<sup>29</sup> Section 215.985(16), F.S.

<sup>30</sup> Section 215.985(16)(a), F.S.

<sup>31</sup> Section 215.985(16)(b), F.S.

<sup>32</sup> *Id.*

## Data Available on State Websites

### *State Budget Website*

The state budget website required by the act is located at [transparencyflorida.gov](http://transparencyflorida.gov). The website includes:

- All information required to be posted on the website.
- All information suggested for inclusion on the website except:
  - Non-operating budget information.
  - Information relating to a governmental entity's bond indebtedness.
  - Information from state universities, Florida College System institutions, school districts, charter schools, charter technical centers, and local governmental units.
- Links to:
  - State audits or reports related to the expenditures and dispersal of state funds.
  - Program or activity descriptions for which funds may be expended.
  - Reports of public school districts.

### *State Contract Management System*

Although the act does not require the state contract management system to be available via website, the CFO makes a limited number of contracts available online through the Florida Accountability Contract Tracking System (FACTS).<sup>33</sup> Contracts are searchable on FACTS by:

- Agency name.
- Vendor name.
- Agency assigned contract ID.
- Contract dollar value.
- Beginning and ending dates of the contract.
- Commodity or service type.

### *Additional Information*

Additional state governmental information available via website includes, but is not limited to:

- Monthly financial statements of WMDs, as required by the act.<sup>34</sup>
- Agency legislative budget requests, original and amended;<sup>35</sup> capital improvement plans;<sup>36</sup> long-range performance plans;<sup>37</sup> the Governor's budget recommendations;<sup>38</sup> legislative

<sup>33</sup> Available at <https://facts.fldfs.com/Search/ContractSearch.aspx> (last visited March 5, 2013).

<sup>34</sup> Available at <http://www.nwfwmd.state.fl.us/bizfinance.html>, <http://www.srwmd.state.fl.us/index.aspx?NID=136>, <http://floridaswater.com/financialstatements/>, <http://www.swfwmd.state.fl.us/business/financials/>, and [http://www.sfwmd.gov/portal/page/portal/xweb%20about%20us/agency%20reports#budget\\_strategic\\_plan](http://www.sfwmd.gov/portal/page/portal/xweb%20about%20us/agency%20reports#budget_strategic_plan). Last visited March 5, 2013.

<sup>35</sup> Available via the Florida Fiscal Portal (<http://floridafiscalportal.state.fl.us>, last visited March 5, 2013) and the Governor's "Let's Get to Work" website (<http://letsgettowork.state.fl.us/HomeFY14.htm>, last visited March 5, 2013).

<sup>36</sup> Available via the Florida Fiscal Portal.

<sup>37</sup> *Id.*

appropriations bills;<sup>39</sup> the conference report on the budget;<sup>40</sup> the Governor's veto message and a list of vetoed appropriations;<sup>41</sup> fiscal analysis in brief;<sup>42</sup> and planning and budgeting instructions and forms.<sup>43</sup>

- Payroll and position data for the executive and judicial branches,<sup>44</sup> state universities,<sup>45</sup> and the legislative branch.<sup>46</sup>

## Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>47</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>48</sup>

In addition to the Florida Constitution, the Florida Statutes specify requirements for public access to government records. The Public Records Act<sup>49</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>50</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>51</sup>

Only the Legislature may create an exemption to public records requirements.<sup>52</sup> If an agency receives a request for a public record that contains exempt or confidential information, the agency shall redact the portion of the record containing exempt or confidential information.<sup>53</sup>

<sup>38</sup> Available via the Florida Fiscal Portal and the Governor's "Let's Get to Work" website.

<sup>39</sup> Available via the Florida Fiscal Portal, the Governor's "Let's Get to Work" website, and the official websites of the Florida Senate and the Florida House of Representatives ([www.flsenate.gov](http://www.flsenate.gov) and [www.myfloridahouse.gov](http://www.myfloridahouse.gov), respectively (last visited March 5, 2013)).

<sup>40</sup> Available via the Florida Fiscal Portal and the official websites of the Florida Senate and the Florida House of Representatives.

<sup>41</sup> Available via the Florida Fiscal Portal.

<sup>42</sup> *Id.* The fiscal analysis in brief consists of the financial outlook post-session.

<sup>43</sup> Available via the Florida Fiscal Portal.

<sup>44</sup> Available via the Governor's "Florida Has Right to Know" website (<http://www.floridahasarighttoknow.com/>, last visited March 5, 2013).

<sup>45</sup> *Id.*

<sup>46</sup> Available via the official websites of the Florida Senate and the Florida House of Representatives.

<sup>47</sup> FLA. CONST., art. I, s. 24(a).

<sup>48</sup> *Id.*

<sup>49</sup> Chapter 119, F.S.

<sup>50</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>51</sup> Section 119.07(1)(a), F.S.

<sup>52</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th

### III. Effect of Proposed Changes:

#### Florida Transparency Act

This bill amends the Florida Transparency Act (act) as follows.

##### *Definition*

The term “contract,” which is currently used in the act but not defined, is defined to mean a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance.

##### *Style and Formatting Requirements*

All websites required by the act:

- Be constructed for usability that, to the extent possible,<sup>54</sup> provides an intuitive user experience.
- Provide a consistent visual design, interaction or navigation design, and information or data presentation.
- Be deployed in compliance with the Americans with Disabilities Act.<sup>55</sup>
- Be compatible with all major web browsers.<sup>56</sup>

##### *State Budget Website*

The bill amends provisions relating to the state budget website currently required by the act.

##### Drafting Changes

The requirement that the website be a single website that is directly accessible through Florida’s internet portal because the bill requires the creation of a new single access website, as described later in this analysis.

##### Search Criteria

The bill creates search criteria and downloading requirements for the currently-required disbursement data for expenditures in the Florida Accounting Information Resource Subsystem

DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

<sup>53</sup> Section 119.07(1)(d), F.S. Section 119.011(13), F.S., defines “redact” to mean to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

<sup>54</sup> The bill does not specify what is meant by “to the extent possible.”

<sup>55</sup> The Americans with Disabilities Act (Pub. L. No. 101-336, § 2, 104 Stat. 328 (1991)) contains nondiscrimination requirements for state and local government websites. Suggestions for compliance include, but are not limited to, text equivalents for images, accessible formats for documents, and avoidance of dictating colors and font settings.

<sup>56</sup> The bill does not define “major web browser.”



(FLAIR). That data must be searchable by the name of the payee, the paying agency, and fiscal year. It also requires such data to be downloadable in a format that allows offline analysis.

#### Required Information

The bill expands:

- Information that must be included from that relating to “each appropriation in the GAA” to that relating to “the approved operating budget.” The approved operating budget includes the GAA, any amendments to the GAA, and related provisions of enacted substantive legislation.
- Categories of currently-required position and rate information for positions provided in the GAA to also require position and rate information for positions approved through an amendment to the operating budget and positions established in the legislative branch.

#### JLAC Duties

The bill:

- Deletes the requirement that the JLAC recommend additional state fiscal information for the state budget website and instead *requires* all suggested information, except that relating to non-operating budgets, be included.
- Amends the requirement that the JLAC recommend a format for collecting and displaying information from educational entities, local governmental units, and other governmental entities, as described later in this analysis.
- Amends the requirement that the JLAC develop a schedule for adding additional information to the state budget website, as described later in the analysis.

#### *Single Access Website*

The EOG, in consultation with the appropriations committees of the Senate and the House of Representatives, is required to establish and maintain a single website that provides access to all other websites required by the act.

#### *State Fiscal Planning Website*

Also, the EOG, in consultation with the Senate and House of Representatives appropriations committees, is required to establish and maintain a website that provides information relating to state fiscal planning. While the state budget website provides information for *approved* budgets and related data, the bill requires the state fiscal planning website to include information submitted prior to the adoption of a budget, including proposals and requests that may never take effect. This information includes, but is not limited to:

- The long-range financial outlook adopted by the Legislative Budget Commission.<sup>57</sup>
- Instructions to the agencies relating to legislative budget requests, capital improvement plans, and long-range program plans.
- Legislative budget requests submitted by each state agency or branch of government, and any amendments to such requests.

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<sup>57</sup> The joint Legislative Budget Commission is required to annually issue a long-range financial outlook setting out recommended fiscal strategies for the state and its departments and agencies in order to assist the legislature in making budget decisions (FLA. CONST., art. III, s. 19(c)(1)).

- Capital improvement plans submitted by each state agency or branch of state government.
- Long-range program plans submitted by each state agency or branch of state government.
- The Governor's budget recommendations submitted pursuant to s. 216.163, F.S.<sup>58</sup>

State fiscal planning data must be searchable by fiscal year, agency, appropriation category, and keywords.

Additionally, the Office of Policy and Budget in the EOG is required to ensure that all data added to the website remains accessible to the public for 10 years.

#### *Employee and Officer Information Website*

The Department of Management Services<sup>59</sup> (DMS) must establish and maintain a website providing current information relating to each employee or officer of a state agency, state university, or the State Board of Administration,<sup>60</sup> regardless of the appropriation category from which the person is paid. For each employee or officer, the information must include, at a minimum, his or her:

- Name and salary or hourly rate of pay.
- Position number, class code, and class title.
- Employing agency and budget entity.

The employee and officer information must be searchable by state agency, state university, and the State Board of Administration, and by employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.

#### *JLAC Duties*

The bill reorganizes and amends the JLAC's responsibilities to recommend a format for collecting and displaying information on the state budget website from educational entities, local governmental units, and other governmental units and to develop a schedule for adding additional information to the state budget website to:

- Co-locate those requirements and amend their effective date from November 1, 2012, to November 1, 2013.
- Make the requirements applicable to all websites required by the act.
- Relocates *suggested* information relating to disbursements and revenues to the information that the bill *requires* be included on the state budget website, as described above.

<sup>58</sup> Section 216.163, F.S., specifies requirements for the Governor's recommended budget.

<sup>59</sup> The DMS provides administrative and support services to other state agencies and to state employees (*see* [www.dms.myflorida.com](http://www.dms.myflorida.com), last visited March 5, 2013)).

<sup>60</sup> The State Board of Administration is composed of the Governor, the CFO, and the Attorney General (FLA. CONST., art. IV, s. 4(e)). Its duties include, but are not limited to, the management of state investment fund such as the Florida Retirement System Pension Plan and Investment Plan (*see* <http://www.sbafla.com/fsb/TheFundsWeManage/tabid/731/Default.aspx>, last visited March 5, 2013)).

## *State Contract Management System*

### Terms and Applicability

The contract system that must be maintained by the CFO is changed from “a state contract management system” to “a secure, shared state contract tracking system” and must be available via a website.<sup>61</sup> In addition, the bill narrows the types of entities to which the contract reporting requirements apply from “governmental entities” to “state agencies.”<sup>62</sup>

### Public Access

Pursuant to ss. 119.01 and 119.07, F.S.,<sup>63</sup> the bill authorizes the CFO to make information posted on the system available for viewing and downloading by the public through a website. The bill specifies that unless otherwise provided by law, information retrieved electronically through that requirement is not admissible in court as an authenticated document.

### Protection of Information Posted to the System

The CFO is required to use appropriate Internet security measures to ensure that no person has the ability to alter or modify records available on the website.

The bill prohibits posted records from revealing exempt or confidential information. The website must display a notice that an affected party has the right to request redaction of exempt or confidential information on the website.

### Timing Requirements

Contract information is required to be posted to the system within 30 *calendar* days of execution of a new contract or a major change to an existing contract.

### Informational Requirements

The following additional categories to the information are required to be posted on the website:

- Name of the contracting vendor.
- Applicable contract unit prices and deliverables.
- All payments made to the contractor to date.
- If a competitive solicitation was not used to procure the goods or services, the justification for that action, including citation to a statutory exemption or exception from competitive solicitation, if any.
- Electronic copies of the contract and procurement documents that have been redacted to conceal exempt or confidential information, as provided below.

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<sup>61</sup> This change somewhat codifies current practice, as the CFO currently makes its FACTS database available via <http://www.myfloridacfo.com/transparency/> (last visited March 5, 2013). However, the CFO does not currently make all contracts available via the website.

<sup>62</sup> “State agency” is not defined in ch. 215, F.S.; however, the definition of “state agency” in s. 216.011(qq), F.S., may apply (see footnote 5 for that definition and footnote 15 for the definition of “governmental entity”).

<sup>63</sup> Section 119.01, F.S., provides, in part, that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person. Section 119.07, F.S., provides, in part, that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

The following information is no longer required to be included in the system:

- Contract violations.
- The number of extensions or renewals.
- The statutory authority for providing the service.

#### Redaction of Protected Information

The bill creates provisions governing redaction from posted contracts of information that is exempt from public records requirements or otherwise confidential. Each state agency must redact such information from a contract or procurement document before posting an electronic copy of such documents on the system. If a state agency becomes aware that it did not properly redact a posted document, it must immediately notify the CFO and provide the CFO with a properly redacted copy of the contract within seven days.

If a party to a contract, or an authorized representative thereof, discovers that posted document has not been properly redacted, they may request the state agency that posted the document to redact the exempt or confidential information. Such request must:

- Be in writing and delivered by mail or electronic transmission, or in person, to the posting agency; and
- Identify the specific document, the page numbers of the document that include the exempt or confidential information, the information that is exempt or confidential, and the relevant statutory exemption from the public records requirements.

A fee may not be charged for a redaction made pursuant to such a request. Upon receipt of a request that meets the requirements, the posting agency must redact the exempt or confidential information. If necessary, a party to a contract may petition the circuit court for an order directing compliance with a valid redaction request.

The bill provides that the CFO, the DFS, or an officer, employee, or contractor thereof, is not responsible for redacting exempt or confidential information from a document posted by another state agency, and is not liable for the failure of the state agency to redact such information. The CFO may notify the posting agency if a document posted on the system contains exempt or confidential information is discovered.

#### Requests and Subpoenas for Copies of Documents

The bill specifies that the posting of information on the system, or the provision of contract information on a website for public viewing and downloading, does not supersede the duty of a state agency to respond to a public record request for such information or to a subpoena for such information.

In addition, the bill requires that a request for a copy of a contract or procurement document or a certified copy of a contract or procurement document must be made to the state agency that is party to the contract. Such request may not be made to the CFO, the DFS, or an officer, employee, or contractor thereof unless the CFO or DFS is a party to the contract.

A subpoena for a copy of a contract or procurement document or certified copy of a contract or procurement document must be served on the state agency that is a party to the contract and that maintains the original documents. The bill provides that the CFO, the DFS, or an officer, employee, or contractor thereof may not be served a subpoena for those records, unless the CFO or DFS is a party to the contract.

#### Rulemaking Authority

The CFO is authorized to adopt rules to administer the state contract tracking system, including procedures and requirements for submitting and updating the information and required documentation relating to contracts.

Additionally, the CFO may regulate and prohibit the posting of records that could:

- Facilitate identity theft or fraud such as signatures;
- Compromise or reveal an agency investigation;
- Reveal the identity of undercover personnel;
- Reveal proprietary business information or trade secrets;
- Reveal an individual's medical information; or
- Reveal any other record or information that the CFO believes may jeopardize the health, safety, or welfare of the public.

#### Appropriation

The bill provides an appropriation of \$326,775 in recurring funds and \$386,292 in nonrecurring funds from the General Revenue Fund, as well as four full-time equivalent positions with associated salary rate of \$231,409, to the DFS for the 2013-2014 fiscal year to implement the state contract tracking system.

#### *Additional Provisions*

- The exemption from the act for a municipality or special district that has total annual revenues of less than \$10 million is repealed.
- Managers of the state budget website, the state fiscal planning website, and the state officer and employee information website are required to submit to the JLAC information on the cost of creating and maintaining their respective websites.

#### **User Experience Task Force**

A User Experience Task Force is created to develop and recommend a design for consolidating existing state transparency websites into a single website. The task force will be comprised of four members, one of each of whom will be designated by the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives (public officers). Those officers may assign staff to assist the task force.

By October 1, 2013, the task force must submit a work plan to the public officers that includes, but is not limited to, a review of:

- All relevant state transparency websites.

- Options for reducing the number of websites without losing detailed data.
- Options for linking expenditure data with related invoices and contracts.

By March 1, 2014, the task force must submit its design recommendation to the public officers. The design must provide an intuitive and cohesive user experience that allows users to move easily between varied types of related data. If necessary, the recommendation may include a complete redesign of data submission and inclusion. The recommendation must include a cost estimate for implementation of the design.

The section creating the task force expires June 30, 2014.

The bill provides an effective date of July 1, 2013.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### **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 EOG and the DMS will incur indeterminate costs to establish and maintain the new websites required by the bill.

The bill provides a 2013-2014 fiscal year appropriation of \$326,775 in recurring funds and \$386,292 in nonrecurring funds from the General Revenue Fund, as well as four full-

time equivalent positions with associated salary rate of \$231,409, to the DFS for implementation of the state contract tracking system.<sup>64</sup>

State agencies will likely incur indeterminate costs to comply with the redaction requirements for the state contract tracking website.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

### **Rulemaking**

The separation of powers clause in the Florida Constitution<sup>65</sup> prevents the Legislature from delegating its constitutional duties.<sup>66</sup> Because legislative power involves the exercise of policy-related discretion over the content of law,<sup>67</sup> any discretion given an executive branch agency to implement a law must be “pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”<sup>68</sup> The bill provides the CFO with general rulemaking authority to implement the state contract tracking system and authorizes the CFO to regulate and prohibit the posting of records that may jeopardize the health, safety, or welfare of the public. Whether those provisions provide sufficient minimal standards and guidelines is unclear.

It is also unclear whether the bill’s express grant of rulemaking authority to the CFO is intended to exclude the adoption of rules for anything other than procedures and requirements for submitting and updating required contract information.

### **Public Records**

The bill provides a process by which a document posted to the contract tracking management system that has not been properly redacted under the bill’s provisions may be replaced. However, case law provides that once protected information has been made publicly available, it may no longer be withheld by a custodial agency. Therefore, if a document containing exempt or confidential information is posted to the public website, the custodial information may no longer be able to protect the information.

### **Other Comments**

The bill does not:

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<sup>64</sup> See *Department of Financial Services D3A issue 36371C0*

<sup>65</sup> FLA. CONST., art. II, s. 3.

<sup>66</sup> See *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

<sup>67</sup> See *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

<sup>68</sup> See *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

- Specify what is meant by “to the extent possible” for purposes of providing an intuitive user experience.<sup>69</sup>
- Define “major web browser.”<sup>70</sup>
- Specify a date by which website managers must submit cost information to the JLAC.<sup>71</sup>

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>69</sup> Used in lines 66-67 of the bill.

<sup>70</sup> Used in line 72 of the bill.

<sup>71</sup> Lines 221-223 of the bill.