

1 A bill to be entitled  
2 An act relating to procurement of personal property and  
3 services; creating s. 287.019, F.S.; defining  
4 "privatization"; requiring the head of a state agency,  
5 prior to the purchase, lease, or acquisition of  
6 commodities or contractual services by privatization, to  
7 conduct a business case evaluation of the proposed  
8 privatization; providing elements and components of the  
9 evaluation; requiring the head of a state agency,  
10 subsequent to the purchase, lease, or acquisition of  
11 commodities or contractual services by privatization, to  
12 conduct an evaluation of the privatization; providing  
13 evaluation criteria; requiring state agencies to establish  
14 a system for monitoring the performance of a privatization  
15 contractor and for monitoring the contractor's compliance  
16 with the terms and conditions of the privatization  
17 contract; requiring state agencies to conduct annual  
18 evaluations of the performance of privatization  
19 contractors and report their findings to the Legislature,  
20 the Office of Program Policy Analysis and Government  
21 Accountability, and the Auditor General; requiring the  
22 Office of Program Policy Analysis and Government  
23 Accountability and the Auditor General to periodically  
24 examine any privatization in order to assist the  
25 Legislature in evaluating whether expected savings and  
26 outcomes have been achieved through privatization;  
27 creating s. 14.204, F.S.; creating the Center for  
28 Efficient Government; providing purposes of the center;

29 providing for an oversight advisory board to oversee the  
30 activities of the center; providing for membership of the  
31 board; creating s. 110.1095, F.S.; requiring executive  
32 agencies to address the transition of employees affected  
33 by outsourcing initiatives; requiring agencies to develop  
34 job placement policies for such employees; requiring  
35 agencies to develop a reemployment and retraining  
36 assistance plan for employees; authorizing agencies to  
37 provide job skills retraining to any impacted employee who  
38 is not offered comparable employment within 1 year of  
39 separating from state employment; requiring agencies to  
40 coordinate the impact and transition of affected employees  
41 with the Agency for Workforce Innovation; requiring the  
42 coordination of services for state employees with  
43 Workforce Florida, Inc., and regional workforce boards  
44 throughout the state; requiring agencies to offer critical  
45 employee retention salary increases; authorizing agencies  
46 to use a percentage of the savings realized from an  
47 implemented outsourcing initiative as an employee  
48 recognition allocation to reward the employee or group of  
49 employees who proposed the initiative; requiring agencies  
50 to consider incorporating severance compensation  
51 provisions into outsourcing contracts; providing an  
52 effective date.

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54 Be It Enacted by the Legislature of the State of Florida:  
55

56 Section 1. Section 287.019, Florida Statutes, is created  
57 to read:

58 287.019 Privatization evaluation and assessment.--

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

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

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

70 (2) Prior to the purchase, lease, or acquisition of any  
71 commodity or contractual service required by an agency of the  
72 state under this chapter which meets the definition provided in  
73 subsection (1), the head of the state agency shall conduct a  
74 business case evaluation of the proposed privatization which  
75 shall specifically address the potential for the privatization  
76 to result in a verifiable cost savings. A business case  
77 evaluation for a privatization proposal shall contain the  
78 following elements:

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

81 1. A description of the program or service to be  
82 privatized.

83 2. An analysis of the agency's current performance and

84 associated needs or problems with respect to the program or  
85 service that is the subject of the privatization proposal and  
86 proposed solutions.

87 3. The benefits, such as cost savings or program  
88 improvements, that are expected to result from privatization.

89 (b) Cost-benefit analysis.--The cost-benefit analysis  
90 element shall contain the following components:

91 1. An accounting of the current direct and indirect  
92 expenditures for the program or services for which privatization  
93 is proposed. Indirect costs, as determined by the agency,  
94 include, but are not limited to, providing executive direction,  
95 legal services, and administrative support services such as  
96 personnel, finance, and budgeting; program direction,  
97 monitoring, and other activities that are essential to operating  
98 a program but are not directly associated with providing a  
99 service; and the salaries, benefits, and expenses of the  
100 individuals overseeing the contractor for the privatization.  
101 Direct costs, as determined by the agency, include, but are not  
102 limited to, salaries and benefits of employees formerly  
103 providing the program or service.

104 2. An analysis demonstrating the potential savings or  
105 increased costs that are expected to occur as a result of  
106 privatization. The analysis shall include the identification of  
107 crucial factors that could affect the potential savings  
108 realized, the effect of changes in these factors on costs and  
109 benefits of the proposal, and a list of state assets that would  
110 be transferred to the contractor if the privatization plan is  
111 implemented.

112        3. If the proposed privatization will occur under a share-  
113 in-savings contract, a description of the methodology that will  
114 be used to calculate savings and payments to a contractor under  
115 such contract. For purposes of this section, a "share-in-savings  
116 contract" is an agreement in which an agency pays a contractor  
117 based on the financial benefits derived from the contractor's  
118 performance and which contains quantifiable baseline data that  
119 will be used to establish the basis upon which the percentage of  
120 savings paid to a contractor will be determined.

121        (c) Contract monitoring and contingency plans.--The  
122 contract monitoring and contingency plans element shall contain  
123 the following components:

124            1. The process the agency plans to use to monitor the  
125 performance of the privatization contractor and the estimated  
126 monitoring costs the agency will incur for this oversight  
127 function.

128            2. A contingency plan specifying actions that will be  
129 taken to address potential problems such as vendor prices  
130 exceeding anticipated levels, unexpected delays by the  
131 contractor in performing services by required deadlines, failure  
132 to meet performance expectations, or inability to meet  
133 obligations or abandonment of the contract.

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

136            1. A list of public records issues pertinent to the  
137 proposed privatization, including whether any confidential or  
138 exempt records would be maintained by the contractor and the  
139 procedures that would be used to ensure that the contractor

140 maintains security and privacy of confidential or exempt  
141 records.

142 2. A requirement that, in the event of unlawful disclosure  
143 of any confidential personnel information or records by a  
144 contractor which results in identity theft, the affected  
145 employee or employees must be made whole by the contractor,  
146 which shall include, but not be limited to, the purchase of  
147 identity theft insurance by the contractor at no cost to the  
148 state or the affected employee.

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

153 (3) If the business case evaluation conducted pursuant to  
154 subsection (2) indicates that the proposed privatization will  
155 result in a verifiable cost savings, the evaluation must  
156 ascertain whether the cost savings will be directly attributable  
157 to any of the following:

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

159 (b) Reduced regulatory requirements.

160 (c) Reduced overhead.

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

163 (e) Access to better equipment than that available to the  
164 state agency.

165 (f) The ability to react more quickly to changing  
166 conditions than the state agency. If so, was this ability  
167 attributable to:

168       1. An ability to shift funds to pay unexpected expenses  
169 without the encumbrance of budget transfer authority under which  
170 the state agency must operate.

171       2. An ability to expand operations more quickly than the  
172 state agency.

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

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

179       (i) The avoidance of prohibitive or excessive start-up  
180 costs needed to provide appropriate up-front funding for service  
181 infrastructure.

182       (4) One year after entering into a contract for the  
183 purchase, lease, or acquisition of any commodity or contractual  
184 service required by an agency of the state under this chapter,  
185 which meets the definition provided in subsection (1), the  
186 Center for Efficient Government shall conduct an evaluation of  
187 the results of the privatization to determine whether the  
188 privatization yielded or failed to yield the projected cost  
189 savings based on the evaluation conducted pursuant to  
190 subsections (2) and (3) prior to entering into the contract and  
191 an evaluation of the results of the privatization during its  
192 first year which shall specifically address whether the  
193 privatization resulted in a verifiable cost increase. If it is  
194 determined that the privatization resulted in a verifiable cost

195 increase, the evaluation must ascertain whether the cost  
196 increase was directly attributable to any of the following:

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

200 1. Lack of public access to service and financial records  
201 maintained by the provider.

202 2. Variations in the quality of services being provided to  
203 citizens.

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

207 4. A resultant inability to gauge or monitor poor  
208 performance. In an instance where such poor performance resulted  
209 in termination of a contract, was increased cost and/or hardship  
210 incurred because:

211 a. The contractor was a sole-source provider of a service;  
212 or

213 b. The contractor was providing a service in which no  
214 service disruptions could be tolerated.

215 (b) Service quality problems which include, but are not  
216 limited to:

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

219 2. Identifiable cost-cutting measures that result in cost  
220 increases including, but not limited to, frequent replacement of  
221 poorly maintained equipment.



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

224 a. Poorly defined responsibilities of the contractor.

225 b. Lack of service quality performance measures.

226 c. The absence of penalties for nonperformance.

227 d. The absence of contingency plans.

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

230 1. The submission by the contractor of a low initial bid  
231 in order to obtain the contract followed by substantially  
232 increasing costs in subsequent years when the agency previously  
233 providing the service no longer has the staff or authority to  
234 perform the service.

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

240 3. Failure in the request for proposals that solicited the  
241 bid for the service to mandate that the contractor achieve a  
242 specified level of savings.

243 4. Failure of the contract to limit future price  
244 increases.

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

246 1. Employee layoffs resulting in morale problems.

247 2. Union challenges to privatization.

248 3. Disruptions resulting from bumping rights when affected  
249 employees assume jobs in other areas.

250        4. Failure of an agency's ability to meet Equal Employment  
251 Opportunity goals and subsequent discrimination challenges  
252 resulting from inordinate numbers of minority groups being  
253 removed from state payrolls.

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

256        Section 2. (1) No later than January 1, 2007, each state  
257 agency shall establish a system for monitoring the performance  
258 of a contractor with whom the state has entered into a contract  
259 for the purchase, lease, or acquisition of commodities or  
260 contractual services by privatization as defined in s.  
261 287.019(1), Florida Statutes, and for monitoring the  
262 contractor's compliance with the terms and conditions of the  
263 privatization contract.

264        (2) Beginning January 1, 2007, each state agency, in  
265 coordination with the Center for Efficient Government, shall  
266 conduct an annual evaluation of the performance of any  
267 contractor with whom the state has entered into a contract for  
268 the purchase, lease, or acquisition of commodities or  
269 contractual services by privatization exceeding \$10 million and  
270 report its findings to the Legislature, the Office of Program  
271 Policy Analysis and Government Accountability, and the Auditor  
272 General.

273        (3) Beginning January 1, 2007, the Office of Program  
274 Policy Analysis and Government Accountability and the Auditor  
275 General shall be required to periodically examine any  
276 privatization exceeding \$10 million in order to assist the

277 Legislature in evaluating whether expected savings and outcomes  
 278 have been achieved through privatization.

279 Section 3. Section 14.204, Florida Statutes, is created to  
 280 read:

281 14.204 Center For Efficient Government; creation; purpose;  
 282 oversight advisory board.--

283 (1) The Center for Efficient Government is created and  
 284 administratively housed in the Department of Management  
 285 Services.

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

289 (a) Review past outsourcing projects for best business  
 290 practices.

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

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

300 (d) Maintain a database that contains information about  
 301 initiatives which are being performed by contractors to include,  
 302 but not be limited to, the lead agency name and description of  
 303 program or service being outsourced, names of contractors and  
 304 subcontractors on contract, projected and actual completion

305 dates by project phase, a description of performance measures  
306 contained in the contract, and actual performance measures and  
307 projected costs and revenues associated with the contract.

308 (e) Develop and implement a program to transition impacted  
309 employees. This program should recognize their contributions to  
310 the state and the state's commitment to minimize the personal  
311 impact on such employees while implementing beneficial programs  
312 that reduce the cost of government for all citizens of the  
313 state. The center shall provide recommendations for this program  
314 to the Governor on an ongoing basis.

315 (3) (a) The Center for Efficient Government Oversight  
316 Advisory Board is established for the purpose of reviewing and  
317 evaluating the performance of the center in carrying out its  
318 duties under this section and investigating and evaluating any  
319 issues relevant to the center's review of past outsourcing  
320 projects and existing outsourcing plans or any other activities  
321 of the center the board deems appropriate. The center shall make  
322 reports as it deems necessary to the Governor, the President of  
323 the Senate, the Speaker of the House of Representatives, and the  
324 Legislative Budget Commission concerning its findings and  
325 recommendations. The board is composed of the following members:

326 1. The Chief Financial Officer, who shall serve as chair  
327 of the board.

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

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

332 4. A member of the House of Representatives appointed by

333 the Speaker of the House of Representatives, who shall be a  
 334 member of the majority party.

335 5. A member of the House of Representatives appointed by  
 336 the Speaker of the House of Representatives, who shall be a  
 337 member of the minority party.

338 6. The Secretary of the Department of Management Services.

339 7. The Secretary of Health.

340 8. The Executive Director of the Agency for Workforce  
 341 Innovation.

342 9. The Executive Director of the Department of Revenue.

343 (b) Board members are entitled to receive per diem and  
 344 travel expenses as provided in s. 112.061, Florida Statutes,  
 345 while carrying out official business of the board and shall be  
 346 reimbursed by their respective agencies in accordance with  
 347 chapter 112.

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

350 Section 4. Section 110.1095, Florida Statutes, is created  
 351 to read:

352 110.1095 Transition of employees affected by outsourcing  
 353 initiatives.--

354 (1) Executive agencies shall address the transition of all  
 355 affected employees in the business case for any outsourcing  
 356 proposal submitted to the Center for Efficient Government under  
 357 s. 14.204 and through the procurement of such outsourced  
 358 services.

359 (2) Each agency shall develop job placement policies for  
 360 employees affected by an outsourcing initiative. Policies shall

361 include, but not be limited to, requiring that each impacted  
362 state employee be interviewed by the contractor and considered  
363 for job placement within the company.

364 (3) Each agency shall develop a reemployment and  
365 retraining assistance plan for employees who are not retained by  
366 the agency or employed by the contractor. Agencies may provide  
367 job skills retraining to any impacted employee who is not  
368 offered comparable employment within one year of separating from  
369 state employment. Agencies shall coordinate the impact and  
370 transition of affected employees with the Agency for Workforce  
371 Innovation. The agency shall also coordinate services for state  
372 employees with Workforce Florida, Inc., and regional workforce  
373 boards throughout the state.

374 (4) In accordance with existing statutory authority,  
375 agencies shall, within their approval budgets, offer critical  
376 employee retention salary increases in order to retain those  
377 individuals identified as critical to successful transition of  
378 the outsourced service to the contractor.

379 (5) In accordance with existing statutory authority,  
380 agencies may use a percentage of the savings realized from an  
381 implemented outsourcing initiative as an employee recognition  
382 allocation to reward the employee or group of employees who  
383 proposed the initiative.

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

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389 pay.

390 (7) The Department of Management Services, Division of  
391 Human Resource Management, and the Center for Efficient  
392 Government shall provide technical assistance to the agencies,  
393 as requested, to facilitate development of the measures set  
394 forth herein.

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

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