

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill creates in law two new entities: the Commission on Efficient Government and the Center for Efficient Government. The bill codifies two similar entities that have been operating for the past year under the Governor’s executive order 04-45: the Center for Efficient Government and its oversight board. The bill provides for the repeal of the Commission on Efficient Government and the Center for Efficient Government on July 1, 2010, unless re-enacted by the Legislature prior to that date. The bill also authorizes 9 FTE to staff the Center. In addition, the bill repeals law authorizing another entity, the Council on Competitive Government. The discussion below provides details.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Since the 1950’s, Florida has statutorily required competitive bidding in state procurement. Through the years, the Legislature has amended the requirements numerous times with control over the procurement process passing from the State Purchasing Commission to the Department of General Services, now known as the Department of Management Services (DMS).

Currently, part I of ch. 287, F.S., sets forth the requirements for the procurement of commodities and contractual services by state agencies. The law tasks DMS, as the centralized authority, with overseeing the implementation of competitive bidding requirements and with creating uniform rules for procurement. The state purchasing process is also partly decentralized. Except in the cases where state term contracts exist, agencies may buy commodities and contractual services themselves.

As the state has increasingly shifted to external provision of services,¹ it has occasionally experienced challenges in ensuring that the desired results are achieved. Recent studies and audits have suggested that the state’s procurement of large, complex initiatives could be improved.

- The Governor’s Chief Inspector General released an audit report in June 2003 entitled “A Road Map to Excellence in Contracting.” It found problems with procurement, particularly with performance monitoring, procurement methodologies, and contract writing. The report suggested a variety of solutions, including revising ch. 287, F.S., improving leadership by the DMS, instating a negotiations training program, and facilitating communication among agency procurement staff.
- In January 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report entitled “The Legislature Could Strengthen State’s Privatization² Accountability Requirements.” OPPAGA concurred with the Chief Inspector General’s June 2003 findings and suggested Legislative actions including mandating the use of business cases, strengthening requirements for performance contracting, and strengthening oversight of agency privatization initiatives.
- Various reports by the Auditor General identified problems. For example:
 - In the MyFloridaAlliance initiative of the State Technology Office (STO) involving outsourcing multiple functions, the STO had not conducted full feasibility studies, cost analyses, or risk assessments to determine if the outsourcing of these functions would provide the best value to the state. Additionally, the information provided in the solicitation

¹ According to the Center for Efficient Government, there have been at least 138 outsourcing projects undertaken between January 1999 and June 2004.

² OPPAGA uses “privatization” as a generic term encompassing such techniques and activities as contracting out, outsourcing, and public-private partnerships.

documents did not provide sufficient detail about STO operations, services, and needs to allow for a responsible vendor to adequately respond to the listed key initiatives. The contracts with Accenture and BearingPoint lacked certain provisions to adequately protect state resources.³ The STO subsequently cancelled the contracts.

- In the Department of Management Services' procurement of the MyFloridaMarketplace e-procurement system, the department planning process did not include timely completion of a cost-benefit or risk analysis.⁴
- In the Department of Business and Professional Regulation's On-line Licensing and Call Center Services procurement, the department did not perform a feasibility study for the procurement's Application Management Services component.⁵ Additionally, the contract, which is funded through a shared-savings model, failed to provide specifics about how to define and share savings.⁶

The Governor entered an executive order on March 11, 2004, creating the Center for Efficient Government (Center) within the DMS. The executive order stated that the Center was "to be the enterprise wide gateway for best business practices in order to improve the way state agencies deliver services to Florida's citizens." The order required the Center to:

- Establish a five-member oversight panel made up of agency heads;
- Create a centralized, multi-stage, gate process for the review, evaluation, and approval of agency outsourcing⁷ initiatives;
- Provide documentation at the completion of each stage to the Legislature prior to initiation of the next stage;
- Review past outsourcing projects for best business practices and existing outsourcing plans to ensure agency compliance with center standards;
- Maintain a database with information about initiatives being performed by contractors that includes a description of the work being performed, applicable performance measures, and contractor and subcontractor identification; and
- Implement a program to transition displaced state employees.⁸

Pursuant to the Governor's order, the Center began its operations in April 2004. The executive order states that it is to be in existence until January 3, 2007.

The Center's policies require all agency outsourcing projects to undergo a sequential review and validation process, referred to as the "Gate Process." The oversight board, however, only reviews and validates projects estimated to be valued at more than \$10 million per fiscal year and enterprise-wide projects that are proposed by the center. As an agency completes each stage, the oversight board is to review the agency's progress and determine whether to validate that progress so that the agency may continue to the next stage. However, the board has no authority to accept or deny a project, or the documentation provided by an agency.

Proposed changes

³ Auditor General Report No. 2005-08, *State Technology Office: MyFlorida Alliance Operational Audit*, July 2004.

⁴ Auditor General Report No. 2005-116, *Department of Management Services: MyFloridaMarketplace Operational Audit*, February 2005.

⁵ Auditor General Report No. 2002-112, *On-Line Licensing System & Call Center Services Agreement- Department of Business & Professional Regulation - Operational Audit*, December 2001.

⁶ Auditor General Report No. 2004-112, *Department of Business & Professional Regulation - On-Line Licensing System & Call Center Services Agreement Operational Audit*, January 2004.

⁷ The center defines an "outsourced function or service" as "one which was previously performed by state employees and is now operated by a third party entity while the state remains fully responsible for the provision of affected services and maintains control over management and policy decisions." *Center for Efficient Government FAQ's*.

http://dms.myflorida.com/dms/administration/center_for_efficient_government/center_for_efficient_government_faqs.

⁸ Executive Order 04-45.

The bill creates mechanisms to improve the state's procurement. The bill:

- Provides criteria that certain procurements of contractual services must meet. They must result in cost savings while maintaining services' quality, increase services' quality at the same or lower cost, or increase both cost and quality.
- Provides a formal review process for certain procurements by:
 - Creating a Commission on Efficient Government (Commission) in DMS to review and approve the procurements at key decision points using a "centralized gate process." The bill specifies the Commission's membership as four agency heads and three private sector individuals appointed by the Governor.
 - Requiring certain contractual services procurements to pass through the gate process, including those costing \$10 million and above annually; those requiring budgetary changes; and those with unusual funding, such as from fees or shared-savings. The bill requires procurements by agencies headed by the Attorney General, Chief Financial Officer, or Commissioner of Agriculture to pass through the centralized gate process but provides that the agency head, not the Commission on Efficient Government, will approve, withhold approval, or deny approval of procurements. This is because of their status as Constitutional officers.
 - Requiring the Commission to give the Legislature business cases and supporting documents 14 days before a Commission meeting for information purposes.
- Creates a Center for Efficient Government, provides for its staff, and requires it to support the Commission in its review and agencies in planning for and implementing certain procurements.
- Requires for procurements required to pass through the Center and contractual services procurements costing \$1 million or more:
 - Business cases that meet specific requirements, such as qualitative and quantitative descriptions of agencies' current performance, descriptions and analyses of options for service provision, and detailed cost-benefit analyses.
 - Solicitations that contain certain information to ensure that prospective contractors are fully informed of the state's needs.
 - Contracts that include certain provisions, such as specifics about how contractors will be evaluated and paid and how public records law requirements will be met.
 - Notice to the Governor about contract amendments exceeding certain thresholds.
 - Review of contractor performance prior to extending or renewing certain procurements.
- Permits only state employees or officers, not contractors, to perform certain personnel-related activities.
- Prohibits contractors from knowingly participating in certain agency procurement activities.
- Provides an appropriation of \$1,023,554 and authorizes 9 positions for the Center for Efficient Government.

C. SECTION DIRECTORY:

Section 1 amends s. 20.02, F.S., to create the Center for Efficient Government within the Department of Management Services.

Section 2 creates s. 287.0571, F.S., which provides a name and Legislative intent for the act and exempts certain procurements from being subject to ss. 287.0571-287.0577, F.S.

Section 3 creates s. 287.0573, F.S., which provides definitions for the terms "center", "centralized gate process", and "commission".

Section 4 creates s. 287.0574, F.S., which provides criteria governing the procurement of contractual services.

Section 5 creates s. 287.0575, F.S., which creates the Commission for Efficient Government (Commission) and specifies its membership and operations. It also creates the Center for Efficient Government (Center) and specifies its duties.

Section 6 creates s. 287.0576, F.S., which provides the criteria for proposed procurements of contractual services to be subject to the review and approval process by the Center and the Commission.

Section 7 creates s. 287.0577, F.S., which provides the requirements for business cases, solicitations, and contracts for procurements of contractual services required to pass through the Center's centralized gate process.

Section 8 creates s. 287.0578, regarding the supersession of subsequent acts inconsistent with this act.

Section 9 amends s. 287.057, F.S., requiring certified negotiators to participate in certain agency procurements.

Section 10 creates s. 215.4211, F.S., authorizing the Chief Financial Officer to review and comment on certain unexecuted comments.

Section 11 creates s. 216.1817, F.S., which provides limitations on budgetary changes for contractual services procurement; placement of positions in reserve' re-establishment of positions.

Section 12 creates an unnumbered section of law limiting certain personnel-related activities to performance by public officers or employees.

Section 13 creates an unnumbered section of law prohibiting contractors from knowingly participating in certain agency procurement activities.

Section 14 provides for the repeal of the Center and Commission on July 1, 2010, unless the entities are re-enacted prior to that date.

Section 15 provides for the renumbering of s. 287.0572, F.S., to s. 287.0579, F.S.

Section 16 amends s. 119.0721, F.S., to correct a cross-reference to a section repealed by the bill.

Section 17 repeals s. 14.203, F.S., which authorizes the Council on Competitive Government.

Section 18 appropriates \$1,023,544 and authorizes 9 full-time-equivalent positions for the Center.

Section 19 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Management Services
General Revenue Fund

	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Recurring Costs:		
Salaries and Benefits (9 FTE)	\$ 906,788	\$ 906,788

Other Personal Services	14,610	14,610
Expenses	<u>102,156</u>	<u>102,156</u>
Total – recurring	\$1,023,554	\$1,023,554

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill appropriates \$1,023,554 from the General Revenue Fund to the Department of Management Services and authorizes 9 positions for the Center for Efficient Government. The staff is to support the Commission on Efficient Government in its duties and assist agency staff in planning for and implementing certain procurements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission on Efficient Government to adopt rules regarding the procurements which must pass through the Center on Efficient Government and the standards and procedures which agencies must use during the procurement process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the March 23, 2005, meeting of the Governmental Operations Committee, the committee adopted five amendments and reported the bill favorably.

The amendments:

- Revised the definition of “inherently governmental function or responsibility” to be more specific;

- Required a contract provision specifying that contractors interview interested adversely affected state employees for possible employment;
- Provided that business plans include components regarding retraining adversely state affected employees; and
- Required procurements by agencies headed by the Attorney General, Chief Financial Officer, or Commissioner of Agriculture to pass through the centralized gate process but provided that the agency head, not the Commission on Efficient Government, will approve, withhold approval, or deny approval of procurements.

At the April 15, 2005, meeting of the State Administration Appropriations Committee, the committee adopted seven amendments and reported the bill favorably with a committee substitute.

The amendments:

- Revised the composition of the committee to include three agency heads and four private sector representatives.
- Required a unanimous vote for a procurement contract to move to the next gate.
- Required the Commission to submit a quarterly report to the Legislature and to the Governor.
- Changed the criteria for a procurement contract to be reviewed by the Commission to \$10 million dollars or more annually.
- Provided for an Auditor General review of and legislative actions against any agency violating the provisions of this law.
- Changed the appropriation in the bill to \$1,023,554 from the General Revenue fund and 9 full time equivalent positions.
- Changed a whereas clause.

At the April 20, 2005, meeting of the State Administration Council, the council adopted a strike-all amendment, as amended, and reported the bill favorably with a committee substitute.

The strike-all amendment, as amended:

- Named the act the "Center for Efficient Government Act" and provided legislative intent.
- Exempted additional procurements from the Center for Efficient Government (Center) and Commission on Efficient Government (Commission) processes.
- Deleted the definition for "inherently governmental function or responsibility" and prohibitions on contracting out such functions or responsibilities.
- Prohibited private sector members of the Commission from being registered lobbyists.
- Permitted private-sector Commission members to have a business relationship with the state but requires them and agency head members to recuse themselves under certain conditions.
- Increased the Commission's quorum to require 2 private-sector members.
- Provided for the adoption of certain rules by the Commission.
- Increased the threshold for projects which must pass through the centralized gate process from \$10 million total to \$10 million in any year.
- Removes the Commission's ability to prioritize projects in the case of extraordinarily high volume.
- Required the Commission to approve use of an invitation to negotiate.
- Provided that except for the agency's failure to comply with a Commission decision, other failures to comply with the act or rules shall not affect validity of the solicitation process or contract.
- Required projects undergoing Commission review and contractual services procurements of \$1 million or more in any year to meet specific requirements for business cases, solicitation documents, contracts, and contract amendments, extensions, and renewals.
- Revised the required provisions of the business case and contracts for certain procurements.

- Provided for the use of certified negotiators by agencies for procurements costing \$1 million or more annually.
- Provided for review of certain contracts by the Chief Financial Officer.
- Permitted only state employees, not contractors, may perform certain actions relating to personnel.
- Provided that no contractor, or its employees, agents, or subcontractors, may participate in a procurement process for the procurement of contractual services from an entity of which the contractor, or its employees, agents, or subcontractors, has a material interest. Pre-bid conferences and requests for information are excluded.