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1 A bill to be entitled
2 An act relating to outsourcing; amending s.
3 14.203, F.S.; changing the membership of the
4 State Council on Competitive Government;
5 providing definitions; providing for
6 appointments; providing qualifications for
7 membership; providing for terms and limitation
8 on terms; providing additional powers and
9 duties of the council; providing that certain
10 business entities shall be given preference
11 when bidding to provide services previously
12 provided by state agencies; authorizing each
13 state agency to bid on any contract for the
14 provision of services previously provided by
15 any state agency; providing that all
16 outsourcing contracts, other than certain
17 contracts subject to the Correctional
18 Privatization Commission, must be awarded by
19 the council; creating s. 14.2031, F.S.;
20 prohibiting the council from awarding contracts
21 unless it determines a certain cost savings;
22 creating s. 14.2032, F.S.; requiring the
23 Auditor General to develop and implement a
24 costs and benefits analysis; requiring regular
25 evaluation of contractors for state services by
26 the Auditor General; creating s. 14.2033, F.S.;
27 prohibiting certain contacts with council
28 members and employees; providing for
29 applicability; providing an effective date.
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31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 14.203, Florida Statutes, is
2 amended to read:

3 14.203 State Council on Competitive Government.--It is
4 the policy of this state that all state services be performed
5 in the most effective and efficient manner in order to provide
6 the best value to the citizens of the state. The state also
7 recognizes that competition among service providers may
8 improve the quality of services provided, and that
9 competition, innovation, and creativity among service
10 providers should be encouraged.

11 (1) For the purposes of this section and ss.
12 14.2031-14.2033:

13 (a) "Commercial activity" means an activity that
14 provides a product or service that is available from a private
15 source.

16 (b) "Council" means the State Council on Competitive
17 Government.

18 (c)~~(b)~~ "Identified state service" means a service
19 provided by the state that is under consideration to determine
20 whether the service may be better provided through competition
21 with private sources, or which the Legislature, through the
22 General Appropriations Act or other law, has directed to be
23 competitively bid.

24 (2)(a) There is hereby created the State Council on
25 Competitive Government, which shall be composed of nine
26 members appointed by the Governor, subject to confirmation by
27 the Senate. A council member may not have been an employee or
28 a contract vendor of or a consultant to a state agency, or an
29 employee or a contract vendor of or a consultant to a bidder,
30 for 2 years prior to appointment to the council and may not
31 become an employee or a contract vendor of or a consultant to

1 a state agency, or an employee or a contract vendor of or a
2 consultant to a bidder, for 2 years following the termination
3 of the appointment to the council. At least three of the
4 council members shall be retired state workers and at least
5 three of the members shall have significant prior experience
6 in the private sector. In appointing the council, the Governor
7 shall seek to provide reasonable racial, ethnic, regional, and
8 gender diversity ~~the Governor and Cabinet, sitting as the~~
9 ~~Administration Commission as defined in s. 14.202.~~ The
10 council, on its own initiative, the Office of Program Policy
11 Analysis and Government Accountability, created pursuant to s.
12 11.51, or the Commission on Government Accountability to the
13 People, created pursuant to s. 286.30, may identify commercial
14 activities currently being performed by state agencies and, if
15 it is determined that such services may be better provided by
16 requiring competition with private sources or other state
17 agency service providers, may recommend that a state agency
18 engage in any process, including competitive bidding, that
19 creates competition with private sources or other state agency
20 service providers.

21 (b) The term of office for a member of the council is
22 4 years. No member of the council shall be reappointed to the
23 council if such member has served on the council for the past
24 8 consecutive years.

25 (c) A vacancy shall be filled in the same manner as
26 the original appointment and shall be for the remainder of the
27 unexpired term only.

28 (d) The Governor shall appoint from among the members
29 a chair and a vice chair for terms of 2 years each.
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1 (e) Members of the council shall serve without
2 compensation but are entitled to reimbursement for per diem
3 and travel expenses pursuant to s. 112.061.

4 (f) The council may employ an executive director and
5 such staff as is necessary, within the limits of legislative
6 appropriation. The council may retain such consultants as it
7 deems necessary to accomplish its mission. Neither the
8 executive director nor any consultant retained by the council
9 may have been an employee or a contract vendor of or a
10 consultant to a state agency, or an employee or a contract
11 vendor of or a consultant to a bidder, for 2 years prior to
12 employment with or retention by the council and may not become
13 an employee or a contract vendor of or a consultant to a state
14 agency, or an employee or a contract vendor of or a consultant
15 to a bidder, for 2 years following termination of employment
16 with the council.

17 (g) The council shall meet upon the call of the chair
18 or a majority of the members of the council. A majority of
19 the members of the council constitutes a quorum.

20 (h) In accordance with all provisions of law, the
21 council may lease such office space as is necessary, within
22 the limits of legislative appropriation.

23 (3) In performing its duties under this section, the
24 council may:

25 (a) Adopt rules to implement any provision of this
26 section.

27 (b) Hold public hearings or conduct studies.

28 (c) Consult with private sources.

29 (d) Require a state agency to conduct an in-house cost
30 estimate, a management study, or any other hearing, study,
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1 review, or cost estimate concerning any aspect of an
2 identified state service.

3 (e) Develop and require for use by state agencies
4 methods to accurately and fairly estimate and account for the
5 cost of providing an identified state service.

6 (f) Require that an identified state service be
7 submitted to competitive bidding or another process that
8 creates competition with private sources or other governmental
9 entities. In determining whether an identified state service
10 should be submitted to competitive bidding, the council shall
11 consider, at a minimum:

12 1. Any constitutional and legal implications which may
13 arise as a result of such action.

14 2. The cost of supervising the work of any private
15 contractor.

16 3. The total cost to the state agency of such state
17 agency's performance of a service, including all indirect
18 costs related to that state agency and costs of such agencies
19 as the Comptroller, the Treasurer, the Attorney General, and
20 other such support agencies to the extent such costs would not
21 be incurred if a contract is awarded. Costs for the current
22 provision of the service shall be considered only when such
23 costs would actually be saved if the contract were awarded to
24 another entity.

25 (g) Prescribe, in consultation with affected state
26 agencies, the specifications and conditions of purchase
27 procedures that must be followed by a state agency or a
28 private source engaged in competitive bidding to provide an
29 identified state service.

30 (h) Award a contract to a state agency currently
31 providing the service, another state agency, a private source,

1 or any combination of such entities, if the bidder presents
2 the best and most reasonable bid, which is not necessarily the
3 lowest bid. In determining the best and most reasonable bid
4 among private entities, the council shall give preference to a
5 business entity which has its primary place of business in
6 this state and to a business entity which agrees to provide
7 employment opportunities to state employees who will be
8 displaced as a result of the outsourcing of the identified
9 service. No state agency shall be prohibited from bidding on
10 any contract to be awarded by the commission. It is intended
11 that consideration be given as to how to transfer the program
12 back if the bidder is not successful in carrying out the
13 requirements of the contract. The bid shall also include an
14 analysis of health care benefits, retirement, and workers'
15 compensation insurance for employees of the contractor which
16 are reasonably comparable to those provided by the state.

17 (i) Determine the terms and conditions of a contract
18 for service or interagency contract to provide an identified
19 state service or other commercial activity. Such terms and
20 conditions may include the requirement that a minimum level of
21 health insurance coverage for employees, including optional
22 family coverage, whether employer-paid or employee-paid, or a
23 combination thereof, is available to employees.

24 (j) Require the state agency to encourage state
25 employees to organize and submit a bid for the identified
26 state service.

27 (4) A state agency shall perform any activities
28 required by the council in the performance of its duties or
29 the exercise of its powers under this section.

30 (5) Contracts entered into by the council to implement
31 this section and any decision regarding whether a state agency

1 shall engage in competitive bidding are exempt from state law
2 regulating or limiting purchasing practices and decisions,
3 including chapter 120. No state agency shall be prohibited
4 from bidding on any contract to be awarded by the commission.

5 (6) A contract entered into pursuant to this section
6 constitutes an executive branch recommendation only and shall
7 not take effect until a specific appropriation is provided by
8 law to fund such contract. In addition, any contract entered
9 into by a state agency pursuant to this section shall include
10 language that its effect is contingent upon a specific
11 appropriation by law.

12 (7) No contract for the provision of an identified
13 state service shall be awarded by the state except pursuant to
14 the provisions of this section, except that contracts relating
15 to correctional facilities or programs subject to the
16 provisions of chapter 957 shall not be subject to the
17 provisions of this section.

18 Section 2. Section 14.2031, Florida Statutes, is
19 created to read:

20 14.2031 Cost-saving requirements.--The council may not
21 enter into a contract or series of contracts unless the
22 council determines that the contract or series of contracts in
23 total for an identified state service will result in a cost
24 savings to the state of at least 10 percent over the public
25 provision of the same service. Such cost savings as determined
26 by the council must be based upon the actual costs associated
27 with the service as determined pursuant to the methods
28 established pursuant to s. 14.203(3). Reasonable projections
29 of payments of any kind to the state or any political
30 subdivision thereof for which the private entity would be
31 liable because of its status as a private entity rather than a

1 public entity, including, but not limited to, corporate income
2 and sales tax payments, shall be included as cost savings in
3 all such determinations. In addition, the costs associated
4 with the appointment and activities of any contract monitor
5 shall be included in such determination.

6 Section 3. Section 14.2032, Florida Statutes, is
7 created to read:

8 14.2032 Evaluation of costs and benefits of
9 contracts.--The Auditor General shall develop and implement an
10 evaluation of the costs and benefits of each contract awarded
11 by the council. This evaluation must include a comparison of
12 the costs and benefits of providing the identified service by
13 the agency that was providing such service prior to the award
14 of the contract versus the costs and benefits of providing the
15 identified service by the contractor. The Auditor General
16 shall also evaluate the performance of the contractor at least
17 once every 3 years and 1 year prior to the scheduled
18 termination of each contract and make recommendations to the
19 Speaker of the House of Representatives and the President of
20 the Senate as to whether to continue the contract.

21 Section 4. Section 14.2033, Florida Statutes, is
22 created to read:

23 14.2033 Prohibition on contact.--A bidder or potential
24 bidder is not permitted to have any contact with any member or
25 employee of or consultant to the council regarding a request
26 for proposal, a proposal, or the evaluation or selection
27 process from the time a request for proposals for the
28 provision of an identified service is issued until the time a
29 notification of intent to award is announced, except if such
30 contact is in writing or in a meeting for which notice was
31 provided in the Florida Administrative Weekly.

1 Section 5. The provisions of this act shall only apply
2 to contracts executed on, or after, the effective date of this
3 act.

4 Section 6. This act shall take effect July 1, 2001.

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HOUSE SUMMARY

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Changes the membership of the State Council on
Competitive Government from the Governor and Cabinet to
nine members appointed by the Governor to 4-year terms.

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Requires that all contracts awarded for the provision of
state services must be awarded by the council, except
those contracts subject to approval by the Correctional
Privatization Commission. Provides that any state agency
may bid on any such contract.

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Prohibits the council's awarding a contract unless the
council determines that the contract will result in a
savings of at least 10 percent.

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Requires the Auditor General to regularly evaluate the
cost-effectiveness of awarded contracts.

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Prohibits ex parte communications between members of the
council and bidders for state services contracts.

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