

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1819 (PCB SA 04-08A) Procurement
SPONSOR(S): State Administration and Benson
TIED BILLS: HB 1905; HB 1889 **IDEN./SIM. BILLS:** CS/SB 2932 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Brazzell</u>	<u>Everhart</u>
2) <u>Appropriations</u>	<u></u>	<u>Belcher</u>	<u>Baker</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill makes a number of changes to ch. 287, F.S., the state's procurement chapter, repeals the chapter on the purchasing of printing (ch. 283, F.S.), and makes limited changes to other chapters. Major effects of the bill include:

- Reorganizing and streamlining ch. 287, F.S., renumbering sections and dividing the chapter into a larger number of parts.
- Providing for non-traditional contracting arrangements to be considered procurements and thus subject to ch. 287, F.S., and creating provisions governing such contracting arrangements.
- Repealing the printing chapter (ch. 283, F.S.) and including major printing provisions in ch. 286, F.S., and ch. 287, F.S.
- Creating the Center for Efficient Government (center) in the Department of Management Services (DMS), including a board composed of agency heads, and specifying its duties.
- Providing a new method of procurement, the invitation to participate, which involves the use of on-line reverse auction procedures.
- Requiring that certain outsourcing or privatization procurements valued at \$10 million or more or with certain FTE impacts be reviewed by the Legislature.
- Clarifying provisions relating to MyFloridaMarketplace, the state's on-line procurement program.
- Providing for certifying and using certified negotiators.

A companion bill corrects cross-references in other sections of law to the renumbered and repealed sections and contains provisions of ch. 287, F.S., that are renumbered but not substantively amended.

The bill has an indeterminate fiscal impact upon the state. The bill takes effect on July 1, 2004.

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

STORAGE NAME: h1819a.ap.doc
DATE: April 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" 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:

The bill creates a new office, the Center for Efficient Government (center), and a new board to oversee the center.

B. EFFECT OF PROPOSED CHANGES:

Present situation:

Since the 1950’s, Florida has statutorily required competitive bidding in state procurement. Through the years, the requirements have been amended numerous times with control over the procurement process passing from the State Purchasing Commission to the Department of General Services, now known as the Department of Management Services (DMS).

Currently, part I of ch. 287, F.S., sets forth the requirements for the procurement of goods and services by state agencies. The stated legislative intent of the chapter is to create a system of uniform competitive bidding procedures so that fair and open competition is encouraged, and opportunities for favoritism and impropriety are reduced.

The DMS is the centralized authority tasked with overseeing the implementation of competitive bidding requirements and with creating uniform rules for procurement. Additionally, the DMS is authorized to establish state term contracts for commodities and contractual services. The state purchasing process is also partly decentralized. Except in the case of state term contracts, agencies may buy commodities and services themselves.

Two recent studies have suggested that the state’s procurement system is in need of repair. The Governor’s Chief Inspector General released an audit report in June 2003 entitled “A Road Map to Excellence in Contracting”. It found problems with procurement, particularly with performance monitoring, procurement methodologies, and contract writing, and attributed those to:

- Piecemeal statutes and rules.
- Lack of statewide guidance from the DMS.
- Lack of sharing of best practices among agencies.
- Inadequate systems for monitoring and rating vendor performance.
- Inconsistencies in agencies’ procurement processes and documents.
- Lack of expertise in negotiating contracts.
- Lack of formal needs assessment processes.

The report suggested a variety of solutions, including revising ch. 287, F.S., improving leadership by the DMS, instating a negotiations training program, and facilitating communication among agency procurement staff.

In January 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report entitled "The Legislature Could Strengthen State's Privatization Accountability Requirements"¹. OPPAGA concurred with the Chief Inspector General's June 2003 findings and suggested Legislative actions including mandating the use of business cases, strengthening requirements for performance contracting, and strengthening oversight of agency privatization initiatives.

Effect of bill:

The bill makes a number of changes to the state's procurement chapter (ch. 287, F.S.), repeals the chapter on the purchasing of printing (ch. 283, F.S.), and makes limited changes to other chapters. Major effects of the bill include:

- Reorganizing and streamlining ch. 287, F.S., renumbering sections and dividing the chapter into a larger number of parts.
- Providing for non-traditional contracting arrangements to be considered procurements and thus subject to ch. 287, F.S., and creating provisions governing such contracting arrangements.
- Repealing the printing chapter (ch. 283, F.S.) and including major printing provisions in ch. 286, F.S., and ch. 287, F.S.
- Creating the Center for Efficient Government (center) in the Department of Management Services (DMS), including a board composed of agency heads, and specifying its duties.
- Providing a new method of procurement, the invitation to participate, which involves the use of on-line reverse auction procedures.
- Requiring that certain outsourcing or privatization procurements valued at \$10 million or more or with certain FTE impacts be reviewed by the Legislature.
- Clarifying provisions relating to MyFloridaMarketplace, the state's on-line procurement program.
- Providing for certifying and using certified negotiators.

A companion bill corrects cross-references and contains provisions of ch. 287, F.S., that were renumbered but not substantively amended.

See the Section Directory for a full listing of the bill's provisions.

C. SECTION DIRECTORY:

Section 1 amends s. 20.22, F.S., creating the Center for Efficient Government (center) in the Department of Management Services (DMS).

Section 2 amends s. 255.0525, F.S., providing the option for the state and for local governments to advertise construction projects on the internet in addition to using the current methods of print advertising.

Section 3 amends s. 287.012, F.S., amending the definitions of "best value", "commodity", "contractor", "contractual service", and "exceptional purchase" and creating definitions for "board", "center", "consideration", "invitation to participate", "outsourcing", "privatization", "procurement of commodities and contractual services", "reverse auction", and "secretary".

Section 4 transfers s. 287.017, F.S., to a newly-created s. 287.028, F.S., and creates new provisions to determine the value of non-traditional contracts.

Section 5 transfers s. 287.057(18), F.S., which limits certain persons' ability to contract for additional related work to a newly-created s. 287.019, F.S., and amends it to provide such persons are also unable to subcontract to perform additional related work.

¹ OPPAGA uses "privatization" as a generic term encompassing such techniques and activities as contracting out, outsourcing, and public-private partnerships.

Section 6 creates s. 287.0265, F.S., establishing the Center for Efficient Government and its board in the DMS. It provides for its duties and processes, including developing standards, processes, and templates for agencies' use, implementing a system for review and reporting to the Legislature as required in part III, and maintaining a database.

Section 7 transfers s. 287.056(1), F.S., regarding requirements for agencies to purchase from state term contracts to a newly-created s. 287.0330, F.S., and creates new language listing the available methods for procurement.

Section 8 transfers s. 287.057(1), F.S., regarding invitation to bid solicitations to a newly-created s. 287.0331, F.S., and amends it to conform with new terminology used in the chapter to address non-traditional contracting arrangements.

Section 9 transfers s. 287.057(2), F.S., regarding request for proposal solicitations to a newly-created s. 287.0332, F.S., and amends it to provide that the standard for selecting a contractor is "best value" and to conform with new terminology used in the chapter to address non-traditional contracting arrangements.

Section 10 transfers s. 287.057(3), F.S., regarding invitation to negotiation solicitations to a newly-created s. 287.0333, F.S., revises the standard for justifying its use, and amends it to conform with new terminology used in the chapter to address non-traditional contracting arrangements.

Section 11 creates s. 287.03335, F.S., providing for a new purchasing method, the "invitation to participate" which involves contractor selection via an on-line reverse auction.

Section 12 transfers 287.057(10), F.S., providing that procurements may not be divided to avoid competitive solicitation requirements, to a newly-created s. 287.0334, F.S., regarding small procurement procedures, and provides that the DMS shall adopt rules governing such purchases.

Section 13 transfers s. 287.057(5)(c)1. and 2., F.S., regarding single-source procurements, to a newly-created s. 287.0335, F.S., provides that forms prescribed by the DMS shall be used to provide the required notice, and amends it to conform with new terminology used in the chapter to address non-traditional contracting arrangements.

Section 14 transfers s. 287.057(5)(a), F.S., regarding emergency procurements, to a newly-created s. 287.0336, F.S., and makes technical amendments.

Section 15 transfers s. 287.056(3), F.S., regarding requests for quotes, and s. 287.057(5)(b), F.S., regarding exceptions from competitive solicitation requirements for procurements from term or agency contracts, to a newly-created s. 287.0337, F.S., and amends the new section to conform with new terminology used in the chapter, to provide for the DMS to exempt agencies by rule from requirements to purchase from state term contracts, and to require the DMS to obtain advice from users when developing specifications for state term contract commodities and contractual services.

Section 16 transfers s. 287.042(3)(b), (c), (d), (f) and (g) and (13), F.S., and s. 287.057(4), (6), (7), and (20), F.S., to a newly-created s. 287.0341, F.S., which provides general provisions for procurement, and amends the section to conform with new terminology used in the chapter.

Section 17 transfers s. 287.057(17), F.S., regarding negotiations teams, to a newly-created s. 287.036, F.S., and amends the section to require the involvement of certified negotiators in procurements valued at \$1 million or above and to conform with new terminology used in the chapter.

Section 18 creates s. 287.037, F.S., providing for agencies to obtain data regarding pricing, cost, or consideration from vendors or contractors under certain conditions, for the adjustment to contracts based on such data, and for the retention of records by contractors subject to this section.

Section 19 transfers s. 287.057(19), F.S., to a newly-created s. 287.038, F.S., and amends the section to conform with new terminology used in the chapter.

Section 20 transfers s. 287.042(1)(a), (b), and (h); (2)(a); (3); (4)(a); (5); (6); (7); (8); (9); (10); (11); (12); and (14), F.S., to the newly-created s. 287.026, F.S., and amends the section to require that the department adopt rules regarding share-in-savings contracts, remove a requirement that the DMS provide rules to the Chief Financial Officer, remove the authorization for the DMS to collect fees for the use of its electronic information resources, and conform with new terminology used in the chapter.

Section 21 transfers s. 287.057(23), F.S., regarding the DMS's on-line procurement program to a newly-created s. 287.027, F.S., and amends it to clarify that participation involves the procurement of commodities and contractual services, provide a cap of 1% on fees that may be charged, remove the requirement that only prequalified vendors may participate, remove the requirement that the department provide by rule criteria for commodities and contractual services that may be procured using the program, and remove the authority for the program's contractor to collect and retain fees.

Section 22 transfers s. 287.045, F.S., regarding purchases of recycled and recyclable products, to a newly-created s. 287.128, F.S., and amends it to require the DMS to adopt rules encouraging the use of products containing recycled content or that are recyclable and to delete a requirement that the DMS report on the use of recycled and non-recycled products.

Section 23 creates part III composed of ss. 287.0439, 287.044, 287.046, 287.047, and 287.048, F.S., providing definitions, requiring that certain outsourcing or privatization initiatives receive legislative review, providing that contracts contain certain provisions, requiring that contractors provide access to records, and providing that agency actions in accordance with part III are not grounds for protest under ch. 120, F.S.

Section 24 transfers s. 287.042(1)(d), (e), (f), and (g), F.S., to a newly-created s. 287.122, F.S., to provide that purchases from the prison industry program or from qualified organizations for persons with disabilities be listed on a state term contract or as an exception to a state term contract and that the DMS may provide for testing of products from the prison industry program for a fee.

Section 25 transfers s. 287.057(5)(e), (f), and (g) and (11), F.S., regarding exemptions from competitive solicitation requirements to a newly-created s. 287.123, F.S., and makes technical amendments.

Section 26 transfers s. 287.025, F.S., regarding the purchase of insurance, to a newly-created s. 287.1241, F.S., and deletes the restriction against the primary purchase of insurance titled in the state's name on museum collections, artifacts, relics, or fine arts.

Section 27 transfers s. 287.055, F.S., the Consultants' Competitive Negotiation Act, to a newly-created s. 287.125, F.S., and changes references from the "Department of Management Services" to the "department."

Section 28 transfers s. 287.058, F.S., regarding contract documents, to a newly-created s. 287.31, F.S., and amends the section to provide specific contract terms for share-in-savings contracts and the conditions under which agencies and contractors may charge fees to external parties. It also amends the section to conform with new terminology used in the chapter.

Section 29 transfers s. 287.042(3)(e), F.S., regarding contract files, and s. 287.0567(15) and (16), F.S., regarding contract administration, to a newly-created s. 287.321, F.S., and makes technical changes.

Section 30 creates s. 287.34, F.S., regarding payment of accounts, which includes language transferred from s. 287.042(8), F.S.

Section 31 transfers s. 287.042(2)(b) and (c), F.S., regarding bid protests to a newly-created s. 287.55, F.S., and amends the section to provide that agencies may proceed with protested agency term contracts.

Section 32 transfers s. 287.132, F.S., regarding legislative intent with respect to the integrity of the public contracting and purchasing process, to a newly-created s. 287.561, F.S., and amends the section to address the conduct of public employees.

Section 33 transfers s. 287.133, F.S., regarding public entity crimes, to a newly-created s. 287.562, F.S., and makes technical changes to conform to new terminology used in the chapter.

Section 34 transfers s. 287.042(15) and (16), F.S., regarding purchasing in conjunction with other agencies to a newly-created s. 287.57, F.S., and makes a technical correction.

Section 35 transfers s. 287.16, F.S., regarding the DMS's operation of facilities to service vehicles, to a newly-created s. 287.65, F.S., and removes its authority to operate maintenance, repair, and storage facilities.

Section 36 transfers s. 287.161, F.S., regarding the executive aircraft pool to a newly-created s. 287.655, F.S., and amends the section to grant authority to lease aircraft and to provide for operation on a full-cost recovery basis.

Section 37 transfers s. 287.17, F.S., regarding use of state vehicles to a newly-created s. 287.66, F.S., and amends the section to require agencies to report annually on state vehicle use to the DMS.

Section 38 deletes s. 287.057 (21), F.S., which is obsolete language, and s. 287.057(22), F.S., the substance of which is added to newly-created s. 287.123, F.S.

Section 39 amends s. 119.0721, F.S., regarding a public records exemption for social security numbers to address a reference to a deleted section.

Section 40 repeals s. 14.203, creating the Council for Competitive Government; s. 283.30, providing definitions regarding printing; s. 283.31, deleting a requirement to maintain certain records regarding printing; s. 283.32, deleting provisions regarding recycled material use; s. 283.33, deleting requirements regarding bidding; s. 283.34, regarding state officers having interests in printing contracts; s. 283.43, deleting duplicative provisions; and s. 283.56, regarding the placement of publication titles.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Indeterminate. It is unclear whether or not this bill will increase state revenues.
2. Expenditures: Indeterminate. The intent of this bill is to ensure the state obtains the best value for the citizens of Florida in its procurements. However, it is unclear whether or not these changes will increase or decrease state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The marketplace for purchases by the state may become more competitive.

D. FISCAL COMMENTS: This bill may increase the state's ability to make more cost-effective purchases.

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill provides for the DMS to adopt rules regarding small procurement procedures, agency purchases from state term contracts, and share-in-savings contractual arrangements.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

PCB SA 04-08A was amended by the Committee on State Administration on March 22, 2004. The majority of the 20 amendments adopted were technical, conforming terminology to that used elsewhere in the bill and deleting duplicate sections. Effects of substantive amendments included clarifying the role of the Center for Efficient Government (center) in assisting employees impacted by procurements; restoring language to current law regarding the types of solicitations that may be used to procure state construction; providing for the retention by certain contractors of cost, pricing, and consideration data and for state audit of such data; and exempting Cabinet agencies from the requirement to use the center's services.