



HB 1707

2003

1 A bill to be entitled

2 An act relating to procurement of personal property and
3 services; creating s. 287.019, F.S.; defining
4 "privatization"; requiring the head of a state agency,
5 prior to the purchase, lease, or acquisition of
6 commodities or contractual services by privatization, to
7 conduct an evaluation of the proposed privatization;
8 requiring the head of a state agency, subsequent to the
9 purchase, lease, or acquisition of commodities or
10 contractual services by privatization, to conduct an
11 evaluation of the privatization; providing evaluation
12 criteria; requiring the State Council for Competitive
13 Government to conduct a quarterly review of completed
14 agency privatization evaluations; providing that a vendor
15 must be a domiciled state corporation or have a
16 significant business presence in the state; providing an
17 effective date.

18
19 WHEREAS, a continuing issue in government reform is the
20 option of privatizing public services, and

21 WHEREAS, privatization is often proposed as a way to
22 improve public services, with proponents claiming that
23 privatization can cut government waste, increase employee
24 productivity, and save tax dollars, and

25 WHEREAS, however, concerns have been raised that
26 privatization can cost more than it saves, can lead to the loss
27 of public control over government services, and may reduce
28 service quality, and

29 WHEREAS, experience has shown that privatization can work
30 well in some cases, produces mixed results in others, and can



HB 1707

2003

31 raise a variety of problems if the process is not well managed,
32 and

33 WHEREAS, privatization in Florida is occurring in a host of
34 public services, ranging from delivery of social services to
35 building roads, and

36 WHEREAS, Florida is also outsourcing government programs
37 and services through public-private partnerships, and

38 WHEREAS, in these partnerships, which are an alternative to
39 full privatization, the private sector and government assume
40 joint responsibility for the design and delivery of public
41 programs and services, and

42 WHEREAS, when assessing privatization potential, the best
43 candidates are programs where there are clearly defined tasks to
44 be performed, good unit cost data can be developed for
45 comparison, good quality and quantity measures are available so
46 that service delivery can be monitored, and private sector
47 service providers already exist, and

48 WHEREAS, it must also be recognized that it may be
49 difficult to privatize many state functions, and

50 WHEREAS, for example, programs that involve the state's
51 police power in which issues of fairness and equity are critical
52 are not good candidates for privatization, and

53 WHEREAS, it should be recognized that market competition,
54 rather than privatization itself, produces cost savings, and

55 WHEREAS, private companies have incentives to reduce their
56 costs to increase profits and market share, whereas government
57 agencies commonly do not face such competition, and

58 WHEREAS, however, when agencies have been placed in a
59 competitive situation, they have frequently improved their
60 performance and were able to under-bid private vendors, and



HB 1707

2003

61 WHEREAS, it is in the public interest of the citizens of
62 the State of Florida that a diligent, comprehensive, ongoing
63 effort at providing realistic assessments and evaluations of
64 privatization efforts be undertaken, NOW, THEREFORE,

65
66 Be It Enacted by the Legislature of the State of Florida:

67
68 Section 1. Section 287.019, Florida Statutes, is created
69 to read:

70 287.019 Privatization evaluation and assessment.--

71 (1) For the purposes of this section, "privatization"
72 means entering into a contract with one or more private entities
73 for the purchase, lease, or acquisition of any commodity or
74 contractual service required by an agency of the state under
75 this chapter when:

76 (a) It is maintained by the department that such commodity
77 or contractual service can be provided in a more efficient
78 manner by a private entity; and

79 (b) The expenditure by the contracting agency for the
80 purchase, lease, or acquisition of commodities or contractual
81 services meets or exceeds the threshold amount provided in s.
82 287.017 for CATEGORY FIVE:

83 1. Twice in any 1-year period; or

84 2. Four or more times during any 3-year period.

85 (2) Prior to the purchase, lease, or acquisition of any
86 commodity or contractual service required by an agency of the
87 state under this chapter which meets the definition provided in
88 subsection (1), the head of the state agency shall conduct an
89 evaluation of the proposed privatization which shall
90 specifically address the potential for the privatization to



HB 1707

2003

91 result in a verifiable cost savings. If it is determined that
92 the proposed privatization will result in a verifiable cost
93 savings, the evaluation must ascertain whether the cost savings
94 be will directly attributable to any of the following:

95 (a) Lower labor costs than that of the state agency.

96 (b) Reduced regulatory requirements.

97 (c) Reduced overhead.

98 (d) Increased flexibility with respect to the motivation,
99 reward, and termination of employees.

100 (e) Access to better equipment than that available to the
101 state agency.

102 (f) The ability to react more quickly to changing
103 conditions than the state agency. If so was this ability
104 attributable to:

105 1. An ability to shift funds to pay unexpected expenses
106 without the encumbrance of budget transfer authority under which
107 the state agency must operate.

108 2. An ability to expand operations more quickly than the
109 state agency.

110 (g) Staffing flexibility, including the ability to obtain
111 specialized expertise by contract or through the hiring of a
112 consultant for one-time occasional projects.

113 (h) The avoidance of political factors, which may include
114 the use of private-sector experts not aligned or associated with
115 partisan political groups.

116 (i) The avoidance of prohibitive or excessive start-up
117 costs needed to provide appropriate up-front funding for service
118 infrastructure.

119 (3) One year after entering into a contract for the
120 purchase, lease, or acquisition of any commodity or contractual



HB 1707

2003

121 service required by an agency of the state under this chapter
122 which meets the definition provided in subsection (1), the head
123 of the state agency shall conduct an evaluation of the results
124 of the privatization to determine whether the privatization
125 yielded or failed to yield the projected cost savings based on
126 the evaluation conducted pursuant to subsection (2) prior to
127 entering into the contract, and an evaluation of the results of
128 the privatization during its first year which shall specifically
129 address whether the privatization resulted in a verifiable cost
130 increase. If it is determined that the privatization resulted in
131 a verifiable cost increase, the evaluation must ascertain
132 whether the cost increase was directly attributable to any of
133 the following:

134 (a) Reduced public accountability. If so, did the lack of
135 public accountability or reduced public accountability manifest
136 itself in increased costs resulting from:

137 1. Lack of public access to service and financial records
138 maintained by the provider.

139 2. Variations in the quality of services being provided to
140 citizens.

141 3. Entering into a contract the term of which was too
142 lengthy, thus precluding the ability to adjust to a changing
143 condition or circumstance.

144 4. A resultant inability to gauge or monitor poor
145 performance. In an instance where such an inability and poor
146 performance resulted in termination of a contract, was increased
147 cost and or hardship incurred because:

148 a. The contractor was a sole-source provider of a service;
149 or



HB 1707

2003

150 b. The contractor was providing a service in which no
151 service disruptions could be tolerated.

152 (b) Service quality problems which include, but are not
153 limited to:

154 1. Providing service to only those who do not have many
155 needs, commonly known as "creaming."

156 2. Identifiable cost-cutting measures that result in cost
157 increases including, but not limited to, frequent replacement of
158 poorly maintained equipment.

159 3. Service quality problems that arise from contract
160 deficiencies which include, but are not limited to:

161 a. Poorly defined responsibilities of the contractor;

162 b. Lack of service quality performance measures;

163 c. The absence of penalties for nonperformance;

164 d. The absence of contingency plans.

165 (c) Higher long-term costs. If so, did the higher long-
166 term costs result from:

167 1. The submission by the contractor of a low initial bid
168 in order to obtain the contract followed by substantially
169 increasing costs in subsequent years when the agency previously
170 providing the service no longer has the staff or authority to
171 perform the service.

172 2. The acceptance of a contract bid that appears low but
173 is in actuality higher than the in-house costs of the agency due
174 to the agency's inability to determine the actual cost of
175 providing services in-house because of agency accounting systems
176 which do not allocate all direct and indirect costs to services.

177 3. Failure in the request for proposals that solicited the
178 bid for the service to mandate that the contractor achieve a
179 specified level of savings.



HB 1707

2003

180 4. Failure of the contract to limit future price
181 increases.

182 (d) Workforce issues including, but not limited to:

183 1. Employee layoffs resulting in morale problems.

184 2. Union challenges to privatization.

185 3. Disruptions resulting from bumping rights when affected
186 employees assume jobs in other areas.

187 4. Failure of an agency's ability to meet Equal Employment
188 Opportunity goals and subsequent discrimination challenges
189 resulting from inordinate numbers of minority groups being
190 removed from state payrolls.

191 5. Failure in a contract to require the contractor to
192 guarantee jobs and wages for a limited time period.

193 (6) The State Council for Competitive Government must
194 conduct a quarterly review of each completed agency
195 privatization evaluation required pursuant to subsection (3).
196 The council may authorize the Office of Program Policy Analysis
197 and Governmental Accountability to conduct the quarterly reviews
198 required under this subsection.

199 Section 2. Any other provision of law to the contrary
200 notwithstanding, a contract for services, request for proposals,
201 or invitation to bid between an agency of the state and a
202 contract vendor succeeding to the operation of a program or
203 function of a state agency shall not be executed unless the
204 vendor is a domiciled corporation in this state or has a
205 significant business presence in the state for the duration of
206 the contract. For purposes of this section, the term
207 "significant business presence" means a retention of
208 substantially all of the filed positions previously assigned to



HB 1707

2003

209 the state agency at substantially the same total cash equivalent
210 of salaries and benefits.

211 Section 3. This act shall take effect upon becoming a law.