

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1303 Florida Marine Research Institute
SPONSOR(S): Paul
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands & Water Resources (Sub)</u>	_____	<u>Camechis</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	_____	_____	_____
3) <u>Appropriations</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill requires the Florida Fish and Wildlife Conservation Commission (FWC) to:

- Analyze the cost of funding the Florida Marine Research Institute (FMRI) compared with the cost of outsourcing research functions to academic, nonprofit, or private institutions;
- Contract with academic, nonprofit, or private institutions for research services currently provided by FMRI (this requirement appears to apply to any state agency that conducts marine research) and to establish preferential bid award criteria favoring Florida-based entities and entities that “agree” to provide employment opportunities for displaced state employees; and
- Provide a report to the Governor and Legislature regarding outsourcing and cost savings associated with outsourcing research activities.

The bill also prohibits communication between potential bidders and FWC staff unless notice is posted in the Florida Administrative Weekly.

The bill does not reduce total appropriations to the FWC but requires the FWC to outsource services, thereby resulting in an indeterminate reduction in the amount of funding available to support research activities performed directly by the FMRI. The bill will result in a positive fiscal impact on the private sector facilities and research facilities of state universities selected by the FMRI to perform research activities.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1303.nr.doc
DATE: April 7, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Related Constitutional Provisions

Article IV, Section 9 of the Florida Constitution requires the Florida Fish and Wildlife Conservation Commission (FWC) to “have its own staff, which includes management, research, and enforcement.” Currently, the FMRI serves as the FWC’s research staff with respect to marine-related issues. Although the Florida Constitution requires the FWC to have its own research staff, the Constitution does not require the entity known as the “FMRI” to be housed within the FWC.

By requiring the FWC to have its own research staff, it appears that the Constitution, by implication, requires the Legislature to provide sufficient funding to the FWC to support research staff housed within the FWC. However, this Constitutional provision has not been interpreted by the Florida Courts. Therefore, the extent of research staff within the FWC, and corresponding funding, required by the Constitution is unclear.

Florida Marine Research Institute (FMRI)

Generally

In 1999, the Legislature transferred the FMRI from the Department of Environmental Protection to the FWC. Section 20.331(4)(d), F.S., establishes the FMRI within the FWC and specifies the mission of the FMRI as follows¹:

- Serve as the primary source of research and technical information and expertise on the status of Florida’s saltwater resources;
- Monitor the status and health of saltwater habitat, marine life, and wildlife;
- Develop and implement restoration techniques for marine habitat and enhancement of saltwater plant and animal populations;
- Respond and provide critical technical support for marine catastrophes including oil spills, ship groundings, major marine species die-offs, hazardous spills, and natural disaster;
- Identify and monitor marine toxic red tides and their impacts, and provide technical support for state and local public health concerns; and
- Provide state and local governments with estuarine, marine, coastal technical information and research results.

FMRI operates a total of 13 locations across Florida and is responsible for assessing the condition of marine resources throughout 8000 miles of shoreline and 15,200 square miles of state waters. Over

¹ s. 20.331, F.S.

the years, FMRI has expanded its geographic presence by gradually building a network of field labs strategically located on or near major estuarine or coastal water bodies. According to the FWC, no other resource agency, university, nonprofit or private institution is as geographically well represented as FMRI. The FWC asserts that this network of field labs creates economies of scale that allow FMRI to conduct regionally focused studies in an extremely cost effective manner.²

The FMRI is conducting over 130 research projects covering over 150 key marine resources-commercial and recreational fisheries, endangered and threatened species, marine and estuarine habitats, and harmful algal blooms such as red tide. These projects are organized within broad, interrelated program areas of Fisheries Assessment, Ecosystem Assessment and Restoration, Endangered & Threatened Species, and Information Science & Management.³ Since 1949, FMRI has produced over 1350 scientific publications, 250 of these in the last five years. In a three-year period from 2001 to 2003, 119 peer-reviewed manuscripts have been published in scientific journals.⁴

Funding and Organization

Total appropriations for FMRI in fiscal year 2003-2004 are \$30,904,853. According to the FWC, in FY 2003-2004, FMRI is outsourcing approximately \$6 million, or 20 percent, of its total budget. The FMRI does not accept grants or contracts from any industry or group regulated by government entities. The major sources of funding include saltwater fishing license revenue, state general revenue, and federal grants. The budget supports facilities, staff, and technical operations at the FMRI's St. Petersburg headquarters, 11 field stations located throughout the state, and technical contracts issued to academic, non-profit, and private institutions.⁵ Funding for the FMRI is provided by the following sources:

Source of Funding	Percent of Total FMRI Funding
Marine Resource Conservation Trust Fund (MRCTF)/Grant: includes revenue from public or private sources such as federal grants, contracts, or private donations.	38%
MRCTF/Fees: includes proceeds from fishing license fees, vessel registration, fines/penalties, marine turtle license plates, and other sources.	37.2%
General Revenue	15.0%
STMTF-Save the Manatee Trust Fund: includes proceeds from license plate fees, vessel registrations, and donations.	6.4%
MRCTF/CPTF (transferred from DEP's Coastal Protection Trust Fund): includes proceeds from a \$.02 per-barrel tax on petroleum products, legal judgments, and damage assessments.	2.8%
MRCTF/FCO-Fixed Capital Outlay	0.4%
MRCTF/EMRTF (transferred from DEP's Ecosystem Management & Restoration Trust Fund): includes proceeds from financial settlements recovered for injury to or destruction of coral reefs or other natural resources, penalties for water-quality violations, and other damage awards.	0.1%

² FWC Legislative Bill Analysis, p. 2.

³ <http://floridamarine.org/programs/>

⁴ FWC Legislative Bill Analysis, p. 2.

⁵ <http://floridamarine.org/programs/>

Organizationally, the FMRI is under the supervision of the Executive Director of the FWC, not the Division of Marine Fisheries within the Commission. The 474 positions within the FMRI are allocated to the following programs in the FMRI, including 211.5 regular FTEs, 22.5 temporary FTEs, and approximately 240 full-time OPS positions which fluctuate depending upon the status of grant-funded activities:

Program or Area of Operations	Number of Regular FTEs	Number of Temporary FTEs	Number of Full-Time OPS Positions
Office of the FMRI Director	6	0	5
Fisheries Assessment	104.5	14	134
Ecosystem Assessment & Restoration	26	3.5	30
Endangered & Threatened Species	21	3	36
Information Science & Management	29	2	18.75
Education and Information	2	0	2.5
Planning & Special Projects	2	0	0
Budget Office	5	0	1
Facilities Management	12	0	12.75
Keys Marine Laboratory	4	0	0
TOTAL NUMBER OF POSITIONS	211.5	22.5	240

EFFECT OF PROPOSED CHANGES

The bill establishes that it is the intent of the Legislature to promote effective and cost-efficient scientific research, including, but not limited to, data collection, field analysis, laboratory analysis, and information synthesis, regarding the state's marine resources. The bill provides that the Legislature believes this intent is best served when "state agencies" analyze the provision of such research to determine the optimal balance between the costs associated with providing such research, the quality of the research provided, and the benefits of independent managerial separation between the entities relying upon such scientific research and the entities performing such research.

The bill requires "agencies" to contract with academic, nonprofit, or private institutions when this research activity is available.

The bill requires the FWC to conduct a "written analysis" of the cost of funding the FMRI to conduct applied research and information synthesis compared to the cost of outsourcing those functions to academic, nonprofit, and private institutions. The analysis must be one of the factors for comparing requests for proposals or solicitation of bids to be issued by the FWC for the provision of applied research and information synthesis regarding the state's marine resources.

In determining the best and most reasonable bid among private entities, the bill requires the FWC to give preference to "an entity that is located in the state and to an entity that agrees to provide employment opportunities to state employees who will be displaced as a result of the outsourcing of the identified service." A state agency may not be prohibited from bidding on any contract to be awarded by the FWC.

The bill prohibits a bidder or potential bidder from having contact with any member or employee of or consultant to the FWC regarding a request for proposals, a proposal, or the evaluation or selection process from the time a request for proposals for the provision of an identified service is issued until the time a notification of intent to award is announced, except if such contact is in writing or in a meeting for which notice was provided in the Florida Administrative Weekly.

By February 1, 2005, the FWC must provide to the Governor, the Speaker of the House of Representatives, and the President of the Senate a report that consolidates the following information:

- New private contracts for applied research and information synthesis;
- The anticipated cost savings, if any, associated with each new contract;
- The commission's authorized use of anticipated cost savings, if any;
- Actual cost savings and use of savings of prior-year private contracts; and
- A description of each instance in which a request for proposals or solicitation of bids process did not result in a contract.

C. SECTION DIRECTORY:

Section 1. Requires "agencies" to contract with certain providers for research services; requires FWC to conduct a written analysis of research costs; provides a preference in bidding; prohibits contact between the FWC and bidders; requires FWC to submit a report to the Governor and Legislature.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill may result in an increase in revenues to state academic institutions if those institutions provide marine research services and are awarded contracts to perform research activities.
2. Expenditures: This bill does not increase or decrease appropriations to the FWC for marine research activities.

The FWC provided the following comments regarding the fiscal impact of this bill:

- The overall fiscal impact on the FWC is difficult to estimate, but assuming that state supported marine research is budgeted at current recurring and non-recurring levels, then no fiscal impact will occur. However, less overall service and product delivery will likely be a result of outsourcing because of the increased overhead associated with outsourcing. If the current levels of service and product are demanded, then budget increases will be necessary.
- FMRI estimates that there will be a direct cost of approximately \$70,000 to outsource the written analysis comparing the costs associated with outsourcing research verses conducting it mainly in-house. There is no appropriation for this study.
- Assuming a nearly maximal outsourcing scenario in which over 100 research projects were continued in numerous outsourced relationships, there would likely be a large additional cost to the state tied to discipline-specific oversight of scientific contracts. The current resources allocated to FMRI in-house research, including scientific positions, would be redirected to work by contractors. There are no restrictions relative to overhead charges associated with these contracts and some non-profit laboratories, in addition to 100% of personnel costs, add 78% of personnel costs as overhead. Additionally, scientific oversight workload would be created that would require approximately 10-15 contract managers. The expanding agency overhead cost to ensure the same level of service under the outsourced model that FMRI currently provides would add significant cost to the state for the same level of service now provided directly by FMRI.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues: None.
- 2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires the FWC to outsource research activities to academic, nonprofit, or private institutions that perform such activities. Therefore, the bill will result in an indeterminate positive fiscal impact on entities awarded contracts to perform research activities.

D. FISCAL COMMENTS:

The following fiscal comments were provided by the FWC:⁶

- The FMRI annual operating budget is approximately \$31,000,000. The major sources of funding include dedicated fees from recreational and commercial fishing licenses and specialty license plates, state general revenue, and federal grants. The budget supports facilities, staff, and technical operations at our St. Petersburg headquarters and 12 other field stations located throughout the state. The budget also supports research and technical contracts issued to academic, non-profit, and private institutions. FMRI has a long history of aggressively pursuing outsourcing opportunities for products and services based on the outsourced arrangement being more cost effective for the state or of improved quality. In FY 2003-2004 FMRI is outsourcing approximately \$6 million or 20 percent of the total budget.
- In FY 2003-2004, approximately \$11.5 million or 38% of the total FMRI budget consists of federal grants. FMRI receives approximately 150 separate grants on an annual basis. By definition, the granting agency, in awarding these funds to FMRI, has determined FMRI to be the best entity to receive the funds and conduct the work involved. FMRI has a long history of being highly competitive for prestigious national grants from federal agencies including EPA, NOAA, the National Park Service, and the U.S. Fish and Wildlife Service.
- Approximately \$3 million of the \$11.5 million grant total is funds awarded to the State of Florida under the Dingell-Johnson Sportfish Restoration Act that designates the state regulatory or management agencies for fisheries (FWC in the case of Florida) as the only eligible recipients. Outsourcing some research with these funds is not feasible given that under conditions of the federal assistance, only the state agency can directly provide the service.
- The bill directs FMRI to outsource a research activity normally provided by FMRI if it is available from academic, nonprofit, or private institutions. No criteria are specified for outsourcing activities other than its availability external to FMRI. No stipulation is made relative to cost effectiveness or improvement in quality or delivery of service. FMRI has a long history of appropriately outsourcing research and monitoring activities and services in support of research, based on the outsourced arrangements being more cost effective for the state or improving quality of products or delivery of services. Lack of criteria other than external availability could result in a significant cost increase to the state and or a reduction in quality of products or services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:

⁶ FWC Legislative Bill Analysis, p. 3.

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Article IV, Section 9 of the Florida Constitution requires the FWC to “have its own staff, which includes management, research, and enforcement.” This provision, by implication, appears to require the Legislature to provide sufficient funding to the FWC to support research staff housed within the FWC. However, the provision has not been interpreted by the Florida Courts. Therefore, the extent of research staff within the FWC, and corresponding funding, required by the Constitution is unclear.

In 1999, the Legislature transferred the FMRI from the Department of Environmental Protection to the FWC, establishing specific statutory responsibilities and duties of the FMRI.⁷ Although the Florida Constitution requires the FWC to have its own research staff, the Constitution does not require the entity known as the “FMRI” to be housed within the FWC.

This bill requires the FMRI to contract with academic, nonprofit, or private institutions when research activities are available through those entities. It is unclear whether this “outsourcing” requirement will impact the constitutional directive that the FWC have its own research staff. However, if funding is insufficient for the FMRI to conduct independent research on behalf of the FWC, there may be constitutional implications.

- B. **RULE-MAKING AUTHORITY:** This bill does not appear to affect the rulemaking authority of the FWC.
- C. **DRAFTING ISSUES OR OTHER COMMENTS:** Although the bill’s title specifies that the bill is an act relating to the “Florida Marine Research Institute,” Section 1(1) of the bill requires “agencies” to contract with academic, nonprofit, or private institutions when marine research activities are available through those providers. Application of Section 1(1) to any state agency conducting marine research appears to be inconsistent with the “relating to clause” in the title.

The following comments were provided by the FWC:

- No criteria are specified for outsourcing activities (e.g. cost effectiveness or improvement in quality or delivery of service) other than its availability external to FMRI. This provision could affect other agencies involved in marine activities such as DEP, DOT, DACS and WMDs because the scope is not narrowed to FMRI in Sec 1. (1).
- The section prohibits bidders or potential bidders from having contact with FWC staff during the RFP advertising process, evaluation, or award posting unless such contact is noticed in the Florida Administrative Weekly. It is unclear how this provision may interact with other state statutes regarding bid processes.
- FMRI currently has over 100 individual research projects throughout the state. 100% of these projects are directed at marine resource management needs. Nearly all of these projects require specialized expertise and equipment to collect, process and analyze the data or information used to generate the final product. FMRI has a great deal of experience in outsourcing programmatic components to universities and non-governmental institutions. In nearly every case the definition of the project scope and monitoring of the progress of the work requires specialized scientific expertise. This fact underscores the necessity for specialized scientific oversight of contracting relationships in addition to the standard administrative overhead of managing the outsourced relationship. Without discipline-specific oversight of

⁷ s. 20.331, F.S.

outsourced services and products, there would be no guarantee that the state is receiving cost-effective, high quality services and products.

➤ The downside of over reliance on research contracting is the delay that is introduced when answers are needed for urgent or emerging topics. Contracts are not easily or quickly changeable to meet the requirements of urgent issues that routinely confront the Commission.

➤ The FMRI collects data on more than 200 species of fish and invertebrates harvested from Florida waters. The data are used to monitor harvest rates and assess the health of exploited fish and invertebrate populations. The confidentiality of fisheries harvest data is protected by Federal Law (Titles 5 U.S.C. 552 and 18 U.S.C. 1905). FMRI's data collection efforts for commercial harvest statistics are supported by grants for which confidentiality and non-disclosure is a condition of federal aid. These strict stipulations regarding the collection and management of fisheries information may prove too burdensome to potential contractors in an outsourcing context. Data collected by a contractor must be transferred timely to authorized federal employees; the contractor may retain no copies of these data. Contractor employees collecting data with federal authority must follow all procedures applicable to federal employees. Under agreements with the State, each state data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure. It is uncertain if the federal agencies currently funding these efforts will approve of an outsourced arrangement. To our knowledge, no other state has such an arrangement. These conditions will complicate outsourcing this service and could result in loss of federal funding if not done correctly.

➤ Under provisions of Section 6 of the Endangered Species Act (ESA), FMRI conducts research and monitoring on several federally and state listed endangered or threatened species including Johnson's seagrass, five species of sea turtles, smalltooth sawfish, sturgeon, the North Atlantic right whale, and the Florida manatee. Only state wildlife and conservation agencies can participate in ESA Section 6 agreement and the funding associated with the agreements. Studies involving these species are tightly regulated under the ESA and various other state and federal legislation. FMRI holds federal permits for studies involving federally protected species. Any outsourcing of products or services for work on listed species is limited to only those groups with state and federal permits, which necessarily limits the potential outsourcing opportunities. The outsourcing requirement itself could lead to loss of federal funds for endangered species work.

➤ In addition to continuous, proactive research and studies, several teams within FMRI perform an important event response function associated with unpredictable events such as red tides, marine fisheries die-offs, oil spills, and ship groundings. The statewide FMRI presence, FMRI's ability to draw on resources from multiple internal programs, and specialized expertise create an efficient technical response network to ensure the protection of critical marine habitats, and determine causality and prescribe any mitigating or preventative management measures associated with these events. Outsourcing of these event response capabilities would likely be inefficient since separate contractors would likely be required for each event type and for multiple regions of the state. In addition, splitting response capabilities among multiple contractors would negate the efficiencies created by the current cross-program response network available at FMRI.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A