

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1331 Commodities Produced by Forced Labor

SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, Yeager

TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	14 Y, 0 N, As CS	Poreda	Miller
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N	Mullins	Topp
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law requires state agencies that wish to procure commodities or contractual services in excess of \$35,000 to use a competitive solicitation process. Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid, request for proposals, or invitation to negotiate.

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System. The Department of Management Services (DMS) maintains a vendor list based on the vendor registration process and has been granted authority to remove from its vendor list any source of supply that fails to fulfill any of its duties specified in a contract. DMS also maintains lists of disqualified, scrutinized or removed vendors.

The term "forced labor" has been defined by the United States (U.S.), as part of the Tariff Act of 1930 (Act), to mean "all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily, including forced or indentured child labor. The Act also prohibits importing any product into the U.S. that was mined, produced, or manufactured wholly or in part by forced labor, with some limited exceptions.

The bill directs DMS to create and maintain the "Forced Labor Vendor List" (List) of companies who have provided to an agency a commodity produced, in whole or in part, by forced labor.

The bill prohibits vendors from submitting a bid, proposal, or reply to an agency, or entering into or renewing a contract to provide goods or services to an agency, after its placement on the List and agencies may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor that is on the List. Companies placed on the List are automatically removed after 365 days, unless a petition for removal is granted earlier than the end of that period.

The bill may have an insignificant fiscal impact. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Government Contracting and Procurement

The Department of Management Services (DMS) is statutorily designated as the primary state agency overseeing procurement.¹ Its responsibilities include creating uniform agency procurement rules,² implementing the online procurement program,³ and procuring state term contracts.⁴ DMS also is responsible for registering vendors that wish to provide goods or services to the state⁵ and maintaining lists of vendors who may not submit bids, proposals, or replies to agency solicitations.⁶

Florida law creates the procurement and contracting procedures for most state agencies.⁷ In general, the law requires the use of a competitive solicitation⁸ process when agencies wish to procure commodities or contractual services that cost more than \$35,000,⁹ with certain exceptions.¹⁰ Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods:

- Invitation to bid (ITB) — An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.¹¹
- Request for proposals (RFP) — An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.¹²
- Invitation to negotiate (ITN) — An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.¹³

A competitive solicitation for contractual services in excess of \$35,000 must be evidenced by a written agreement (contract) embodying all provisions and conditions of the procurement.¹⁴ The contract must include, but not be limited to, provisions on the following:

¹ See ss. 287.032 and 287.042, F.S.

² See ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

³ See s. 287.057(24), F.S.

⁴ See ss. 287.042(2) and 287.056, F.S.

⁵ See ss. 287.032 and 287.042, F.S.; see also Department of Management Services, *Vendor Registration and Vendor Lists*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited January 19, 2024).

⁶ Ss. 287.1351, 287.133, 287.134, and 287.137, F.S.

⁷ See ch. 287, F.S. “Agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges. S. 287.012(1), F.S.

⁸ “Competitive solicitation” means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement. S. 287.012(6), F.S.

⁹ S. 287.057, F.S. \$35,000 is the minimum threshold for Category 2 purchases, one of four purchasing categories. See s. 287.017, F.S.

¹⁰ See s. 287.057(3)(e), F.S.

¹¹ S. 287.057(1)(a), F.S.

¹² S. 287.057(1)(b), F.S.

¹³ S. 287.057(1)(c), F.S.

¹⁴ S. 287.058(1), F.S., provides an exception for the written agreement for contractual services that provide health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or provide other benefits as required by ch. 440, F.S.

- Bills for fees or other compensation for services or expenses must be submitted in detail sufficient for a proper preaudit and post audit of such items;¹⁵
- Bills for any travel expenses be submitted in accordance with the law on per diem and travel expenses of public officers, employees, or authorized persons;¹⁶
- Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt;¹⁷
- Specifying a scope of work clearly establishing all tasks the contractor is required to perform;¹⁸
- Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment;¹⁹
- Specifying the performance criteria and the final date by which such criteria must be met for completion of the contract;²⁰
- Specifying the conditions that must be met for a renewal of the contract, including, but not limited to:²¹
 - The contract may be renewed for a period not exceeding three years or the term of the original contract, whichever is longer;
 - The renewal price for the contractual service as set forth in the bid, proposal, or reply;
 - Specifying that contract renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds;
- Specifying the financial consequences if the contractor fails to perform in accordance with the contract;²² and
- Addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.²³

The contract must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of \$35,000.²⁴ The Chief Financial Officer (CFO) may waive the contracting requirements for the procurement of certain specified commodities or services, unless otherwise provided in the annual General Appropriations Act (GAA) or the substantive bill implementing the GAA.²⁵ A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term.²⁶ Each public agency contract for services must authorize the public agency to inspect the following records within 10 days after the agency makes a request:²⁷

- Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.²⁸
- Programmatic records, papers, and documents of the contractor that the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.²⁹

¹⁵ S. 287.058(1)(a), F.S.

¹⁶ S. 287.058(1)(b), F.S.

¹⁷ S. 287.058(1)(c), F.S.

¹⁸ S. 287.058(1)(d), F.S.

¹⁹ S. 287.058(1)(e), F.S.

²⁰ S. 287.058(1)(f), F.S.

²¹ S. 287.058(1)(g), F.S.

²² S. 287.058(1)(h), F.S.

²³ S. 287.058(1)(i), F.S.

²⁴ S. 287.058(2), F.S.

²⁵ S. 287.058(5), F.S., incorporates s. 287.057(3)(e), F.S., which lists 13 specific types of commodities or services for which the contracting requirement may be waived, including, for example, artistic services, lectures by individuals, certain health services, family placement services, and services or commodities provided by governmental entities.

²⁶ S. 287.058(6), F.S.

²⁷ S. 216.1366(1), F.S.

²⁸ S. 216.1366(1)(a), F.S.

²⁹ S. 216.1366(1)(b), F.S.

Vendors

Vendors seeking to provide goods or services to the state must register in the Vendor Registration System. In order to register, a vendor must provide its company name, federal tax identification number, tax filing name, business location, commodities and services offered, and certified business and enterprise status. Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal (VIP). The VIP is designed to streamline interactions with vendors and state government entities that purchase goods and services. The system provides a portal where vendors can complete the registration process, receive information on upcoming bids, post information on products and services they can provide, receive purchase orders, view payment information, and review their performance.³⁰

The Vendor Bid System (VBS) allows agencies to post competitive solicitations of \$35,000 or more for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the agency through the VBS, and be notified if their bid has been chosen.³¹

DMS Vendor Lists

DMS maintains a vendor list based on the vendor registration process,³² and may remove from the vendor list any source of supply that fails to fulfill any of its duties specified in a contract.³³ DMS also maintains the following lists of disqualified, scrutinized, or removed vendors:

- Suspended Vendor List;³⁴
- Convicted Vendor List;³⁵
- Discriminatory Vendor List;³⁶
- Antitrust Violator Vendor List;³⁷ and
- Scrutinized List of Prohibited Companies.³⁸

Suspended Vendor List

DMS maintains a list of vendors that have been removed from the vendor list for failing to fulfill any duties specified in their contracts with the state.³⁹ If a vendor fails to perform the duties provided in the vendor's contract, the agency must notify DMS if the vendor meets the grounds for suspension and provide documentation.⁴⁰ If DMS determines good cause exists to remove the vendor, DMS must then notify the vendor in writing of its intent to remove the vendor from the vendor list and of the vendor's right to file a petition for an administrative hearing.⁴¹ A vendor on the suspended vendor list is not eligible to receive a contract from any agency until the vendor is removed from the suspended vendor list.⁴² A vendor placed on the suspended vendor list must wait at least one year before it may file a petition with DMS for removal from the suspended vendor list.⁴³ If a petition for removal is denied, the vendor must wait at least nine months after the date of the denial before petitioning for another hearing. DMS may petition for a suspended vendor's removal before the expiration of such period if, in the

³⁰ The Department of Management Services, *Vendor Resources*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, January 18, 2024).

³¹ *Id.*

³² S. 287.042, F.S. See also The Department of Management Services, *Vendor Resources*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, January 18, 2024).

³³ S. 287.042(1)(b), F.S.

³⁴ S. 287.1351, F.S.

³⁵ S. 287.133, F.S.

³⁶ S. 287.134, F.S.

³⁷ S. 287.137, F.S.

³⁸ S. 287.135, F.S.

³⁹ S. 287.1351, F.S. See *Vendor Registration and Vendor Lists*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited January 18, 2024).

⁴⁰ S. 287.1351(2), F.S.

⁴¹ S. 287.1351(3), F.S.

⁴² S. 287.1351(2)(b), F.S.

⁴³ S. 287.1351(5)(a), F.S.

discretion of DMS, removing that vendor from the suspended vendor list would be in the public interest.⁴⁴

Currently, five vendors are on the Suspended Vendor List.⁴⁵

Convicted Vendor List

DMS has a list of vendors who have been disqualified from the public contracting and purchasing process due to conviction for a public entity crime.⁴⁶ A vendor who has been placed on the convicted vendor list may not submit a bid, proposal, or reply on a contract to provide goods or services to a public entity, and a public entity may not accept any bid, proposal, or reply from, award any contract to, or contract any business with, a vendor on the convicted vendor list.⁴⁷

After receiving information that a vendor has been convicted of a public entity crime, DMS must investigate and determine whether good cause exists to place the vendor on the convicted vendor list. If good cause exists, DMS must provide written notification to the vendor of its intent to place that vendor on the convicted vendor list and of the vendors' legal rights. If the vendor does not request an administrative hearing, DMS must enter a final order placing the vendor on the convicted vendor list.⁴⁸

A vendor placed on the convicted vendor list may petition for removal from the list no sooner than six months from the date of the final order placing the vendor on that list. A vendor's removal is subject to such conditions as may be prescribed by the administrative law judge (ALJ) upon a determination that removal from the list is in the public interest. If a petition for removal is denied, the vendor may not petition for another hearing on removal for a period of nine months after such denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. DMS may petition for removal prior to the expiration of such period if, in its discretion, it determines that removal would be in the public interest.⁴⁹

Currently, there are no vendors on the Convicted Vendor List.⁵⁰

Discriminatory Vendor List

DMS maintains a list of entities that have been disqualified from participating in the state contracting and purchasing process due to a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion.⁵¹ An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity.⁵²

The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list, including the removal process and specified timelines.⁵³

⁴⁴ S. 287.1351(5)(b), F.S.

⁴⁵ Department of Management Services, *Suspended Vendor List*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list (last visited January 18, 2024).

⁴⁶ S. 287.133, F.S. The term "public entity" means the State of Florida, any of its departments or agencies, or any political subdivision. S. 287.133(1)(f), F.S. The term "public entity crime" means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation. S. 287.133(1)(g), F.S.

⁴⁷ S. 287.133(2)(b), F.S.

⁴⁸ S. 287.133(3)(e), F.S.

⁴⁹ *Id.*

⁵⁰ Department of Management Services, *Convicted Vendor List*, Available at https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/convicted_vendor_list (last visited January 19, 2024)

⁵¹ S. 287.134(3)(c), F.S.

⁵² S. 287.134(2)(a), F.S.

⁵³ S. 287.134(3)(e), F.S.

Currently, there are no vendors on the Discriminatory Vendor List.⁵⁴

Antitrust Violator Vendor List

DMS maintains a list of entities disqualified from the public contracting and purchasing process following a conviction or being held civilly liable for an antitrust violation.⁵⁵ An entity or affiliate placed on the antitrust violator vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity.⁵⁶

The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list, including the removal process and specified timelines.⁵⁷

Currently, there are no vendors on the Antitrust Violator Vendor List.⁵⁸

Scrutinized List of Prohibited Companies

The Florida State Board of Administration is charged with maintaining a complete list of scrutinized companies.⁵⁹ A company is prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local government entity for goods or services of any amount if the company is on the Scrutinized Companies that Boycott Israel List.⁶⁰ Companies are prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local government entity for goods or services of \$1 million or more if the company is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List.⁶¹

There are currently 70 companies on the Scrutinized List of Prohibited Companies as of December 19, 2023.⁶²

Forced Labor

The term “forced labor” is defined by the United States (U.S.), as part of the Tariff Act of 1930 (Act), to mean “all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily, including forced or indentured child labor.”⁶³ The Act also prohibits importing any product into the U.S. that was mined, produced, or manufactured wholly or in part by forced labor, with some limited exceptions.⁶⁴

On June 12, 1999, President Clinton signed an executive order titled Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor.⁶⁵ The Executive Order stated that all “executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or

⁵⁴ Department of Management Services, *Discriminatory Vendor List*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/discriminatory_vendor_list (last visited January 19, 2024).

⁵⁵ S. 287.137(3)(b), F.S.

⁵⁶ S. 287.137(2)(a), F.S.

⁵⁷ S. 287.137(3), F.S.

⁵⁸ Department of Management Services, *Antitrust Violator Vendor List*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/antitrust_violator_vendor_list (last visited January 19, 2024).

⁵⁹ S. 215.473, F.S.

⁶⁰ S. 287.135(2), F.S.

⁶¹ S. 287.135(2)(b)1., F.S.

⁶² Florida State Board of Administration, *Protecting Florida's Investments Act (PFIA) and the Global Governance Mandates Quarterly Report*, available at

https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Quarterly/2023_12_19_Web_Update_PFIA_Prohibited_List.pdf?ver=2023-12-19-122502-633 (last visited January 18, 2024)

⁶³ 19 U.S.C. § 1307

⁶⁴ *Id.*

⁶⁵ E.O. 13126, 64 C.F.R. 32383 (1999).

importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.” In 2000, Congress passed The Trafficking Victims Protection Act (TVPA)⁶⁶ and included forced labor in its definition of human trafficking⁶⁷. The TVPA was subsequently reauthorized.⁶⁸ In 2005 the Act directed the Department of Labor, Bureau of International Labor Affairs (ILAB), to maintain a list of goods and their source countries which ILAB had reason to believe are produced by child labor or forced labor.⁶⁹ As of September 28, 2022, there are 159 goods from 78 countries and areas on the list.⁷⁰

Florida Law includes the term “forced labor” within the context of human trafficking, finding that that victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.⁷¹ Human trafficking occurs in many forms of labor exploitation including domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.⁷²

A person who knowingly, or in reckless disregard of the facts, engages in or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for labor⁷³ or services⁷⁴ by coercing⁷⁵ an adult, commits a first-degree felony.⁷⁶

Effect of the Bill

The bill directs DMS to create and maintain the “forced labor vendor list” of companies who have provided to an agency a commodity produced, in whole or in part, by forced labor, including the name and address of each disqualified company. The bill defines the term “forced labor” as work or service exacted from any person, including a minor, under the menace of a penalty for nonperformance and for which the worker does not offer himself or herself voluntarily or an activity that violates s. 787.06, F.S., the statute prohibiting human trafficking.

All invitations to bid, requests for proposals, invitations to negotiate, and written contracts for the provision of commodities must inform the contracting companies of the requirements of this new section of law. Contracts for the provision of commodities entered into or renewed after July 1, 2024, must include an express provision allowing for the termination of the contract if the contracting company is placed on the forced labor vendor list. At the time a company submits a bid, proposal, or reply for the provision of commodities, a member of the company's senior management must certify, in writing, that to the best of his or her knowledge the commodities the company is providing to the

⁶⁶ Pub. L. No. 106- 386.

⁶⁷ 22 U.S.C. §7102

⁶⁸ The Trafficking Victims Protection Act was reauthorized as the Trafficking Victims Protection Reauthorization Act in 2003, 2005, 2008, 2013, 2017, and 2018. 22 U.S.C. Ch. 78.

⁶⁹ 22 U.S.C. §7112(b)(2)(C)

⁷⁰ Bureau of International Labor Affairs, *List of Goods Produced by Child Labor or Forced Labor*, available at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods-print> (last visited January 18, 2024)

⁷¹ S. 787.06(1)(a), F.S.

⁷² S. 787.06(1)(b), F.S.

⁷³ “Labor” means work of economic or financial value. S. 787.06(2)(e), F.S.

⁷⁴ “Services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs. S. 787.06(2)(h), F.S.

⁷⁵ “Coercion” means using or threatening to use force against a person, restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so, using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the liquidation of the debt, destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, other immigration document, or government identification document, Causing or threatening to cause financial harm, Enticing or luring a person by fraud or deceit, or providing a schedule I or II controlled substance to a person for the purpose of exploiting that person. S. 787.06(2)(a), F.S.

⁷⁶ S. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S. A first-degree felony is punishable by up to 30 years’ imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.; or *see* s. 775.084, F.S. (applies to violent career criminals, habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders).

agency have not been produced, in whole or in part, by forced labor. The bill defines "senior management" to include chief executive officers, assistant chief executive officers, including, but not limited to, assistant presidents, vice presidents, or assistant treasurers, chief financial officers, chief personnel officers, or any employee of an entity performing similar functions.

A company gaining actual knowledge that a commodity it provided to a contracting agency was produced in whole or in part by forced labor must notify DMS within 30 days. Agencies receiving information that a company providing a commodity in whole or in part by forced labor must notify DMS in writing within 10 days.

Upon receiving from any source reasonable and credible information that a company submitted a false certification or provided an agency with a commodity produced, wholly or in part, by forced labor, DMS must investigate and determine whether good cause exists to place the company on the forced labor vendor list and whether such placement is in the public interest. The bill provides the following specific guidance on when placing a company on the forced labor vendor list is not in the public interest:

- The company did not provide a commodity produced, wholly or in part, by forced labor;
- Providing an agency with a commodity produced, wholly or in part, by forced labor was committed by a company employee without the actual or constructive knowledge of the company's senior management;
- The member of the company's senior management responsible for the contract under which the company provided the commodity produced, wholly or in part, by forced labor did not have actual or constructive knowledge, and could not have reasonably had such knowledge, that the commodity was so produced;
- The member of the company's senior management responsible for the contract under which the commodity was produced, wholly or in part, by forced labor is no longer employed by the company; or
- For a contract with an agency under the Governor, the Governor makes a public finding that the agency cannot obtain the commodities absent provision of such commodities by the company. (If the contract is with an agency under a state constitutional officer,⁷⁷ that officer makes a similar finding for that agency.)

Absent one of the foregoing specific conditions, DMS must consider the following factors in determining whether placing the company on the forced labor vendor list is in the public interest:

- The nature and details of the provision of the commodity produced, wholly or in part, by forced labor;
- The company's degree of culpability;
- Prior or future self-policing efforts by the company to prevent providing commodities produced, wholly or in part, by forced labor;
- The company's compliance with the reporting requirements upon discovering a provided commodity was produced, wholly or in part, by forced labor;
- The needs of agencies for additional competition in procuring commodities; and
- Mitigation efforts by the company, including adopting a plan to cease producing or providing commodities produced, wholly or in part, by forced labor.

If DMS determines good cause exists to place the company on the forced labor vendor list and that placement is in the public interest, the bill requires that DMS notify the company in writing of the intent to place the company on the list, of the company's right to a hearing, the hearing procedure, and applicable time requirements. Within 21 days the company may challenge placement on the list and

request an administrative hearing based on disputed issues of material fact.⁷⁸ With the following exceptions, ch. 120, F.S., applies to any such hearings:

- The petition is filed with DMS, which is a party for all purposes.
- DMS must notify the Division of Administrative Hearings (DOAH) within five days after the petition is filed. The director of DOAH must assign an administrative law judge (ALJ) to the proceedings within five days after receiving notice from DMS.
- The ALJ must conduct the hearing on the petition within 30 days after being assigned unless the parties stipulate otherwise.
- The ALJ must enter the final order within 30 days after the hearing or receipt of the hearing transcript, whichever is later, determining whether the company is placed on the forced labor vendor list. The final order by the ALJ is subject to appeal to the appropriate district court of appeal.

In any hearing determining whether a company should be placed on the forced labor vendor list, DMS must prove by clear and convincing evidence that the placement is in the public interest. If DMS meets this burden of proof and establishes its case, the company may rebut this presumption by proving by a preponderance of evidence that its placement on the list is not in the public interest. If the company does not request a hearing, DMS shall enter the final order placing the company on the forced labor vendor list.

The bill prohibits a vendor on the forced labor vendor list from submitting a bid, proposal, or reply to an agency, or entering into or renewing a contract to provide goods or services to an agency. Agencies may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a company that is on the forced labor vendor list for 365 days after the date of the order placing the company on the list, unless the company is removed from the list.

Companies are automatically removed from the forced labor vendor list after 365 days, unless a petition for removal is granted earlier than the end of that period.

Companies submitting a false certification or that should have known a commodity provided under a contract with an agency was produced, in whole or in part, by forced labor, and is subsequently placed on the forced labor vendor list, shall be assessed a fine of no more than \$1,000 or an amount equal to 20 percent of the value of the commodity provided under the contract, whichever is greater. All fines collected shall be deposited into the General Revenue Fund.

DMS must review the documentation submitted by an agency and decide whether good cause exists to remove the vendor from the vendor list and to place it on the forced labor vendor list if it is in the public interest. DMS must notify the vendor in writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing, as well as the applicable procedures and time requirements for any such hearing. The ALJ may remove a vendor from the suspended vendor list if the ALJ determines it would be in the public interest.

A company placed on the forced labor vendor list may petition for removal from the list no sooner than six months after the date of the final order placing the company on the list. The bill applies the same hearing procedures to a petition for removal from the list as apply to a petition challenging initial placement on the list. If a petition for removal is denied, the company may not petition for another hearing for removal, but will automatically be removed after 365 days. DMS may petition for the company to be removed before that time if DMS determines that removal would be in the public interest.

Placement on the forced labor vendor list does not affect rights under any contract, franchise, or other binding agreement predating such placement. DMS must update and publish on its website the forced labor vendor list quarterly.

⁷⁸ Under the bill, companies may not respond and request a hearing under s. 120.57(2), F.S., that does not involve disputed issues of fact.

B. SECTION DIRECTORY:

Section 1: Creates s. 287.1346, F.S., relating to the provision of commodities produced by forced labor; denial or revocation of the right to transact business with agencies.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate but insignificant positive fiscal impact through fines collected under the act. All fines collected are to be deposited into the General Revenue Fund.

DMS will incur increased workload for the oversight and management for maintaining and administering the forced labor vendor list. This workload can be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires additional rulemaking by executive branch agencies

C. DRAFTING ISSUES OR OTHER COMMENTS:

None. **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2024, the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment differed from the bill by clarifying that a company placed on the forced labor vendor list is automatically removed after 365 days, unless a petition for removal is granted earlier than the end of that period, but if a petition for removal is denied, the company may not file another petition before the end of the 365-day period. The bill also clarifies that a company that provides a false certification of compliance and is later placed on the forced labor vendor list must be fined no more than \$1,000 or twenty percent of the value of the commodity provided under the contract, whichever is greater.

This analysis is drafted to the bill as amended by the Constitutional Rights, Rule of Law & Government Operations Subcommittee.