

By Senator Lawson

3-1409-01

See HB

1 A bill to be entitled
2 An act relating to the State Council on
3 Competitive Government; amending s. 14.203,
4 F.S.; providing definitions; requiring the
5 council to direct the Office of Program Policy
6 Analysis and Government Accountability and the
7 Director of Efficiency and Enterprise
8 Development of the office of planning and
9 budgeting in the Executive Office of the
10 Governor to review and report on all requests
11 for proposals, invitations to bid, invitations
12 to negotiate, or contracts issued by state
13 agencies that propose the privatization of
14 funded government; requiring state agencies to
15 submit certain privatization proposals to the
16 council; providing considerations and criteria
17 for review and report; providing circumstances
18 for competition with private sources or other
19 state agency service providers; requiring a
20 contract entered into by an executive branch
21 agency to include a statement of contingent
22 effect; providing for open meetings and
23 records; providing that a vendor must be a
24 domiciled state corporation or have a
25 significant business presence in the state;
26 providing a definition; providing an effective
27 date.

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29 Be It Enacted by the Legislature of the State of Florida:
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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 and services to the citizens of the state. The
7 state also recognizes that competition among service providers
8 may 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:

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

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

17 (c) ~~(b)~~ "Identified state service" means a service
18 provided by the state that is under consideration to determine
19 whether the service may be better provided through competition
20 with private sources.

21 (d) "Privatization" means the transfer of government
22 functions, assets, agencies, management, products or
23 productive capacity, financing, or service delivery from the
24 government sector to the nongovernment sector.

25 (2) There is hereby created the State Council on
26 Competitive Government, which shall be composed of the
27 Governor and Cabinet, sitting as the Administration Commission
28 as defined in s. 14.202. The council shall, ~~on its own~~
29 ~~initiative, the Office of Program Policy Analysis and~~
30 ~~Government Accountability, created pursuant to s. 11.51, or~~
31 ~~the Commission on Government Accountability to the People,~~

1 ~~created pursuant to s. 286.30, may~~ identify commercial
2 activities currently being performed by state agencies to
3 determine and, if it is determined that such services may be
4 better provided by requiring competition with private sources
5 or other state agency service providers, ~~may recommend that a~~
6 ~~state agency engage in any process, including competitive~~
7 ~~bidding, that creates competition with private sources or~~
8 ~~other state agency service providers.~~

9 (3) In performing its duties under this section, the
10 council shall ~~may~~:

11 (a) Require each state agency to submit all
12 privatization proposals that cost \$100,000 or more to the
13 council for review and approval prior to their issuance.

14 (b) Direct the Office of Program Policy Analysis and
15 Government Accountability and the Director of Efficiency and
16 Enterprise Development of the office of planning and budgeting
17 in the Executive Office of the Governor to review and report
18 on all requests for proposals, invitations to bid, invitations
19 to negotiate, or contracts issued by state agencies that
20 propose the privatization of funded government services.

21 ~~(a) Adopt rules to implement any provision of this~~
22 ~~section.~~

23 ~~(b) Hold public hearings or conduct studies.~~

24 ~~(c) Consult with private sources.~~

25 ~~(d) Require a state agency to conduct an in-house cost~~
26 ~~estimate, a management study, or any other hearing, study,~~
27 ~~review, or cost estimate concerning any aspect of an~~
28 ~~identified state service.~~

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

1 ~~(f) Require that an identified state service be~~
2 ~~submitted to competitive bidding or another process that~~
3 ~~creates competition with private sources or other governmental~~
4 ~~entities. In determining whether an identified state service~~
5 ~~should be submitted to competitive bidding,The review and~~
6 ~~report council shall consider, at a minimum:~~

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

9 2. The cost of supervising the work of any private
10 contractor.

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

20 4. An analysis of whether the cost of health care
21 benefits, retirement, and workers' compensation insurance for
22 employees of the contractor is reasonable comparable to
23 benefits provided by the state.

24 5. Whether two or more state agencies provide an
25 essentially similar service to a like population with little
26 or no value added by multiple jurisdictions.

27 6. Whether the public sector service has been created
28 in response to a short-term need or abuse, and any subsequent
29 actions that have satisfactorily addressed the need or
30 remedied the abuse with sufficient protection to the affected
31 public.

1 7. Whether the program, service, or deployment of
2 resources exists because of a commitment to job-based tasks
3 that prove unnecessary in light of alternative
4 technology-based processes.

5 8. Whether market forces can address the program or
6 service for its satisfactory operation in a nongovernment
7 context.

8 9. Whether the program or service is peripheral to the
9 core mission of state government regardless of the efficiency
10 of the state agency operation.

11 10. Whether the service or program provides a subsidy
12 that the general population can obtain from a nongovernment
13 provider without loss of integrity or unreasonable cost.

14 11. Whether the selected program or service unduly
15 affects economically or geographically disadvantaged segments
16 of the workforce from receiving subsequent employment.

17 12. Whether the nongovernment provider has made
18 satisfactory provisions to avoid service interruption,
19 provisions for employment by displaced public sector
20 employees, and provisions for maintenance of the quality and
21 accessibility of the contracted service.

22 13. Whether privatization of the program or service
23 would impair the integrity of the regulatory powers of state
24 government or its sworn enforcement of functions conferred on
25 it by law.

26 14. Whether the alternative method of providing
27 government services adds value. For the purposes of this
28 section, an alternative method adds value if it achieves one
29 or more government sector objectives with improvement outcomes
30 irrespective of cost; achieves more outcomes within a fixed
31 amount of appropriation; improves accuracy, timeliness, or

1 responsiveness by employees on behalf of customers, clients,
2 or the public; reduces unit costs; or reduces the cost of
3 sales and general administrative expenses.

4 (4) In conducting a review under this section, the
5 Office of Program Policy Analysis and Government
6 Accountability may:

7 (a) Hold public hearings or conduct studies.

8 (b) Consult with private sources.

9 (c) Require a state agency to conduct an in-house cost
10 estimate, a management study, or any other hearing, study,
11 review, or cost estimate concerning any aspect of an
12 identified state service.

13 (d) Develop and require for use by state agencies
14 methods to accurately and fairly estimate and account for the
15 cost of providing an identified state service.

16 (5) The Director of Efficiency and Enterprise
17 Development of the office of planning and budgeting in the
18 Executive Office of the Governor may adopt rules to implement
19 any provision of this section.

20 (6) Upon review of the report required under this
21 section, the council may recommend that a state agency engage
22 in any process, including competitive bidding, that creates
23 competition with private sources or other state agency service
24 providers. In making such recommendation, the council may:

25 (a)~~(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 (b)~~(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. It is intended that consideration be given as to
4 how to transfer the program back if the bidder is not
5 successful in carrying out the requirements of the contract.
6 The bid shall also include an analysis of health care
7 benefits, retirement, and workers' compensation insurance for
8 employees of the contractor which are reasonably comparable to
9 those provided by the state.

10 (c)~~(i)~~ Determine the terms and conditions of a
11 contract for service or interagency contract to provide an
12 identified state service or other commercial activity. Such
13 terms and conditions may include the requirement that a
14 minimum level of health insurance coverage for employees,
15 including optional family coverage, whether employer-paid or
16 employee-paid, or a combination thereof, is available to
17 employees.

18 (d)~~(j)~~ Require the state agency to encourage state
19 employees to organize and submit a bid for the identified
20 state service.

21 (7)~~(4)~~ A state agency shall perform any activities
22 required by the council in the performance of its duties or
23 the exercise of its powers under this section.

24 (8)~~(5)~~ Contracts entered into by the council to
25 implement this section and any decision regarding whether a
26 state agency shall engage in competitive bidding are exempt
27 from state law regulating or limiting purchasing practices and
28 decisions, including chapter 120.

29 (9)~~(6)~~ A contract entered into pursuant to this
30 section constitutes an executive branch recommendation only
31 and shall not take effect until a specific appropriation is

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

12 (10) The meetings and records of the council are
13 subject to the provisions of ss. 119.07 and 286.011.

14 Section 2. Any other provision of law to the contrary
15 notwithstanding, no contract for services, request for
16 proposals, or invitation to bid between an agency of the state
17 and a contract vendor succeeding to the operation of a program
18 or function of a state agency shall be executed unless the
19 vendor shall be a domiciled corporation in this state or shall
20 have a significant business presence in the state for the
21 duration of the contract. For the purposes of this section,
22 the term "significant business presence" shall mean a
23 retention of substantially all of the filled positions
24 previously assigned to the state agency at substantially the
25 same total cash equivalent of salaries and benefits.

26 Section 3. This act shall take effect July 1, 2001.
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HOUSE SUMMARY

Revises provisions relating to the State Council on Competitive Government. Requires the council to direct the Office of Program Policy Analysis and Government Accountability and the Director of Efficiency and Enterprise Development of the office of planning and budgeting in the Executive Office of the Governor to review and report on all requests for proposals, invitations to bid, invitations to negotiate, or contracts issued by state agencies that propose the privatization of funded government. Requires state agencies to submit certain privatization proposals to the council. Provides considerations and criteria for review and report. Provides circumstances for competition with private sources or other state agency service providers. Requires a contract entered into by an executive branch agency to include a statement of contingent effect. Provides for open meetings and records. Requires a vendor to be a domiciled state corporation or a significant business presence in the state.