

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 Governmental Oversight and Accountability Committee

BILL: SB 374

INTRODUCER: Senator Bogdanoff

SUBJECT: Health and Human Services Contracts

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill creates a Health and Human Services Contract Resource Center to serve as a single, consolidated unit for the administrative and fiscal contract management of health and human services outsourced by the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration. The bill gives the center the authority to establish a data warehouse and sell center services.

The bill also creates an exemption from competitive procurement requirements for services provided by an eligible lead community-based provider currently under contract with the Department of Children and Family Services and in compliance with the department's performance, fiscal, and administrative standards.

This bill substantially amends section 287.057, Florida Statutes and creates a new section.

II. Present Situation:

Contracting and Outsourcing

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} The Florida Statutes define “outsource” as 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.⁴

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.⁵

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 Section 287.012(19), F.S.

⁵ Department of Juvenile Justice. 2010 Legislative Session Bill Analysis, SB 1584, February 9, 2010.

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, 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.⁶

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.⁷

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.⁸ In addition, the department conducts competitive procurements for child welfare services that have been outsourced pursuant to s. 409.1671, F.S.

Coordination of Contracted Services

Section 287.0575, F.S., specifies duties relating to health and human services contracts and the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, and the Department of Veterans' Affairs. The law requires certain contract service providers to supply specified information, and requires administrative coordinators to perform specified duties relating to contract management.

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

⁶ *Id.*

⁷ Agency for Health Care Administration. 2010 Bill Analysis and Economic Impact Statement, SB 1584.

⁸ 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).

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.⁹

III. Effect of Proposed Changes:

Health and Human Services Contract Resource Center

The bill creates the Health and Human Services Contract Resource Center and houses it for administrative purposes only in the Department of Management Services. The bill specifies that the Legislature intends that the center serve as a single, consolidated unit for the administrative and fiscal contract management of health and human services outsourced by the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration.

The center must:

- Serve as the lead state agency for all administrative and fiscal matters related to health and human services contracts;
- Provide administrative and fiscal monitoring activities in coordination with the agency responsible for the program components related to the contract;
- Establish administrative and fiscal performance standards for vendors providing health and human services, which must be used in contract monitoring and as part of each agency's evaluation of competitive bids for health and human services;
- Develop uniform policies, contract administrative requirements, and monitoring protocols related to the administrative and fiscal requirements of vendors providing health and human services;
- Establish or arrange for the establishment of a consolidated data warehouse and archive to maintain the corporate, fiscal, and administrative records of health and human services vendors. The center must ensure that this data is up to date and accessible to other agencies, participating vendors, and the general public through web-based technology. The records may include articles of incorporation, bylaws, governing board and committee meeting minutes, financial audits, and organizational charts;
- Manage the administrative and fiscal data in a manner that allows contract information to be aggregated and assessed to determine the amount, value, and achievement of administrative standards by vendor, by agency, and by type of service;
- Establish a consolidated schedule for site visits to monitor and evaluate the administrative and fiscal compliance of vendors providing health and human services. The center shall facilitate joint site visits with agency programmatic staff whenever possible; and,
- Create an enterprise that allows nonstate agencies to purchase center services. Eligible buyers include, but are not limited to, local governments, nongovernmental organizations, and vendors that have contracts for health and human services with other local service agencies or organizations.

The center will be governed by a board of trustees consisting of the agency heads, or designees, of the Department of Children and Family Services, the Department of Health, the Department of

⁹ s. 215.422, F.S.

Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration. The chair of the board must be appointed by the Governor from the participating agency heads. The board will approve an annual work program and business plan, review and approve center policies, and establish a mechanism for receiving and evaluating feedback from health and human services vendors. The Governor must appoint an executive director, who must have a graduate degree from an accredited institution and at least 7 years of executive-level experience.

The activities of the center must be phased in beginning with children's services contracts of the Department of Children and Family Services and the Department of Health. Other agency contracts must be incorporated into the center's management protocols in accordance with a schedule developed by the board of trustees and approved by the Legislative Budget Commission. The phasing in of all agency contracts must be completed by June 30, 2011.

Procurement Exemption

The bill amends the procurement exemption provisions of s. 287.057(3)(f), F.S., to specify that services provided by an eligible lead community-based provider as described in s. 409.1671(1)(e) currently under contract with the Department of Children and Family Services and in compliance with the department's performance, fiscal, and administrative standards are not subject to the competitive solicitation requirements of s. 287.057, F.S.

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:

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.¹⁰ Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or

¹⁰ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991).

exercising unbridled discretion.”¹¹ The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.¹²

The bill requires the center to establish administrative and fiscal performance standards, and develop uniform policies, requirements, and protocols. Without specifying some adequate standards legislatively, the bill may have a delegation issue.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill provides for the appointment of an executive director, but does not provide for an appropriation for the position.

VI. Technical Deficiencies:

The bill provides that all agency contracts must be phased in by June 30, 2011, which is before the effective date of the bill.

VII. Related Issues:

Some of the duties specified in the bill conflict with duties specified in s. 287.0575, F.S., which could lead to confusion in implementation.

Some of the center’s duties, like establishing administrative and fiscal performance standards, and developing uniform policies, would need to be adopted as rules, if such legislative authority was given to an agency.¹³ Because the authority in this case is given to a “resource center,” which is not an executive branch organizational structure recognized by ss. 20.03 or 20.052, F.S., it is unclear how the center could prescribe policy to the participating agencies.

The bill includes refers to “outsourced” health and human services contracts in a legislative intent section, but never refers to outsourced contracts again in the substantive provisions of the bill, making it unclear whether the bill applies only to outsourced contracts, or all contracts.

¹¹ *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).

¹² *Dep’t of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 363 (Fla. 1st DCA 1985).

¹³ Section 120.052(16), F.S., defines a rule as “each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.”

The bill requires the resource center to establish or “arrange for the establishment” of a “consolidated data warehouse.” The state has been moving for two years towards centralizing all state data centers, pursuant to legislative direction and the guidance of the Agency for Enterprise Information Technology, and agencies may not create new computing facilities or data centers unless authorized by the Legislature.¹⁴ A bill moving through the Senate as of April 1, 2011, SB 7092, further specifies the consolidation of state data centers.

It is unclear why a state agency would need access to a vendor’s articles of incorporation or bylaws, but if it did, that information is currently available from the Department of State.

The bill requires that the center create an “enterprise” to purchase center services, without any legislative guidance. It is unclear whether an entity not specified in Ch. 20, F.S., has the authority to create yet another entity, for the purpose selling services.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

¹⁴ See s. 282.201(4), F.S.