

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1129
SPONSOR(S): Anderson
TIED BILLS:

Advisory Committee on State Procurement

IDEN./SIM. BILLS: SB 2362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Audit & Performance</u>	<u>6 Y, 0 N</u>	<u>De La Paz</u>	<u>De La Paz</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

In Fiscal Year 2004-05, state agencies purchased nearly \$6.4 billion worth of goods and services.

HB 1129 creates the Advisory Committee on State Procurement and expressly states legislative policy with respect to the procurement of goods services and facilities by the state. The purpose of the committee is to evaluate the state's procurement process in its entirety, and to oversee the implementation of legislative procurement policy. The advisory committee is made up of ten members, three of whom are appointed by the President of the Senate, three are appointed by the Speaker of the House, and four are appointed by the Governor.

HB 1129 authorizes the committee to appoint and fix compensation for staff "without regard to laws governing state laws or rules governing state employment," and to hire experts and consultants at rates of up to \$400 per day. In addition the committee is authorized to enter into contracts with private organizations and nonprofit institutions to conduct studies and prepare reports for the committee.

The bill requires the committee to issue a final report on July 1, 2009 to the Clerk of the House of Representatives and Secretary of the Senate. The committee will be terminated 120 days after submission of its final report.

This bill contains a \$4 million appropriation from the general revenue fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill increases government by creating a committee that is assigned responsibilities related to oversight of state procurements and the development of procurement policy. The committee has investigative authority and is authorized to employ personnel, hire consultants and experts, and contract with private organizations and nonprofit institutions to conduct studies and prepare reports.

B. EFFECT OF PROPOSED CHANGES:

In Fiscal Year 2004-05, state agencies purchased nearly \$6.4 billion worth of goods and services.¹ Slightly more than half of this total (\$3.4 billion, or 53%) is related to construction projects for roads, bridges and buildings, as well as associated professional architectural and engineering services. Non-construction related acquisitions accounted for the remaining \$3 billion in purchases.²

In a report issued in April of 2006, OPPAGA noted, “The Department of Management Services and state agencies have taken steps to increase the value of goods and services purchased through state-level term contracts and related initiatives. However, further improvements are needed, especially for acquisitions of complex services.”³ In their report OPPAGA recommend that the Legislature take steps to:

- increase the volume of purchases made through competitive processes;
- require agencies to develop a process to record information on all purchases in the state’s Financial Management Information System, which will enhance the state’s ability to use strategic sourcing practices; and
- require agencies to develop more complete business cases for major complex acquisitions by mandating analyses of associated procurement and contract management

HB 1129 creates the Advisory Committee on State Procurement and expressly states legislative policy with respect to the procurement of goods services and facilities by the state. The purpose of the committee is to evaluate the state’s procurement process in its entirety, and to oversee the implementation of legislative procurement policy. Aspects of the procurement process the committee will examine include: staffing, leadership, planning, and controls used in the procurement process.

The bill describes the goal of legislative procurement policy stating that “[I]t is the policy of the Legislature to promote economy, efficiency, and effectiveness in the procurement of goods, services, and facilities by and for the executive branch of state government. . .”. The bill lists at length several specific means of achieving its stated goal. The means identified in the bill relate to:

- Assuring that procured items will be of requisite quality, lowest reasonable cost, and procured in a timely manner;
- Improving the performance of those involved in procurement;
- Avoiding duplication of procurement activities;
- Addressing deficiencies in law and regulation concerning procurement;
- Simplifying the procurement process;
- Coordinating policies among various agencies;

¹ Excluding expenses associated with grants and reimbursed services such as Medicaid, Temporary Assistance for Needy Families and Foster Care.

² *Steps Have Been Taken to Enhance State Acquisition Management, But Further Improvement Is Needed*, OPPAGA Report No. 06-35, April 2006.

³ *Id.*

- Replicating successful procurement policies;
- Improving the understanding of law and policy among those doing business with the state;
- Promoting fair dealing; and
- Giving special consideration to the Federal Government's procurement process.

The bill also includes a "catch all" provision that authorizes the committee to promote economy, efficiency, and effectiveness in state procurement organizations and operations by "any means the committee deems beneficial and appropriate."

The advisory committee is made up of ten members, three of whom are appointed by the President of the Senate, three are appointed by the Speaker of the House, and four are appointed by the Governor. Two of the appointees by the Speaker must be members of the House of Representatives from different political parties. Likewise, two of the appointees by the President must be Senators from different political parties. The third appointee by the Speaker and the President must be someone who is from outside state government. With respect to the Governor's appointees, two must be from within the executive branch of government, and two must be from outside state government. In addition, the Auditor General or a designee is to serve as an additional ex officio member of the committee. Members of the committee who are members of the Legislature, or who are officers or employees in the executive branch serve without compensation but are entitled to reimbursement for per diem and travel expenses.

HB 1129 charges the advisory committee with the responsibility of studying current laws and procurement policies and practices followed throughout the various state agencies of the executive branch. In addition, the committee has the duty to investigate organizations and management processes involved in a state procurement before the award of the procurement contract, during the bid solicitation process, during the evaluation and negotiation of contracts, and after the award of contracts, for the purpose of determining the extent to which legislative policy is being facilitated.

HB 1129 provides the advisory committee with the power to hold hearings, administer oaths, take testimony, and obtain information directly from the head any state agency to carry out its duty to study and investigate implementation and administration of the procurement process.

In addition, the committee is empowered to employ and set the compensation for committee personnel without regard to laws governing all other state employees. Further, HB 1129 authorizes the committee to hire experts and consultants at rates of up to \$400 per day. Also, the committee is authorized to enter into contracts with private organizations and nonprofit institutions to conduct studies and prepare reports for the committee.

Finally, the bill requires the committee to issue a final report on July 1, 2009 containing its findings and recommendations, and to deliver it to the Clerk of the House of Representatives and Secretary of the Senate. The bill provides that the committee shall terminate 120 days after submission of its final report.

C. SECTION DIRECTORY:

- Section 1. Creates s. 287.0575, F.S., to establish the Advisory Committee on State Procurement.
- Section 2. Provides an appropriation.
- Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

This bill contains a \$4 million appropriation from the general revenue fund for purposes of carrying out its provisions. Expenses incurred by the committee are indeterminate at this time, but will depend upon factors such as the number of hearings the committee will hold, how many staff it will employ and what their rate of compensation will be, whether the committee will decide to compensate its four committee members who are appointed from outside state government (See Other Comments section), the number of consultants and experts the committee utilize and the number of days these consultants and experts are working for the committee, and the number and value of contracts with private organizations the committee enters into.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill contains a provision that states that “. . . this subsection shall not be construed as limiting the committee’s means of facilitating the legislative policy expressed herein, the inquiries of the committee, or the committee’s authority to investigate *additional areas* the committee deems significant, relevant, or important.” (emphasis added). Without expressly saying so this provision clearly implies the committee has broad authority. That broad implied authority, however, is not defined except to say the committee’s authority to investigate includes “additional areas” deemed important. This provision may

authorize inquiry by the committee into areas far removed or only indirectly related to issues of state procurement as long as a majority on the committee deem a matter “significant” or “important.”

HB 1129 clearly provides that the six members of the committee whom are within state government shall serve without compensation; the bill however is silent with respect to those four of members of the committee appointed from outside of state government. It is unclear from the provisions of this bill whether the intention is to compensate the four members of the committee who were appointed from outside of state government.

Paragraph (a) of subsection (5) related to powers of the advisory committee, states that “[t]he advisory committee, or any subcommittee or any individual member thereof, may hold hearings and take testimony. (emphasis added) With respect to the reference to *any subcommittee*, this language implies that the committee is granted the authority to create subcommittees, which could in turn conduct business on behalf of the committee with less than the required six member quorum. In addition, this provision would allow an *individual member* of the committee to conduct full hearings complete with the administration of oaths and the taking of testimony.

HB 1129 empowers the committee to employ personnel and fix their compensation at any level and without regard to laws or rules governing state employment. Under this provision the committee would be authorized to set compensation for its personnel at any level without restriction or limitation. Any employee of the committee would in essence be a non-state employee, employed by the state, whose “state” employment would not be governed by laws or rules applicable to other state employees. It is unclear how this provision would be applied and what affect it would have on persons employed by the committee.

The bill’s provision authorizing the committee to procure services of experts and consultants at rates not to exceed \$400 per day contains no other limitation or control. Any number of consultants and experts could be hired for an indeterminate number of days until the committee is terminated. The provision is written in such a manner as to make the \$400 per day rate actually be a rate per day and per expert and consultant. Given the scope of the committee’s charge to evaluate the state’s entire procurement process, the number of consultants and experts required could be numerous, highly specialized, and for extended periods of time.

The bill’s provision authorizing the committee to enter into contracts with private organizations for the purpose of carrying out studies and preparing reports provides no selection criteria or eligibility requirements. For example, an individual within a private organization contracted with the committee to prepare a report evaluating a particular procurement, could also be an individual with a vested interest in seeing a particular result due to a conflict of interest with, or a financial interest in, a present or prospective contract bidder. Selection criteria or eligibility requirements would be necessary to avoid such potential conflicts.

D. STATEMENT OF THE SPONSOR

This bill will improve the policies, procedures, practices and the management process of State Procurement and Contracting and potentially save \$100s of millions of dollars.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

In the meeting held of the Committee on Audit and Performance on March 21, 2007, the committee adopted an amendment to eliminate the \$400 per day limit on the committee’s authorization to hire experts and consultants. As amended, the bill provides the committee authority to hire experts and consultants at any rate it choose to pay without restriction or control. In addition, another amendment was adopted to increase the number of members of the committee from 10 to 13. The three additional members are appointed by the Attorney General, Chief Financial Officer, and the Commissioner of Agriculture whom are each required to appoint one member to the committee. Finally, the amendment changes the participation of the Auditor General’s Office from being an ex officio member to a role of providing technical assistance to the committee.