

By the Committees on Ways and Means; Governmental Oversight and Productivity; and Senator Argenziano

576-2137-06

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          Secretary of Management Services to appoint an  
30          executive director; requiring state agencies to  
31          submit materials required by the council;

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 creating s. 287.0574, F.S.; providing  
2 requirements for certain business cases to  
3 outsource by a state agency; requiring a state  
4 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; amending s. 119.071, F.S.; deleting a  
26 cross-reference; defining the term "commerical  
27 activity" for purposes of a provision  
28 authorizing the release of social security  
29 numbers; providing an effective date.

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

1           Section 1. Paragraph (a) of subsection (14) and  
2 paragraph (b) of subsection (17) of section 287.057, Florida  
3 Statutes, are amended, and subsection (26) is added to that  
4 section, to read:

5           287.057 Procurement of commodities or contractual  
6 services.--

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

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

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

25           (26) Each solicitation for the procurement of  
26 commodities or contractual services shall include the  
27 following provision: "Respondents to this solicitation or  
28 persons acting on their behalf may not contact, between the  
29 release of the solicitation and the end of the 72-hour period  
30 following the agency posting the notice of intended award,  
31 excluding Saturdays, Sundays, and state holidays, any employee

1 or officer of the executive or legislative branch concerning  
2 any aspect of this solicitation, except in writing to the  
3 procurement officer or as provided in the solicitation  
4 documents. Violation of this provision may be grounds for  
5 rejecting a response."

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

8 287.0571 Applicability of ss. 287.0571-287.0574.--

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

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

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

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

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

24 (b) A procurement of contractual services subject to  
25 s. 287.055.

26 (c) A contract in support of the planning,  
27 development, implementation, operation, or maintenance of the  
28 road, bridge, and public transportation construction program  
29 of the Department of Transportation.

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1           (d) A procurement of commodities or contractual  
2 services which does not constitute an outsourcing of services  
3 or activities.

4           Section 3. Section 287.05721, Florida Statutes, is  
5 created to read:

6           287.05721 Definitions.--As used in ss.  
7 287.0571-287.0574, the term:

8           (1) "Council" means the Council on Efficient  
9 Government.

10           (2) "Outsource" means the process of contracting with  
11 a vendor to provide a service as defined in s. 216.011(1)(f),  
12 in whole or in part, or an activity as defined in s.  
13 216.011(1)(rr), while a state agency retains the  
14 responsibility and accountability for the service or activity  
15 and there is a transfer of management responsibility for the  
16 delivery of resources and the performance of those resources.

17           Section 4. Section 287.0573, Florida Statutes, is  
18 created to read:

19           287.0573 Council on Efficient Government; membership;  
20 duties.--

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

25           (2) The council shall consist of seven members  
26 appointed by the Governor pursuant to s. 20.052:

27           (a) The Secretary of Management Services, who shall  
28 serve as chair.

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

31           (c) Two heads of executive branch agencies.

1        (d) Three members from the private sector who are  
2 subject to confirmation by the Senate and who, collectively,  
3 have experience with procurement, successfully increasing  
4 operational efficiency, and implementing complex projects in  
5 the private-sector business environment. A private-sector  
6 member of the council may not at any time during his or her  
7 appointment to the council be registered to lobby the  
8 executive or legislative branch.

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

17        (4) A member of the council may not participate in a  
18 council review of a business case to outsource if his or her  
19 state agency is conducting the proposed outsourcing or, in the  
20 case of a private-sector member, if he or she has a business  
21 relationship with an entity that is involved or could  
22 potentially be involved in the proposed outsourcing.

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

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

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

1           (8) The council shall:

2           (a) Employ a standard process for reviewing business  
3 cases to outsource.

4           (b) Review and evaluate business cases to outsource as  
5 requested by the Governor or the state agency head whose  
6 agency is proposing to outsource or as required by ss.  
7 287.0571-287.0574 or by law.

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

19           (d) Recommend and implement standard processes for  
20 state agency and council review and evaluate state agency  
21 business cases to outsource, including templates for use by  
22 state agencies in submitting business cases to the council.

23           (e) Develop standards and best-practice procedures for  
24 use by state agencies in evaluating business cases to  
25 outsource.

26           (f) Recommend standards, processes, and guidelines for  
27 use by state agencies in developing business cases to  
28 outsource.

29           (g) Incorporate any lessons learned from outsourcing  
30 services and activities into council standards, procedures,  
31 and guidelines, as appropriate, and identify and disseminate



1 to agencies information regarding best practices in  
2 outsourcing efforts.

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

6 (9) The council shall identify and report yearly to  
7 the Legislature on:

8 (a) Innovative methods of delivering government  
9 services which would improve the efficiency, effectiveness, or  
10 competition in the delivery of government services, including,  
11 but not limited to, enterprise-wide proposals.

12 (b) Outsourcing efforts of each state agency which  
13 shall include, but not be limited to, the number of  
14 outsourcing business cases and solicitations, the number and  
15 dollar value of outsourcing contracts, an explanation of  
16 agency progress on achieving the cost-benefit analysis  
17 schedule as required by s. 287.0574(4)(h), and the status of  
18 extensions, renewals, and amendments of outsourcing contracts.

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 Secretary of Management Services shall  
24 appoint an executive director.

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 business case analysis  
8 and submit an advisory report to the state agency, the  
9 Governor, the President of the Senate, and the Speaker of the  
10 House of Representatives when the advisory report is  
11 completed, but at least 30 days before the agency issues the  
12 solicitation.

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

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

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

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

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1       (3) A business case to outsource having a projected  
2 cost that is less than \$1 million in any fiscal year shall  
3 require a final business case analysis conducted by the state  
4 agency after the conclusion of any negotiations and provided  
5 at least 30 days before execution of a contract to the  
6 council. The council shall provide such business cases in its  
7 annual report to the Legislature.

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

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

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

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

26       (d) A citation to the existing or proposed legal  
27 authority for outsourcing the service or activity.

28       (e) A description of available options for achieving  
29 the goals. If state employees are currently performing the  
30 service or activity, at least one option involving maintaining  
31 state provision of the service or activity shall be included.

1           (f) An analysis of the advantages and disadvantages of  
2 each option, including, at a minimum, potential performance  
3 improvements and risks.

4           (g) A description of the current market for the  
5 contractual services that are under consideration for  
6 outsourcing.

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

7        (j) A description of the specific performance  
8 standards that must, at a minimum, be met to ensure adequate  
9 performance.

10       (k) The projected timeframe for key events from the  
11 beginning of the procurement process through the expiration of  
12 a contract.

13       (l) A plan to ensure compliance with the  
14 public-records law.

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

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

25       (o) A plan for ensuring access by persons with  
26 disabilities in compliance with applicable state and federal  
27 law.

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

30       (5) In addition to the contract requirements provided  
31 in s. 287.058, each contract for a proposed outsourcing,

1 pursuant to s. 287.0574, must include, but need not be limited  
2 to, the following contractual provisions:

3 (a) A scope-of-work provision that clearly specifies  
4 each service or deliverable to be provided, including a  
5 description of each deliverable or activity that is  
6 quantifiable, measurable, and verifiable. This provision must  
7 include a clause that states if a particular service or  
8 deliverable is inadvertently omitted or not clearly specified  
9 but determined to be operationally necessary and verified to  
10 have been performed by the agency within the 12 months before  
11 the execution of the contract, such service or deliverable  
12 will be provided by the contractor through the identified  
13 contract-amendment process.

14 (b) A service-level-agreement provision describing all  
15 services to be provided under the terms of the agreement, the  
16 state agency's service requirements and performance  
17 objectives, specific responsibilities of the state agency and  
18 the contractor, and the process for amending any portion of  
19 the service-level agreement. Each service-level agreement must  
20 contain an exclusivity clause that allows the state agency to  
21 retain the right to perform the service or activity, directly  
22 or with another contractor, if service levels are not being  
23 achieved.

24 (c) A provision that identifies all associated costs,  
25 specific payment terms, and payment schedules, including  
26 provisions governing incentives and financial disincentives  
27 and criteria governing payment.

28 (d) A provision that identifies a clear and specific  
29 transition plan that will be implemented in order to complete  
30 all required activities needed to transfer the service or  
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1 activity from the state agency to the contractor and operate  
2 the service or activity successfully.

3 (e) A performance-standards provision that identifies  
4 all required performance standards, which must include, at a  
5 minimum:

6 1. Detailed and measurable acceptance criteria for  
7 each deliverable and service to be provided to the state  
8 agency under the terms of the contract which document the  
9 required performance level.

10 2. A method for monitoring and reporting progress in  
11 achieving specified performance standards and levels.

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

14 (f) A provision that requires the contractor and its  
15 subcontractors to maintain adequate accounting records that  
16 comply with all applicable federal and state laws and  
17 generally accepted accounting principles.

18 (g) A provision that authorizes the state agency to  
19 have access to and to audit all records related to the  
20 contract and subcontracts, or any responsibilities or  
21 functions under the contract and subcontracts, for purposes of  
22 legislative oversight, and a requirement for audits by a  
23 service organization in accordance with professional auditing  
24 standards, if appropriate.

25 (h) A provision that requires the contractor to  
26 interview and consider for employment with the contractor each  
27 displaced state employee who is interested in such employment.

28 (i) A contingency-plan provision that describes the  
29 mechanism for continuing the operation of the service or  
30 activity, including transferring the service or activity back  
31 to the state agency or successor contractor if the contractor

1 fails to perform and comply with the performance standards and  
2 levels of the contract and the contract is terminated.

3 (j) A provision that requires the contractor and its  
4 subcontractors to comply with public-records laws,  
5 specifically to:

6 1. Keep and maintain the public records that  
7 ordinarily and necessarily would be required by the state  
8 agency in order to perform the service or activity.

9 2. Provide the public with access to such public  
10 records on the same terms and conditions that the state agency  
11 would provide the records and at a cost that does not exceed  
12 that provided in chapter 119 or as otherwise provided by law.

13 3. Ensure that records that are exempt or records that  
14 are confidential and exempt are not disclosed except as  
15 authorized by law.

16 4. Meet all requirements for retaining records and  
17 transfer to the state agency, at no cost, all public records  
18 in possession of the contractor upon termination of the  
19 contract and destroy any duplicate public records that are  
20 exempt or confidential and exempt. All records stored  
21 electronically must be provided to the state agency in a  
22 format that is compatible with the information technology  
23 systems of the state agency.

24 (k) A provision that specifies the ownership of  
25 intellectual property and any rights of the state agency to  
26 use, modify, reproduce, or disseminate the intellectual  
27 property if the contract involves the development or creation  
28 of such intellectual property. This paragraph does not provide  
29 the specific authority needed by an agency to obtain a  
30 copyright or trademark.

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1           (l) A provision that states that the agency retains  
2 the right, in its sole discretion, to co-negotiate any  
3 third-party or subcontractor contracts, excluding any terms  
4 relating to financial compensation.

5           (m) If applicable, a provision that allows the agency  
6 to purchase from the contractor, at its depreciated value,  
7 assets used by the contractor in the performance of the  
8 contract. If assets have not depreciated, the agency shall  
9 retain the right to negotiate to purchase at an agreed-upon  
10 cost.

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

13           287.058 Contract document.--

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

23           Section 7. Section 287.074, Florida Statutes, is  
24 created to read:

25           287.074 Prohibited actions by contractor personnel.--

26           (1) Only a public officer or a public employee upon  
27 whom the public officer has delegated authority shall,  
28 consistent with law, take actions, including, but not limited  
29 to:

30           (a) Selecting state employees;  
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1           (b) Approving position descriptions, performance  
2 standards, or salary adjustments for state employees; and

3           (c) Hiring, promoting, disciplining, demoting, and  
4 dismissing a state employee.

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

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

15           Section 9. Section 14.203, Florida Statutes, is  
16 repealed.

17           Section 10. For the 2006-2007 fiscal year, the sum of  
18 \$1.25 million in recurring funds from the General Revenue Fund  
19 in a qualified expenditure category is appropriated and 10  
20 full-time equivalent positions are authorized to the  
21 Department of Management Services to carry out the activities  
22 of the Council on Efficient Government as provided in this  
23 act.

24           Section 11. The Department of Management Services may  
25 implement a program to train state agency employees who are  
26 involved in managing outsourcings as Project Management  
27 Professionals, as certified by the Project Management  
28 Institute. For the 2006-2007 fiscal year, the sum of \$500,000  
29 in recurring funds from the General Revenue Fund is  
30 appropriated to the Department of Management Services to  
31 implement this program. The Department of Management Services,

1 in consultation with entities subject to this act, shall  
2 identify personnel to participate in this training based on  
3 requested need and ensure that each agency is represented. The  
4 Department of Management Services may remit payment for this  
5 training on behalf of all participating personnel.

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

10 Section 13. Paragraph (a) of subsection (5) of section  
11 119.071, Florida Statutes, is amended to read:

12 119.071 General exemptions from inspection or copying  
13 of public records.--

14 (5) OTHER PERSONAL INFORMATION.--

15 (a)1. The Legislature acknowledges that the social  
16 security number was never intended to be used for business  
17 purposes but was intended to be used solely for the  
18 administration of the federal Social Security System. The  
19 Legislature is further aware that over time this unique  
20 numeric identifier has been used extensively for identity  
21 verification purposes and other legitimate consensual  
22 purposes. The Legislature is also cognizant of the fact that  
23 the social security number can be used as a tool to perpetuate  
24 fraud against a person and to acquire sensitive personal,  
25 financial, medical, and familial information, the release of  
26 which could cause great financial or personal harm to an  
27 individual. The Legislature intends to monitor the commercial  
28 use of social security numbers held by state agencies in order  
29 to maintain a balanced public policy.

30 2. An agency shall not collect an individual's social  
31 security number unless authorized by law to do so or unless

1 | the collection of the social security number is otherwise  
2 | imperative for the performance of that agency's duties and  
3 | responsibilities as prescribed by law. Social security numbers  
4 | collected by an agency must be relevant to the purpose for  
5 | which collected and shall not be collected until and unless  
6 | the need for social security numbers has been clearly  
7 | documented. An agency that collects social security numbers  
8 | shall also segregate that number on a separate page from the  
9 | rest of the record, or as otherwise appropriate, in order that  
10 | the social security number be more easily redacted, if  
11 | required, pursuant to a public records request. An agency  
12 | collecting a person's social security number shall, upon that  
13 | person's request, at the time of or prior to the actual  
14 | collection of the social security number by that agency,  
15 | provide that person with a statement of the purpose or  
16 | purposes for which the social security number is being  
17 | collected and used. Social security numbers collected by an  
18 | agency shall not be used by that agency for any purpose other  
19 | than the purpose stated. Social security numbers collected by  
20 | an agency prior to May 13, 2002, shall be reviewed for  
21 | compliance with this subparagraph. If the collection of a  
22 | social security number prior to May 13, 2002, is found to be  
23 | unwarranted, the agency shall immediately discontinue the  
24 | collection of social security numbers for that purpose.

25 |         3. Effective October 1, 2002, all social security  
26 | numbers held by an agency are confidential and exempt from s.  
27 | 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
28 | exemption applies to all social security numbers held by an  
29 | agency before, on, or after the effective date of this  
30 | exemption.

31 |

1           4. Social security numbers may be disclosed to another  
2 governmental entity or its agents, employees, or contractors  
3 if disclosure is necessary for the receiving entity to perform  
4 its duties and responsibilities. The receiving governmental  
5 entity and its agents, employees, and contractors shall  
6 maintain the confidential and exempt status of such numbers.

7           5. An agency shall not deny a commercial entity  
8 engaged in the performance of a commercial activity, which,  
9 for purposes of this paragraph, means an activity that  
10 provides a product or service that is available from a private  
11 source, as defined in s. 14.203 or its agents, employees, or  
12 contractors access to social security numbers, provided the  
13 social security numbers will be used only in the normal course  
14 of business for legitimate business purposes, and provided the  
15 commercial entity makes a written request for social security  
16 numbers, verified as provided in s. 92.525, legibly signed by  
17 an authorized officer, employee, or agent of the commercial  
18 entity. The verified written request must contain the  
19 commercial entity's name, business mailing and location  
20 addresses, business telephone number, and a statement of the  
21 specific purposes for which it needs the social security  
22 numbers and how the social security numbers will be used in  
23 the normal course of business for legitimate business  
24 purposes. The aggregate of these requests shall serve as the  
25 basis for the agency report required in subparagraph 8. An  
26 agency may request any other information reasonably necessary  
27 to verify the identity of the entity requesting the social  
28 security numbers and the specific purposes for which such  
29 numbers will be used; however, an agency has no duty to  
30 inquire beyond the information contained in the verified  
31 written request. A legitimate business purpose includes

1 verification of the accuracy of personal information received  
2 by a commercial entity in the normal course of its business;  
3 use in a civil, criminal, or administrative proceeding; use  
4 for insurance purposes; use in law enforcement and  
5 investigation of crimes; use in identifying and preventing  
6 fraud; use in matching, verifying, or retrieving information;  
7 and use in research activities. A legitimate business purpose  
8 does not include the display or bulk sale of social security  
9 numbers to the general public or the distribution of such  
10 numbers to any customer that is not identifiable by the  
11 distributor.

12           6. Any person who makes a false representation in  
13 order to obtain a social security number pursuant to this  
14 paragraph, or any person who willfully and knowingly violates  
15 this paragraph, commits a felony of the third degree,  
16 punishable as provided in s. 775.082 or s. 775.083. Any public  
17 officer who violates this paragraph is guilty of a noncriminal  
18 infraction, punishable by a fine not exceeding \$500. A  
19 commercial entity that provides access to public records  
20 containing social security numbers in accordance with this  
21 paragraph is not subject to the penalty provisions of this  
22 subparagraph.

23           7.a. On or after October 1, 2002, a person preparing  
24 or filing a document to be recorded in the official records by  
25 the county recorder as provided for in chapter 28 may not  
26 include any person's social security number in that document,  
27 unless otherwise expressly required by law. If a social  
28 security number is or has been included in a document  
29 presented to the county recorder for recording in the official  
30 records of the county before, on, or after October 1, 2002, it  
31

1 | may be made available as part of the official record available  
2 | for public inspection and copying.

3 |         b. Any person, or his or her attorney or legal  
4 | guardian, has the right to request that a county recorder  
5 | remove, from an image or copy of an official record placed on  
6 | a county recorder's publicly available Internet website or a  
7 | publicly available Internet website used by a county recorder  
8 | to display public records or otherwise made electronically  
9 | available to the general public by such recorder, his or her  
10 | social security number contained in that official record. Such  
11 | request must be made in writing, legibly signed by the  
12 | requester and delivered by mail, facsimile, or electronic  
13 | transmission, or delivered in person, to the county recorder.  
14 | The request must specify the identification page number that  
15 | contains the social security number to be redacted. The county  
16 | recorder has no duty to inquire beyond the written request to  
17 | verify the identity of a person requesting redaction. A fee  
18 | shall not be charged for the redaction of a social security  
19 | number pursuant to such request.

20 |         c. A county recorder shall immediately and  
21 | conspicuously post signs throughout his or her offices for  
22 | public viewing and shall immediately and conspicuously post,  
23 | on any Internet website or remote electronic site made  
24 | available by the county recorder and used for the ordering or  
25 | display of official records or images or copies of official  
26 | records, a notice stating, in substantially similar form, the  
27 | following:

28 |             (I) On or after October 1, 2002, any person preparing  
29 | or filing a document for recordation in the official records  
30 | may not include a social security number in such document,  
31 | unless required by law.

1           (II) Any person has a right to request a county  
2 recorder to remove, from an image or copy of an official  
3 record placed on a county recorder's publicly available  
4 Internet website or on a publicly available Internet website  
5 used by a county recorder to display public records or  
6 otherwise made electronically available to the general public,  
7 any social security number contained in an official record.  
8 Such request must be made in writing and delivered by mail,  
9 facsimile, or electronic transmission, or delivered in person,  
10 to the county recorder. The request must specify the  
11 identification page number that contains the social security  
12 number to be redacted. No fee will be charged for the  
13 redaction of a social security number pursuant to such a  
14 request.

15           d. Until January 1, 2007, if a social security number,  
16 made confidential and exempt pursuant to this paragraph, or a  
17 complete bank account, debit, charge, or credit card number  
18 made exempt pursuant to paragraph (b) is or has been included  
19 in a court file, such number may be included as part of the  
20 court record available for public inspection and copying  
21 unless redaction is requested by the holder of such number, or  
22 by the holder's attorney or legal guardian, in a signed,  
23 legibly written request specifying the case name, case number,  
24 document heading, and page number. The request must be  
25 delivered by mail, facsimile, electronic transmission, or in  
26 person to the clerk of the circuit court. The clerk of the  
27 circuit court does not have a duty to inquire beyond the  
28 written request to verify the identity of a person requesting  
29 redaction. A fee may not be charged for the redaction of a  
30 social security number or a bank account, debit, charge, or  
31 credit card number pursuant to such request.



1 e. Any person who prepares or files a document to be  
2 recorded in the official records by the county recorder as  
3 provided in chapter 28 may not include a person's social  
4 security number or complete bank account, debit, charge, or  
5 credit card number in that document unless otherwise expressly  
6 required by law. Until January 1, 2007, if a social security  
7 number or a complete bank account, debit, charge, or credit  
8 card number is or has been included in a document presented to  
9 the county recorder for recording in the official records of  
10 the county, such number may be made available as part of the  
11 official record available for public inspection and copying.  
12 Any person, or his or her attorney or legal guardian, may  
13 request that a county recorder remove from an image or copy of  
14 an official record placed on a county recorder's publicly  
15 available Internet website, or a publicly available Internet  
16 website used by a county recorder to display public records  
17 outside the office or otherwise made electronically available  
18 outside the county recorder's office to the general public,  
19 his or her social security number or complete account, debit,  
20 charge, or credit card number contained in that official  
21 record. Such request must be legibly written, signed by the  
22 requester, and delivered by mail, facsimile, electronic  
23 transmission, or in person to the county recorder. The request  
24 must specify the identification page number of the document  
25 that contains the number to be redacted. The county recorder  
26 does not have a duty to inquire beyond the written request to  
27 verify the identity of a person requesting redaction. A fee  
28 may not be charged for redacting such numbers.

29 f. Subparagraphs 2. and 3. do not apply to the clerks  
30 of the court or the county recorder with respect to circuit  
31 court records and official records.

1           g. On January 1, 2007, and thereafter, the clerk of  
2 the circuit court and the county recorder must keep complete  
3 bank account, debit, charge, and credit card numbers exempt as  
4 provided for in paragraph (b), and must keep social security  
5 numbers confidential and exempt as provided for in  
6 subparagraph 3., without any person having to request  
7 redaction.

8           8. Beginning January 31, 2004, and each January 31  
9 thereafter, every agency must file a report with the Secretary  
10 of State, the President of the Senate, and the Speaker of the  
11 House of Representatives listing the identity of all  
12 commercial entities that have requested social security  
13 numbers during the preceding calendar year and the specific  
14 purpose or purposes stated by each commercial entity regarding  
15 its need for social security numbers. If no disclosure  
16 requests were made, the agency shall so indicate.

17           9. Any affected person may petition the circuit court  
18 for an order directing compliance with this paragraph.

19           10. This paragraph does not supersede any other  
20 applicable public records exemptions existing prior to May 13,  
21 2002, or created thereafter.

22           11. This paragraph is subject to the Open Government  
23 Sunset Review Act in accordance with s. 119.15 and shall stand  
24 repealed October 2, 2007, unless reviewed and saved from  
25 repeal through reenactment by the Legislature.

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

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS/Senate Bill 2518

4 The committee substitute for SB 2518:

- 5 -- Changes the "cone of silence" period for contracting to  
6 the time period between the release of the solicitation  
7 and the end of the 72 hour protest window after the  
8 agency posts its notice of intended award. The change  
9 means an awarded vendor can communicate with the agency  
10 after the protest period and before execution of the  
11 contract.  
12 -- Changes the language concerning the appointment of the  
13 executive director to clarify that the executive director  
14 does not direct the entire council.  
15 -- Places a definition for "commercial activity" within the  
16 provisions of s. 119.071, F.S., rather than relying on a  
17 cross-reference for that definition.  
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