

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5611 PCB GOA 10-03 Department of Management Services

SPONSOR(S): Government Operations Appropriations Committee and Hays

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Government Operations Appropriations Committee	9 Y, 5 N	Dykes	Topp
1)	Full Appropriations Council on Education & Economic Development		Dykes	Voyles
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Department of Management Services (DMS) is the administrative arm of Florida’s state government. The bill amends statutes relating to DMS to conform to the proposed House General Appropriations Act by:

- Repealing s. 287.0573, creating the Council on Efficient Government and making corresponding changes to other sections of law. Eliminating the council’s support office within DMS will provide operating budget savings of \$447,038. The revenues used to fund the office will be redirected to the General Revenue Fund.
- Repealing certain provisions of s. 287.09451, F.S., creating the Office of Supplier Diversity and the Minority Business Certification Task Force and transferring some of the responsibilities and two of the positions of the office to the Division of State Purchasing. This will provide operating budget savings of \$752,935 and revenues used to fund the office will be redirected to the General Revenue Fund.
- Requiring that the private sector vendor transaction fees collected by the department for use of its statewide electronic procurement and information services system, known as MyFloridaMarketPlace, in excess of what is needed to fund legislatively authorized disbursements will be redirected to the General Revenue Fund.

This bill redirects approximately \$1.6 million to the General Revenue Fund.

This bill takes effect on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Council on Efficient Government

Background:

Under the Florida Government Accountability Act,¹ most state agencies are subject to a "sunset" review process to determine whether the agency should be retained, modified, or abolished. During the 2010 Regular Session, among the departments that the Legislature will review is the Department of Management of Services.² Part of that review includes an examination of agency advisory committees.³

The Council on Efficient Government was created within the department pursuant to s. 287.0573, F.S., for the purpose of reviewing, evaluating, and issuing advisory reports on business cases submitted to the council as specified by the requirements of ss. 287.0573 and 287.0574, F.S. The council consists of seven members appointed by the Governor – the Secretary of the Department of Management Services (serves as chair), a cabinet member other than the Governor or an executive staff designee, two heads of executive branch agencies, and three members with relevant experience from the private sector who are subject to confirmation by the Senate.⁴

The council is supported by the Office of Efficient Government organizationally housed within the department's Purchasing Oversight budget entity. Sec. 287.0573(10), F.S., authorizes the department to employ an adequate number of staff who collectively possess significant expertise and experience as required to carry out the responsibilities of the council. When initially created, the office was authorized 10 full time positions and an annual operating budget of \$1.75 million in recurring General Revenue. Currently, the office has four positions, including the director position, with an annual operating budget of \$447,038 funded by the transaction fees collected by the department from private sector vendors in connection with the statewide electronic procurement and information services system – known as MyFloridaMarketPlace.⁵ The director position and one staff position are vacant.⁶

¹ See ss. 11.901-11.920, F.S.

² See s. 11.905, F.S.

³ See s. 11.906, F.S.

⁴ See s. 287.0573, F.S.

⁵ See pg. 340-341, Fiscal Year 2009-10 General Appropriations Act.

⁶ State Personnel Vacancy Report dated February 17, 2010, on file with the Government Operations Appropriations Committee.

In light of such factors as the state's economic condition and budgetary constraints, there has been a decline in the number of large outsourcing initiatives by state government. Council staff did not review any outsourcing proposals in either Fiscal Year 2007-08 or Fiscal Year 2008-09 that met the \$10 million annual cost threshold for review by the full council, nor was there need for the council to submit an advisory report to an agency, Governor and Legislature.⁷ The council has not met in 2010. The council met two times during 2008 and 2009, respectfully, and four times during 2007.⁸

The Secretary of the department recommends that the Legislature abolish the council due to lack of outsourcing activity by state government.⁹ According to the council's most recent annual report, it has developed standards and best practice procedures for agencies to use when developing business cases as well as a standardized process for reviewing business cases if the council were abolished.¹⁰

The Joint Legislative Sunset Committee recommends eliminating the council, but maintain the business model requirements for agencies that are considering an outsourcing initiative.¹¹

Effect of Change:

This bill repeals the Council on Efficient Government. Repeal of the council should not have an adverse effect on state outsourcing and contracting. For any proposed outsourcing, a state agency will remain responsible for developing a business case that justifies the proposal to outsource. State agencies will be required to submit the business case to the Governor and Legislature in the form and manner required by the budget instructions issued pursuant to ss. 216.023(1), (2) and (4)(a)7., F.S., augmented with additional information if necessary. All other statutory provisions pertaining to state agency outsourcing initiatives and business case requirements governed by ss. 287.0572 and 287.0574, F.S., will remain in effect.

The council-developed standards and best practice procedures for agencies to use when developing business cases as well as a standardized process for reviewing business cases will remain available for agency use as if the council were in existence.

This bill conforms to the proposed House General Appropriations Act by eliminating the council. The four-member support staff and operating budget will no longer be needed. As a result, the portion of the transaction fees collected by the department from private sector vendors in connection with the statewide electronic procurement and information services system used to fund the support staff in the amount of \$447,038 will be redirected to General Revenue, on a recurring basis, to help balance the state's General Revenue budget.

Office of Supplier Diversity

Background:

The Office of Supplier Diversity (Office) was created as part of Governor Bush's "One Florida Equity in Contracting initiative." Prior to that time, the office was called the Minority Business Advocacy and Assistance Office.

The Office provides leadership and guidance on state certification and the registration of minority vendors and facilitating use of Service-Disabled Veteran, Minority/Women-owned Business Enterprises (M/WBE) to provide goods and services to state agencies and universities. The Office provides services in accordance with Chapter 255, s.255.102, F.S., Contractors Utilization of Minority Business Enterprises; Chapter 288, Part IV, s.288.703, F.S., Definitions; s.288.7031, F.S., Application of

⁷ Letter dated October 16, 2009 from DMS Secretary South to the Joint Legislative Sunset Committee.

⁸ DMS website: Council on Efficient Government/Council Meetings.

⁹ Letter dated October 16, 2009 from DMS Secretary South to the Joint Legislative Sunset Committee.

¹⁰ Letter dated October 16, 2009 from DMS Secretary South to the Joint Legislative Sunset Committee & DMS website: Council on Efficient Government/Reports/Annual Reports/Annual Report 2009.

¹¹ Joint Legislative Sunset Committee Meeting Packet dated March 8, 2010.

Definitions; s.288.706, F.S., Minority Business Loan Mobilization Program; and primarily Chapter 287, with specific reference to s.287.0943, F.S., Certification of Minority Business, s.287.0931, F.S., Statewide and Inter-local Agreements; s.287.094, F.S., Minority Business Enterprise Programs; and s.287.09451, F.S., Powers and Duties.

In addition to the state certification and registration processes performed by the Office, the following bullets describe the functions and services referenced above in more detail. The Office:

- measures the amount of spending by state agencies with certified minority enterprises
- conducts compliance audits of certified minority enterprises
- provides outreach to state agencies, community organizations and vendors in matters relating to state contracting opportunities
- implements the Minority Business Loan Mobilization Program, in conjunction with the Florida Black Business Investment Board (FBBIB), and the Mentor Protégé Program
- serves as a liaison between state agencies and minority vendors by reviewing state agency utilization plans and 90-day spending plans
- reports on state agency spend with minority vendors, minority groups and industry segments
- reviews state procurement documents to ensure that the language is not prohibitive to minority participation and that minority vendors have fair opportunities to compete in the state procurement process

The Office is comprised of 11 positions (director position is vacant)¹² and has an annual operating budget of \$825,620. The Office is funded by the transaction fees collected by the department from private sector vendors in connection with the statewide electronic procurement and information services system – known as MyFloridaMarketPlace.¹³

The Office uses certification criteria when reviewing those minority businesses interested in becoming a state-certified minority business enterprise.¹⁴ The certification criteria applied is, in most instances, very similar or identical to the certification criteria used by local governments, non-profit corporations, and other state organizations.¹⁵ In evaluating whether a business should be certified, the Office considers whether it is:

- Engaged in commercial transactions;
- Operated in Florida;
- 51 percent owned, managed and controlled by: African American, Hispanic American, Asian American, Native American, American Woman or Service-Disabled Veteran (minimum of 10 percent disability) who is a permanent resident of Florida and a US citizen;
- A small business independently owned and operated, with a net worth of not more than \$5 million that employs 200 or fewer full-time permanent employees; or
- Recognized as a certified business by the federal government.

The Office reported in its annual report for the 2008-09 fiscal year that there were a total of 4,997 state-certified minority enterprises, an increase of 879 certifications from 4,118 in Fiscal Year 2007-08.¹⁶ However, the volume of state-certified and registered minority businesses does not directly correlate with the amount of state spend with minority business vendors. Economic conditions, budgetary factors, goods and services contracting needs, are among factors that can affect government and private sector contracting and spend behavior.

¹² State Personnel Vacancy Report dated February 17, 2010 & email communication with DMS Management – on file with the Government Operations Appropriations Committee.

¹³ See pg. 341-342, Fiscal Year 2009-10 General Appropriations Act.

¹⁴ See ch. 287 and 288, F.S.

¹⁵ Internet based research of non-profit corporations and other organizations providing minority business certification services similar to the Office of Supplier Diversity.

¹⁶ DMS website: Office of Supplier Diversity/Publications/Annual Reports/OSD Annual Report Fiscal Year 2008-09.

Although the Office does not measure and quantify the direct impact on state contracting resulting from the state-certification and registration processes, the Office did report that a total of \$1.35 billion was spent during the 2008-09 fiscal year by state government with a minority business vendor. Of this amount, 36.7% of the minority business vendors were certified.¹⁷

Any business may register with the Department of Management Services, Division of State Purchasing through its statewide electronic procurement and information services system to do business with the state. If a vendor wishes to participate in a state procurement process as a state-certified minority business enterprise, it must be certified by the Office. If certified by the Office, an added benefit for the minority business vendor is that it will be selected as the prevailing bidder for a state contract if the bid evaluation indicates a tie with a non certified minority business vendor.

As part of the Office's outreach to community organizations and vendors in matters relating to state contracting opportunities, the Office attends statewide and regional conferences, seminars and workshops. The Office hosts the annual MatchMaker Conference and Tradeshow (Orlando in Fiscal Year 2008-09) and other regional MatchMaker workshops around the state to provide an opportunity for small and minority business owners and managers to learn about, and to discuss, state contracting processes and state contracting opportunities.

The Minority Business Certification Task Force (Task Force) was created in s. 287.0943, F.S., to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises.^{18,19} The primary purpose of the Task Force is to propose a final list of the criteria and procedures for consideration by the Secretary of Department of Management Services. The Task Force also is authorized to seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. The department placed the criteria in the Florida Administrative Code over 13 years ago.²⁰ According to the Office, the Task Force has not met in recent years primarily because the use of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2003.²¹

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of the Department of Management Services.²²

HB 7029 effectively deletes provisions establishing the Minority Business Certification Task Force and was passed by the full House on March 10, 2010.

Division of State Purchasing (State Purchasing)

State Purchasing is governed by Chapters 112 part III, 119.07, 120.57, 283, 287, 413.031, 413.036, 413.037, 812.081, and 946.515, F.S.

¹⁷ DMS website: Office of Supplier Diversity/Publications/Annual Reports/OSD Annual Report Fiscal Year 2008-09.

¹⁸ See Chapter 94-322, L.O.F.

¹⁹ Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, limited to no more than 3 years, appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem, and terminates upon the completion of its assignment."

²⁰ Office of Program Policy Analysis & Government Accountability Sunset Review Report, p. 4, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11, published December 2008.

²¹ Information provided by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, Department of Management Services on January 26, 2010.

²² Office of Program Policy Analysis & Government Accountability Sunset Review Report, p. 4, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11, published December 2008.

State Purchasing provides outreach and registration for vendors to broaden contracting opportunities to a diverse vendor population. State Purchasing encourages vendor participation at the annual Florida Government Purchasing Conference with other state agencies, universities, cities and counties. State Purchasing uses the combined purchasing power of the State of Florida to deliver goods and services for the state and eligible users and provides professional leadership and guidance in understanding and using the best purchasing and contracting practices. State Purchasing promotes fair and open contracts in the state's procurement process. Sources of supply are solicited, and contracts for the purchase, lease or acquisition of commodities and services are scheduled and implemented.

Effect of Change:

This bill:

- transfers certain key duties performed by the Office of Supplier Diversity to the Division of State Purchasing
- repeals certain provisions of statute creating the Office of Supplier Diversity within the Department of Management Services
- eliminates provisions relating to the certification of minority business enterprises by the Office of Supplier Diversity
- provides that a business certified by the Office of Supplier Diversity as a minority business enterprise under ch. 287, F.S., as of June 30, 2010, will continue to be recognized as a certified minority business enterprise for purposes of doing business with state government for two years from the effective date of certification, but not later than June 30, 2012.
- provides that a business certified by a department of the Federal government, any local governmental jurisdiction or organization will be accepted as a certified minority business enterprise for purposes of doing business with state government when the minority business enterprise has obtained certification or recertification within the past two years and the minority business enterprise certification criteria met, at a minimum, the state's certification criteria in the certification process.
- deletes provisions relating to review and evaluation of certification program and procedures of statewide and interlocal minority business certification agreements
- provides that complaints alleging prohibited discrimination by an agency in its public procurement may be filed with the Inspector General for the agency that is the subject of the complaint
- deletes provisions relating to specified communication and advocacy duties of the Office
- repeals provisions relating to the Minority Business Certification Task Force

The Division of State Purchasing will be responsible for continuing duties performed by the Office as it pertains to:

- measuring the amount of spending by state agencies with certified minority enterprises,
- reviewing state agency utilization plans and 90-day spending plans, and
- reporting on state agency spend with minority vendors, minority groups and industry segments in strict compliance with statutory requirements

The Division of State Purchasing will not be responsible for continuing the duties of the Office as it pertains to:

- state certification and the registration of minority business vendors
- conducting compliance audits of certified minority enterprises
- providing outreach to state agencies, community organizations and vendors in matters relating to state contracting opportunities for minority business vendors – (State Purchasing provides outreach and registration for vendors to broaden contracting opportunities to a diverse vendor population)

- implementing the Minority Business Loan Mobilization Program, in conjunction with the Florida Black Business Investment Board (FBBIB), and the Mentor Protégé Program

This bill conforms to the proposed House General Appropriations Act by eliminating the Office. Two positions and recurring operating budget authority of \$72,685 will be transferred from the Office to the Division of State Purchasing to perform the duties outlined above. The remaining nine positions (director position is vacant) and recurring operating budget authority of \$752,935 will be eliminated from the department's budget. As a result, the portion of the transaction fees collected by the department from private sector vendors in connection with the statewide electronic procurement and information services system used to fund the Office in the amount of \$752,935 will be redirected to General Revenue, on a recurring basis, to help balance the state's General Revenue budget.

E-Procurement System Transaction fees Collected by the Department

Background:

Pursuant to ss. 287.042 and 287.057, F.S., the department has the authority to collect transaction fees from private sector vendors for the use of its electronic procurement and information services system – known as MyFloridaMarketPlace. All transaction fees collected under this statutory provision are required to be used for disbursements as provided by law. In the annual General Appropriations Act, these transaction fees are authorized for the purpose of making contractor payments associated with the statewide electronic procurement and information services system and for department administrative costs for most functions and services within the department's Purchasing Oversight budget entity.

The Office of Supplier Diversity, the support staff for the Council on Efficient Government and the Division of State Purchasing, are within the department's Support Program and are funded by the transaction fees collected.²³ Annual collections for Fiscal Year 2008-09 were \$19.4 million, and estimated collections for Fiscal Year 2009-10 and 2010-11, respectively, are \$19.5 million.²⁴

Transaction fees collected from private sector vendors in excess of what is needed to fund the legislatively authorized disbursements accumulate in an operating trust fund and become unobligated cash balances. These cash balances are deposited with the State Treasury and earn modest rates of return. Excess cash balances have been transferred to the General Revenue Fund in past two years.

Effect of Change:

This bill amends ss. 287.042 and 287.057, F.S., to require that the private sector vendor transaction fees collected by the department for the use of its statewide electronic procurement and information services system – known as MyFloridaMarketPlace – in excess of what is needed to fund the legislatively authorized disbursements will be redirected to the General Revenue Fund to prevent further accumulation of unobligated cash balances within the operating trust fund used by the Support Program.

Although the specific amount of collections to be redirected to the General Revenue Fund will be based on the amount of transaction fees collected less legislatively authorized disbursements, historical collection patterns indicate that the annual fee collections generally exceed the amounts necessary to fund the legislatively authorized disbursements.

As previously mentioned, this bill repeals the Office of Supplier Diversity and the Council on Efficient Government. Repealing these entities reduce the department's administrative costs within the Support Program by \$1.2 million, which functions are funded by the transaction fees collected. At a minimum, the transaction fees collected that would otherwise be used to fund these functions will be redirected to

²³ See pg. 340-342, Fiscal Year 2009-10 General Appropriations Act.

²⁴ Accrual Fund Balance Analysis prepared by the Accounting Office of DMS.

the General Revenue Fund, on a recurring basis, combined with the excess collections to be used to help balance the state's General Revenue budget.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.11, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing.

Section 2. Amends s. 255.102, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing.

Section 3. Amends s. 287.012, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing.

Section 4. Amends s. 287.042, F.S., providing that transaction fees collected by the Department of Management Services for the use of its electronic information services in excess of the obligations and encumbrances to cover the department's costs of providing the services shall be calculated annually and transferred to the General Revenue Fund. Conforms provisions pertaining to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing.

Section 5. Amends s. 287.057, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing. Conforms cross-references. Provides that transaction fees collected by the Department of Management Services for the use of the services of its online procurement systems in excess of the obligations and encumbrances to cover the department's costs of providing the services shall be calculated and transferred to the General Revenue Fund.

Section 6. Amends s. 287.094, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing. Provides that certain complaints formerly filed with the office may be filed with agency inspectors general.

Section 7. Amends s. 287.094, F.S., providing that a business certified by the Office of Supplier Diversity as a minority business enterprise under s. 287.0943, F.S., as of a specified date shall continue to be recognized as a certified minority business enterprise for purposes of doing business with state government for 2 years from the effective date of certification, but not later than June 30, 2012.

Section 8. Amends s. 287.0943, F.S., providing for certification of minority businesses by other specified governments if certification criteria meet, at a minimum, the state's criteria. Provides duties of the Division of State Purchasing. Eliminates provisions relating to the certification of minority business enterprises by the Office of Supplier Diversity. Deletes provisions relating to the Minority Business Certification Task Force. Deletes provisions relating to review and evaluation of certification program and procedures of statewide and interlocal minority business certification agreements.

Section 9. Amends s. 287.09431, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of duties to the Division of State Purchasing. Conforms cross-references.

Section 10. Amends s. 287.09451, F.S., deleting provision creating the Office of Supplier Diversity within the Department of Management Services. Provides for assumption of specified powers and duties by the Division of State Purchasing. Eliminates provisions relating to the certification of minority business enterprises by the office. Deletes provisions relating to specified communication and advocacy duties of the office. Deletes obsolete provisions.

Section 11. Amends s. 288.703, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing.

Section 12. Amends s. 288.712, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing.

Section 13. Amends s. 288.955, F.S., conforming provisions to the elimination of the Office of Supplier Diversity and the transfer of its duties to the Division of State Purchasing.

Section 14. Amends s. 287.05721, F.S., repealing the definition of “council” as it relates to the Council on Efficient Government.

Section 15. Repeals s. 287.0573, F.S., creating the Council on Efficient Government within the Department of Management Services.

Section 16. Amends s. 287.0574, F.S., conforming provisions to the elimination of the Council on Efficient Government. Requires that a business case be submitted in the form and manner required by the budget instructions.

Section 17. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See “Fiscal Comments” section.

2. Expenditures:

See “Fiscal Comments” section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Office of Supplier Diversity provides certification, registration and outreach services to minority business vendors and community organizations in matters relating to state contracting opportunities. The impact of eliminating the office and transferring portions of its functions and services to the Division of State Purchasing is indeterminate.

D. FISCAL COMMENTS:

The total amount of recurring operating base budget redirected to General Revenue directly resulting from this bill is \$1.2 million. Other budget reductions in the proposed House General Appropriations Act relating to the Purchasing Oversight budget entity and the Office of Supplier Diversity will provide an aggregate amount of recurring redirected revenue to the General Revenue Fund of \$1.6 million as a result of this bill.

- Elimination of the Office of Supplier Diversity:
 - FTE: (9.00)
 - Amount Redirected to General Revenue: \$752,935

- Elimination of the Council on Efficient Government and support staff:
 - FTE: (4.00)
 - Amount Redirected to General Revenue: \$447,038

- Positions transferred from the Office of Supplier Diversity to the Division of State Purchasing to perform residual duties:
 - FTE: 2.00
 - Recurring Operating Base Budget – Operating Trust Fund: \$72,685

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES