

By the Committees on Governmental Oversight and Productivity;
Children and Families; and Senators Campbell and Margolis

585-1803-05

1 A bill to be entitled
2 An act relating to the Department of Children
3 and Family Services; providing legislative
4 intent with respect to establishing a structure
5 by which the department shall monitor and
6 manage contracts with external service
7 providers; providing definitions; requiring the
8 department to competitively procure certain
9 commodities and contractual services; requiring
10 the department to allow all public
11 postsecondary institutions to bid on contracts
12 intended for any public postsecondary
13 institution; authorizing the department to
14 competitively procure and contract for systems
15 of treatment or service that involve multiple
16 providers; providing requirements if other
17 governmental entities contribute matching
18 funds; requiring that an entity providing
19 matching funds must comply with certain
20 procurement procedures; authorizing the
21 department to independently procure and
22 contract for treatment services; requiring that
23 the department develop a validated business
24 case before outsourcing any service or
25 function; providing requirements for the
26 business case; requiring that the validated
27 business case be submitted to the Legislature
28 for approval; requiring that a contractual
29 service that has previously been outsourced be
30 subject to the requirements for a validated
31 business case; requiring that a procurement of

1 contractual services equal to or in excess of
2 the threshold amount for CATEGORY FIVE comply
3 with specified requirements, including a scope
4 of work and performance standards; authorizing
5 the department to adopt incremental penalties
6 by rule; authorizing the department to include
7 cost-neutral, performance-based incentives in a
8 contract; requiring that a contract in excess
9 of \$1 million be negotiated by a contract
10 negotiator who is certified according to
11 standards established by the Department of
12 Management Services; limiting circumstances
13 under which the department may amend a
14 contract; requiring that a proposed contract
15 amendment be submitted to the Executive Office
16 of the Governor for approval; requiring
17 approval of a contract amendment by the
18 Administration Commission under certain
19 circumstances; requiring the department to
20 verify that contractual terms have been
21 satisfied before renewing a contract; requiring
22 certain documentation; requiring the department
23 to develop, in consultation with the Department
24 of Management Services, contract templates and
25 guidelines; requiring that the department
26 establish a contract-management process;
27 specifying the requirements for and components
28 of the contract-management process; providing
29 requirements for resolving performance
30 deficiencies and terminating a contract;
31 requiring a corrective-action plan under

1 certain circumstances; requiring the department
2 to develop standards of conduct and
3 disciplinary actions; requiring that the
4 department establish contract-monitoring units
5 and a contract-monitoring process; requiring
6 written reports; requiring on-site visits for
7 contracts involving the provision of direct
8 client services; requiring the department to
9 make certain documents available to the
10 Legislature; requiring the department to create
11 an electronic database to store the documents;
12 amending s. 402.73, F.S.; requiring the Agency
13 for Persons with Disabilities to implement
14 systems to ensure quality and fiscal integrity
15 of programs in the developmental services
16 Medicaid waiver system; providing an exemption
17 for health services from competitive bidding
18 requirements; amending s. 409.1671, F.S.;
19 conforming provisions to changes made by the
20 act; requiring that the Office of Program
21 Policy Analysis and Government Accountability
22 conduct two reviews of the contract-management
23 and accountability structures of the department
24 and report to the Legislature and the Auditor
25 General; repealing s. 402.72, F.S., relating to
26 contract-management requirements for the
27 Department of Children and Family Services;
28 providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Department of Children and Family Services;
2 procurement of contractual services; outsourcing or
3 privatization; contract management.--

4 (1) LEGISLATIVE INTENT.--The Legislature intends that
5 the Department of Children and Family Services obtain services
6 in the manner that is most efficient and cost-effective for
7 the state, that provides the greatest long-term benefits to
8 the clients receiving services, and that minimizes the
9 disruption of client services. In order to meet these
10 legislative goals, the department shall comply with
11 legislative policy guidelines that require compliance with
12 uniform procedures for procuring contractual services,
13 prescribe how the department must outsource its programmatic
14 and administrative services to external service providers
15 rather than having them provided by the department or another
16 state agency, and establish a contract-management and
17 contract-monitoring process.

18 (2) DEFINITIONS.--As used in this section, the term:

19 (a) "Contract manager" means the department employee
20 who is responsible for enforcing the compliance with
21 administrative and programmatic terms and conditions of a
22 contract. The contract manager is the primary point of contact
23 through which all contracting information flows between the
24 department and the contractor. The contract manager is
25 responsible for day-to-day contract oversight, including
26 approval of contract deliverables and invoices. All actions
27 related to the contract shall be initiated by or coordinated
28 with the contract manager. The contract manager maintains the
29 official contract files.

30 (b) "Contract monitor" means the department employee
31 who is responsible for observing, recording, and reporting to

1 the contract manager and other designated entities the
2 information necessary to assist the contract manager and
3 program management in determining whether the contractor is in
4 compliance with the administrative and programmatic terms and
5 conditions of the contract.

6 (c) "Department" means the Department of Children and
7 Family Services.

8 (d) "Outsourcing" means the process of contracting
9 with an external service provider to provide a service, in
10 whole or in part, while the department retains the
11 responsibility and accountability for the service.

12 (e) "Performance measure" means the quantitative
13 indicators used to assess if the service the external provider
14 is performing is achieving the desired results. Measures of
15 performance include outputs, direct counts of program
16 activities, and outcomes or results of program activities in
17 the lives of the clients served.

18 (f) "Performance standard" means the quantifiable,
19 specified, and desired level to be achieved for a particular
20 performance measure.

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

26 (h) "Service" means all or any portion of a program or
27 program component as defined in section 216.011.

28 (3) PROCUREMENT OF COMMODITIES AND CONTRACTUAL
29 SERVICES.--

30 (a) For the purchase of commodities and contractual
31 services in excess of the threshold amount established in

1 section 287.017, Florida Statutes, for CATEGORY TWO, the
2 department shall comply with the requirements set forth in
3 section 287.057, Florida Statutes.

4 (b) Notwithstanding section 287.057(5)(f)13., Florida
5 Statutes, whenever the department intends to contract with a
6 public postsecondary institution to provide a service, the
7 department must allow all public postsecondary institutions in
8 this state that are accredited by the Southern Association of
9 Colleges and Schools to bid on the contract. Thereafter,
10 notwithstanding any other provision to the contrary, if a
11 public postsecondary institution intends to subcontract for
12 any service awarded in the contract, the subcontracted service
13 must be procured by competitive procedures.

14 (c) When it is in the best interest of a defined
15 segment of its consumer population, the department may
16 competitively procure and contract for systems of treatment or
17 service that involve multiple providers, rather than procuring
18 and contracting for treatment or services separately from each
19 participating provider. The department must ensure that all
20 providers that participate in the treatment or service system
21 meet all applicable statutory, regulatory, service-quality,
22 and cost-control requirements. If other governmental entities
23 or units of special purpose government contribute matching
24 funds to the support of a given system of treatment or
25 service, the department shall formally request information
26 from those funding entities in the procurement process and may
27 take the information received into account in the selection
28 process. If a local government contributes matching funds to
29 support the system of treatment or contracted service and if
30 the match constitutes at least 25 percent of the value of the
31 contract, the department shall afford the governmental match

1 contributor an opportunity to name an employee as one of the
2 persons required by section 287.057(17), Florida Statutes, to
3 evaluate or negotiate certain contracts, unless the department
4 sets forth in writing the reason why the inclusion would be
5 contrary to the best interest of the state. Any employee so
6 named by the governmental match contributor shall qualify as
7 one of the persons required by section 287.057(17), Florida
8 Statutes. A governmental entity or unit of special purpose
9 government may not name an employee as one of the persons
10 required by section 287.057(17), Florida Statutes, if it, or
11 any of its political subdivisions, executive agencies, or
12 special districts, intends to compete for the contract to be
13 awarded. The governmental funding entity or contributor of
14 matching funds must comply with all procurement procedures set
15 forth in section 287.057, Florida Statutes, when appropriate
16 and required.

17 (d) The department may procure and contract for or
18 provide assessment and case-management services independently
19 from treatment services.

20 (4) SOURCING STANDARDS AND REQUIREMENTS.--If the
21 department proposes to outsource a service, the department
22 must comply with the requirements of this section prior to the
23 procurement process provided for in section 287.057, Florida
24 Statutes.

25 (a) The department shall develop a business case
26 describing and analyzing the service proposed for outsourcing.
27 A business case is part of the solicitation process and is not
28 a rule subject to challenge pursuant to section 120.54,
29 Florida Statutes. The business case must include, but need not
30 be limited to:

31

1 1. A detailed description of the services to be
2 outsourced, a description and analysis of the department's
3 current performance of the service, and a rationale
4 documenting how outsourcing the service would be in the best
5 interest of the state, the department, and its clients.

6 2. A cost-benefit analysis documenting the estimated
7 specific direct and indirect costs, savings, performance
8 improvements, risks, and qualitative and quantitative benefits
9 involved in or resulting from outsourcing the service. The
10 cost-benefit analysis must include a detailed plan and
11 timeline identifying all actions that must be implemented to
12 realize expected benefits. Under section 92.525, Florida
13 Statutes, the Secretary of Children and Family Services shall
14 verify that all costs, savings, and benefits are valid and
15 achievable.

16 3. A description of the specific performance measures
17 and standards that must be achieved through the outsourcing
18 proposal.

19 4. A statement of the potential effect on applicable
20 federal, state, and local revenues and expenditures. The
21 statement must specifically describe the effect on general
22 revenue, trust funds, general revenue service charges, and
23 interest on trust funds, together with the potential direct or
24 indirect effect on federal funding and cost allocations.

25 5. A plan to ensure compliance with public-record
26 laws, which must include components that:

27 a. Provide public access to public records at a cost
28 that does not exceed that provided in chapter 119, Florida
29 Statutes.

30 b. Ensure the confidentiality of records that are
31 exempt from disclosure or confidential under law.

1 c. Meet all legal requirements for record retention.
2 d. Allow for transfer to the state, at no cost, all
3 public records in possession of the external service provider
4 upon termination of the contract.
5 6. A department transition and implementation plan for
6 addressing changes in the number of agency personnel, affected
7 business processes, and employee-transition issues. Such a
8 plan must also specify the mechanism for continuing the
9 operation of the service if the contractor fails to perform
10 and comply with the performance measures and standards and
11 provisions of the contract. Within this plan, the department
12 shall identify all resources, including full-time equivalent
13 positions, which are subject to outsourcing. All full-time
14 equivalent positions identified in the plan shall be placed in
15 reserve by the Executive Office of the Governor until the end
16 of the second year of the contract. Notwithstanding the
17 provisions of section 216.262, Florida Statutes, the Executive
18 Office of the Governor shall request authority from the
19 Legislative Budget Commission to reestablish full-time
20 positions above the number fixed by the Legislature when a
21 contract is terminated and the outsourced service must be
22 returned to the department.
23 7. A listing of assets proposed for transfer to or use
24 by the external service provider, a description of the
25 proposed requirements for maintenance of those assets by the
26 external service provider or the department in accordance with
27 chapter 273, Florida Statutes, a plan for their disposition
28 upon termination of the contract, and a description of how the
29 planned asset transfer or use by the contractor is in the best
30 interest of the department and the state.
31

1 (b)1. If the department proposes to outsource the
2 service in the next fiscal year, the department shall submit
3 the business case with the department's final legislative
4 budget request, in the manner and form prescribed in the
5 legislative budget request instructions under section 216.023,
6 Florida Statutes. Upon approval in the General Appropriations
7 Act, the department may initiate and complete the procurement
8 process under section 287.057, Florida Statutes, and shall
9 have the authority to enter into contracts with the external
10 service provider.

11 2. If a proposed outsourcing initiative would require
12 integration with, or would in any way affect other state
13 information technology systems, the department shall submit
14 the feasibility study documentation required by the
15 legislative budget request instructions under section 216.023,
16 Florida Statutes.

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

1 (d) The department may not privatize a service without
2 specific authority provided in general law, the General
3 Appropriations Act, legislation implementing the General
4 Appropriations Act, or a special appropriations act.

5 (5) CONTRACTING AND PERFORMANCE MEASURES.--In addition
6 to the requirements of section 287.058, Florida Statutes,
7 every procurement of contractual services by the department
8 which meets or is in excess of the threshold amount provided
9 in section 287.017, Florida Statutes, for CATEGORY FIVE, must
10 comply with the requirements of this subsection.

11 (a) The department shall execute a contract containing
12 all provisions and conditions, which must include, but need
13 not be limited to:

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

19 2. Associated costs and savings, specific payment
20 terms and payment schedules, including incentive and penalty
21 provisions, criteria governing payment, and a clear and
22 specific schedule to complete all required activities needed
23 to transfer the service from the state to the contractor.

24 3. Clear and specific identification of all required
25 performance measures and standards, which must, at a minimum,
26 include:

27 a. Acceptance criteria for each deliverable and
28 service to be provided to the department under the terms of
29 the contract which document, to the greatest extent possible,
30 the required performance level. Acceptance criteria must be
31

1 detailed, clear, and unambiguous and shall be used to measure
2 deliverables and services to be provided under the contract.
3 b. A method for monitoring and reporting progress in
4 achieving specified performance standards and levels.
5 c. The sanctions or penalties that shall be assessed
6 for contract or state nonperformance. The department may
7 adopt, by rule, provisions for including in its contracts
8 incremental penalties to be imposed by its contract managers
9 on a contractor due to the contractor's failure to comply with
10 a requirement for corrective action. Any financial penalty
11 that is imposed upon a contractor may not be paid from funds
12 being used to provide services to clients, and the contractor
13 may not reduce the amount of services being delivered to
14 clients as a method for offsetting the effect of the penalty.
15 If a financial penalty is imposed upon a contractor that is a
16 corporation, the department shall notify, at a minimum, the
17 board of directors of the corporation. The department may
18 notify any additional parties that the department believes may
19 be helpful in obtaining the corrective action that is being
20 sought. In addition, the rules adopted by the department must
21 include provisions that permit the department to deduct the
22 financial penalties from funds that would otherwise be due to
23 the contractor, not to exceed 10 percent of the amount that
24 otherwise would be due to the contractor for the period of
25 noncompliance. If the department imposes a financial penalty,
26 it shall advise the contractor in writing of the cause for the
27 penalty. A failure to include such deductions in a request for
28 payment constitutes grounds for the department to reject that
29 request for payment. The remedies identified in this paragraph
30 do not limit or restrict the department's application of any
31 other remedy available to it in the contract or under law. The

1 remedies described in this paragraph may be cumulative and may
2 be assessed upon each separate failure to comply with
3 instructions from the department to complete corrective
4 action.

5 4. A requirement that the contractor maintain adequate
6 accounting records that comply with all applicable federal and
7 state laws and generally accepted accounting principles.

8 5. A requirement authorizing the department and state
9 to have access to and conduct audits of all records related to
10 the contract and outsourced services.

11 6. A requirement that ownership of any intellectual
12 property developed in the course of, or as a result of, work
13 or services performed under the contract shall transfer to the
14 state if the contractor ceases to provide the outsourced
15 service.

16 7. A requirement describing the timing and substance
17 of all plans and status or progress reports that are to be
18 provided. All plans and status or progress reports must comply
19 with any relevant state and federal standards for planning,
20 implementation, operations, and oversight.

21 8. A requirement that the contractor shall comply with
22 public-record laws. The contractor shall:

23 a. Keep and maintain the public records that
24 ordinarily and necessarily would be required by the department
25 to perform the service.

26 b. Provide public access to such public records on the
27 same terms and conditions that the department would and at a
28 cost that does not exceed that provided in chapter 119.

29 c. Ensure the confidentiality of records that are
30 exempt from disclosure or confidential under law.
31

1 d. Meet all legal and auditing requirements for record
2 retention, and transfer to the state, at no cost to the state,
3 all public records in possession of the contractor upon
4 termination of the contract. All records stored electronically
5 must be provided to the state in the format compatible with
6 state information technology systems.

7 9. A requirement that any state funds provided for the
8 purchase of or improvements to real property are contingent
9 upon the contractor granting to the state a security interest
10 in the property which is at least equal to the amount of the
11 state funds provided for at least 5 years following the date
12 of purchase or the completion of the improvements or as
13 further required by law. The contract must include a provision
14 that, as a condition of receipt of state funding for this
15 purpose, the contractor agrees that, if it disposes of the
16 property before the department's interest is vacated, the
17 contractor must refund the proportionate share of the state's
18 initial investment, as adjusted by depreciation.

19 10. A provision that the contractor annually submit
20 and verify, under section 92.525, Florida Statutes, all
21 required financial statements.

22 11. A provision that the contractor will be held
23 responsible and accountable for all work covered under the
24 contract including any work performed by subcontractors. The
25 contract must state that the department may monitor the
26 performance of any subcontractor.

27 (b) A contract may include cost-neutral,
28 performance-based incentives that may vary according to the
29 extent a contractor achieves or surpasses the performance
30 standards set forth in the contract. The incentives may be
31 weighted proportionally to reflect the extent to which the

1 contractor has demonstrated that it has consistently met or
2 exceeded the contractual requirements and the performance
3 standards.

4 (c) The department shall review the time period for
5 which it executes contracts and, to the greatest extent
6 practicable, shall execute multiyear contracts to make the
7 most efficient use of the resources devoted to contract
8 processing and execution.

9 (d) When the annualized value of a contract is in
10 excess of \$1 million, at least one of the persons conducting
11 negotiations must be certified as a contract negotiator based
12 upon standards established by the Department of Management
13 Services.

14 (e) The department may not amend a contract without
15 first submitting the proposed contract amendment to the
16 Executive Office of the Governor for approval if the effect of
17 the amendment would be to increase:

18 1. The value of the contract by \$250,000 for those
19 contracts with a total value of at least \$250,000 but less
20 than \$1 million;

21 2. The value of the contract by \$1 million for those
22 contracts with a total value of at least \$1 million but less
23 than \$10 million;

24 3. The value of the contract by 10 percent for those
25 contracts with a total value of \$10 million or more; or

26 4. The term of the contract by 1 year or more.

27
28 When the department proposes any contract amendment that meets
29 the criteria described in this paragraph, it shall submit the
30 proposed contract amendment to the Executive Office of the
31 Governor for approval and shall immediately notify the chairs

1 of the legislative appropriations committees. The Executive
2 Office of the Governor may not approve the proposed contract
3 amendment until 14 days following receipt of the notification
4 to the legislative appropriations chairs. If either chair of
5 the legislative appropriations committees objects in writing
6 to a proposed contract amendment within 14 days following
7 notification and specifies the reasons for the objection, the
8 Executive Office of the Governor shall disapprove the proposed
9 contract amendment or shall submit the proposed contract
10 amendment to the Administration Commission. The proposed
11 contract amendment may be approved by the Administration
12 Commission by a two-thirds vote of the members present with
13 the Governor voting in the affirmative. In the absence of
14 approval by the commission, the proposed contract amendment
15 shall be automatically disapproved. Otherwise, upon approval
16 by the Governor or Administration Commission, the department
17 may execute the contract amendment.

18 (e) An amendment that is issued under legislative
19 direction, including funding adjustments annually provided for
20 in the General Appropriations Act or the federal
21 appropriations acts, need not be submitted for approval in
22 accordance with paragraph (d).

23 (f) In addition to the requirements of subsections
24 287.057(13) and (14), Florida Statutes, the department shall
25 verify that all specific direct and indirect costs, savings,
26 performance measures and standards, and qualitative and
27 quantitative benefits identified in the original contract have
28 been satisfied by a contractor or the department before the
29 contract is extended or renewed. The documentation must
30 include an explanation of any differences between the required
31 performance as identified in the contract and the actual

1 performance of the contractor. The documentation must be
2 included in the official contract file.

3 (g) The department shall, in consultation with the
4 Department of Management Services, develop contract templates
5 and guidelines that define the mandatory contract provisions
6 and other requirements identified in this subsection and that
7 must be used for all contractual service contracts meeting the
8 requirements of this subsection. All contract templates and
9 guidelines shall be developed by September 30, 2005.

10 (6) CONTRACT-MANAGEMENT REQUIREMENTS AND
11 PROCESS.--Notwithstanding section 287.057(15), Florida
12 Statutes, the department is responsible for establishing a
13 contract-management process that requires a member of the
14 department's Senior Management Service to assign in writing
15 the responsibility of a contract to a contract manager. The
16 department shall maintain a set of procedures describing its
17 contract-management process which must minimally include the
18 following requirements:

19 (a) The contract manager shall maintain the official
20 contract file throughout the duration of the contract and for
21 a period not less than 6 years after the termination of the
22 contract.

23 (b) The contract manager shall review all invoices for
24 compliance with the criteria and payment schedule provided for
25 in the contract and shall approve payment of all invoices
26 before their transmission to the Department of Financial
27 Services for payment. Only the contract manager shall approve
28 the invoices for a specific contract, unless the contract
29 manager is temporarily unavailable to review an invoice. The
30 contract file must contain an explanation for any periods of
31 temporary unavailability of the assigned contract manager. For

1 any individual invoice in excess of \$500,000, a member of the
2 Selected Exempt Service or Senior Management Service shall
3 also sign payment approval of the invoice. For any individual
4 invoice in excess of \$1 million, a member of the Senior
5 Management Service shall also sign payment approval of the
6 invoice.

7 (c) The contract manager shall maintain a schedule of
8 payments and total amounts disbursed and shall periodically
9 reconcile the records with the state's official accounting
10 records.

11 (d) For contracts involving the provision of direct
12 client services, the contract manager shall periodically visit
13 the physical location where the services are delivered and
14 speak directly to clients receiving the services and the staff
15 responsible for delivering the services.

16 (e) For contracts for which the contractor is a
17 corporation, the contract manager shall attend at least one
18 board meeting semiannually, if held and if within 100 miles of
19 the contract manager's official headquarters.

20 (f) The contract manager shall meet at least once a
21 month directly with the contractor's representative and
22 maintain records of such meetings.

23 (g) The contract manager shall periodically document
24 any differences between the required performance measures and
25 the actual performance measures. If a contractor fails to meet
26 and comply with the performance measures established in the
27 contract, the department may allow a reasonable period for the
28 contractor to correct performance deficiencies. If performance
29 deficiencies are not resolved to the satisfaction of the
30 department within the prescribed time, and if no extenuating
31 circumstances can be documented by the contractor to the

1 department's satisfaction, the department must terminate the
2 contract. The department may not enter into a new contract
3 with that same contractor for the services for which the
4 contract was previously terminated for a period of at least 24
5 months after the date of termination. The contract manager
6 shall obtain and enforce corrective-action plans, if
7 appropriate, and maintain records regarding the completion or
8 failure to complete corrective-action items.

9 (h) The contract manager shall document any contract
10 modifications, which shall include recording any contract
11 amendments as provided for in this section.

12 (i) The contract manager shall be properly trained
13 before being assigned responsibility for any contract.

14
15 The department shall develop standards of conduct and a range
16 of disciplinary actions for its employees which are
17 specifically related to carrying out contract-management
18 responsibilities.

19 (7) CONTRACT-MONITORING REQUIREMENTS AND PROCESS.--The
20 department shall establish contract-monitoring units staffed
21 by full-time career service employees who report to a member
22 of the Select Exempt Service or Senior Management Service and
23 who have been properly trained to perform contract monitoring.
24 A member of the Senior Management Service shall assign in
25 writing a specific contract to a contract-monitoring unit,
26 with at least one member of the contract-monitoring unit
27 possessing specific knowledge and experience in the contract's
28 program area. The department shall establish a
29 contract-monitoring process that must include, but need not be
30 limited to, the following requirements:
31

1 (a) Performing a risk assessment at the start of each
2 fiscal year and preparing an annual contract-monitoring
3 schedule that includes consideration for the level of risk
4 assigned. The department may monitor any contract at any time
5 regardless of whether such monitoring was originally included
6 in the annual contract-monitoring schedule.

7 (b) Preparing a contract-monitoring plan, including
8 sampling procedures, before performing on-site monitoring at
9 external locations of a service provider. The plan must
10 include a description of the programmatic, fiscal, and
11 administrative components that will be monitored on-site. If
12 appropriate, clinical and therapeutic components may be
13 included.

14 (c) Conducting analyses of the performance and
15 compliance of an external service provider by means of desk
16 reviews if the external service provider will not be monitored
17 on-site during a fiscal year.

18 (d) Unless the department sets forth in writing the
19 need for an extension, providing a written report presenting
20 the results of the monitoring within 30 days after the
21 completion of the on-site monitoring or desk review. Report
22 extensions may not exceed 30 days after the original
23 completion date. The department shall develop and use a
24 standard contract-monitoring report format and shall provide
25 access to the reports by means of a website that is available
26 to the Legislature.

27 (e) For contracts involving the provision of direct
28 client services, requiring the contract monitor to visit the
29 physical location where the services are being delivered and
30 to speak directly to the clients receiving the services and
31 with the staff responsible for delivering the services.

1 (f) Developing and maintaining a set of procedures
2 describing the contract-monitoring process.

3
4 The department shall develop standards of conduct and a range
5 of disciplinary actions for its employees which are
6 specifically related to carrying out contract-monitoring
7 responsibilities.

8 (8) REPORTS TO THE LEGISLATURE.--Beginning October 1,
9 2005, the department shall make available to the Legislature
10 electronically all documents associated with the procurement
11 and contracting functions of the department. The documents in
12 the database must include, but are not limited to, all:

13 (a) Business cases;

14 (b) Procurement documents;

15 (c) Contracts and any related files, attachments, or
16 amendments;

17 (d) Contract monitoring reports;

18 (e) Corrective action plans and reports of corrective
19 actions taken when contractor performance deficiencies are
20 identified; and

21 (f) Status reports on all outsourcing initiatives
22 describing the progress by the department towards achieving
23 the business objectives, costs, savings, and quantifiable
24 benefits identified in the business case.

25 Section 2. Section 402.73, Florida Statutes, is
26 amended to read:

27 402.73 Contracting and performance standards.--

28 ~~(1) The Department of Children and Family Services~~
29 ~~shall establish performance standards for all contracted~~
30 ~~client services. Notwithstanding s. 287.057(5)(f), the~~

1 ~~department must competitively procure any contract for client~~
2 ~~services when any of the following occurs:~~

3 ~~(a) The provider fails to meet appropriate performance~~
4 ~~standards established by the department after the provider has~~
5 ~~been given a reasonable opportunity to achieve the established~~
6 ~~standards.~~

7 ~~(b) A new program or service has been authorized and~~
8 ~~funded by the Legislature and the annual value of the contract~~
9 ~~for such program or service is \$300,000 or more.~~

10 ~~(c) The department has concluded, after reviewing~~
11 ~~market prices and available treatment options, that there is~~
12 ~~evidence that the department can improve the performance~~
13 ~~outcomes produced by its contract resources. At a minimum, the~~
14 ~~department shall review market prices and available treatment~~
15 ~~options biennially. The department shall compile the results~~
16 ~~of the biennial review and include the results in its annual~~
17 ~~performance report to the Legislature pursuant to chapter~~
18 ~~94-249, Laws of Florida. The department shall provide notice~~
19 ~~and an opportunity for public comment on its review of market~~
20 ~~prices and available treatment options.~~

21 ~~(2) The competitive requirements of subsection (1)~~
22 ~~must be initiated for each contract that meets the criteria of~~
23 ~~this subsection, unless the secretary makes a written~~
24 ~~determination that particular facts and circumstances require~~
25 ~~deferral of the competitive process. Facts and circumstances~~
26 ~~must be specifically described for each individual contract~~
27 ~~proposed for deferral and must include one or more of the~~
28 ~~following:~~

29 ~~(a) An immediate threat to the health, safety, or~~
30 ~~welfare of the department's clients.~~

31

1 ~~(b) A threat to appropriate use or disposition of~~
2 ~~facilities that have been financed in whole, or in substantial~~
3 ~~part, through contracts or agreements with a state agency.~~

4 ~~(c) A threat to the service infrastructure of a~~
5 ~~community which could endanger the well being of the~~
6 ~~department's clients.~~

7
8 ~~Competitive procurement of client services contracts that meet~~
9 ~~the criteria in subsection (1) may not be deferred for longer~~
10 ~~than 1 year.~~

11 ~~(3) The Legislature intends that the department obtain~~
12 ~~services in the manner that is most cost effective for the~~
13 ~~state, that provides the greatest long term benefits to the~~
14 ~~clients receiving services, and that minimizes the disruption~~
15 ~~of client services. In order to meet these legislative goals,~~
16 ~~the department may adopt rules providing procedures for the~~
17 ~~competitive procurement of contracted client services which~~
18 ~~represent an alternative to the request for proposal or~~
19 ~~invitation to bid process. The alternative competitive~~
20 ~~procedures shall permit the department to solicit professional~~
21 ~~qualifications from prospective providers and to evaluate such~~
22 ~~statements of qualification before requesting service~~
23 ~~proposals. The department may limit the firms invited to~~
24 ~~submit service proposals to only those firms that have~~
25 ~~demonstrated the highest level of professional capability to~~
26 ~~provide the services under consideration, but may not invite~~
27 ~~fewer than three firms to submit service proposals, unless~~
28 ~~fewer than three firms submitted satisfactory statements of~~
29 ~~qualification. The alternative procedures must, at a minimum,~~
30 ~~allow the department to evaluate competing proposals and~~
31 ~~select the proposal that provides the greatest benefit to the~~

1 ~~state while considering the quality of the services,~~
2 ~~dependability, and integrity of the provider, the~~
3 ~~dependability of the provider's services, the experience of~~
4 ~~the provider in serving target populations or client groups~~
5 ~~substantially identical to members of the target population~~
6 ~~for the contract in question, and the ability of the provider~~
7 ~~to secure local funds to support the delivery of services,~~
8 ~~including, but not limited to, funds derived from local~~
9 ~~governments. These alternative procedures need not conform to~~
10 ~~the requirements of s. 287.042 or s. 287.057(1) or (2).~~

11 ~~(4) The department shall review the period for which~~
12 ~~it executes contracts and, to the greatest extent practicable,~~
13 ~~shall execute multiyear contracts to make the most efficient~~
14 ~~use of the resources devoted to contract processing and~~
15 ~~execution.~~

16 ~~(5) When it is in the best interest of a defined~~
17 ~~segment of its consumer population, the department may~~
18 ~~competitively procure and contract for systems of treatment or~~
19 ~~service that involve multiple providers, rather than procuring~~
20 ~~and contracting for treatment or services separately from each~~
21 ~~participating provider. The department must ensure that all~~
22 ~~providers that participate in the treatment or service system~~
23 ~~meet all applicable statutory, regulatory, service quality,~~
24 ~~and cost control requirements. If other governmental entities~~
25 ~~or units of special purpose government contribute matching~~
26 ~~funds to the support of a given system of treatment or~~
27 ~~service, the department shall formally request information~~
28 ~~from those funding entities in the procurement process and may~~
29 ~~take the information received into account in the selection~~
30 ~~process. If a local government contributes match to support~~
31 ~~the system of treatment or contracted service and if the match~~

1 ~~constitutes at least 25 percent of the value of the contract,~~
2 ~~the department shall afford the governmental match contributor~~
3 ~~an opportunity to name an employee as one of the persons~~
4 ~~required by s. 287.057(17) to evaluate or negotiate certain~~
5 ~~contracts, unless the department sets forth in writing the~~
6 ~~reason why such inclusion would be contrary to the best~~
7 ~~interest of the state. Any employee so named by the~~
8 ~~governmental match contributor shall qualify as one of the~~
9 ~~persons required by s. 287.057(17). No governmental entity or~~
10 ~~unit of special purpose government may name an employee as one~~
11 ~~of the persons required by s. 287.057(17) if it, or any of its~~
12 ~~political subdivisions, executive agencies, or special~~
13 ~~districts, intends to compete for the contract to be awarded.~~
14 ~~The governmental funding entity or match contributor shall~~
15 ~~comply with any deadlines and procurement procedures~~
16 ~~established by the department. The department may also involve~~
17 ~~nongovernmental funding entities in the procurement process~~
18 ~~when appropriate.~~

19 ~~(6) The department may contract for or provide~~
20 ~~assessment and case management services independently from~~
21 ~~treatment services.~~

22 ~~(7) The department shall adopt, by rule, provisions~~
23 ~~for including in its contracts incremental penalties to be~~
24 ~~imposed by its contract managers on a service provider due to~~
25 ~~the provider's failure to comply with a requirement for~~
26 ~~corrective action. Any financial penalty that is imposed upon~~
27 ~~a provider may not be paid from funds being used to provide~~
28 ~~services to clients, and the provider may not reduce the~~
29 ~~amount of services being delivered to clients as a method for~~
30 ~~offsetting the impact of the penalty. If a financial penalty~~
31 ~~is imposed upon a provider that is a corporation, the~~

1 ~~department shall notify, at a minimum, the board of directors~~
2 ~~of the corporation. The department may notify, at its~~
3 ~~discretion, any additional parties that the department~~
4 ~~believes may be helpful in obtaining the corrective action~~
5 ~~that is being sought. Further, the rules adopted by the~~
6 ~~department must include provisions that permit the department~~
7 ~~to deduct the financial penalties from funds that would~~
8 ~~otherwise be due to the provider, not to exceed 10 percent of~~
9 ~~the amount that otherwise would be due to the provider for the~~
10 ~~period of noncompliance. If the department imposes a financial~~
11 ~~penalty, it shall advise the provider in writing of the cause~~
12 ~~for the penalty. A failure to include such deductions in a~~
13 ~~request for payment constitutes a ground for the department to~~
14 ~~reject that request for payment. The remedies identified in~~
15 ~~this subsection do not limit or restrict the department's~~
16 ~~application of any other remedy available to it in the~~
17 ~~contract or under law. The remedies described in this~~
18 ~~subsection may be cumulative and may be assessed upon each~~
19 ~~separate failure to comply with instructions from the~~
20 ~~department to complete corrective action.~~

21 ~~(8) The department shall develop standards of conduct~~
22 ~~and a range of disciplinary actions for its employees which~~
23 ~~are specifically related to carrying out contracting~~
24 ~~responsibilities.~~

25 ~~(1)(9)~~ The Agency for Persons with Disabilities
26 ~~department~~ must implement systems and controls to ensure
27 financial integrity and service provision quality in the
28 developmental services Medicaid waiver service system.

29 ~~(10) If a provider fails to meet the performance~~
30 ~~standards established in the contract, the department may~~
31 ~~allow a reasonable period for the provider to correct~~

1 ~~performance deficiencies. If performance deficiencies are not~~
2 ~~resolved to the satisfaction of the department within the~~
3 ~~prescribed time, and if no extenuating circumstances can be~~
4 ~~documented by the provider to the department's satisfaction,~~
5 ~~the department must cancel the contract with the provider. The~~
6 ~~department may not enter into a new contract with that same~~
7 ~~provider for the services for which the contract was~~
8 ~~previously canceled for a period of at least 24 months after~~
9 ~~the date of cancellation. If an adult substance abuse services~~
10 ~~provider fails to meet the performance standards established~~
11 ~~in the contract, the department may allow a reasonable period,~~
12 ~~not to exceed 6 months, for the provider to correct~~
13 ~~performance deficiencies. If the performance deficiencies are~~
14 ~~not resolved to the satisfaction of the department within 6~~
15 ~~months, the department must cancel the contract with the adult~~
16 ~~substance abuse provider, unless there is no other qualified~~
17 ~~provider in the service district.~~

18 ~~(11) The department shall include in its standard~~
19 ~~contract document a requirement that any state funds provided~~
20 ~~for the purchase of or improvements to real property are~~
21 ~~contingent upon the contractor or political subdivision~~
22 ~~granting to the state a security interest in the property at~~
23 ~~least to the amount of the state funds provided for at least 5~~
24 ~~years from the date of purchase or the completion of the~~
25 ~~improvements or as further required by law. The contract must~~
26 ~~include a provision that, as a condition of receipt of state~~
27 ~~funding for this purpose, the provider agrees that, if it~~
28 ~~disposes of the property before the department's interest is~~
29 ~~vacated, the provider will refund the proportionate share of~~
30 ~~the state's initial investment, as adjusted by depreciation.~~

31

1 ~~(12) The department shall develop and refine~~
2 ~~contracting and accountability methods that are~~
3 ~~administratively efficient and that provide for optimal~~
4 ~~provider performance.~~

5 ~~(13) The department may competitively procure any~~
6 ~~contract when it deems it is in the best interest of the state~~
7 ~~to do so. The requirements described in subsection (1) do not,~~
8 ~~and may not be construed to, limit in any way the department's~~
9 ~~ability to competitively procure any contract it executes, and~~
10 ~~the absence of any or all of the criteria described in~~
11 ~~subsection (1) may not be used as the basis for an~~
12 ~~administrative or judicial protest of the department's~~
13 ~~determination to conduct competition, make an award, or~~
14 ~~execute any contract.~~

15 ~~(14) A contract may include cost neutral,~~
16 ~~performance based incentives that may vary according to the~~
17 ~~extent a provider achieves or surpasses the performance~~
18 ~~standards set forth in the contract. Such incentives may be~~
19 ~~weighted proportionally to reflect the extent to which the~~
20 ~~provider has demonstrated that it has consistently met or~~
21 ~~exceeded the contractual requirements and the department's~~
22 ~~performance standards.~~

23 ~~(2)(15)~~ Nothing contained in chapter 287 shall require
24 competitive bids for health services involving examination,
25 diagnosis, or treatment.

26 Section 3. Section 409.1671, Florida Statutes, is
27 amended to read:

28 409.1671 Foster care and related services; outsourcing
29 privatization.--

30 (1)(a) It is the intent of the Legislature that the
31 Department of Children and Family Services shall outsource

1 ~~privatize~~ the provision of foster care and related services
2 statewide. It is further the Legislature's intent to encourage
3 communities and other stakeholders in the well-being of
4 children to participate in assuring that children are safe and
5 well-nurtured. However, while recognizing that some local
6 governments are presently funding portions of certain foster
7 care and related services programs and may choose to expand
8 such funding in the future, the Legislature does not intend by
9 its outsourcing ~~privatization~~ of foster care and related
10 services that any county, municipality, or special district be
11 required to assist in funding programs that previously have
12 been funded by the state. Counties that provide children and
13 family services with at least 40 licensed residential group
14 care beds by July 1, 2003, and provide at least \$2 million
15 annually in county general revenue funds to supplement foster
16 and family care services shall continue to contract directly
17 with the state and shall be exempt from the provisions of this
18 section. Nothing in this paragraph prohibits any county,
19 municipality, or special district from future voluntary
20 funding participation in foster care and related services. As
21 used in this section, the term "outsource" ~~"privatize"~~ means
22 to contract with competent, community-based agencies. The
23 department shall submit a plan to accomplish outsourcing
24 ~~privatization~~ statewide, through a competitive process, phased
25 in over a 3-year period beginning January 1, 2000. This plan
26 must be developed with local community participation,
27 including, but not limited to, input from community-based
28 providers that are currently under contract with the
29 department to furnish community-based foster care and related
30 services, and must include a methodology for determining and
31 transferring all available funds, including federal funds that

1 | the provider is eligible for and agrees to earn and that
2 | portion of general revenue funds which is currently associated
3 | with the services that are being furnished under contract. The
4 | methodology must provide for the transfer of funds
5 | appropriated and budgeted for all services and programs that
6 | have been incorporated into the project, including all
7 | management, capital (including current furniture and
8 | equipment), and administrative funds to accomplish the
9 | transfer of these programs. This methodology must address
10 | expected workload and at least the 3 previous years'
11 | experience in expenses and workload. With respect to any
12 | district or portion of a district in which outsourcing
13 | ~~privatization~~ cannot be accomplished within the 3-year
14 | timeframe, the department must clearly state in its plan the
15 | reasons the timeframe cannot be met and the efforts that
16 | should be made to remediate the obstacles, which may include
17 | alternatives to total outsourcing ~~privatization~~, such as
18 | public-private partnerships. As used in this section, the term
19 | "related services" includes, but is not limited to, family
20 | preservation, independent living, emergency shelter,
21 | residential group care, foster care, therapeutic foster care,
22 | intensive residential treatment, foster care supervision, case
23 | management, postplacement supervision, permanent foster care,
24 | and family reunification. Unless otherwise provided for, the
25 | state attorney shall provide child welfare legal services,
26 | pursuant to chapter 39 and other relevant provisions, in
27 | Pinellas and Pasco Counties. When a private nonprofit agency
28 | has received case management responsibilities, transferred
29 | from the state under this section, for a child who is
30 | sheltered or found to be dependent and who is assigned to the
31 | care of the outsourcing ~~privatization~~ project, the agency may

1 act as the child's guardian for the purpose of registering the
2 child in school if a parent or guardian of the child is
3 unavailable and his or her whereabouts cannot reasonably be
4 ascertained. The private nonprofit agency may also seek
5 emergency medical attention for such a child, but only if a
6 parent or guardian of the child is unavailable, his or her
7 whereabouts cannot reasonably be ascertained, and a court
8 order for such emergency medical services cannot be obtained
9 because of the severity of the emergency or because it is
10 after normal working hours. However, the provider may not
11 consent to sterilization, abortion, or termination of life
12 support. If a child's parents' rights have been terminated,
13 the nonprofit agency shall act as guardian of the child in all
14 circumstances.

15 (b) It is the intent of the Legislature that the
16 department will continue to work towards full outsourcing
17 ~~privatization~~ in a manner that assures the viability of the
18 community-based system of care and best provides for the
19 safety of children in the child protection system. To this
20 end, the department is directed to continue the process of
21 outsourcing ~~privatizing~~ services in those counties in which
22 signed startup contracts have been executed. The department
23 may also continue to enter into startup contracts with
24 additional counties. However, no services shall be transferred
25 to a community-based care lead agency until the department, in
26 consultation with the local community alliance, has determined
27 and certified in writing to the Governor and the Legislature
28 that the district is prepared to transition the provision of
29 services to the lead agency and that the lead agency is ready
30 to deliver and be accountable for such service provision. In
31

1 making this determination, the department shall conduct a
2 readiness assessment of the district and the lead agency.

3 1. The assessment shall evaluate the operational
4 readiness of the district and the lead agency based on:

5 a. A set of uniform criteria, developed in
6 consultation with currently operating community-based care
7 lead agencies and reflecting national accreditation standards,
8 that evaluate programmatic, financial, technical assistance,
9 training and organizational competencies; and

10 b. Local criteria reflective of the local
11 community-based care design and the community alliance
12 priorities.

13 2. The readiness assessment shall be conducted by a
14 joint team of district and lead agency staff with direct
15 experience with the start up and operation of a
16 community-based care service program and representatives from
17 the appropriate community alliance. Within resources available
18 for this purpose, the department may secure outside audit
19 expertise when necessary to assist a readiness assessment
20 team.

21 3. Upon completion of a readiness assessment, the
22 assessment team shall conduct an exit conference with the
23 district and lead agency staff responsible for the transition.

24 4. Within 30 days following the exit conference with
25 staff of each district and lead agency, the secretary shall
26 certify in writing to the Governor and the Legislature that
27 both the district and the lead agency are prepared to begin
28 the transition of service provision based on the results of
29 the readiness assessment and the exit conference. The document
30 of certification must include specific evidence of readiness
31 on each element of the readiness instrument utilized by the

1 assessment team as well as a description of each element of
2 readiness needing improvement and strategies being implemented
3 to address each one.

4 (c) The Auditor General and the Office of Program
5 Policy Analysis and Government Accountability (OPPAGA), in
6 consultation with The Child Welfare League of America and the
7 Louis de la Parte Florida Mental Health Institute, shall
8 jointly review and assess the department's process for
9 determining district and lead agency readiness.

10 1. The review must, at a minimum, address the
11 appropriateness of the readiness criteria and instruments
12 applied, the appropriateness of the qualifications of
13 participants on each readiness assessment team, the degree to
14 which the department accurately determined each district and
15 lead agency's compliance with the readiness criteria, the
16 quality of the technical assistance provided by the department
17 to a lead agency in correcting any weaknesses identified in
18 the readiness assessment, and the degree to which each lead
19 agency overcame any identified weaknesses.

20 2. Reports of these reviews must be submitted to the
21 appropriate substantive and appropriations committees in the
22 Senate and the House of Representatives on March 1 and
23 September 1 of each year until full transition to
24 community-based care has been accomplished statewide, except
25 that the first report must be submitted by February 1, 2004,
26 and must address all readiness activities undertaken through
27 June 30, 2003. The perspectives of all participants in this
28 review process must be included in each report.

29 (d) In communities where economic or demographic
30 constraints make it impossible or not feasible to
31 competitively contract with a lead agency, the department

1 shall develop an alternative plan in collaboration with the
2 local community alliance, which may include establishing
3 innovative geographical configurations or consortia of
4 agencies. The plan must detail how the community will continue
5 to implement community-based care through competitively
6 procuring either the specific components of foster care and
7 related services or comprehensive services for defined
8 eligible populations of children and families from qualified
9 licensed agencies as part of its efforts to develop the local
10 capacity for a community-based system of coordinated care. The
11 plan must ensure local control over the management and
12 administration of the service provision in accordance with the
13 intent of this section and may include recognized best
14 business practices, including some form of public or private
15 partnerships.

16 (e) As used in this section, the term "eligible lead
17 community-based provider" means a single agency with which the
18 department shall contract for the provision of child
19 protective services in a community that is no smaller than a
20 county. The secretary of the department may authorize more
21 than one eligible lead community-based provider within a
22 single county when to do so will result in more effective
23 delivery of foster care and related services. To compete for
24 an outsourcing ~~a privatization~~ project, such agency must have:

25 1. The ability to coordinate, integrate, and manage
26 all child protective services in the designated community in
27 cooperation with child protective investigations.

28 2. The ability to ensure continuity of care from entry
29 to exit for all children referred from the protective
30 investigation and court systems.

31

1 3. The ability to provide directly, or contract for
2 through a local network of providers, all necessary child
3 protective services. Such agencies should directly provide no
4 more than 35 percent of all child protective services
5 provided.

6 4. The willingness to accept accountability for
7 meeting the outcomes and performance standards related to
8 child protective services established by the Legislature and
9 the Federal Government.

10 5. The capability and the willingness to serve all
11 children referred to it from the protective investigation and
12 court systems, regardless of the level of funding allocated to
13 the community by the state, provided all related funding is
14 transferred.

15 6. The willingness to ensure that each individual who
16 provides child protective services completes the training
17 required of child protective service workers by the Department
18 of Children and Family Services.

19 7. The ability to maintain eligibility to receive all
20 federal child welfare funds, including Title IV-E and IV-A
21 funds, currently being used by the Department of Children and
22 Family Services.

23 8. Written agreements with Healthy Families Florida
24 lead entities in their community, pursuant to s. 409.153, to
25 promote cooperative planning for the provision of prevention
26 and intervention services.

27 9. A board of directors, of which at least 51 percent
28 of the membership is comprised of persons residing in this
29 state. Of the state residents, at least 51 percent must also
30 reside within the service area of the lead community-based
31 provider.

1 (f)1. The Legislature finds that the state has
2 traditionally provided foster care services to children who
3 have been the responsibility of the state. As such, foster
4 children have not had the right to recover for injuries beyond
5 the limitations specified in s. 768.28. The Legislature has
6 determined that foster care and related services need to be
7 outsourced ~~privatized~~ pursuant to this section and that the
8 provision of such services is of paramount importance to the
9 state. The purpose for such outsourcing ~~privatization~~ is to
10 increase the level of safety, security, and stability of
11 children who are or become the responsibility of the state.
12 One of the components necessary to secure a safe and stable
13 environment for such children is that private providers
14 maintain liability insurance. As such, insurance needs to be
15 available and remain available to nongovernmental foster care
16 and related services providers without the resources of such
17 providers being significantly reduced by the cost of
18 maintaining such insurance.

19 2. The Legislature further finds that, by requiring
20 the following minimum levels of insurance, children in
21 outsourced ~~privatized~~ foster care and related services will
22 gain increased protection and rights of recovery in the event
23 of injury than provided for in s. 768.28.

24 (g) In any county in which a service contract has not
25 been executed by December 31, 2004, the department shall
26 ensure access to a model comprehensive residential services
27 program as described in s. 409.1677 which, without imposing
28 undue financial, geographic, or other barriers, ensures
29 reasonable and appropriate participation by the family in the
30 child's program.

31

1 1. In order to ensure that the program is operational
2 by December 31, 2004, the department must, by December 31,
3 2003, begin the process of establishing access to a program in
4 any county in which the department has not either entered into
5 a transition contract or approved a community plan, as
6 described in paragraph (d), which ensures full outsourcing
7 ~~privatization~~ by the statutory deadline.

8 2. The program must be procured through a competitive
9 process.

10 3. The Legislature does not intend for the provisions
11 of this paragraph to substitute for the requirement that full
12 conversion to community-based care be accomplished.

13 (h) Other than an entity to which s. 768.28 applies,
14 any eligible lead community-based provider, as defined in
15 paragraph (e), or its employees or officers, except as
16 otherwise provided in paragraph (i), must, as a part of its
17 contract, obtain a minimum of \$1 million per claim/\$3 million
18 per incident in general liability insurance coverage. The
19 eligible lead community-based provider must also require that
20 staff who transport client children and families in their
21 personal automobiles in order to carry out their job
22 responsibilities obtain minimum bodily injury liability
23 insurance in the amount of \$100,000 per claim, \$300,000 per
24 incident, on their personal automobiles. In any tort action
25 brought against such an eligible lead community-based provider
26 or employee, net economic damages shall be limited to \$1
27 million per liability claim and \$100,000 per automobile claim,
28 including, but not limited to, past and future medical
29 expenses, wage loss, and loss of earning capacity, offset by
30 any collateral source payment paid or payable. In any tort
31 action brought against such an eligible lead community-based

1 provider, noneconomic damages shall be limited to \$200,000 per
2 claim. A claims bill may be brought on behalf of a claimant
3 pursuant to s. 768.28 for any amount exceeding the limits
4 specified in this paragraph. Any offset of collateral source
5 payments made as of the date of the settlement or judgment
6 shall be in accordance with s. 768.76. The lead
7 community-based provider shall not be liable in tort for the
8 acts or omissions of its subcontractors or the officers,
9 agents, or employees of its subcontractors.

10 (i) The liability of an eligible lead community-based
11 provider described in this section shall be exclusive and in
12 place of all other liability of such provider. The same
13 immunities from liability enjoyed by such providers shall
14 extend as well to each employee of the provider when such
15 employee is acting in furtherance of the provider's business,
16 including the transportation of clients served, as described
17 in this subsection, in privately owned vehicles. Such
18 immunities shall not be applicable to a provider or an
19 employee who acts in a culpably negligent manner or with
20 willful and wanton disregard or unprovoked physical aggression
21 when such acts result in injury or death or such acts
22 proximately cause such injury or death; nor shall such
23 immunities be applicable to employees of the same provider
24 when each is operating in the furtherance of the provider's
25 business, but they are assigned primarily to unrelated works
26 within private or public employment. The same immunity
27 provisions enjoyed by a provider shall also apply to any sole
28 proprietor, partner, corporate officer or director,
29 supervisor, or other person who in the course and scope of his
30 or her duties acts in a managerial or policymaking capacity
31 and the conduct that caused the alleged injury arose within

1 | the course and scope of those managerial or policymaking
2 | duties. Culpable negligence is defined as reckless
3 | indifference or grossly careless disregard of human life.

4 | (j) Any subcontractor of an eligible lead
5 | community-based provider, as defined in paragraph (e), which
6 | is a direct provider of foster care and related services to
7 | children and families, and its employees or officers, except
8 | as otherwise provided in paragraph (i), must, as a part of its
9 | contract, obtain a minimum of \$1 million per claim/\$3 million
10 | per incident in general liability insurance coverage. The
11 | subcontractor of an eligible lead community-based provider
12 | must also require that staff who transport client children and
13 | families in their personal automobiles in order to carry out
14 | their job responsibilities obtain minimum bodily injury
15 | liability insurance in the amount of \$100,000 per claim,
16 | \$300,000 per incident, on their personal automobiles. In any
17 | tort action brought against such subcontractor or employee,
18 | net economic damages shall be limited to \$1 million per
19 | liability claim and \$100,000 per automobile claim, including,
20 | but not limited to, past and future medical expenses, wage
21 | loss, and loss of earning capacity, offset by any collateral
22 | source payment paid or payable. In any tort action brought
23 | against such subcontractor, noneconomic damages shall be
24 | limited to \$200,000 per claim. A claims bill may be brought on
25 | behalf of a claimant pursuant to s. 768.28 for any amount
26 | exceeding the limits specified in this paragraph. Any offset
27 | of collateral source payments made as of the date of the
28 | settlement or judgment shall be in accordance with s. 768.76.

29 | (k) The liability of a subcontractor of an eligible
30 | lead community-based provider that is a direct provider of
31 | foster care and related services as described in this section

1 shall be exclusive and in place of all other liability of such
2 provider. The same immunities from liability enjoyed by such
3 subcontractor provider shall extend as well to each employee
4 of the subcontractor when such employee is acting in
5 furtherance of the subcontractor's business, including the
6 transportation of clients served, as described in this
7 subsection, in privately owned vehicles. Such immunities shall
8 not be applicable to a subcontractor or an employee who acts
9 in a culpably negligent manner or with willful and wanton
10 disregard or unprovoked physical aggression when such acts
11 result in injury or death or such acts proximately cause such
12 injury or death; nor shall such immunities be applicable to
13 employees of the same subcontractor when each is operating in
14 the furtherance of the subcontractor's business, but they are
15 assigned primarily to unrelated works within private or public
16 employment. The same immunity provisions enjoyed by a
17 subcontractor shall also apply to any sole proprietor,
18 partner, corporate officer or director, supervisor, or other
19 person who in the course and scope of his or her duties acts
20 in a managerial or policymaking capacity and the conduct that
21 caused the alleged injury arose within the course and scope of
22 those managerial or policymaking duties. Culpable negligence
23 is defined as reckless indifference or grossly careless
24 disregard of human life.

25 (1) The Legislature is cognizant of the increasing
26 costs of goods and services each year and recognizes that
27 fixing a set amount of compensation actually has the effect of
28 a reduction in compensation each year. Accordingly, the
29 conditional limitations on damages in this section shall be
30 increased at the rate of 5 percent each year, prorated from
31 the effective date of this paragraph to the date at which

1 damages subject to such limitations are awarded by final
2 judgment or settlement.

3 (2)(a) The department may contract for the delivery,
4 administration, or management of protective services, the
5 services specified in subsection (1) relating to foster care,
6 and other related services or programs, as appropriate. The
7 department shall retain responsibility for the quality of
8 contracted services and programs and shall ensure that
9 services are delivered in accordance with applicable federal
10 and state statutes and regulations. The department must adopt
11 written policies and procedures for monitoring the contract
12 for delivery of services by lead community-based providers.
13 These policies and procedures must, at a minimum, address the
14 evaluation of fiscal accountability and program operations,
15 including provider achievement of performance standards,
16 provider monitoring of subcontractors, and timely followup of
17 corrective actions for significant monitoring findings related
18 to providers and subcontractors. These policies and procedures
19 must also include provisions for reducing the duplication of
20 the department's program monitoring activities both internally
21 and with other agencies, to the extent possible. The
22 department's written procedures must ensure that the written
23 findings, conclusions, and recommendations from monitoring the
24 contract for services of lead community-based providers are
25 communicated to the director of the provider agency as
26 expeditiously as possible.

27 (b) Persons employed by the department in the
28 provision of foster care and related services whose positions
29 are being outsourced under ~~privatized pursuant to~~ this statute
30 shall be given hiring preference by the provider, if provider
31 qualifications are met.

1 (3)(a) In order to help ensure a seamless child
2 protection system, the department shall ensure that contracts
3 entered into with community-based agencies pursuant to this
4 section include provisions for a case-transfer process to
5 determine the date that the community-based agency will
6 initiate the appropriate services for a child and family. This
7 case-transfer process must clearly identify the closure of the
8 protective investigation and the initiation of service
9 provision. At the point of case transfer, and at the
10 conclusion of an investigation, the department must provide a
11 complete summary of the findings of the investigation to the
12 community-based agency.

13 (b) The contracts must also ensure that each
14 community-based agency shall furnish information on its
15 activities in all cases in client case records.

16 (c) The contract between the department and
17 community-based agencies must include provisions that specify
18 the procedures to be used by the parties to resolve
19 differences in interpreting the contract or to resolve
20 disputes as to the adequacy of the parties' compliance with
21 their respective obligations under the contract.

22 (d) Each contract with an eligible lead
23 community-based provider shall provide for the payment by the
24 department to the provider of a reasonable administrative cost
25 in addition to funding for the provision of services.

26 (e) Each contract with an eligible lead
27 community-based provider must include all performance outcome
28 measures established by the Legislature and that are under the
29 control of the lead agency. The standards must be adjusted
30 annually by contract amendment to enable the department to
31 meet the legislatively established statewide standards.

1 (4)(a) The department, in consultation with the
2 community-based agencies that are undertaking the outsourced
3 ~~privatized~~ projects, shall establish a quality assurance
4 program for privatized services. The quality assurance program
5 shall be based on standards established by the Adoption and
6 Safe Families Act as well as by a national accrediting
7 organization such as the Council on Accreditation of Services
8 for Families and Children, Inc. (COA) or CARF--the
9 Rehabilitation Accreditation Commission. Each program operated
10 under contract with a community-based agency must be evaluated
11 annually by the department. The department shall, to the
12 extent possible, use independent financial audits provided by
13 the community-based care agency to eliminate or reduce the
14 ongoing contract and administrative reviews conducted by the
15 department. The department may suggest additional items to be
16 included in such independent financial audits to meet the
17 department's needs. Should the department determine that such
18 independent financial audits are inadequate, then other
19 audits, as necessary, may be conducted by the department.
20 Nothing herein shall abrogate the requirements of s. 215.97.
21 The department shall submit an annual report regarding quality
22 performance, outcome measure attainment, and cost efficiency
23 to the President of the Senate, the Speaker of the House of
24 Representatives, the minority leader of each house of the
25 Legislature, and the Governor no later than January 31 of each
26 year for each project in operation during the preceding fiscal
27 year.

28 (b) The department shall use these findings in making
29 recommendations to the Governor and the Legislature for future
30 program and funding priorities in the child welfare system.
31

1 (5)(a) The community-based agency must comply with
2 statutory requirements and agency rules in the provision of
3 contractual services. Each foster home, therapeutic foster
4 home, emergency shelter, or other placement facility operated
5 by the community-based agency or agencies must be licensed by
6 the Department of Children and Family Services under chapter
7 402 or this chapter. Each community-based agency must be
8 licensed as a child-caring or child-placing agency by the
9 department under this chapter. The department, in order to
10 eliminate or reduce the number of duplicate inspections by
11 various program offices, shall coordinate inspections required
12 pursuant to licensure of agencies under this section.

13 (b) Substitute care providers who are licensed under
14 s. 409.175 and have contracted with a lead agency authorized
15 under this section shall also be authorized to provide
16 registered or licensed family day care under s. 402.313, if
17 consistent with federal law and if the home has met the
18 requirements of s. 402.313.

19 (c) A dually licensed home under this section shall be
20 eligible to receive both an out-of-home care payment and a
21 subsidized child care payment for the same child pursuant to
22 federal law. The department may adopt administrative rules
23 necessary to administer this paragraph.

24 (6) Beginning January 1, 1999, and continuing at least
25 through June 30, 2000, the Department of Children and Family
26 Services shall outsource ~~privatize~~ all foster care and related
27 services in district 5 while continuing to contract with the
28 current model programs in districts 1, 4, and 13, and in
29 subdistrict 8A, and shall expand the subdistrict 8A pilot
30 program to incorporate Manatee County. Planning for the
31 district 5 outsourcing ~~privatization~~ shall be done by

1 providers that are currently under contract with the
2 department for foster care and related services and shall be
3 done in consultation with the department. A lead provider of
4 the district 5 program shall be competitively selected, must
5 demonstrate the ability to provide necessary comprehensive
6 services through a local network of providers, and must meet
7 criteria established in this section. Contracts with
8 organizations responsible for the model programs must include
9 the management and administration of all outsourced ~~privatized~~
10 services specified in subsection (1). However, the department
11 may use funds for contract management only after obtaining
12 written approval from the Executive Office of the Governor.
13 The request for such approval must include, but is not limited
14 to, a statement of the proposed amount of such funds and a
15 description of the manner in which such funds will be used. If
16 the community-based organization selected for a model program
17 under this subsection is not a Medicaid provider, the
18 organization shall be issued a Medicaid provider number
19 pursuant to s. 409.907 for the provision of services currently
20 authorized under the state Medicaid plan to those children
21 encompassed in this model and in a manner not to exceed the
22 current level of state expenditure.

23 (7) The Florida Coalition for Children, Inc., in
24 consultation with the department, shall develop a plan based
25 on an independent actuarial study regarding the long-term use
26 and structure of a statewide community-based care risk pool
27 for the protection of eligible lead community-based providers,
28 their subcontractors, and providers of other social services
29 who contract directly with the department. The plan must also
30 outline strategies to maximize federal earnings as they relate
31 to the community-based care risk pool. At a minimum, the plan

1 | must allow for the use of federal earnings received from child
2 | welfare programs to be allocated to the community-based care
3 | risk pool by the department, which earnings are determined by
4 | the department to be in excess of the amount appropriated in
5 | the General Appropriations Act. The plan must specify the
6 | necessary steps to ensure the financial integrity and
7 | industry-standard risk management practices of the
8 | community-based care risk pool and the continued availability
9 | of funding from federal, state, and local sources. The plan
10 | must also include recommendations that permit the program to
11 | be available to entities of the department providing child
12 | welfare services until full conversion to community-based care
13 | takes place. The final plan shall be submitted to the
14 | department and then to the Executive Office of the Governor
15 | and the Legislative Budget Commission for formal adoption
16 | before January 1, 2005. Upon approval of the plan by all
17 | parties, the department shall issue an interest-free loan that
18 | is secured by the cumulative contractual revenue of the
19 | community-based care risk pool membership, and the amount of
20 | the loan shall equal the amount appropriated by the
21 | Legislature for this purpose. The plan shall provide for a
22 | governance structure that assures the department the ability
23 | to oversee the operation of the community-based care risk pool
24 | at least until this loan is repaid in full.

25 | (a) The purposes for which the community-based care
26 | risk pool shall be used include, but are not limited to:

- 27 | 1. Significant changes in the number or composition of
28 | clients eligible to receive services.
- 29 | 2. Significant changes in the services that are
30 | eligible for reimbursement.

31 |

1 3. Scheduled or unanticipated, but necessary, advances
2 to providers or other cash-flow issues.

3 4. Proposals to participate in optional Medicaid
4 services or other federal grant opportunities.

5 5. Appropriate incentive structures.

6 6. Continuity of care in the event of failure,
7 discontinuance of service, or financial misconduct by a lead
8 agency.

9 7. Payment for time-limited technical assistance and
10 consultation to lead agencies in the event of serious
11 performance or management problems.

12 8. Payment for meeting all traditional and
13 nontraditional insurance needs of eligible members.

14 9. Significant changes in the mix of available funds.

15 (b) After approval of the plan in the 2004-2005 fiscal
16 year and annually thereafter, the department may also request
17 in its annual legislative budget request, and the Governor may
18 recommend, that the funding necessary to carry out paragraph
19 (a) be appropriated to the department. Subsequent funding of
20 the community-based care risk pool shall be supported by
21 premiums assessed to members of the community-based care risk
22 pool on a recurring basis. The community-based care risk pool
23 may invest and retain interest earned on these funds. In
24 addition, the department may transfer funds to the
25 community-based care risk pool as available in order to ensure
26 an adequate funding level if the fund is declared to be
27 insolvent and approval is granted by the Legislative Budget
28 Commission. Such payments for insolvency shall be made only
29 after a determination is made by the department or its actuary
30 that all participants in the community-based care risk pool
31 are current in their payments of premiums and that assessments

1 have been made at an actuarially sound level. Such payments by
2 participants in the community-based care risk pool may not
3 exceed reasonable industry standards, as determined by the
4 actuary. Money from this fund may be used to match available
5 federal dollars. Dividends or other payments, with the
6 exception of legitimate claims, may not be paid to members of
7 the community-based care risk pool until the loan issued by
8 the department is repaid in full. Dividends or other payments,
9 with the exception of legitimate claims and other purposes
10 contained in the approved plan, may not be paid to members of
11 the community-based care risk pool unless, at the time of
12 distribution, the community-based care risk pool is deemed
13 actuarially sound and solvent. Solvency shall be determined by
14 an independent actuary contracted by the department. The plan
15 shall be developed in consultation with the Office of
16 Insurance Regulation.

17 1. Such funds shall constitute partial security for
18 contract performance by lead agencies and shall be used to
19 offset the need for a performance bond. Subject to the
20 approval of the plan, the community-based care risk pool shall
21 be managed by the Florida Coalition for Children, Inc., or the
22 designated contractors of the Florida Coalition for Children,
23 Inc. Nonmembers of the community-based care risk pool may
24 continue to contract with the department but must provide a
25 letter of credit equal to one-twelfth of the annual contract
26 amount in lieu of membership in the community-based care risk
27 pool.

28 2. The department may separately require a bond to
29 mitigate the financial consequences of potential acts of
30 malfeasance, misfeasance, or criminal violations by the
31 provider.

1 (8) Notwithstanding the provisions of s. 215.425, all
2 documented federal funds earned for the current fiscal year by
3 the department and community-based agencies which exceed the
4 amount appropriated by the Legislature shall be distributed to
5 all entities that contributed to the excess earnings based on
6 a schedule and methodology developed by the department and
7 approved by the Executive Office of the Governor. Distribution
8 shall be pro rata based on total earnings and shall be made
9 only to those entities that contributed to excess earnings.
10 Excess earnings of community-based agencies shall be used only
11 in the service district in which they were earned. Additional
12 state funds appropriated by the Legislature for
13 community-based agencies or made available pursuant to the
14 budgetary amendment process described in s. 216.177 shall be
15 transferred to the community-based agencies. The department
16 shall amend a community-based agency's contract to permit
17 expenditure of the funds.

18 (9) Each district and subdistrict that participates in
19 the model program effort or any future outsourcing
20 ~~privatization~~ effort as described in this section must
21 thoroughly analyze and report the complete direct and indirect
22 costs of delivering these services through the department and
23 the full cost of outsourcing ~~privatization~~, including the cost
24 of monitoring and evaluating the contracted services.

25 (10) The lead community-based providers and their
26 subcontractors shall be exempt from state travel policies as
27 set forth in s. 112.061(3)(a) for their travel expenses
28 incurred in order to comply with the requirements of this
29 section.

30 Section 4. The Office of Program Policy Analysis and
31 Government Accountability shall conduct two reviews of the

1 contract-management and accountability structures of the
2 Department of Children and Family Services, including, but not
3 limited to, whether the department is adequately monitoring
4 and managing its outsourced or privatized functions and
5 services. The office shall report its findings and
6 recommendations to the President of the Senate, the Speaker of
7 the House of Representatives, and the Auditor General by
8 February 1 of 2006 and 2007, respectively.

9 Section 5. Section 402.72, Florida Statutes, is
10 repealed.

11 Section 6. This act shall take effect July 1, 2005.

12
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 CS for Senate Bill 1476

16 Adjusts the contract value thresholds at which an agency must
17 first submit a proposed contract amendment for approval to the
Executive Office of the Governor.

18 Replaces the word "privatization" with "outsourcing" in the
19 section heading of s. 409.1671, F.S., for consistency of
terminology.