

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.

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8 Be It Enacted by the Legislature of the State of Florida:
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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 (g) The provisions of this section shall not apply to
2 contracts in support of the planning, development,
3 implementation, operation or maintenance of the road, bridge,
4 and public transportation construction program of the
5 Department of Transportation.

6 (2)(a) The Department of Management Services may
7 establish the Center for Efficient Government, which shall
8 promote best business practices in procurement and contracting
9 in order to allow state agencies to focus on their core
10 missions and to deliver services efficiently and
11 cost-effectively and, when validated, contract for services
12 that can be more effectively provided by the private sector.

13 (b) The center shall:

14 1. Assist agencies, when requested, in their
15 compliance with this section, which shall include, but need
16 not be limited to, developing and updating business cases and
17 solicitation documents, supporting contract negotiations,
18 contract drafting, change management, performance measurement,
19 and contract management.

20 2. Develop standards, processes, templates, and
21 guidelines that comply with the appropriate provisions of this
22 section for use by agencies.

23 3. Create and maintain a database of new and existing
24 state procurement initiatives, which must include, but need
25 not be limited to, those initiatives subject to this section.
26 At a minimum, the database must contain the following
27 information in regard to contractual services:

28 a. The agency name, the name and description of the
29 contractual service procured, and the names of the prime
30 contractor and any subcontractors.

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1 b. The projected and actual completion dates by
2 project phase.

3 c. A description of the performance standards
4 contained in the contract, projected performance, and actual
5 performance.

6 d. The projected costs and revenues, as applicable,
7 and actual costs and revenues.

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

12 (a) The agency shall develop a business case
13 describing and analyzing the function or service proposed for
14 outsourcing. A business case is part of the solicitation
15 process and is not a rule subject to challenge under section
16 120.54, Florida Statutes. The business case must include, but
17 need not be limited to:

18 1. A detailed description of the service to be
19 outsourced, a description and analysis of the agency's current
20 performance of the service, and a rationale documenting how
21 outsourcing the service would be in the best interest of the
22 state, the agency, or its clients.

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

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

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

9 a. Providing public access to public records at a cost
10 that does not exceed that provided in chapter 119, Florida
11 Statutes.

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

14 c. Meeting all legal requirements for retaining
15 records.

16 d. Transferring to the state, at no cost, all public
17 records in possession of the contractor upon termination of
18 the contract.

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

1 authority from the Legislative Budget Commission to
2 reestablish full-time positions above the number fixed by the
3 Legislature when a contract is terminated and the outsourced
4 service must be returned to the agency.

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

12 (b)1. If the agency proposes to outsource a service in
13 the next fiscal year, the agency shall submit the business
14 case along with the agency's final legislative budget request,
15 in the manner and form prescribed in the legislative budget
16 request instructions pursuant to section 16.023, Florida
17 Statutes. Prior to approval in the General Appropriations Act,
18 the agency may initiate the procurement process pursuant to
19 section 287.057, Florida Statutes, however, only upon approval
20 in the General Appropriations Act, may the agency complete
21 contract execution pursuant to section 287.057, Florida
22 Statutes.

23 2. If a proposed outsourcing initiative would require
24 integration with or would in any way affect other information
25 technology systems of the state, the agency shall submit the
26 feasibility study documentation as required by the
27 instructions for the legislative budget request under section
28 216.023, Florida Statutes.

29 (c) If the agency proposes to outsource a service
30 during a fiscal year and the outsourcing provision was not
31 included in the agency's approved operating budget, the agency

1 must provide to the Executive Office of the Governor, the
2 President of the Senate, the Speaker of the House of
3 Representatives, the chairs of the legislative appropriations
4 committees, and the chairs of the relevant substantive
5 committees the validated business case that complies with the
6 requirements of paragraph (a) at least 45 days before the
7 release of any solicitation documents, as provided in section
8 287.057, Florida Statutes. Any budgetary changes that are
9 inconsistent with the agency's approved budget may not be made
10 to existing programs unless such changes are recommended to
11 the Legislative Budget Commission by the Governor and the
12 Legislative Budget Commission expressly approves such program
13 changes.

14 (d) An agency may not privatize a service, as defined
15 in subsection (1), without specific authority provided for in
16 general law, the General Appropriations Act, legislation
17 implementing the General Appropriations Act, or a special
18 appropriations act.

19 (4)(a) In addition to the requirements of section
20 287.058, Florida Statutes, each contract for the procurement
21 of contractual services by an agency which meets or is in
22 excess of the threshold amount provided in section 287.017,
23 Florida Statutes, for CATEGORY FIVE, must include, but need
24 not be limited to:

25 1. A detailed scope of work that clearly specifies
26 each service or deliverable to be provided, including a
27 description of each deliverable or activity that is
28 quantifiable, measurable, and verifiable.

29 2. All service-level agreements describing all
30 services to be provided under the terms of the agreement, the
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1 agency's service requirements and performance objectives, and
2 specific responsibilities of the agency and 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 service from the agency to the contractor and operate the
9 service successfully.

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

12 a. Detailed measurable acceptance criteria for each
13 deliverable and service to be provided to the agency under the
14 terms of the contract which document the required performance
15 level.

16 b. A method for monitoring and reporting progress in
17 achieving specified performance standards and levels.

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

20 5. A requirement that the contractor maintain adequate
21 accounting records that comply with all applicable federal and
22 state laws and generally accepted accounting principles.

23 6. A requirement authorizing the agency to have access
24 to and conduct audits of all records related to the contract
25 and outsourced services.

26 7. A requirement that ownership of any intellectual
27 property that is critical for the assumption of the outsourced
28 service be transferred from the contractor to the agency if
29 the contractor ceases to provide the outsourced service.

30 8. A requirement describing the timing and substance
31 of all plans and status or progress reports that are to be

1 provided. All plans and status or progress reports must comply
2 with any relevant state and federal standards.

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

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

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

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

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

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

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1 11. A provision that the contractor annually submit
2 and verify pursuant to section 92.525, Florida Statutes, all
3 required financial statements.

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

12 (c) When the annualized value of a contract is in
13 excess of \$1 million, at least one of the persons conducting
14 negotiations must be certified as a contract negotiator based
15 upon standards established by the Department of Management
16 Services.

17 (d) An agency may not amend a contract without first
18 submitting the proposed contract amendment to the Executive
19 Office of the Governor for approval if the effect of the
20 amendment would be to increase:

21 1. The value of the contract by \$250,000 or more for
22 those contracts with a total value of at least \$250,000 but
23 less than \$1 million;

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

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

29 4. The term of the contract by 1 year or more.
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1 When an agency proposes any contract amendment that meets the
2 criteria described in this paragraph, it shall submit the
3 proposed contract amendment to the Executive Office of the
4 Governor for approval and shall immediately notify the chairs
5 of the legislative appropriations committees. The Executive
6 Office of the Governor may not approve the proposed contract
7 amendment until 14 days following receipt of the notification
8 to the legislative appropriations chairs. If either chair of
9 the legislative appropriations committee objects in writing to
10 a proposed contract amendment within the 14 days following
11 notification and specifies the reasons for such objection, the
12 Executive Office of the Governor shall disapprove the proposed
13 contract amendment or shall submit the proposed contract
14 amendment to the Administration Commission. The proposed
15 contract amendment may be approved by the Administration
16 Commission by a two-thirds vote of the members present with
17 the Governor voting in the affirmative. In the absence of
18 approval by the Administration Commission, the proposed
19 contract amendment shall be automatically disapproved.
20 Otherwise, upon approval by the Governor or Administration
21 Commission, the agency may execute the contract amendment. An
22 amendment that is issued under legislative direction,
23 including funding adjustments annually provided for in the
24 General Appropriations Act, need not be submitted for approval
25 in accordance with this paragraph.

26 (e) In addition to the requirements of sections
27 287.057(13) and (14), Florida Statutes, prior to the renewal
28 or extension of a contract an agency shall verify that all
29 specific direct and indirect costs, savings, performance
30 standards, and qualitative and quantitative benefits
31 identified in the original contract have been met by the

1 contractor and the agency. Such documentation must include an
2 explanation of any differences between the required
3 performance as identified in the contract and the actual
4 performance of the contractor. Such documentation shall be
5 included in the official contract file.

6 Section 2. Section 215.4211, Florida Statutes, is
7 created to read:

8 215.4211 Review of contracts for state agencies.--The
9 Chief Financial Officer may request, as he or she deems
10 necessary, the option to review and provide comments prior to
11 the execution of any contract that is required to be in
12 compliance with the provisions identified in paragraph (4)(a)
13 of section 1 of this act.

14 Section 3. Section 14.203, Florida Statutes, is
15 repealed.

16 Section 4. For the 2005-2006 fiscal year, \$500,000 in
17 recurring funds from the General Revenue Fund and \$500,000 in
18 recurring funds from the Grants and Donations Trust Fund are
19 appropriated and eight positions are authorized in the
20 Department of Management Services for the Center for Efficient
21 Government. Such funds and positions are contingent on the
22 appropriation of funds and positions in section 5.

23 Section 5. For the 2005-2006 fiscal year, there is
24 appropriated \$356,250 in recurring funds from the General
25 Revenue Fund and five positions are authorized in the
26 Department of Financial Services for the review of contracts
27 for state agencies. This appropriation represents 9 months'
28 funding for the positions.

29 Section 6. For the 2005-2006 fiscal year, there is
30 appropriated \$274,700 in nonrecurring funds from the Grants
31 and Donations Trust Fund in the Department of Management

1 Services for training costs for the certified negotiator
2 designation for procurement contracting. Such funds represent
3 335 training units. The Department of Management Services, in
4 consultation with entities subject to this act, shall identify
5 personnel to participate in this training based on requested
6 need and ensuring that each agency is represented. The
7 Department of Management Services is authorized to remit
8 payment for this training on behalf of all personnel
9 identified to participate.

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

15 Section 8. A contractor, as defined in chapter 287,
16 Florida Statutes, or its employees, agents, or subcontractors,
17 may not knowingly participate through decision, approval,
18 disapproval, recommendation, preparation of any part of a
19 purchase request, influencing the content of any specification
20 or procurement standard, rendering of advice, investigation,
21 or auditing, or in any other advisory capacity, in the
22 procurement of contractual services from an entity of which
23 the contractor, or its employees, agents, or subcontractors,
24 has a material interest.

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