

By Senator Argenziano

3-1590B-06

1 A bill to be entitled
 2 An act relating to procurement of contractual
 3 services by a state agency; amending s.
 4 287.057, F.S.; prohibiting a state agency from
 5 renewing or amending a contract for outsourcing
 6 under certain conditions; requiring certain
 7 qualifications for persons chosen to conduct
 8 negotiations during specified procurements;
 9 requiring the department to adopt rules
 10 governing those qualifications; requiring that
 11 a specified statement be included in
 12 procurements of commodities and services which
 13 prohibits contact between respondents and
 14 specified employees of the executive and
 15 legislative branches; creating s. 287.0571,
 16 F.S.; creating the Florida Efficient Government
 17 Act; providing legislative intent; providing
 18 that procurements of specified commodities and
 19 services are not subject to the act; creating
 20 s. 287.05721, F.S.; providing definitions;
 21 creating s. 287.0573, F.S.; creating the
 22 Council on Efficient Government; providing the
 23 purpose and membership of the council;
 24 providing duties and responsibilities of the
 25 council; requiring the council to review and
 26 issue advisory reports on certain state agency
 27 procurements; requiring the department to
 28 employ adequate number of staff; requiring the
 29 council to be headed by a director appointed by
 30 the Secretary of Management Services; requiring
 31 state agencies to submit materials required by

1 the council; creating s. 287.0574, F.S.;
2 providing requirements for certain business
3 cases to outsource by a state agency; requiring
4 a state agency to develop a business case that
5 describes and analyzes a contractual services
6 procurement under consideration; providing that
7 the business case is not subject to challenge
8 or protest under the Administrative Procedure
9 Act; providing required components of a
10 business case; providing contract requirements
11 for an outsourcing procurement; amending s.
12 287.058, F.S.; providing that a contract may
13 not prohibit a contractor from lobbying the
14 executive or legislative branches concerning
15 specified contract issues, within specified
16 time lines; creating s. 287.074, F.S.;
17 requiring that only public officers or
18 employees perform certain functions;
19 prohibiting a contractor from participating in
20 the procurement of contractual services by a
21 state agency; repealing s. 14.203, F.S.,
22 relating to the State Council on Competitive
23 Government; providing appropriations; providing
24 that certain state agencies are subject to the
25 act; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (a) of subsection (14) and
30 paragraph (b) of subsection (17) of section 287.057, Florida
31

1 Statutes, are amended, and subsection (26) is added to that
2 section, to read:

3 287.057 Procurement of commodities or contractual
4 services.--

5 (14)(a) Contracts for commodities or contractual
6 services may be renewed for a period that may not exceed 3
7 years or the term of the original contract, whichever period
8 is longer. Renewal of a contract for commodities or
9 contractual services shall be in writing and shall be subject
10 to the same terms and conditions set forth in the initial
11 contract. If the commodity or contractual service is purchased
12 as a result of the solicitation of bids, proposals, or
13 replies, the price of the commodity or contractual service to
14 be renewed shall be specified in the bid, proposal, or reply.
15 A renewal contract may not include any compensation for costs
16 associated with the renewal. Renewals shall be contingent upon
17 satisfactory performance evaluations by the agency and subject
18 to the availability of funds. Exceptional purchase contracts
19 pursuant to paragraphs (5)(a) and (c) may not be renewed. With
20 the exception of s. 287.057(13), if a contract amendment
21 results in a longer contract term or increased payments, a
22 state agency may not renew or amend a contract for the
23 outsourcing of a service or activity that has an original term
24 value exceeding the sum of \$10 million before submitting a
25 written report concerning contract performance to the
26 Governor, the President of the Senate, and the Speaker of the
27 House of Representatives at least 90 days before execution of
28 the renewal or amendment.

29 (17) For a contract in excess of the threshold amount
30 provided in s. 287.017 for CATEGORY FOUR, the agency head
31 shall appoint:

1 (b) At least three persons to conduct negotiations
2 during a competitive sealed reply procurement who collectively
3 have experience and knowledge in negotiating contracts,
4 contract procurement, and the program areas and service
5 requirements for which commodities or contractual services are
6 sought. When the value of a contract is in excess of \$1
7 million in any fiscal year, at least one of the persons
8 conducting negotiations must be certified as a contract
9 negotiator based upon rules adopted by the Department of
10 Management Services in order to ensure that certified contract
11 negotiators are knowledgeable about effective negotiation
12 strategies, capable of successfully implementing those
13 strategies, and involved appropriately in the procurement
14 process. At a minimum, the rules must address the
15 qualifications required for certification, the method of
16 certification, and the procedure for involving the certified
17 negotiator. If the value of a contract is in excess of \$10
18 million in any fiscal year, at least one of the persons
19 conducting negotiations must be a Project Management
20 Professional, as certified by the Project Management
21 Institute.

22 (26) Each solicitation for the procurement of
23 commodities or contractual services shall include the
24 following provision: "Respondents to this solicitation or
25 persons acting on their behalf may not contact, between the
26 release of the solicitation and the execution of the resulting
27 contract, any employee or officer of the executive or
28 legislative branch concerning any aspect of this solicitation,
29 except in writing to the procurement officer or as provided in
30 the solicitation documents. Violation of this provision may be
31 grounds for rejecting a response."

1 Section 2. Section 287.0571, Florida Statutes, is
2 created to read:

3 287.0571 Applicability of ss. 287.0571-287.0574.--

4 (1) Sections 287.0571-287.0574 may be cited as the
5 "Florida Efficient Government Act."

6 (2) It is the intent of the Legislature that each
7 state agency focus on its core mission and deliver services
8 effectively and efficiently by leveraging resources and
9 contracting with private-sector vendors whenever vendors can
10 more effectively and efficiently provide services and reduce
11 the cost of government.

12 (3) It is further the intent of the Legislature that
13 business cases to outsource be evaluated for feasibility,
14 cost-effectiveness, and efficiency before a state agency
15 proceeds with any outsourcing of services.

16 (4) Sections 287.0571-287.0574 do not apply to:

17 (a) A procurement of commodities and contractual
18 services listed in s. 287.057(5)(e), (f), and (g) and (22).

19 (b) A procurement of contractual services subject to
20 s. 287.055.

21 (c) A contract in support of the planning,
22 development, implementation, operation, or maintenance of the
23 road, bridge, and public transportation construction program
24 of the Department of Transportation.

25 (d) A procurement of commodities or contractual
26 services which does not constitute an outsourcing of services
27 or activities.

28 Section 3. Section 287.05721, Florida Statutes, is
29 created to read:

30 287.05721 Definitions.--As used in ss.

31 287.0571-287.0574, the term:

1 (1) "Council" means the Council on Efficient
2 Government.

3 (2) "Outsource" means the process of contracting with
4 a vendor to provide a service as defined in s. 216.011(1)(f),
5 in whole or in part, or an activity as defined in s.
6 216.011(1)(rr), while a state agency retains the
7 responsibility and accountability for the service or activity
8 and there is a transfer of management responsibility for the
9 delivery of resources and the performance of those resources.

10 Section 4. Section 287.0573, Florida Statutes, is
11 created to read:

12 287.0573 Council on Efficient Government; membership;
13 duties.--

14 (1) There is created a Council on Efficient Government
15 within the Department of Management Services to review,
16 evaluate, and issue advisory reports on business cases
17 submitted to the council as specified in this section.

18 (2) The council shall consist of seven members
19 appointed by the Governor pursuant to s. 20.052 and confirmed
20 by the Senate:

21 (a) The Secretary of Management Services, who shall
22 serve as chair.

23 (b) A cabinet member other than the Governor, or his
24 or her senior management or executive staff designee.

25 (c) Two heads of executive branch agencies.

26 (d) Three members from the private sector who,
27 collectively, have experience with procurement, successfully
28 increasing operational efficiency, and implementing complex
29 projects in the private-sector business environment. A
30 private-sector member of the council may not at any time
31

1 during his or her appointment to the council be registered to
2 lobby the executive or legislative branch.

3 (3) Within 45 days after the effective date of this
4 section, the Governor shall appoint two private-sector members
5 and two state agency heads for terms of 1 year and one
6 private-sector member and two agency heads for terms of 2
7 years. Thereafter, each member shall be appointed for a term
8 of 2 years. The private-sector members shall serve without
9 compensation, but are entitled to reimbursement for per diem
10 and travel expenses pursuant to s. 112.061.

11 (4) A member of the council may not participate in a
12 council review of a business case to outsource if his or her
13 state agency is conducting the proposed outsourcing or, in the
14 case of a private-sector member, if he or she has a business
15 relationship with an entity that is involved or could
16 potentially be involved in the proposed outsourcing.

17 (5) A member of the council, except the cabinet
18 member, may not delegate his or her membership to a designee.

19 (6) A quorum shall consist of at least four members,
20 including at least two private-sector members.

21 (7) Any vacancy on the council shall be filled in the
22 same manner as the original appointment, and any member
23 appointed to fill a vacancy occurring for a reason other than
24 the expiration of a term shall serve only for the unexpired
25 term of the member's predecessor.

26 (8) The council shall:

27 (a) Employ a standard process for reviewing
28 outsourcing proposals.

29 (b) Review and evaluate business cases to outsource as
30 requested by the Governor or the state agency head whose
31

1 agency is proposing to outsource or as required by ss.
2 287.0571-287.0574 or by law.

3 (c) No later than 30 days before a state agency's
4 issuance of a solicitation of \$10 million or more, provide to
5 the agency conducting the procurement, the Governor, the
6 President of the Senate, and the Speaker of the House of
7 Representatives an advisory report for each business case
8 reviewed and evaluated by the council. The report must contain
9 all versions of the business case, an evaluation of the
10 business case, any relevant recommendations, and sufficient
11 information to assist the state agency proposing to outsource
12 in determining whether the business case to outsource should
13 be included with the legislative budget request.

14 (d) Recommend and implement standard processes for
15 state agency and council review and evaluate state agency
16 business cases to outsource, including templates for use by
17 state agencies in submitting business cases to the council.

18 (e) Develop standards and best-practice procedures for
19 use by state agencies in evaluating business cases to
20 outsource.

21 (f) Recommend standards, processes, and guidelines for
22 use by state agencies in developing business cases to
23 outsource.

24 (g) Recommend incorporation of any lessons learned
25 from outsourcing functions, services, and activities into
26 council standards, procedures, and guidelines, as appropriate,
27 and identifying and disseminating to agencies information
28 regarding best practices in outsourcing efforts.

29 (h) Develop, in consultation with the Agency for
30 Workforce Innovation, guidelines for assisting state employees
31 whose jobs are eliminated as a result of outsourcing.

1 (i) Identify and report yearly to the Legislature on
2 innovative methods of delivering government services which
3 would improve the efficiency, effectiveness, or competition in
4 the delivery of government services, including, but not
5 limited to, enterprise-wide proposals.

6 (j) Report to the Legislature, yearly, on the
7 outsourcing efforts of each state agency. Such reporting shall
8 include, but need not be limited to, the number of outsourcing
9 business cases and solicitations generated by each state
10 agency, the number and dollar value of outsourcing contracts
11 by each state agency, and the status of extensions, renewals,
12 and amendments of state agency outsourcing contracts.

13 (9) The council shall make available to the Governor
14 and the Legislature minutes of all meetings, a summary report
15 on each proposal that describes funding options, including the
16 need for any budget amendments or new appropriations, and an
17 annual report of the activities and recommendations of the
18 council.

19 (10) The department shall employ an adequate number of
20 staff who collectively possess significant expertise and
21 experience as required to carry out the responsibilities of
22 this act.

23 (11) The council shall be headed by a director
24 appointed by the secretary.

25 (12) Each state agency shall submit to the council all
26 information, documents, or other materials required by the
27 council or this chapter.

28 Section 5. Section 287.0574, Florida Statutes, is
29 created to read:

30 287.0574 Business cases to outsource; review and
31 analysis; requirements.--

1 (1) A business case to outsource having a projected
2 cost exceeding \$10 million in any fiscal year shall require:

3 (a) An initial business case analysis conducted by the
4 state agency and submitted to the council, the Governor, the
5 President of the Senate, and the Speaker of the House of
6 Representatives at least 60 days before a solicitation is
7 issued. The council shall evaluate the proposal and submit the
8 evaluation to the state agency, the President of the Senate,
9 and the Speaker of the House of Representatives when the
10 business case evaluation is completed, but at least 30 days
11 before issuing a solicitation.

12 (b) A final business case analysis conducted by the
13 state agency and submitted after the conclusion of any
14 negotiations, at least 30 days before execution of a contract,
15 to the council, the Governor, the President of the Senate, and
16 the Speaker of the House of Representatives.

17 (2) A proposal to outsource having a projected cost
18 that ranges from \$1 million to \$10 million in any fiscal year
19 shall require:

20 (a) An initial business case analysis conducted by the
21 state agency and submission of the business case at least 30
22 days before issuing a solicitation to the center, the council,
23 the President of the Senate, and the Speaker of the House of
24 Representatives.

25 (b) A final business case analysis conducted by the
26 state agency and submitted after the conclusion of any
27 negotiations, at least 30 days before execution of a contract,
28 to the center, the council, the Governor, the President of the
29 Senate, and the Speaker of the House of Representatives.

30 (3) A business case to outsource having a projected
31 cost that is less than \$1 million in any fiscal year shall

1 require a final business case analysis conducted by the state
2 agency after the conclusion of any negotiations and provided
3 at least 30 days before execution of a contract to the center
4 that shall provide such business cases in its annual report to
5 the Legislature.

6 (4) For any proposed outsourcing, the state agency
7 shall develop a business case that justifies the proposal to
8 outsource. In order to reduce any administrative burden, the
9 center may allow a state agency to submit the business case in
10 the form required by the budget instructions issued pursuant
11 to s. 216.023(11), augmented with additional information if
12 necessary, to ensure that the requirements of this section are
13 met. The business case is not subject to challenge or protest
14 pursuant to chapter 120. The business case must include, but
15 need not be limited to:

16 (a) A detailed description of the service or activity
17 for which the outsourcing is proposed.

18 (b) A description and analysis of the state agency's
19 current performance, based on existing performance metrics if
20 the state agency is currently performing the service or
21 activity.

22 (c) The goals desired to be achieved through the
23 proposed outsourcing and the rationale for such goals.

24 (d) A citation of the existing or proposed legal
25 authority for contracting for outsourcing of the service or
26 activity.

27 (e) A description of available options for achieving
28 the goals.

29 (f) An analysis of the advantages and disadvantages of
30 each option, including, at a minimum, potential performance
31 improvements and risks.

1 (g) A description of the current market for the
2 contractual services that are under consideration for
3 outsourcing.

4 (h) A cost-benefit analysis documenting the direct and
5 indirect specific baseline costs, savings, and qualitative and
6 quantitative benefits involved in or resulting from the
7 implementation of the recommended option or options. Such
8 analysis must specify the schedule that, at a minimum, must be
9 adhered to in order to achieve the estimated savings. All
10 elements of cost must be clearly identified in the
11 cost-benefit analysis, described in the business case, and
12 supported by applicable records and reports. The state agency
13 head shall attest that, based on the data and information
14 underlying the business case, to the best of his or her
15 knowledge, all projected costs, savings, and benefits are
16 valid and achievable. As used in this section, the term "cost"
17 means the reasonable, relevant, and verifiable cost, which may
18 include, but is not limited to, elements such as personnel,
19 materials and supplies, services, equipment, capital
20 depreciation, rent, maintenance and repairs, utilities,
21 insurance, personnel travel, overhead, and interim and final
22 payments. The appropriate elements shall depend on the nature
23 of the specific initiative. As used in this section, the term
24 "savings" means the difference between the direct and indirect
25 actual annual baseline costs compared to the projected annual
26 cost for the contracted functions or responsibilities in any
27 succeeding state fiscal year during the term of the contract.

28 (i) A description of differences among current state
29 agency policies and processes and, as appropriate, a
30 discussion of options for or a plan to standardize,
31 consolidate, or revise current policies and processes, if any,

1 to reduce the customization of any proposed solution that
2 would otherwise be required.

3 (j) A description of the specific performance
4 standards that must, at a minimum, be met to ensure adequate
5 performance.

6 (k) The projected timeframe for key events from the
7 beginning of the procurement process through the expiration of
8 a contract.

9 (l) A plan to ensure compliance with the
10 public-records law.

11 (m) A specific and feasible contingency plan
12 addressing contractor nonperformance and a description of the
13 tasks involved in and costs required for its implementation.

14 (n) A state agency's transition plan for addressing
15 changes in the number of agency personnel, affected business
16 processes, employee transition issues, and communication with
17 affected stakeholders, such as agency clients and the public.
18 The transition plan must contain a reemployment and retraining
19 assistance plan for employees who are not retained by the
20 state agency or employed by the contractor.

21 (o) A plan for ensuring access by persons with
22 disabilities in compliance with applicable state and federal
23 law.

24 (p) A description of legislative and budgetary actions
25 necessary to accomplish the proposed outsourcing.

26 (5) In addition to the contract requirements provided
27 in s. 287.058, each contract for a proposed outsourcing must
28 include, but need not be limited to:

29 (a) A detailed scope of work which clearly specifies
30 each service or deliverable to be provided, including a
31

1 description of each deliverable or activity that is
2 quantifiable, measurable, and verifiable.

3 (b) A service-level agreement describing all services
4 to be provided under the terms of the agreement, the state
5 agency's service requirements and performance objectives, and
6 specific responsibilities of the state agency and the
7 contractor.

8 (c) Associated costs, specific payment terms and
9 payment schedules, including incentive and financial
10 disincentive provisions and criteria governing payment.

11 (d) A clear and specific transition implementation
12 schedule that will be implemented in order to complete all
13 required activities needed to transfer the service or activity
14 from the state agency to the contractor and operate the
15 service or activity successfully.

16 (e) Clear and specific identification of all required
17 performance standards, which must include, at a minimum:

18 1. Detailed measurable acceptance criteria for each
19 deliverable and service to be provided to the state agency
20 under the terms of the contract for outsourcing which document
21 the required performance level.

22 2. A method for monitoring and reporting progress in
23 achieving specified performance standards and levels.

24 3. The sanctions or disincentives that shall be
25 imposed for nonperformance by the contractor or state agency.

26 (f) A requirement that the contractor maintain
27 adequate accounting records that comply with all applicable
28 federal and state laws and generally accepted accounting
29 principles.

30 (g) A requirement authorizing state access to and
31 audit of all records related to the contract or any

1 responsibilities or functions under the contract for state
2 audit and legislative oversight purposes and a requirement for
3 service organization audits in accordance with professional
4 auditing standards, if appropriate.

5 (h) A requirement that the contractor interview and
6 consider for employment with the contractor each displaced
7 state employee who is interested in such employment.

8 (i) A requirement to include a contingency plan that
9 describes the mechanism for continuing the operation of the
10 service or activity if the contractor fails to perform and
11 comply with the performance standards and levels of the
12 contract and the contract is terminated.

13 Section 6. Subsection (6) is added to section 287.058,
14 Florida Statutes, to read:

15 287.058 Contract document.--

16 (6) A contract may not prohibit a contractor from
17 lobbying the executive or legislative branch concerning the
18 scope of services, performance, term, or compensation
19 regarding any contract to which the contractor and a state
20 agency are parties, after contract execution and during the
21 contract term. The provisions of this subsection are
22 supplemental to the provisions of ss. 11.062 and 216.347 and
23 any other law prohibiting the use of state funds for lobbying
24 purposes.

25 Section 7. Section 287.074, Florida Statutes, is
26 created to read:

27 287.074 Prohibited actions by contracted state
28 employees.--

29 (1) Only a public officer or a public employee upon
30 whom the public officer has delegated authority shall,
31

1 consistent with law, take actions, including, but not limited
2 to:

- 3 (a) Selecting state employees;
4 (b) Approving position descriptions, performance
5 standards, or salary adjustments for state employees; and
6 (c) Hiring, promoting, disciplining, demoting, and
7 dismissing a state employee.

8 (2) Only a public officer shall, consistent with law,
9 commission and appoint state officers.

10 Section 8. A contractor, as defined in chapter 287,
11 Florida Statutes, or its employees, agents, or subcontractors,
12 may not knowingly participate, through decision, approval,
13 disapproval, or preparation of any part of a purchase request,
14 investigation, or audit, in the procurement of contractual
15 services by a state agency from an entity in which the
16 contractor, or its employees, agents, or subcontractors, has a
17 material interest.

18 Section 9. Section 14.203, Florida Statutes, is
19 repealed.

20 Section 10. For the 2006-2007 fiscal year, the sum of
21 \$1.25 million in recurring funds from the General Revenue Fund
22 in a qualified expenditure category is appropriated and 10
23 full-time equivalent positions are authorized to the
24 Department of Management Services to carry out the activities
25 of the Council on Efficient Government as provided in this
26 act.

27 Section 11. The Department of Management Services may
28 implement a program to train state agency employees who are
29 involved in managing outsourcings as Project Management
30 Professionals, as certified by the Project Management
31 Institute. For the 2006-2007 fiscal year, the sum of \$500,000

1 in recurring funds from the General Revenue Fund is
2 appropriated to the Department of Management Services to
3 implement this program. The Department of Management Services,
4 in consultation with entities subject to this act, shall
5 identify personnel to participate in this training based on
6 requested need and ensure that each agency is represented. The
7 Department of Management Services may remit payment for this
8 training on behalf of all participating personnel.

9 Section 12. Notwithstanding any law to the contrary, a
10 state agency under the individual control of the Attorney
11 General, the Chief Financial Officer, or the Commissioner of
12 Agriculture are subject to this act.

13 Section 13. This act shall take effect upon becoming a
14 law.

15
16 *****

17 SENATE SUMMARY

18 Creates the Florida Efficient Government Act. Prohibits a
19 state agency from renewing or amending a contract for
20 outsourcing under certain conditions. Requires certain
21 qualifications for persons chosen to conduct negotiations
22 during specified procurements. Requires a specified
23 statement in procurements of commodities and services
24 that prohibit contact between respondents and specified
25 employees of the executive and legislative branches of
26 state government. Provides restrictions on contractor
27 involvement in the procurement of certain contractual
28 services. Provides that procurements of specified
29 commodities and services are not subject to the act.
30 Creates the Council on Efficient Government. Provides
31 requirements for certain proposals to outsource by a
state agency. Requires a state agency to develop a
business case that describes and analyzes a contractual
services procurement under consideration. Provides
required components of a business case. Provides contract
requirements for an outsourcing procurement. Provides
that a contract may not prohibit a contractor from
lobbying the executive or legislative branches concerning
specified contract issues, within specified timelines.
Prohibits a contractor from participating in the
procurement of contractual services by a state agency.
Provides appropriations. (See bill for details.)