

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1139 Energy  
**SPONSOR(S):** Government Operations Subcommittee, Drake  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	16 Y, 0 N, As CS	Skinner	Toliver
2) State Administration & Technology Appropriations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law requires state agencies that wish to procure commodities or contractual services in excess of \$35,000 to use a competitive solicitation process. A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process. Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid, request for proposals, or invitation to negotiate.

State agencies, in many circumstances, are required to take specified actions to promote energy efficiency and other environmental benefits when conducting public business. When procuring new vehicles, state agencies, state universities, community colleges, and local governments under a state purchasing plan must first define the intended purpose for the vehicle and determine which statutorily listed use class applies. Vehicles must be selected for the greatest fuel efficiency available for the determined class when fuel economy data is available.

Under the Florida Building Code, private providers may only perform building code inspection services that are within the disciplines covered by their licensure or certification under specified law, including single-trade inspections.

The bill revises the selection criteria that state agencies, state universities, community colleges, and local governments must use when vehicles are being procured for purchase or leasing agreements. Under the bill, these entities would be required to make selections based on the lowest lifetime ownership costs over five years as determined by DMS, instead of greatest fuel efficiency available. The bill requires DMS to annually publish a ranking of the vehicles on its website based on this criteria using available industry data. The bill also requires sedans or light trucks purchased under a state purchasing plan to be ranked in the top five of the department's rankings, unless the Secretary of DMS approves an exception and states the reason. The bill exempts law enforcement vehicles from this top five ranking requirement and removes the exception for emergency response vehicles in certain circumstances.

The bill removes the requirement that all state agencies must use ethanol and biodiesel blended fuels when available. It also removes the requirement that state agencies administering central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.

The bill requires DMS to make recommendations to state agencies, including state colleges and universities, and local governments regarding the procurement of electric and natural gas fuel vehicles and best practices for integrating such vehicles into existing fleets before July 1, 2023.

Lastly, the bill amends the definition of "single-trade inspection" to include the installation of electric vehicle charging stations, solar energy and energy storage installations or alterations.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Procurement of Commodities or Contractual Services

Current law specifies the procedures for the procurement of commodities or contractual services.<sup>1</sup> The Department of Management Services (DMS) provides uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users<sup>2</sup>, and establishes purchasing agreements and procures state term contracts for commodities and contractual services.<sup>3</sup>

DMS is required to consider the life-cycle cost of commodities purchased by the state, when applicable and feasible.<sup>4</sup> When calculating the life-cycle cost, the agency may consider the acquisition cost of the product; the energy consumption and the projected cost of energy over the useful life of the product; and the anticipated trade-in, resale, or salvage value of the product.<sup>5</sup> The agency is authorized to establish by rule energy-efficiency standards for major energy-consuming products.<sup>6</sup>

Florida law requires state agencies that wish to procure commodities or contractual services in excess of \$35,000<sup>7</sup> to use a competitive solicitation process.<sup>8</sup> A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.<sup>9</sup> Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods:

- *Invitation to bid*: When an agency is capable of defining the scope of work or specific commodity sought, then an agency must use an invitation to bid (ITB). An ITB must include a detailed description of the commodity or contractual service sought and whether the agency contemplates renewal of the contract. If the agency contemplates renewal of the contract, then each bid submitted in response to an ITB must include the price for each year for which the contract may be renewed. Bid evaluations must include consideration of the total cost for each year of the contract, including renewal years, and the contract must be awarded to the responsible and responsive vendor who submits the lowest responsive bid.<sup>10</sup>
- *Request for proposals*: An agency must use a request for proposals (RFP) when the purposes and uses for the contractual service or commodity sought can be specifically defined and the agency is capable of identifying necessary deliverables. A vendor may respond with various versions of services or commodities to meet the specification of the solicitation document. Before issuing an RFP, the agency must specify in writing the reasons an ITB is not practicable. An RFP must include a statement describing the commodities or contractual services sought, the relative importance of price and other evaluation criteria, and whether the agency contemplates renewal of the contract. The contract is awarded by written notice to the responsible and responsive vendor whose proposal is most advantageous to the state;<sup>11</sup> or
- *Invitation to negotiate*: An invitation to negotiate (ITN) is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem. It identifies one or more responsive vendors with which the agency may negotiate in

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<sup>1</sup> Chapter 287, F.S.

<sup>2</sup> Section 287.032, F.S.

<sup>3</sup> Section 287.042(2)(a), F.S.

<sup>4</sup> Section 287.083(1), F.S.

<sup>5</sup> Section 287.083(5), F.S.

<sup>6</sup> Section 287.083(3)(a), F.S.

<sup>7</sup> Section 287.017(2), F.S.

<sup>8</sup> Section 287.057(1), F.S.

<sup>9</sup> Section 287.012(6), F.S.

<sup>10</sup> Section 287.057(1)(a), F.S.

<sup>11</sup> Section 287.057(1)(b), F.S.

order to receive the best value. Before issuing an ITN, the agency head must specify in writing the reasons an ITB or an RFP are not practicable. An ITN must include questions being explored, the facts being sought, and the specific goals of the solicitation. The agency may select one or more vendors to begin negotiations and then award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state.<sup>12</sup>

Commodities or contractual services available only from a single source may be exempt from the competitive solicitation requirement.<sup>13</sup> Current law specifies processes an agency must follow in this circumstance.<sup>14</sup>

### Climate-friendly Public Business

Current law requires state agencies, in many circumstances, to take specified actions to promote energy efficiency and other environmental benefits when conducting public business.<sup>15</sup> These actions include:

- Consulting the Florida Climate-Friendly Preferred Products List<sup>16</sup> when procuring products from state term contracts<sup>17</sup> and procuring such products if the price is comparable;<sup>18</sup>
- Contracting for meeting and conference space only with facilities that have received a special designation from the Department of Environmental Protection for best practices in water, energy, and waste efficiency standards, absent a determination from the agency head no other viable alternative exists;<sup>19</sup>
- Ensuring all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption and reporting compliance to DMS;<sup>20</sup> and
- Using ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.<sup>21</sup>

Additionally, when procuring new vehicles, state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan must first define the intended purpose for the vehicle and determine which of the statutorily listed use class<sup>22</sup> the vehicle is being procured for.<sup>23</sup> These vehicles must be selected for the greatest fuel efficiency available for the determined given use class when fuel economy data is available.<sup>24</sup> Exceptions may be made for emergency response vehicles in certain circumstances.<sup>25</sup>

### Florida Building Code

The Florida Building Codes Act<sup>26</sup> exists to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code (Building Code).<sup>27</sup> The Building Code consists of a single set of documents that apply to the design, construction, erection,

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<sup>12</sup> Section 287.057(1)(c), F.S.

<sup>13</sup> Section 287.057(3)(c), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 286.29, F.S.

<sup>16</sup> The Florida Climate-Friendly Preferred Products List is developed by DMS, which works with the Department of Environmental Protection to continually assess the list. The list identifies specific products and vendors that offer energy efficiency or other environmental benefits over competing products. *See s. 286.29(1)*, F.S.

<sup>17</sup> A state term contract is a contract for commodities or contractual services that is competitively procured by DMS and is used by agencies and other eligible users. *See ss. 287.012(28)*, F.S. and *287.042(2)(a)*, F.S.

<sup>18</sup> Section 286.29(1), F.S.

<sup>19</sup> Section 286.29(2), F.S.

<sup>20</sup> Section 286.29(3), F.S.

<sup>21</sup> Section 286.29(5), F.S.

<sup>22</sup> Listed vehicle use classes are the following: state business travel, designated operator; state business travel, pool operators; construction, agricultural, or maintenance work; conveyance of passengers; conveyance of building or maintenance materials and supplies; off-road vehicle, motorcycle, or all-terrain vehicle; emergency response; or other. *See s. 286.29(4)*, F.S.

<sup>23</sup> Section 286.29(4), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Part IV, Chapter 553, F.S.

<sup>27</sup> Section 553.72(1), F.S.

alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in Florida, and it must be applied, administered, and enforced uniformly and consistently throughout jurisdictions.<sup>28</sup>

Property owners or the property owner's contractor may hire private providers<sup>29</sup> to provide building code inspection services.<sup>30</sup> A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that's person's licensure or certification under specified law, including single-trade inspections.<sup>31</sup> A single-trade inspection is:

any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.<sup>32</sup>

A private provider may not provide building code inspection services upon any building designed or constructed by the private provider or the private provider's firm.<sup>33</sup> Current law specifies the process that a property owner or the property owner's contractor must follow in notifying the local building official when hiring a private provider to provide building code inspection services, including single-trade inspections.<sup>34</sup>

## Effect of the Bill

The bill revises the selection criteria that state agencies, state universities, community colleges, and local governments must use when vehicles are being procured for purchase or leasing agreements. Under the bill, these entities would be required to make selections based on the lowest lifetime ownership costs over five years as determined by DMS, instead of greatest fuel efficiency available. The bill requires DMS to annually publish a ranking of the vehicles on its website based on the lowest cost of ownership over five years using available industry data. The bill also requires that any vehicle that is a sedan or a light truck that is purchased under a state purchasing plan must be ranked in the top five of the department's rankings, unless the Secretary of DMS approves an exception and states the reason. The bill exempts law enforcement vehicles from this top five ranking requirement and removes the exception for emergency response vehicles in certain circumstances.

The bill removes the requirement that all state agencies must use ethanol and biodiesel blended fuels when available. It also removes the requirement that state agencies administering central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.

Before July 1, 2023, the bill requires DMS to make recommendations to state agencies, including state colleges and universities, and local governments regarding the procurement of electric and natural gas fuel vehicles and best practices for integrating such vehicles into existing fleets.

Lastly, the bill amends the definition of "single-trade inspection" to include the installation of electric vehicle charging stations, solar energy and energy storage installations or alterations, thus allowing certain private providers of building code inspection services to inspect those fixtures.

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<sup>28</sup> *Id.*

<sup>29</sup> A private provider is a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. It can also include a person who holds a standard certificate under part XII of chapter 468 in certain circumstances. *See* s. 553.791(1)(n), F.S.

<sup>30</sup> Section 553.791(2)(a), F.S.

<sup>31</sup> Section 553.791(3), F.S.

<sup>32</sup> Section 553.791(1)(p), F.S.

<sup>33</sup> Section 553.791(3), F.S.

<sup>34</sup> Section 553.791(4), F.S.

**B. SECTION DIRECTORY:**

Section 1 amends s. 286.29, F.S., relating to climate-friendly public business.

Section 2 creates an unnumbered section of law requiring DMS to make certain recommendations to specified entities.

Section 3 amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 4 provides an effective date of July 1, 2022.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article III, s. 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” However,

an act “may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection.”<sup>35</sup>

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 27, 2022, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment changed the bill in the following ways:

- Specified that certain vehicles procured under a purchase or leasing agreement must be procured based on the lowest lifetime ownership costs over five years as determined by DMS;
- Required DMS to annually publish on its website vehicle rankings based on this criteria using available industry data;
- Required sedans and light trucks purchased under a state purchasing plan to be in the top five of DMS’s rankings, unless the Secretary of DMS approves an exception and states the reason;
- Exempted law enforcement vehicles from the top five ranking requirement;
- Removed the exception for emergency response vehicles in certain circumstances; and
- Required DMS’s recommendations to also include recommendations regarding procurement of natural gas fuel vehicles and best practices for integrating such vehicles into existing fleets.

This analysis is drafted to the committee substitute as adopted by the Government Operations Subcommittee.

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<sup>35</sup> *Chenoweth v. Kemp*, 396 So. 2d 1122, 1124 (Fla. 1981).