

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Kottkamp offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause, and insert:

5
6 Section 1. Paragraph (i) is added to subsection (2) of
7 section 20.22, Florida Statutes, to read:

8 20.22 Department of Management Services.--There is created
9 a Department of Management Services.

10 (2) The following divisions and programs within the
11 Department of Management Services are established:

12 (i) Center for Efficient Government.

13 Section 2. Section 287.0571, Florida Statutes, is created
14 to read:

15 287.0571 Applicability of ss. 287.0571-287.0578.--

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16 (1) Sections 287.0571-287.0578 shall be known as the
17 "Center for Efficient Government Act".

18 (2) It is the intent of the Legislature that state
19 agencies focus on their core missions and deliver services
20 effectively and efficiently by leveraging resources and
21 contracting with the private sector for services that can be
22 more effectively provided by the private sector and that reduce
23 the cost of government for all citizens of the state.

24 (3) The provisions of this act shall not be required to
25 apply to procurements of commodities and contractual services
26 listed in s. 287.057(5)(e), (f), and (g) and (22).

27 (4) The provisions of this act shall not apply to:

28 (a) Procurements of commodities and contractual services
29 subject to s. 287.055.

30 (b) Contracts in support of the planning, development,
31 implementation, operation, or maintenance of the road, bridge,
32 and public transportation construction program of the Department
33 of Transportation.

34 (5) Only the provisions of ss. 287.0571-287.0576,
35 287.0578, and section 13 of this act shall apply to procurements
36 governed by the provisions of HB 1827 or SB 1476, 2005 Regular
37 Session of the Legislature, or similar legislation, if adopted
38 in the same legislative session or an extension thereof and
39 enacted into law.

40 Section 3. Section 287.0573, Florida Statutes, is created
41 to read:

42 287.0573 Definitions.--For the purposes of this act:

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43 (1) "Center" means the Center for Efficient Government.

44 (2) "Centralized gate process" means the system of review
45 phases for a proposed procurement of contractual services, the
46 conclusion of each phase being a "gate" or decision point at
47 which the commission determines whether the procurement under
48 consideration may proceed to the next phase.

49 (3) "Commission" means the Commission on Efficient
50 Government.

51 Section 4. Section 287.0574, Florida Statutes, is created
52 to read:

53 287.0574 Criteria for procurement of contractual
54 services.--

55 (1) The agency must include with its final legislative
56 budget request the business cases for procurements for
57 contractual services that the agency proposes in the fiscal year
58 for which the final legislative budget request is submitted, in
59 the manner and form prescribed in the legislative budget request
60 instructions pursuant to s. 216.023.

61 (2) When compared to the cost and quality of service
62 performed by state employees, an agency may procure a
63 contractual service currently or previously provided by state
64 employees only if, upon full implementation of a procurement,
65 it:

66 (a) Results in reasonable cost savings while maintaining
67 at least the same quality of service;

68 (b) Reasonably increases the quality of service while not
69 exceeding the same level of cost; or

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70 (c) Significantly increases measurable outputs and quality
71 while minimally increasing costs, at levels and percentages
72 proposed by the procuring agency and approved in writing in
73 advance of the procurement by the commission. Only projects with
74 an annual cost below \$10 million in each fiscal year may meet
75 this criterion.

76 Section 5. Section 287.0575, Florida Statutes, is created
77 to read:

78 287.0575 Commission on Efficient Government; membership;
79 duties; Center for Efficient Government; duties.--

80 (1) The Commission on Efficient Government is created
81 within the Department of Management Services to oversee the
82 Center for Efficient Government and carry out the
83 responsibilities specified in this section.

84 (a) The commission shall consist of seven members
85 appointed by the Governor:

86 1. Four members shall be heads of executive branch
87 agencies.

88 2. Three members shall be from the private sector and,
89 collectively, shall have experience with procurement,
90 successfully increasing operational efficiency, and implementing
91 complex projects in the private sector business environment. No
92 private sector member of the commission may at any time during
93 his or her appointment to the commission be registered to lobby
94 the executive or legislative branch.

95 (b) By August 1, 2005, the Governor shall appoint two
96 private sector members and two agency heads for terms of 3 years

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97 and one private sector member and two agency heads for terms of
98 4 years. Thereafter, each member shall serve for a term of 4
99 years. The private sector members shall serve without
100 compensation but shall be entitled to reimbursement for per diem
101 and travel expenses pursuant to s. 112.061.

102 (c) No member of the commission shall participate in
103 commission review of a procurement when his or her agency is
104 conducting the procurement or, in the case of a private sector
105 member, he or she has a business relationship with an entity
106 that is involved or could potentially be involved in the
107 procurement.

108 (d) The members of the commission may not delegate their
109 membership to a designee.

110 (e) A quorum shall consist of at least four members,
111 including at least two private-sector members. At least one
112 private-sector member must vote on the prevailing side for
113 commission action to take effect.

114 (f) Any vacancy on the commission shall be filled in the
115 same manner as the original appointment, and any member
116 appointed to fill a vacancy occurring for a reason other than
117 the expiration of a term shall serve only for the unexpired term
118 of the member's predecessor.

119 (g) At the first meeting of the commission after August 1,
120 2005, the members of the commission shall elect, by majority
121 vote of those in attendance, a member to serve as chair of the
122 commission. No later than September 1 of each succeeding year,
123 the commission shall elect a new chair.

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124 (h) The commission shall:

125 1. Oversee the Center for Efficient Government.

126 2. Adopt the centralized gate process.

127 3. Review, evaluate, and grant approval of, withhold
128 approval of, or deny approval of a proposed procurement at each
129 gate established within the centralized gate process. The
130 commission shall adopt rules regarding the procurements that
131 must pass through the centralized gate process. Such
132 procurements shall include, at a minimum, those subject to the
133 requirements of s. 287.0576(1).

134 4. Approve templates and guidelines and adopt rules
135 prescribing standards and procedures for use by agencies during
136 the procurement process which shall, at a minimum, include the
137 requirements under ss. 287.0576-287.0577 for procurements of
138 contractual services.

139 5. Implement a plan for providing information and
140 documentation to the Legislature and the Governor on behalf of
141 agencies and in compliance with the provisions of this chapter.
142 The plan shall include, at a minimum, providing copies of
143 documents to be reviewed by the commission to the President of
144 the Senate, the Speaker of the House of Representatives, the
145 Governor, and the chairs of the relevant appropriations and
146 substantive legislative committees at least 14 days prior to the
147 meeting of the commission at which the proposed procurement will
148 be discussed.

149 6. Review the performance of procurements which have
150 advanced through the full centralized gate process.

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151 (2) The Center for Efficient Government is created in the
152 department to establish and promote best business practices so
153 that the delivery of services to citizens of the state are
154 provided in the most effective and cost-efficient manner
155 possible. The secretary of the department shall appoint a
156 director of the center. The duties and responsibilities of the
157 center are:

158 (a) Recommending and implementing a centralized gate
159 process for reviewing and evaluating, and granting, withholding,
160 or denying approval of, agency procurements which, at a minimum,
161 shall include the requirements contained in s. 287.0576(1) and
162 (2) for contractual services procurements.

163 (b) Providing support and assistance to the commission,
164 including, but not limited to, reviewing and validating agency
165 business cases, recommending standards, processes, templates,
166 and guidelines for use by agencies during the procurement
167 process and providing information and documentation as requested
168 or required by law.

169 (c) Assisting agencies directly in the procurement process
170 as needed to ensure a high-quality procurement, including, but
171 not limited to, developing and updating business cases, drafting
172 solicitation and contract documents, participating in contract
173 negotiations, identifying performance measures, and advising
174 agencies on performance measurement, contract management, and
175 change management. The center shall also provide information,
176 training, and technical assistance to agencies on the use of the

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177 standards, processes, templates, and guidelines developed for
178 use by agencies during the procurement process.

179 (d) Collecting data and information from agencies on an
180 ongoing basis with regard to the status and results of
181 procurements that have advanced completely through the
182 centralized gate process, recommending incorporation of any
183 lessons learned from such projects into commission standards,
184 procedures, templates, and guidelines, as appropriate, and
185 identifying and disseminating to agencies information regarding
186 best practices in procurement, particularly contractual services
187 procurements.

188 (e) Developing and implementing, in consultation with the
189 Agency for Workforce Innovation, guidelines for assisting
190 employees whose jobs are eliminated as a result of procurements.

191 (3) The department shall employ an adequate number of
192 highly skilled, credentialed staff who collectively possess
193 significant expertise and experience as required to carry out
194 the responsibilities of this act.

195 (4) Agencies shall submit to the center all information,
196 documents, or other materials required by commission rule or
197 this chapter.

198 Section 6. Section 287.0576, Florida Statutes, is created
199 to read:

200 287.0576 Review and analysis of proposed procurement of
201 contractual services; centralized gate process.--

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202 (1) At a minimum, procurements required to undergo review
203 and analysis through the centralized gate process adopted by the
204 commission are:

205 (a) Contractual services procurements that have an
206 estimated total cost of \$10 million or more in any fiscal year.

207 (b) New contractual services procurements that will
208 require adjustments to the agency's budget, in accordance with
209 chapter 216, totaling \$1 million or more. Amendments to existing
210 contracts are excluded.

211 (c) Contractual services procurements that do not involve
212 an outlay of state funds estimated to total \$10 million or more
213 in any fiscal year because of the provision of services by the
214 contractor at a rate significantly below market rate, the
215 significant investment of other resources by the agency, or
216 other reason, but in which the total value of the services
217 performed by the agency and contractor under the contract is
218 estimated to total \$10 million or more in any fiscal year.
219 Examples of such procurements include, but are not limited to,
220 free, no-cost, or codevelopment contracts.

221 (d) Contractual services procurements for which the sum of
222 gross revenues or shared savings to be generated for the state
223 and contractor over the term of the contract plus the sum of any
224 payments to the contractor by the agency over the term of the
225 contract, if any, is estimated to total \$10 million or more in
226 any fiscal year.

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227 (e) Contractual services procurements that do not meet the
228 criteria in paragraphs (a)-(d) that the Legislature has directed
229 to be subject to the centralized gate process.

230 (2) Extensions and renewals of contracts resulting from
231 procurements in subsection (1) and extensions and renewals of
232 contracts meeting the criteria identified in paragraphs (1)(a),
233 (c), and (d) which did not pass through the center shall undergo
234 review and analysis through the centralized gate process
235 implemented by the center, though, notwithstanding any law to
236 the contrary, such contracts shall pass only through such gates
237 as the commission determines are appropriate based on the
238 legislative intent of this act.

239
240 For purposes of determining whether a procurement meets the
241 requirements of this section, multiple contractual services
242 procurements for substantially similar or related functions or
243 responsibilities occurring in a coordinated fashion or in close
244 time proximity to one another are considered a single
245 contractual services procurement for purposes of meeting the
246 thresholds set forth in this section.

247 (3) The centralized gate process shall require, at a
248 minimum, review of the procurement by the commission at each
249 gate. At each gate, the commission shall determine by majority
250 vote to:

251 (a) Approve the procurement, if the agency has
252 sufficiently met the requirements of the current gate, and
253 advance the procurement to the next phase;

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254 (b) Withhold approval of the procurement, if additional
255 work must be completed in order to satisfy the requirements of
256 the current gate, and retain the procurement in that phase; or

257 (c) Deny the procurement, if the procurement is not a good
258 business decision, and remove the procurement from
259 consideration.

260

261 Notwithstanding the provisions of this section, the commission
262 may not deny procurements which are required by law. If the
263 commission determines that a procurement required by law is not
264 a good business decision, the commission shall withhold approval
265 and transmit to the President of the Senate, the Speaker of the
266 House of Representatives, and the Governor the reasons why the
267 procurement should not be completed and any recommendation for
268 legislative action. If the President of the Senate or the
269 Speaker of the House of Representatives has not responded within
270 14 business days of receipt of the communication, the commission
271 shall proceed at its discretion consistent with the Legislative
272 intent of this act.

273

274 Notwithstanding any law to the contrary, agencies under the
275 individual control of the Attorney General, the Chief Financial
276 Officer, or the Commissioner of Agriculture are subject to the
277 provisions of this act, except that the commission shall not
278 grant, withhold, or deny approval of a procurement by such
279 agency but instead may only provide recommendations to the

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280 agency. The respective agency head shall have sole authority to
281 grant, withhold, or deny approval of such procurement.

282 (4) The gates and required documentation comprising the
283 centralized gate process shall, at a minimum, consist of:

284 (a) The proposal identification gate, which shall include
285 the business case.

286 (b) The procurement preparation gate, which shall include
287 the updated business case and the solicitation documents prior
288 to the issuance of such documents. An agency may not release
289 solicitation documents without the commission's approval at this
290 gate. The commission must review and approve the written
291 determination of the agency required pursuant to s.

292 287.057(3)(a) before granting approval for the use of an
293 invitation to negotiate, or withhold approval pending submission
294 by the agency of an acceptable alternative solicitation method.

295 (c) The contract development gate, which shall include the
296 final business case and the proposed unexecuted contract. An
297 agency may not execute the contract without the commission's
298 approval at this gate.

299 (d) The transition management gate, which shall include
300 updates to the final business case and, for a procurement of
301 contractual services, an analysis of the agency's and
302 contractor's readiness for the contractor to perform the
303 proposed responsibility or function. An agency may not
304 transition to contractor performance without the commission's
305 approval at this gate.

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306 (e) The post-implementation gate, which shall include
307 updates to the final business case and a report on the adequacy
308 of contractor performance.

309 (5)(a) Any executed contract for a procurement passing
310 through the centralized gate process pursuant to this section
311 shall be null and void if an agency fails to comply with the
312 commission decision at the proposal identification, procurement
313 preparation, or contract development gate.

314 (b) Failure to comply with any other requirements of this
315 act or implementing rules shall not affect the validity of the
316 competitive solicitation and award process or any contract.

317 (6) The commission shall take action at each gate within
318 60 days of the submission of a procurement by an agency. If the
319 commission does not take action within this timeframe, the
320 agency head shall determine whether to grant, withhold, or deny
321 approval of the procurement at that gate based on the rules and
322 guidelines of the commission for that gate and shall notify the
323 Governor, the President of the Senate, the Speaker of the House
324 of Representatives, and the commission of such action and the
325 circumstances thereof.

326 (7) During the terms of the contracts, the agency shall
327 annually submit with its legislative budget request a status
328 report for each procurement that has passed through at least the
329 first three gates of the centralized gate process describing the
330 progress made to date, actual completion dates in comparison to
331 planned completion dates, actual costs incurred in comparison to
332 projected costs incurred, current issues requiring resolution,

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333 planned project milestones, deliverables, and expenditures for
334 the next reporting period, and any other information relating to
335 the contractual services that may be requested.

336 Section 7. Section 287.0577, Florida Statutes, is created
337 to read:

338 287.0577 Requirements for procurement of certain
339 contractual services.--In addition to the other applicable
340 requirements of this chapter, an agency shall comply with the
341 following requirements for, at a minimum, procurements of
342 contractual services estimated to total \$1 million or more in
343 any fiscal year and those subject to review under s.

344 287.0576(1)(b), (c), (d), and (e) and (2):

345 (1) BUSINESS CASE.--The agency shall develop a business
346 case which describes and analyzes the procurement. The business
347 case is not subject to challenge or protest pursuant to chapter
348 120. The business case shall include, but not be limited to, the
349 information in paragraphs (a)-(1). For procurements not subject
350 to commission review, the agency shall provide a copy of the
351 business case to the President of the Senate and the Speaker of
352 the House at least 14 days prior to releasing a solicitation.
353 For procurements subject to commission review, the business case
354 shall be in such detail as is appropriate given the current
355 phase of the procurement but shall contain sufficient
356 information to enable the commission to determine at that gate
357 whether the procurement may proceed to the next procurement
358 phase:

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359 (a)1. A detailed description of the function or
360 responsibility for which the procurement is proposed;

361 2. If the agency is currently performing the function or
362 responsibility, a description and analysis of the agency's
363 current performance, including, but not limited to, baseline
364 costs and performance metrics;

365 3. The goals desired to be achieved through the
366 procurement and the rationale for such goals; and

367 4. A citation of the existing or proposed legal authority
368 for contracting for the function or responsibility.

369 (b)1. A description of available options for achieving the
370 goals. If state employees are currently performing the function
371 or responsibility, at least one option involving maintaining
372 state provision of the function or responsibility shall be
373 included.

374 2. A description of the current market for the contractual
375 services which are under consideration for procurement.

376 3. An analysis of the advantages and disadvantages of each
377 option, including, at a minimum, potential performance
378 improvements and risks.

379 (c) A cost-benefit analysis documenting the direct and
380 indirect specific baseline costs, savings, and qualitative and
381 quantitative benefits involved in or resulting from the
382 implementation of the recommended option or options. Such
383 analysis shall specify the schedule that, at a minimum, must be
384 adhered to in order to achieve the estimated savings. All
385 elements of cost shall be clearly identified in the cost-benefit

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386 analysis, described in the business case, and supported by
387 applicable records and reports. The agency head shall attest
388 that, based on the data and information underlying the business
389 case, to the best of his or her knowledge, all projected costs,
390 savings, and benefits are valid and achievable. "Cost" means the
391 reasonable, relevant, and verifiable cost which may include, but
392 not be limited to, elements such as personnel costs, materials
393 and supplies, services, equipment, capital depreciation costs,
394 rent, maintenance and repairs, utilities, insurance, personnel
395 travel, overhead, and interim and final payments. The
396 appropriate elements shall depend on the nature of the specific
397 initiative. "Savings" means the difference between the direct
398 and indirect actual annual baseline costs compared to the
399 projected annual cost for the contracted functions or
400 responsibilities in any succeeding state fiscal year during the
401 term of the contract.

402 (d) A description of variance among agency policies and
403 processes and, as appropriate, a discussion of options for or a
404 plan to standardize, consolidate, or revise current policies and
405 processes, if any, to reduce the customization of any proposed
406 solution that would otherwise be required.

407 (e) A description of the specific performance standards
408 that must, at a minimum, be met to ensure adequate performance.

409 (f) A statement of the potential impact on federal, state,
410 and local revenues and expenditures. The statement shall
411 specifically describe the effect on general revenue, trust
412 funds, general revenue service charges, and interest on trust

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413 funds together with the potential direct or indirect effect on
414 federal funding and cost allocations.

415 (g) The projected timeframe for key events, from the
416 beginning of the procurement process through the expiration of a
417 contract.

418 (h) A plan to ensure compliance with public records law
419 which must include components that:

420 1. Provide public access to public records at a cost that
421 does not exceed that provided in chapter 119.

422 2. Ensure the confidentiality of records that are exempt
423 or confidential under law.

424 3. Meet all legal requirements for record retention
425 provided by law.

426 4. Require transfer to the state, at no cost, of all
427 public records in possession of the contractor upon termination
428 of the contract.

429 (i) A specific and feasible contingency plan addressing
430 contractor nonperformance and a description of the tasks
431 involved in and costs required for its implementation.

432 (j) An agency transition plan for addressing changes in
433 the number of agency personnel, affected business processes,
434 employee transition issues, and communication with affected
435 stakeholders, such as agency clients and the public. The
436 transition plan shall contain a reemployment and retraining
437 assistance plan for employees who are not retained by the agency
438 or employed by the contractor.

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439 (k) A listing of any assets proposed for surplus or use by
440 a contractor. For those assets proposed to be used by a
441 contractor, the business case shall include a description of the
442 proposed requirements for maintaining those assets by the
443 contractor or the agency in accordance with chapter 273, a plan
444 for the transitioning of the assets upon termination of the
445 contract, and a description of how the planned use by a
446 contractor is in the best interest of the agency and state.

447 (l) A plan for ensuring access by persons with
448 disabilities in compliance with applicable state and federal
449 law.

450
451 If a contractual services procurement meets the criteria for
452 submission of feasibility study documentation as required by the
453 legislative budget request instructions established pursuant to
454 s. 216.023, the agency shall submit such documentation.

455 (2) SOLICITATION REQUIREMENTS.--The solicitation for a
456 contractual services procurement shall include, at a minimum:

457 (a) A detailed description of the function or
458 responsibility under consideration for contracting and, if the
459 function or responsibility is currently being performed by an
460 agency, a description and analysis of the agency's current
461 performance.

462 (b) Requirements that are achievable, unambiguous,
463 measurable, meaningful, and complete.

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464 (c) The criteria that after contract execution will be
465 used to assess contractor performance and the minimum acceptable
466 contractor performance levels.

467 (3) CONTRACT.--Each contract must include, but need not be
468 limited to:

469 (a) A detailed scope of work that clearly specifies each
470 service or deliverable to be provided, including a description
471 of each deliverable or activity that is quantifiable,
472 measurable, and verifiable.

473 (b) All service-level agreements describing all services
474 to be provided under the terms of the agreement, the agency's
475 service requirements and performance objectives, and specific
476 responsibilities of the agency and the contractor.

477 (c) Associated costs and savings, specific payment terms
478 and payment schedule, including incentive and disincentive
479 provisions, criteria governing payment, and a clear and specific
480 implementation schedule that will be implemented in order to
481 complete all required activities needed to transfer the service
482 from the agency to the contractor and operate the service
483 successfully.

484 (d) Clear and specific identification of all required
485 performance standards, which must include, at a minimum:

486 1. Detailed measurable acceptance criteria for each
487 deliverable and service to be provided to the agency under the
488 terms of the contract which document the required performance
489 level.

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490 2. A method for monitoring and reporting progress in
491 achieving specified performance standards and levels.

492 3. The sanctions or disincentives that shall be assessed
493 for nonperformance by the contractor or agency.

494 (e) A requirement that the contractor maintain adequate
495 accounting records that comply with all applicable federal and
496 state laws and generally accepted accounting principles.

497 (f) A requirement authorizing state access to and audit of
498 all records related to the contract or any responsibilities or
499 functions under the contract for state audit and legislative
500 oversight purposes and a requirement for service organization
501 audits in accordance with professional auditing standards, if
502 appropriate.

503 (g) A requirement describing the timing and substance of
504 all plans and status or progress reports that are to be
505 provided. All plans and status or progress reports must comply
506 with any relevant state and federal standards.

507 (h) A requirement that the contractor comply with public
508 records laws. The contractor must:

509 1. Keep and maintain the public records that ordinarily
510 and necessarily would be required by the state agency in order
511 to perform the function or service.

512 2. Provide the public with access to such public records
513 on the same terms and conditions that the state agency would and
514 at a cost that does not exceed that provided in chapter 119.

515 3. Ensure the confidentiality of records that are exempt
516 from public disclosure or made confidential under law.

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517 4. Meet all requirements for retaining records and
518 transfer to the state, at no cost, all public records in
519 possession of the contractor upon termination of the contract
520 and destroy any duplicate public records which are exempt and
521 confidential. All records stored electronically must be provided
522 to the state in a format that is compatible with information
523 technology systems of the state.

524 (i) A requirement that any state funds provided for the
525 purchase of or improvements to real property be made contingent
526 upon the contractor granting to the state a security interest in
527 the property which is at least equal to the amount of the state
528 funds provided for the most recent years following the date of
529 purchase or the completion of improvements, or as otherwise
530 required by law. The contract must include a provision that, if
531 the contractor disposes of the property before the agency's
532 interest is vacated, the contractor will refund the
533 proportionate share of the state's initial investment, as
534 adjusted by depreciation.

535 (j) If a contract involves the development or creation of
536 intellectual property, the contract must specify the ownership
537 of such intellectual property and any rights of the state to
538 use, modify, reproduce, or disseminate the intellectual
539 property.

540 (k) A provision that the contractor annually submit and
541 verify, pursuant to s. 92.525, all required financial
542 statements.

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543 (1) A requirement that the contractor shall interview and
544 consider for employment with the contractor each displaced state
545 employee who is interested in such employment.

546 (m) Provisions requiring that venue for any action
547 regarding the contract shall be in Leon County and that the
548 contract shall be interpreted according to the laws of this
549 state.

550 (4) AMENDMENTS.--An agency may not amend a contract
551 without first submitting the proposed contract amendment to the
552 Executive Office of the Governor for approval and notifying the
553 chairs of the legislative appropriations committees of such
554 submission if the effect of the amendment would be to:

555 (a) Increase the value of the contract by \$1 million or
556 more for those contracts with a total value of at least \$1
557 million but less than \$10 million; or

558 (b) Increase the value of the contract by 10 percent or
559 more for those contracts with a total value of \$10 million or
560 more.

561
562 An agency shall not divide a contract amendment so as to avoid
563 the requirements of this section.

564 (5) In addition to the requirements of subsections
565 287.057(13) and (14), prior to the renewal or extension of a
566 contract, an agency shall document whether all specific direct
567 and indirect costs, savings, performance standards, and
568 qualitative and quantitative benefits identified in the contract
569 have been met by the contractor and the agency. If the actual

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570 performance of the contractor does not meet the required
571 performance as identified in the contract, the agency shall
572 explain the reasons why and provide justification for the
573 extensions or renewal of the contract. This documentation shall
574 be included in the official contract file.

575 Section 8. Section 287.0578, Florida Statutes, is created
576 to read:

577 287.0578 Subsequent inconsistent laws.--Subsequent
578 inconsistent laws shall supersede this act only to the extent
579 they do so by express reference to this section.

580 Section 9. Paragraph (b) of subsection (17) of section
581 287.057, Florida Statutes, is amended to read:

582 287.057 Procurement of commodities or contractual
583 services.--

584 (17) For a contract in excess of the threshold amount
585 provided in s. 287.017 for CATEGORY FOUR, the agency head shall
586 appoint:

587 (b) At least three persons to conduct negotiations during
588 a competitive sealed reply procurement who collectively have
589 experience and knowledge in negotiating contracts, contract
590 procurement, and the program areas and service requirements for
591 which commodities or contractual services are sought. When the
592 annual value of a contract is in excess of \$1 million, at least
593 one of the persons conducting negotiations must be certified as
594 a contract negotiator based upon rules adopted by the Department
595 of Management Services.

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Amendment No. (for drafter's use only)

596 Section 10. Section 215.4211, Florida Statutes, is created
597 to read:

598 215.4211 Review of contracts for state agencies.--The
599 Chief Financial Officer may request, as he or she deems
600 necessary, the option to review and provide comments prior to
601 the execution of any contract that is required to be in
602 compliance with the provisions of s. 287.0577(3).

603 Section 11. Section 216.1817, Florida Statutes, is created
604 to read:

605 216.1817 Placement of positions in reserve;
606 reestablishment of positions.--If a procurement of contractual
607 services involves the performance of functions or
608 responsibilities that are being shifted from state employees to
609 a contractor, the agency shall identify within the business case
610 prepared pursuant to s. 287.0577 all resources which are
611 affected, including full-time equivalent positions. All full-
612 time equivalent positions identified in the business case shall
613 be placed in reserve by the Executive Office of the Governor
614 until the end of the second year of the contract. However, in
615 the business case, the agency may account for any savings from
616 the full-time equivalent positions identified and held in
617 reserve. Notwithstanding the provisions of s. 216.262, the
618 Executive Office of the Governor shall request authority from
619 the Legislative Budget Commission to reestablish full-time
620 equivalent positions above the number fixed by the Legislature
621 if a contract is terminated and the performance of the functions
622 or responsibilities must be returned to the agency.

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Amendment No. (for drafter's use only)

623 Section 12. Section 287.074, Florida Statutes, is created
624 to read:

625 287.074 Actions reserved to public officers or
626 employees.--

627 (1) Only a public officer or a public employee upon whom
628 the public officer has delegated authority shall, consistent
629 with law, take actions including, but not limited to:

630 (a) Selecting state employees;

631 (b) Approving position descriptions, performance
632 standards, or salary adjustments for state employees; and

633 (c) Hiring, promoting, disciplining, demoting, and
634 dismissing a state employee.

635 (2) Only a public officer shall, consistent with law,
636 commission and appoint state officers.

637 Section 13. A contractor, as defined in chapter 287,
638 Florida Statutes, or its employees, agents, or subcontractors,
639 may not knowingly participate, through decision, approval,
640 disapproval, preparation of any part of a purchase request,
641 investigation, or auditing, in the procurement of contractual
642 services by an agency from an entity in which the contractor, or
643 its employees, agents, or subcontractors has a material
644 interest.

645 Section 14. The Center for Efficient Government and the
646 Commission on Efficient Government shall terminate on July 1,
647 2010, unless reenacted by the Legislature prior to that date. It
648 is the intent of the Legislature that, beginning July 1, 2010,
649 the various state agencies shall perform the review functions

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650 required under this act for procurements of contractual services
651 under their jurisdiction. It is also the intent of the
652 Legislature that beginning July 1, 2010, the positions
653 authorized by this act shall remain with the Department of
654 Management Services, which shall continue providing technical
655 assistance as required in this act.

656 Section 15. Section 287.0572, Florida Statutes, is
657 renumbered as section 287.0579, Florida Statutes:

658 287.0579 ~~287.0572~~ Present-value methodology.--

659 (1) The cost of bids, proposals, or replies for state
660 contracts that include provisions for unequal payment streams or
661 unequal time payment periods shall be evaluated using present-
662 value methodology. Each agency, as defined in s. 287.012(1),
663 shall perform the evaluation using the present-value discount
664 rate supplied by the department. The present-value discount rate
665 shall be the rate for United States Treasury notes and bonds
666 published in the Interest Rates: Money and Capital Markets
667 section of the most recent copy of the Federal Reserve Bulletin
668 published at the time of issuance of the request for proposals,
669 the invitation to negotiate, or the invitation to bid.

670 (2) The department may adopt rules to administer
671 subsection (1).

672 Section 16. Subsection (3) of section 119.0721, Florida
673 Statutes, is amended to read:

674 119.0721 Social security number exemption.--

675 (3) An agency shall not deny a commercial entity engaged
676 in the performance of a commercial activity, which, for purposes

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677 | of this subsection, means an activity that provides a product or
678 | service that is available from a private source as defined in s.
679 | ~~14.203~~ or its agents, employees, or contractors access to social
680 | security numbers, provided the social security numbers will be
681 | used only in the normal course of business for legitimate
682 | business purposes, and provided the commercial entity makes a
683 | written request for social security numbers, verified as
684 | provided in s. 92.525, legibly signed by an authorized officer,
685 | employee, or agent of the commercial entity. The verified
686 | written request must contain the commercial entity's name,
687 | business mailing and location addresses, business telephone
688 | number, and a statement of the specific purposes for which it
689 | needs the social security numbers and how the social security
690 | numbers will be used in the normal course of business for
691 | legitimate business purposes. The aggregate of these requests
692 | shall serve as the basis for the agency report required in
693 | subsection (7). An agency may request any other information as
694 | may be reasonably necessary to verify the identity of the entity
695 | requesting the social security numbers and the specific purposes
696 | for which such numbers will be used; however, an agency has no
697 | duty to inquire beyond the information contained in the verified
698 | written request. A legitimate business purpose includes
699 | verification of the accuracy of personal information received by
700 | a commercial entity in the normal course of its business; use in
701 | a civil, criminal, or administrative proceeding; use for
702 | insurance purposes; use in law enforcement and investigation of
703 | crimes; use in identifying and preventing fraud; use in

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704 matching, verifying, or retrieving information; and use in
705 research activities. A legitimate business purpose does not
706 include the display or bulk sale of social security numbers to
707 the general public or the distribution of such numbers to any
708 customer that is not identifiable by the distributor.

709 Section 17. Section 14.203, Florida Statutes, is repealed.

710 Section 18. There is hereby appropriated \$1,023,554
711 recurring budget authority to the Department of Management
712 Services from the General Revenue Fund, and nine full-time
713 equivalent positions are authorized, to carry out the activities
714 of the Center for Efficient Government and the Commission on
715 Efficient Government as provided in this act.

716 Section 19. This act shall take effect July 1, 2005.

717
718

719 ===== T I T L E A M E N D M E N T =====

720

721 Remove the entire title, and insert:

722

723 A bill to be entitled

724 An act relating to procurement of contractual services by
725 an agency; amending s. 20.22, F.S.; placing the Center for
726 Efficient Government in the Department of Management
727 Services; creating s. 287.0571, F.S.; providing a popular
728 name; providing legislative intent; providing that
729 procurements of specified commodities and services are not
730 subject to the act; providing specified applicability;

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HOUSE AMENDMENT

Bill No. CS/CS/SB 1146

Amendment No. (for drafter's use only)

731 creating s. 287.0573, F.S.; providing definitions;
732 creating s. 287.0574, F.S.; providing criteria for the
733 procurement of contractual services by an agency;
734 requiring an agency to include with its final legislative
735 budget request the business cases for specified
736 procurements; creating s. 287.0575, F.S.; creating the
737 Commission on Efficient Government within the Department
738 of Management Services; providing for purpose, membership,
739 and organization of the commission; providing duties and
740 responsibilities of the commission; creating the Center
741 for Efficient Government; providing purpose and
742 organization of the center; providing duties and
743 responsibilities of the center; requiring the center to
744 recommend and implement a centralized gate process for
745 reviewing, evaluating, and approving agency procurements;
746 requiring state agencies to submit specified information,
747 documents, and other materials required under commission
748 rules; creating s. 287.0576, F.S.; specifying procurements
749 which must be reviewed and evaluated under the centralized
750 gate process; providing minimum requirements for the
751 centralized gate process; providing for specified
752 determinations by the commission at each gate; providing
753 procedure with respect to an unfavorable finding by the
754 commission with respect to a procurement required by law;
755 providing that agencies under the individual control of
756 the Attorney General, Chief Financial Officer, or
757 Commissioner of Agriculture are subject to the act, with

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Bill No. CS/CS/SB 1146

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758 specified exceptions; providing authority of the agency
759 head with respect to procurements by such agencies;
760 establishing the gates within the centralized gate
761 process; requiring agencies to submit specified documents
762 for commission review at each gate; providing for
763 nullification of executed contracts for procurement under
764 specified circumstances; requiring the commission to take
765 action at each gate within a specified time period;
766 providing procedure if the commission does not take action
767 within such time period; requiring the submission of
768 annual status reports; creating s. 287.0577, F.S.;
769 providing requirements for procurement of certain
770 contractual services; requiring an agency to develop a
771 business case which describes and analyzes a contractual
772 services procurement under consideration; providing that
773 the business case is not subject to challenge or protest
774 under the Administrative Procedure Act; providing required
775 components of a business case; defining "cost" and
776 "savings"; providing requirements with respect to the
777 solicitation for a contractual services procurement;
778 providing contract requirements for a contractual services
779 procurement; providing requirements with respect to
780 contract amendments; providing that specified contract
781 amendments must be submitted to the Executive Office of
782 the Governor for approval; requiring notification of such
783 submission to the chairs of the legislative appropriations
784 committees; prohibiting the division of a contract

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HOUSE AMENDMENT

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785 amendment to avoid specified requirements; requiring
786 documentation of contractor performance prior to renewal
787 or extension of a contract; creating s. 287.0578, F.S.;
788 providing for conditional supersession of the act;
789 amending s. 287.057, F.S.; providing a requirement with
790 respect to the composition of persons chosen to conduct
791 negotiations during a specified competitive sealed reply
792 procurement; creating s. 215.4211, F.S.; authorizing the
793 Chief Financial Officer to review contracts for state
794 agencies; creating s. 216.1817, F.S.; requiring the
795 placement of full-time equivalent positions in reserve
796 under certain conditions; providing for the
797 reestablishment of full-time equivalent positions upon
798 termination of a contract and reversion of functions and
799 responsibilities to the agency; creating s. 287.074, F.S.;
800 providing that only public officers or employees must
801 perform certain functions; providing restrictions on
802 contractor involvement in the procurement of contractual
803 services; providing for future termination of the Center
804 for Efficient Government and the Commission on Efficient
805 Government; providing legislative intent with respect to
806 the performance of review functions and assistance to
807 agencies for procurements of contractual services by state
808 agencies after a specified date; providing that positions
809 authorized under the act shall remain with the Department
810 of Management Services after a specified date; repealing
811 s. 14.203, F.S., which creates the State Council on

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HOUSE AMENDMENT

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812 Competitive Government and provides duties and authority
813 of the council; providing an appropriation; providing
814 full-time equivalent positions; amending s. 119.0721,
815 F.S.; removing a cross reference; clarifying the meaning
816 of "commercial activity" to conform to the removal of the
817 reference; providing an effective date.

818
819 WHEREAS, the private sector can often perform services with
820 greater efficiency and effectiveness at a lower cost than the
821 state, and

822 WHEREAS, the state has long been a leader in innovative
823 practices, in part because of its partnerships with the private
824 sector, and

825 WHEREAS, the state desires to reap the benefits of lower
826 costs, high quality, and innovation by working closely with the
827 private sector, and

828 WHEREAS, the state still maintains responsibility for
829 ensuring that the services performed by the private sector on
830 behalf of the state are of high quality, cost-effective, and
831 appropriate functions for the private sector, and

832 WHEREAS, leading businesses have developed best practices
833 to determine what to obtain from the market and how to ensure
834 that such services are provided at the desired quality and at
835 the appropriate cost, and

836 WHEREAS, the executive branch has made great progress in
837 promoting the use of such best practices, and the citizens of

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838 | the state could benefit by the increased adoption across state
839 | government of such best practices, NOW, THEREFORE,

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