

Bill No. SB 1146

Barcode 504202

Proposed Committee Substitute by the Committee on Governmental
Oversight and Productivity

1 A bill to be entitled

2 An act relating to purchasing and procurement;

3 providing definitions; authorizing the

4 Department of Management Services to establish

5 the Center for Efficient Government; providing

6 for the powers and duties of the center;

7 prescribing duties of a state agency before a

8 service may be outsourced; requiring agencies

9 to do a business case analysis; specifying the

10 requirements for the analysis; requiring that

11 an agency submit the proposed business case

12 with the agency's legislative budget request;

13 prescribing the process for approval if the

14 outsourcing is not included in the agency's

15 approved operating budget; prohibiting an

16 agency from privatizing a service without

17 specific legislative authorization; prescribing

18 contract requirements for a contract that meets

19 or exceeds a specified threshold amount;

20 authorizing a contract to include certain

21 incentives; providing requirements for a

22 contract that exceeds \$1 million in value;

23 providing a process for a state agency to

24 submit to the Executive Office of the Governor

25 certain contract amendments for approval;

26 requiring approval of the Administration

27 Commission under certain circumstances;

28 creating s. 215.4211, F.S.; authorizing the

29 Chief Financial Officer to review contracts for

30 state agencies; repealing s. 14.203, F.S.,

31 relating to the State Council on Competitive

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1 Government; providing an appropriation;
 2 providing restrictions on contractor
 3 supervision of state employees; providing
 4 restrictions on contractor involvement in state
 5 procurement; providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
 8

9 Section 1. Center for Efficient Government;
 10 outsourcing or privatization; contract management.--

11 (1) As used in this section, the term:

12 (a) "Agency" means the entities defined in section
 13 287.012(1), Florida Statutes.

14 (b) "Contractor" has the same meaning as in section
 15 287.012(8), Florida Statutes.

16 (c) "Outsourcing" means the process of contracting
 17 with an external service provider to provide a service, in
 18 whole or in part, while the agency retains the responsibility
 19 and accountability for the service.

20 (d) "Performance standards" means the quantifiable,
 21 specified, and desired level to be achieved for a particular
 22 service.

23 (e) "Privatize" means any process aimed at
 24 transferring the responsibility for a service, in whole or in
 25 part, from the agency to the private sector such that the
 26 private sector is solely and fully responsible for the
 27 performance of the specific service.

28 (f) "Service" means all or any portion of a program or
 29 program component as defined in section 216.011, Florida
 30 Statutes.

31 (2)(a) The Department of Management Services may

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1 establish the Center for Efficient Government, which shall
2 promote best business practices in procurement and contracting
3 in order to allow state agencies to focus on their core
4 missions and to deliver services efficiently and
5 cost-effectively and, when validated, contract for services
6 that can be more effectively provided by the private sector.

7 (b) The center shall:

8 1. Assist agencies, when requested, in their
9 compliance with this section, which shall include, but need
10 not be limited to, developing and updating business cases and
11 solicitation documents, supporting contract negotiations,
12 contract drafting, change management, performance measurement,
13 and contract management.

14 2. Develop standards, processes, templates, and
15 guidelines that comply with the appropriate provisions of this
16 section for use by agencies.

17 3. Create and maintain a database of new and existing
18 state procurement initiatives, which must include, but need
19 not be limited to, those initiatives subject to this section.
20 At a minimum, the database must contain the following
21 information in regard to contractual services:

22 a. The agency name, the name and description of the
23 contractual service procured, and the names of the prime
24 contractor and any subcontractors.

25 b. The projected and actual completion dates by
26 project phase.

27 c. A description of the performance standards
28 contained in the contract, projected performance, and actual
29 performance.

30 d. The projected costs and revenues, as applicable,
31 and actual costs and revenues.

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1 (3) If an agency proposes to outsource a service, the
2 agency must comply with the requirements of paragraph (a)
3 before beginning the procurement process provided for in
4 section 287.057, Florida Statutes.

5 (a) The agency shall develop a business case
6 describing and analyzing the function or service proposed for
7 outsourcing. A business case is part of the solicitation
8 process and is not a rule subject to challenge under section
9 120.54, Florida Statutes. The business case must include, but
10 need not be limited to:

11 1. A detailed description of the service to be
12 outsourced, a description and analysis of the agency's current
13 performance of the service, and a rationale documenting how
14 outsourcing the service would be in the best interest of the
15 state, the agency, or its clients.

16 2. A cost-benefit analysis describing the estimated
17 specific direct and indirect costs, savings, performance
18 improvements, risks, and qualitative and quantitative benefits
19 involved in or resulting from outsourcing the service. The
20 cost-benefit analysis must include a detailed plan and
21 timeline identifying all actions that must be implemented to
22 realize expected benefits. Pursuant to section 92.525, Florida
23 Statutes, the agency head shall verify that all costs,
24 savings, and benefits are valid and achievable.

25 3. A statement of the potential effect on applicable
26 federal, state, and local revenues and expenditures. The
27 statement must specifically describe the effect on general
28 revenue, trust funds, general revenue service charges, and
29 interest on trust funds, together with the potential direct or
30 indirect effect on federal funding and cost allocations.

31 4. A plan to ensure compliance with public-records

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1 law, including a plan for:

2 a. Providing public access to public records at a cost
3 that does not exceed that provided in chapter 119, Florida
4 Statutes.

5 b. Ensuring the confidentiality of records that are
6 exempt from public disclosure or made confidential by law.

7 c. Meeting all legal requirements for retaining
8 records.

9 d. Transferring to the state, at no cost, all public
10 records in possession of the contractor upon termination of
11 the contract.

12 5. A transition and implementation plan for addressing
13 changes in the number of agency personnel, affected business
14 processes, and employee-transition issues. Such a plan must
15 also specify the mechanism for continuing the operation of the
16 service if the contractor fails to perform and comply with the
17 performance standards and provisions of the contract. Within
18 this plan, the agency shall identify all resources, including
19 full-time equivalent positions, which are subject to
20 outsourcing. All full-time equivalent positions identified in
21 the plan shall be placed in reserve by the Executive Office of
22 the Governor until the end of the second year of the contract.
23 Notwithstanding the provisions of section 216.262, Florida
24 Statutes, the Executive Office of the Governor shall request
25 authority from the Legislative Budget Commission to
26 reestablish full-time positions above the number fixed by the
27 Legislature when a contract is terminated and the outsourced
28 service must be returned to the agency.

29 6. A listing of assets proposed for transfer to or use
30 by a contractor, a description of the proposed requirements
31 for maintaining those assets by the contractor or the agency

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1 in accordance with chapter 273, Florida Statutes, a plan for
2 disposing of the assets upon termination of the contract, and
3 a description of how the planned asset transfer or use by a
4 contractor is in the best interest of the agency and state.

5 (b)1. If the agency proposes to outsource a service in
6 the next fiscal year, the agency shall submit the business
7 case along with the agency's final legislative budget request,
8 in the manner and form prescribed in the legislative budget
9 request instructions pursuant to section 16.023, Florida
10 Statutes. Upon approval in the General Appropriations Act, the
11 agency may initiate and complete the procurement process
12 pursuant to section 287.057, Florida Statutes, and may enter
13 into contracts with the contractor.

14 2. If a proposed outsourcing initiative would require
15 integration with or would in any way affect other information
16 technology systems of the state, the agency shall submit the
17 feasibility study documentation as required by the
18 instructions for the legislative budget request under section
19 216.023, Florida Statutes.

20 (c) If the agency proposes to outsource a service
21 during a fiscal year and the outsourcing provision was not
22 included in the agency's approved operating budget, the agency
23 must provide to the Executive Office of the Governor, the
24 President of the Senate, the Speaker of the House of
25 Representatives, the chairs of the legislative appropriations
26 committees, and the chairs of the relevant substantive
27 committees the validated business case that complies with the
28 requirements of paragraph (a) at least 45 days before the
29 release of any solicitation documents, as provided in section
30 287.057, Florida Statutes. Any budgetary changes that are
31 inconsistent with the agency's approved budget may not be made

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1 to existing programs unless such changes are recommended to
2 the Legislative Budget Commission by the Governor and the
3 Legislative Budget Commission expressly approves such program
4 changes.

5 (d) An agency may not privatize a service, as defined
6 in subsection (1), without specific authority provided for in
7 general law, the General Appropriations Act, legislation
8 implementing the General Appropriations Act, or a special
9 appropriations act.

10 (4)(a) In addition to the requirements of section
11 287.058, Florida Statutes, each contract for the procurement
12 of contractual services by an agency which meets or is in
13 excess of the threshold amount provided in section 287.017,
14 Florida Statutes, for CATEGORY FIVE, must include, but need
15 not be limited to:

16 1. A detailed scope of work that clearly specifies
17 each service or deliverable to be provided, including a
18 description of each deliverable or activity that is
19 quantifiable, measurable, and verifiable.

20 2. All service-level agreements describing all
21 services to be provided under the terms of the agreement, the
22 agency's service requirements and performance objectives, and
23 specific responsibilities of the agency and the contractor.

24 3. Associated costs and savings, specific payment
25 terms and payment schedule, including incentive and penalty
26 provisions, criteria governing payment, and a clear and
27 specific implementation schedule that will be implemented in
28 order to complete all required activities needed to transfer
29 the service from the agency to the contractor and operate the
30 service successfully.

31 4. Clear and specific identification of all required

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1 performance standards, which must include, at a minimum:

2 a. Detailed measurable acceptance criteria for each
3 deliverable and service to be provided to the agency under the
4 terms of the contract which document the required performance
5 level.

6 b. A method for monitoring and reporting progress in
7 achieving specified performance standards and levels.

8 c. The sanctions or penalties that shall be assessed
9 for nonperformance by the contractor or agency.

10 5. A requirement that the contractor maintain adequate
11 accounting records that comply with all applicable federal and
12 state laws and generally accepted accounting principles.

13 6. A requirement authorizing the agency to have access
14 to and conduct audits of all records related to the contract
15 and outsourced services.

16 7. A requirement that ownership of any intellectual
17 property that is critical for the assumption of the outsourced
18 service be transferred from the contractor to the agency if
19 the contractor ceases to provide the outsourced service.

20 8. A requirement describing the timing and substance
21 of all plans and status or progress reports that are to be
22 provided. All plans and status or progress reports must comply
23 with any relevant state and federal standards.

24 9. A requirement that the contractor comply with
25 public-records laws. The contractor must:

26 a. Keep and maintain the public records that
27 ordinarily and necessarily would be required by the state
28 agency in order to perform the function or service.

29 b. Provide the public with access to such public
30 records on the same terms and conditions that the state agency
31 would, and at a cost that does not exceed that provided in

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1 chapter 119, Florida Statutes.

2 c. Ensure the confidentiality of records that are
3 exempt from public disclosure or made confidential under law.

4 d. Meet all requirements for retaining records and
5 transfer to the state, at no cost, all public records in
6 possession of the contractor upon termination of the contract.
7 All records stored electronically must be provided to the
8 state in a format that is compatible with information
9 technology systems of the state.

10 10. A requirement that any state funds provided for
11 the purchase of or improvements to real property be made
12 contingent upon the contractor granting to the state a
13 security interest in the property which is at least equal to
14 the amount of the state funds provided for the most recent
15 years following the date of purchase or the completion of
16 improvements, or as otherwise required by law. The contract
17 must include a provision that, if the contractor disposes of
18 the property before the agency's interest is vacated, the
19 contractor will refund the proportionate share of the state's
20 initial investment, as adjusted by depreciation.

21 11. A provision that the contractor annually submit
22 and verify pursuant to section 92.525, Florida Statutes, all
23 required financial statements.

24 (b) A contract may include cost-neutral,
25 performance-based incentives that may vary according to the
26 extent a contractor achieves or surpasses the performance
27 standards set forth in the contract. Such incentives may be
28 weighted proportionally to reflect the extent to which the
29 contractor has demonstrated that it has consistently met or
30 exceeded the contractual requirements and performance
31 standards.

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1 (c) When the annualized value of a contract is in
2 excess of \$1 million, at least one of the persons conducting
3 negotiations must be certified as a contract negotiator based
4 upon standards established by the Department of Management
5 Services.

6 (d) An agency may not amend a contract without first
7 submitting the proposed contract amendment to the Executive
8 Office of the Governor for approval if the effect of the
9 amendment would be to increase:

- 10 1. The value of the contract by \$250,000; or
11 2. The term of the contract by 1 year or more.

12
13 When an agency proposes any contract amendment that meets the
14 criteria described in this paragraph, it shall submit the
15 proposed contract amendment to the Executive Office of the
16 Governor for approval and shall immediately notify the chairs
17 of the legislative appropriations committees. The Executive
18 Office of the Governor may not approve the proposed contract
19 amendment until 14 days following receipt of the notification
20 to the legislative appropriations chairs. If either chair of
21 the legislative appropriations committee objects in writing to
22 a proposed contract amendment within the 14 days following
23 notification and specifies the reasons for such objection, the
24 Executive Office of the Governor shall disapprove the proposed
25 contract amendment or shall submit the proposed contract
26 amendment to the Administration Commission. The proposed
27 contract amendment may be approved by the Administration
28 Commission by a two-thirds vote of the members present with
29 the Governor voting in the affirmative. In the absence of
30 approval by the Administration Commission, the proposed
31 contract amendment shall be automatically disapproved.

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1 Otherwise, upon approval by the Governor or Administration
2 Commission, the agency may execute the contract amendment. An
3 amendment that is issued under legislative direction,
4 including funding adjustments annually provided for in the
5 General Appropriations Act, need not be submitted for approval
6 in accordance with this paragraph.

7 (e) In addition to the requirements of sections
8 287.057(13) and (14), Florida Statutes, prior to the renewal
9 or extension of a contract an agency shall verify that all
10 specific direct and indirect costs, savings, performance
11 standards, and qualitative and quantitative benefits
12 identified in the original contract have been met by the
13 contractor and the agency. Such documentation must include an
14 explanation of any differences between the required
15 performance as identified in the contract and the actual
16 performance of the contractor. Such documentation shall be
17 included in the official contract file.

18 Section 2. Section 215.4211, Florida Statutes, is
19 created to read:

20 215.4211 Review of contracts for state agencies.--The
21 Chief Financial Officer may request, as he or she deems
22 necessary, the option to review and provide comments prior to
23 the execution of any contract that is required to be in
24 compliance with the provisions identified in paragraph (4)(a)
25 of section 1 of this act.

26 Section 3. Section 14.203, Florida Statutes, is
27 repealed.

28 Section 4. The sum of \$1 million is appropriated from
29 the General Revenue Fund to the Center for Efficient
30 Government in the Department of Management Services, and 8
31 full-time equivalent positions are authorized, to fund the

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1 center for fiscal year 2005-2006.

2 Section 5. A contractor, as defined in chapter 287,
3 Florida Statutes, or its employees, agents, or subcontractors,
4 may not directly or indirectly supervise, direct, or act as an
5 approving authority over any state employee or the actions
6 committed to the responsibility of state employees.

7 Section 6. A contractor, as defined in chapter 287,
8 Florida Statutes, or its employees, agents, or subcontractors,
9 may not knowingly participate through decision, approval,
10 disapproval, recommendation, preparation of any part of a
11 purchase request, influencing the content of any specification
12 or procurement standard, rendering of advice, investigation,
13 or auditing, or in any other advisory capacity, in the
14 procurement of contractual services from an entity of which
15 the contractor, or its employees, agents, or subcontractors,
16 has a material interest.

17 Section 7. This act shall take effect July 1, 2005.

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