

By the Committees on General Government Appropriations;  
Governmental Oversight and Productivity; and Senator  
Argenziano

601-1894-05

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 appropriations and  
2 authorizing positions; providing restrictions  
3 on contractor supervision of state employees;  
4 providing restrictions on contractor  
5 involvement in state procurement; providing an  
6 effective date.

7  
8 Be It Enacted by the Legislature of the State of Florida:  
9

10 Section 1. Center for Efficient Government;  
11 outsourcing or privatization; contract management.--

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

13 (a) "Agency" means the entities defined in section  
14 287.012(1), Florida Statutes.

15 (b) "Contractor" has the same meaning as in section  
16 287.012(8), Florida Statutes.

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

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

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

29 (f) "Service" means all or any portion of a program or  
30 program component as defined in section 216.011, Florida  
31 Statutes.

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.

31

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  
31

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 more for  
14 those contracts with a total value of at least \$250,000 but  
15 less than \$1 million;

16 2. The value of the contract by \$1 million or more for  
17 those contracts with a total value of at least \$1 million but  
18 less than \$10 million;

19 3. The value of the contract by 10 percent or more for  
20 those contracts with a total value of \$10 million or more; or

21 4. The term of the contract by 1 year or more.

22  
23 When an agency proposes any contract amendment that meets the  
24 criteria described in this paragraph, it shall submit the  
25 proposed contract amendment to the Executive Office of the  
26 Governor for approval and shall immediately notify the chairs  
27 of the legislative appropriations committees. The Executive  
28 Office of the Governor may not approve the proposed contract  
29 amendment until 14 days following receipt of the notification  
30 to the legislative appropriations chairs. If either chair of  
31 the legislative appropriations committee objects in writing to

1 a proposed contract amendment within the 14 days following  
2 notification and specifies the reasons for such objection, the  
3 Executive Office of the Governor shall disapprove the proposed  
4 contract amendment or shall submit the proposed contract  
5 amendment to the Administration Commission. The proposed  
6 contract amendment may be approved by the Administration  
7 Commission by a two-thirds vote of the members present with  
8 the Governor voting in the affirmative. In the absence of  
9 approval by the Administration Commission, the proposed  
10 contract amendment shall be automatically disapproved.  
11 Otherwise, upon approval by the Governor or Administration  
12 Commission, the agency may execute the contract amendment. An  
13 amendment that is issued under legislative direction,  
14 including funding adjustments annually provided for in the  
15 General Appropriations Act, need not be submitted for approval  
16 in accordance with this paragraph.

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

28 Section 2. Section 215.4211, Florida Statutes, is  
29 created to read:

30 215.4211 Review of contracts for state agencies.--The  
31 Chief Financial Officer may request, as he or she deems

1 necessary, the option to review and provide comments prior to  
2 the execution of any contract that is required to be in  
3 compliance with the provisions identified in paragraph (4)(a)  
4 of section 1 of this act.

5 Section 3. Section 14.203, Florida Statutes, is  
6 repealed.

7 Section 4. For the 2005-2006 fiscal year, \$500,000 in  
8 recurring funds from the General Revenue Fund and \$500,000 in  
9 recurring funds from the Grants and Donations Trust Fund are  
10 appropriated and eight positions are authorized in the  
11 Department of Management Services for the Center for Efficient  
12 Government. Such funds and positions are contingent on the  
13 appropriation of funds and positions in section 5.

14 Section 5. For the 2005-2006 fiscal year, there is  
15 appropriated \$356,250 in recurring funds from the General  
16 Revenue Fund and five positions are authorized in the  
17 Department of Financial Services for the review of contracts  
18 for state agencies. This appropriation represents 9 months'  
19 funding for the positions.

20 Section 6. For the 2005-2006 fiscal year, there is  
21 appropriated \$274,700 in nonrecurring funds from the Grants  
22 and Donations Trust Fund in the Department of Management  
23 Services for training costs for the certified negotiator  
24 designation for procurement contracting. Such funds represent  
25 335 training units. The Department of Management Services, in  
26 consultation with entities subject to this act, shall identify  
27 personnel to participate in this training based on requested  
28 need and ensuring that each agency is represented. The  
29 Department of Management Services is authorized to remit  
30 payment for this training on behalf of all personnel  
31 identified to participate.

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

6           Section 8. A contractor, as defined in chapter 287,  
7 Florida Statutes, or its employees, agents, or subcontractors,  
8 may not knowingly participate through decision, approval,  
9 disapproval, recommendation, preparation of any part of a  
10 purchase request, influencing the content of any specification  
11 or procurement standard, rendering of advice, investigation,  
12 or auditing, or in any other advisory capacity, in the  
13 procurement of contractual services from an entity of which  
14 the contractor, or its employees, agents, or subcontractors,  
15 has a material interest.

16           Section 9. This act shall take effect July 1, 2005.

17  
18                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
19                   COMMITTEE SUBSTITUTE FOR  
20                   CS for SB 1146

- 21 1. Revises monetary thresholds for which contract amendments  
22 are required to be approved by the Executive Office of  
the Governor.
- 23 2. Appropriates \$1 million and authorizes 8 positions for  
24 the Center for Efficient Government in the Department of  
Management Services (\$500,000, General Revenue Fund;  
25 \$500,000, Grants and Donations Trust Fund).
- 26 3. Appropriates \$356,250 from the General Revenue Fund and  
27 authorizes 5 positions to the Department of Financial  
Services for the review of contracts for agencies.
- 28 4. Appropriates \$274,700 from the Grants and Donations Trust  
29 Fund within the Department of Management Services for  
training of agency personnel in procurement contracting  
30 as certified negotiators.  
31