

By Senator Campbell

32-1544-05

See HB 711

1 A bill to be entitled

2 An act relating to procurement; amending s.

3 287.012, F.S.; providing definitions; creating

4 s. 287.046, F.S.; providing for outsourcing or

5 privatization of functions; providing

6 procedural, contractual, and negotiation

7 requirements; providing contract amendment

8 requirements and limitations; providing

9 requirements for share-in-savings contracts;

10 requiring contracting agencies to annually

11 report to the Governor, the Legislature, and

12 certain entities; providing reporting

13 requirements; requiring the Department of

14 Management Services to annually report to the

15 Governor, Legislature, and certain entities;

16 providing reporting requirements; requiring the

17 Department of Management Services to establish

18 a personnel training program for certain

19 purposes; amending s. 283.33, F.S.; correcting

20 a cross-reference; providing an effective date.

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22 WHEREAS, when appropriately managed, privatization can

23 produce substantial benefits for taxpayers, including saving

24 public dollars and improving service quality, and

25 WHEREAS, the potential benefits of privatization may be

26 lost if privatization initiatives are poorly conceived or

27 implemented, and

28 WHEREAS, careful specification of the services to be

29 provided through privatization and strong systems to monitor

30 contractor performance are needed to avoid service quality

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1 | problems, higher long-term costs, and disruptions in essential  
2 | state services, and

3 |         WHEREAS, the Legislature has found that oversight of  
4 | state privatization should be strengthened, NOW, THEREFORE,

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6 | Be It Enacted by the Legislature of the State of Florida:

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8 |         Section 1. Subsections (20) through (26) of section  
9 | 287.012, Florida Statutes, are renumbered as subsections (22)  
10 | through (28), respectively, subsections (27) and (28) are  
11 | renumbered as subsections (30) and (31), respectively, and new  
12 | subsections (20), (21), and (29) are added to that section, to  
13 | read:

14 |         287.012 Definitions.--As used in this part, the term:

15 |         (20) "Outsourcing" means establishing a contractual  
16 | relationship between an agency and another entity under which  
17 | the agency remains fully responsible and accountable for the  
18 | provision of affected services and maintains control over  
19 | management decisions, while the other entity performs all or  
20 | part of the function or functions.

21 |         (21) "Privatization" means any process aimed at  
22 | shifting functions and responsibilities, in whole or in part,  
23 | from the government to the private sector. Privatization may  
24 | encompass a variety of techniques and activities, such as  
25 | outsourcing, that promote more involvement of the private  
26 | sector in providing services that have traditionally been  
27 | provided by government.

28 |         (29) "Share-in-savings contract" means an agreement in  
29 | which an agency pays a contractor based on the financial  
30 | benefits derived from the contractor's performance.

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1           Section 2. Section 287.046, Florida Statutes, is  
2 created to read:

3           287.046 Outsourcing or privatizing of functions.--No  
4 agency may outsource or privatize any function without having  
5 or seeking authority except as authorized by general law, the  
6 General Appropriations Act, legislation implementing the  
7 General Appropriations Act, or special appropriations acts.

8           (1) Prior to outsourcing or privatizing a function or  
9 responsibility, an agency shall develop a business case  
10 describing and analyzing the outsourcing or privatization  
11 initiative. The business case shall include, but not be  
12 limited to, the following information:

13           (a) A detailed description of the function to be  
14 outsourced or privatized, a description and analysis of the  
15 agency's current performance, a rationale for the proposed  
16 outsourcing or privatization initiative, and a citation to the  
17 existing or proposed legal authority for outsourcing or  
18 privatizing the function or responsibility.

19           (b) A cost-benefit analysis describing the current  
20 direct and indirect costs of the program or services, an  
21 analysis demonstrating the potential savings or increased  
22 costs that are expected to occur under privatization or  
23 outsourcing, and a sensitivity analysis identifying critical  
24 factors that could affect the potential savings and the effect  
25 of changes in these factors on costs and benefits of the  
26 proposal.

27           (c) The process the agency plans to use to monitor  
28 contractor performance and the estimated monitoring costs the  
29 agency will incur for this monitoring.

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1           (d) A contingency plan specifying methods and  
2 mechanisms to resolve any situation in which the contractor is  
3 found to be not complying with its contract.

4           (e) A list of state assets that would be transferred  
5 to the contractor if privatization or outsourcing is  
6 implemented.

7           (2) The agency shall submit the business case for each  
8 privatization or outsourcing proposal to the Legislative  
9 Budget Commission for approval prior to entering into a  
10 contract with a contractor. Upon the approval of the  
11 Legislative Budget Commission, the agency may enter into a  
12 contract with the contractor.

13           (3) Agencies shall enter into contracts for each  
14 privatization and outsourcing initiative. At a minimum, the  
15 contract shall include:

16           (a) Performance measures and standards, including  
17 output and outcome measures as defined in s. 216.011 and unit  
18 cost measures representing the costs of producing an output or  
19 outcome. The term "unit cost" means the average total cost of  
20 producing a single unit of output, for goods and services, for  
21 a specific agency activity, as defined in legislative budget  
22 instructions required by s. 216.023.

23           (b) Incentives and penalties to encourage contractor  
24 compliance with contract terms and the achievement of expected  
25 performance results, including high-quality and cost-effective  
26 services to the citizens of this state.

27           (c) Provisions providing access to contractor data by  
28 government agencies and the public as follows:

29           1. A contractor must make available for review any  
30 record the contractor produces or collects related to the  
31 provision of a state function or service to the same extent

1 those records would be available from a state agency by a  
2 public records request.

3 2. A contractor must maintain confidentiality of  
4 records which are exempt from public records requests or  
5 otherwise confidential and exempt under law.

6 (d) Reporting of progress in achieving performance  
7 standards and outcomes specified in the contract.

8 (e) A requirement that the contractor provide access  
9 for the contracting agency's inspector general, the Office of  
10 Program Policy Analysis and Government Accountability, the  
11 Auditor General, and the Department of Financial Services to  
12 all records of the contractor related to the services being  
13 provided, as needed for a properly authorized audit,  
14 examination, or investigation.

15 (4) When the value of an outsourcing or privatization  
16 contract is in excess of \$1 million, at least one of the  
17 persons conducting negotiations must be trained in  
18 negotiation.

19 (5) The agency may not amend a contract for an  
20 approved privatization or outsourcing initiative without first  
21 submitting the proposed amendment to the Legislative Budget  
22 Commission for approval if:

23 (a) The effect of the amendment would be to expand the  
24 financial terms or conditions, or the duration of the  
25 contract.

26 (b)1. The total dollar amount to be paid is increased  
27 by 10 percent or more; or

28 2. A contract performance date or the contract service  
29 ending date is extended by 1 year or more.

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1 Upon the approval of the amendment by the Legislative Budget  
2 Commission, the agency may amend the contract.

3 (6) Privatization or outsourcing initiatives that  
4 involve a share-in-savings contract must include:

5 (a) A description of the methodology that will be used  
6 to calculate savings to the state and payments to a contractor  
7 under the contract.

8 (b) Quantifiable baseline data that will be used to  
9 establish the basis upon which the percentage of savings paid  
10 to a contractor will be determined.

11 (7)(a) An agency shall annually furnish the President  
12 of the Senate, the Speaker of the House of Representatives,  
13 the Legislative Budget Commission, and the Office of Program  
14 Policy Analysis and Government Accountability a report on all  
15 its current outsourcing or privatization contracts that  
16 describes the progress made in implementing each outsourcing  
17 or privatization effort and the contractor's performance in  
18 achieving contractually specified performance standards. Part  
19 of this report must also include information on the extent to  
20 which work formerly performed in this state by state employees  
21 is being performed in other states or out of country as a  
22 result of the outsourcing or privatization initiative.

23 (b) The Department of Management Services shall  
24 annually furnish the President of the Senate, the Speaker of  
25 the House of Representatives, the Legislative Budget  
26 Commission, and the Office of Program Policy Analysis and  
27 Government Accountability a report that summarizes agency  
28 reports required by this section. As part of its report, the  
29 department shall identify lessons learned from agency  
30 initiatives in outsourcing and privatizing government programs  
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1 and recommend areas for improvement in developing contracts  
2 and monitoring contractor performance.

3 (8) The Department of Management Services shall  
4 establish a program to train state agency contracting  
5 personnel in best practices for contract development,  
6 negotiation, and monitoring. Part of that training must  
7 include curriculum to create a certified negotiator program.

8 Section 3. Subsection (1) of section 283.33, Florida  
9 Statutes, is amended to read:

10 283.33 Printing of publications; lowest bidder  
11 awards.--

12 (1) Publications may be printed and prepared in-house,  
13 by another agency or the Legislature, or purchased on bid,  
14 whichever is more economical and practicable as determined by  
15 the agency. An agency may contract for binding separately when  
16 more economical or practicable, whether or not the remainder  
17 of the printing is done in-house. A vendor may subcontract for  
18 binding and still be considered a responsible vendor,  
19 notwithstanding s. 287.012~~(26)~~~~(24)~~.

20 Section 4. This act shall take effect July 1, 2005.  
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