

By the Committees on Health and Human Services Appropriations; Governmental Oversight and Productivity; Children and Families; and Senators Campbell and Margolis

603-1895-05

1   A bill to be entitled  
2            An act relating to the Department of Children  
3            and Family Services; providing legislative  
4            intent with respect to establishing a structure  
5            by which the department shall monitor and  
6            manage contracts with external service  
7            providers; providing definitions; requiring the  
8            department to competitively procure certain  
9            commodities and contractual services; requiring  
10           the department to allow all public  
11           postsecondary institutions to bid on contracts  
12           intended for any public postsecondary  
13           institution; authorizing the department to  
14           competitively procure and contract for systems  
15           of treatment or service that involve multiple  
16           providers; providing requirements if other  
17           governmental entities contribute matching  
18           funds; requiring that an entity providing  
19           matching funds must comply with certain  
20           procurement procedures; authorizing the  
21           department to independently procure and  
22           contract for treatment services; requiring that  
23           the department develop a validated business  
24           case before outsourcing any service or  
25           function; providing requirements for the  
26           business case; requiring that the validated  
27           business case be submitted to the Legislature  
28           for approval; requiring that a contractual  
29           service that has previously been outsourced be  
30           subject to the requirements for a validated  
31           business case; requiring that a procurement of

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 contractual services equal to or in excess of  
2 the threshold amount for CATEGORY FIVE comply  
3 with specified requirements, including a scope  
4 of work and performance standards; authorizing  
5 the department to adopt incremental penalties  
6 by rule; authorizing the department to include  
7 cost-neutral, performance-based incentives in a  
8 contract; requiring multiyear contracts unless  
9 justification is provided; requiring that a  
10 contract in excess of \$1 million be negotiated  
11 by a contract negotiator who is certified  
12 according to standards established by the  
13 Department of Management Services; limiting  
14 circumstances under which the department may  
15 amend a contract; requiring that a proposed  
16 contract amendment be submitted to the  
17 Executive Office of the Governor for approval;  
18 requiring approval of a contract amendment by  
19 the Administration Commission under certain  
20 circumstances; requiring the department to  
21 verify that contractual terms have been  
22 satisfied before renewing a contract; requiring  
23 certain documentation; requiring the department  
24 to develop, in consultation with the Department  
25 of Management Services, contract templates and  
26 guidelines; requiring that the department  
27 establish a contract-management process;  
28 specifying the requirements for and components  
29 of the contract-management process; providing  
30 requirements for resolving performance  
31 deficiencies and terminating a contract;

1 requiring a corrective-action plan under  
2 certain circumstances; requiring the department  
3 to develop standards of conduct and  
4 disciplinary actions; requiring that the  
5 department establish contract-monitoring units  
6 and a contract-monitoring process; requiring  
7 written reports; requiring on-site visits for  
8 contracts involving the provision of direct  
9 client services; requiring the department to  
10 make certain documents available to the  
11 Legislature; requiring the department to create  
12 an electronic database to store the documents;  
13 prohibiting contractors from performing certain  
14 functions; amending s. 402.73, F.S.; requiring  
15 the Agency for Persons with Disabilities to  
16 implement systems to ensure quality and fiscal  
17 integrity of programs in the developmental  
18 services Medicaid waiver system; providing an  
19 exemption for health services from competitive  
20 bidding requirements; amending s. 409.1671,  
21 F.S.; conforming provisions to changes made by  
22 the act; requiring that the Office of Program  
23 Policy Analysis and Government Accountability  
24 conduct two reviews of the contract-management  
25 and accountability structures of the department  
26 and report to the Legislature and the Auditor  
27 General; repealing s. 402.72, F.S., relating to  
28 contract-management requirements for the  
29 Department of Children and Family Services;  
30 providing an appropriation; providing an  
31 effective date.

1 Be It Enacted by the Legislature of the State of Florida:

2  
3 Section 1. Department of Children and Family Services;  
4 procurement of contractual services; outsourcing or  
5 privatization; contract management.--

6 (1) LEGISLATIVE INTENT.--The Legislature intends that  
7 the Department of Children and Family Services obtain services  
8 in the manner that is most efficient and cost-effective for  
9 the state, that provides the greatest long-term benefits to  
10 the clients receiving services, and that minimizes the  
11 disruption of client services. In order to meet these  
12 legislative goals, the department shall comply with  
13 legislative policy guidelines that require compliance with  
14 uniform procedures for procuring contractual services,  
15 prescribe how the department must outsource its programmatic  
16 and administrative services to external service providers  
17 rather than having them provided by the department or another  
18 state agency, and establish a contract-management and  
19 contract-monitoring process.

20 (2) DEFINITIONS.--As used in this section, the term:

21 (a) "Contract manager" means the department employee  
22 who is responsible for enforcing the compliance with  
23 administrative and programmatic terms and conditions of a  
24 contract. The contract manager is the primary point of contact  
25 through which all contracting information flows between the  
26 department and the contractor. The contract manager is  
27 responsible for day-to-day contract oversight, including  
28 approval of contract deliverables and invoices. All actions  
29 related to the contract shall be initiated by or coordinated  
30 with the contract manager. The contract manager maintains the  
31 official contract files.

1           (b) "Contract monitor" means the department employee  
2 who is responsible for observing, recording, and reporting to  
3 the contract manager and other designated entities the  
4 information necessary to assist the contract manager and  
5 program management in determining whether the contractor is in  
6 compliance with the administrative and programmatic terms and  
7 conditions of the contract.

8           (c) "Department" means the Department of Children and  
9 Family Services.

10           (d) "Outsourcing" means the process of contracting  
11 with an external service provider to provide a service, in  
12 whole or in part, while the department retains the  
13 responsibility and accountability for the service.

14           (e) "Performance measure" means the quantitative  
15 indicators used to assess if the service the external provider  
16 is performing is achieving the desired results. Measures of  
17 performance include outputs, direct counts of program  
18 activities, and outcomes or results of program activities in  
19 the lives of the clients served.

20           (f) "Performance standard" means the quantifiable,  
21 specified, and desired level to be achieved for a particular  
22 performance measure.

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

28           (h) "Service" means all or any portion of a program or  
29 program component as defined in section 216.011.

30           (3) PROCUREMENT OF COMMODITIES AND CONTRACTUAL  
31 SERVICES.--

1        (a) For the purchase of commodities and contractual  
2 services in excess of the threshold amount established in  
3 section 287.017, Florida Statutes, for CATEGORY TWO, the  
4 department shall comply with the requirements set forth in  
5 section 287.057, Florida Statutes.

6        (b) Notwithstanding section 287.057(5)(f)13., Florida  
7 Statutes, whenever the department intends to contract with a  
8 public postsecondary institution to provide a service, the  
9 department must allow all public postsecondary institutions in  
10 this state that are accredited by the Southern Association of  
11 Colleges and Schools to bid on the contract. Thereafter,  
12 notwithstanding any other provision to the contrary, if a  
13 public postsecondary institution intends to subcontract for  
14 any service awarded in the contract, the subcontracted service  
15 must be procured by competitive procedures.

16        (c) When it is in the best interest of a defined  
17 segment of its consumer population, the department may  
18 competitively procure and contract for systems of treatment or  
19 service that involve multiple providers, rather than procuring  
20 and contracting for treatment or services separately from each  
21 participating provider. The department must ensure that all  
22 providers that participate in the treatment or service system  
23 meet all applicable statutory, regulatory, service-quality,  
24 and cost-control requirements. If other governmental entities  
25 or units of special purpose government contribute matching  
26 funds to the support of a given system of treatment or  
27 service, the department shall formally request information  
28 from those funding entities in the procurement process and may  
29 take the information received into account in the selection  
30 process. If a local government contributes matching funds to  
31 support the system of treatment or contracted service and if

1 the match constitutes at least 25 percent of the value of the  
2 contract, the department shall afford the governmental match  
3 contributor an opportunity to name an employee as one of the  
4 persons required by section 287.057(17), Florida Statutes, to  
5 evaluate or negotiate certain contracts, unless the department  
6 sets forth in writing the reason why the inclusion would be  
7 contrary to the best interest of the state. Any employee so  
8 named by the governmental match contributor shall qualify as  
9 one of the persons required by section 287.057(17), Florida  
10 Statutes. A governmental entity or unit of special purpose  
11 government may not name an employee as one of the persons  
12 required by section 287.057(17), Florida Statutes, if it, or  
13 any of its political subdivisions, executive agencies, or  
14 special districts, intends to compete for the contract to be  
15 awarded. The governmental funding entity or contributor of  
16 matching funds must comply with all procurement procedures set  
17 forth in section 287.057, Florida Statutes, when appropriate  
18 and required.

19 (d) The department may procure and contract for or  
20 provide assessment and case-management services independently  
21 from treatment services.

22 (4) SOURCING STANDARDS AND REQUIREMENTS.--If the  
23 department proposes to outsource a service, the department  
24 must comply with the requirements of this section prior to the  
25 procurement process provided for in section 287.057, Florida  
26 Statutes.

27 (a) The department shall develop a business case  
28 describing and analyzing the service proposed for outsourcing.  
29 A business case is part of the solicitation process and is not  
30 a rule subject to challenge pursuant to section 120.54,  
31

1 Florida Statutes. The business case must include, but need not  
2 be limited to:

3 1. A detailed description of the services to be  
4 outsourced, a description and analysis of the department's  
5 current performance of the service, and a rationale  
6 documenting how outsourcing the service would be in the best  
7 interest of the state, the department, and its clients.

8 2. A cost-benefit analysis documenting the estimated  
9 specific direct and indirect costs, savings, performance  
10 improvements, risks, and qualitative and quantitative benefits  
11 involved in or resulting from outsourcing the service. The  
12 cost-benefit analysis must include a detailed plan and  
13 timeline identifying all actions that must be implemented to  
14 realize expected benefits. Under section 92.525, Florida  
15 Statutes, the Secretary of Children and Family Services shall  
16 verify that all costs, savings, and benefits are valid and  
17 achievable.

18 3. A description of the specific performance measures  
19 and standards that must be achieved through the outsourcing  
20 proposal.

21 4. A statement of the potential effect on applicable  
22 federal, state, and local revenues and expenditures. The  
23 statement must specifically describe the effect on general  
24 revenue, trust funds, general revenue service charges, and  
25 interest on trust funds, together with the potential direct or  
26 indirect effect on federal funding and cost allocations.

27 5. A plan to ensure compliance with public-record  
28 laws, which must include components that:

29 a. Provide public access to public records at a cost  
30 that does not exceed that provided in chapter 119, Florida  
31 Statutes.



1           b. Ensure the confidentiality of records that are  
2 exempt from disclosure or confidential under law.

3           c. Meet all legal requirements for record retention.

4           d. Allow for transfer to the state, at no cost, all  
5 public records in possession of the external service provider  
6 upon termination of the contract.

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

25           7. A listing of assets proposed for transfer to or use  
26 by the external service provider, a description of the  
27 proposed requirements for maintenance of those assets by the  
28 external service provider or the department in accordance with  
29 chapter 273, Florida Statutes, a plan for their disposition  
30 upon termination of the contract, and a description of how the  
31

1 planned asset transfer or use by the contractor is in the best  
2 interest of the department and the state.

3 (b)1. If the department proposes to outsource the  
4 service in the next fiscal year, the department shall submit  
5 the business case with the department's final legislative  
6 budget request, in the manner and form prescribed in the  
7 legislative budget request instructions under section 216.023,  
8 Florida Statutes. Upon approval in the General Appropriations  
9 Act, the department may initiate and complete the procurement  
10 process under section 287.057, Florida Statutes, and shall  
11 have the authority to enter into contracts with the external  
12 service provider.

13 2. If a proposed outsourcing initiative would require  
14 integration with, or would in any way affect other state  
15 information technology systems, the department shall submit  
16 the feasibility study documentation required by the  
17 legislative budget request instructions under section 216.023,  
18 Florida Statutes.

19 (c) If the department proposes to outsource a service  
20 during a fiscal year and the outsourcing provision was not  
21 included in the approved operating budget of the department,  
22 the department must provide to the Governor, the President of  
23 the Senate, the Speaker of the House of Representatives, the  
24 chairs of the legislative appropriations committees, and the  
25 chairs of the relevant substantive committees the business  
26 case that complies with the requirements of paragraph (a) at  
27 least 45 days before the release of any solicitation  
28 documents, as provided for in section 287.057, Florida  
29 Statutes. Any budgetary changes that are inconsistent with the  
30 department's approved budget may not be made to existing  
31 programs unless the changes are recommended to the Legislative

1 Budget Commission by the Governor and the Legislative Budget  
2 Commission expressly approves the program changes.

3 (d) The department may not privatize a service without  
4 specific authority provided in general law, the General  
5 Appropriations Act, legislation implementing the General  
6 Appropriations Act, or a special appropriations act.

7 (5) CONTRACTING AND PERFORMANCE MEASURES.--In addition  
8 to the requirements of section 287.058, Florida Statutes,  
9 every procurement of contractual services by the department  
10 which meets or is in excess of the threshold amount provided  
11 in section 287.017, Florida Statutes, for CATEGORY FIVE, must  
12 comply with the requirements of this subsection.

13 (a) The department shall execute a contract containing  
14 all provisions and conditions, which must include, but need  
15 not be limited to:

16 1. A detailed scope of work that clearly specifies  
17 each service and deliverable to be provided, including a  
18 description of each deliverable or activity that is  
19 quantifiable, measurable, and verifiable by the department and  
20 the contractor.

21 2. Associated costs and savings, specific payment  
22 terms and payment schedules, including incentive and penalty  
23 provisions, criteria governing payment, and a clear and  
24 specific schedule to complete all required activities needed  
25 to transfer the service from the state to the contractor.

26 3. Clear and specific identification of all required  
27 performance measures and standards, which must, at a minimum,  
28 include:

29 a. Acceptance criteria for each deliverable and  
30 service to be provided to the department under the terms of  
31 the contract which document, to the greatest extent possible,

1 the required performance level. Acceptance criteria must be  
2 detailed, clear, and unambiguous and shall be used to measure  
3 deliverables and services to be provided under the contract.

4 b. A method for monitoring and reporting progress in  
5 achieving specified performance standards and levels.

6 c. The sanctions or penalties that shall be assessed  
7 for contract or state nonperformance. The department may  
8 adopt, by rule, provisions for including in its contracts  
9 incremental penalties to be imposed by its contract managers  
10 on a contractor due to the contractor's failure to comply with  
11 a requirement for corrective action. Any financial penalty  
12 that is imposed upon a contractor may not be paid from funds  
13 being used to provide services to clients, and the contractor  
14 may not reduce the amount of services being delivered to  
15 clients as a method for offsetting the effect of the penalty.  
16 If a financial penalty is imposed upon a contractor that is a  
17 corporation, the department shall notify, at a minimum, the  
18 board of directors of the corporation. The department may  
19 notify any additional parties that the department believes may  
20 be helpful in obtaining the corrective action that is being  
21 sought. In addition, the rules adopted by the department must  
22 include provisions that permit the department to deduct the  
23 financial penalties from funds that would otherwise be due to  
24 the contractor, not to exceed 10 percent of the amount that  
25 otherwise would be due to the contractor for the period of  
26 noncompliance. If the department imposes a financial penalty,  
27 it shall advise the contractor in writing of the cause for the  
28 penalty. A failure to include such deductions in a request for  
29 payment constitutes grounds for the department to reject that  
30 request for payment. The remedies identified in this paragraph  
31 do not limit or restrict the department's application of any

1 other remedy available to it in the contract or under law. The  
2 remedies described in this paragraph may be cumulative and may  
3 be assessed upon each separate failure to comply with  
4 instructions from the department to complete corrective  
5 action.

6 4. A requirement that the contractor maintain adequate  
7 accounting records that comply with all applicable federal and  
8 state laws and generally accepted accounting principles.

9 5. A requirement authorizing the department and state  
10 to have access to and conduct audits of all records related to  
11 the contract and outsourced services.

12 6. A requirement that ownership of any intellectual  
13 property developed in the course of, or as a result of, work  
14 or services performed under the contract shall transfer to the  
15 state if the contractor ceases to provide the outsourced  
16 service.

17 7. A requirement describing the timing and substance  
18 of all plans and status or progress reports that are to be  
19 provided. All plans and status or progress reports must comply  
20 with any relevant state and federal standards for planning,  
21 implementation, operations, and oversight.

22 8. A requirement that the contractor shall comply with  
23 public-record laws. The contractor shall:

24 a. Keep and maintain the public records that  
25 ordinarily and necessarily would be required by the department  
26 to perform the service.

27 b. Provide public access to such public records on the  
28 same terms and conditions that the department would and at a  
29 cost that does not exceed that provided in chapter 119.

30 c. Ensure the confidentiality of records that are  
31 exempt from disclosure or confidential under law.

1           d. Meet all legal and auditing requirements for record  
2 retention, and transfer to the state, at no cost to the state,  
3 all public records in possession of the contractor upon  
4 termination of the contract. All records stored electronically  
5 must be provided to the state in the format compatible with  
6 state information technology systems.

7           9. A requirement that any state funds provided for the  
8 purchase of or improvements to real property are contingent  
9 upon the contractor granting to the state a security interest  
10 in the property which is at least equal to the amount of the  
11 state funds provided for at least 5 years following the date  
12 of purchase or the completion of the improvements or as  
13 further required by law. The contract must include a provision  
14 that, as a condition of receipt of state funding for this  
15 purpose, the contractor agrees that, if it disposes of the  
16 property before the department's interest is vacated, the  
17 contractor must refund the proportionate share of the state's  
18 initial investment, as adjusted by depreciation.

19           10. A provision that the contractor annually submit  
20 and verify, under section 92.525, Florida Statutes, all  
21 required financial statements.

22           11. A provision that the contractor will be held  
23 responsible and accountable for all work covered under the  
24 contract including any work performed by subcontractors. The  
25 contract must state that the department may monitor the  
26 performance of any subcontractor.

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. The 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 the performance  
3 standards.

4 (c) The department shall review the time period for  
5 which it executes contracts and shall execute multiyear  
6 contracts to make the most efficient use of the resources  
7 devoted to contract processing and execution. Whenever the  
8 department chooses not to use a multiyear contract, a  
9 justification for that decision must be contained in the  
10 contract.

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

16 (e) The department may not amend a contract without  
17 first submitting the proposed contract amendment to the  
18 Executive Office of the Governor for approval if the effect of  
19 the amendment would be to increase:

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

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

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

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

29  
30 When the department proposes any contract amendment that meets  
31 the criteria described in this paragraph, it shall submit the

1 proposed contract amendment to the Executive Office of the  
2 Governor for approval and shall immediately notify the chairs  
3 of the legislative appropriations committees. The Executive  
4 Office of the Governor may not approve the proposed contract  
5 amendment until 14 days following receipt of the notification  
6 to the legislative appropriations chairs. If either chair of  
7 the legislative appropriations committees objects in writing  
8 to a proposed contract amendment within 14 days following  
9 notification and specifies the reasons for the objection, the  
10 Executive Office of the Governor shall disapprove the proposed  
11 contract amendment or shall submit the proposed contract  
12 amendment to the Administration Commission. The proposed  
13 contract amendment may be approved by the Administration  
14 Commission by a two-thirds vote of the members present with  
15 the Governor voting in the affirmative. In the absence of  
16 approval by the commission, the proposed contract amendment  
17 shall be automatically disapproved. Otherwise, upon approval  
18 by the Governor or Administration Commission, the department  
19 may execute the contract amendment.

20       (f) An amendment that is issued under legislative  
21 direction, including funding adjustments annually provided for  
22 in the General Appropriations Act or the federal  
23 appropriations acts, need not be submitted for approval in  
24 accordance with paragraph (d).

25       (g) In addition to the requirements of subsections  
26 287.057(13) and (14), Florida Statutes, the department shall  
27 verify, based on the best available data at the point of  
28 contract renegotiations, that all specific direct and indirect  
29 costs, savings, performance measures and standards, and  
30 qualitative and quantitative benefits identified in the  
31 original contract have been satisfied by a contractor or the



1 department before the contract is extended or renewed. The  
2 documentation must include an explanation of any differences  
3 between the required performance as identified in the contract  
4 and the actual performance of the contractor. The  
5 documentation must be included in the official contract file.

6 (h) The department shall, in consultation with the  
7 Department of Management Services, develop contract templates  
8 and guidelines that define the mandatory contract provisions  
9 and other requirements identified in this subsection and that  
10 must be used for all contractual service contracts meeting the  
11 requirements of this subsection. All contract templates and  
12 guidelines shall be developed by September 30, 2005.

13 (6) CONTRACT-MANAGEMENT REQUIREMENTS AND  
14 PROCESS.--Notwithstanding section 287.057(15), Florida  
15 Statutes, the department is responsible for establishing a  
16 contract-management process that requires a member of the  
17 department's Senior Management Service to assign in writing  
18 the responsibility of a contract to a contract manager. The  
19 department shall maintain a set of procedures describing its  
20 contract-management process which must minimally include the  
21 following requirements:

22 (a) The contract manager shall maintain the official  
23 contract file throughout the duration of the contract and for  
24 a period not less than 6 years after the termination of the  
25 contract.

26 (b) The contract manager shall review all invoices for  
27 compliance with the criteria and payment schedule provided for  
28 in the contract and shall approve payment of all invoices  
29 before their transmission to the Department of Financial  
30 Services for payment. Only the contract manager shall approve  
31 the invoices for a specific contract, unless the contract

1 manager is temporarily unavailable to review an invoice. The  
2 contract file must contain an explanation for any periods of  
3 temporary unavailability of the assigned contract manager. For  
4 any individual invoice in excess of \$500,000, a member of the  
5 Selected Exempt Service or Senior Management Service shall  
6 also sign payment approval of the invoice. For any individual  
7 invoice in excess of \$1 million, a member of the Senior  
8 Management Service shall also sign payment approval of the  
9 invoice.

10 (c) The contract manager shall maintain a schedule of  
11 payments and total amounts disbursed and shall periodically  
12 reconcile the records with the state's official accounting  
13 records.

14 (d) For contracts involving the provision of direct  
15 client services, the contract manager shall periodically visit  
16 the physical location where the services are delivered and  
17 speak directly to clients receiving the services and the staff  
18 responsible for delivering the services.

19 (e) For contracts for which the contractor is a  
20 corporation, the contract manager shall attend at least one  
21 board meeting semiannually, if held and if within 100 miles of  
22 the contract manager's official headquarters.

23 (f) The contract manager shall meet at least once a  
24 month directly with the contractor's representative and  
25 maintain records of such meetings.

26 (g) The contract manager shall periodically document  
27 any differences between the required performance measures and  
28 the actual performance measures. If a contractor fails to meet  
29 and comply with the performance measures established in the  
30 contract, the department may allow a reasonable period for the  
31 contractor to correct performance deficiencies. If performance

1 deficiencies are not resolved to the satisfaction of the  
2 department within the prescribed time, and if no extenuating  
3 circumstances can be documented by the contractor to the  
4 department's satisfaction, the department must terminate the  
5 contract. The department may not enter into a new contract  
6 with that same contractor for the services for which the  
7 contract was previously terminated for a period of at least 24  
8 months after the date of termination. The contract manager  
9 shall obtain and enforce corrective-action plans, if  
10 appropriate, and maintain records regarding the completion or  
11 failure to complete corrective-action items.

12 (h) The contract manager shall document any contract  
13 modifications, which shall include recording any contract  
14 amendments as provided for in this section.

15 (i) The contract manager shall be properly trained  
16 before being assigned responsibility for any contract.

17  
18 The department shall develop standards of conduct and a range  
19 of disciplinary actions for its employees which are  
20 specifically related to carrying out contract-management  
21 responsibilities.

22 (7) CONTRACT-MONITORING REQUIREMENTS AND PROCESS.--The  
23 department shall establish contract-monitoring units staffed  
24 by full-time career service employees who report to a member  
25 of the Select Exempt Service or Senior Management Service and  
26 who have been properly trained to perform contract monitoring.  
27 A member of the Senior Management Service shall assign in  
28 writing a specific contract to a contract-monitoring unit,  
29 with at least one member of the contract-monitoring unit  
30 possessing specific knowledge and experience in the contract's  
31 program area. The department shall establish a

1 contract-monitoring process that must include, but need not be  
2 limited to, the following requirements:

3 (a) Performing a risk assessment at the start of each  
4 fiscal year and preparing an annual contract-monitoring  
5 schedule that includes consideration for the level of risk  
6 assigned. The department may monitor any contract at any time  
7 regardless of whether such monitoring was originally included  
8 in the annual contract-monitoring schedule.

9 (b) Preparing a contract-monitoring plan, including  
10 sampling procedures, before performing on-site monitoring at  
11 external locations of a service provider. The plan must  
12 include a description of the programmatic, fiscal, and  
13 administrative components that will be monitored on-site. If  
14 appropriate, clinical and therapeutic components may be  
15 included.

16 (c) Conducting analyses of the performance and  
17 compliance of an external service provider by means of desk  
18 reviews if the external service provider will not be monitored  
19 on-site during a fiscal year.

20 (d) Unless the department sets forth in writing the  
21 need for an extension, providing a written report presenting  
22 the results of the monitoring within 30 days after the  
23 completion of the on-site monitoring or desk review. Report  
24 extensions may not exceed 30 days after the original  
25 completion date. The department shall develop and use a  
26 standard contract-monitoring report format and shall provide  
27 access to the reports by means of a website that is available  
28 to the Legislature.

29 (e) For contracts involving the provision of direct  
30 client services, requiring the contract monitor to visit the  
31 physical location where the services are being delivered and

1 to speak directly to the clients receiving the services and  
2 with the staff responsible for delivering the services.

3 (f) Developing and maintaining a set of procedures  
4 describing the contract-monitoring process.

5  
6 The department shall develop standards of conduct and a range  
7 of disciplinary actions for its employees which are  
8 specifically related to carrying out contract-monitoring  
9 responsibilities.

10 (8) CONTRACTOR PROHIBITIONS.--

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

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

26 (9) REPORTS TO THE LEGISLATURE.--Beginning October 1,  
27 2005, the department shall make available to the Legislature  
28 electronically all documents associated with the procurement  
29 and contracting functions of the department. The documents in  
30 the database must include, but are not limited to, all:

31 (a) Business cases;

- 1           (b) Procurement documents;  
2           (c) Contracts and any related files, attachments, or  
3 amendments;  
4           (d) Contract monitoring reports;  
5           (e) Corrective action plans and reports of corrective  
6 actions taken when contractor performance deficiencies are  
7 identified; and  
8           (f) Status reports on all outsourcing initiatives  
9 describing the progress by the department towards achieving  
10 the business objectives, costs, savings, and quantifiable  
11 benefits identified in the business case.

12           Section 2. Section 402.73, Florida Statutes, is  
13 amended to read:

14           402.73 Contracting and performance standards.--

15           ~~(1) The Department of Children and Family Services~~  
16 ~~shall establish performance standards for all contracted~~  
17 ~~client services. Notwithstanding s. 287.057(5)(f), the~~  
18 ~~department must competitively procure any contract for client~~  
19 ~~services when any of the following occurs:~~

20           ~~(a) The provider fails to meet appropriate performance~~  
21 ~~standards established by the department after the provider has~~  
22 ~~been given a reasonable opportunity to achieve the established~~  
23 ~~standards.~~

24           ~~(b) A new program or service has been authorized and~~  
25 ~~funded by the Legislature and the annual value of the contract~~  
26 ~~for such program or service is \$300,000 or more.~~

27           ~~(c) The department has concluded, after reviewing~~  
28 ~~market prices and available treatment options, that there is~~  
29 ~~evidence that the department can improve the performance~~  
30 ~~outcomes produced by its contract resources. At a minimum, the~~  
31 ~~department shall review market prices and available treatment~~

1 ~~options biennially. The department shall compile the results~~  
2 ~~of the biennial review and include the results in its annual~~  
3 ~~performance report to the Legislature pursuant to chapter~~  
4 ~~94-249, Laws of Florida. The department shall provide notice~~  
5 ~~and an opportunity for public comment on its review of market~~  
6 ~~prices and available treatment options.~~

7 ~~(2) The competitive requirements of subsection (1)~~  
8 ~~must be initiated for each contract that meets the criteria of~~  
9 ~~this subsection, unless the secretary makes a written~~  
10 ~~determination that particular facts and circumstances require~~  
11 ~~deferral of the competitive process. Facts and circumstances~~  
12 ~~must be specifically described for each individual contract~~  
13 ~~proposed for deferral and must include one or more of the~~  
14 ~~following:~~

15 ~~(a) An immediate threat to the health, safety, or~~  
16 ~~welfare of the department's clients.~~

17 ~~(b) A threat to appropriate use or disposition of~~  
18 ~~facilities that have been financed in whole, or in substantial~~  
19 ~~part, through contracts or agreements with a state agency.~~

20 ~~(c) A threat to the service infrastructure of a~~  
21 ~~community which could endanger the well being of the~~  
22 ~~department's clients.~~

23  
24 ~~Competitive procurement of client services contracts that meet~~  
25 ~~the criteria in subsection (1) may not be deferred for longer~~  
26 ~~than 1 year.~~

27 ~~(3) The Legislature intends that the department obtain~~  
28 ~~services in the manner that is most cost effective for the~~  
29 ~~state, that provides the greatest long term benefits to the~~  
30 ~~clients receiving services, and that minimizes the disruption~~  
31 ~~of client services. In order to meet these legislative goals,~~

1 | ~~the department may adopt rules providing procedures for the~~  
2 | ~~competitive procurement of contracted client services which~~  
3 | ~~represent an alternative to the request for proposal or~~  
4 | ~~invitation to bid process. The alternative competitive~~  
5 | ~~procedures shall permit the department to solicit professional~~  
6 | ~~qualifications from prospective providers and to evaluate such~~  
7 | ~~statements of qualification before requesting service~~  
8 | ~~proposals. The department may limit the firms invited to~~  
9 | ~~submit service proposals to only those firms that have~~  
10 | ~~demonstrated the highest level of professional capability to~~  
11 | ~~provide the services under consideration, but may not invite~~  
12 | ~~fewer than three firms to submit service proposals, unless~~  
13 | ~~fewer than three firms submitted satisfactory statements of~~  
14 | ~~qualification. The alternative procedures must, at a minimum,~~  
15 | ~~allow the department to evaluate competing proposals and~~  
16 | ~~select the proposal that provides the greatest benefit to the~~  
17 | ~~state while considering the quality of the services,~~  
18 | ~~dependability, and integrity of the provider, the~~  
19 | ~~dependability of the provider's services, the experience of~~  
20 | ~~the provider in serving target populations or client groups~~  
21 | ~~substantially identical to members of the target population~~  
22 | ~~for the contract in question, and the ability of the provider~~  
23 | ~~to secure local funds to support the delivery of services,~~  
24 | ~~including, but not limited to, funds derived from local~~  
25 | ~~governments. These alternative procedures need not conform to~~  
26 | ~~the requirements of s. 287.042 or s. 287.057(1) or (2).~~

27 |       ~~(4) The department shall review the period for which~~  
28 | ~~it executes contracts and, to the greatest extent practicable,~~  
29 | ~~shall execute multiyear contracts to make the most efficient~~  
30 | ~~use of the resources devoted to contract processing and~~  
31 | ~~execution.~~



1           ~~(5) When it is in the best interest of a defined~~  
2 ~~segment of its consumer population, the department may~~  
3 ~~competitively procure and contract for systems of treatment or~~  
4 ~~service that involve multiple providers, rather than procuring~~  
5 ~~and contracting for treatment or services separately from each~~  
6 ~~participating provider. The department must ensure that all~~  
7 ~~providers that participate in the treatment or service system~~  
8 ~~meet all applicable statutory, regulatory, service quality,~~  
9 ~~and cost control requirements. If other governmental entities~~  
10 ~~or units of special purpose government contribute matching~~  
11 ~~funds to the support of a given system of treatment or~~  
12 ~~service, the department shall formally request information~~  
13 ~~from those funding entities in the procurement process and may~~  
14 ~~take the information received into account in the selection~~  
15 ~~process. If a local government contributes match to support~~  
16 ~~the system of treatment or contracted service and if the match~~  
17 ~~constitutes at least 25 percent of the value of the contract,~~  
18 ~~the department shall afford the governmental match contributor~~  
19 ~~an opportunity to name an employee as one of the persons~~  
20 ~~required by s. 287.057(17) to evaluate or negotiate certain~~  
21 ~~contracts, unless the department sets forth in writing the~~  
22 ~~reason why such inclusion would be contrary to the best~~  
23 ~~interest of the state. Any employee so named by the~~  
24 ~~governmental match contributor shall qualify as one of the~~  
25 ~~persons required by s. 287.057(17). No governmental entity or~~  
26 ~~unit of special purpose government may name an employee as one~~  
27 ~~of the persons required by s. 287.057(17) if it, or any of its~~  
28 ~~political subdivisions, executive agencies, or special~~  
29 ~~districts, intends to compete for the contract to be awarded.~~  
30 ~~The governmental funding entity or match contributor shall~~  
31 ~~comply with any deadlines and procurement procedures~~

1 ~~established by the department. The department may also involve~~  
2 ~~nongovernmental funding entities in the procurement process~~  
3 ~~when appropriate.~~

4 ~~(6) The department may contract for or provide~~  
5 ~~assessment and case management services independently from~~  
6 ~~treatment services.~~

7 ~~(7) The department shall adopt, by rule, provisions~~  
8 ~~for including in its contracts incremental penalties to be~~  
9 ~~imposed by its contract managers on a service provider due to~~  
10 ~~the provider's failure to comply with a requirement for~~  
11 ~~corrective action. Any financial penalty that is imposed upon~~  
12 ~~a provider may not be paid from funds being used to provide~~  
13 ~~services to clients, and the provider may not reduce the~~  
14 ~~amount of services being delivered to clients as a method for~~  
15 ~~offsetting the impact of the penalty. If a financial penalty~~  
16 ~~is imposed upon a provider that is a corporation, the~~  
17 ~~department shall notify, at a minimum, the board of directors~~  
18 ~~of the corporation. The department may notify, at its~~  
19 ~~discretion, any additional parties that the department~~  
20 ~~believes may be helpful in obtaining the corrective action~~  
21 ~~that is being sought. Further, the rules adopted by the~~  
22 ~~department must include provisions that permit the department~~  
23 ~~to deduct the financial penalties from funds that would~~  
24 ~~otherwise be due to the provider, not to exceed 10 percent of~~  
25 ~~the amount that otherwise would be due to the provider for the~~  
26 ~~period of noncompliance. If the department imposes a financial~~  
27 ~~penalty, it shall advise the provider in writing of the cause~~  
28 ~~for the penalty. A failure to include such deductions in a~~  
29 ~~request for payment constitutes a ground for the department to~~  
30 ~~reject that request for payment. The remedies identified in~~  
31 ~~this subsection do not limit or restrict the department's~~

1 ~~application of any other remedy available to it in the~~  
2 ~~contract or under law. The remedies described in this~~  
3 ~~subsection may be cumulative and may be assessed upon each~~  
4 ~~separate failure to comply with instructions from the~~  
5 ~~department to complete corrective action.~~

6 ~~(8) The department shall develop standards of conduct~~  
7 ~~and a range of disciplinary actions for its employees which~~  
8 ~~are specifically related to carrying out contracting~~  
9 ~~responsibilities.~~

10 ~~(1)(9)~~ The Agency for Persons with Disabilities  
11 ~~department~~ must implement systems and controls to ensure  
12 financial integrity and service provision quality in the  
13 developmental services Medicaid waiver service system.

14 ~~(10) If a provider fails to meet the performance~~  
15 ~~standards established in the contract, the department may~~  
16 ~~allow a reasonable period for the provider to correct~~  
17 ~~performance deficiencies. If performance deficiencies are not~~  
18 ~~resolved to the satisfaction of the department within the~~  
19 ~~prescribed time, and if no extenuating circumstances can be~~  
20 ~~documented by the provider to the department's satisfaction,~~  
21 ~~the department must cancel the contract with the provider. The~~  
22 ~~department may not enter into a new contract with that same~~  
23 ~~provider for the services for which the contract was~~  
24 ~~previously canceled for a period of at least 24 months after~~  
25 ~~the date of cancellation. If an adult substance abuse services~~  
26 ~~provider fails to meet the performance standards established~~  
27 ~~in the contract, the department may allow a reasonable period,~~  
28 ~~not to exceed 6 months, for the provider to correct~~  
29 ~~performance deficiencies. If the performance deficiencies are~~  
30 ~~not resolved to the satisfaction of the department within 6~~  
31 ~~months, the department must cancel the contract with the adult~~

1 ~~substance abuse provider, unless there is no other qualified~~  
2 ~~provider in the service district.~~

3       ~~(11) The department shall include in its standard~~  
4 ~~contract document a requirement that any state funds provided~~  
5 ~~for the purchase of or improvements to real property are~~  
6 ~~contingent upon the contractor or political subdivision~~  
7 ~~granting to the state a security interest in the property at~~  
8 ~~least to the amount of the state funds provided for at least 5~~  
9 ~~years from the date of purchase or the completion of the~~  
10 ~~improvements or as further required by law. The contract must~~  
11 ~~include a provision that, as a condition of receipt of state~~  
12 ~~funding for this purpose, the provider agrees that, if it~~  
13 ~~disposes of the property before the department's interest is~~  
14 ~~vacated, the provider will refund the proportionate share of~~  
15 ~~the state's initial investment, as adjusted by depreciation.~~

16       ~~(12) The department shall develop and refine~~  
17 ~~contracting and accountability methods that are~~  
18 ~~administratively efficient and that provide for optimal~~  
19 ~~provider performance.~~

20       ~~(13) The department may competitively procure any~~  
21 ~~contract when it deems it is in the best interest of the state~~  
22 ~~to do so. The requirements described in subsection (1) do not,~~  
23 ~~and may not be construed to, limit in any way the department's~~  
24 ~~ability to competitively procure any contract it executes, and~~  
25 ~~the absence of any or all of the criteria described in~~  
26 ~~subsection (1) may not be used as the basis for an~~  
27 ~~administrative or judicial protest of the department's~~  
28 ~~determination to conduct competition, make an award, or~~  
29 ~~execute any contract.~~

30       ~~(14) A contract may include cost neutral,~~  
31 ~~performance based incentives that may vary according to the~~

1 ~~extent a provider achieves or surpasses the performance~~  
2 ~~standards set forth in the contract. Such incentives may be~~  
3 ~~weighted proportionally to reflect the extent to which the~~  
4 ~~provider has demonstrated that it has consistently met or~~  
5 ~~exceeded the contractual requirements and the department's~~  
6 ~~performance standards.~~

7       ~~(2)(15)~~ Nothing contained in chapter 287 shall require  
8 competitive bids for health services involving examination,  
9 diagnosis, or treatment.

10       Section 3. Section 409.1671, Florida Statutes, is  
11 amended to read:

12       409.1671 Foster care and related services; outsourcing  
13 ~~privatization~~.--

14       (1)(a) It is the intent of the Legislature that the  
15 Department of Children and Family Services shall outsource  
16 ~~privatize~~ the provision of foster care and related services  
17 statewide. It is further the Legislature's intent to encourage  
18 communities and other stakeholders in the well-being of  
19 children to participate in assuring that children are safe and  
20 well-nurtured. However, while recognizing that some local  
21 governments are presently funding portions of certain foster  
22 care and related services programs and may choose to expand  
23 such funding in the future, the Legislature does not intend by  
24 its outsourcing ~~privatization~~ of foster care and related  
25 services that any county, municipality, or special district be  
26 required to assist in funding programs that previously have  
27 been funded by the state. Counties that provide children and  
28 family services with at least 40 licensed residential group  
29 care beds by July 1, 2003, and provide at least \$2 million  
30 annually in county general revenue funds to supplement foster  
31 and family care services shall continue to contract directly

1 | with the state and shall be exempt from the provisions of this  
2 | section. Nothing in this paragraph prohibits any county,  
3 | municipality, or special district from future voluntary  
4 | funding participation in foster care and related services. As  
5 | used in this section, the term "outsource" ~~"privatize"~~ means  
6 | to contract with competent, community-based agencies. The  
7 | department shall submit a plan to accomplish outsourcing  
8 | ~~privatization~~ statewide, through a competitive process, phased  
9 | in over a 3-year period beginning January 1, 2000. This plan  
10 | must be developed with local community participation,  
11 | including, but not limited to, input from community-based  
12 | providers that are currently under contract with the  
13 | department to furnish community-based foster care and related  
14 | services, and must include a methodology for determining and  
15 | transferring all available funds, including federal funds that  
16 | the provider is eligible for and agrees to earn and that  
17 | portion of general revenue funds which is currently associated  
18 | with the services that are being furnished under contract. The  
19 | methodology must provide for the transfer of funds  
20 | appropriated and budgeted for all services and programs that  
21 | have been incorporated into the project, including all  
22 | management, capital (including current furniture and  
23 | equipment), and administrative funds to accomplish the  
24 | transfer of these programs. This methodology must address  
25 | expected workload and at least the 3 previous years'  
26 | experience in expenses and workload. With respect to any  
27 | district or portion of a district in which outsourcing  
28 | ~~privatization~~ cannot be accomplished within the 3-year  
29 | timeframe, the department must clearly state in its plan the  
30 | reasons the timeframe cannot be met and the efforts that  
31 | should be made to remediate the obstacles, which may include

1 alternatives to total outsourcing ~~privatization~~, such as  
2 public-private partnerships. As used in this section, the term  
3 "related services" includes, but is not limited to, family  
4 preservation, independent living, emergency shelter,  
5 residential group care, foster care, therapeutic foster care,  
6 intensive residential treatment, foster care supervision, case  
7 management, postplacement supervision, permanent foster care,  
8 and family reunification. Unless otherwise provided for, the  
9 state attorney shall provide child welfare legal services,  
10 pursuant to chapter 39 and other relevant provisions, in  
11 Pinellas and Pasco Counties. When a private nonprofit agency  
12 has received case management responsibilities, transferred  
13 from the state under this section, for a child who is  
14 sheltered or found to be dependent and who is assigned to the  
15 care of the outsourcing ~~privatization~~ project, the agency may  
16 act as the child's guardian for the purpose of registering the  
17 child in school if a parent or guardian of the child is  
18 unavailable and his or her whereabouts cannot reasonably be  
19 ascertained. The private nonprofit agency may also seek  
20 emergency medical attention for such a child, but only if a  
21 parent or guardian of the child is unavailable, his or her  
22 whereabouts cannot reasonably be ascertained, and a court  
23 order for such emergency medical services cannot be obtained  
24 because of the severity of the emergency or because it is  
25 after normal working hours. However, the provider may not  
26 consent to sterilization, abortion, or termination of life  
27 support. If a child's parents' rights have been terminated,  
28 the nonprofit agency shall act as guardian of the child in all  
29 circumstances.

30 (b) It is the intent of the Legislature that the  
31 department will continue to work towards full outsourcing

1 ~~privatization~~ in a manner that assures the viability of the  
2 community-based system of care and best provides for the  
3 safety of children in the child protection system. To this  
4 end, the department is directed to continue the process of  
5 outsourcing ~~privatizing~~ services in those counties in which  
6 signed startup contracts have been executed. The department  
7 may also continue to enter into startup contracts with  
8 additional counties. However, no services shall be transferred  
9 to a community-based care lead agency until the department, in  
10 consultation with the local community alliance, has determined  
11 and certified in writing to the Governor and the Legislature  
12 that the district is prepared to transition the provision of  
13 services to the lead agency and that the lead agency is ready  
14 to deliver and be accountable for such service provision. In  
15 making this determination, the department shall conduct a  
16 readiness assessment of the district and the lead agency.

17 1. The assessment shall evaluate the operational  
18 readiness of the district and the lead agency based on:

19 a. A set of uniform criteria, developed in  
20 consultation with currently operating community-based care  
21 lead agencies and reflecting national accreditation standards,  
22 that evaluate programmatic, financial, technical assistance,  
23 training and organizational competencies; and

24 b. Local criteria reflective of the local  
25 community-based care design and the community alliance  
26 priorities.

27 2. The readiness assessment shall be conducted by a  
28 joint team of district and lead agency staff with direct  
29 experience with the start up and operation of a  
30 community-based care service program and representatives from  
31 the appropriate community alliance. Within resources available



1 | for this purpose, the department may secure outside audit  
2 | expertise when necessary to assist a readiness assessment  
3 | team.

4 |         3. Upon completion of a readiness assessment, the  
5 | assessment team shall conduct an exit conference with the  
6 | district and lead agency staff responsible for the transition.

7 |         4. Within 30 days following the exit conference with  
8 | staff of each district and lead agency, the secretary shall  
9 | certify in writing to the Governor and the Legislature that  
10 | both the district and the lead agency are prepared to begin  
11 | the transition of service provision based on the results of  
12 | the readiness assessment and the exit conference. The document  
13 | of certification must include specific evidence of readiness  
14 | on each element of the readiness instrument utilized by the  
15 | assessment team as well as a description of each element of  
16 | readiness needing improvement and strategies being implemented  
17 | to address each one.

18 |         (c) The Auditor General and the Office of Program  
19 | Policy Analysis and Government Accountability (OPPAGA), in  
20 | consultation with The Child Welfare League of America and the  
21 | Louis de la Parte Florida Mental Health Institute, shall  
22 | jointly review and assess the department's process for  
23 | determining district and lead agency readiness.

24 |         1. The review must, at a minimum, address the  
25 | appropriateness of the readiness criteria and instruments  
26 | applied, the appropriateness of the qualifications of  
27 | participants on each readiness assessment team, the degree to  
28 | which the department accurately determined each district and  
29 | lead agency's compliance with the readiness criteria, the  
30 | quality of the technical assistance provided by the department  
31 | to a lead agency in correcting any weaknesses identified in

1 the readiness assessment, and the degree to which each lead  
2 agency overcame any identified weaknesses.

3           2. Reports of these reviews must be submitted to the  
4 appropriate substantive and appropriations committees in the  
5 Senate and the House of Representatives on March 1 and  
6 September 1 of each year until full transition to  
7 community-based care has been accomplished statewide, except  
8 that the first report must be submitted by February 1, 2004,  
9 and must address all readiness activities undertaken through  
10 June 30, 2003. The perspectives of all participants in this  
11 review process must be included in each report.

12           (d) In communities where economic or demographic  
13 constraints make it impossible or not feasible to  
14 competitively contract with a lead agency, the department  
15 shall develop an alternative plan in collaboration with the  
16 local community alliance, which may include establishing  
17 innovative geographical configurations or consortia of  
18 agencies. The plan must detail how the community will continue  
19 to implement community-based care through competitively  
20 procuring either the specific components of foster care and  
21 related services or comprehensive services for defined  
22 eligible populations of children and families from qualified  
23 licensed agencies as part of its efforts to develop the local  
24 capacity for a community-based system of coordinated care. The  
25 plan must ensure local control over the management and  
26 administration of the service provision in accordance with the  
27 intent of this section and may include recognized best  
28 business practices, including some form of public or private  
29 partnerships.

30           (e) As used in this section, the term "eligible lead  
31 community-based provider" means a single agency with which the

1 department shall contract for the provision of child  
2 protective services in a community that is no smaller than a  
3 county. The secretary of the department may authorize more  
4 than one eligible lead community-based provider within a  
5 single county when to do so will result in more effective  
6 delivery of foster care and related services. To compete for  
7 an outsourcing ~~a privatization~~ project, such agency must have:

8       1. The ability to coordinate, integrate, and manage  
9 all child protective services in the designated community in  
10 cooperation with child protective investigations.

11       2. The ability to ensure continuity of care from entry  
12 to exit for all children referred from the protective  
13 investigation and court systems.

14       3. The ability to provide directly, or contract for  
15 through a local network of providers, all necessary child  
16 protective services. Such agencies should directly provide no  
17 more than 35 percent of all child protective services  
18 provided.

19       4. The willingness to accept accountability for  
20 meeting the outcomes and performance standards related to  
21 child protective services established by the Legislature and  
22 the Federal Government.

23       5. The capability and the willingness to serve all  
24 children referred to it from the protective investigation and  
25 court systems, regardless of the level of funding allocated to  
26 the community by the state, provided all related funding is  
27 transferred.

28       6. The willingness to ensure that each individual who  
29 provides child protective services completes the training  
30 required of child protective service workers by the Department  
31 of Children and Family Services.

1           7. The ability to maintain eligibility to receive all  
2 federal child welfare funds, including Title IV-E and IV-A  
3 funds, currently being used by the Department of Children and  
4 Family Services.

5           8. Written agreements with Healthy Families Florida  
6 lead entities in their community, pursuant to s. 409.153, to  
7 promote cooperative planning for the provision of prevention  
8 and intervention services.

9           9. A board of directors, of which at least 51 percent  
10 of the membership is comprised of persons residing in this  
11 state. Of the state residents, at least 51 percent must also  
12 reside within the service area of the lead community-based  
13 provider.

14           (f)1. The Legislature finds that the state has  
15 traditionally provided foster care services to children who  
16 have been the responsibility of the state. As such, foster  
17 children have not had the right to recover for injuries beyond  
18 the limitations specified in s. 768.28. The Legislature has  
19 determined that foster care and related services need to be  
20 outsourced ~~privatized~~ pursuant to this section and that the  
21 provision of such services is of paramount importance to the  
22 state. The purpose for such outsourcing ~~privatization~~ is to  
23 increase the level of safety, security, and stability of  
24 children who are or become the responsibility of the state.  
25 One of the components necessary to secure a safe and stable  
26 environment for such children is that private providers  
27 maintain liability insurance. As such, insurance needs to be  
28 available and remain available to nongovernmental foster care  
29 and related services providers without the resources of such  
30 providers being significantly reduced by the cost of  
31 maintaining such insurance.

1           2. The Legislature further finds that, by requiring  
2 the following minimum levels of insurance, children in  
3 outsourced ~~privatized~~ foster care and related services will  
4 gain increased protection and rights of recovery in the event  
5 of injury than provided for in s. 768.28.

6           (g) In any county in which a service contract has not  
7 been executed by December 31, 2004, the department shall  
8 ensure access to a model comprehensive residential services  
9 program as described in s. 409.1677 which, without imposing  
10 undue financial, geographic, or other barriers, ensures  
11 reasonable and appropriate participation by the family in the  
12 child's program.

13           1. In order to ensure that the program is operational  
14 by December 31, 2004, the department must, by December 31,  
15 2003, begin the process of establishing access to a program in  
16 any county in which the department has not either entered into  
17 a transition contract or approved a community plan, as  
18 described in paragraph (d), which ensures full outsourcing  
19 ~~privatization~~ by the statutory deadline.

20           2. The program must be procured through a competitive  
21 process.

22           3. The Legislature does not intend for the provisions  
23 of this paragraph to substitute for the requirement that full  
24 conversion to community-based care be accomplished.

25           (h) Other than an entity to which s. 768.28 applies,  
26 any eligible lead community-based provider, as defined in  
27 paragraph (e), or its employees or officers, except as  
28 otherwise provided in paragraph (i), must, as a part of its  
29 contract, obtain a minimum of \$1 million per claim/\$3 million  
30 per incident in general liability insurance coverage. The  
31 eligible lead community-based provider must also require that

1 staff who transport client children and families in their  
2 personal automobiles in order to carry out their job  
3 responsibilities obtain minimum bodily injury liability  
4 insurance in the amount of \$100,000 per claim, \$300,000 per  
5 incident, on their personal automobiles. In any tort action  
6 brought against such an eligible lead community-based provider  
7 or employee, net economic damages shall be limited to \$1  
8 million per liability claim and \$100,000 per automobile claim,  
9 including, but not limited to, past and future medical  
10 expenses, wage loss, and loss of earning capacity, offset by  
11 any collateral source payment paid or payable. In any tort  
12 action brought against such an eligible lead community-based  
13 provider, noneconomic damages shall be limited to \$200,000 per  
14 claim. A claims bill may be brought on behalf of a claimant  
15 pursuant to s. 768.28 for any amount exceeding the limits  
16 specified in this paragraph. Any offset of collateral source  
17 payments made as of the date of the settlement or judgment  
18 shall be in accordance with s. 768.76. The lead  
19 community-based provider shall not be liable in tort for the  
20 acts or omissions of its subcontractors or the officers,  
21 agents, or employees of its subcontractors.

22 (i) The liability of an eligible lead community-based  
23 provider described in this section shall be exclusive and in  
24 place of all other liability of such provider. The same  
25 immunities from liability enjoyed by such providers shall  
26 extend as well to each employee of the provider when such  
27 employee is acting in furtherance of the provider's business,  
28 including the transportation of clients served, as described  
29 in this subsection, in privately owned vehicles. Such  
30 immunities shall not be applicable to a provider or an  
31 employee who acts in a culpably negligent manner or with

1 willful and wanton disregard or unprovoked physical aggression  
2 when such acts result in injury or death or such acts  
3 proximately cause such injury or death; nor shall such  
4 immunities be applicable to employees of the same provider  
5 when each is operating in the furtherance of the provider's  
6 business, but they are assigned primarily to unrelated works  
7 within private or public employment. The same immunity  
8 provisions enjoyed by a provider shall also apply to any sole  
9 proprietor, partner, corporate officer or director,  
10 supervisor, or other person who in the course and scope of his  
11 or her duties acts in a managerial or policymaking capacity  
12 and the conduct that caused the alleged injury arose within  
13 the course and scope of those managerial or policymaking  
14 duties. Culpable negligence is defined as reckless  
15 indifference or grossly careless disregard of human life.

16 (j) Any subcontractor of an eligible lead  
17 community-based provider, as defined in paragraph (e), which  
18 is a direct provider of foster care and related services to  
19 children and families, and its employees or officers, except  
20 as otherwise provided in paragraph (i), must, as a part of its  
21 contract, obtain a minimum of \$1 million per claim/\$3 million  
22 per incident in general liability insurance coverage. The  
23 subcontractor of an eligible lead community-based provider  
24 must also require that staff who transport client children and  
25 families in their personal automobiles in order to carry out  
26 their job responsibilities obtain minimum bodily injury  
27 liability insurance in the amount of \$100,000 per claim,  
28 \$300,000 per incident, on their personal automobiles. In any  
29 tort action brought against such subcontractor or employee,  
30 net economic damages shall be limited to \$1 million per  
31 liability claim and \$100,000 per automobile claim, including,

1 | but not limited to, past and future medical expenses, wage  
2 | loss, and loss of earning capacity, offset by any collateral  
3 | source payment paid or payable. In any tort action brought  
4 | against such subcontractor, noneconomic damages shall be  
5 | limited to \$200,000 per claim. A claims bill may be brought on  
6 | behalf of a claimant pursuant to s. 768.28 for any amount  
7 | exceeding the limits specified in this paragraph. Any offset  
8 | of collateral source payments made as of the date of the  
9 | settlement or judgment shall be in accordance with s. 768.76.

10 |       (k) The liability of a subcontractor of an eligible  
11 | lead community-based provider that is a direct provider of  
12 | foster care and related services as described in this section  
13 | shall be exclusive and in place of all other liability of such  
14 | provider. The same immunities from liability enjoyed by such  
15 | subcontractor provider shall extend as well to each employee  
16 | of the subcontractor when such employee is acting in  
17 | furtherance of the subcontractor's business, including the  
18 | transportation of clients served, as described in this  
19 | subsection, in privately owned vehicles. Such immunities shall  
20 | not be applicable to a subcontractor or an employee who acts  
21 | in a culpably negligent manner or with willful and wanton  
22 | disregard or unprovoked physical aggression when such acts  
23 | result in injury or death or such acts proximately cause such  
24 | injury or death; nor shall such immunities be applicable to  
25 | employees of the same subcontractor when each is operating in  
26 | the furtherance of the subcontractor's business, but they are  
27 | assigned primarily to unrelated works within private or public  
28 | employment. The same immunity provisions enjoyed by a  
29 | subcontractor shall also apply to any sole proprietor,  
30 | partner, corporate officer or director, supervisor, or other  
31 | person who in the course and scope of his or her duties acts



1 | in a managerial or policymaking capacity and the conduct that  
2 | caused the alleged injury arose within the course and scope of  
3 | those managerial or policymaking duties. Culpable negligence  
4 | is defined as reckless indifference or grossly careless  
5 | disregard of human life.

6 |         (1) The Legislature is cognizant of the increasing  
7 | costs of goods and services each year and recognizes that  
8 | fixing a set amount of compensation actually has the effect of  
9 | a reduction in compensation each year. Accordingly, the  
10 | conditional limitations on damages in this section shall be  
11 | increased at the rate of 5 percent each year, prorated from  
12 | the effective date of this paragraph to the date at which  
13 | damages subject to such limitations are awarded by final  
14 | judgment or settlement.

15 |         (2)(a) The department may contract for the delivery,  
16 | administration, or management of protective services, the  
17 | services specified in subsection (1) relating to foster care,  
18 | and other related services or programs, as appropriate. The  
19 | department shall retain responsibility for the quality of  
20 | contracted services and programs and shall ensure that  
21 | services are delivered in accordance with applicable federal  
22 | and state statutes and regulations. The department must adopt  
23 | written policies and procedures for monitoring the contract  
24 | for delivery of services by lead community-based providers.  
25 | These policies and procedures must, at a minimum, address the  
26 | evaluation of fiscal accountability and program operations,  
27 | including provider achievement of performance standards,  
28 | provider monitoring of subcontractors, and timely followup of  
29 | corrective actions for significant monitoring findings related  
30 | to providers and subcontractors. These policies and procedures  
31 | must also include provisions for reducing the duplication of

1 | the department's program monitoring activities both internally  
2 | and with other agencies, to the extent possible. The  
3 | department's written procedures must ensure that the written  
4 | findings, conclusions, and recommendations from monitoring the  
5 | contract for services of lead community-based providers are  
6 | communicated to the director of the provider agency as  
7 | expeditiously as possible.

8 |         (b) Persons employed by the department in the  
9 | provision of foster care and related services whose positions  
10 | are being outsourced under ~~privatized pursuant to~~ this statute  
11 | shall be given hiring preference by the provider, if provider  
12 | qualifications are met.

13 |         (3)(a) In order to help ensure a seamless child  
14 | protection system, the department shall ensure that contracts  
15 | entered into with community-based agencies pursuant to this  
16 | section include provisions for a case-transfer process to  
17 | determine the date that the community-based agency will  
18 | initiate the appropriate services for a child and family. This  
19 | case-transfer process must clearly identify the closure of the  
20 | protective investigation and the initiation of service  
21 | provision. At the point of case transfer, and at the  
22 | conclusion of an investigation, the department must provide a  
23 | complete summary of the findings of the investigation to the  
24 | community-based agency.

25 |         (b) The contracts must also ensure that each  
26 | community-based agency shall furnish information on its  
27 | activities in all cases in client case records.

28 |         (c) The contract between the department and  
29 | community-based agencies must include provisions that specify  
30 | the procedures to be used by the parties to resolve  
31 | differences in interpreting the contract or to resolve

1 | disputes as to the adequacy of the parties' compliance with  
2 | their respective obligations under the contract.

3 |         (d) Each contract with an eligible lead  
4 | community-based provider shall provide for the payment by the  
5 | department to the provider of a reasonable administrative cost  
6 | in addition to funding for the provision of services.

7 |         (e) Each contract with an eligible lead  
8 | community-based provider must include all performance outcome  
9 | measures established by the Legislature and that are under the  
10 | control of the lead agency. The standards must be adjusted  
11 | annually by contract amendment to enable the department to  
12 | meet the legislatively established statewide standards.

13 |         (4)(a) The department, in consultation with the  
14 | community-based agencies that are undertaking the outsourced  
15 | ~~privatized~~ projects, shall establish a quality assurance  
16 | program for privatized services. The quality assurance program  
17 | shall be based on standards established by the Adoption and  
18 | Safe Families Act as well as by a national accrediting  
19 | organization such as the Council on Accreditation of Services  
20 | for Families and Children, Inc. (COA) or CARF--the  
21 | Rehabilitation Accreditation Commission. Each program operated  
22 | under contract with a community-based agency must be evaluated  
23 | annually by the department. The department shall, to the  
24 | extent possible, use independent financial audits provided by  
25 | the community-based care agency to eliminate or reduce the  
26 | ongoing contract and administrative reviews conducted by the  
27 | department. The department may suggest additional items to be  
28 | included in such independent financial audits to meet the  
29 | department's needs. Should the department determine that such  
30 | independent financial audits are inadequate, then other  
31 | audits, as necessary, may be conducted by the department.

1 Nothing herein shall abrogate the requirements of s. 215.97.  
2 The department shall submit an annual report regarding quality  
3 performance, outcome measure attainment, and cost efficiency  
4 to the President of the Senate, the Speaker of the House of  
5 Representatives, the minority leader of each house of the  
6 Legislature, and the Governor no later than January 31 of each  
7 year for each project in operation during the preceding fiscal  
8 year.

9 (b) The department shall use these findings in making  
10 recommendations to the Governor and the Legislature for future  
11 program and funding priorities in the child welfare system.

12 (5)(a) The community-based agency must comply with  
13 statutory requirements and agency rules in the provision of  
14 contractual services. Each foster home, therapeutic foster  
15 home, emergency shelter, or other placement facility operated  
16 by the community-based agency or agencies must be licensed by  
17 the Department of Children and Family Services under chapter  
18 402 or this chapter. Each community-based agency must be  
19 licensed as a child-caring or child-placing agency by the  
20 department under this chapter. The department, in order to  
21 eliminate or reduce the number of duplicate inspections by  
22 various program offices, shall coordinate inspections required  
23 pursuant to licensure of agencies under this section.

24 (b) Substitute care providers who are licensed under  
25 s. 409.175 and have contracted with a lead agency authorized  
26 under this section shall also be authorized to provide  
27 registered or licensed family day care under s. 402.313, if  
28 consistent with federal law and if the home has met the  
29 requirements of s. 402.313.

30 (c) A dually licensed home under this section shall be  
31 eligible to receive both an out-of-home care payment and a

1 subsidized child care payment for the same child pursuant to  
2 federal law. The department may adopt administrative rules  
3 necessary to administer this paragraph.

4 (6) Beginning January 1, 1999, and continuing at least  
5 through June 30, 2000, the Department of Children and Family  
6 Services shall outsource ~~privatize~~ all foster care and related  
7 services in district 5 while continuing to contract with the  
8 current model programs in districts 1, 4, and 13, and in  
9 subdistrict 8A, and shall expand the subdistrict 8A pilot  
10 program to incorporate Manatee County. Planning for the  
11 district 5 outsourcing ~~privatization~~ shall be done by  
12 providers that are currently under contract with the  
13 department for foster care and related services and shall be  
14 done in consultation with the department. A lead provider of  
15 the district 5 program shall be competitively selected, must  
16 demonstrate the ability to provide necessary comprehensive  
17 services through a local network of providers, and must meet  
18 criteria established in this section. Contracts with  
19 organizations responsible for the model programs must include  
20 the management and administration of all outsourced ~~privatized~~  
21 services specified in subsection (1). However, the department  
22 may use funds for contract management only after obtaining  
23 written approval from the Executive Office of the Governor.  
24 The request for such approval must include, but is not limited  
25 to, a statement of the proposed amount of such funds and a  
26 description of the manner in which such funds will be used. If  
27 the community-based organization selected for a model program  
28 under this subsection is not a Medicaid provider, the  
29 organization shall be issued a Medicaid provider number  
30 pursuant to s. 409.907 for the provision of services currently  
31 authorized under the state Medicaid plan to those children

1 encompassed in this model and in a manner not to exceed the  
2 current level of state expenditure.

3           (7) The Florida Coalition for Children, Inc., in  
4 consultation with the department, shall develop a plan based  
5 on an independent actuarial study regarding the long-term use  
6 and structure of a statewide community-based care risk pool  
7 for the protection of eligible lead community-based providers,  
8 their subcontractors, and providers of other social services  
9 who contract directly with the department. The plan must also  
10 outline strategies to maximize federal earnings as they relate  
11 to the community-based care risk pool. At a minimum, the plan  
12 must allow for the use of federal earnings received from child  
13 welfare programs to be allocated to the community-based care  
14 risk pool by the department, which earnings are determined by  
15 the department to be in excess of the amount appropriated in  
16 the General Appropriations Act. The plan must specify the  
17 necessary steps to ensure the financial integrity and  
18 industry-standard risk management practices of the  
19 community-based care risk pool and the continued availability  
20 of funding from federal, state, and local sources. The plan  
21 must also include recommendations that permit the program to  
22 be available to entities of the department providing child  
23 welfare services until full conversion to community-based care  
24 takes place. The final plan shall be submitted to the  
25 department and then to the Executive Office of the Governor  
26 and the Legislative Budget Commission for formal adoption  
27 before January 1, 2005. Upon approval of the plan by all  
28 parties, the department shall issue an interest-free loan that  
29 is secured by the cumulative contractual revenue of the  
30 community-based care risk pool membership, and the amount of  
31 the loan shall equal the amount appropriated by the

1 Legislature for this purpose. The plan shall provide for a  
2 governance structure that assures the department the ability  
3 to oversee the operation of the community-based care risk pool  
4 at least until this loan is repaid in full.

5 (a) The purposes for which the community-based care  
6 risk pool shall be used include, but are not limited to:

7 1. Significant changes in the number or composition of  
8 clients eligible to receive services.

9 2. Significant changes in the services that are  
10 eligible for reimbursement.

11 3. Scheduled or unanticipated, but necessary, advances  
12 to providers or other cash-flow issues.

13 4. Proposals to participate in optional Medicaid  
14 services or other federal grant opportunities.

15 5. Appropriate incentive structures.

16 6. Continuity of care in the event of failure,  
17 discontinuance of service, or financial misconduct by a lead  
18 agency.

19 7. Payment for time-limited technical assistance and  
20 consultation to lead agencies in the event of serious  
21 performance or management problems.

22 8. Payment for meeting all traditional and  
23 nontraditional insurance needs of eligible members.

24 9. Significant changes in the mix of available funds.

25 (b) After approval of the plan in the 2004-2005 fiscal  
26 year and annually thereafter, the department may also request  
27 in its annual legislative budget request, and the Governor may  
28 recommend, that the funding necessary to carry out paragraph  
29 (a) be appropriated to the department. Subsequent funding of  
30 the community-based care risk pool shall be supported by  
31 premiums assessed to members of the community-based care risk

1 pool on a recurring basis. The community-based care risk pool  
2 may invest and retain interest earned on these funds. In  
3 addition, the department may transfer funds to the  
4 community-based care risk pool as available in order to ensure  
5 an adequate funding level if the fund is declared to be  
6 insolvent and approval is granted by the Legislative Budget  
7 Commission. Such payments for insolvency shall be made only  
8 after a determination is made by the department or its actuary  
9 that all participants in the community-based care risk pool  
10 are current in their payments of premiums and that assessments  
11 have been made at an actuarially sound level. Such payments by  
12 participants in the community-based care risk pool may not  
13 exceed reasonable industry standards, as determined by the  
14 actuary. Money from this fund may be used to match available  
15 federal dollars. Dividends or other payments, with the  
16 exception of legitimate claims, may not be paid to members of  
17 the community-based care risk pool until the loan issued by  
18 the department is repaid in full. Dividends or other payments,  
19 with the exception of legitimate claims and other purposes  
20 contained in the approved plan, may not be paid to members of  
21 the community-based care risk pool unless, at the time of  
22 distribution, the community-based care risk pool is deemed  
23 actuarially sound and solvent. Solvency shall be determined by  
24 an independent actuary contracted by the department. The plan  
25 shall be developed in consultation with the Office of  
26 Insurance Regulation.

27       1. Such funds shall constitute partial security for  
28 contract performance by lead agencies and shall be used to  
29 offset the need for a performance bond. Subject to the  
30 approval of the plan, the community-based care risk pool shall  
31 be managed by the Florida Coalition for Children, Inc., or the



1 designated contractors of the Florida Coalition for Children,  
2 Inc. Nonmembers of the community-based care risk pool may  
3 continue to contract with the department but must provide a  
4 letter of credit equal to one-twelfth of the annual contract  
5 amount in lieu of membership in the community-based care risk  
6 pool.

7           2. The department may separately require a bond to  
8 mitigate the financial consequences of potential acts of  
9 malfeasance, misfeasance, or criminal violations by the  
10 provider.

11           (8) Notwithstanding the provisions of s. 215.425, all  
12 documented federal funds earned for the current fiscal year by  
13 the department and community-based agencies which exceed the  
14 amount appropriated by the Legislature shall be distributed to  
15 all entities that contributed to the excess earnings based on  
16 a schedule and methodology developed by the department and  
17 approved by the Executive Office of the Governor. Distribution  
18 shall be pro rata based on total earnings and shall be made  
19 only to those entities that contributed to excess earnings.  
20 Excess earnings of community-based agencies shall be used only  
21 in the service district in which they were earned. Additional  
22 state funds appropriated by the Legislature for  
23 community-based agencies or made available pursuant to the  
24 budgetary amendment process described in s. 216.177 shall be  
25 transferred to the community-based agencies. The department  
26 shall amend a community-based agency's contract to permit  
27 expenditure of the funds.

28           (9) Each district and subdistrict that participates in  
29 the model program effort or any future outsourcing  
30 ~~privatization~~ effort as described in this section must  
31 thoroughly analyze and report the complete direct and indirect

1 costs of delivering these services through the department and  
2 the full cost of ~~outsourcing privatization~~, including the cost  
3 of monitoring and evaluating the contracted services.

4 (10) The lead community-based providers and their  
5 subcontractors shall be exempt from state travel policies as  
6 set forth in s. 112.061(3)(a) for their travel expenses  
7 incurred in order to comply with the requirements of this  
8 section.

9 Section 4. The Office of Program Policy Analysis and  
10 Government Accountability shall conduct two reviews of the  
11 contract-management and accountability structures of the  
12 Department of Children and Family Services, including, but not  
13 limited to, whether the department is adequately monitoring  
14 and managing its outsourced or privatized functions and  
15 services. The office shall report its findings and  
16 recommendations to the President of the Senate, the Speaker of  
17 the House of Representatives, and the Auditor General by  
18 February 1 of 2006 and 2007, respectively.

19 Section 5. Section 402.72, Florida Statutes, is  
20 repealed.

21 Section 6. The nonrecurring sum of \$102,232 is  
22 appropriated from the General Revenue Fund to the Department  
23 of Children and Family Services for the 2005-2006 fiscal year,  
24 to comply with the electronic-reporting requirements in  
25 section 1 of this act.

26 Section 7. This act shall take effect July 1, 2005.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
CS for CS for Senate Bill 1476

- Requires the Department of Children and Family Services to justify, in the contract, a decision not to use multiyear contracts. This provision applies to contracts in excess of \$250,000.
- Clarifies that the verifications required when a contract is extended or renewed shall be based on the best available data at the point of contract renegotiations.
- Prohibits contractors from supervising state employees and from participating in any procurement process in which the contractor has a material interest.
- Appropriates \$102,232 from non-recurring general revenue funds to the Department of Children and Family Services for Fiscal Year 2005-2006 to fund the electronic reporting requirements mandated in this legislation.