

By the Committee on Governmental Oversight and Productivity;
and Senator Argenziano

585-1753C-05

1 A bill to be entitled
2 An act relating to purchasing and procurement;
3 providing definitions; authorizing the
4 Department of Management Services to establish
5 the Center for Efficient Government; providing
6 for the powers and duties of the center;
7 prescribing duties of a state agency before a
8 service may be outsourced; requiring agencies
9 to do a business case analysis; specifying the
10 requirements for the analysis; requiring that
11 an agency submit the proposed business case
12 with the agency's legislative budget request;
13 prescribing the process for approval if the
14 outsourcing is not included in the agency's
15 approved operating budget; prohibiting an
16 agency from privatizing a service without
17 specific legislative authorization; prescribing
18 contract requirements for a contract that meets
19 or exceeds a specified threshold amount;
20 authorizing a contract to include certain
21 incentives; providing requirements for a
22 contract that exceeds \$1 million in value;
23 providing a process for a state agency to
24 submit to the Executive Office of the Governor
25 certain contract amendments for approval;
26 requiring approval of the Administration
27 Commission under certain circumstances;
28 creating s. 215.4211, F.S.; authorizing the
29 Chief Financial Officer to review contracts for
30 state agencies; repealing s. 14.203, F.S.,
31 relating to the State Council on Competitive

1 Government; providing an appropriation;
2 providing restrictions on contractor
3 supervision of state employees; providing
4 restrictions on contractor involvement in state
5 procurement; providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Center for Efficient Government;
10 outsourcing or privatization; contract management.--

11 (1) As used in this section, the term:

12 (a) "Agency" means the entities defined in section
13 287.012(1), Florida Statutes.

14 (b) "Contractor" has the same meaning as in section
15 287.012(8), Florida Statutes.

16 (c) "Outsourcing" means the process of contracting
17 with an external service provider to provide a service, in
18 whole or in part, while the agency retains the responsibility
19 and accountability for the service.

20 (d) "Performance standards" means the quantifiable,
21 specified, and desired level to be achieved for a particular
22 service.

23 (e) "Privatize" means any process aimed at
24 transferring the responsibility for a service, in whole or in
25 part, from the agency to the private sector such that the
26 private sector is solely and fully responsible for the
27 performance of the specific service.

28 (f) "Service" means all or any portion of a program or
29 program component as defined in section 216.011, Florida
30 Statutes.
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1 (2)(a) The Department of Management Services may
2 establish the Center for Efficient Government, which shall
3 promote best business practices in procurement and contracting
4 in order to allow state agencies to focus on their core
5 missions and to deliver services efficiently and
6 cost-effectively and, when validated, contract for services
7 that can be more effectively provided by the private sector.

8 (b) The center shall:

9 1. Assist agencies, when requested, in their
10 compliance with this section, which shall include, but need
11 not be limited to, developing and updating business cases and
12 solicitation documents, supporting contract negotiations,
13 contract drafting, change management, performance measurement,
14 and contract management.

15 2. Develop standards, processes, templates, and
16 guidelines that comply with the appropriate provisions of this
17 section for use by agencies.

18 3. Create and maintain a database of new and existing
19 state procurement initiatives, which must include, but need
20 not be limited to, those initiatives subject to this section.
21 At a minimum, the database must contain the following
22 information in regard to contractual services:

23 a. The agency name, the name and description of the
24 contractual service procured, and the names of the prime
25 contractor and any subcontractors.

26 b. The projected and actual completion dates by
27 project phase.

28 c. A description of the performance standards
29 contained in the contract, projected performance, and actual
30 performance.

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1 d. The projected costs and revenues, as applicable,
2 and actual costs and revenues.

3 (3) If an agency proposes to outsource a service, the
4 agency must comply with the requirements of paragraph (a)
5 before beginning the procurement process provided for in
6 section 287.057, Florida Statutes.

7 (a) The agency shall develop a business case
8 describing and analyzing the function or service proposed for
9 outsourcing. A business case is part of the solicitation
10 process and is not a rule subject to challenge under section
11 120.54, Florida Statutes. The business case must include, but
12 need not be limited to:

13 1. A detailed description of the service to be
14 outsourced, a description and analysis of the agency's current
15 performance of the service, and a rationale documenting how
16 outsourcing the service would be in the best interest of the
17 state, the agency, or its clients.

18 2. A cost-benefit analysis describing the estimated
19 specific direct and indirect costs, savings, performance
20 improvements, risks, and qualitative and quantitative benefits
21 involved in or resulting from outsourcing the service. The
22 cost-benefit analysis must include a detailed plan and
23 timeline identifying all actions that must be implemented to
24 realize expected benefits. Pursuant to section 92.525, Florida
25 Statutes, the agency head shall verify that all costs,
26 savings, and benefits are valid and achievable.

27 3. A statement of the potential effect on applicable
28 federal, state, and local revenues and expenditures. The
29 statement must specifically describe the effect on general
30 revenue, trust funds, general revenue service charges, and
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1 interest on trust funds, together with the potential direct or
2 indirect effect on federal funding and cost allocations.

3 4. A plan to ensure compliance with public-records
4 law, including a plan for:

5 a. Providing public access to public records at a cost
6 that does not exceed that provided in chapter 119, Florida
7 Statutes.

8 b. Ensuring the confidentiality of records that are
9 exempt from public disclosure or made confidential by law.

10 c. Meeting all legal requirements for retaining
11 records.

12 d. Transferring to the state, at no cost, all public
13 records in possession of the contractor upon termination of
14 the contract.

15 5. A transition and implementation plan for addressing
16 changes in the number of agency personnel, affected business
17 processes, and employee-transition issues. Such a plan must
18 also specify the mechanism for continuing the operation of the
19 service if the contractor fails to perform and comply with the
20 performance standards and provisions of the contract. Within
21 this plan, the agency shall identify all resources, including
22 full-time equivalent positions, which are subject to
23 outsourcing. All full-time equivalent positions identified in
24 the plan shall be placed in reserve by the Executive Office of
25 the Governor until the end of the second year of the contract.
26 Notwithstanding the provisions of section 216.262, Florida
27 Statutes, the Executive Office of the Governor shall request
28 authority from the Legislative Budget Commission to
29 reestablish full-time positions above the number fixed by the
30 Legislature when a contract is terminated and the outsourced
31 service must be returned to the agency.

1 6. A listing of assets proposed for transfer to or use
2 by a contractor, a description of the proposed requirements
3 for maintaining those assets by the contractor or the agency
4 in accordance with chapter 273, Florida Statutes, a plan for
5 disposing of the assets upon termination of the contract, and
6 a description of how the planned asset transfer or use by a
7 contractor is in the best interest of the agency and state.

8 (b)1. If the agency proposes to outsource a service in
9 the next fiscal year, the agency shall submit the business
10 case along with the agency's final legislative budget request,
11 in the manner and form prescribed in the legislative budget
12 request instructions pursuant to section 16.023, Florida
13 Statutes. Upon approval in the General Appropriations Act, the
14 agency may initiate and complete the procurement process
15 pursuant to section 287.057, Florida Statutes, and may enter
16 into contracts with the contractor.

17 2. If a proposed outsourcing initiative would require
18 integration with or would in any way affect other information
19 technology systems of the state, the agency shall submit the
20 feasibility study documentation as required by the
21 instructions for the legislative budget request under section
22 216.023, Florida Statutes.

23 (c) If the agency proposes to outsource a service
24 during a fiscal year and the outsourcing provision was not
25 included in the agency's approved operating budget, the agency
26 must provide to the Executive Office of the Governor, the
27 President of the Senate, the Speaker of the House of
28 Representatives, the chairs of the legislative appropriations
29 committees, and the chairs of the relevant substantive
30 committees the validated business case that complies with the
31 requirements of paragraph (a) at least 45 days before the

1 release of any solicitation documents, as provided in section
2 287.057, Florida Statutes. Any budgetary changes that are
3 inconsistent with the agency's approved budget may not be made
4 to existing programs unless such changes are recommended to
5 the Legislative Budget Commission by the Governor and the
6 Legislative Budget Commission expressly approves such program
7 changes.

8 (d) An agency may not privatize a service, as defined
9 in subsection (1), without specific authority provided for in
10 general law, the General Appropriations Act, legislation
11 implementing the General Appropriations Act, or a special
12 appropriations act.

13 (4)(a) In addition to the requirements of section
14 287.058, Florida Statutes, each contract for the procurement
15 of contractual services by an agency which meets or is in
16 excess of the threshold amount provided in section 287.017,
17 Florida Statutes, for CATEGORY FIVE, must include, but need
18 not be limited to:

19 1. A detailed scope of work that clearly specifies
20 each service or deliverable to be provided, including a
21 description of each deliverable or activity that is
22 quantifiable, measurable, and verifiable.

23 2. All service-level agreements describing all
24 services to be provided under the terms of the agreement, the
25 agency's service requirements and performance objectives, and
26 specific responsibilities of the agency and the contractor.

27 3. Associated costs and savings, specific payment
28 terms and payment schedule, including incentive and penalty
29 provisions, criteria governing payment, and a clear and
30 specific implementation schedule that will be implemented in
31 order to complete all required activities needed to transfer

1 the service from the agency to the contractor and operate the
2 service successfully.

3 4. Clear and specific identification of all required
4 performance standards, which must include, at a minimum:

5 a. Detailed measurable acceptance criteria for each
6 deliverable and service to be provided to the agency under the
7 terms of the contract which document the required performance
8 level.

9 b. A method for monitoring and reporting progress in
10 achieving specified performance standards and levels.

11 c. The sanctions or penalties that shall be assessed
12 for nonperformance by the contractor or agency.

13 5. A requirement that the contractor maintain adequate
14 accounting records that comply with all applicable federal and
15 state laws and generally accepted accounting principles.

16 6. A requirement authorizing the agency to have access
17 to and conduct audits of all records related to the contract
18 and outsourced services.

19 7. A requirement that ownership of any intellectual
20 property that is critical for the assumption of the outsourced
21 service be transferred from the contractor to the agency if
22 the contractor ceases to provide the outsourced service.

23 8. A requirement describing the timing and substance
24 of all plans and status or progress reports that are to be
25 provided. All plans and status or progress reports must comply
26 with any relevant state and federal standards.

27 9. A requirement that the contractor comply with
28 public-records laws. The contractor must:

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

1 b. Provide the public with access to such public
2 records on the same terms and conditions that the state agency
3 would, and at a cost that does not exceed that provided in
4 chapter 119, Florida Statutes.

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

7 d. Meet all requirements for retaining records and
8 transfer to the state, at no cost, all public records in
9 possession of the contractor upon termination of the contract.

10 All records stored electronically must be provided to the
11 state in a format that is compatible with information
12 technology systems of the state.

13 10. A requirement that any state funds provided for
14 the purchase of or improvements to real property be made
15 contingent upon the contractor granting to the state a
16 security interest in the property which is at least equal to
17 the amount of the state funds provided for the most recent
18 years following the date of purchase or the completion of
19 improvements, or as otherwise required by law. The contract
20 must include a provision that, if the contractor disposes of
21 the property before the agency's interest is vacated, the
22 contractor will refund the proportionate share of the state's
23 initial investment, as adjusted by depreciation.

24 11. A provision that the contractor annually submit
25 and verify pursuant to section 92.525, Florida Statutes, all
26 required financial statements.

27 (b) A contract may include cost-neutral,
28 performance-based incentives that may vary according to the
29 extent a contractor achieves or surpasses the performance
30 standards set forth in the contract. Such incentives may be
31 weighted proportionally to reflect the extent to which the

1 contractor has demonstrated that it has consistently met or
2 exceeded the contractual requirements and performance
3 standards.

4 (c) When the annualized value of a contract is in
5 excess of \$1 million, at least one of the persons conducting
6 negotiations must be certified as a contract negotiator based
7 upon standards established by the Department of Management
8 Services.

9 (d) An agency may not amend a contract without first
10 submitting the proposed contract amendment to the Executive
11 Office of the Governor for approval if the effect of the
12 amendment would be to increase:

- 13 1. The value of the contract by \$250,000; or
- 14 2. The term of the contract by 1 year or more.

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16 When an agency proposes any contract amendment that meets the
17 criteria described in this paragraph, it shall submit the
18 proposed contract amendment to the Executive Office of the
19 Governor for approval and shall immediately notify the chairs
20 of the legislative appropriations committees. The Executive
21 Office of the Governor may not approve the proposed contract
22 amendment until 14 days following receipt of the notification
23 to the legislative appropriations chairs. If either chair of
24 the legislative appropriations committee objects in writing to
25 a proposed contract amendment within the 14 days following
26 notification and specifies the reasons for such objection, the
27 Executive Office of the Governor shall disapprove the proposed
28 contract amendment or shall submit the proposed contract
29 amendment to the Administration Commission. The proposed
30 contract amendment may be approved by the Administration
31 Commission by a two-thirds vote of the members present with

1 the Governor voting in the affirmative. In the absence of
2 approval by the Administration Commission, the proposed
3 contract amendment shall be automatically disapproved.
4 Otherwise, upon approval by the Governor or Administration
5 Commission, the agency may execute the contract amendment. An
6 amendment that is issued under legislative direction,
7 including funding adjustments annually provided for in the
8 General Appropriations Act, need not be submitted for approval
9 in accordance with this paragraph.

10 (e) In addition to the requirements of sections
11 287.057(13) and (14), Florida Statutes, prior to the renewal
12 or extension of a contract an agency shall verify that all
13 specific direct and indirect costs, savings, performance
14 standards, and qualitative and quantitative benefits
15 identified in the original contract have been met by the
16 contractor and the agency. Such documentation must include an
17 explanation of any differences between the required
18 performance as identified in the contract and the actual
19 performance of the contractor. Such documentation shall be
20 included in the official contract file.

21 Section 2. Section 215.4211, Florida Statutes, is
22 created to read:

23 215.4211 Review of contracts for state agencies.--The
24 Chief Financial Officer may request, as he or she deems
25 necessary, the option to review and provide comments prior to
26 the execution of any contract that is required to be in
27 compliance with the provisions identified in paragraph (4)(a)
28 of section 1 of this act.

29 Section 3. Section 14.203, Florida Statutes, is
30 repealed.

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1 Section 4. The sum of \$1 million is appropriated from
2 the General Revenue Fund to the Center for Efficient
3 Government in the Department of Management Services, and 8
4 full-time equivalent positions are authorized, to fund the
5 center for fiscal year 2005-2006.

6 Section 5. A contractor, as defined in chapter 287,
7 Florida Statutes, or its employees, agents, or subcontractors,
8 may not directly or indirectly supervise, direct, or act as an
9 approving authority over any state employee or the actions
10 committed to the responsibility of state employees.

11 Section 6. A contractor, as defined in chapter 287,
12 Florida Statutes, or its employees, agents, or subcontractors,
13 may not knowingly participate through decision, approval,
14 disapproval, recommendation, preparation of any part of a
15 purchase request, influencing the content of any specification
16 or procurement standard, rendering of advice, investigation,
17 or auditing, or in any other advisory capacity, in the
18 procurement of contractual services from an entity of which
19 the contractor, or its employees, agents, or subcontractors,
20 has a material interest.

21 Section 7. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1146
4 Repeals the State Council on Competitive Government, instead
5 of replacing it with the Center for Efficient Government.
6 Provides that the Center for Efficient Government will develop
7 standards and assist agencies in complying with the business
8 case and contract requirements of the section. The Center will
9 not initiate business cases or procurements.
10 Requires that agencies develop business cases with specific
11 requirements, and seek approval of the outsourcing via General
12 Appropriations Act or Legislative Budget Commission, depending
13 on the timing of the proposed outsourcing. Requires the
14 inclusion of specific terms on agency outsourcing contracts,
15 and that amendments to such contracts must be approved by
16 either the Executive Office of the Governor, or the
17 Administration Commission, depending on the circumstances.
18 Requires an agency to document and verify contractor
19 performance prior to extending or renewing a contract.
20 Requires that contract negotiators will be trained according
21 to DMS standards.
22 Provides that the CFO has the option to review and provide
23 comments prior to the execution of any contract that is
24 required to be in compliance with the provisions of paragraph
25 (4)(a) of section 1 of this act
26 Appropriates \$1 million and authorizes 8 FTEs for the Center
27 for Efficient Government for fiscal year 2005-2006.
28 Prohibits a contractor or its employees from supervising state
29 employees or working on procurements from entities in which
30 the contractor or its employees have an interest.
31 Appropriates \$1 million and authorizes 8 FTEs for the Center
 for Efficient Government for fiscal year 2005-2006.