Session Law 89-114

Florida Senate & House of Representatives

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S 458 GENERAL BILL/CS/1ST ENG by Governmental Operations; Johnson and others (Similar CS/H 647)
Public Contracting/Integrity: provides legislative intent re integrity of public contracting & purchasing process; describes public entity crimes; provides for convicted vendor list; prohibits public entities from accepting bids from, awarding contracts to, or transacting business with any person or affiliate on convicted vendor list; provides for removal from convicted vendor list under certain circumstances, etc. Creates 287.132, 133. Effective Date: 07/01/89.

03/10/89 SENATE Prefiled
03/24/89 SENATE Referred to Governmental Operations; Judiciary-Civil
04/04/89 SENATE Introduced, referred to Governmental Operations; Judiciary-Civil - SJ 45
04/14/89 SENATE On Committee agenda—Governmental Operations, 04/18/89, 3:45 pm, Room—H—(428); Extension of time granted Committee Governmental Operations
04/18/89 SENATE Comm. Report: CS by Governmental Operations—SJ 199
04/20/89 SENATE CS read first time—SJ 201; Now in Judiciary—Civil—SJ 199
04/26/89 SENATE On Committee agenda—Judiciary—Civil, 05/01/89, 12:45 pm, Room—JC—(309)
04/28/89 SENATE Extension of time granted Committee Judiciary—Civil
05/01/89 SENATE Comm. Report: Favorable by Judiciary—Civil, placed on Calendar—SJ 242
05/16/89 SENATE Placed on Special Order Calendar—SJ 354
05/18/89 SENATE Placed on Special Order Calendar—SJ 380; CS passed as amended; YEAS 38 NAYS 0—SJ 398
05/24/89 HOUSE In Messages
05/26/89 HOUSE Received, placed on Calendar—HJ 660; Substituted for CS/HB 647—HJ 681; Read second time; Read third time; CS passed; YEAS 104 NAYS 0—HJ 681
05/26/89 Ordered enrolled—SJ 503
06/12/89 Signed by Officers and presented to Governor
06/26/89 Approved by Governor; Chapter No. 89—114

NOTES: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
I. SUMMARY:

A. Present Situation:

Chapter 287, F.S., provides for the procurement of personal property and services for use by state agencies. As a general rule, the Division of Purchasing of the Department of General Services purchases personal property for state agencies and the agencies purchase contractual services. These purchases are generally made by solicitation of bids. A "qualified bidder" or "qualified offeror" is any person who has the capability in all respects to perform the contract requirements fully and has the integrity and reliability which will assure good faith performance. The purchase contract is to be awarded to the qualified bidder whose proposal is determined to be most advantageous to the state.

B. Effect of Proposed Changes:

The bill would require the Department of General Services to maintain a list of vendors who have been convicted of a public entity crime or who were or are affiliated with a person convicted of a public entity crime. A public entity crime is defined as any violation of any state or federal law which violation is directly related to the transaction of business with any public entity, including, but not limited to, any bid or contract for goods or services to be provided to any public entity, and which involves antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material representation.

Any person whose name has been placed on the convicted vendor list would be prohibited from submitting a bid on a contract to provide goods or services to a public entity, being awarded a contract with any public entity, or transacting business with any public entity. These prohibitions would only involve transactions involving more than $3,000. The prohibitions would be effective for a period of 36 months unless the vendor had his name removed from the convicted vendor list during that time.

Any person convicted of a public entity crime would be required to notify the Department of General Services of the conviction within 30 days. Any public entity receiving information of such a conviction would be required to notify the department within 10 days. If the department had reason to believe a person had been convicted of such a crime, it could issue a written demand for the person to appear and be examined under oath, to answer interrogatories, or to produce documents.

If the department conducted an investigation and determined good cause existed to place a person's name on the convicted vendor list, it would have to notify the person in writing of...
its intent to place his name on the list. The person would have 21 days from receipt of the notice to petition for a formal administrative hearing. If he did not do so, the department would place his name on the convicted vendor list. The petition for a hearing would be filed with the Department of General Services, which would have 5 days to notify the Department of Administrative Hearings (DOAH) of the petition. DOAH would have 5 days to appoint a hearing officer. The hearing officer would then have 30 days within which to conduct the hearing. The hearing officer would have to enter the final order within 30 days after the hearing or receipt of the hearing transcript, whichever is later. If the hearing officer determined it was in the public interest, the person's name would be placed on the convicted vendor list. Proof of a conviction of a public entity crime would be prima facie evidence that it is in the public interest. Overcoming the prima facie case would require proving by a preponderance of the evidence that it would not be in the public interest.

A person whose name is placed on the convicted vendor list may petition for removal of his name 6 months after entry of the final order to place it there.

The Department of General Services would publish the list in the Florida Administrative Weekly every quarter.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Unquantifiable.

B. Government:

The Department of General Services reports the following fiscal impact:

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<tr>
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<td>Year 1</td>
<td>Year 2</td>
<td>Year 3</td>
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<tr>
<td>(FY 89/90)</td>
<td>(FY 90/91)</td>
<td>(FY 91/92)</td>
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<tr>
<td>(1) Non-recurring</td>
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<tr>
<td>Operating Capital Outlay</td>
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Additional costs would be incurred by the Division of Administrative Hearings in providing for the required hearings. Because the number of hearings which will be required is not
known, no specific additional costs for conducting the additional procedures are currently quantifiable.

III. COMMENTS:
None.

IV. AMENDMENTS:
None.
I. SUMMARY:

A. Present Situation:

State and federal criminal law prohibit crimes such as fraud, theft, bribery, collusion, antitrust violations, racketeering, and conspiracy, which are considered economic crimes. State and federal laws grant civil remedies for those injured by the actions underlying these crimes, which may be recovered by the injured persons, or by the government on their behalf.

Economic crime is an active problem in the marketplace, and generates losses to public agencies, as well as private persons and entities. The Florida Department of Legal Affairs estimates that the Division of Economic Crimes has recovered some $80 million in civil damages and penalties over the past 10 years on behalf of the state and the public. In approximately 80 percent of these recoveries, the offending entities were also convicted in state or federal criminal courts of the underlying criminal offenses for the actions for which civil damages were paid.

While Florida is able to prosecute companies in criminal court, and to obtain civil damages, the state is not currently authorized to prevent offending companies, their associates, or their affiliates from continuing to seek and obtain public contracts. Chapter 287, F.S., provides for law and procedure for public procurement. The Department of General Services is authorized to set policies and procedures, and to oversee agency practices, for state agency purchasing and construction of facilities for state agencies. Chapter 287.052, F.S., requires that contracts for commodities over the threshold price of $3,000, be procured by competitive bidding, except as provided by law. Section 287.057, F.S., provides that contractual services contracts at or greater than the threshold price of $3,000 are to be procured by competitive sealed bidding, or by competitive sealed proposals, except as provided by law.

In competitive bidding, the state must award the contract to the person who has submitted a bid which conforms in all material respects to the invitation to bid or request for proposals. Agencies have no authority to exclude a bidder from the bidding process or from a contract award based upon past convictions for economic crimes committed in dealings with government agencies or private persons.

Chapter 120, F.S., the Administrative Procedure Act, provides a means of redress for persons aggrieved by agency actions. A party is entitled to an administrative proceeding whenever its substantial interests have been determined by an agency. The act provides for formal administrative proceedings in
s. 120.57(1), F.S., informal proceedings in s. 120.57(2), F.S., and for informal disposition of proceedings in s. 120.57(3), F.S.

B. Effect of Proposed Changes:

Would prohibit certain persons and entities adjudged guilty of certain crimes relating to business transactions with federal, state, and local governmental agencies from doing business with state agencies or political subdivisions. State agencies and political subdivisions would be prohibited from doing business over a threshold amount of $3,000 with certain persons or entities guilty of such crimes.

The law would state the legislative intent regarding public contracting, which includes a determination that the opportunity to bid on public contracts is a matter of privilege, not of right.

The law would define a special category of "public entity crimes," which would be specified economic crimes under state or federal law that are directly related to transaction of business with an agency of any state or local government, or the federal government. A conviction would be defined as a finding of guilt or a conviction of an economic crime if found guilty or convicted of charges brought in state or federal trial court after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, whether or not adjudication of guilt was witheld.

The Department of General Services would maintain a "convicted vendor list," which would contain the names of certain persons and entities disqualified from doing business with the state. The department would be required to publish an initial list on January 1, 1990, and would be required to publish an updated list on a quarterly basis, in the Florida Administrative Weekly. The law would provide that the actual disqualification to do business with the state would begin upon entry of an administrative order finding disqualification of a person or affiliate.

A person or affiliate whose name is placed on the list would not be permitted to submit bids on contracts for providing goods or services to a public entity, and could not be awarded or permitted to perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and would not be permitted to transact business with a public entity for contracts over a threshold amount, for a period of 36 months after the date of being placed on the convicted vendor list. Public entities would similarly be prohibited from dealings with such convicted persons or affiliates for the specified period. It would be provided that a public agency or "public entity" which is doing business with someone whose name is published on the convicted vendor list is prohibited from dealing with any affiliate of such person. A "public entity" would include the State of Florida, state agencies and departments, and political subdivisions of the state.

A "person" whose name could be placed upon the convicted vendor list would be those persons or business entities capable of contracting with public agencies for goods and services, and who bid for public entity contracts or otherwise do business with public entities. The term would include officers, directors, employees, and other persons active in the management of an entity. An "affiliate" of a person could also be placed on the guilty vendor list. "Affiliate" would mean a variety of persons or entities related to another person, who would be either 1) predecessors or successors of another person, or 2) entities which are under the control of certain
persons, and which also have been convicted of a public entity crime. Officers, directors, employees, and other persons active in the management of an affiliate would be included in the definition of affiliate. Certain prohibitions would apply to joint venturers.

Before entering into a contract in excess of the threshold amount of CATEGORY TWO purchases in s. 287.017, F.S. -- currently $3,000 -- to provide goods or services with a public entity, a person would be required to file a sworn statement prescribed by the department to include the name and business address, which would include a statement of whether the person or his affiliate had been found guilty of a public entity crime, with certain exceptions. Any person would be required to notify the department within 30 days after a conviction of a public entity crime, and any public entity receiving information that a person had been convicted of a public entity crime would be required to notify the department.

Notice and procedure would be required before a name could be placed on the convicted vendor list. The department would be required to investigate reports, and to determine whether there is good cause for placement on the list. Prior to placement on the list, the department would be required to send notice of its intent, and information regarding the right to a hearing and the requirements therefor.

A person's failure to request a hearing within the specified time would result in the entry of a final order by the department placing the name on the convicted vendor list. A person would otherwise be entitled to petition for a formal hearing pursuant to s. 120.57(1), F.S., to determine, specifically, whether it is in the public interest for such person or affiliate to be placed on the convicted vendor list.

While a person would not be permitted to petition for an informal hearing pursuant to s. 120.57(2), F.S., the petition for hearing could be disposed by informal disposition, as provided by s. 120.57(3), F.S., pursuant to which the hearing officer would enter a final order adopting the agreed resolution. The petition would be filed with the department, and the department would be a party to the proceeding for all purposes.

The "final order" of the hearing officer in any of the authorized administrative proceedings would be final agency action from which appellate review could be taken as provided by s. 120.68, F.S.

An expedited procedure would be provided. The department would be required to notify the Division of Administrative Hearings (DOAH) of a request for a hearing within 5 days, and DOAH would be required to assign a hearing officer within 5 days, as well. Unless otherwise stipulated, the hearing would have to be held within 30 days of the assignment of the hearing officer, and the hearing officer would have to enter a final order within a specified time.

The final order of the hearing officer would either place or not place the person or affiliate on the list. Upon a finding that the name is placed on the list, however, the person or affiliate at that time would be disqualified from doing business with a public agency.

In determining whether a name is placed on the list, the hearing officer would be required to consider some eleven specified factors, which include reinstatement or a grant of clemency, whether the person was found guilty of the crime, cooperation with state or federal authorities, the nature and details of the crime, whether or not the person or affiliate
volunteered required information concerning his guilt as required by law, and the needs of public entities for additional competition in the procurement of goods and services.

The department would be required to prove that it is in the public interest that the person be placed on the list, which could be accomplished by providing proof of conviction of a specified crime, or proof of affiliate status. Affiliate status would require proof of the standard for clear and convincing evidence.

The person or affiliate would be permitted to offer evidence on any relevant issue. Once the department establishes the conviction, the person or affiliate would be permitted to show by a preponderance of the evidence that it would not be in the public interest to place his name on the list, based upon factors provided for consideration by the hearing officer.

A similar procedure would be provided for removal of a name from the list. After an entry of an order of disqualification, a person could petition after a period of 6 months for removal from the list, except that a person could petition for removal from the list any any time in the case of a reversal of a finding of guilt for the underlying crime. Upon denial of a request for removal, the person on the list could again petition for removal after 9 months, unless the finding of guilt is reversed on appellate review or by pardon.

A savings clause would be provided for rights and obligations entered into prior to the beginning of the disqualification procedure. The hearing officer would be permitted to declare voidable those agreements entered into if the person or affiliate had failed to meet the certain conditions specified for consideration by the hearing officer, concerning payment of damages and penalties, disassociation from persons or entities involved in public entity crime, and prior or future self-policing.

The law would not apply to the purchase of goods or services made by any public entity from the Department of Corrections, the nonprofit corporation organized for correctional work programs under ch. 946, F.S., or any accredited workshop for the blind or handicapped certified under s. 413.032-413.037, F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Unquantifiable.

B. Government:

The Department of General Services reports the following fiscal impact:

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(1) Non-recurring
Additional costs would be incurred by the Division of Administrative Hearings in providing for the required hearings. Because the number of hearings which will be required is not known, no specific additional costs for conducting the additional procedures are currently quantifiable.

III. COMMENTS:

It is not entirely clear from differing provisions in the bill whether the disqualification of a person or affiliate from doing business with the state would be effected by entry of the order that the name is placed on the convicted vendor list, or by the actual placement of the name upon the list. Legally and administratively, a person or entity would be more appropriately disqualified after a hearing; the names of persons who have been disqualified should be required to be placed on the convicted vendor list. Thus, it would be clear that if a name were omitted from the list through a clerical oversight, or the updated list were not yet published, the person or entity would nevertheless be disqualified after entry of an order providing for disqualification.

One portion of the bill provides that a person or affiliate would be disqualified upon entry of a final order. The bill also provides, however, that the period of disqualification would begin to run from the date of placement of the name upon the list. Since orders would be issued at different times, but the list would be issued on a quarterly basis, the disqualification period would differ for some persons or entities, depending upon the amount of time that elapsed between the issuance of the order and the next publication of the list.

The hearing provided for determination of whether a name should be placed on the convicted vendor list would require a broad spectrum of determinations of both fact and law, some of which may not be appropriate for final determination by the hearing officer. In addition to making the factual determinations essential to due process concerning whether the person was convicted and whether an affiliate is actually an affiliate, the hearing officer would also be required to make substantive determinations concerning whether the state has an overriding need for the products or services of an entity that should preclude the name from being placed on the list, and whether a person or entity is sufficiently rehabilitated to be permitted to conduct business with state agencies. Because there are no laws or rules provided by which the hearing officers' determinations would be guided on the substantive issues, those determinations would be more appropriately made by the agencies with the expertise and responsibilities in those areas, which are the Department of General Services and the Department of Legal Affairs, respectively.

The bill would limit the procedures available to a person to those provided by s. 120.57(1), F.S., and s. 120.57(3), F.S. It is
possible that all the facts would be agreed, and the only question left to be debated would be whether facts as agreed merit placement on the list. When there are no issues of disputed material fact, informal administrative proceedings as provided by s. 120.57(2), F.S., are appropriate, but would not be authorized by the bill.

A department which ascertains that a bidder or other vendor had directly been convicted of a public entity crime would still have to do business with such person or entity if the name had not previously been placed on the convicted vendor list. There is no procedure by which an agency could disqualify a person or firm directly found guilty for the purposes of a specific contract. While the convicted vendor list is to be published in the Weekly, it would not be required to be made directly available to the purchasing offices of agencies.

The hearing officer would be permitted to declare certain contracts voidable, when the person or firm permitted to do business with the state did not fulfill obligations relating to rehabilitation for committing one of the specified crimes. No particular procedure would be provided for this determination. In addition, such a determination would not be within the expertise of the hearing officer, but would be within the expertise and duties either of law enforcement agencies, or the agency with whom the contract is made.

IV. AMENDMENTS:

None.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1458

Substitutes the term "convicted" for the term "guilty," to
designate the persons and firms that would be subject to
disqualification from doing business with the state.

Changes the threshold standard for disqualification from
doing business with public agencies from a finding of guilt
of a public entity crime entered after October 1, 1989, to a
finding of guilt or conviction of a public entity crime
relating to charges filed after July 1, 1989.

Replaces the term "guilty vendor list" with the term
"convicted vendor list."

Amends the definition of "affiliate" to designate either a
successor or predecessor of a person, or an entity which is
under the control of a person who is active in the
management of the entity, and such person has been convicted
of a public entity crime.

Adds the enumeration of partners and members to the list of
persons active in the management of an affiliate who are
deemed to have the status of affiliate.

Clarifies that the definition of public entity crime applies
to those violations of the specified crimes that are
directly related to transaction of business with any public
entity.

Ties its provisions to the threshold amount provided in
CATEGORY TWO of s. 287.017, F.S., over which a person would
not be allowed to do business with the state if convicted of
a public entity crime.

Specifies that public entities notifying the Department of
General Services that a person has been convicted of a
public entity crime must do so in writing.

Replaces an incorrect statutory reference to nonprofit
workshops for the blind or other handicapped with the
correct reference.

Changes the effective date of the bill from October 1, 1989
to July 1, 1989.

Committee on Governmental Operations

[Signature]
Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)
**AS PASSED BY THE 1989 LEGISLATURE**

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 647 (CS/SB 458 passed)

RELATING TO: Integrity in Public Contracting

SPONSOR(S): Committee on Governmental Operations and Representatives Langton, Bronson, and Simon

EFFECTIVE DATE: July 1, 1989

DATE BECAME LAW: June 26, 1989

CHAPTER #: 89-114, Laws of Florida

COMPANION BILL(S): CS/SB 458 (similar)

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

A. SHORT SUMMARY:

This bill creates ss. 287.132-.133, Florida Statutes, to preserve the integrity of public contracting by providing state and local government agencies with the authority to refuse to do business with persons or affiliates who have been involved in crimes against public entities that include fraud, bribery, collusion, bid-rigging, etc. This bill directs the Department of General Services (DGS or Department) to maintain a convicted vendor list, which would be published in the Florida Administrative Weekly. The listing of the name of a contractor or affiliate would work to bar him from entering into a contract above a specified threshold figure with a public entity for a 36-month period.

B. PRESENT SITUATION:

Most government entities in Florida, including state, county, and municipal agencies, award contracts for goods and services to the qualified bidder who submits the lowest bid. However, there is currently no provision in Florida law which allows public entities to refuse to do business with persons or firms who have been convicted of such crimes as fraud, theft, bribery, or bid-rigging, except for the provisions in ss. 337.164-.166, Florida Statutes. These provisions were enacted by the Legislature in 1983 as part of the Department of Transportation's (DOT) crime prevention package. These sections provide DOT with the authority to deny or revoke a contractor's certificate of qualification, which is documentation of a contractor's fitness...
to bid on DOT construction projects. In this way, DOT is not forced to be an unwilling party to a contract with a person who has demonstrated his ability to defraud the state.

It is the position of the Attorney General--whose job involves the prosecution of persons charged with contract crime--that crimes involving fraud, collusion, bribery, and bid-rigging are not limited to the road construction industry. Incidents of crime involving contracts for goods and services highlight the need other public entities have for the same kind of statutory protection that has been provided DOT. Accordingly, the Attorney General is supporting legislation which would amend chapter 287, Florida Statutes, to give public entities the authority to refuse to transact business with persons or firms convicted of a "public entity crime." The primary intent of the proposed legislation is to preserve the integrity of the public purchasing process by underscoring that the transaction of business with a public entity is not a right but a privilege. The bill is designed to give public entities more contracting options by providing them with express statutory authority to refuse to do business with firms or persons who have dealt unfairly with them. It would provide public entities with greater control over their budgets and over the administration of programs that can only be run through the letting of contracts for goods and services by allowing them to decline contract offers from persons who have been involved in the unlawful taking of public monies for personal gain.

C. EFFECT OF PROPOSED CHANGES:

Legislative Intent, Powers, and Definitions

This bill would create s. 287.132, Florida Statutes, to provide public entities with the authority to refuse to enter into contracts with persons or firms who have been found guilty of a crime relating to a contract with a public entity. The stated legislative intent of the bill is the preservation of the public contracting and purchasing process as well as the provision for public entities of open competition among persons of good citizenship. This bill expressly provides public entities with the authority to deny contracting privileges to persons involved in crimes including, but not limited to, fraud, theft, bribery, collusion, racketeering, conspiracy, and material misrepresentation. This bill provides the definitions of terms essential to the administration of the convicted vendor list and program. This bill defines affiliate, conviction, convicted vendor list, Department, person, public entity, and public entity crime.

Procedures

This bill would create the convicted vendor list on which the names of persons found guilty of public entity crimes or the names of persons affiliated with those found guilty of public entity would appear as of January 1, 1990. The placement of a person's name on the list would bar that person from entering
into contracts above a specified threshold figure with public entities for a 36-month period. This bill provides that, upon receiving reasonable information from any source that a person has been found guilty of a contract crime directly related to his business with a public entity, the Department of General Services (DGS) would investigate to determine if good cause exists to place the name of that person or his affiliate on the convicted vendor list, which would be published in the Florida Administrative Weekly. A public entity that receives information that a person has been convicted of a public entity crime would be required to transmit that information to DGS in writing within 10 days of receipt of the information. If DGS finds that good cause exists to place a person's name on the list, it would be required to notify the person of its intent in writing, and inform the person of his right to a hearing under s. 120.57(1), Florida Statutes. In determining whether it is in the public interest to place the name of a person on the list, a hearing officer would consider criteria which include the nature and detail of the crime; the degree of culpability of the person or affiliate; whether prompt payment of restitution was made by the convicted vendor; whether the convicted vendor as a demonstration of good faith mitigated the damages he caused; whether the convicted vendor has disassociated himself from other persons involved in a public entity crime; and whether public entities require the return of the convicted vendor to the market place to increase competition. A person would be allowed to petition to have his name removed from the list no sooner than 6 months from the date of the final order disqualifying him from transacting business with a public entity. The final order of the hearing officer would be considered final agency action, which would be subject to judicial review under s. 120.68, Florida Statutes. When considering whether to remove a person's name from the list, the hearing officer would consider the same criteria that govern the original placement of a name on the list.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Creates s. 287.132, Florida Statutes, to provide for the preservation of the integrity of the public contracting process by providing the state, its departments, agencies, and political subdivisions the authority to refuse to transact business with persons or affiliates involved in contract crime.

Section 2 -- Creates s. 287.133, Florida Statutes, to require DGS to maintain and publish a convicted vendor list, which would contain the names of contractors and affiliates who have been involved in public entity crimes, and which would work to bar such contractors and affiliates from transacting business above a specified threshold figure with a public entity for a 36-month period; provides administrative procedures which may be used by contractors or affiliates to protest the placement of their names on the list and to petition for removal of their names from the list.

Section 3 -- Provides an effective date.
II. ANALYSIS & ECONOMIC IMPACT STATEMENT: FY 89-90 FY 90-91

A. IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   EXPENDITURES:
   Department of General Services
   Operating Capital Outlay $17,483

2. Recurring or Annualized Continuation Effects:

   EXPENDITURES:
   Department of General Services
   Salaries & Benefits (4 FTE) 111,678 120,613
   Other Personal Services 5,000 5,000
   Expenses 45,509 46,826

3. Long Run Effects Other Than Normal Growth:

   None

4. Appropriations Consequences:

   EXPENDITURES:
   Department of General Services
   General Revenue Fund 179,670 171,899

B. IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

   None

2. Recurring or Annualized Continuation Effects:

   None

3. Long Run Effects Other Than Normal Growth:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None

2. Direct Private Sector Benefits:

   None
3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

Though an amendment providing a specific appropriation for CS/HB 647 was adopted by the House Committee on Appropriations, no such amendment was offered when CS/SB 458 was substituted on the House floor. Instead, DGS agreed to absorb the cost of implementing the program.

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the following portion(s) of the State Comprehensive Plan:

(21) GOVERNMENTAL EFFICIENCY.--

(a) Goal.--Florida governments shall economically and efficiently provide the amount and quality of services required by the public.

(b) Policies.--

11. Encourage governments to seek outside contracting on a competitive-bid basis, when cost-effective and appropriate.

The placing of contractors' and affiliates' names on the convicted vendor list would work to show others who would consider engaging in public entity crime that the consequences of their actions could result in a long-range loss of business rather than a short-range increase in cash.

IV. COMMENTS:

The Department of General Services, whose job would include maintaining the list and investigating source information to determine whether good cause exists to place a vendor's name on the list, supports the bill. However, DGS indicated that it does not currently have positions available which could be used to perform the investigative duties it would be charged with under the proposed legislation. It also expressed some reservations about language in section 2 of the bill which relates to the $3,000 contract threshold. One provision in this section provides that a person or affiliate may not transact business with a public entity in excess of $3,000 for 36 months from the date his name is placed on the list. Two similar provisions relate to the awarding of contracts by a public entity, and to the filing of sworn statements by a contractor. Neither of these provisions makes mention of the $3,000 threshold. The Department suggested that if the intent of the bill is to cover contracts in excess of $3,000, the language in each of these provisions should be made to conform to the language in s. 287.017(1)(b), Florida Statutes, which lists threshold figures by category--$3,000 is the Category II threshold. The Department may
annually adjust the amount in these categories by administrative rule based upon the rate of change in a nationally recognized price index. Amendatory language which addressed this concern was added to the bill when it was heard by the Policy & Procedures Subcommittee.

The Department also expressed concerns about the provision in the bill which states that public entity contracts involving the purchase of goods or services from nonprofit corporations organized under chapter 946, or from accredited nonprofit workshops under s. 413.031 are not covered by the bill. It suggested that the provisions should be amended so that these nonprofit entities may not employ or utilize the services of a person who has been convicted of a public entity crime, with the exception of inmates incarcerated by the Department of Corrections or handicapped persons as defined in s. 413.033, Florida Statutes.

This bill is consistent with the Governmental Operations Committee's Mission statement, which directs the Committee to "[i]nitiate ways to achieve better productivity and efficiency by state agencies."

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Diane Carr
Staff Director: Barry Kling

SECOND COMMITTEE OF REFERENCE:
Prepared by:
Staff Director:

APPROPRIATIONS:
Prepared by: Frank Morgan
Staff Director: Dr. James A. Zingale