

By Senator Lawson

6-1227-05

See HB

1 A bill to be entitled

2 An act relating to procurement of personal

3 property and services; creating s. 287.019,

4 F.S.; defining "privatization"; requiring the

5 head of a state agency, prior to the purchase,

6 lease, or acquisition of commodities or

7 contractual services by privatization, to

8 conduct a business case evaluation of the

9 proposed privatization; providing elements and

10 components of the evaluation; requiring the

11 head of a state agency, subsequent to the

12 purchase, lease, or acquisition of commodities

13 or contractual services by privatization, to

14 conduct an evaluation of the privatization;

15 providing evaluation criteria; requiring state

16 agencies to establish a system for monitoring

17 the performance of a privatization contractor

18 and for monitoring the contractor's compliance

19 with the terms and conditions of the

20 privatization contract; requiring state

21 agencies to conduct annual evaluations of the

22 performance of privatization contractors and

23 report their findings to the Legislature, the

24 Office of Program Policy Analysis and

25 Government Accountability, and the Auditor

26 General; requiring the Office of Program Policy

27 Analysis and Government Accountability and the

28 Auditor General to periodically examine any

29 privatization in order to assist the

30 Legislature in evaluating whether expected

31 savings and outcomes have been achieved through

1 privatization; creating s. 14.204, F.S.;

2 creating the Center for Efficient Government;

3 providing purposes of the center; providing for

4 an oversight advisory board to oversee the

5 activities of the center; providing for

6 membership of the board; creating s. 110.1095,

7 F.S.; requiring executive agencies to address

8 the transition of employees affected by

9 outsourcing initiatives; requiring agencies to

10 develop job placement policies for such

11 employees; requiring agencies to develop a

12 reemployment and retraining assistance plan for

13 employees; authorizing agencies to provide job

14 skills retraining to any impacted employee who

15 is not offered comparable employment within 1

16 year of separating from state employment;

17 requiring agencies to coordinate the impact and

18 transition of affected employees with the

19 Agency for Workforce Innovation; requiring the

20 coordination of services for state employees

21 with Workforce Florida, Inc., and regional

22 workforce boards throughout the state;

23 requiring agencies to offer critical employee

24 retention salary increases; authorizing

25 agencies to use a percentage of the savings

26 realized from an implemented outsourcing

27 initiative as an employee recognition

28 allocation to reward the employee or group of

29 employees who proposed the initiative;

30 requiring agencies to consider incorporating

31 severance compensation provisions into

1 outsourcing contracts; providing an effective
2 date.

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

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6 Section 1. Section 287.019, Florida Statutes, is
7 created to read:

8 287.019 Privatization evaluation and assessment.--

9 (1) For the purposes of this section, "privatization"
10 means entering into a contract with one or more private
11 entities for the purchase, lease, or acquisition of any
12 commodity or contractual service required by an agency of the
13 state under this chapter when:

14 (a) It is maintained by the department that such
15 commodity or contractual service can be provided in a more
16 efficient manner by a private entity; and

17 (b) The expenditure by the contracting agency for the
18 purchase, lease, or acquisition of commodities or contractual
19 services exceeds \$10 million annually.

20 (2) Prior to the purchase, lease, or acquisition of
21 any commodity or contractual service required by an agency of
22 the state under this chapter which meets the definition
23 provided in subsection (1), the head of the state agency shall
24 conduct a business case evaluation of the proposed
25 privatization which shall specifically address the potential
26 for the privatization to result in a verifiable cost savings.
27 A business case evaluation for a privatization proposal shall
28 contain the following elements:

29 (a) Description and rationale.--The description and
30 rationale element shall contain the following components:

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- 1 1. A description of the program or service to be
2 privatized.
- 3 2. An analysis of the agency's current performance and
4 associated needs or problems with respect to the program or
5 service that is the subject of the privatization proposal and
6 proposed solutions.
- 7 3. The benefits, such as cost savings or program
8 improvements, that are expected to result from privatization.
- 9 (b) Cost-benefit analysis.--The cost-benefit analysis
10 element shall contain the following components:
- 11 1. An accounting of the current direct and indirect
12 expenditures for the program or services for which
13 privatization is proposed. Indirect costs, as determined by
14 the agency, include, but are not limited to, providing
15 executive direction, legal services, and administrative
16 support services such as personnel, finance, and budgeting;
17 program direction, monitoring, and other activities that are
18 essential to operating a program but are not directly
19 associated with providing a service; and the salaries,
20 benefits, and expenses of the individuals overseeing the
21 contractor for the privatization. Direct costs, as determined
22 by the agency, include, but are not limited to, salaries and
23 benefits of employees formerly providing the program or
24 service.
- 25 2. An analysis demonstrating the potential savings or
26 increased costs that are expected to occur as a result of
27 privatization. The analysis shall include the identification
28 of crucial factors that could affect the potential savings
29 realized, the effect of changes in these factors on costs and
30 benefits of the proposal, and a list of state assets that
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1 would be transferred to the contractor if the privatization
2 plan is implemented.

3 3. If the proposed privatization will occur under a
4 share-in-savings contract, a description of the methodology
5 that will be used to calculate savings and payments to a
6 contractor under such contract. For purposes of this section,
7 a "share-in-savings contract" is an agreement in which an
8 agency pays a contractor based on the financial benefits
9 derived from the contractor's performance and which contains
10 quantifiable baseline data that will be used to establish the
11 basis upon which the percentage of savings paid to a
12 contractor will be determined.

13 (c) Contract monitoring and contingency plans.--The
14 contract monitoring and contingency plans element shall
15 contain the following components:

16 1. The process the agency plans to use to monitor the
17 performance of the privatization contractor and the estimated
18 monitoring costs the agency will incur for this oversight
19 function.

20 2. A contingency plan specifying actions that will be
21 taken to address potential problems such as vendor prices
22 exceeding anticipated levels, unexpected delays by the
23 contractor in performing services by required deadlines,
24 failure to meet performance expectations, or inability to meet
25 obligations or abandonment of the contract.

26 (d) Public records access.--The public records access
27 element shall contain the following components:

28 1. A list of public records issues pertinent to the
29 proposed privatization, including whether any confidential or
30 exempt records would be maintained by the contractor and the
31 procedures that would be used to ensure that the contractor

1 maintains security and privacy of confidential or exempt
2 records.

3 2. Agency plans to require the contractor to make
4 available for inspection and review any program-related
5 records that it produces or collects to the same extent and in
6 the same manner as such records would be available from a
7 state agency.

8 (3) If the business case evaluation conducted pursuant
9 to subsection (2) indicates that the proposed privatization
10 will result in a verifiable cost savings, the evaluation must
11 ascertain whether the cost savings will be directly
12 attributable to any of the following:

13 (a) Lower labor costs than that of the state agency.

14 (b) Reduced regulatory requirements.

15 (c) Reduced overhead.

16 (d) Increased flexibility with respect to the
17 motivation, reward, and termination of employees.

18 (e) Access to better equipment than that available to
19 the state agency.

20 (f) The ability to react more quickly to changing
21 conditions than the state agency. If so, was this ability
22 attributable to:

23 1. An ability to shift funds to pay unexpected
24 expenses without the encumbrance of budget transfer authority
25 under which the state agency must operate.

26 2. An ability to expand operations more quickly than
27 the state agency.

28 (g) Staffing flexibility, including the ability to
29 obtain specialized expertise by contract or through the hiring
30 of a consultant for one-time occasional projects.

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1 (h) The avoidance of political factors, which may
2 include the use of private-sector experts not aligned or
3 associated with partisan political groups.

4 (i) The avoidance of prohibitive or excessive start-up
5 costs needed to provide appropriate up-front funding for
6 service infrastructure.

7 (4) One year after entering into a contract for the
8 purchase, lease, or acquisition of any commodity or
9 contractual service required by an agency of the state under
10 this chapter, which meets the definition provided in
11 subsection (1), the Center for Efficient Government shall
12 conduct an evaluation of the results of the privatization to
13 determine whether the privatization yielded or failed to yield
14 the projected cost savings based on the evaluation conducted
15 pursuant to subsections (2) and (3) prior to entering into the
16 contract and an evaluation of the results of the privatization
17 during its first year which shall specifically address whether
18 the privatization resulted in a verifiable cost increase. If
19 it is determined that the privatization resulted in a
20 verifiable cost increase, the evaluation must ascertain
21 whether the cost increase was directly attributable to any of
22 the following:

23 (a) Reduced public accountability. If so, did the lack
24 of public accountability or reduced public accountability
25 manifest itself in increased costs resulting from:

26 1. Lack of public access to service and financial
27 records maintained by the provider.

28 2. Variations in the quality of services being
29 provided to citizens.

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1 3. Entering into a contract the term of which was too
2 lengthy, thus precluding the ability to adjust to a changing
3 condition or circumstance.

4 4. A resultant inability to gauge or monitor poor
5 performance. In an instance where such poor performance
6 resulted in termination of a contract, was increased cost or
7 hardship incurred because:

8 a. The contractor was a sole-source provider of a
9 service; or

10 b. The contractor was providing a service in which no
11 service disruptions could be tolerated.

12 (b) Service quality problems which include, but are
13 not limited to:

14 1. Providing service to only those who do not have
15 many needs, commonly known as "creaming."

16 2. Identifiable cost-cutting measures that result in
17 cost increases including, but not limited to, frequent
18 replacement of poorly maintained equipment.

19 3. Service quality problems that arise from contract
20 deficiencies which include, but are not limited to:

21 a. Poorly defined responsibilities of the contractor.

22 b. Lack of service quality performance measures.

23 c. The absence of penalties for nonperformance.

24 d. The absence of contingency plans.

25 (c) Higher long-term costs. If so, did the higher
26 long-term costs result from:

27 1. The submission by the contractor of a low initial
28 bid in order to obtain the contract followed by substantially
29 increasing costs in subsequent years when the agency
30 previously providing the service no longer has the staff or
31 authority to perform the service.

1 2. The acceptance of a contract bid that appears low
2 but is in actuality higher than the in-house costs of the
3 agency due to the agency's inability to determine the actual
4 cost of providing services in-house because of agency
5 accounting systems which do not allocate all direct and
6 indirect costs to services.

7 3. Failure in the request for proposals that solicited
8 the bid for the service to mandate that the contractor achieve
9 a specified level of savings.

10 4. Failure of the contract to limit future price
11 increases.

12 (d) Workforce issues including, but not limited to:

13 1. Employee layoffs resulting in morale problems.

14 2. Union challenges to privatization.

15 3. Disruptions resulting from bumping rights when
16 affected employees assume jobs in other areas.

17 4. Failure of an agency's ability to meet Equal
18 Employment Opportunity goals and subsequent discrimination
19 challenges resulting from inordinate numbers of minority
20 groups being removed from state payrolls.

21 5. Failure in a contract to require the contractor to
22 guarantee jobs and wages for a limited time period.

23 Section 2. (1) No later than January 1, 2006, each
24 state agency shall establish a system for monitoring the
25 performance of a contractor with whom the state has entered
26 into a contract for the purchase, lease, or acquisition of
27 commodities or contractual services by privatization as
28 defined in section 287.019(1), Florida Statutes, and for
29 monitoring the contractor's compliance with the terms and
30 conditions of the privatization contract.

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1 (2) Beginning January 1, 2006, each state agency, in
2 coordination with the Center for Efficient Government, shall
3 conduct an annual evaluation of the performance of any
4 contractor with whom the state has entered into a contract for
5 the purchase, lease, or acquisition of commodities or
6 contractual services by privatization exceeding \$10 million
7 and report its findings to the Legislature, the Office of
8 Program Policy Analysis and Government Accountability, and the
9 Auditor General.

10 (3) Beginning January 1, 2006, the Office of Program
11 Policy Analysis and Government Accountability and the Auditor
12 General shall be required to periodically examine any
13 privatization exceeding \$10 million in order to assist the
14 Legislature in evaluating whether expected savings and
15 outcomes have been achieved through privatization.

16 Section 3. Section 14.204, Florida Statutes, is
17 created to read:

18 14.204 Center For Efficient Government; creation;
19 purpose; oversight advisory board.--

20 (1) The Center for Efficient Government is created and
21 administratively housed in the Department of Management
22 Services.

23 (2) The purpose of the center is to improve the way
24 state agencies deliver services to Florida's citizens. In
25 furtherance of this purpose, the center shall:

26 (a) Review past outsourcing projects for best business
27 practices.

28 (b) Review existing outsourcing plans within the state
29 agencies to ensure compliance with center standards and
30 business case criteria, execution of effective contracts with
31 vendors, and implementation of successful change management.

1 (c) Provide to the President of the Senate, the
2 Speaker of the House of Representatives, and the Governor, by
3 July 1, annually, a written report containing a list of
4 outsourcing projects and initiatives that can be developed
5 over the next 3-year period.

6 (d) Maintain a database that contains information
7 about initiatives which are being performed by contractors to
8 include, but not be limited to, the lead agency name and
9 description of program or service being outsourced, names of
10 contractors and subcontractors on contract, projected and
11 actual completion dates by project phase, a description of
12 performance measures contained in the contract, and actual
13 performance measures and projected costs and revenues
14 associated with the contract.

15 (e) Develop and implement a program to transition
16 impacted employees. This program should recognize their
17 contributions to the state and the state's commitment to
18 minimize the personal impact on such employees while
19 implementing beneficial programs that reduce the cost of
20 government for all citizens of the state. The center shall
21 provide recommendations for this program to the Governor on an
22 ongoing basis.

23 (3)(a) The Center for Efficient Government Oversight
24 Advisory Board is established for the purpose of reviewing and
25 evaluating the performance of the center in carrying out its
26 duties under this section and investigating and evaluating any
27 issues relevant to the center's review of past outsourcing
28 projects and existing outsourcing plans or any other
29 activities of the center the board deems appropriate. The
30 center shall make reports as it deems necessary to the
31 Governor, the President of the Senate, the Speaker of the

1 House of Representatives, and the Legislative Budget
2 Commission concerning its findings and recommendations. The
3 board is composed of the following members:

4 1. The Chief Financial Officer, who shall serve as
5 chair of the board.

6 2. A member of the Senate appointed by the President
7 of the Senate, who shall be a member of the majority party.

8 3. A member of the Senate appointed by the President
9 of the Senate, who shall be a member of the minority party.

10 4. A member of the House of Representatives appointed
11 by the Speaker of the House of Representatives, who shall be a
12 member of the majority party.

13 5. A member of the House of Representatives appointed
14 by the Speaker of the House of Representatives, who shall be a
15 member of the minority party.

16 6. The Secretary of the Department of Management
17 Services.

18 7. The Secretary of Health.

19 8. The Executive Director of the Agency for Workforce
20 Innovation.

21 9. The Executive Director of the Department of
22 Revenue.

23 (b) Board members are entitled to receive per diem and
24 travel expenses as provided in s. 112.061 while carrying out
25 official business of the board and shall be reimbursed by
26 their respective agencies in accordance with chapter 112.

27 (4) All agencies are directed to render assistance,
28 resources, and cooperation to the center.

29 Section 4. Section 110.1095, Florida Statutes, is
30 created to read:

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1 110.1095 Transition of employees affected by
2 outsourcing initiatives.--

3 (1) Executive agencies shall address the transition of
4 all affected employees in the business case for any
5 outsourcing proposal submitted to the Center for Efficient
6 Government under s. 14.204 and through the procurement of such
7 outsourced services.

8 (2) Each agency shall develop job placement policies
9 for employees affected by an outsourcing initiative. Policies
10 shall include, but not be limited to, requiring that each
11 impacted state employee be interviewed by the contractor and
12 considered for job placement within the company.

13 (3) Each agency shall develop a reemployment and
14 retraining assistance plan for employees who are not retained
15 by the agency or employed by the contractor. Agencies may
16 provide job skills retraining to any impacted employee who is
17 not offered comparable employment within one year of
18 separating from state employment. Agencies shall coordinate
19 the impact and transition of affected employees with the
20 Agency for Workforce Innovation. The agency shall also
21 coordinate services for state employees with Workforce
22 Florida, Inc., and regional workforce boards throughout the
23 state.

24 (4) In accordance with existing statutory authority,
25 agencies shall, within their approval budgets, offer critical
26 employee retention salary increases in order to retain those
27 individuals identified as critical to successful transition of
28 the outsourced service to the contractor.

29 (5) In accordance with existing statutory authority,
30 agencies may use a percentage of the savings realized from an
31 implemented outsourcing initiative as an employee recognition

1 allocation to reward the employee or group of employees who
2 proposed the initiative.

3 (6) Agencies shall consider incorporating severance
4 compensation provisions into outsourcing contracts requiring
5 the vendor to create an employee severance pay pool as part of
6 the contract. Employees who are not offered employment with
7 the state, the vendor, or another entity would be provided
8 severance pay.

9 (7) The Department of Management Services, Division of
10 Human Resource Management, and the Center for Efficient
11 Government shall provide technical assistance to the agencies,
12 as requested, to facilitate development of the measures set
13 forth herein.

14 (8) Agencies are directed to implement the policies
15 and programs set forth in this section.

16 Section 5. This act shall take effect upon becoming a
17 law.

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