

By Senator Argenziano

3-907A-05

1 A bill to be entitled
2 An act relating to purchasing and procurement;
3 amending s. 14.203, F.S.; redesignating the
4 State Council on Competitive Government as the
5 "Center for Efficient Government"; transferring
6 the center from the Administration Commission
7 to the Department of Management Services;
8 revising the powers and duties of the center;
9 requiring the center to adopt rules;
10 prescribing duties of the center before a state
11 function or service is outsourced or
12 privatized; requiring the center to perform a
13 business-case analysis; specifying the
14 requirements for the analysis; requiring that
15 the center submit the proposed business case to
16 the Legislature for approval under certain
17 circumstances; providing requirements for the
18 secretary or executive director of a state
19 agency that proposes to outsource or privatize
20 a function or service; prescribing contract
21 requirements; providing requirements for a
22 contract that exceeds \$1 million in value;
23 requiring the Department of Management Services
24 to establish a program to train contract
25 negotiators; requiring that a state agency
26 submit certain contract amendments to the
27 Legislative Budget Commission for approval;
28 providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Section 14.203, Florida Statutes, is
2 amended to read:

3 14.203 Center for Efficient State Council on
4 ~~Competitive~~ Government.--It is the policy of this state that
5 all state services be performed in the most effective and
6 efficient manner in order to provide the best value to the
7 residents ~~citizens~~ of the state. The state also recognizes
8 that competition among service providers may improve the
9 quality of services provided, and that competition,
10 innovation, and creativity among service providers should be
11 encouraged.

12 (1) For the purposes of this section, the term:

13 (a) "Commercial activity" means an activity that
14 provides a product or service that is available from a private
15 source.

16 (b) "Identified state service" means a service
17 provided by the state which ~~that~~ is under consideration to
18 determine whether the service may be better provided through
19 competition with private sources.

20 (2) There is ~~hereby~~ created the Center for Efficient
21 ~~State Council on Competitive~~ Government, which shall be a
22 function ~~composed~~ of the Department of Management Services
23 ~~Governor and Cabinet, sitting as the Administration Commission~~
24 ~~as defined in s. 14.202~~. The center ~~council~~, on its own
25 initiative, or the Office of Program Policy Analysis and
26 Government Accountability, created pursuant to s. 11.51, may
27 identify commercial activities currently being performed by
28 state agencies and, if it is determined that such services may
29 be better provided by requiring competition with private
30 sources or other state agency service providers, may recommend
31 that a state agency engage in a competitive-selection process

1 ~~any process, including competitive bidding,~~ that creates
2 competition with private sources or other state agency service
3 providers.

4 (3) In performing its duties under this section, the
5 ~~center council~~ may:

6 (a) Adopt rules to administer ~~implement any provision~~
7 ~~of~~ this section.

8 (b) Hold public hearings or conduct studies.

9 (c) Consult with private sources.

10 (4)(a) Before the outsourcing or privatization of a
11 function or service, the center shall comply with the
12 following requirements:

13 1. The center shall develop a validated business case
14 describing and analyzing the function or service proposed for
15 outsourcing or privatization. A business case is part of the
16 solicitation process and is not a rule subject to challenge
17 pursuant to s. 120.54. The business case must include, but
18 need not be limited to:

19 a. A detailed description of the functions or services
20 to be outsourced or privatized, a description and analysis of
21 the state agency's current performance of such function or
22 service, and a rationale documenting how outsourcing or
23 privatizing such function or service would be in the best
24 interest of the state, the agency, or its clients.

25 b. A validated cost-benefit analysis describing the
26 estimated specific direct and indirect costs, savings,
27 performance improvements, risks, and qualitative and
28 quantitative benefits involved in or resulting from
29 outsourcing or privatizing the function or service. The
30 cost-benefit analysis must include a detailed plan and
31 timeline identifying all actions that must be implemented to

1 realize expected benefits. The center shall certify that all
2 costs, savings, and benefits are valid and achievable.

3 c. A statement of the potential effect on applicable
4 federal, state, and local revenues and expenditures. The
5 statement must specifically describe the effect on general
6 revenue, trust funds, general revenue service charges, and
7 interest on trust funds, together with the potential direct or
8 indirect effect on federal funding and cost allocations.

9 d. A plan to ensure compliance with public-records
10 law, including a plan for:

11 (I) Providing public access to public records at a
12 cost that does not exceed that provided in chapter 119.

13 (II) Ensuring the confidentiality of records that are
14 exempt from public disclosure or made confidential by law.

15 (III) Meeting all legal requirements for retaining
16 records.

17 (IV) Transferring to the state, at no cost, all public
18 records in possession of the external service provider upon
19 termination of the contract.

20 e. A transition and implementation plan for addressing
21 changes in organizational structure, affected business
22 processes, and employee-transition issues. Such a plan must
23 also specify the mechanism for continuing the operation of the
24 function or service if the external service provider fails to
25 perform and comply with the performance standards and
26 provisions of the contract.

27 f. A listing of assets proposed for transfer to or use
28 by an external service provider, a description of the proposed
29 requirements for maintaining those assets by the external
30 service provider or the state agency in accordance with
31 chapter 273, a plan for disposing of the assets upon

1 termination of the contract, and a description of how the
2 planned asset transfer or use by an external service provider
3 is in the best interest of the agency and state.

4 2. If the center proposes to outsource or privatize a
5 function or service, whether initially or after the expiration
6 of an existing contract to outsource or privatize, and the
7 proposal meets one of the following criteria:

8 a. The value of the contract, as provided in s.
9 287.017, over the proposed term of the contract is projected
10 to exceed the lesser of 5 percent of the state agency's total
11 budget or \$10 million; or

12 b. Reductions during the proposed term of the contract
13 are projected to exceed the lesser of 50 full-time equivalent
14 positions, 5 percent of the state agency's authorized
15 full-time equivalent positions, or 5 percent of the agency's
16 authorized salaries and benefits;

17
18 the center must submit the proposed business case to the
19 Legislature for approval. The proposed business case must be
20 submitted at least 60 days before the first day of the regular
21 legislative session to the President of the Senate and the
22 Speaker of the House of Representatives. At the request of the
23 Legislature, the Office of Program Policy Analysis and
24 Government Accountability may review and validate the
25 information contained in the business case and provide comment
26 and recommendations to the Legislature. Upon approval by the
27 Legislature of the proposed business case, the center may
28 continue the solicitation process and initiate and complete
29 the procurement process under s. 287.057.

30 (b)1. If any state agency proposes to outsource or
31 privatize a function or service, whether initially or after

1 the expiration of an existing contract to outsource or
2 privatize, and the proposal does not meet one of the criteria
3 identified in sub-subparagraphs (a)1.a. and b., the secretary
4 or executive director of the state agency shall approve the
5 proposed business case, certifying that all costs, savings,
6 and benefits are valid and achievable. If requested by the
7 Legislature, copies of the approved business case shall be
8 submitted to the chairs of the legislative appropriations and
9 relevant substantive committees.

10 2. If a proposed outsourcing or privatization
11 initiative would require integration with or would in any way
12 affect other information technology systems of the state, the
13 agency shall submit the feasibility study documentation as
14 required by the instructions for the legislative budget
15 request under s. 216.023.

16 (c) Notwithstanding s. 287.057(5)(f), upon completion
17 of the procurement process as set forth in s. 287.057, the
18 state agency may enter into contracts with the external
19 service provider.

20 (d) Any such contract must include detailed and
21 specific terms and conditions and performance standards that
22 provide a clearly defined scope and level of work that is
23 directly related to the goals and objectives of the
24 initiative. The terms must include, but need not be limited
25 to:

26 1. A detailed scope of work that clearly specifies
27 each service or deliverable to be provided.

28 2. All service-level agreements describing all
29 services to be provided under the terms of the agreement, the
30 state agency's service requirements and performance
31

1 objectives, and specific responsibilities of the agency and
2 the contractor.

3 3. Associated costs and savings, specific payment
4 terms and payment schedule, including incentive and penalty
5 provisions, criteria governing payment, and a clear and
6 specific implementation schedule that will be implemented in
7 order to complete all required activities needed to transfer
8 the function or service from the state agency to the
9 contractor and operate the function or service successfully.

10 4. A description of deliverables, activities, or
11 events that are directly related to the scope of work which
12 are quantifiable, measurable, and verifiable.

13 5. Clear and specific identification of all required
14 performance standards, which must, at a minimum, include:

15 a. Detailed measurable acceptance criteria for each
16 deliverable and service to be provided to the state agency
17 under the terms of the contract which document the required
18 performance level.

19 b. A method for monitoring and reporting progress in
20 achieving specified performance standards and levels.

21 c. The sanctions or penalties that shall be assessed
22 for nonperformance by the contractor or state agency.

23 6. A requirement that the contractor maintain adequate
24 accounting records that comply with all applicable federal and
25 state laws.

26 7. A requirement authorizing the state agency to have
27 access to and conduct audits of all records related to the
28 contract and outsourced functions or services.

29 8. A requirement that ownership of any intellectual
30 property that is critical for the assumption of the outsourced
31 function or service be transferred from the external service

1 provider to the state agency if the external service provider
2 ceases to provide the outsourced function or service.

3 9. A requirement describing the timing and substance
4 of all plans and status or progress reports that are to be
5 provided. All plans and status or progress reports must comply
6 with any relevant state and federal standards.

7 10. A requirement that the contractor comply with
8 public-records laws. The contractor must:

9 a. Keep and maintain the public records that
10 ordinarily and necessarily would be required by the state
11 agency in order to perform the function or service.

12 b. Provide the public with access to such public
13 records on the same terms and conditions that the state agency
14 would, and at a cost that does not exceed that provided in
15 chapter 119.

16 c. Ensure the confidentiality of records that are
17 exempt from public disclosure or made confidential under law.

18 d. Meet all requirements for retaining records and
19 transfer to the state, at no cost, all public records in
20 possession of the contractor upon termination of the contract.
21 All records stored electronically must be provided to the
22 state in a format compatible with information technology
23 systems of the state.

24 11. A requirement that any state funds provided for
25 the purchase of or improvements to real property be made
26 contingent upon the contractor granting to the state a
27 security interest in the property which is at least equal to
28 the amount of the state funds provided for the most recent 5
29 years following the date of purchase or the completion of
30 improvements, or as otherwise required by law. The contract
31 must include a provision that, if the contractor disposes of

1 the property before the state agency's interest is vacated,
2 the contractor will refund the proportionate share of the
3 state's initial investment, as adjusted by depreciation.

4 12. A provision that the contractor annually submit
5 all required financial statements, which must comply with 18
6 U.S.C. s. 1350.

7 (e) A contract may include cost-neutral,
8 performance-based incentives that may vary according to the
9 extent a contractor achieves or surpasses the performance
10 standards set forth in the contract. Such incentives may be
11 weighted proportionally to reflect the extent to which the
12 contractor has demonstrated that it has consistently met or
13 exceeded the contractual requirements and performance
14 standards.

15 (f) When the value of a contract is in excess of \$1
16 million, at least one of the persons conducting negotiations
17 must be certified as a contract negotiator based upon
18 standards identified by the National Institute of Governmental
19 Purchasing. The Department of Management Services shall
20 establish a program to train contracting personnel in best
21 practices for contract negotiation. The training program shall
22 be based on standards established by a national accrediting or
23 certification program, such as the National Institute of
24 Governmental Purchasing.

25 (g) Notwithstanding s. 216.181, a state agency may not
26 amend a contract without first submitting the proposed
27 amendment to the Legislative Budget Commission for approval
28 if:

29 1. The effect of the amendment would be to expand the
30 financial terms, conditions, or duration of the contract and
31

1 the total dollar amount to be paid is increased 10 percent or
2 more;

3 2. The federal or state funding sources or
4 requirements are changed; or

5 3. The contract performance date or the contract
6 service ending date is extended by 1 year or longer.

7
8 Upon approval of the contract amendment by the Legislative
9 Budget Commission, the state agency may amend the contract as
10 approved by the Legislative Budget Commission.

11 ~~(d) Require a state agency to conduct an in house cost~~
12 ~~estimate, a management study, or any other hearing, study,~~
13 ~~review, or cost estimate concerning any aspect of an~~
14 ~~identified state service.~~

15 ~~(e) Develop and require for use by state agencies~~
16 ~~methods to accurately and fairly estimate and account for the~~
17 ~~cost of providing an identified state service.~~

18 ~~(f) Require that an identified state service be~~
19 ~~submitted to competitive bidding or another process that~~
20 ~~creates competition with private sources or other governmental~~
21 ~~entities. In determining whether an identified state service~~
22 ~~should be submitted to competitive bidding, the council shall~~
23 ~~consider, at a minimum:~~

24 ~~1. Any constitutional and legal implications which may~~
25 ~~arise as a result of such action.~~

26 ~~2. The cost of supervising the work of any private~~
27 ~~contractor.~~

28 ~~3. The total cost to the state agency of such state~~
29 ~~agency's performance of a service, including all indirect~~
30 ~~costs related to that state agency and costs of such agencies~~
31 ~~as the Chief Financial Officer, the Attorney General, and~~

1 ~~other such support agencies to the extent such costs would not~~
2 ~~be incurred if a contract is awarded. Costs for the current~~
3 ~~provision of the service shall be considered only when such~~
4 ~~costs would actually be saved if the contract were awarded to~~
5 ~~another entity.~~

6 ~~(g) Prescribe, in consultation with affected state~~
7 ~~agencies, the specifications and conditions of purchase~~
8 ~~procedures that must be followed by a state agency or a~~
9 ~~private source engaged in competitive bidding to provide an~~
10 ~~identified state service.~~

11 ~~(h) Award a contract to a state agency currently~~
12 ~~providing the service, another state agency, a private source,~~
13 ~~or any combination of such entities, if the bidder presents~~
14 ~~the best and most reasonable bid, which is not necessarily the~~
15 ~~lowest bid. It is intended that consideration be given as to~~
16 ~~how to transfer the program back if the bidder is not~~
17 ~~successful in carrying out the requirements of the contract.~~
18 ~~The bid shall also include an analysis of health care~~
19 ~~benefits, retirement, and workers' compensation insurance for~~
20 ~~employees of the contractor which are reasonably comparable to~~
21 ~~those provided by the state.~~

22 ~~(i) Determine the terms and conditions of a contract~~
23 ~~for service or interagency contract to provide an identified~~
24 ~~state service or other commercial activity. Such terms and~~
25 ~~conditions may include the requirement that a minimum level of~~
26 ~~health insurance coverage for employees, including optional~~
27 ~~family coverage, whether employer paid or employee paid, or a~~
28 ~~combination thereof, is available to employees.~~

29 ~~(j) Require the state agency to encourage state~~
30 ~~employees to organize and submit a bid for the identified~~
31 ~~state service.~~

1 ~~(5)~~(4) A state agency shall perform any activities
2 required by the center ~~council~~ in the performance of its
3 duties or the exercise of its powers under this section.

4 ~~(5) Contracts entered into by the council to implement~~
5 ~~this section and any decision regarding whether a state agency~~
6 ~~shall engage in competitive bidding are exempt from state law~~
7 ~~regulating or limiting purchasing practices and decisions,~~
8 ~~including chapter 120.~~

9 ~~(6) A contract entered into pursuant to this section~~
10 ~~constitutes an executive branch recommendation only and shall~~
11 ~~not take effect until a specific appropriation is provided by~~
12 ~~law to fund such contract. In addition, any contract entered~~
13 ~~into by a state agency pursuant to this section shall include~~
14 ~~language that its effect is contingent upon a specific~~
15 ~~appropriation by law.~~

16 Section 2. This act shall take effect July 1, 2005.

17
18 *****

19 SENATE SUMMARY

20 Renames the State Council on Competitive Government as
21 the "Center for Efficient Government" and transfers it
22 from the Administration Commission to the Department of
23 Management Services. Requires the center to perform a
24 business-case analysis before certain state functions or
25 services are outsourced or privatized. Requires that the
26 center submit certain business-case analyses to the
27 Legislature for approval. Requires that the secretary or
28 executive director of a state agency meet certain
29 contract requirements before outsourcing or privatizing a
30 function or service. Requires the Department of
31 Management Services to establish a program to train
contract negotiators. Requires that a state agency submit
certain contract amendments to the Legislative Budget
Commission for approval. (See bill for details.)