

By Senator Mitchell

4-462A-01

1 A bill to be entitled
2 An act relating to state government; creating
3 s. 14.204, F.S.; creating the State Council on
4 Competitive Government; providing for
5 appointment of members, powers, and duties;
6 providing for review of government services and
7 functions in relation to the performance of
8 those services and functions by nongovernment
9 providers; providing criteria for review;
10 providing for contract recommendations;
11 repealing s. 14.023, F.S., which provides for a
12 State Council on Competitive Government;
13 providing an effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Section 14.204, Florida Statutes, is
18 created to read:

- 19 14.204 State Council on Competitive Government.--
20 (1) DEFINITIONS.--As used in this section, the term:
21 (a) "Commercial activity" means an activity that
22 provides a product or service that is commonly available from
23 a private source.
24 (b) "Council" means the State Council on Competitive
25 Government.
26 (c) "Identified state service" means a service
27 provided by the state which the council has identified as a
28 commercially available service and which the council has
29 brought under study to determine whether the service may be
30 provided by private sources through competition.

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1 (d) "Privatization" means the transfer of government
2 functions, assets, agencies, management, products or
3 productive capacity, financing, or service delivery from the
4 government sector to the nongovernment sector.

5 (2) STATE COUNCIL ON COMPETITIVE GOVERNMENT.--The
6 State Council on Competitive Government is established. It is
7 the policy of this state that all state services be performed
8 in the most effective and efficient manner in order to provide
9 the best value to the public. The state recognizes that
10 competition among service providers may improve the quality of
11 services provided. The council shall encourage competition,
12 innovation, and creativity among service providers and within
13 the public sector.

14 (3) MEMBERSHIP.--The council shall consist of 9
15 members appointed as follows: two members appointed by the
16 Governor, one of whom must be from the government sector; two
17 appointees of the Governor and Cabinet, one of whom must be
18 from the government sector; the Director of the Legislature's
19 Office of Program Policy and Government Accountability; two
20 members appointed by the President of the Senate; and two
21 members appointed by the Speaker of the House of
22 Representatives. The council shall select its presiding
23 officer from its membership. The council shall meet as often
24 as necessary to perform its duties.

25 (4) DUTIES.--

26 (a) The council shall identify commercially available
27 services currently being performed by state agencies and, if
28 the council finds that any services of an agency can be better
29 provided through competition with private sources or other
30 state agency service providers, the council may recommend that
31 the state agency engage in any process, including competitive

1 bidding, which is recommended by the council to provide the
2 service through competition among private sources or with
3 other state-agency service providers.

4 (b) The council shall review and comment on all
5 requests for proposals, invitations to bid, invitations to
6 negotiate, or contracts issued by state agencies which propose
7 privatization of funded government services. Each state agency
8 shall submit all of its privatization proposals costing
9 \$100,000 or more to the council for its review before any
10 action is taken by the agency.

11 (c) The council shall review all existing instances in
12 which state-government-funded services have been privatized in
13 order to comment on whether the services are being performed
14 in the most effective and efficient manner to provide the best
15 value to the public.

16 (5) POWERS.--In performing its duties under this
17 section, the council may:

18 (a) Adopt rules governing any aspect of the council's
19 duties or responsibilities.

20 (b) Hold public hearings or conduct studies.

21 (c) Consult with private sources or state agencies
22 that provide services.

23 (d) Recommend that a state agency conduct an in-house
24 cost estimate, a management study, or any other hearing,
25 study, review, or cost estimate concerning any aspect of an
26 identified state service.

27 (e) Develop for use by state agencies methods to
28 accurately and fairly estimate and account for the cost of
29 providing an identified state service.

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1 (f) Recommend that an identified state service be
2 submitted to competitive bidding or another process that
3 creates competition among private sources.

4 (g) Suggest, in consultation with affected state
5 agencies, the specifications and conditions of purchase
6 procedures that should be followed by a state agency or a
7 private source engaged in competitive bidding to provide an
8 identified state service.

9 (h) Recommend the award of a contract to a state
10 agency currently providing the service, another state agency,
11 a private source, or any combination of those entities if the
12 bidder presents the best and most reasonable bid, which is not
13 necessarily the lowest bid.

14 (i) Suggest the terms and conditions of a contract for
15 service or an interagency contract to provide an identified
16 state service or other commercially available service.

17 (j) Recommend a minimum level of contractor health
18 insurance coverage for employees, including optional family
19 coverage, whether employer-paid or employee-paid or a
20 combination thereof.

21 (k) Encourage state employees to organize and submit a
22 bid for the identified service.

23 (6) COST COMPARISON AND CONTRACT CONSIDERATIONS.--In
24 comparing the cost of providing a service, the council must
25 consider the cost of supervising the work of any private
26 contractor, including an analysis of whether health-care
27 benefits, retirement, and workers' compensation insurance for
28 employees of the contractor are reasonably comparable to
29 benefits provided by the state. The council must also consider
30 the total cost to the agency of that agency's performance of a
31 service, such total cost to include all indirect costs related

1 to that agency and the costs of agencies such as the
2 Comptroller, the Treasurer, the Attorney General, and other
3 support agencies. In reviewing proposals submitted by state
4 agencies or in making recommendations for actions to be
5 undertaken by state agencies in privatization or in making
6 recommendations for investments in productive improvements to
7 public-sector agencies, the council shall consider the
8 following:

9 (a) Whether two or more state agencies provide an
10 essentially similar service to a like population with little
11 or no value added by multiple jurisdictions.

12 (b) Whether the public-sector service has been created
13 in response to a short-term need or abuse, and any subsequent
14 actions that have satisfactorily addressed the need or
15 remedied the abuse with sufficient protection to the affected
16 public.

17 (c) Whether the program, service, or deployment of
18 resources exists because of a commitment to job-based tasks
19 that prove unnecessary in light of alternative
20 technology-based processes.

21 (d) Whether market forces can address the program or
22 service for its satisfactory operation in a nongovernment
23 context.

24 (e) Whether the program or service is peripheral to
25 the core mission of state government regardless of the
26 efficiency of the state-agency operation.

27 (f) Whether the service or program provides a subsidy
28 that the general population can obtain from a nongovernment
29 provider without loss of integrity or unreasonable cost.
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1 (g) Whether the selected program or service unduly
2 affects economically or geographically disadvantaged segments
3 of the workforce from receiving subsequent employment.

4 (h) Whether the nongovernment provider has made
5 satisfactory provisions to avoid service interruption,
6 provisions for employment by displaced public-sector
7 employees, and provisions for maintenance of the quality and
8 accessibility of the contracted service.

9 (i) Whether privatization of the program or service
10 would impair the integrity of the regulatory powers of state
11 government or its sworn enforcement of functions conferred on
12 it by law.

13 (j) Whether the alternative method of providing
14 government services adds value. For the purposes of this
15 section, an alternative method adds value if it achieves one
16 or more government-sector objectives with improvement outcomes
17 irrespective of cost; achieves more outcomes within a fixed
18 amount of appropriation; improves accuracy, timeliness, or
19 responsiveness by employees on behalf of customers, clients,
20 or the public; reduces unit costs; or reduces the cost of
21 sales and general administrative expenses.

22 (7) DUTIES OF AFFECTED STATE AGENCIES.--A state agency
23 shall cooperate with the council in the performance of its
24 duties under this section.

25 (8) EXEMPTION.--Any contract entered into pursuant to
26 council recommendations and decisions regarding whether an
27 agency will engage in competitive bidding with respect to such
28 a contract is exempt from all laws of the state regulating or
29 limiting state purchasing and purchasing decisions.

30 (9) CONTRACT RECOMMENDATIONS; APPROPRIATIONS.--A
31 contract entered into under this section constitutes an

1 executive branch recommendation only and does not take effect
2 until a specific appropriation to fund the contract is
3 provided by law. In addition, any contract entered into by an
4 executive-branch agency under this section must state in its
5 text that its effect is contingent upon a specific
6 appropriation by law. However, a contract entered into
7 pursuant to this section may not impair the actions of any
8 executive branch agency whose powers are derived directly from
9 the State Constitution or impair any contractual or statutory
10 obligations imposed by state or federal law or a grant-in-aid
11 program.

12 (10) OPEN MEETINGS AND OPEN RECORDS LAWS.--The
13 meetings and records of the council are subject to the
14 provisions of ss. 119.07 and 286.011.

15 (11) REIMBURSEMENT FOR EXPENSES.--Members of the
16 council are not entitled to receive a salary but may be
17 reimbursed for expenses under s. 112.061.

18 Section 2. Section 14.023, Florida Statutes, is
19 repealed.

20 Section 3. This act shall take effect July 1, 2001.

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23 SENATE SUMMARY

24 Creates a new State Council on Competitive Government and
25 provides for its membership, powers, and duties. Provides
26 for review of government services and functions in
27 relation to the performance of those services and
28 functions by nongovernment providers. Repeals the
29 existing Council on Competitive Government.
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