

1 A bill to be entitled
2 An act relating to procurement; amending s. 287.012, F.S.;
3 providing definitions; creating s. 287.046, F.S.;
4 providing for outsourcing or privatization of functions;
5 providing procedural, contractual, and negotiation
6 requirements; providing contract amendment requirements
7 and limitations; providing requirements for share-in-
8 savings contracts; requiring contracting agencies to
9 annually report to the Governor, the Legislature, and
10 certain entities; providing reporting requirements;
11 requiring the Department of Management Services to
12 annually report to the Governor, Legislature, and certain
13 entities; providing reporting requirements; requiring the
14 Department of Management Services to establish a personnel
15 training program for certain purposes; amending s. 283.33,
16 F.S.; correcting a cross reference; providing an effective
17 date.

18
19 WHEREAS, when appropriately managed, privatization can
20 produce substantial benefits for taxpayers, including saving
21 public dollars and improving service quality, and

22 WHEREAS, the potential benefits of privatization may be
23 lost if privatization initiatives are poorly conceived or
24 implemented, and

25 WHEREAS, careful specification of the services to be
26 provided through privatization and strong systems to monitor
27 contractor performance are needed to avoid service quality

28 | problems, higher long-term costs, and disruptions in essential
 29 | state services, and

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

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

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 35 | Section 1. Subsections (20) through (26) of section
 36 | 287.012, Florida Statutes, are renumbered as subsections (22)
 37 | through (28), respectively, subsections (27) and (28) are
 38 | renumbered as subsections (30) and (31), respectively, and new
 39 | subsections (20), (21), and (29) are added to said section, to
 40 | read:

41 | 287.012 Definitions.--As used in this part, the term:

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

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

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

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

59 287.046 Outsourcing or privatizing of functions.--No
60 agency may outsource or privatize any function without having or
61 seeking authority except as authorized by general law, the
62 General Appropriations Act, legislation implementing the General
63 Appropriations Act, or special appropriations acts.

64 (1) Prior to outsourcing or privatizing a function or
65 responsibility, an agency shall develop a business case
66 describing and analyzing the outsourcing or privatization
67 initiative. The business case shall include, but not be limited
68 to, the following information:

69 (a) A detailed description of the function to be outsourced
70 or privatized, a description and analysis of the agency's current
71 performance, a rationale for the proposed outsourcing or
72 privatization initiative, and a citation to the existing or
73 proposed legal authority for outsourcing or privatizing the
74 function or responsibility.

75 (b) A cost-benefit analysis describing the current direct
76 and indirect costs of the program or services, an analysis
77 demonstrating the potential savings or increased costs that are
78 expected to occur under privatization or outsourcing, and a
79 sensitivity analysis identifying critical factors that could
80 affect the potential savings and the effect of changes in these
81 factors on costs and benefits of the proposal.

82 (c) The process the agency plans to use to monitor
83 contractor performance and the estimated monitoring costs the
84 agency will incur for this monitoring.

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

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

90 (2) The agency shall submit the business case for each
91 privatization or outsourcing proposal to the Legislative Budget
92 Commission for approval prior to entering into a contract with a
93 contractor. Upon the approval of the Legislative Budget
94 Commission, the agency may enter into a contract with the
95 contractor.

96 (3) Agencies shall enter into contracts for each
97 privatization and outsourcing initiative. At a minimum, the
98 contract shall include:

99 (a) Performance measures and standards, including output and
100 outcome measures as defined in s. 216.011 and unit cost measures
101 representing the costs of producing an output or outcome. The term
102 "unit cost" means the average total cost of producing a single
103 unit of output, for goods and services, for a specific agency
104 activity, as defined in legislative budget instructions required
105 by s. 216.023.

106 (b) Incentives and penalties to encourage contractor
107 compliance with contract terms and the achievement of expected
108 performance results, including high-quality and cost-effective
109 services to the citizens of this state.

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

112 1. A contractor must make available for review any record
113 the contractor produces or collects related to the provision of a
114 state function or service to the same extent those records would
115 be available from a state agency by a public records request.

116 2. A contractor must maintain confidentiality of records
117 which are exempt from public records requests or otherwise
118 confidential and exempt under law.

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

121 (e) A requirement that the contractor provide access for
122 the contracting agency's inspector general, the Office of
123 Program Policy Analysis and Government Accountability, the
124 Auditor General, and the Department of Financial Services to all
125 records of the contractor related to the services being
126 provided, as needed for a properly authorized audit,
127 examination, or investigation.

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

131 (5) The agency may not amend a contract for an approved
132 privatization or outsourcing initiative without first submitting
133 the proposed amendment to the Legislative Budget Commission for
134 approval if:

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

137 (b)1. The total dollar amount to be paid is increased by

138 10 percent or more; or

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

141
 142 Upon the approval of the amendment by the Legislative Budget
 143 Commission, the agency may amend the contract.

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

146 (a) A description of the methodology that will be used to
 147 calculate savings to the state and payments to a contractor
 148 under the contract.

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

152 (7)(a) An agency shall annually furnish the President of
 153 the Senate, the Speaker of the House of Representatives, the
 154 Legislative Budget Commission, and the Office of Program Policy
 155 Analysis and Government Accountability a report on all its
 156 current outsourcing or privatization contracts that describes
 157 the progress made in implementing each outsourcing or
 158 privatization effort and the contractor's performance in
 159 achieving contractually specified performance standards. Part of
 160 this report must also include information on the extent to which
 161 work formerly performed in this state by state employees is
 162 being performed in other states or out of country as a result of
 163 the outsourcing or privatization initiative.

164 (b) The Department of Management Services shall annually
 165 furnish the President of the Senate, the Speaker of the House of

166 Representatives, the Legislative Budget Commission, and the
 167 Office of Program Policy Analysis and Government Accountability
 168 a report that summarizes agency reports required by this
 169 section. As part of its report, the department shall identify
 170 lessons learned from agency initiatives in outsourcing and
 171 privatizing government programs and recommend areas for
 172 improvement in developing contracts and monitoring contractor
 173 performance.

174 (8) The Department of Management Services shall establish
 175 a program to train state agency contracting personnel in best
 176 practices for contract development, negotiation, and monitoring.
 177 Part of that training must include curriculum to create a
 178 certified negotiator program.

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

181 283.33 Printing of publications; lowest bidder awards.--

182 (1) Publications may be printed and prepared in-house, by
 183 another agency or the Legislature, or purchased on bid,
 184 whichever is more economical and practicable as determined by
 185 the agency. An agency may contract for binding separately when
 186 more economical or practicable, whether or not the remainder of
 187 the printing is done in-house. A vendor may subcontract for
 188 binding and still be considered a responsible vendor,
 189 notwithstanding s. 287.012~~(26)~~~~(24)~~.

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