

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.--

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

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

36 287.0573 Definitions.--For the purposes of this act:

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

38 (2) "Centralized gate process" means the system of review
39 phases for a proposed procurement of contractual services, the
40 conclusion of each phase being a "gate" or decision point at
41 which the commission determines whether the procurement under
42 consideration may proceed to the next phase.

43 (3) "Commission" means the Commission on Efficient
44 Government.

45 Section 4. Section 287.0574, Florida Statutes, is created
46 to read:

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47 287.0574 Criteria for procurement of contractual
48 services.--

49 (1) The agency must include with its final legislative
50 budget request the business cases for procurements for
51 contractual services that the agency proposes in the fiscal year
52 for which the final legislative budget request is submitted, in
53 the manner and form prescribed in the legislative budget request
54 instructions pursuant to s. 216.023.

55 (2) When compared to the cost and quality of service
56 performed by state employees, an agency may procure a
57 contractual service currently or previously provided by state
58 employees only if, upon full implementation of a procurement,
59 it:

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

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

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

70 Section 5. Section 287.0575, Florida Statutes, is created
71 to read:

72 287.0575 Commission on Efficient Government; membership;
73 duties; Center for Efficient Government; duties.--

74 (1) The Commission on Efficient Government is created
75 within the Department of Management Services to oversee the
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76 | Center for Efficient Government and carry out the
77 | responsibilities specified in this section.

78 | (a) The commission shall consist of seven members
79 | appointed by the Governor:

80 | 1. Four members shall be heads of executive branch
81 | agencies.

82 | 2. Three members shall be from the private sector and,
83 | collectively, shall have experience with procurement,
84 | successfully increasing operational efficiency, and implementing
85 | complex projects in the private sector business environment. No
86 | private sector member of the commission may at any time during
87 | his or her appointment to the commission be registered to lobby
88 | the executive or legislative branch.

89 | (b) By August 1, 2005, the Governor shall appoint two
90 | private sector members and two agency heads for terms of 3 years
91 | and one private sector member and two agency heads for terms of
92 | 4 years. Thereafter, each member shall serve for a term of 4
93 | years. The private sector members shall serve without
94 | compensation but shall be entitled to reimbursement for per diem
95 | and travel expenses pursuant to s. 112.061.

96 | (c) No member of the commission shall participate in
97 | commission review of a procurement when his or her agency is
98 | conducting the procurement or, in the case of a private sector
99 | member, he or she has a business relationship with an entity
100 | that is involved or could potentially be involved in the
101 | procurement.

102 | (d) The members of the commission may not delegate their
103 | membership to a designee.

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

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

113 (g) At the first meeting of the commission after August 1,
114 2005, the members of the commission shall elect, by majority
115 vote of those in attendance, a member to serve as chair of the
116 commission. No later than September 1 of each succeeding year,
117 the commission shall elect a new chair.

118 (h) The commission shall:

119 1. Oversee the Center for Efficient Government.
120 2. Adopt the centralized gate process.
121 3. Review, evaluate, and grant approval of, withhold
122 approval of, or deny approval of a proposed procurement at each
123 gate established within the centralized gate process. The
124 commission shall adopt rules regarding the procurements that
125 must pass through the centralized gate process. Such
126 procurements shall include, at a minimum, those subject to the
127 requirements of s. 287.0576(1).

128 4. Approve templates and guidelines and adopt rules
129 prescribing standards and procedures for use by agencies during
130 the procurement process which shall, at a minimum, include the
131 requirements under ss. 287.0576-287.0577 for procurements of
132 contractual services.

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

143 6. Review the performance of procurements which have
144 advanced through the full centralized gate process.

145 (2) The Center for Efficient Government is created in the
146 department to establish and promote best business practices so
147 that the delivery of services to citizens of the state are
148 provided in the most effective and cost-efficient manner
149 possible. The secretary of the department shall appoint a
150 director of the center. The duties and responsibilities of the
151 center are:

152 (a) Recommending and implementing a centralized gate
153 process for reviewing and evaluating, and granting, withholding,
154 or denying approval of, agency procurements which, at a minimum,
155 shall include the requirements contained in s. 287.0576(1) and
156 (2) for contractual services procurements.

157 (b) Providing support and assistance to the commission,
158 including, but not limited to, reviewing and validating agency
159 business cases, recommending standards, processes, templates,
160 and guidelines for use by agencies during the procurement

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161 process and providing information and documentation as requested
162 or required by law.

163 (c) Assisting agencies directly in the procurement process
164 as needed to ensure a high-quality procurement, including, but
165 not limited to, developing and updating business cases, drafting
166 solicitation and contract documents, participating in contract
167 negotiations, identifying performance measures, and advising
168 agencies on performance measurement, contract management, and
169 change management. The center shall also provide information,
170 training, and technical assistance to agencies on the use of the
171 standards, processes, templates, and guidelines developed for
172 use by agencies during the procurement process.

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

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

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

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189 (4) Agencies shall submit to the center all information,
190 documents, or other materials required by commission rule or
191 this chapter.

192 Section 6. Section 287.0576, Florida Statutes, is created
193 to read:

194 287.0576 Review and analysis of proposed procurement of
195 contractual services; centralized gate process.--

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

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

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

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

215 (d) Contractual services procurements for which the sum of
216 gross revenues or shared savings to be generated for the state
217 and contractor over the term of the contract plus the sum of any
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218 payments to the contractor by the agency over the term of the
219 contract, if any, is estimated to total \$10 million or more in
220 any fiscal year.

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

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

233
234 For purposes of determining whether a procurement meets the
235 requirements of this section, multiple contractual services
236 procurements for substantially similar or related functions or
237 responsibilities occurring in a coordinated fashion or in close
238 time proximity to one another are considered a single
239 contractual services procurement for purposes of meeting the
240 thresholds set forth in this section.

241 (3) The centralized gate process shall require, at a
242 minimum, review of the procurement by the commission at each
243 gate. At each gate, the commission shall determine by majority
244 vote to:

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245 (a) Approve the procurement, if the agency has
246 sufficiently met the requirements of the current gate, and
247 advance the procurement to the next phase;

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

251 (c) Deny the procurement, if the procurement is not a good
252 business decision, and remove the procurement from
253 consideration.

254
255 Notwithstanding the provisions of this section, the commission
256 may not deny procurements which are required by law. If the
257 commission determines that a procurement required by law is not
258 a good business decision, the commission shall withhold approval
259 and transmit to the President of the Senate, the Speaker of the
260 House of Representatives, and the Governor the reasons why the
261 procurement should not be completed and any recommendation for
262 legislative action. If the President of the Senate or the
263 Speaker of the House of Representatives has not responded within
264 14 business days of receipt of the communication, the commission
265 shall proceed at its discretion consistent with the Legislative
266 intent of this act.

267
268 Notwithstanding any law to the contrary, agencies under the
269 individual control of the Attorney General, the Chief Financial
270 Officer, or the Commissioner of Agriculture are subject to the
271 provisions of this act, except that the commission shall not
272 grant, withhold, or deny approval of a procurement by such
273 agency but instead may only provide recommendations to the

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

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

278 (a) The proposal identification gate, which shall include
279 the business case.

280 (b) The procurement preparation gate, which shall include
281 the updated business case and the solicitation documents prior
282 to the issuance of such documents. An agency may not release
283 solicitation documents without the commission's approval at this
284 gate. The commission must review and approve the written
285 determination of the agency required pursuant to s.

286 287.057(3) (a) before granting approval for the use of an
287 invitation to negotiate, or withhold approval pending submission
288 by the agency of an acceptable alternative solicitation method.

289 (c) The contract development gate, which shall include the
290 final business case and the proposed unexecuted contract. An
291 agency may not execute the contract without the commission's
292 approval at this gate.

293 (d) The transition management gate, which shall include
294 updates to the final business case and, for a procurement of
295 contractual services, an analysis of the agency's and
296 contractor's readiness for the contractor to perform the
297 proposed responsibility or function. An agency may not
298 transition to contractor performance without the commission's
299 approval at this gate.

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

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

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

311 (6) The commission shall take action at each gate within
312 60 days of the submission of a procurement by an agency. If the
313 commission does not take action within this timeframe, the
314 agency head shall determine whether to grant, withhold, or deny
315 approval of the procurement at that gate based on the rules and
316 guidelines of the commission for that gate and shall notify the
317 Governor, the President of the Senate, the Speaker of the House
318 of Representatives, and the commission of such action and the
319 circumstances thereof.

320 (7) During the terms of the contracts, the agency shall
321 annually submit with its legislative budget request a status
322 report for each procurement that has passed through at least the
323 first three gates of the centralized gate process describing the
324 progress made to date, actual completion dates in comparison to
325 planned completion dates, actual costs incurred in comparison to
326 projected costs incurred, current issues requiring resolution,
327 planned project milestones, deliverables, and expenditures for
328 the next reporting period, and any other information relating to
329 the contractual services that may be requested.

330 Section 7. Section 287.0577, Florida Statutes, is created
331 to read:

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332 287.0577 Requirements for procurement of certain
333 contractual services.--In addition to the other applicable
334 requirements of this chapter, an agency shall comply with the
335 following requirements for, at a minimum, procurements of
336 contractual services estimated to total \$1 million or more in
337 any fiscal year and those subject to review under s.
338 287.0576(1)(b), (c), (d), and (e) and (2):

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

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

355 2. If the agency is currently performing the function or
356 responsibility, a description and analysis of the agency's
357 current performance, including, but not limited to, baseline
358 costs and performance metrics;

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

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361 4. A citation of the existing or proposed legal authority
362 for contracting for the function or responsibility.

363 (b)1. A description of available options for achieving the
364 goals. If state employees are currently performing the function
365 or responsibility, at least one option involving maintaining
366 state provision of the function or responsibility shall be
367 included.

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

370 3. An analysis of the advantages and disadvantages of each
371 option, including, at a minimum, potential performance
372 improvements and risks.

373 (c) A cost-benefit analysis documenting the direct and
374 indirect specific baseline costs, savings, and qualitative and
375 quantitative benefits involved in or resulting from the
376 implementation of the recommended option or options. Such
377 analysis shall specify the schedule that, at a minimum, must be
378 adhered to in order to achieve the estimated savings. All
379 elements of cost shall be clearly identified in the cost-benefit
380 analysis, described in the business case, and supported by
381 applicable records and reports. The agency head shall attest
382 that, based on the data and information underlying the business
383 case, to the best of his or her knowledge, all projected costs,
384 savings, and benefits are valid and achievable. "Cost" means the
385 reasonable, relevant, and verifiable cost which may include, but
386 not be limited to, elements such as personnel costs, materials
387 and supplies, services, equipment, capital depreciation costs,
388 rent, maintenance and repairs, utilities, insurance, personnel
389 travel, overhead, and interim and final payments. The

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390 appropriate elements shall depend on the nature of the specific
391 initiative. "Savings" means the difference between the direct
392 and indirect actual annual baseline costs compared to the
393 projected annual cost for the contracted functions or
394 responsibilities in any succeeding state fiscal year during the
395 term of the contract.

396 (d) A description of variance among agency policies and
397 processes and, as appropriate, a discussion of options for or a
398 plan to standardize, consolidate, or revise current policies and
399 processes, if any, to reduce the customization of any proposed
400 solution that would otherwise be required.

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

403 (f) A statement of the potential impact on federal, state,
404 and local revenues and expenditures. The statement shall
405 specifically describe the effect on general revenue, trust
406 funds, general revenue service charges, and interest on trust
407 funds together with the potential direct or indirect effect on
408 federal funding and cost allocations.

409 (g) The projected timeframe for key events, from the
410 beginning of the procurement process through the expiration of a
411 contract.

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

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

416 2. Ensure the confidentiality of records that are exempt
417 or confidential under law.

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418 3. Meet all legal requirements for record retention
419 provided by law.

420 4. Require transfer to the state, at no cost, of all
421 public records in possession of the contractor upon termination
422 of the contract.

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

426 (j) An agency transition plan for addressing changes in
427 the number of agency personnel, affected business processes,
428 employee transition issues, and communication with affected
429 stakeholders, such as agency clients and the public. The
430 transition plan shall contain a reemployment and retraining
431 assistance plan for employees who are not retained by the agency
432 or employed by the contractor.

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

441 (l) A plan for ensuring access by persons with
442 disabilities in compliance with applicable state and federal
443 law.

444
445 If a contractual services procurement meets the criteria for
446 submission of feasibility study documentation as required by the
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447 legislative budget request instructions established pursuant to
448 s. 216.023, the agency shall submit such documentation.

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

451 (a) A detailed description of the function or
452 responsibility under consideration for contracting and, if the
453 function or responsibility is currently being performed by an
454 agency, a description and analysis of the agency's current
455 performance.

456 (b) Requirements that are achievable, unambiguous,
457 measurable, meaningful, and complete.

458 (c) The criteria that after contract execution will be
459 used to assess contractor performance and the minimum acceptable
460 contractor performance levels.

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

463 (a) A detailed scope of work that clearly specifies each
464 service or deliverable to be provided, including a description
465 of each deliverable or activity that is quantifiable,
466 measurable, and verifiable.

467 (b) All service-level agreements describing all services
468 to be provided under the terms of the agreement, the agency's
469 service requirements and performance objectives, and specific
470 responsibilities of the agency and the contractor.

471 (c) Associated costs and savings, specific payment terms
472 and payment schedule, including incentive and disincentive
473 provisions, criteria governing payment, and a clear and specific
474 implementation schedule that will be implemented in order to
475 complete all required activities needed to transfer the service

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476 from the agency to the contractor and operate the service
477 successfully.

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

480 1. Detailed measurable acceptance criteria for each
481 deliverable and service to be provided to the agency under the
482 terms of the contract which document the required performance
483 level.

484 2. A method for monitoring and reporting progress in
485 achieving specified performance standards and levels.

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

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

491 (f) A requirement authorizing state access to and audit of
492 all records related to the contract or any responsibilities or
493 functions under the contract for state audit and legislative
494 oversight purposes and a requirement for service organization
495 audits in accordance with professional auditing standards, if
496 appropriate.

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

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

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

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

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

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

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

529 (j) If a contract involves the development or creation of
530 intellectual property, the contract must specify the ownership
531 of such intellectual property and any rights of the state to

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532 use, modify, reproduce, or disseminate the intellectual
533 property.

534 (k) A provision that the contractor annually submit and
535 verify, pursuant to s. 92.525, all required financial
536 statements.

537 (l) A requirement that the contractor shall interview and
538 consider for employment with the contractor each displaced state
539 employee who is interested in such employment.

540 (m) Provisions requiring that venue for any action
541 regarding the contract shall be in Leon County and that the
542 contract shall be interpreted according to the laws of this
543 state.

544 (4) AMENDMENTS.--An agency may not amend a contract
545 without first submitting the proposed contract amendment to the
546 Executive Office of the Governor for approval and notifying the
547 chairs of the legislative appropriations committees of such
548 submission if the effect of the amendment would be to:

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

552 (b) Increase the value of the contract by 10 percent or
553 more for those contracts with a total value of \$10 million or
554 more.

555
556 An agency shall not divide a contract amendment so as to avoid
557 the requirements of this section.

558 (5) In addition to the requirements of subsections
559 287.057(13) and (14), prior to the renewal or extension of a
560 contract, an agency shall document whether all specific direct

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561 and indirect costs, savings, performance standards, and
562 qualitative and quantitative benefits identified in the contract
563 have been met by the contractor and the agency. If the actual
564 performance of the contractor does not meet the required
565 performance as identified in the contract, the agency shall
566 explain the reasons why and provide justification for the
567 extensions or renewal of the contract. This documentation shall
568 be included in the official contract file.

569 Section 8. Section 287.0578, Florida Statutes, is created
570 to read:

571 287.0578 Subsequent inconsistent laws.--Subsequent
572 inconsistent laws shall supersede this act only to the extent
573 they do so by express reference to this section.

574 Section 9. Paragraph (b) of subsection (17) of section
575 287.057, Florida Statutes, is amended to read:

576 287.057 Procurement of commodities or contractual
577 services.--

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

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

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590 Section 10. Section 215.4211, Florida Statutes, is created
591 to read:

592 215.4211 Review of contracts for state agencies.--The
593 Chief Financial Officer may request, as he or she deems
594 necessary, the option to review and provide comments prior to
595 the execution of any contract that is required to be in
596 compliance with the provisions of s. 287.0577(3).

597 Section 11. Section 216.1817, Florida Statutes, is created
598 to read:

599 216.1817 Placement of positions in reserve;
600 reestablishment of positions.--If a procurement of contractual
601 services involves the performance of functions or
602 responsibilities that are being shifted from state employees to
603 a contractor, the agency shall identify within the business case
604 prepared pursuant to s. 287.0577 all resources which are
605 affected, including full-time equivalent positions. All full-
606 time equivalent positions identified in the business case shall
607 be placed in reserve by the Executive Office of the Governor
608 until the end of the second year of the contract. However, in
609 the business case, the agency may account for any savings from
610 the full-time equivalent positions identified and held in
611 reserve. Notwithstanding the provisions of s. 216.262, the
612 Executive Office of the Governor shall request authority from
613 the Legislative Budget Commission to reestablish full-time
614 equivalent positions above the number fixed by the Legislature
615 if a contract is terminated and the performance of the functions
616 or responsibilities must be returned to the agency.

617 Section 12. This act shall not apply to administrative,
618 examination, licensing, investigative, and prosecutorial

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619 services for any board, commission, or council created within
620 the Department of Business and Professional Regulation pursuant
621 to chapter 20, Florida Statutes, as the privatization of such
622 services is governed by ss. 455.32 and 471.038, Florida
623 Statutes.

624 Section 13. Section 287.074, Florida Statutes, is created
625 to read:

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

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

631 (a) Selecting state employees;

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

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

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

638 Section 14. A contractor, as defined in chapter 287,
639 Florida Statutes, or its employees, agents, or subcontractors,
640 may not knowingly participate, through decision, approval,
641 disapproval, preparation of any part of a purchase request,
642 investigation, or auditing, in the procurement of contractual
643 services by an agency from an entity in which the contractor, or
644 its employees, agents, or subcontractors has a material
645 interest.

646 Section 15. The Center for Efficient Government and the
647 Commission on Efficient Government shall terminate on July 1,
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648 2010, unless reenacted by the Legislature prior to that date. It
649 is the intent of the Legislature that, beginning July 1, 2010,
650 the various state agencies shall perform the review functions
651 required under this act for procurements of contractual services
652 under their jurisdiction. It is also the intent of the
653 Legislature that beginning July 1, 2010, the positions
654 authorized by this act shall remain with the Department of
655 Management Services, which shall continue providing technical
656 assistance as required in this act.

657 Section 16. Section 287.0572, Florida Statutes, is
658 renumbered as section 287.0579, Florida Statutes:

659 287.0579 ~~287.0572~~ Present-value methodology.--

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

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

673 Section 17. Subsection (3) of section 119.0721, Florida
674 Statutes, is amended to read:

675 119.0721 Social security number exemption.--

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676 (3) An agency shall not deny a commercial entity engaged
677 in the performance of a commercial activity, which, for purposes
678 of this subsection, means an activity that provides a product or
679 service that is available from a private source as defined in s.
680 ~~14.203~~ or its agents, employees, or contractors access to social
681 security numbers, provided the social security numbers will be
682 used only in the normal course of business for legitimate
683 business purposes, and provided the commercial entity makes a
684 written request for social security numbers, verified as
685 provided in s. 92.525, legibly signed by an authorized officer,
686 employee, or agent of the commercial entity. The verified
687 written request must contain the commercial entity's name,
688 business mailing and location addresses, business telephone
689 number, and a statement of the specific purposes for which it
690 needs the social security numbers and how the social security
691 numbers will be used in the normal course of business for
692 legitimate business purposes. The aggregate of these requests
693 shall serve as the basis for the agency report required in
694 subsection (7). An agency may request any other information as
695 may be reasonably necessary to verify the identity of the entity
696 requesting the social security numbers and the specific purposes
697 for which such numbers will be used; however, an agency has no
698 duty to inquire beyond the information contained in the verified
699 written request. A legitimate business purpose includes
700 verification of the accuracy of personal information received by
701 a commercial entity in the normal course of its business; use in
702 a civil, criminal, or administrative proceeding; use for
703 insurance purposes; use in law enforcement and investigation of
704 crimes; use in identifying and preventing fraud; use in

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

710 Section 18. Section 14.203, Florida Statutes, is repealed.

711 Section 19. There is hereby appropriated \$1,023,554
712 recurring budget authority to the Department of Management
713 Services from the General Revenue Fund, and nine full-time
714 equivalent positions are authorized, to carry out the activities
715 of the Center for Efficient Government and the Commission on
716 Efficient Government as provided in this act.

717 Section 20. This act shall take effect July 1, 2005.

718

719

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

721

722 Remove the entire title, and insert:

723

724 A bill to be entitled

725 An act relating to procurement of contractual services by
726 an agency; amending s. 20.22, F.S.; placing the Center for
727 Efficient Government in the Department of Management
728 Services; creating s. 287.0571, F.S.; providing a popular
729 name; providing legislative intent; providing that
730 procurements of specified commodities and services are not
731 subject to the act; providing specified applicability;
732 creating s. 287.0573, F.S.; providing definitions;
733 creating s. 287.0574, F.S.; providing criteria for the

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

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763 | for commission review at each gate; providing for
764 | nullification of executed contracts for procurement under
765 | specified circumstances; requiring the commission to take
766 | action at each gate within a specified time period;
767 | providing procedure if the commission does not take action
768 | within such time period; requiring the submission of
769 | annual status reports; creating s. 287.0577, F.S.;
770 | providing requirements for procurement of certain
771 | contractual services; requiring an agency to develop a
772 | business case which describes and analyzes a contractual
773 | services procurement under consideration; providing that
774 | the business case is not subject to challenge or protest
775 | under the Administrative Procedure Act; providing required
776 | components of a business case; defining "cost" and
777 | "savings"; providing requirements with respect to the
778 | solicitation for a contractual services procurement;
779 | providing contract requirements for a contractual services
780 | procurement; providing requirements with respect to
781 | contract amendments; providing that specified contract
782 | amendments must be submitted to the Executive Office of
783 | the Governor for approval; requiring notification of such
784 | submission to the chairs of the legislative appropriations
785 | committees; prohibiting the division of a contract
786 | amendment to avoid specified requirements; requiring
787 | documentation of contractor performance prior to renewal
788 | or extension of a contract; creating s. 287.0578, F.S.;
789 | providing for conditional supersession of the act;
790 | amending s. 287.057, F.S.; providing a requirement with
791 | respect to the composition of persons chosen to conduct

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792 negotiations during a specified competitive sealed reply
793 procurement; creating s. 215.4211, F.S.; authorizing the
794 Chief Financial Officer to review contracts for state
795 agencies; creating s. 216.1817, F.S.; requiring the
796 placement of full-time equivalent positions in reserve
797 under certain conditions; providing for the
798 reestablishment of full-time equivalent positions upon
799 termination of a contract and reversion of functions and
800 responsibilities to the agency; providing nonapplicability
801 of the act with respect to the privatization of boards,
802 commissions, or councils created within the Department of
803 Business and Professional Regulation; creating s. 287.074,
804 F.S.; providing that only public officers or employees
805 must perform certain functions; providing restrictions on
806 contractor involvement in the procurement of contractual
807 services; providing for future termination of the Center
808 for Efficient Government and the Commission on Efficient
809 Government; providing legislative intent with respect to
810 the performance of review functions and assistance to
811 agencies for procurements of contractual services by state
812 agencies after a specified date; providing that positions
813 authorized under the act shall remain with the Department
814 of Management Services after a specified date; repealing
815 s. 14.203, F.S., which creates the State Council on
816 Competitive Government and provides duties and authority
817 of the council; providing an appropriation; providing
818 full-time equivalent positions; amending s. 119.0721,
819 F.S.; removing a cross reference; clarifying the meaning

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820 of "commercial activity" to conform to the removal of the
821 reference; providing an effective date.

822

823 WHEREAS, the private sector can often perform services with
824 greater efficiency and effectiveness at a lower cost than the
825 state, and

826 WHEREAS, the state has long been a leader in innovative
827 practices, in part because of its partnerships with the private
828 sector, and

829 WHEREAS, the state desires to reap the benefits of lower
830 costs, high quality, and innovation by working closely with the
831 private sector, and

832 WHEREAS, the state still maintains responsibility for
833 ensuring that the services performed by the private sector on
834 behalf of the state are of high quality, cost-effective, and
835 appropriate functions for the private sector, and

836 WHEREAS, leading businesses have developed best practices
837 to determine what to obtain from the market and how to ensure
838 that such services are provided at the desired quality and at
839 the appropriate cost, and

840 WHEREAS, the executive branch has made great progress in
841 promoting the use of such best practices, and the citizens of
842 the state could benefit by the increased adoption across state
843 government of such best practices, NOW, THEREFORE,