

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1584

INTRODUCER: Children, Families and Elder Affairs Committee and Senator Smith

SUBJECT: Procurement of Contractual Services/State Agency

DATE: March 18, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Fav/CS
2.			CJ	
3.			GO	
4.			HA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The Committee Substitute creates s. 287.0575, F.S., relating to outsourced human services, that provides definitions for the terms “financial impact”, “human services” and “new governmental mandate,” and specifies that the goal of the bill is to lead to a more stable business environment for providing outsourced human services, ensure accountability, eliminate duplication, and improve efficiency. The bill contains provisions for state agencies relating to contracting, outsourcing, and monitoring of specified human services.

In addition, the bill requires the Social Services Estimating Conference to meet annually for the purpose of developing information that is related to mental health, substance abuse, child welfare, or juvenile justice services needs.

This bill substantially amends s. 216.136 and creates s. 287.0575, Florida Statutes.

II. Present Situation:

Contracting and Outsourcing

Background

Privatization involves the provision of publicly funded services by nongovernment entities. Privatization can take several forms, including the cessation of services by government, the outsourcing of services by government, the divestiture of government assets, and the use of public-private partnerships. Outsourcing has become a common approach to providing human services as states and localities face budget crises and struggle to ensure the same level of services with limited resources. Government is increasingly turning to nonprofit groups, community-based organizations, faith-based organizations, charitable agencies, and private-sector companies to provide human services.¹

Although the terms “privatization” and “outsourcing” are often used interchangeably, the two service structures are different. With privatization, program infrastructure is transferred entirely from the government to another service provider. The government ceases to provide those services. With outsourcing, the government competitively contracts with a vendor to provide specific services. Most outsourced functions involve transferring responsibilities for the management, operation, upgrade, and maintenance of some infrastructure to the contracted vendor, with the government agency retaining a central role in program oversight.^{2,3}

Many factors drive government to outsource the delivery of human services, including the desire to improve service, increase efficiency, and ensure cost-effectiveness. State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

Department of Juvenile Justice (DJJ)

The Department of Juvenile Justice contracts for residential, probation, prevention, and detention ancillary services pursuant to ch. 287, F.S., relating to procurement of personal property and services. All services are competitively procured, with the exception of medical and mental health care.⁴

Section 985.632, F.S. requires DJJ to conduct quality assurance reviews of all programs and services. Program monitors have been integrated with quality assurance reviewers to annually conduct programmatic monitoring as a team. Accreditation is not used to satisfy verification of contractual compliance or to determine whether programs are meeting appropriate health, safety

¹ Bandoh, E. *Outsourcing the Delivery of Human Services*, Welfare Information Network, Issue Notes. Vol. 7, No. 12 October 2003. Available at: <http://76.12.61.196/publications/outsourcinghumanservicesIN.htm> (Last visited March 14, 2010.)

² *Id.*

³ In Florida law, the term "outsource" means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources. *See* s. 287.05721, F.S.

⁴ Department of Juvenile Justice. 2010 Legislative Session Bill Analysis, SB 1584, February 9, 2010.

and treatment requirements. Program monitors provide oversight of contracted programs. A contract manager conducts administrative monitoring once per year for each provider. The department's administrative/fiscal monitoring focuses on the accounting for all contract funds/expenditures to determine that funds have been expended in accordance with the contract and all applicable laws, rules, and regulations. Programmatic monitoring focuses on the delivery of services to youth.⁵

Agency for Health Care Administration (AHCA)

The Agency for Health Care Administration does not typically outsource human services related to mental health, substance abuse, child welfare, or juvenile justice. The agency purchases and reimburses providers and managed care plans for these services.⁶

Department of Children and Family Services (DCF)

Section 20.19, and Chapters 287 and 402, F.S., require DCF, whenever possible in accordance with established program objectives and performance criteria, to contract for the provision of services by counties, municipalities, not-for-profit corporations, for-profit corporations, and other entities capable of providing needed services, if services so provided are more cost-efficient than those provided by the department.⁷ In addition, the department conducts competitive procurements for child welfare services that have been outsourced pursuant to s. 409.1671, F.S.

Payment Issues

Current law provides payment procedures for invoices submitted to a state agency. Invoices must be filed with the Chief Financial Officer (CFO), recorded in the financial systems of the state, approved for payment by the agency, and filed with the CFO not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services. In the case of a dispute, the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed.⁸

Estimating Conferences

Economic, demographic, caseload and revenue forecasts are essential for a variety of governmental planning and budgeting functions. Most importantly, revenue and caseload estimates are needed to ensure that the state meets the constitutional balanced budget requirement. The various forecasts are primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor's budget recommendations and the

⁵ *Id.*

⁶ Agency for Health Care Administration. 2010 Bill Analysis and Economic Impact Statement, SB 1584.

⁷ Department of Children and Family Services, Procurement and Contract Management, Contract Management System For Contractual Services. CFOP 75-2. Available at: <http://www.dcf.state.fl.us/admin/publications/policies/075-2.pdf>. (Last visited March 13, 2010).

⁸ s. 215.422, F.S.

General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.⁹

Each state agency and the judicial branch must use the official results of the conference in carrying out their duties under the state planning and budgeting system. While the legislature is not bound to use the official consensus forecasts, it has consistently used the results of these conferences in its official duties since 1970.

Conference principals can call conferences and are generally responsible for developing and choosing the forecasts. Currently, the estimating conferences meet at the call of any of the principals, which is typically four times a year. However, meetings are not every quarter because more times are needed early in the fiscal year to produce the Long Range Financial Outlook. The Social Services Estimating Conference has met four times in 2010: January 26, January 29, February 12, and February 26.¹⁰

III. Effect of Proposed Changes:

Definitions

The bill defines the term “financial impact” as an increase in reasonable costs of 5 percent or more in the annual aggregate payment to a contractor performing a contract for the outsourcing of human services.

The bill defines the term “human services” to mean services related to mental health, substance abuse, child welfare, or juvenile justice.

The bill also defines the term “new governmental mandate” as a statutory requirement, administrative rule, regulation, assessment, executive order, judicial order, or other governmental requirement, or an agency policy, that was not in effect when a contract for the outsourcing of human services was originally entered into and that directly imposes an obligation on the contractor to take, or to refrain from taking, an action in order to fulfill its contractual obligation.

Outsourced Human Services

The bill contains provisions that purport to create a more stable business environment for providing outsourced human services related to mental health, substance abuse, child welfare, or juvenile justice and to ensure accountability, eliminate duplication, and improve efficiency with respect to the provision of such services, including, but not limited, to:

- Requiring that accreditation by certain accrediting bodies¹¹ shall be accepted by state agencies in lieu of the agency’s facility licensure onsite review and administrative

⁹ Office of Economic and Demographic Research, The Florida Legislature. Available at: <http://edr.state.fl.us/conferences/confprocess.pdf>. (Last visited March 14, 2010).

¹⁰ Office of Economic and Demographic Research, The Florida Legislature. Available at: <http://edr.state.fl.us/conferences/schedule.pdf>. (Last visited March 14, 2010).

¹¹ Those accrediting entities are the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, and the Council on Accreditation.

- requirements, and as a substitute for the state agency's licensure, administrative, and program monitoring requirements. Accreditation for administrative requirements satisfies the administrative requirements for licensure during the period of time that the accreditation is effective. It also provides that the Department of Management Services (DMS or department) or agency may continue to inspect and monitor the provider as necessary with respect to reimbursement issues, complaints, and compliance with federal and state laws not covered by accreditation.
- Requiring each state agency that has been designated by the federal government and state law as the authorized state entity with respect to the provision of specified human services to be the lead agency for that designated human service population. By July 1, 2011, each lead agency is required to:
 - Develop a common monitoring protocol that must be used by all agencies serving the same population;
 - Implement a plan to coordinate monitoring activities related to the delivery of services to the populations being served by multiple state agencies;
 - Adopt rules that guide the delivery of service across the jurisdictions of multiple state agencies serving the same population and coordinate all monitoring activities; and
 - Provide for a master list of core required documents for contract monitoring purposes and provide for the collection of such documents from each service provider. DMS shall establish an electronic document vault for the storage, delivery, and retrieval of administrative documents required in the regulatory review processes. To the greatest extent possible, the department shall promote the development, implementation, and maintenance of the document vault by providers or provider trade associations.

The bill also requires:

- Requires the establishment of a document vault for the storage, delivery, and retrieval of administrative documents required for regulatory review.
- Contracts to outsource human services related to mental health, substance abuse, child welfare, and juvenile justice must:
 - Provide that if a material change to the scope of the contract is imposed upon a service provider and compliance with such change will have a material adverse financial impact on the service provider, the contracting agency shall negotiate a contract amendment with the service provider to increase the maximum obligation amount or unit price of the contract to offset the material adverse financial impact of the change if the service provider furnishes evidence to the contracting agency of such material adverse financial impact along with a request to renegotiate the contract based on the proposed change;
 - Ensure that payment will be made on all items not under dispute and that payment will not be withheld on undisputed issues pending the resolution of disputed issues;

- Provide that any disbursed funds that remain unexpended during the contract term be considered as authorized revenue for the purposes of cash flow, program expansion and development, and administrative costs; and
- Subject to appropriation, include provisions authorizing an annual cost-of-living adjustment that reflects increases in the consumer price index.

The bill also provides:

- When a contractor is aggrieved by the refusal or failure of a governmental unit to negotiate a contract amendment to remedy a material adverse financial impact of a new governmental mandate pursuant to this section, this constitutes an agency action for the purposes of chapter 120.
- Each agency that contracts for the provision of specified human services must prepare a comprehensive list of all contract requirements, mandated reports, outcome measures, and other requirements of a provider and submit the list annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
- State agencies shall provide an analysis of every new governmental mandate, form, or procedure required of a service provider under a contract for the outsourcing of human services which was not in effect when the contract was originally entered into. The analysis must identify the cost to the provider of any new requirements and must be transmitted to the provider before any new mandate, form, or procedure may be used or implemented. The analysis must also include a fiscal impact statement with respect to each new form, procedure, or mandate required or imposed.
- State agencies must accept all mandated reports and invoices from service providers electronically and shall establish a procedure that allows for posting all core documents in secure electronic storage. If a service provider uses such storage, the state agency must have access to the electronic storage for monitoring core documents, and shall by rule or contract require that the provider deposit administrative documents requested by the department or agency in such storage.

Estimating Conferences

The bill requires the Social Services Estimating Conference to be convened annually for the purpose of developing information that is related to mental health, substance abuse, child welfare, or juvenile justice services needs, including, but not limited to, enrollment, caseload, utilization, and expenditures that reflect population growth and economic trends.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

DCF reports that there may be a fiscal impact on the private sector but it is impossible to measure that impact at this time.

C. Government Sector Impact:

Department of Juvenile Justice (DJJ)

The provision relating to contract amendments on lines 146-149 of the CS will result in a fiscal impact on the DJJ. The department processed 301 contract amendments last fiscal year and anticipates processing the same number or more next fiscal year. If the intent of this provision is to provide administrative review to a contract provider if the parties reach an impasse during negotiations, then DJJ will incur a non-recurring impact of **\$3,412** and a recurring impact of **\$145,299**. The department will have to hire one additional senior attorney and one additional operations and management consultant.

Department of Children and Family Services

DCF reports that the provisions of the bill will result in an increased workload and duplicative tasks for the department which will result in an unknown fiscal impact. DCF has not provided an estimate of how the CS will impact workload or duplicative tasks.

VI. Technical Deficiencies:

There are a number of provisions in the bill that are unclear, e.g.:

- Lines 150-154 of the bill should read, “Each agency shall annually review **and list** all contract ...”
- Lines 160-165 of the bill relating to the estimating conference is not clear whether this annual requirement is in addition to the current meeting requirements.

VII. Related Issues:

The **Agency for Health Care Administration** has reported that if Medicaid providers are included in the definition of providers for outsourced human services, then a requirement for state agencies to accept national accreditations as a substitute for existing licensure and monitoring requirements may create notable impacts on AHCA. National accreditation standards may differ greatly from Florida Medicaid guidelines, and reducing the frequency and nature of the reviews may result in decreasing the quality of care for Medicaid recipients.¹²

The consequences of enacting this legislation on the agency's licensing and monitoring processes cannot be determined at this time. Agency experience has shown that the processes for combining monitoring tools and coordinating monitoring activities can result in considerable outlays of staff time and a low rate of satisfaction from providers.¹³

The **Department of Juvenile Justice** has stated similar concerns surrounding accreditation. Accrediting entities currently recognized by DJJ conduct a site visit once every three years and are not intended to ensure contract compliance or the welfare and safety of youth served by the department. In a 2003 review of DJJ's quality assurance and program monitoring, OPPAGA concluded:

One of the issues that has arisen regarding the department's oversight of contracted residential programs is whether accredited programs should be exempt from the QA process. We concluded that this should not occur. Although the department's QA and accreditation standards are similar, accredited programs do not always perform well on QA reviews. This is likely due to differences in the length of time between the reviews and the thoroughness of the reviews. Due to these differences and the potential risks that programs pose to the state when they do not adequately care for youth in their custody, exempting all accredited programs from QA review is not in the best interest of the state.¹⁴

The **Department of Children and Family Services** has commented that the provision of the bill requiring that if a material change to the scope of contract that will have a material adverse financial impact on the service provider, the department must negotiate a contract amendment with the provider to increase the dollar amount, may be problematic:

There is no mention of a provision requiring a reduction in the overall contract amount or reduction in the unit price when there are savings associated with a change in the scope of service or other cost savings, so this is a one-sided provision. It is not clear if this provision would apply to changes in scope that preceded the effective date of the legislation. Any provision for renegotiation of price due to changes in the scope of work should work both ways, so that reductions or offsets due to savings are

¹² Agency for Health Care Administration. 2010 Bill Analysis and Economic Impact Statement, SB 1584,

¹³ *Id.*

¹⁴ Office of Program Policy Analysis and Government Accountability. *Juvenile Justice Can Improve Its Quality Assurance and Program Monitoring Processes*, Report 03-73, December 2003.

taken into account. In addition, there should be provisions to address budget and appropriation issues.¹⁵

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 18, 2010:

The committee substitute:

- Expands provisions relating to accreditation to require that accreditation by certain accrediting bodies shall be accepted by state agencies in lieu of the agency's facility licensure onsite review and administrative requirements, and as a substitute for the state agency's licensure, administrative, and program monitoring requirements. Accreditation for administrative requirements satisfies the administrative requirements for licensure during the period of time that the accreditation is effective. It also provides that the Department of Management Services (DMS) or agency may continue to inspect and monitor the provider as necessary with respect to reimbursement issues, complaints, and compliance with federal and state laws not covered by accreditation.
- Requires the establishment of a document vault for the storage, delivery, and retrieval of administrative documents required for regulatory review.
- Requires state agencies to accept all mandated reports and invoices from service providers electronically and shall establish a procedure for posting all core documents in secure electronic storage.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ Department of Children and Family Services, Staff Analysis and Economic Impact, SB 1584. February 4, 2010.