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# **Government Operations Subcommittee**

**Wednesday, March 13, 2013  
2:00 PM  
Webster Hall (212 Knott)**

# **Meeting Packet**

**Will Weatherford  
Speaker**

**Jason T. Brodeur  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Subcommittee

**Start Date and Time:** Wednesday, March 13, 2013 02:00 pm  
**End Date and Time:** Wednesday, March 13, 2013 04:00 pm  
**Location:** Webster Hall (212 Knott)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 519 Military Affairs by Moraitis  
CS/HB 529 Public Records by Health Quality Subcommittee, Renuart  
HB 1309 Procurement of Commodities and Contractual Services by Albritton  
HB 1311 Pub. Rec./DSO/Office of Supplier Diversity/DMS by Albritton  
HB 4029 Governor's Private Secretary by Fitzenhagen

**Consideration of the following proposed committee bill(s):**

PCB GVOPS 13-05 -- OGSR Paratransit Services

**NOTICE FINALIZED on 03/11/2013 16:26 by Sims-Davis.Linda**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 519 Military Affairs  
**SPONSOR(S):** Moraitis, Jr.  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		JS Stramski	Williamson <i>Law</i>
2) Veteran & Military Affairs Subcommittee			
3) Appropriations Committee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide up to 12 weeks of FMLA leave to eligible employees who are family members of a servicemember deployed on covered active duty, in certain circumstances. In addition, eligible employees who are family members of a covered servicemember may take up to 26 weeks of FMLA leave to care for the servicemember who is undergoing medical treatment for a serious injury or illness incurred or aggravated in the line of duty on active duty.

The FMLA generally applies to employees of states and local governments.

The bill provides that an employee of the state or any county, municipality, or other political subdivision who is the spouse of a servicemember of the United States Armed Forces may not be compelled by his or her employing authority to work overtime or extended hours during a period in which his or her spouse is deployed on active duty military service. The bill prohibits an employing authority from imposing a sanction or penalty upon such employee for failure or refusal to work overtime or extended work hours during a period in which his or her spouse is deployed on active duty military service.

The bill requires an employing authority to grant a request by an employee who is a spouse of a servicemember of the United States Armed Forces deployed on active duty military service for unpaid leave not to exceed four working days for the purpose of attending to matters directly related to the implementation of deployment orders of the spouse.

The bill provides an effective date of July 1, 2013.

The bill may have an indeterminate fiscal impact on state and local governments. See Fiscal Comments section for further details.

The bill may be a county or municipal mandate. See Section III.A.1. of the analysis.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Federal Family and Medical Leave Act

The federal Family and Medical Leave Act (FMLA)<sup>1</sup> contains two leave entitlements that benefit families of servicemembers in the United States Armed Forces, qualifying exigency leave and military caregiver leave.

For qualifying exigency leave, eligible employees who are the spouse, son, daughter, or parent of a military member may take up to 12 weeks of FMLA leave during any 12-month period to address the most common issues that arise when a military member is deployed to a foreign country, such as attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.<sup>2</sup> For military caregiver leave, eligible employees who are the spouse, son, daughter, parent or next of kin of a covered servicemember may take up to 26 weeks of FMLA leave during a single 12-month period to care for the servicemember who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred or aggravated in the line of duty on active duty.<sup>3</sup> These provisions apply to the families of members of both the active duty and reserve components of the Armed Forces.

An employer may require that an employee seeking leave under the FMLA provide certification to substantiate the reason for taking leave.<sup>4</sup>

In order to be considered an “eligible employee”, the employee must have at least 12 months of service with the employer and have worked at least 1,250 hours within the previous 12 months.<sup>5</sup> Employers subject to the FMLA include all state and local public agencies.<sup>6</sup>

Covered active duty under the FMLA is defined by rule as follows:

- Covered active duty or call to covered active duty status in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Armed Forces will generally specify if the member is deployed to a foreign country.
- Covered active duty or call to covered active duty status in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.<sup>7</sup>

##### Overtime, Extended Work Hours, and Public Employees

The federal Fair Labor Standards Act (FLSA)<sup>8</sup> provides that covered employees<sup>9</sup> of public agencies<sup>10</sup> who work in excess of the standard amount of hours in a given work period are entitled to either overtime pay or, if there is an applicable agreement, to special compensatory leave.<sup>11</sup>

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<sup>1</sup> 29 U.S.C. s. 2601, *et seq.*

<sup>2</sup> 29 U.S.C. s. 2612(a)(1)(E).

<sup>3</sup> See 29 C.F.R. s. 825.126(b) for a more detailed list of exigent circumstances that entitle an eligible employee to FMLA military leave.

<sup>4</sup> 29 U.S.C. s. 2613.

<sup>5</sup> 29 U.S.C. s. 2611(2)(A).

<sup>6</sup> 29 U.S.C. s. 2611(4)(A)(iii), defining “public agency” by cross-reference to 29 U.S.C. s. 203(x).

<sup>7</sup> See 29 C.F.R. s. 825.126(a).

<sup>8</sup> 29 U.S.C. s. 201, *et seq.*

Florida law governing compensation and work hours of state employees is controlled by the requirements of the FLSA. Career service employees are entitled to special compensatory leave for overtime hours worked; however, senior management service and selected exempt service employees are expected to work the hours necessary to complete their tasks, and generally are not entitled to overtime pay.<sup>12</sup> Counties, municipalities, or other political subdivisions likewise are bound by the FLSA. Counties, municipalities, or other political subdivisions may require executive and professional workers to work extended hours as necessary absent an agreement or ordinance to the contrary.

#### Chapter 115, F.S.

Chapter 115, F.S., provides certain leave protections for state and local employees who are called to active military service. Current law, however, does not provide special considerations in working conditions for an employee of the state or local government who is the spouse of a servicemember of the United States Armed Forces if the servicemember is deployed on active duty military service.

#### **Effect of Bill**

This bill provides that an employee of the state or any county, municipality, or other political subdivision who is the spouse of a servicemember of the United States Armed Forces may not be compelled by his or her employing authority to work overtime or extended hours during a period in which his or her spouse is deployed on active duty military service. It prohibits an employing authority from imposing a sanction or penalty upon such for failure or refusal to work overtime or extended work hours during a period in which his or her spouse is deployed on active duty military service.

The bill requires an employing authority to grant a request by an employee who is a spouse of a servicemember of the United States Armed Forces deployed on active duty military service for unpaid leave not to exceed four working days for the purpose of attending to matters directly related to the implementation of deployment orders of his or her spouse.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 115.135, F.S; providing that an employee of the state or any county, municipality, or other political subdivision who is the spouse of a military servicemember may not be compelled to work overtime or extended work hours during active duty deployment of his or her spouse; prohibiting the imposition of a sanction or penalty upon such employee for failure or refusal to work overtime or extended work hours during the period of his or her spouse's active duty deployment; requiring an employing authority to grant a request by such employee for unpaid leave for specified purposes during the active duty deployment; providing a limitation on such unpaid leave.

**Section 2:** Provides an effective date of July 1, 2013.

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

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

##### **1. Revenues:**

None.

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<sup>9</sup> Certain classes of employees, such as those working in executive and professional capacities, are excluded from the wage and hour provisions of the FLSA. 29 U.S.C. s. 213.

<sup>10</sup> 29 U.S.C. s. 203(x), defining "public agency" as "the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency."

<sup>11</sup> 29 U.S.C. s. 207.

<sup>12</sup> Rule 60L-34.0031(3), Fla. Admin. Code.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on state and local governments as a result of the prohibition on government employers from requiring an employee who is a spouse of a servicemember of the United States Armed Forces from working extended or overtime hours. These costs may be especially pronounced if such an employee is a professional or executive employee, or is otherwise excluded from the wage and hour provisions of the FLSA and state law.

According to the Department of Military Affairs, due to the lack of data regarding the pool of spouses who would be eligible under the bill, the economic impact cannot be estimated at this time.<sup>13</sup>

According to the Department of Management Services, agencies will need to establish procedures for identifying and tracking the spouses who are deployed on active duty military service which may increase administrative work.<sup>14</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with the requirement that employers provide four days of unpaid leave to employees who are spouses of servicemembers of the United States Armed Forces deployed on active duty military service. Counties and municipalities may incur additional costs if they cannot require certain employees to work extra hours or overtime. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18, of the Florida Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

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<sup>13</sup> According to the Department of Military Affairs, there are 5,268 men and women residing in Florida from all active and reserve service components who are currently deployed. The marital status of these servicemembers is unknown, as is the number of spouses who are employed by the state or a county, municipality, or other political subdivision. (HB 519 Analysis by the Florida Department of Military Affairs, on file with the Government Operations Subcommittee.)

<sup>14</sup> Department of Management Services Bill Analysis of HB 519, January 30, 2013, at 2 (on file with the Government Operations Subcommittee).

2. Other:

Federal Preemption

Pursuant to the Supremacy Clause of United States Constitution, state laws that are contrary to valid federal laws are preempted.<sup>15</sup>

Currently, the federal FMLA entitles eligible employees who are the spouse, son, daughter, or parent of a military member to take up to 12 weeks of FMLA leave during any 12-month period to address the most common issues that arise when a military member is deployed to a foreign country. This bill sets the limit on the amount of job protected leave to only four days. In order to avoid any conflict, this provision would have to be implemented as an additional benefit, over and above what the federal law requires.<sup>16</sup>

B. RULE-MAKING AUTHORITY:

The bill does not provide for rule-making authority. Rule-making authority may be necessary to specify procedures to be followed by employees and employers in order to secure the protections provided for in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Applicability of the FMLA to State and Local Governments

While all FMLA leave provisions purport to apply to state and local governments, Congress is limited in its ability to subject state and local governments to potential litigation.

The United States Supreme Court recently clarified that the power of the federal government to abrogate state sovereign immunity through the FMLA, by way of Congress' power under the Fourteenth Amendment to enact prophylactic anti-discriminatory legislation, is limited to those instances where Congress can identify a pattern of constitutional violations and tailor a remedy that is congruent and proportional to the harm addressed.<sup>17</sup> While the United States Supreme Court has held that the family care leave provision, as applicable to the states, is valid under this analysis because there is sufficient evidence that state family care leave policies historically have detrimentally affected women,<sup>18</sup> the Court held that states could not be forced to comply with the self-care provision because it was not directed at an identified pattern of gender-based discrimination. In other words, there was not sufficient evidence that self-care sick leave policies of state and local government employers historically affected one gender more so than the other. As a result, the application of the self-care sick leave provision to the states was not found to be congruent and proportional to any pattern of sex-based discrimination demonstrated by the states, and was found to be unconstitutional to the extent it purports to apply to the states.<sup>19</sup>

The FMLA provisions that apply to spouses of servicemembers of the Armed Forces have not been challenged by any state. Therefore, it is unclear if these provisions are directed at an identified pattern of gender-based discrimination and if they are sufficiently congruent and proportional to a pattern of sex-discrimination as to survive constitutional scrutiny.

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<sup>15</sup> Art VI, cl.2, U.S. Const.; *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963).

<sup>16</sup> Department of Management Services Bill Analysis of HB 519, January 30, 2013, at 3 (on file with the Government Operations Subcommittee).

<sup>17</sup> *Nevada Dep't of Human Resources v. Hibbs*, 538 U.S. 721, 728 (2003); *Coleman v. Maryland Court of Appeals*, -- U.S.--, 132 S.Ct. 1327, 1338 (2012) (plurality opinion).

<sup>18</sup> *Hibbs*, supra at fn. 8.

<sup>19</sup> *Coleman*, supra at fn. 9.



#### Other Comments: Department of Management Services

The Department of Management Services provided the following comments regarding the bill:

Proposed section 115.135(2) provides job protected leave, not to exceed four days, for the purpose of attending to matters directly related to the implementation of deployment orders for his or her spouse. While this provision would not deviate from current practice for employees covered by FMLA leave, since the number of job protected days under FMLA actually exceeds the proposed benefit, the practical effect of this provision would be to extend job protected leave to employees not eligible for FMLA leave (i.e., employees that do not have 12 months of service with the employer or employees that have not worked 1,250 hours in the previous 12 months) and to extend the benefits of FMLA eligible employees by another four days.<sup>20</sup>

The State Personnel System (SPS) is currently the only state government employer that is required to provide job protected leave for family medical illness and the birth/adoption of a child via dual administration of state provisions (section 110.221, F.S.) with federal provisions (FMLA). The proposed provision compounds the issue for the SPS by requiring a similar approach in the area of exigency leave for employees whose spouses are serving in the military.<sup>21</sup>

#### Other Comments: Overtime and Extended Work Hours

The bill does not define "extended work hours". As such, it is unclear how, or even if, the proscription on compelling an employee to work overtime or extended hours during a period in which his or her spouse is deployed on active duty military service would apply to employees exempted from the FLSA. While the FLSA<sup>22</sup> and the Florida Administrative Code<sup>23</sup> define what constitutes overtime for covered employees, exempt workers are not entitled to overtime under the FLSA or state law, and they are expected to work the amount of hours necessary to fulfill the duties of their positions.<sup>24</sup>

#### Other Comments: Procedure for Securing Leave

The bill does not specify a procedure by which a spouse of a servicemember of the United States Armed Forces must notify an employer that his or her spouse is deployed on active duty military service. The bill does not provide any rulemaking authority for employers to specify what procedures must be followed in order to secure leave or notify an employer that the employer may not require the employee to work overtime or extended work hours.

#### Other Comments: No Remedies Specified

The bill does not specify what remedies are available to an employee whose rights under the bill are violated.

#### Other Comments: Definitions

The bill does not define the phrase "deployed on active duty military service."<sup>25</sup> Therefore, it is unclear what set of events may trigger the provisions of this bill.

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<sup>20</sup> Department of Management Services Bill Analysis of HB 519, January 30, 2013, at 2 (on file with the Government Operations Subcommittee).

<sup>21</sup> *Id.* at 3.

<sup>22</sup> 29 U.S.C. s. 207.

<sup>23</sup> Rule 60L-34.0031, Fla. Admin. Code.

<sup>24</sup> See Rule 60L-34.0031(3), Fla. Admin. Code.

<sup>25</sup> "Active military service" is defined in s. 115.08, F.S., as "...active duty in the Florida defense force or federal service in training or on active duty with any branch of the Armed Forces or Reservists of the Armed Forces, the Florida National Guard, the Coast Guard of the United States, and service of all officers of the United States Public Health Service detailed by proper authority for duty with the Armed Forces, and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause." However, this definition does not appear to provide any guidance as to what criteria would be

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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used to define when the proposed provisions of the bill would apply, as neither "deployment" nor "active duty" are defined in ch. 115, F.S.

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A bill to be entitled  
 An act relating to military affairs; creating s.  
 115.135, F.S.; providing that an employee of the state  
 or any county, municipality, or other political  
 subdivision who is the spouse of a military  
 servicemember may not be compelled to work overtime or  
 extended work hours during active duty deployment of  
 his or her spouse; prohibiting the imposition of a  
 sanction or penalty upon such employee for failure or  
 refusal to work overtime or extended work hours during  
 the period of his or her spouse's active duty  
 deployment; requiring an employing authority to grant  
 a request by such employee for unpaid leave for  
 specified purposes during the active duty deployment;  
 providing a limitation on such unpaid leave; providing  
 an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 115.135, Florida Statutes, is created  
 to read:

115.135 Overtime and leave considerations; spouses of  
 military servicemembers on active duty.-  
(1) (a) An employee of the state or any county,  
 municipality, or other political subdivision who is the spouse  
 of a servicemember of the United States Armed Forces may not be  
 compelled by his or her employing authority to work overtime or  
 extended work hours during a period in which his or her spouse

29 | is deployed on active duty military service.

30 |       (b) An employing authority may not impose a sanction or  
 31 | penalty upon an employee who is the spouse of a servicemember of  
 32 | the United States Armed Forces for failure or refusal to work  
 33 | overtime or extended work hours during a period in which his or  
 34 | her spouse is deployed on active duty military service.

35 |       (2) An employing authority shall grant a request by an  
 36 | employee who is the spouse of a servicemember of the United  
 37 | States Armed Forces deployed on active duty military service for  
 38 | unpaid leave not to exceed 4 working days for the purpose of  
 39 | attending to matters directly related to the implementation of  
 40 | deployment orders of his or her spouse.

41 |       Section 2. This act shall take effect July 1, 2013.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee

3 Representative Moraitis offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 40 and 41, insert:

7 Section 2. To support members of our nation's armed forces  
 8 and their families, the Legislature finds that a proper and  
 9 legitimate purpose is served by prohibiting the state or any  
 10 county, municipality, or other political subdivision from  
 11 requiring an employee whose spouse is deployed on active duty  
 12 military service from working overtime or extended hours. To  
 13 support members of our nation's armed forces and their families,  
 14 the Legislature also finds that a proper and legitimate state  
 15 purpose is served by permitting an employee of the state or any  
 16 county, municipality, or other political subdivision whose  
 17 spouse is deployed on active duty military service to take  
 18 unpaid leave to attend to matters directly related to the  
 19 implementation of the deployment orders. Therefore, the



Amendment No.

20 Legislature determines and declares that this act fulfills an  
21 important state interest.

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**T I T L E   A M E N D M E N T**

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Remove line 16 and insert:

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that the act fulfills an important state interest; providing an  
29 effective date.

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**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 529 Public Records  
**SPONSOR(S):** Health Quality Subcommittee; Renuart  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 60

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Government Operations Subcommittee		JS Stramski	Williamson <i>Law</i>
3) Health & Human Services Committee			

**SUMMARY ANALYSIS**

CS/HB 529 creates a public record exemption for information relating to the identification and location of current or former personnel of the Department of Health (DOH), whose duties include the:

- Investigation or prosecution of complaints filed against health care practitioners; or
- Inspection of practitioners or facilities licensed by DOH.

In addition to providing a public record exemption for DOH personnel, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of upon becoming a law.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption; thus, it requires a two-thirds vote for final passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Public Record Exemptions

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.<sup>3</sup> Examples of public employees covered by these exemptions include law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys. Legislation was passed in 2012 to provide a public record exemption for personal and identifying information of current or former county tax collectors, and investigators or inspectors of the Department of Business and Professional Regulation.<sup>4</sup>

Although the types of exempt information vary, the following information is exempt from public record requirements for all of the above-listed public employees:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of public employees; and

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> See s. 119.071(4)(d), F.S.

<sup>4</sup> CS/CS/HB1089; Chapter 2012-214, L.O.F.

- Names and locations of schools and day care facilities attended by the children of the public employees.

If exempt information is held by an agency<sup>5</sup> that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.<sup>6</sup>

Currently, personal information of Department of Health investigative staff and their spouses and children is not exempt from public disclosure.<sup>7</sup>

### Department of Health – Complaints and Investigations

The Department of Health (DOH) is responsible for the regulation of health care practitioners pursuant to chapter 456, F.S. Specific facilities and professions regulated by DOH require inspections prior to beginning practice and on a periodic basis. Specifically, these facilities and professionals include:<sup>8</sup>

- Pain Management Clinics;
- Pharmacies;
- Dental Laboratories;
- Massage Establishments;
- Electrolysis Establishments;
- Optical Establishments;
- Dispensing Practitioners; and
- Any place in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale.

Many individuals may be involved in some fashion throughout the investigation process. Section 456.073(1), F.S., requires DOH inspectors and investigators to investigate any complaint that is determined to be legally sufficient. After review of a complaint, if the allegations and supporting documentation show that a violation may have occurred, the complaint is considered legally sufficient for investigation. A complaint is legally sufficient if it contains ultimate facts that show a violation of chapter 456, F.S., any of the practice acts relating to the professions regulated by DOH, or of any rule adopted by DOH or a regulatory board has occurred.

The Investigative Services Unit (ISU) functions as the investigative arm of DOH as it investigates complaints against health care practitioners and facilities regulated by DOH. ISU includes staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders of DOH. Upon completion of collecting information and conducting interviews, the investigator writes an investigative report and the report is forwarded to DOH's attorneys for legal review.<sup>9</sup>

<sup>5</sup> Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>6</sup> Section 119.071(4)(d)3., F.S.

<sup>7</sup> *But See* s. 119.071(4)(d)2.a., F.S., re: Department of Health investigators of child abuse.

<sup>8</sup> Sections 456.069 and 465.017, F.S.

<sup>9</sup> Florida Department of Health, Division of Medical Quality Assurance, [http://www.doh.state.fl.us/mqa/enforcement/enforce\\_csu.html](http://www.doh.state.fl.us/mqa/enforcement/enforce_csu.html) (last visited March 8, 2013).

Attorneys within the PSU then review the investigative report to recommend a course of action, which may include:<sup>10</sup>

- Emergency orders against licensees who pose an immediate threat to the health, safety, and welfare of individuals;
- Expert reviews for complex cases that require professional health care experts to render an opinion;
- Closing orders if the investigation or the expert review does not support the allegations;<sup>11</sup> or
- Administrative complaints when the investigation supports the allegations.

When an administrative complaint is filed, the subject has the right to choose a hearing, consent/stipulation agreement, or voluntarily relinquish their license. In all of these instances, the case is then presented to the professional board or DOH for final agency action. If the subject appeals the final decision, the PSU attorney defends the final order before the appropriate appellate court.

According to DOH, investigators have recently had to be involved in more investigations that include criminal elements.<sup>12</sup> Investigators who inspect massage establishments are identifying and reporting to law enforcement possible human trafficking activities. Further, investigators have forged strong relationships with law enforcement in an effort to combat the health care concerns caused by illegal pill mills and controlled substance abuse in Florida. As DOH investigators are exposed to more and more potentially dangerous criminal situations, they have become concerned about the release of personal information that may be used by criminals, or individuals under investigation by DOH, to target investigative staff and their families.

### **Effect of Proposed Changes**

The bill further expands the current public record exemption for identification and location information of public employees to include current and former DOH personnel whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by DOH. The bill provides that the following information is exempt<sup>13</sup> from public record requirements if such personnel make a reasonable effort to protect the information from being accessible through other means available to the public:

- Home addresses, telephone numbers, and photographs of current or former DOH personnel whose duties include investigating or prosecuting complaints against health care practitioners, or inspecting practitioners or facilities licensed by DOH;
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and

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<sup>10</sup> *Id.*

<sup>11</sup> Cases closed with no finding of probable cause are generally confidential and are not available through a public records request.

<sup>12</sup> HB 529 Bill Analysis, Economic Statement and Fiscal Note, Department of Health, at page 3, February 1, 2013 (on file with the Health Quality subcommittee).

<sup>13</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.<sup>14</sup>

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides that the bill shall be effective upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

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

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

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

None.

**D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on state or local agencies with staff responsible for complying with public record requests as staff could require training related to the expansion of the public record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that

<sup>14</sup> See s. 24(c), Art. I of the State Constitution.

counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution, requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the identification and location of certain personnel of the Department of Health. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

No additional rule-making authority is necessary to implement the provisions of the bill.

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

It is unclear what the term "reasonable efforts" on line 191 of the bill means and what actions personnel would have to take to protect identifying information.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 19, 2013, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment narrows the scope of the public record exemption and clarifies whose identifying information is exempt from disclosure.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

1                                   A bill to be entitled  
 2       An act relating to public records; amending s.  
 3       119.071, F.S.; providing an exemption from public  
 4       records requirements for certain identifying  
 5       information of specific current and former personnel  
 6       of the Department of Health and the spouses and  
 7       children of such personnel, under specified  
 8       circumstances; providing for future legislative review  
 9       and repeal of the exemption under the Open Government  
 10      Sunset Review Act; providing a statement of public  
 11      necessity; providing an effective date.

12

13   Be It Enacted by the Legislature of the State of Florida:

14

15           Section 1. Paragraph (d) of subsection (4) of section  
 16   119.071, Florida Statutes, is amended to read:

17           119.071 General exemptions from inspection or copying of  
 18   public records.—

19           (4) AGENCY PERSONNEL INFORMATION.—

20           (d)1. For purposes of this paragraph, the term "telephone  
 21   numbers" includes home telephone numbers, personal cellular  
 22   telephone numbers, personal pager telephone numbers, and  
 23   telephone numbers associated with personal communications  
 24   devices.

25           2.a. The home addresses, telephone numbers, social  
 26   security numbers, dates of birth, and photographs of active or  
 27   former sworn or civilian law enforcement personnel, including  
 28   correctional and correctional probation officers, personnel of

29 | the Department of Children and Families ~~Family Services~~ whose  
 30 | duties include the investigation of abuse, neglect,  
 31 | exploitation, fraud, theft, or other criminal activities,  
 32 | personnel of the Department of Health whose duties are to  
 33 | support the investigation of child abuse or neglect, and  
 34 | personnel of the Department of Revenue or local governments  
 35 | whose responsibilities include revenue collection and  
 36 | enforcement or child support enforcement; the home addresses,  
 37 | telephone numbers, social security numbers, photographs, dates  
 38 | of birth, and places of employment of the spouses and children  
 39 | of such personnel; and the names and locations of schools and  
 40 | day care facilities attended by the children of such personnel  
 41 | are exempt from s. 119.07(1).

42 |       b. The home addresses, telephone numbers, dates of birth,  
 43 | and photographs of firefighters certified in compliance with s.  
 44 | 633.35; the home addresses, telephone numbers, photographs,  
 45 | dates of birth, and places of employment of the spouses and  
 46 | children of such firefighters; and the names and locations of  
 47 | schools and day care facilities attended by the children of such  
 48 | firefighters are exempt from s. 119.07(1).

49 |       c. The home addresses, dates of birth, and telephone  
 50 | numbers of current or former justices of the Supreme Court,  
 51 | district court of appeal judges, circuit court judges, and  
 52 | county court judges; the home addresses, telephone numbers,  
 53 | dates of birth, and places of employment of the spouses and  
 54 | children of current or former justices and judges; and the names  
 55 | and locations of schools and day care facilities attended by the  
 56 | children of current or former justices and judges are exempt

57 | from s. 119.07(1).

58 |       d. The home addresses, telephone numbers, social security  
 59 | numbers, dates of birth, and photographs of current or former  
 60 | state attorneys, assistant state attorneys, statewide  
 61 | prosecutors, or assistant statewide prosecutors; the home  
 62 | addresses, telephone numbers, social security numbers,  
 63 | photographs, dates of birth, and places of employment of the  
 64 | spouses and children of current or former state attorneys,  
 65 | assistant state attorneys, statewide prosecutors, or assistant  
 66 | statewide prosecutors; and the names and locations of schools  
 67 | and day care facilities attended by the children of current or  
 68 | former state attorneys, assistant state attorneys, statewide  
 69 | prosecutors, or assistant statewide prosecutors are exempt from  
 70 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

71 |       e. The home addresses, dates of birth, and telephone  
 72 | numbers of general magistrates, special magistrates, judges of  
 73 | compensation claims, administrative law judges of the Division  
 74 | of Administrative Hearings, and child support enforcement  
 75 | hearing officers; the home addresses, telephone numbers, dates  
 76 | of birth, and places of employment of the spouses and children  
 77 | of general magistrates, special magistrates, judges of  
 78 | compensation claims, administrative law judges of the Division  
 79 | of Administrative Hearings, and child support enforcement  
 80 | hearing officers; and the names and locations of schools and day  
 81 | care facilities attended by the children of general magistrates,  
 82 | special magistrates, judges of compensation claims,  
 83 | administrative law judges of the Division of Administrative  
 84 | Hearings, and child support enforcement hearing officers are



85 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 86 Constitution if the general magistrate, special magistrate,  
 87 judge of compensation claims, administrative law judge of the  
 88 Division of Administrative Hearings, or child support hearing  
 89 officer provides a written statement that the general  
 90 magistrate, special magistrate, judge of compensation claims,  
 91 administrative law judge of the Division of Administrative  
 92 Hearings, or child support hearing officer has made reasonable  
 93 efforts to protect such information from being accessible  
 94 through other means available to the public.

95 f. The home addresses, telephone numbers, dates of birth,  
 96 and photographs of current or former human resource, labor  
 97 relations, or employee relations directors, assistant directors,  
 98 managers, or assistant managers of any local government agency  
 99 or water management district whose duties include hiring and  
 100 firing employees, labor contract negotiation, administration, or  
 101 other personnel-related duties; the names, home addresses,  
 102 telephone numbers, dates of birth, and places of employment of  
 103 the spouses and children of such personnel; and the names and  
 104 locations of schools and day care facilities attended by the  
 105 children of such personnel are exempt from s. 119.07(1) and s.  
 106 24(a), Art. I of the State Constitution.

107 g. The home addresses, telephone numbers, dates of birth,  
 108 and photographs of current or former code enforcement officers;  
 109 the names, home addresses, telephone numbers, dates of birth,  
 110 and places of employment of the spouses and children of such  
 111 personnel; and the names and locations of schools and day care  
 112 facilities attended by the children of such personnel are exempt

113 | from s. 119.07(1) and s. 24(a), Art. I of the State  
 114 | Constitution.

115 |       h. The home addresses, telephone numbers, places of  
 116 | employment, dates of birth, and photographs of current or former  
 117 | guardians ad litem, as defined in s. 39.820; the names, home  
 118 | addresses, telephone numbers, dates of birth, and places of  
 119 | employment of the spouses and children of such persons; and the  
 120 | names and locations of schools and day care facilities attended  
 121 | by the children of such persons are exempt from s. 119.07(1) and  
 122 | s. 24(a), Art. I of the State Constitution, if the guardian ad  
 123 | litem provides a written statement that the guardian ad litem  
 124 | has made reasonable efforts to protect such information from  
 125 | being accessible through other means available to the public.

126 |       i. The home addresses, telephone numbers, dates of birth,  
 127 | and photographs of current or former juvenile probation  
 128 | officers, juvenile probation supervisors, detention  
 129 | superintendents, assistant detention superintendents, juvenile  
 130 | justice detention officers I and II, juvenile justice detention  
 131 | officer supervisors, juvenile justice residential officers,  
 132 | juvenile justice residential officer supervisors I and II,  
 133 | juvenile justice counselors, juvenile justice counselor  
 134 | supervisors, human services counselor administrators, senior  
 135 | human services counselor administrators, rehabilitation  
 136 | therapists, and social services counselors of the Department of  
 137 | Juvenile Justice; the names, home addresses, telephone numbers,  
 138 | dates of birth, and places of employment of spouses and children  
 139 | of such personnel; and the names and locations of schools and  
 140 | day care facilities attended by the children of such personnel

141 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 142 Constitution.

143 j. The home addresses, telephone numbers, dates of birth,  
 144 and photographs of current or former public defenders, assistant  
 145 public defenders, criminal conflict and civil regional counsel,  
 146 and assistant criminal conflict and civil regional counsel; the  
 147 home addresses, telephone numbers, dates of birth, and places of  
 148 employment of the spouses and children of such defenders or  
 149 counsel; and the names and locations of schools and day care  
 150 facilities attended by the children of such defenders or counsel  
 151 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 152 Constitution.

153 k. The home addresses, telephone numbers, and photographs  
 154 of current or former investigators or inspectors of the  
 155 Department of Business and Professional Regulation; the names,  
 156 home addresses, telephone numbers, and places of employment of  
 157 the spouses and children of such current or former investigators  
 158 and inspectors; and the names and locations of schools and day  
 159 care facilities attended by the children of such current or  
 160 former investigators and inspectors are exempt from s. 119.07(1)  
 161 and s. 24(a), Art. I of the State Constitution if the  
 162 investigator or inspector has made reasonable efforts to protect  
 163 such information from being accessible through other means  
 164 available to the public. This sub-subparagraph is subject to the  
 165 Open Government Sunset Review Act in accordance with s. 119.15  
 166 and shall stand repealed on October 2, 2017, unless reviewed and  
 167 saved from repeal through reenactment by the Legislature.

168 l. The home addresses and telephone numbers of county tax

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169 collectors; the names, home addresses, telephone numbers, and  
170 places of employment of the spouses and children of such tax  
171 collectors; and the names and locations of schools and day care  
172 facilities attended by the children of such tax collectors are  
173 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
174 Constitution if the county tax collector has made reasonable  
175 efforts to protect such information from being accessible  
176 through other means available to the public. This sub-  
177 subparagraph is subject to the Open Government Sunset Review Act  
178 in accordance with s. 119.15 and shall stand repealed on October  
179 2, 2017, unless reviewed and saved from repeal through  
180 reenactment by the Legislature.

181 m. The home addresses, telephone numbers, and photographs  
182 of current or former personnel of the Department of Health whose  
183 duties include the investigation or prosecution of complaints  
184 filed against health care practitioners or the inspection of  
185 practitioners or facilities licensed by the Department of  
186 Health; the names, home addresses, telephone numbers, and places  
187 of employment of the spouses and children of such personnel; and  
188 the names and locations of schools and day care facilities  
189 attended by the children of such personnel are exempt from s.  
190 119.07(1) and s. 24(a), Art. I of the State Constitution if the  
191 personnel have made reasonable efforts to protect such  
192 information from being accessible through other means available  
193 to the public.

194 3. An agency that is the custodian of the information  
195 specified in subparagraph 2. and that is not the employer of the  
196 officer, employee, justice, judge, or other person specified in

197 | subparagraph 2. shall maintain the exempt status of that  
 198 | information only if the officer, employee, justice, judge, other  
 199 | person, or employing agency of the designated employee submits a  
 200 | written request for maintenance of the exemption to the  
 201 | custodial agency.

202 |         4. The exemptions in this paragraph apply to information  
 203 | held by an agency before, on, or after the effective date of the  
 204 | exemption.

205 |         5.a. Sub-subparagraphs 2.a.-1. are ~~This paragraph is~~  
 206 | subject to the Open Government Sunset Review Act in accordance  
 207 | with s. 119.15, and shall stand repealed on October 2, 2017,  
 208 | unless reviewed and saved from repeal through reenactment by the  
 209 | Legislature.

210 |         b. Sub-subparagraph 2.m. is subject to the Open Government  
 211 | Sunset Review Act in accordance with s. 119.15, and shall stand  
 212 | repealed on October 2, 2018, unless reviewed and saved from  
 213 | repeal through reenactment by the Legislature.

214 |         Section 2. The Legislature finds that it is a public  
 215 | necessity that the home addresses, telephone numbers, and  
 216 | photographs of current or former personnel of the Department of  
 217 | Health whose duties include the investigation or prosecution of  
 218 | complaints filed against health care practitioners or the  
 219 | inspection of practitioners or facilities licensed by the  
 220 | Department of Health; that the names, home addresses, telephone  
 221 | numbers, and places of employment of the spouses and children of  
 222 | such personnel; and that the names and locations of schools and  
 223 | day care facilities attended by the children of such personnel  
 224 | be made exempt from public record requirements. The Legislature

225 | finds that the release of such identifying and location  
 226 | information might place current or former personnel of the  
 227 | Department of Health whose duties include the investigation or  
 228 | prosecution of complaints filed against health care  
 229 | practitioners or the inspection of practitioners or facilities  
 230 | licensed by the Department of Health and their family members in  
 231 | danger of physical and emotional harm from disgruntled  
 232 | individuals who have contentious reactions to actions carried  
 233 | out by personnel of the Department of Health, or whose business  
 234 | or professional practices have come under the scrutiny of  
 235 | investigators and inspectors of the Department of Health. The  
 236 | Legislature further finds that the harm that may result from the  
 237 | release of such personal identifying and location information  
 238 | outweighs any public benefit that may be derived from the  
 239 | disclosure of the information.

240 |           Section 3. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1309 Procurement of Commodities and Contractual Services

**SPONSOR(S):** Albritton

**TIED BILLS:** HB 1311 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington <i>JA</i>	Williamson <i>Craw</i>
2) Appropriations Committee			

### SUMMARY ANALYSIS

State procurement of personal property and services is governed by chapter 287, F.S. The Department of Management Services (DMS) is responsible for maintaining uniform rules for and overseeing agency procurement, as well as negotiating statewide contracts to leverage the state's buying power.

Effective July 1, 2013, the bill makes the following revisions to provisions governing state agency procurement and contracting, including, but not limited to:

- Renames chapter 287, F.S., as "Procurement of Commodities and Contractual Services";
- Revises contract manager, grant manager, or contract negotiator qualifications and training requirements;
- Provides that DMS may delegate the purchase of insurance to agencies;
- Modifies the process for suspending a vendor from the vendor list maintained by DMS;
- Requires that invitations to bid be awarded to the lowest responsive bidder;
- Permits DMS to lead joint agreements with governmental entities;
- Allows agencies to combine funds for purchases of commodities and services;
- Removes the requirement that an agency head certify emergency procurement documents; and
- Repeals contract negotiation team requirements.

In addition, the bill directs DMS to establish a direct-support organization (DSO) for the purpose of providing assistance, funding, and support to DMS. The bill provides for the governance of the DSO by a board, and specifies board composition and term limits. The bill requires that the DSO operate under a written contract with DMS, and provides contract requirements. The bill additionally provides for an annual financial audit of the DSO.

The bill has an indeterminate fiscal impact on state government. See Fiscal Comments section for further discussion.

The bill provides an effective date of July 1, 2013.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **BACKGROUND**

##### **Department of Management Services**

The Department of Management Services (DMS) provides administrative and support services to other state agencies and to state employees. DMS's areas of responsibility include, but are not limited to:<sup>1</sup>

- Employee benefits (retirement and insurance);
- Human resource management;
- Business operations (real estate development and management, state purchasing, and specialized services);
- Telecommunications; and
- Agency administration.

Section 20.22(2), F.S., establishes the following divisions and programs within DMS:

- Facilities Program;
- Technology Program;
- Workforce Program;
- Support Program;
- Federal Property Assistance Program;
- Administration Program;
- Division of Administrative Hearings;
- Division of Retirement; and
- Division of State Group Insurance.

##### **State Procurement of Contracts for Personal Property and Services**

##### **Chapter 287, Florida Statutes**

Chapter 287, F.S., regulates state agency<sup>2</sup> procurement of personal property and services. DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.<sup>3</sup> DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.<sup>4</sup>

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:<sup>5</sup>

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;

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<sup>1</sup> See the Department of Management Services' website at: <http://www.dms.myflorida.com/> (last visited March 8, 2013).

<sup>2</sup> Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

<sup>3</sup> See ss. 287.032 and 287.042, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> See s. 287.057, F.S.

- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.<sup>6</sup> Section 287.012(6), F.S., provides that competitive solicitation means “the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.” Specified contractual services and commodities are not subject to competitive solicitation requirements.<sup>7</sup>

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by DMS, a water management district, or certain other agencies.<sup>8</sup>

#### Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance to a recipient or subrecipient,<sup>9</sup> or that provides federal financial assistance to a subrecipient,<sup>10</sup> to include a provision specifying scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform, and a provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.<sup>11</sup>

#### Qualifications for Contract Managers and Contract Negotiators

For each contractual services contract the agency must designate an employee to function as contract manager who must be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Current law requires certain contract managers to attend training conducted by the Chief Financial Officer (CFO).<sup>12</sup> It also requires certain contract negotiators to be certified based upon rules adopted by DMS.<sup>13</sup>

#### State Term Contracts

Using the various procurement methods, DMS negotiates state term contracts and purchasing agreements that are intended to leverage the state’s buying power.<sup>14</sup> Agencies must purchase commodities and contractual services from purchasing agreements and state term contracts procured by DMS; however, all governmental agencies, as defined in s. 163.3164, F.S., may utilize the contracts.<sup>15</sup>

#### MyFloridaMarketPlace

The State’s MyFloridaMarketPlace (MFMP) is a centralized e-procurement system. DMS maintains a list of vendors by classes of commodities within the MFMP system.

<sup>6</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

<sup>7</sup> See s. 287.057(3)(f), F.S.

<sup>8</sup> See s. 287.042(2)(c), F.S.

<sup>9</sup> As defined in s. 215.97, F.S.

<sup>10</sup> As defined by applicable United States Office of Management and Budget circulars.

<sup>11</sup> See s. 215.971, F.S.

<sup>12</sup> See s. 287.057(14), F.S.

<sup>13</sup> See s. 287.057(16)(b), F.S.

<sup>14</sup> See s. 287.012(27), F.S.

<sup>15</sup> See s. 287.056(1), F.S.

### Office of Supplier Diversity

Section 287.09451, F.S., provides that the Legislature finds that there is evidence of a systematic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system. Because of the disparity, the state has enacted race and gender-conscious remedial programs to ensure minority participation in state contracts. The Office of Supplier Diversity (OSD) is created within DMS to assist minority business enterprises in becoming suppliers of commodities, services, and construction services to state government.

### **Chief Financial Officer and Department of Financial Services**

The CFO is an elected constitutional Cabinet member.<sup>16</sup> The CFO serves as the chief financial officer of the state and is responsible for setting and approving accounts against the state and keeping all state funds and securities.<sup>17</sup> Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,<sup>18</sup> paying state employee salaries,<sup>19</sup> and reporting all disbursements of funds administered by the CFO.<sup>20</sup>

The CFO also serves as the head of the Department of Financial Services (DFS), which executes the duties of the CFO.<sup>21</sup> DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshall;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Office of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>22</sup>

The Financial Services Commission; Board of Funeral, Cemetery, and Consumer Services; and Strategic Markets Research and Assessment Unit also are established within DFS.<sup>23</sup>

### **Direct-Support Organizations**

While no general statutory definition for a direct-support organization (DSO) exists, a DSO is a Florida not-for-profit corporation, incorporated under the provisions of chapter 617, F.S., and authorized by law to benefit or provide assistance to a governmental entity. Generally, a DSO is created to give a governmental entity the flexibility to seek an additional funding source, and to enhance the mission of the department or political subdivision it supports.

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<sup>16</sup> Art. 4, s. 4(a) and (c) of the State Constitution.

<sup>17</sup> Art. 4, s. 4(c) of the State Constitution, and s. 17.001, F.S.

<sup>18</sup> Section 17.04, F.S.

<sup>19</sup> See s. 17.09, F.S.

<sup>20</sup> Section 17.11, F.S.

<sup>21</sup> See s. 20.121, F.S.

<sup>22</sup> Section 20.121(2), F.S.

<sup>23</sup> Sections 20.121(3), (4), and (6), F.S.

Each DSO tends to be specifically authorized or created in statute. Oftentimes, the authorizing statute establishes requirements for the organization's articles of incorporation – as well as other oversight requirements – and membership and appointment procedures for the DSO's board are provided.

Some more familiar state DSOs are the Florida National Guard Foundation<sup>24</sup> and the Florida Juvenile Justice Foundation.<sup>25</sup> Various other state agencies and political subdivisions are statutorily authorized to create DSOs, including the Statewide Public Guardianship Office,<sup>26</sup> the Statewide Guardian Ad Litem Office,<sup>27</sup> the Department of Military Affairs,<sup>28</sup> the Department of Corrections,<sup>29</sup> and the Department of Education.<sup>30</sup>

Direct-support organizations with annual expenditures in excess of \$100,000 that are administered by a state agency are required to provide for an annual financial audit of accounts and records to be conducted by an independent certified public accountant. Such audit report is submitted by the DSO within nine months after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, and approval.<sup>31</sup>

## **EFFECT OF THE BILL**

### **State Procurement of Contracts for Personal Property and Services**

#### **Chapter Name**

The bill renames chapter 287, F.S., as "Procurement of Commodities and Contractual Services." The chapter is currently named "Procurement of Personal Property and Services."

#### **Training**

The bill provides that DMS and DFS must jointly conduct training to promote best practices and procedures related to negotiating, managing, and accountability in agency grant agreements. In addition, the bill provides that both departments may recommend personnel to each agency for whom training is appropriate. Currently, both DMS and DFS provide training to personnel involved in managing specified contracts.<sup>32</sup>

The bill also provides that each agency contract manager, who is responsible for contracts in excess of the amounts defined by DMS rule, must complete training in contract management jointly conducted or coordinated by DMS and DFS. The bill permits DMS to establish training and certification requirements for contract management positions. The bill provides that the CFO must conduct training for financial and performance accountability in contracts and grant management, which must be completed by each contract manager in order to receive certification as a contract manager. Both departments may recommend personnel in other agencies who are appropriate to receive the training. Current law only requires training for contract managers who oversee contracts in excess of the threshold amount for Category Two, which includes contracts that exceed \$35,000, but this bill may permit DMS to require

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<sup>24</sup> The Florida National Guard Foundation was founded as a nonprofit organization in 1983. The foundation operates as a DSO of the Florida Department of Military Affairs for the direct or indirect benefit of the Florida National Guard. More information about this DSO can be found online at: <http://www.floridanationalguardfoundation.org/florida-national-guard-foundation-about-us.html> (last visited on March 10, 2013).

<sup>25</sup> The Florida Juvenile Justice Foundation was established to seek private supplemental funds to enhance and promote education and public safety through effective prevention, intervention and treatment services that strengthen families and positively change the lives of troubled youths. More information about this DSO can be found online at: <http://www.djjfoundation.org/about-us> (last visited on March 10, 2013).

<sup>26</sup> Section 744.7082, F.S.

<sup>27</sup> Section 39.8298, F.S.

<sup>28</sup> Section 250.115, F.S.

<sup>29</sup> Section 944.802, F.S.

<sup>30</sup> Section 1001.24, F.S.

<sup>31</sup> Section 215.981, F.S.

<sup>32</sup> See ss. 287.057(14) and 287.076, F.S.

training for contract managers who oversee contracts above or below that threshold. The bill does not establish any guidelines for determining training requirement thresholds for purposes of rulemaking, which may raise separation of powers issues. See section III. of the analysis for further discussion.

#### Definitions

The bill provides a definition for "alternate contract source" which means a term contract competitively awarded by other governmental entities that is approved by DMS for use by agencies pursuant to s. 287.042(17), F.S, which pertains to private correctional facilities. This new definition does not appear to be utilized in chapter 287, F.S.

The bill provides a definition for "governmental entity", which means a political subdivision or agency of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, nonprofit public university or college, single-purpose or multipurpose special district, single-purpose or multipurpose public authority, metropolitan or consolidated government, separate legal entity or administrative entity, or any agency of the Federal Government.

The bill deletes the definition for "artistic services." The bill also amends the definitions for "best value," "commodities," "electronic posting," and "extension."

#### Insurance

The bill provides that unless delegated by DMS rule, insurance must be purchased for all agencies by DMS. Currently, DMS cannot delegate the purchase of insurance to agencies. The bill also provides a grant of rulemaking authority for delegating the purchase of insurance. It is not clear if this delegation is necessary because DMS already has a grant of rulemaking in s. 287.042(12), F.S., for purposes of delegating duties conferred upon DMS. However, the section fails to provide any standards for DMS to utilize in creating rules pertaining to delegation, which may constitute an unlawful delegation of legislative authority. See section III. of the analysis for further discussion.

#### Vendor List

The bill deletes from s. 287.042(1)(a), F.S., a provision that requires DMS to maintain a vendor list. The requirement also is found in s. 287.042(3)(a), F.S.; therefore, DMS will continue to maintain a vendor list of interested vendors by classes of commodities and services.

In addition, under current law, DMS may remove a vendor from the vendor list if the vendor fails to perform any contractual duties with an agency. The bill instead requires the agency to suspend the vendor when contractual duties are not performed, rather than DMS. The bill provides that an agency must follow DMS procedures for suspension and reinstatement of vendors. Although DMS currently has procedures specified in rule,<sup>33</sup> those rules would need to be modified to create a process for utilization by other agencies. In addition, there does not appear to be a grant of rulemaking authority to implement this section, nor does there appear to be sufficient standards to guide implementation. See section III. of the analysis for further discussion.

#### Term Contracts

The bill provides that when a vendor protests a notice of intent to award a contract to multiple vendors, the intended award may proceed unless the protesting vendor submits to DMS in writing particular facts and circumstances that demonstrate a reasonable basis for protesting the award to the other vendor or vendors. The Secretary of Management Services or his or her designee must determine in writing whether the vendor has demonstrated a sufficient basis for stay of the intended award. If the vendor prevails in the protest, the vendor is added to the contract with the same term and conditions as the other awarded contracts.

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<sup>33</sup> See chapter 60A-1.006, F.A.C.  
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### Joint Agreements

The bill authorizes DMS to lead, rather than solely enter into, joint agreements with governmental entities for the purchase of commodities or contractual services that can be used by multiple agencies.

### Combining Funds

The bill permits agencies to combine funds for the purchase of commodities or contractual services. This would appear to allow agencies to circumvent the legislative appropriations process. See section III. of the analysis for further discussion.

### Required Agency Agreement Terminology

The bill deletes repetitive language found in s. 287.056, F.S., that also is found in s. 287.058(d) and (e), F.S. The language requires agencies to include in contracts a provision specifying a scope of work that clearly establishes all tasks that the contractor is required to perform, and a provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

### Invitations to Bid

The bill provides that a contract awarded in a procurement initiated with an invitation to bid must be awarded to the responsible and responsive vendor that submits the lowest responsive bid. This provision was in chapter 287, F.S., until 2010, when it was inadvertently removed.<sup>34</sup>

### Exemptions from Competitive Solicitation

#### *Emergency Action Exception*

The bill provides that the agency head must sign a written determination that immediate danger to the public health, safety, or welfare or other substantial loss to the state requires emergency action. The bill provides that the agency must furnish copies of all written determinations relating to the emergency to DMS and the CFO. The bill removes the requirement that the determination be certified under oath.

#### *Single Source Contracts*

The bill deletes provisions that require agencies to submit forms for approval from DMS for specified single source contracts prior to entering into contracts with vendors. According to DMS, these requirements were established to verify that agencies were noticing intent to enter into single source contracts and DMS has never utilized this provision to deny an agency's request to enter into such an agreement.<sup>35</sup>

### Contract Renewals and Extensions

The bill permits a contract extension and renewal to include written amendments signed by the parties. The bill also provides that an agency may negotiate a lower price in solicitations for contract renewals.

### MyFloridaMarketPlace

Current law requires DMS, in consultation with the Agency for Enterprise Information Technology and the Comptroller, to develop a program for online procurement of commodities and contractual services. The bill inserts a reference to the CFO in place of the Comptroller as the CFO is the state's chief financial officer, and removes a reference to the Agency for Enterprise Information Technology, as the Agency for Enterprise Information Technology has been decommissioned. Because MyFloridaMarketPlace is developed already, the bill provides that DMS and the CFO must maintain, rather than develop, a program for online procurement of commodities and contractual services.

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<sup>34</sup> See chapter 2010-151, L.O.F.

<sup>35</sup> According to a representative from DMS on March 8, 2013.

### Team for Contract Negotiations

The bill repeals s. 287.0731, F.S., which requires DMS to establish a team that includes a chief negotiator to specialize in conducting negotiations for the procurement of information technology.

### Office of Supplier Diversity – Direct-Support Organization

The bill permits the Office of Supplier Diversity (OSD) to transfer certain operations to a direct-support organization (DSO). The bill requires DMS to establish and govern a DSO to assist DMS in carrying out the duties of the Secretary of Management Services with respect to supplier diversity. The purpose of the DSO is to raise money; submit requests for and receive grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; receive, hold, invest, and administer property; and make expenditures to or for the benefit of the mission of the OSD. The DSO must be incorporated under the provisions of chapter 617, F.S., and approved by the Department of State as a not for profit corporation.

The Secretary of Management Services must appoint an 11-member board, each of whom must have been or currently be actively engaged in minority business development as an entrepreneur in private industry, in governmental service, or has been recognized for achievement in the business or governmental community in the area of economic development. The bill specifies requirements for each member, one of which must be the Secretary of Management Services. Three at-large members must be appointed with input from the Legislature. Each member must serve a two-year term.

The bill provides that the board must annually elect a chair and vice chair and must adopt internal procedures or bylaws necessary for efficient operation.

The bill provides that the DSO must operate under contract with DMS. The bill requires the contract to provide the following:

- Approval of the articles of incorporation and bylaws of the DSO by DMS;
- The fiscal year of the DSO, which must begin July 1 of each year and end June 30 of the following year;
- Submission of an annual budget, which must be approved by DMS;
- Annual certification by DMS that the DSO is complying with the terms of the contract and is performing in a manner consistent with the goals and purposes of DMS;
- The reversion to DMS, or the state if DMS ceases to exist, of moneys and property held in trust by the DSO for the benefit of DMS if the DSO is no longer approved to operate;
- Disclosures to donors within all promotional and fundraising publications that it is a private non-profit corporation; and
- Provisions of equal employment.

The bill provides that funds solicited by the DSO must be held in a separate depository account in the name of the DSO. In addition, the DSO must provide an annual financial audit, pursuant to s. 215.981, F.S. DMS and the Auditor General must have access to all records of the DSO.<sup>36</sup> The bill provides that DMS may adopt rules to administer this section.

### Effective Date

The bill provides an effective date of July 1, 2013.

## B. SECTION DIRECTORY:

Section 1. renames chapter 287, F.S., as "Procurement of Commodities and Contractual Services."

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<sup>36</sup> Direct-support organizations are considered state agencies within the public records law and as such, the records that the DSO must make available to DMS and Auditor General are public records and the provision in the bill may be unnecessary. See *Palm Beach Community College Foundation, Inc. v. WTFT, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993).

Section 2. amends s. 215.971, F.S., requiring the Department of Management Services and the Department of Financial Services to jointly conduct training related to negotiating, managing, and accountability in grant agreements.

Section 3. amends s. 287.012, F.S., providing, revising, and eliminating definitions.

Section 4. amends s. 287.022, F.S., providing that DMS may delegate by rule the purchase of insurance for state agencies; authorizing the department to adopt rules.

Section 5. amends s. 287.042, F.S., revising powers, duties, and functions of DMS; eliminating a duty of DMS to maintain a vendor list; authorizing an agency to suspend and reinstate a source of supply that fails to fulfill its duties as specified in a contract with the agency, following procedures of DMS; providing an additional circumstance under which the department may proceed with a competitive solicitation or contract award process of a term contract as an alternative to the stay of such process pursuant to a formal written protest under the Administrative Procedure Act; providing that DMS may delegate to agencies the authority for the purchase of insurance; authorizing DMS to lead or enter into joint agreements with governmental entities for the purchase of commodities or contractual services that can be used by multiple agencies; authorizing an agency that has been appropriated funds or has existing funds for a purchase of commodities or contractual services to combine funds for such purchases.

Section 6. amends s. 287.056, F.S., eliminating provisions requiring certain inclusions in agency agreements.

Section 7. amends s. 287.057, F.S., relating to procurement of commodities or contractual services; providing that contracts awarded pursuant to an invitation to bid shall be awarded to the responsible and responsive vendor that submits the lowest responsive bid; revising exceptions to the requirement that the purchase of specified commodities or contractual services be made only as a result of receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies; revising contractual services and commodities that are not subject to competitive solicitation requirements by virtue of being available only from a single source; providing that a contract for commodities or contractual services may be awarded without competition if the recipient of funds is established during the appropriations process; revising provisions relating to extension of a contract for commodities or contractual services; authorizing an agency to negotiate better pricing upon renewal of a contract; providing training requirements for contract managers responsible for contracts in excess of a specified threshold amount; authorizing DMS to establish training and certification requirements; requiring DMS, in consultation with the CFO to maintain a program for online procurement of commodities and contractual services.

Section 8. amends s. 287.0571, F.S., revising nonapplicability of a business case to outsource.

Section 9. amends s. 287.058, F.S., defining the term "performance measure"; revising references within provisions relating to purchase orders used in lieu of written agreements for classes of contractual services; revising terminology.

Section 10. repeals s. 287.0731, F.S., relating to establishment by the department of a team to specialize in conducting specified negotiations.

Section 11. amends s. 287.076, F.S., providing that Project Management Professionals training for personnel involved in managing outsourcings and negotiations is subject to annual appropriations.

Section 12. amends s. 287.09451, F.S., providing that the Office of Supplier Diversity may administratively transfer certain operations to a direct-support organization; revising references to purchasing categories; providing for the establishment of a direct-support organization by the department to assist in carrying out duties with respect to supplier diversity; providing purposes of the



direct-support organization; providing requirements of the direct-support organization; providing for organization and membership of the direct-support organization board; providing requirements of the contract under which the direct-support organization operates; providing requirements with respect to funds solicited by the direct-support organization; providing for annual audits; specifying responsibilities of the direct-support organization.

Sections 13. through 23. amend ss. 16.0155, 283.33, 394.457, 402.7305, 409.9132, 427.0135, 445.024, 627.311, 627.351, 765.5155, and 893.055, F.S., conforming cross references.

Section 24. provides an effective date of July 1, 2013.

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

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

#### **1. Revenues:**

See below Fiscal Comments.

#### **2. Expenditures:**

See below Fiscal Comments.

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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

None.

### **D. FISCAL COMMENTS:**

The bill permits DMS to require training for agency employees beyond those employees that are currently required to receive training. The potential addition of training may have an indeterminate fiscal impact on state agencies. In addition, the bill creates a direct-support organization for purposes of providing support to the Office of Supplier Diversity, which includes raising funds for the benefit of the Office of Supplier Diversity.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

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

2. Other:

Article II, s. 3 of the State Constitution provides that “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” The separation of powers doctrine prevents the Legislature from delegating its constitutional duties.<sup>37</sup>

Legislative power involves the exercise of policy-related discretion over the content of law.<sup>38</sup> The Legislature can delegate to another body the task of implementing policy, but only if adequate safeguards are in place.<sup>39</sup> The Supreme Court has warned that “[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law.”<sup>40</sup> Thus, the Legislature must promulgate standards sufficient to guide administrative agencies in performance of their duties.<sup>41</sup> The grants of rulemaking in this bill may raise separation of powers issues if the courts determine that adequate safeguards and guidelines were not legislatively provided.

Legislative power also involves the power to appropriate state funds.<sup>42</sup> Thus, the Legislature may not delegate the power to appropriate to state agencies. The bill permits multiple agencies to combine funds for the purpose of procuring commodities and contractual services, which has the potential to usurp the legislative appropriation for that agency.

**B. RULE-MAKING AUTHORITY:**

The constitutional separation of powers doctrine prevents the Legislature from delegating its constitutional duties. Because legislative power involves the exercise of policy-related discretion over the content of law, any discretion given an agency to implement a law must be “pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”<sup>43</sup>

The bill authorizes the Department of Management Services to adopt rules pertaining to training, purchasing insurance, and for the suspension of vendors. The bill is inconsistent when providing a grant of rulemaking authority for such rulemaking. In addition, minimal standards and guidelines for such implementation do not appear to be provided.

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

Other Comments: Definition

The bill creates a definition for “alternate contract source,” but the new term does not appear to be utilized in chapter 287, F.S.

Drafting Issues

Section 2 of the bill (lines 101-115), amends s. 215.971, F.S., relating to agreements funded with federal and state assistance. The bill creates a new subsection (4); however, current law only provide for subsections (1) and (2). As such, the bill should be amended to reflect that a subsection (3) is being created.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

<sup>37</sup> *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

<sup>38</sup> *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

<sup>39</sup> *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

<sup>40</sup> *Id.*

<sup>41</sup> *Florida Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005); *Avatar Dev. Corp. v. State*, 723 So.2d 199 (Fla. 1998).

<sup>42</sup> *See Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260 (Fla. 1991).

<sup>43</sup> *Supra* at n. 39.



29 of commodities or contractual services that can be  
 30 used by multiple agencies; authorizing an agency that  
 31 has been appropriated funds or has existing funds for  
 32 a purchase of commodities or contractual services to  
 33 combine funds for such purchases; amending s. 287.056,  
 34 F.S.; eliminating provisions requiring certain  
 35 inclusions in agency agreements; amending s. 287.057,  
 36 F.S., relating to procurement of commodities or  
 37 contractual services; providing that contracts awarded  
 38 pursuant to an invitation to bid shall be awarded to  
 39 the responsible and responsive vendor that submits the  
 40 lowest responsive bid; revising exceptions to the  
 41 requirement that the purchase of specified commodities  
 42 or contractual services be made only as a result of  
 43 receiving competitive sealed bids, competitive sealed  
 44 proposals, or competitive sealed replies; revising  
 45 contractual services and commodities that are not  
 46 subject to competitive solicitation requirements by  
 47 virtue of being available only from a single source;  
 48 providing that a contract for commodities or  
 49 contractual services may be awarded without  
 50 competition if the recipient of funds is established  
 51 during the appropriations process; revising provisions  
 52 relating to extension of a contract for commodities or  
 53 contractual services; authorizing an agency to  
 54 negotiate better pricing upon renewal of a contract;  
 55 providing training requirements for contract managers  
 56 responsible for contracts in excess of a specified

57 threshold amount; authorizing the department to  
 58 establish training and certification requirements;  
 59 requiring the department, in consultation with the  
 60 Chief Financial Officer to maintain a program for  
 61 online procurement of commodities and contractual  
 62 services; amending s. 287.0571, F.S.; revising  
 63 nonapplicability of a business case to outsource;  
 64 amending s. 287.058, F.S.; defining the term  
 65 "performance measure"; revising references within  
 66 provisions relating to purchase orders used in lieu of  
 67 written agreements for classes of contractual  
 68 services; revising terminology; repealing s. 287.0731,  
 69 F.S., relating to establishment by the department of a  
 70 team to specialize in conducting specified  
 71 negotiations; amending s. 287.076, F.S.; providing  
 72 that Project Management Professionals training for  
 73 personnel involved in managing outsourcings and  
 74 negotiations is subject to annual appropriations;  
 75 amending s. 287.09451, F.S.; providing that the Office  
 76 of Supplier diversity may administratively transfer  
 77 certain operations to a direct-support organization;  
 78 revising references to purchasing categories;  
 79 providing for the establishment of a direct-support  
 80 organization by the department to assist in carrying  
 81 out duties with respect to supplier diversity;  
 82 providing purposes of the direct-support organization;  
 83 providing requirements of the direct-support  
 84 organization; providing for organization and

85 membership of the direct-support organization board;  
 86 providing requirements of the contract under which the  
 87 direct-support organization operates; providing  
 88 requirements with respect to funds solicited by the  
 89 direct-support organization; providing for annual  
 90 audits; specifying responsibilities of the direct-  
 91 support organization; amending ss. 16.0155, 283.33,  
 92 394.457, 402.7305, 409.9132, 427.0135, 445.024,  
 93 627.311, 627.351, 765.5155, and 893.055, F.S.;  
 94 conforming cross-references; providing an effective  
 95 date.

96

97 Be It Enacted by the Legislature of the State of Florida:

98

99 Section 1. Chapter 287, Florida Statutes, is renamed as  
 100 "Procurement of Commodities and Contractual Services."

101 Section 2. Subsection (4) is added to section 215.971,  
 102 Florida Statutes, to read:

103 215.971 Agreements funded with federal and state  
 104 assistance.—For an agency agreement that provides state  
 105 financial assistance to a recipient or subrecipient, as those  
 106 terms are defined in s. 215.97, or that provides federal  
 107 financial assistance to a subrecipient, as defined by applicable  
 108 United States Office of Management and Budget circulars, the  
 109 agreement shall include:

110 (4) The Department of Management Services and the  
 111 Department of Financial Services shall jointly conduct training  
 112 to promote best practices and procedures related to negotiating,

113 managing, and accountability in agency grant agreements. Both  
 114 departments may recommend personnel to each agency for whom  
 115 receipt of the training is appropriate.

116 Section 3. Subsections (3), (4), (5), (10), and (13)  
 117 through (28) of section 287.012, Florida Statutes, are amended  
 118 to read:

119 287.012 Definitions.—As used in this part, the term:

120 (3) "Alternate contract source" means a term contract  
 121 competitively awarded by other governmental entities that is  
 122 approved by the department for use by agencies pursuant to s.  
 123 287.042(17).

124 ~~(3) "Artistic services" means the rendering by a~~  
 125 ~~contractor of its time and effort to create or perform an~~  
 126 ~~artistic work in the fields of music, dance, drama, folk art,~~  
 127 ~~creative writing, painting, sculpture, photography, graphic~~  
 128 ~~arts, craft arts, industrial design, costume design, fashion~~  
 129 ~~design, motion pictures, television, radio, or tape and sound~~  
 130 ~~recording.~~

131 (4) "Best value" means the highest overall value to the  
 132 state based on objective factors that include, but are not  
 133 limited to, price, quality, design, and workmanship.

134 (5) "Commodity" means any of the various supplies,  
 135 materials, goods, merchandise, food, equipment, information  
 136 technology, and other personal property, including a mobile  
 137 home, trailer, or other portable structure with floor space of  
 138 less than 5,000 square feet, purchased, leased, or otherwise  
 139 contracted for by the state and its agencies. "Commodity" also  
 140 includes interest on deferred-payment commodity contracts

141 approved pursuant to s. 287.063 entered into by an agency for  
 142 the purchase of other commodities. However, commodities  
 143 purchased for resale are excluded from this definition. Printing  
 144 of publications shall be considered a commodity when procured  
 145 ~~let upon contract~~ pursuant to s. 283.33, whether purchased for  
 146 resale or not.

147 (10) "Electronic posting" or "electronically post" means  
 148 the noticing of solicitations, agency decisions or intended  
 149 decisions, or other matters relating to procurement, on a  
 150 centralized Internet website designated by the department for  
 151 this purpose, in the manner and form required by s.  
 152 120.57(3)(a).

153 (13) "Extension" means an increase in the time allowed for  
 154 the contract period ~~due to circumstances which, without fault of~~  
 155 ~~either party, make performance impracticable or impossible, or~~  
 156 ~~which prevent a new contract from being executed, with or~~  
 157 ~~without a proportional increase in the total dollar amount, with~~  
 158 ~~any increase to be based on the method and rate previously~~  
 159 ~~established in the contract.~~

160 (14) "Governmental entity" means a political subdivision  
 161 or agency of this state or of any state of the United States,  
 162 including, but not limited to, state government, county, city,  
 163 school district, nonprofit public university or college, single-  
 164 purpose or multipurpose special district, single-purpose or  
 165 multipurpose public authority, metropolitan or consolidated  
 166 government, separate legal entity or administrative entity, or  
 167 any agency of the Federal Government.

168 ~~(15)-(14)~~ "Information technology" has the meaning ascribed



169 in s. 282.0041.

170 (16)~~(15)~~ "Invitation to bid" means a written or  
 171 electronically posted solicitation for competitive sealed bids.

172 (17)~~(16)~~ "Invitation to negotiate" means a written or  
 173 electronically posted solicitation for competitive sealed  
 174 replies to select one or more vendors with which to commence  
 175 negotiations for the procurement of commodities or contractual  
 176 services.

177 (18)~~(17)~~ "Minority business enterprise" has the meaning  
 178 ascribed in s. 288.703.

179 (19)~~(18)~~ "Office" means the Office of Supplier Diversity  
 180 of the Department of Management Services.

181 (20)~~(19)~~ "Outsource" means the process of contracting with  
 182 a vendor to provide a service as defined in s. 216.011(1)(f), in  
 183 whole or in part, or an activity as defined in s.  
 184 216.011(1)(rr), while a state agency retains the responsibility  
 185 and accountability for the service or activity and there is a  
 186 transfer of management responsibility for the delivery of  
 187 resources and the performance of those resources.

188 (21)~~(20)~~ "Renewal" means contracting with the same  
 189 contractor for an additional contract period after the initial  
 190 contract period, only if pursuant to contract terms specifically  
 191 providing for such renewal.

192 (22)~~(21)~~ "Request for information" means a written or  
 193 electronically posted request made by an agency to vendors for  
 194 information concerning commodities or contractual services.  
 195 Responses to these requests are not offers and may not be  
 196 accepted by the agency to form a binding contract.

197 |        (23)~~(22)~~ "Request for proposals" means a written or  
 198 | electronically posted solicitation for competitive sealed  
 199 | proposals.

200 |        (24)~~(23)~~ "Request for a quote" means an electronic, oral  
 201 | or written request for written pricing or services information  
 202 | from a state term contract vendor for commodities or contractual  
 203 | services available on a state term contract from that vendor.

204 |        (25)~~(24)~~ "Responsible vendor" means a vendor who has the  
 205 | capability in all respects to fully perform the contract  
 206 | requirements and the integrity and reliability that will assure  
 207 | good faith performance.

208 |        (26)~~(25)~~ "Responsive bid," "responsive proposal," or  
 209 | "responsive reply" means a bid, ~~or~~ proposal, or reply submitted  
 210 | by a responsive and responsible vendor that conforms in all  
 211 | material respects to the solicitation.

212 |        (27)~~(26)~~ "Responsive vendor" means a vendor that has  
 213 | submitted a bid, proposal, or reply that conforms in all  
 214 | material respects to the solicitation.

215 |        (28)~~(27)~~ "State term contract" means a term contract that  
 216 | is competitively procured by the department pursuant to s.  
 217 | 287.057 and that is used by agencies and eligible users pursuant  
 218 | to s. 287.056.

219 |        (29)~~(28)~~ "Term contract" means an indefinite quantity  
 220 | contract to furnish commodities or contractual services during a  
 221 | defined period.

222 |        Section 4. Subsection (1) of section 287.022, Florida  
 223 | Statutes, is amended, and subsection (4) is added to that  
 224 | section, to read:

225 287.022 Purchase of insurance.-

226 (1) Unless delegated pursuant to rule adopted by the  
 227 department, insurance, while not a commodity, nevertheless shall  
 228 be purchased for all agencies by the department, except that  
 229 agencies may purchase title insurance for land acquisition and  
 230 may make emergency purchases of insurance pursuant to s.  
 231 287.057(3)(a). The procedures for purchasing insurance, whether  
 232 the purchase is made by the department or by the agencies, shall  
 233 be the same as those set forth herein for the purchase of  
 234 commodities.

235 (4) The department may adopt rules to administer this  
 236 section.

237 Section 5. Paragraphs (a) and (b) of subsection (1),  
 238 paragraph (b) of subsection (2), paragraph (b) of subsection  
 239 (6), and subsections (8), (15), (16), and (17) of section  
 240 287.042, Florida Statutes, are amended to read:

241 287.042 Powers, duties, and functions.-The department  
 242 shall have the following powers, duties, and functions:

243 (1)(a) To canvass all sources of supply, ~~establish and~~  
 244 ~~maintain a vendor list,~~ and contract for the purchase, lease, or  
 245 acquisition, including purchase by installment sales or lease-  
 246 purchase contracts which may provide for the payment of interest  
 247 on unpaid portions of the purchase price, of all commodities and  
 248 contractual services required by any agency under this chapter.  
 249 Any contract providing for deferred payments and the payment of  
 250 interest shall be subject to specific rules adopted by the  
 251 department.

252 (b) An agency ~~The department~~ may suspend a ~~remove from its~~

253 ~~vendor list any~~ source of supply that ~~which~~ fails to fulfill any  
 254 of its duties specified in a contract with the agency state. An  
 255 agency ~~It~~ may reinstate any such source of supply when it is  
 256 satisfied that further instances of default will not occur. An  
 257 agency must follow department procedures for suspension and  
 258 reinstatement.

259 (2)

260 (b) As an alternative to any provision in s. 120.57(3)(c),  
 261 the department may proceed with the competitive solicitation or  
 262 contract award process of a term contract in the following  
 263 circumstances:

264 1. When the Secretary of Management Services ~~the~~  
 265 ~~department~~ or his or her designee sets forth in writing  
 266 particular facts and circumstances that ~~which~~ demonstrate that  
 267 the delay incident to staying the solicitation or contract award  
 268 process would be detrimental to the interests of the state.  
 269 After the award of a contract resulting from a competitive  
 270 solicitation in which a timely protest was received and in which  
 271 the state did not prevail, the contract may be canceled and  
 272 reawarded.

273 2. When a vendor protests a notice of intent to award a  
 274 contract to multiple vendors, the intended award may proceed  
 275 unless the protesting vendor submits to the department in  
 276 writing particular facts and circumstances that demonstrate a  
 277 reasonable basis for protesting the award to the other vendor or  
 278 vendors. The Secretary of Management Services or his or her  
 279 designee shall determine in writing whether the vendor has  
 280 demonstrated a sufficient basis for stay of the intended award.

281 If the vendor prevails in the protest, the vendor shall be added  
 282 to the contract with the same terms and conditions as the other  
 283 awarded vendors.

284 (6)

285 (b) ~~Except for the purchase of insurance,~~ The department  
 286 may delegate to agencies the authority for the procurement of  
 287 and contracting for commodities or contractual services.

288 (8) To provide any commodity and contractual service  
 289 purchasing rules to the Chief Financial Officer and all agencies  
 290 electronically or through an electronic medium or other means.  
 291 Agencies may not approve any account or request any payment of  
 292 any account for the purchase of any commodity or the procurement  
 293 of any contractual service covered by a purchasing or  
 294 contractual service rule except as authorized therein. The  
 295 department shall furnish copies of rules adopted by the  
 296 department to any county, municipality, or other local public  
 297 agency requesting them.

298 (15) To lead or enter into joint agreements with  
 299 governmental entities agencies, ~~as defined in s. 163.3164,~~ for  
 300 ~~the purpose of pooling funds~~ for the purchase of commodities or  
 301 contractual services ~~information technology~~ that can be used by  
 302 multiple agencies.

303 (16)(a) Each agency that has been appropriated or has  
 304 existing funds for a ~~such~~ purchase of commodities or contractual  
 305 services may combine funds for such purchases, and shall, upon  
 306 contract award by the department, transfer their portion of the  
 307 funds into the department's Operating Trust Fund for payment by  
 308 the department. The funds shall be transferred by the Executive

309 Office of the Governor pursuant to the agency budget amendment  
 310 request provisions in chapter 216.

311 (b) Agencies that sign the joint agreements are  
 312 financially obligated for their portion of the agreed-upon  
 313 funds. If an agency becomes more than 90 days delinquent in  
 314 paying the funds, the department shall certify to the Chief  
 315 Financial Officer the amount due, and the Chief Financial  
 316 Officer shall transfer the amount due to the Operating Trust  
 317 Fund of the department from any of the agency's available funds.  
 318 The Chief Financial Officer shall report these transfers and the  
 319 reasons for the transfers to the Executive Office of the  
 320 Governor and the legislative appropriations committees.

321 (17)~~(16)~~ To evaluate contracts let by the Federal  
 322 Government, another state, or a political subdivision for the  
 323 provision of commodities and contract services, and, if it is  
 324 determined in writing to be cost-effective and in the best  
 325 interest of the state, to enter into a written agreement  
 326 authorizing an agency to make purchases under such contract.

327 (18)~~(17)~~(a) To enter into contracts pursuant to chapter  
 328 957 for the designing, financing, acquiring, leasing,  
 329 constructing, or operating of private correctional facilities.  
 330 The department shall enter into a contract or contracts with one  
 331 contractor per facility for the designing, acquiring, financing,  
 332 leasing, constructing, and operating of that facility or may, if  
 333 specifically authorized by the Legislature, separately contract  
 334 for any such services.

335 (b) To manage and enforce compliance with existing or  
 336 future contracts entered into pursuant to chapter 957.

337  
 338 The department may not delegate the responsibilities conferred  
 339 by this subsection.

340 Section 6. Subsection (1) of section 287.056, Florida  
 341 Statutes, is amended to read:

342 287.056 Purchases from purchasing agreements and state  
 343 term contracts.—

344 (1) Agencies shall, and eligible users may, purchase  
 345 commodities and contractual services from purchasing agreements  
 346 established and state term contracts procured, pursuant to s.  
 347 287.057, by the department. ~~Each agency agreement made under~~  
 348 ~~this subsection shall include:~~

349 ~~(a) A provision specifying a scope of work that clearly~~  
 350 ~~establishes all tasks that the contractor is required to~~  
 351 ~~perform.~~

352 ~~(b) A provision dividing the contract into quantifiable,~~  
 353 ~~measurable, and verifiable units of deliverables that must be~~  
 354 ~~received and accepted in writing by the contract manager before~~  
 355 ~~payment. Each deliverable must be directly related to the scope~~  
 356 ~~of work and specify the required minimum level of service to be~~  
 357 ~~performed and the criteria for evaluating the successful~~  
 358 ~~completion of each deliverable.~~

359 Section 7. Paragraph (a) of subsection (1) and subsections  
 360 (3), (10), (12), (13), (14), (16), and (22) of section 287.057,  
 361 Florida Statutes, are amended to read:

362 287.057 Procurement of commodities or contractual  
 363 services.—

364 (1) The competitive solicitation processes authorized in

365 | this section shall be used for procurement of commodities or  
 366 | contractual services in excess of the threshold amount provided  
 367 | for CATEGORY TWO in s. 287.017. Any competitive solicitation  
 368 | shall be made available simultaneously to all vendors, must  
 369 | include the time and date for the receipt of bids, proposals, or  
 370 | replies and of the public opening, and must include all  
 371 | contractual terms and conditions applicable to the procurement,  
 372 | including the criteria to be used in determining acceptability  
 373 | and relative merit of the bid, proposal, or reply.

374 |       (a) Invitation to bid.—The invitation to bid shall be used  
 375 | when the agency is capable of specifically defining the scope of  
 376 | work for which a contractual service is required or when the  
 377 | agency is capable of establishing precise specifications  
 378 | defining the actual commodity or group of commodities required.

379 |       1. All invitations to bid must include:

380 |           a. A detailed description of the commodities or  
 381 | contractual services sought; and

382 |           b. If the agency contemplates renewal of the contract, a  
 383 | statement to that effect.

384 |       2. Bids submitted in response to an invitation to bid in  
 385 | which the agency contemplates renewal of the contract must  
 386 | include the price for each year for which the contract may be  
 387 | renewed.

388 |       3. Evaluation of bids shall include consideration of the  
 389 | total cost for each year of the contract, including renewal  
 390 | years, as submitted by the vendor.

391 |       4. The contract shall be awarded to the responsible and  
 392 | responsive vendor that submits the lowest responsive bid.



393 (3) When the purchase price of commodities or contractual  
 394 services exceeds the threshold amount provided in s. 287.017 for  
 395 CATEGORY TWO, no purchase of commodities or contractual services  
 396 may be made without receiving competitive sealed bids,  
 397 competitive sealed proposals, or competitive sealed replies  
 398 unless:

399 (a) The agency head determines in writing that an  
 400 immediate danger to the public health, safety, or welfare or  
 401 other substantial loss to the state requires emergency action.  
 402 After the agency head signs ~~makes such~~ a written determination,  
 403 the agency may proceed with the procurement of commodities or  
 404 contractual services necessitated by the immediate danger,  
 405 without receiving competitive sealed bids, competitive sealed  
 406 proposals, or competitive sealed replies. However, such  
 407 emergency procurement shall be made by obtaining pricing  
 408 information from at least two prospective vendors, which must be  
 409 retained in the contract file, unless the agency determines in  
 410 writing that the time required to obtain pricing information  
 411 will increase the immediate danger to the public health, safety,  
 412 or welfare or other substantial loss to the state. The agency  
 413 shall furnish copies of all written determinations ~~certified~~  
 414 ~~under oath~~ and any other documents relating to the emergency  
 415 action to the department. A copy of the written statement shall  
 416 be furnished to the Chief Financial Officer with the voucher  
 417 authorizing payment. The individual purchase of personal  
 418 clothing, shelter, or supplies which are needed on an emergency  
 419 basis to avoid institutionalization or placement in a more  
 420 restrictive setting is an emergency for the purposes of this

421 paragraph, and the filing with the department of such statement  
 422 is not required in such circumstances. In the case of the  
 423 emergency purchase of insurance, the period of coverage of such  
 424 insurance shall not exceed a period of 30 days, and all such  
 425 emergency purchases shall be reported to the department.

426 (b) The purchase is made by an agency from a state term  
 427 contract procured, pursuant to this section, by the department  
 428 or by an agency, after receiving approval from the department,  
 429 from a contract procured, pursuant to subsection (1), by another  
 430 agency.

431 (c) Commodities or contractual services available only  
 432 from a single source may be excepted from the competitive-  
 433 solicitation requirements. When an agency believes that  
 434 commodities or contractual services are available only from a  
 435 single source, the agency shall electronically post a  
 436 description of the commodities or contractual services sought  
 437 for a period of at least 7 business days. The description must  
 438 include a request that prospective vendors provide information  
 439 regarding their ability to supply the commodities or contractual  
 440 services described. If it is determined in writing by the  
 441 agency, after reviewing any information received from  
 442 prospective vendors, that the commodities or contractual  
 443 services are available only from a single source, the agency  
 444 shall+

445 ~~1.~~ provide notice of its intended decision to enter a  
 446 single-source purchase contract in the manner specified in s.  
 447 120.57(3), ~~if the amount of the contract does not exceed the~~  
 448 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR.~~

449           ~~2. Request approval from the department for the single-~~  
 450 ~~source purchase, if the amount of the contract exceeds the~~  
 451 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR. The~~  
 452 ~~agency shall initiate its request for approval in a form~~  
 453 ~~prescribed by the department, which request may be~~  
 454 ~~electronically transmitted. The failure of the department to~~  
 455 ~~approve or disapprove the agency's request for approval within~~  
 456 ~~21 days after receiving such request shall constitute prior~~  
 457 ~~approval of the department. If the department approves the~~  
 458 ~~agency's request, the agency shall provide notice of its~~  
 459 ~~intended decision to enter a single-source contract in the~~  
 460 ~~manner specified in s. 120.57(3).~~

461           ~~(d) When it is in the best interest of the state, the~~  
 462 ~~secretary of the department or his or her designee may authorize~~  
 463 ~~the Support Program to purchase insurance by negotiation, but~~  
 464 ~~such purchase shall be made only under conditions most favorable~~  
 465 ~~to the public interest.~~

466           (d)(e) Prescriptive assistive devices for the purpose of  
 467 medical, developmental, or vocational rehabilitation of clients  
 468 are excepted from competitive-solicitation requirements and  
 469 shall be procured pursuant to an established fee schedule or by  
 470 any other method which ensures the best price for the state,  
 471 taking into consideration the needs of the client. Prescriptive  
 472 assistive devices include, but are not limited to, prosthetics,  
 473 orthotics, and wheelchairs. For purchases made pursuant to this  
 474 paragraph, state agencies shall annually file with the  
 475 department a description of the purchases and methods of  
 476 procurement.

477        (e)~~(f)~~ The following contractual services and commodities  
 478 are not subject to the competitive-solicitation requirements of  
 479 this section:

480            1. Artistic services. For the purposes of this subsection,  
 481 the term "artistic services" does not include advertising or  
 482 typesetting. As used in this subparagraph, the term  
 483 "advertising" means the making of a representation in any form  
 484 in connection with a trade, business, craft, or profession in  
 485 order to promote the supply of commodities or services by the  
 486 person promoting the commodities or contractual services.

487            2. Academic program reviews if the fee for such services  
 488 does not exceed \$50,000.

489            3. Lectures by individuals.

490            4. Legal services, including attorney, paralegal, expert  
 491 witness, appraisal, or mediator services.

492            5.a. Health services involving examination, diagnosis,  
 493 treatment, prevention, medical consultation, or administration.

494            b. Beginning January 1, 2011, health services, including,  
 495 but not limited to, substance abuse and mental health services,  
 496 involving examination, diagnosis, treatment, prevention, or  
 497 medical consultation, when such services are offered to eligible  
 498 individuals participating in a specific program that qualifies  
 499 multiple providers and uses a standard payment methodology.

500 Reimbursement of administrative costs for providers of services  
 501 purchased in this manner shall also be exempt. For purposes of  
 502 this sub-subparagraph, "providers" means health professionals,  
 503 health facilities, or organizations that deliver or arrange for  
 504 the delivery of health services.

505           6. Services provided to persons with mental or physical  
 506 disabilities by not-for-profit corporations which have obtained  
 507 exemptions under the provisions of s. 501(c)(3) of the United  
 508 States Internal Revenue Code or when such services are governed  
 509 by the provisions of Office of Management and Budget Circular A-  
 510 122. However, in acquiring such services, the agency shall  
 511 consider the ability of the vendor, past performance,  
 512 willingness to meet time requirements, and price.

513           7. Medicaid services delivered to an eligible Medicaid  
 514 recipient unless the agency is directed otherwise in law.

515           8. Family placement services.

516           9. Prevention services related to mental health, including  
 517 drug abuse prevention programs, child abuse prevention programs,  
 518 and shelters for runaways, operated by not-for-profit  
 519 corporations. However, in acquiring such services, the agency  
 520 shall consider the ability of the vendor, past performance,  
 521 willingness to meet time requirements, and price.

522           10. Training and education services provided to injured  
 523 employees pursuant to s. 440.491(6).

524           11. Contracts entered into pursuant to s. 337.11.

525           12. Services or commodities provided by governmental  
 526 entities ~~agencies~~.

527           13. Statewide public service announcement programs  
 528 provided by a Florida statewide nonprofit corporation under s.  
 529 501(c)(6) of the Internal Revenue Code, with a guaranteed  
 530 documented match of at least \$3 to \$1.

531           (g) Continuing education events or programs that are  
 532 offered to the general public and for which fees have been

533 collected that pay all expenses associated with the event or  
 534 program are exempt from requirements for competitive  
 535 solicitation.

536 (10) A contract for commodities or contractual services  
 537 may be awarded without competition if state or federal law  
 538 prescribes with whom the agency must contract or if the rate of  
 539 payment or the recipient of the funds is established during the  
 540 appropriations process.

541 (12) Extension of a contract for commodities or  
 542 contractual services shall be in writing for a period not to  
 543 exceed 6 months and shall be subject to the same terms and  
 544 conditions set forth in the initial contract and any written  
 545 amendments signed by the parties. There shall be only one  
 546 extension of a contract unless the failure to meet the criteria  
 547 set forth in the contract for completion of the contract is due  
 548 to events beyond the control of the contractor.

549 (13) Contracts for commodities or contractual services may  
 550 be renewed for a period that may not exceed 3 years or the term  
 551 of the original contract, whichever period is longer. Renewal of  
 552 a contract for commodities or contractual services shall be in  
 553 writing and shall be subject to the same terms and conditions  
 554 set forth in the initial contract and any written amendments  
 555 signed by the parties. If the commodity or contractual service  
 556 is purchased as a result of the solicitation of bids, proposals,  
 557 or replies, the price of the commodity or contractual service to  
 558 be renewed shall be specified in the bid, proposal, or reply,  
 559 except that an agency may negotiate lower pricing. A renewal  
 560 contract may not include any compensation for costs associated

561 with the renewal. Renewals shall be contingent upon satisfactory  
 562 performance evaluations by the agency and subject to the  
 563 availability of funds. Exceptional purchase contracts pursuant  
 564 to paragraphs (3) (a) and (c) may not be renewed. With the  
 565 exception of subsection (10)~~(12)~~, if a contract amendment  
 566 results in a longer contract term or increased payments, a state  
 567 agency may not renew or amend a contract for the outsourcing of  
 568 a service or activity that has an original term value exceeding  
 569 the sum of \$10 million before submitting a written report  
 570 concerning contract performance to the Governor, the President  
 571 of the Senate, and the Speaker of the House of Representatives  
 572 at least 90 days before execution of the renewal or amendment.

573 (14) For each contractual services contract, the agency  
 574 shall designate an employee to function as contract manager who  
 575 shall be responsible for enforcing performance of the contract  
 576 terms and conditions and serve as a liaison with the contractor.  
 577 Each contract manager who is responsible for contracts in excess  
 578 of the threshold amounts defined in rule by the Department of  
 579 Management Services must complete training in contract  
 580 management jointly conducted or coordinated by the Department of  
 581 Management Services and the Department of Financial Services.  
 582 The department may establish training and certification  
 583 requirements for the contract manager position. The Chief  
 584 Financial Officer shall conduct training for financial and  
 585 performance accountability in contracts and grant management,  
 586 which must be completed by each contract manager in order to  
 587 receive certification as a contract manager. Both the Department  
 588 of Management Services and the Department of Financial Services

589 may recommend to each agency personnel who are appropriate to  
 590 receive the training. ~~amount for CATEGORY TWO must attend~~  
 591 ~~training conducted by the Chief Financial Officer for~~  
 592 ~~accountability in contracts and grant management.~~ The Chief  
 593 Financial Officer shall establish and disseminate uniform  
 594 procedures pursuant to s. 17.03(3) to ensure that contractual  
 595 services have been rendered in accordance with the contract  
 596 terms before the agency processes the invoice for payment. The  
 597 procedures shall include, but need not be limited to, procedures  
 598 for monitoring and documenting contractor performance, reviewing  
 599 and documenting all deliverables for which payment is requested  
 600 by vendors, and providing written certification by contract  
 601 managers of the agency's receipt of goods and services.

602 (16) For a contract in excess of the threshold amount  
 603 provided in s. 287.017 for CATEGORY FOUR, the agency head shall  
 604 appoint:

605 (a) At least three persons to evaluate proposals and  
 606 replies who collectively have experience and knowledge in the  
 607 program areas and service requirements for which commodities or  
 608 contractual services are sought.

609 (b) At least three persons to conduct negotiations during  
 610 a competitive sealed reply procurement who collectively have  
 611 experience and knowledge in negotiating contracts, contract  
 612 procurement, and the program areas and service requirements for  
 613 which commodities or contractual services are sought.

614 (c) When the value of a contract is in excess of \$1  
 615 million in any fiscal year, at least one of the persons  
 616 conducting negotiations must be certified as a contract



617 negotiator based upon rules adopted by the Department of  
 618 Management Services in order to ensure that certified contract  
 619 negotiators are knowledgeable about effective negotiation  
 620 strategies, capable of successfully implementing those  
 621 strategies, and involved appropriately in the procurement  
 622 process. At a minimum, the rules must address the qualifications  
 623 required for certification, the method of certification, and the  
 624 procedure for involving the certified negotiator. If the value  
 625 of a contract is in excess of \$10 million in any fiscal year, at  
 626 least one of the persons conducting negotiations must be a  
 627 Project Management Professional, as certified by the Project  
 628 Management Institute.

629 (22) The department, in consultation with the Chief  
 630 Financial Officer ~~Agency for Enterprise Information Technology~~  
 631 ~~and the Comptroller~~, shall maintain ~~develop~~ a program for online  
 632 procurement of commodities and contractual services. To enable  
 633 the state to promote open competition and to leverage its buying  
 634 power, agencies shall participate in the online procurement  
 635 program, and eligible users may participate in the program. Only  
 636 vendors prequalified as meeting mandatory requirements and  
 637 qualifications criteria may participate in online procurement.

638 (a) The department, in consultation with the agency, may  
 639 contract for equipment and services necessary to develop and  
 640 implement online procurement.

641 (b) The department, in consultation with the agency, shall  
 642 adopt rules, pursuant to ss. 120.536(1) and 120.54, to  
 643 administer the program for online procurement. The rules shall  
 644 include, but not be limited to:

645 1. Determining the requirements and qualification criteria  
646 for prequalifying vendors.

647 2. Establishing the procedures for conducting online  
648 procurement.

649 3. Establishing the criteria for eligible commodities and  
650 contractual services.

651 4. Establishing the procedures for providing access to  
652 online procurement.

653 5. Determining the criteria warranting any exceptions to  
654 participation in the online procurement program.

655 (c) The department may impose and shall collect all fees  
656 for the use of the online procurement systems.

657 1. The fees may be imposed on an individual transaction  
658 basis or as a fixed percentage of the cost savings generated. At  
659 a minimum, the fees must be set in an amount sufficient to cover  
660 the projected costs of the services, including administrative  
661 and project service costs in accordance with the policies of the  
662 department.

663 2. If the department contracts with a provider for online  
664 procurement, the department, pursuant to appropriation, shall  
665 compensate the provider from the fees after the department has  
666 satisfied all ongoing costs. The provider shall report  
667 transaction data to the department each month so that the  
668 department may determine the amount due and payable to the  
669 department from each vendor.

670 3. All fees that are due and payable to the state on a  
671 transactional basis or as a fixed percentage of the cost savings  
672 generated are subject to s. 215.31 and must be remitted within

673 40 days after receipt of payment for which the fees are due. For  
 674 fees that are not remitted within 40 days, the vendor shall pay  
 675 interest at the rate established under s. 55.03(1) on the unpaid  
 676 balance from the expiration of the 40-day period until the fees  
 677 are remitted.

678 4. All fees and surcharges collected under this paragraph  
 679 shall be deposited in the Operating Trust Fund as provided by  
 680 law.

681 Section 8. Paragraph (a) of subsection (3) of section  
 682 287.0571, Florida Statutes, is amended to read:

683 287.0571 Business case to outsource; applicability.-

684 (3) This section does not apply to:

685 (a) A procurement of commodities and contractual services  
 686 listed in s. 287.057(3)(d) and (e) and (21) ~~287.057(3)(e), (f),~~  
 687 ~~and (g) and (21)~~.

688 Section 9. Subsections (1) and (2) of section 287.058,  
 689 Florida Statutes, are amended to read:

690 287.058 Contract document.-

691 (1) Every procurement of contractual services in excess of  
 692 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
 693 except for the providing of health and mental health services or  
 694 drugs in the examination, diagnosis, or treatment of sick or  
 695 injured state employees or the providing of other benefits as  
 696 required by the provisions of chapter 440, shall be evidenced by  
 697 a written agreement embodying all provisions and conditions of  
 698 the procurement of such services, which shall, where applicable,  
 699 include, but not be limited to, a provision:

700 (a) That bills for fees or other compensation for services

701 or expenses be submitted in detail sufficient for a proper  
 702 preaudit and postaudit thereof.

703 (b) That bills for any travel expenses be submitted in  
 704 accordance with s. 112.061. A state agency may establish rates  
 705 lower than the maximum provided in s. 112.061.

706 (c) Allowing unilateral cancellation by the agency for  
 707 refusal by the contractor to allow public access to all  
 708 documents, papers, letters, or other material made or received  
 709 by the contractor in conjunction with the contract, unless the  
 710 records are exempt from s. 24(a) of Art. I of the State  
 711 Constitution and s. 119.07(1).

712 (d) Specifying a scope of work that clearly establishes  
 713 all tasks the contractor is required to perform.

714 (e) Dividing the contract into quantifiable, measurable,  
 715 and verifiable units of deliverables that must be received and  
 716 accepted in writing by the contract manager before payment. Each  
 717 deliverable must be directly related to the scope of work and  
 718 specify a performance measure. As used in this paragraph,  
 719 performance measure means the required minimum acceptable level  
 720 of service to be performed and criteria for evaluating the  
 721 successful completion of each deliverable.

722 (f) Specifying the criteria and the final date by which  
 723 such criteria must be met for completion of the contract.

724 (g) Specifying that the contract may be renewed for a  
 725 period that may not exceed 3 years or the term of the original  
 726 contract, whichever period is longer, specifying the renewal  
 727 price for the contractual service as set forth in the bid,  
 728 proposal, or reply, specifying that costs for the renewal may

729 not be charged, and specifying that renewals shall be contingent  
 730 upon satisfactory performance evaluations by the agency and  
 731 subject to the availability of funds. Exceptional purchase  
 732 contracts pursuant to s. 287.057(3)(a) and (c) may not be  
 733 renewed.

734 (h) Specifying the financial consequences that the agency  
 735 must apply if the contractor fails to perform in accordance with  
 736 the contract.

737 (i) Addressing the property rights of any intellectual  
 738 property related to the contract and the specific rights of the  
 739 state regarding the intellectual property if the contractor  
 740 fails to provide the services or is no longer providing  
 741 services.

742  
 743 In lieu of a written agreement, the agency ~~department~~ may  
 744 authorize the use of a purchase order for classes of contractual  
 745 services, if the provisions of paragraphs (a)-(i) are included  
 746 in the purchase order or solicitation. The purchase order must  
 747 include, but need not be limited to, an adequate description of  
 748 the services, the contract period, and the method of payment. In  
 749 lieu of printing the provisions of paragraphs (a)-(c) and (g)  
 750 ~~(a)-(i)~~ in the contract document or purchase order, agencies may  
 751 incorporate the requirements of paragraphs (a)-(c) and (g) ~~(a)-~~  
 752 ~~(i)~~ by reference.

753 (2) The written agreement shall be signed by the agency  
 754 head or designee and the contractor before ~~prior to~~ the  
 755 rendering of any contractual service the value of which is in  
 756 excess of the threshold amount provided in s. 287.017 for

757 CATEGORY TWO, except in the case of a valid emergency as  
 758 certified by the agency head. The ~~certification~~ written  
 759 statement of an emergency shall be prepared within 30 days after  
 760 the contractor begins rendering the service and shall state the  
 761 particular facts and circumstances which precluded the execution  
 762 of the written agreement before ~~prior to~~ the rendering of the  
 763 service. If the agency fails to have the contract signed by the  
 764 agency head or designee and the contractor before ~~prior to~~  
 765 rendering the contractual service, and if an emergency does not  
 766 exist, the agency head shall, no later than 30 days after the  
 767 contractor begins rendering the service, certify the specific  
 768 conditions and circumstances to the department as well as  
 769 describe actions taken to prevent recurrence of such  
 770 noncompliance. The agency head may delegate the written  
 771 statement ~~certification~~ only to other senior management agency  
 772 personnel. A copy of the written statement ~~certification~~ shall  
 773 be furnished to the Chief Financial Officer with the voucher  
 774 authorizing payment. The department shall report repeated  
 775 instances of noncompliance by an agency to the Auditor General.  
 776 Nothing in this subsection shall be deemed to authorize  
 777 additional compensation prohibited by s. 215.425. The  
 778 procurement of contractual services shall not be divided so as  
 779 to avoid the provisions of this section.

780 Section 10. Section 287.0731, Florida Statutes, is  
 781 repealed.

782 Section 11. Section 287.076, Florida Statutes, is amended  
 783 to read:

784 287.076 Project Management Professionals training for

785 personnel involved in managing outsourcings and negotiations;  
 786 funding.—The Department of Management Services may implement a  
 787 program to train state agency employees who are involved in  
 788 managing outsourcings as Project Management Professionals, as  
 789 certified by the Project Management Institute. Subject to annual  
 790 appropriations, For the 2006-2007 fiscal year, the sum of  
 791 \$500,000 in recurring funds from the General Revenue Fund is  
 792 appropriated to the Department of Management Services to  
 793 implement this program. the Department of Management Services,  
 794 in consultation with entities subject to this act, shall  
 795 identify personnel to participate in this training based on  
 796 requested need and ensure that each agency is represented. The  
 797 Department of Management Services may remit payment for this  
 798 training on behalf of all participating personnel.

799 Section 12. Subsection (7) is added to section 287.09451,  
 800 Florida Statutes, to read:

801 287.09451 Office of Supplier Diversity; powers, duties,  
 802 and functions.—

803 (7) The Office of Supplier Diversity may administratively  
 804 transfer certain operations to a direct-support organization as  
 805 described in this subsection.

806 (a) The department shall establish and govern a direct-  
 807 support organization to assist the department in carrying out  
 808 the duties of the Secretary of Management Services with respect  
 809 to supplier diversity. The purpose of the direct-support  
 810 organization is to raise money; submit requests for and receive  
 811 grants from the Federal Government, the state or its political  
 812 subdivisions, private foundations, and individuals; receive,

813 hold, invest, and administer property; and make expenditures to  
 814 or for the benefit of the mission of the Office of Supplier  
 815 Diversity. Such a direct-support organization is an organization  
 816 that is:

817 1. Incorporated under the provisions of chapter 617 and  
 818 approved by the Department of State as a Florida corporation not  
 819 for profit.

820 2. Organized and operated to receive, hold, invest, and  
 821 administer property and to make expenditures to or for the  
 822 benefit of the department and the Office of Supplier Diversity.

823 3. Approved by the department to be operating for the  
 824 benefit of and in a manner consistent with the goals of the  
 825 department and in the best interests of the state.

826 (b)1. The Secretary of Management Services shall appoint a  
 827 direct-support organization board consisting of 11 members, each  
 828 of whom is or has been actively engaged in minority business  
 829 development as an entrepreneur in private industry, in  
 830 governmental service, or has been recognized for achievement in  
 831 the business or governmental community in the area of economic  
 832 development.

833 2. The board shall be composed of the Secretary of  
 834 Management Services or his or her designee and:

835 a. Six members of the executive committee of the Florida  
 836 Advisory Council on Small and Minority Business Development.

837 b. One member from the board of directors of Enterprise  
 838 Florida, Inc.

839 c. Three at-large members appointed by the Secretary of  
 840 Management Services with input from the Legislature.



841 3. Each member shall serve for a term of 2 years from the  
 842 date of appointment, except that a vacancy shall be filled by  
 843 appointment for the remainder of the unexpired term. Vacancies  
 844 shall be filled by appointment of the Secretary of Management  
 845 Services in the same manner of the original appointment.

846 4. The board shall annually elect a chair and a vice  
 847 chair.

848 5. The board shall adopt internal procedures or bylaws  
 849 necessary for efficient operations.

850 (c) The direct-support organization shall operate under  
 851 written contract with the department. The contract must provide  
 852 for:

853 1. Approval of the articles of incorporation and bylaws of  
 854 the direct-support organization by the department.

855 2. The fiscal year of the direct-support organization,  
 856 which must begin July 1 of each year and end June 30 of the  
 857 following year.

858 3. Submission of an annual budget for approval by the  
 859 department.

860 4. Certification by the department that the direct-support  
 861 organization is complying with the terms of the contract and is  
 862 performing in a manner consistent with the goals and purposes of  
 863 the department. Such certification must be made annually by the  
 864 department's chief procurement officer or his or her designee  
 865 and kept in the contract file.

866 5. The reversion to the department, or the state if the  
 867 department ceases to exist, of moneys and property held in trust  
 868 by the direct-support organization for the benefit of the

869 department if the direct-support organization is no longer  
 870 approved to operate for the department or if the department  
 871 ceases to exist.

872 6. Disclosure to donors within all promotional and  
 873 fundraising publications that it is a private non-profit  
 874 corporation.

875 7. Provision of equal employment opportunities.

876 (d) Funds solicited by the direct-support organization  
 877 shall be held in a separate depository account in the name of  
 878 the direct-support organization and subject to the provisions of  
 879 the contract with the department. Such funds may include lease  
 880 income, admissions income, membership fees, private donations,  
 881 income derived from fundraising activities, and grants applied  
 882 for and received by the direct-support organization.

883 (e) The direct-support organization shall provide for an  
 884 annual financial audit pursuant to s. 215.981. The department  
 885 and the Auditor General shall have access to all records of the  
 886 direct-support organization upon request.

887 (f) The direct-support organization shall comply with all  
 888 applicable laws. The direct-support organization shall be  
 889 responsible for planning, promoting, funding, and conducting  
 890 outreach, education, and advocacy activities commencing on the  
 891 effective date of this section.

892 (g) The department may adopt rules to administer this  
 893 section.

894 Section 13. Subsection (3) of section 16.0155, Florida  
 895 Statutes, is amended to read:

896 16.0155 Contingency fee agreements.—

897 (3) If the Attorney General makes the determination  
 898 described in subsection (2), notwithstanding the exemption  
 899 provided in s. 287.057(3) (e) ~~(f)~~, the Attorney General shall  
 900 request proposals from private attorneys to represent the  
 901 department on a contingency-fee basis, unless the Attorney  
 902 General determines in writing that requesting proposals is not  
 903 feasible under the circumstances. The written determination does  
 904 not constitute a final agency action subject to review pursuant  
 905 to ss. 120.569 and 120.57. For purposes of this subsection only,  
 906 the department is exempt from the requirements of s. 120.57(3),  
 907 and neither the request for proposals nor the contract award is  
 908 subject to challenge pursuant to ss. 120.569 and 120.57.

909 Section 14. Subsection (1) of section 283.33, Florida  
 910 Statutes, is amended to read:

911 283.33 Printing of publications; lowest bidder awards.—

912 (1) Publications may be printed and prepared in-house, by  
 913 another agency or the Legislature, or purchased on bid,  
 914 whichever is more economical and practicable as determined by  
 915 the agency. An agency may contract for binding separately when  
 916 more economical or practicable, whether or not the remainder of  
 917 the printing is done in-house. A vendor may subcontract for  
 918 binding and still be considered a responsible vendor,  
 919 notwithstanding s. 287.012(25) ~~287.012(24)~~.

920 Section 15. Subsection (3) of section 394.457, Florida  
 921 Statutes, is amended to read:

922 394.457 Operation and administration.—

923 (3) POWER TO CONTRACT.—The department may contract to  
 924 provide, and be provided with, services and facilities in order

925 | to carry out its responsibilities under this part with the  
 926 | following agencies: public and private hospitals; receiving and  
 927 | treatment facilities; clinics; laboratories; departments,  
 928 | divisions, and other units of state government; the state  
 929 | colleges and universities; the community colleges; private  
 930 | colleges and universities; counties, municipalities, and any  
 931 | other governmental unit, including facilities of the United  
 932 | States Government; and any other public or private entity which  
 933 | provides or needs facilities or services. Baker Act funds for  
 934 | community inpatient, crisis stabilization, short-term  
 935 | residential treatment, and screening services must be allocated  
 936 | to each county pursuant to the department's funding allocation  
 937 | methodology. Notwithstanding the provisions of s. 287.057(3)(e)  
 938 | ~~287.057(3)(f)~~, contracts for community-based Baker Act services  
 939 | for inpatient, crisis stabilization, short-term residential  
 940 | treatment, and screening provided under this part, other than  
 941 | those with other units of government, to be provided for the  
 942 | department must be awarded using competitive sealed bids when  
 943 | the county commission of the county receiving the services makes  
 944 | a request to the department's district office by January 15 of  
 945 | the contracting year. The district shall not enter into a  
 946 | competitively bid contract under this provision if such action  
 947 | will result in increases of state or local expenditures for  
 948 | Baker Act services within the district. Contracts for these  
 949 | Baker Act services using competitive sealed bids will be  
 950 | effective for 3 years. The department shall adopt rules  
 951 | establishing minimum standards for such contracted services and  
 952 | facilities and shall make periodic audits and inspections to

953 assure that the contracted services are provided and meet the  
 954 standards of the department.

955 Section 16. Paragraph (a) of subsection (2) of section  
 956 402.7305, Florida Statutes, is amended to read:

957 402.7305 Department of Children and Family Services;  
 958 procurement of contractual services; contract management.—

959 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

960 (a) Notwithstanding s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~,  
 961 whenever the department intends to contract with a public  
 962 postsecondary institution to provide a service, the department  
 963 must allow all public postsecondary institutions in this state  
 964 that are accredited by the Southern Association of Colleges and  
 965 Schools to bid on the contract. Thereafter, notwithstanding any  
 966 other provision to the contrary, if a public postsecondary  
 967 institution intends to subcontract for any service awarded in  
 968 the contract, the subcontracted service must be procured by  
 969 competitive procedures.

970 Section 17. Section 409.9132, Florida Statutes, is amended  
 971 to read:

972 409.9132 Pilot project to monitor home health services.—  
 973 The Agency for Health Care Administration shall expand the home  
 974 health agency monitoring pilot project in Miami-Dade County on a  
 975 statewide basis effective July 1, 2012, except in counties in  
 976 which the program will not be cost-effective, as determined by  
 977 the agency. The agency shall contract with a vendor to verify  
 978 the utilization and delivery of home health services and provide  
 979 an electronic billing interface for home health services. The  
 980 contract must require the creation of a program to submit claims

981 electronically for the delivery of home health services. The  
 982 program must verify telephonically visits for the delivery of  
 983 home health services using voice biometrics. The agency may seek  
 984 amendments to the Medicaid state plan and waivers of federal  
 985 laws, as necessary, to implement or expand the pilot project.  
 986 Notwithstanding s. 287.057(3)(e) ~~287.057(3)(f)~~, the agency must  
 987 award the contract through the competitive solicitation process  
 988 and may use the current contract to expand the home health  
 989 agency monitoring pilot project to include additional counties  
 990 as authorized under this section.

991 Section 18. Subsection (3) of section 427.0135, Florida  
 992 Statutes, is amended to read:

993 427.0135 Purchasing agencies; duties and  
 994 responsibilities.—Each purchasing agency, in carrying out the  
 995 policies and procedures of the commission, shall:

996 (3) Not procure transportation disadvantaged services  
 997 without initially negotiating with the commission, as provided  
 998 in s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~, or unless otherwise  
 999 authorized by statute. If the purchasing agency, after  
 1000 consultation with the commission, determines that it cannot  
 1001 reach mutually acceptable contract terms with the commission,  
 1002 the purchasing agency may contract for the same transportation  
 1003 services provided in a more cost-effective manner and of  
 1004 comparable or higher quality and standards. The Medicaid agency  
 1005 shall implement this subsection in a manner consistent with s.  
 1006 409.908(18) and as otherwise limited or directed by the General  
 1007 Appropriations Act.

1008 Section 19. Paragraph (c) of subsection (5) of section

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1009 445.024, Florida Statutes, is amended to read:

1010 445.024 Work requirements.—

1011 (5) USE OF CONTRACTS.—Regional workforce boards shall  
 1012 provide work activities, training, and other services, as  
 1013 appropriate, through contracts. In contracting for work  
 1014 activities, training, or services, the following applies:

1015 (c) Notwithstanding the exemption from the competitive  
 1016 sealed bid requirements provided in s. 287.057(3)(e)  
 1017 ~~287.057(3)(f)~~ for certain contractual services, each contract  
 1018 awarded under this chapter must be awarded on the basis of a  
 1019 competitive sealed bid, except for a contract with a  
 1020 governmental entity as determined by the regional workforce  
 1021 board.

1022 Section 20. Paragraph (c) of subsection (5) of section  
 1023 627.311, Florida Statutes, is amended to read:

1024 627.311 Joint underwriters and joint reinsurers; public  
 1025 records and public meetings exemptions.—

1026 (5)

1027 (c) The operation of the plan shall be governed by a plan  
 1028 of operation that is prepared at the direction of the board of  
 1029 governors and approved by order of the office. The plan is  
 1030 subject to continuous review by the office. The office may, by  
 1031 order, withdraw approval of all or part of a plan if the office  
 1032 determines that conditions have changed since approval was  
 1033 granted and that the purposes of the plan require changes in the  
 1034 plan. The plan of operation shall:

1035 1. Authorize the board to engage in the activities  
 1036 necessary to implement this subsection, including, but not

1037 | limited to, borrowing money.

1038 |         2. Develop criteria for eligibility for coverage by the  
 1039 | plan, including, but not limited to, documented rejection by at  
 1040 | least two insurers which reasonably assures that insureds  
 1041 | covered under the plan are unable to acquire coverage in the  
 1042 | voluntary market.

1043 |         3. Require notice from the agent to the insured at the  
 1044 | time of the application for coverage that the application is for  
 1045 | coverage with the plan and that coverage may be available  
 1046 | through an insurer, group self-insurers' fund, commercial self-  
 1047 | insurance fund, or assessable mutual insurer through another  
 1048 | agent at a lower cost.

1049 |         4. Establish programs to encourage insurers to provide  
 1050 | coverage to applicants of the plan in the voluntary market and  
 1051 | to insureds of the plan, including, but not limited to:

1052 |             a. Establishing procedures for an insurer to use in  
 1053 | notifying the plan of the insurer's desire to provide coverage  
 1054 | to applicants to the plan or existing insureds of the plan and  
 1055 | in describing the types of risks in which the insurer is  
 1056 | interested. The description of the desired risks must be on a  
 1057 | form developed by the plan.

1058 |             b. Developing forms and procedures that provide an insurer  
 1059 | with the information necessary to determine whether the insurer  
 1060 | wants to write particular applicants to the plan or insureds of  
 1061 | the plan.

1062 |             c. Developing procedures for notice to the plan and the  
 1063 | applicant to the plan or insured of the plan that an insurer  
 1064 | will insure the applicant or the insured of the plan, and notice



1065 of the cost of the coverage offered; and developing procedures  
 1066 for the selection of an insuring entity by the applicant or  
 1067 insured of the plan.

1068 d. Provide for a market-assistance plan to assist in the  
 1069 placement of employers. All applications for coverage in the  
 1070 plan received 45 days before the effective date for coverage  
 1071 shall be processed through the market-assistance plan. A market-  
 1072 assistance plan specifically designed to serve the needs of  
 1073 small, good policyholders as defined by the board must be  
 1074 reviewed and updated periodically.

1075 5. Provide for policy and claims services to the insureds  
 1076 of the plan of the nature and quality provided for insureds in  
 1077 the voluntary market.

1078 6. Provide for the review of applications for coverage  
 1079 with the plan for reasonableness and accuracy, using any  
 1080 available historic information regarding the insured.

1081 7. Provide for procedures for auditing insureds of the  
 1082 plan which are based on reasonable business judgment and are  
 1083 designed to maximize the likelihood that the plan will collect  
 1084 the appropriate premiums.

1085 8. Authorize the plan to terminate the coverage of and  
 1086 refuse future coverage for any insured that submits a fraudulent  
 1087 application to the plan or provides fraudulent or grossly  
 1088 erroneous records to the plan or to any service provider of the  
 1089 plan in conjunction with the activities of the plan.

1090 9. Establish service standards for agents who submit  
 1091 business to the plan.

1092 10. Establish criteria and procedures to prohibit any

1093 agent who does not adhere to the established service standards  
 1094 from placing business with the plan or receiving, directly or  
 1095 indirectly, any commissions for business placed with the plan.

1096 11. Provide for the establishment of reasonable safety  
 1097 programs for all insureds in the plan. All insureds of the plan  
 1098 must participate in the safety program.

1099 12. Authorize the plan to terminate the coverage of and  
 1100 refuse future coverage to any insured who fails to pay premiums  
 1101 or surcharges when due; who, at the time of application, is  
 1102 delinquent in payments of workers' compensation or employer's  
 1103 liability insurance premiums or surcharges owed to an insurer,  
 1104 group self-insurers' fund, commercial self-insurance fund, or  
 1105 assessable mutual insurer licensed to write such coverage in  
 1106 this state; or who refuses to substantially comply with any  
 1107 safety programs recommended by the plan.

1108 13. Authorize the board of governors to provide the goods  
 1109 and services required by the plan through staff employed by the  
 1110 plan, through reasonably compensated service providers who  
 1111 contract with the plan to provide services as specified by the  
 1112 board of governors, or through a combination of employees and  
 1113 service providers.

1114 a. Purchases that equal or exceed \$2,500 but are less than  
 1115 or equal to \$25,000, shall be made by receipt of written quotes,  
 1116 telephone quotes, or informal bids, whenever practical. The  
 1117 procurement of goods or services valued over \$25,000 is subject  
 1118 to competitive solicitation, except in situations in which the  
 1119 goods or services are provided by a sole source or are deemed an  
 1120 emergency purchase, or the services are exempted from

1121 competitive-solicitation requirements under s. 287.057(3)(e)  
 1122 ~~287.057(3)(f)~~. Justification for the sole-sourcing or emergency  
 1123 procurement must be documented. Contracts for goods or services  
 1124 valued at or over \$100,000 are subject to board approval.

1125 b. The board shall determine whether it is more cost-  
 1126 effective and in the best interests of the plan to use legal  
 1127 services provided by in-house attorneys employed by the plan  
 1128 rather than contracting with outside counsel. In making such  
 1129 determination, the board shall document its findings and shall  
 1130 consider the expertise needed; whether time commitments exceed  
 1131 in-house staff resources; whether local representation is  
 1132 needed; the travel, lodging, and other costs associated with in-  
 1133 house representation; and such other factors that the board  
 1134 determines are relevant.

1135 14. Provide for service standards for service providers,  
 1136 methods of determining adherence to those service standards,  
 1137 incentives and disincentives for service, and procedures for  
 1138 terminating contracts for service providers that fail to adhere  
 1139 to service standards.

1140 15. Provide procedures for selecting service providers and  
 1141 standards for qualification as a service provider that  
 1142 reasonably assure that any service provider selected will  
 1143 continue to operate as an ongoing concern and is capable of  
 1144 providing the specified services in the manner required.

1145 16. Provide for reasonable accounting and data-reporting  
 1146 practices.

1147 17. Provide for annual review of costs associated with the  
 1148 administration and servicing of the policies issued by the plan

1149 to determine alternatives by which costs can be reduced.

1150 18. Authorize the acquisition of such excess insurance or  
1151 reinsurance as is consistent with the purposes of the plan.

1152 19. Provide for an annual report to the office on a date  
1153 specified by the office and containing such information as the  
1154 office reasonably requires.

1155 20. Establish multiple rating plans for various  
1156 classifications of risk which reflect risk of loss, hazard  
1157 grade, actual losses, size of premium, and compliance with loss  
1158 control. At least one of such plans must be a preferred-rating  
1159 plan to accommodate small-premium policyholders with good  
1160 experience as defined in sub-subparagraph 22.a.

1161 21. Establish agent commission schedules.

1162 22. For employers otherwise eligible for coverage under  
1163 the plan, establish three tiers of employers meeting the  
1164 criteria and subject to the rate limitations specified in this  
1165 subparagraph.

1166 a. Tier One.—

1167 (I) Criteria; rated employers.—An employer that has an  
1168 experience modification rating shall be included in Tier One if  
1169 the employer meets all of the following:

1170 (A) The experience modification is below 1.00.

1171 (B) The employer had no lost-time claims subsequent to the  
1172 applicable experience modification rating period.

1173 (C) The total of the employer's medical-only claims  
1174 subsequent to the applicable experience modification rating  
1175 period did not exceed 20 percent of premium.

1176 (II) Criteria; non-rated employers.—An employer that does

1177 not have an experience modification rating shall be included in  
 1178 Tier One if the employer meets all of the following:

1179 (A) The employer had no lost-time claims for the 3-year  
 1180 period immediately preceding the inception date or renewal date  
 1181 of the employer's coverage under the plan.

1182 (B) The total of the employer's medical-only claims for  
 1183 the 3-year period immediately preceding the inception date or  
 1184 renewal date of the employer's coverage under the plan did not  
 1185 exceed 20 percent of premium.

1186 (C) The employer has secured workers' compensation  
 1187 coverage for the entire 3-year period immediately preceding the  
 1188 inception date or renewal date of the employer's coverage under  
 1189 the plan.

1190 (D) The employer is able to provide the plan with a loss  
 1191 history generated by the employer's prior workers' compensation  
 1192 insurer, except if the employer is not able to produce a loss  
 1193 history due to the insolvency of an insurer, the receiver shall  
 1194 provide to the plan, upon the request of the employer or the  
 1195 employer's agent, a copy of the employer's loss history from the  
 1196 records of the insolvent insurer if the loss history is  
 1197 contained in records of the insurer which are in the possession  
 1198 of the receiver. If the receiver is unable to produce the loss  
 1199 history, the employer may, in lieu of the loss history, submit  
 1200 an affidavit from the employer and the employer's insurance  
 1201 agent setting forth the loss history.

1202 (E) The employer is not a new business.

1203 (III) Premiums.—The premiums for Tier One insureds shall  
 1204 be set at a premium level 25 percent above the comparable

1205 voluntary market premiums until the plan has sufficient  
 1206 experience as determined by the board to establish an  
 1207 actuarially sound rate for Tier One, at which point the board  
 1208 shall, subject to paragraph (e), adjust the rates, if necessary,  
 1209 to produce actuarially sound rates, provided such rate  
 1210 adjustment shall not take effect prior to January 1, 2007.

1211 b. Tier Two.—

1212 (I) Criteria; rated employers.—An employer that has an  
 1213 experience modification rating shall be included in Tier Two if  
 1214 the employer meets all of the following:

1215 (A) The experience modification is equal to or greater  
 1216 than 1.00 but not greater than 1.10.

1217 (B) The employer had no lost-time claims subsequent to the  
 1218 applicable experience modification rating period.

1219 (C) The total of the employer's medical-only claims  
 1220 subsequent to the applicable experience modification rating  
 1221 period did not exceed 20 percent of premium.

1222 (II) Criteria; non-rated employers.—An employer that does  
 1223 not have any experience modification rating shall be included in  
 1224 Tier Two if the employer is a new business. An employer shall be  
 1225 included in Tier Two if the employer has less than 3 years of  
 1226 loss experience in the 3-year period immediately preceding the  
 1227 inception date or renewal date of the employer's coverage under  
 1228 the plan and the employer meets all of the following:

1229 (A) The employer had no lost-time claims for the 3-year  
 1230 period immediately preceding the inception date or renewal date  
 1231 of the employer's coverage under the plan.

1232 (B) The total of the employer's medical-only claims for

1233 the 3-year period immediately preceding the inception date or  
 1234 renewal date of the employer's coverage under the plan did not  
 1235 exceed 20 percent of premium.

1236 (C) The employer is able to provide the plan with a loss  
 1237 history generated by the workers' compensation insurer that  
 1238 provided coverage for the portion or portions of such period  
 1239 during which the employer had secured workers' compensation  
 1240 coverage, except if the employer is not able to produce a loss  
 1241 history due to the insolvency of an insurer, the receiver shall  
 1242 provide to the plan, upon the request of the employer or the  
 1243 employer's agent, a copy of the employer's loss history from the  
 1244 records of the insolvent insurer if the loss history is  
 1245 contained in records of the insurer which are in the possession  
 1246 of the receiver. If the receiver is unable to produce the loss  
 1247 history, the employer may, in lieu of the loss history, submit  
 1248 an affidavit from the employer and the employer's insurance  
 1249 agent setting forth the loss history.

1250 (III) Premiums.—The premiums for Tier Two insureds shall  
 1251 be set at a rate level 50 percent above the comparable voluntary  
 1252 market premiums until the plan has sufficient experience as  
 1253 determined by the board to establish an actuarially sound rate  
 1254 for Tier Two, at which point the board shall, subject to  
 1255 paragraph (e), adjust the rates, if necessary, to produce  
 1256 actuarially sound rates, provided such rate adjustment shall not  
 1257 take effect prior to January 1, 2007.

1258 c. Tier Three.—

1259 (I) Eligibility.—An employer shall be included in Tier  
 1260 Three if the employer does not meet the criteria for Tier One or

1261 Tier Two.

1262 (II) Rates.—The board shall establish, subject to  
 1263 paragraph (e), and the plan shall charge, actuarially sound  
 1264 rates for Tier Three insureds.

1265 23. For Tier One or Tier Two employers which employ no  
 1266 nonexempt employees or which report payroll which is less than  
 1267 the minimum wage hourly rate for one full-time employee for 1  
 1268 year at 40 hours per week, the plan shall establish actuarially  
 1269 sound premiums, provided, however, that the premiums may not  
 1270 exceed \$2,500. These premiums shall be in addition to the fee  
 1271 specified in subparagraph 26. When the plan establishes  
 1272 actuarially sound rates for all employers in Tier One and Tier  
 1273 Two, the premiums for employers referred to in this paragraph  
 1274 are no longer subject to the \$2,500 cap.

1275 24. Provide for a depopulation program to reduce the  
 1276 number of insureds in the plan. If an employer insured through  
 1277 the plan is offered coverage from a voluntary market carrier:

- 1278 a. During the first 30 days of coverage under the plan;
- 1279 b. Before a policy is issued under the plan;
- 1280 c. By issuance of a policy upon expiration or cancellation  
 1281 of the policy under the plan; or
- 1282 d. By assumption of the plan's obligation with respect to  
 1283 an in-force policy,

1284  
 1285 that employer is no longer eligible for coverage through the  
 1286 plan. The premium for risks assumed by the voluntary market  
 1287 carrier must be no greater than the premium the insured would  
 1288 have paid under the plan, and shall be adjusted upon renewal to



1289 reflect changes in the plan rates and the tier for which the  
 1290 insured would qualify as of the time of renewal. The insured may  
 1291 be charged such premiums only for the first 3 years of coverage  
 1292 in the voluntary market. A premium under this subparagraph is  
 1293 deemed approved and is not an excess premium for purposes of s.  
 1294 627.171.

1295         25. Require that policies issued and applications must  
 1296 include a notice that the policy could be replaced by a policy  
 1297 issued from a voluntary market carrier and that, if an offer of  
 1298 coverage is obtained from a voluntary market carrier, the  
 1299 policyholder is no longer eligible for coverage through the  
 1300 plan. The notice must also specify that acceptance of coverage  
 1301 under the plan creates a conclusive presumption that the  
 1302 applicant or policyholder is aware of this potential.

1303         26. Require that each application for coverage and each  
 1304 renewal premium be accompanied by a nonrefundable fee of \$475 to  
 1305 cover costs of administration and fraud prevention. The board  
 1306 may, with the prior approval of the office, increase the amount  
 1307 of the fee pursuant to a rate filing to reflect increased costs  
 1308 of administration and fraud prevention. The fee is not subject  
 1309 to commission and is fully earned upon commencement of coverage.

1310         Section 21. Paragraph (e) of subsection (6) of section  
 1311 627.351, Florida Statutes, is amended to read:

1312             627.351 Insurance risk apportionment plans.—

1313             (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1314             (e) Purchases that equal or exceed \$2,500, but are less  
 1315 than \$25,000, shall be made by receipt of written quotes,  
 1316 written record of telephone quotes, or informal bids, whenever

1317 practical. The procurement of goods or services valued at or  
 1318 over \$25,000 shall be subject to competitive solicitation,  
 1319 except in situations where the goods or services are provided by  
 1320 a sole source or are deemed an emergency purchase; the services  
 1321 are exempted from competitive solicitation requirements under s.  
 1322 287.057(3)(e) ~~287.057(3)(f)~~; or the procurement of services is  
 1323 subject to s. 627.3513. Justification for the sole-sourcing or  
 1324 emergency procurement must be documented. Contracts for goods or  
 1325 services valued at or over \$100,000 are subject to approval by  
 1326 the board.

1327 Section 22. Subsection (2) of section 765.5155, Florida  
 1328 Statutes, is amended to read:

1329 765.5155 Donor registry; education program.—

1330 (2) The agency and the department shall jointly contract  
 1331 for the operation of a donor registry and education program. The  
 1332 contractor shall be procured by competitive solicitation  
 1333 pursuant to chapter 287, notwithstanding any exemption in s.  
 1334 287.057(3)(e) ~~287.057(3)(f)~~. When awarding the contract,  
 1335 priority shall be given to existing nonprofit groups that are  
 1336 based within the state, have expertise working with procurement  
 1337 organizations, have expertise in conducting statewide organ and  
 1338 tissue donor public education campaigns, and represent the needs  
 1339 of the organ and tissue donation community in the state.

1340 Section 23. Subsection (10) of section 893.055, Florida  
 1341 Statutes, is amended to read:

1342 893.055 Prescription drug monitoring program.—

1343 (10) All costs incurred by the department in administering  
 1344 the prescription drug monitoring program shall be funded through

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2013

1345 federal grants or private funding applied for or received by the  
 1346 state. The department may not commit funds for the monitoring  
 1347 program without ensuring funding is available. The prescription  
 1348 drug monitoring program and the implementation thereof are  
 1349 contingent upon receipt of the nonstate funding. The department  
 1350 and state government shall cooperate with the direct-support  
 1351 organization established pursuant to subsection (11) in seeking  
 1352 federal grant funds, other nonstate grant funds, gifts,  
 1353 donations, or other private moneys for the department so long as  
 1354 the costs of doing so are not considered material. Nonmaterial  
 1355 costs for this purpose include, but are not limited to, the  
 1356 costs of mailing and personnel assigned to research or apply for  
 1357 a grant. Notwithstanding the exemptions to competitive-  
 1358 solicitation requirements under s. 287.057(3)(e) ~~287.057(3)(f)~~,  
 1359 the department shall comply with the competitive-solicitation  
 1360 requirements under s. 287.057 for the procurement of any goods  
 1361 or services required by this section. Funds provided, directly  
 1362 or indirectly, by prescription drug manufacturers may not be  
 1363 used to implement the program.

1364 Section 24. This act shall take effect July 1, 2013.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee  
 3 Representative Albritton offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Section 215.971, Florida Statutes, is amended  
 8 to read:

9 215.971 Agreements funded with federal and state  
 10 assistance.—

11 (1) For an agency agreement that provides state financial  
 12 assistance to a recipient or subrecipient, as those terms are  
 13 defined in s. 215.97, or that provides federal financial  
 14 assistance to a subrecipient, as defined by applicable United  
 15 States Office of Management and Budget circulars, the agreement  
 16 must shall include the following:

17 (a) (1) A provision specifying a scope of work that clearly  
 18 establishes the tasks that the recipient or subrecipient is  
 19 required to perform. ~~and~~



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20 (b) (2) A provision dividing the agreement into  
21 quantifiable units of deliverables that must be received and  
22 accepted in writing by the agency before payment. Each  
23 deliverable must be directly related to the scope of work and  
24 ~~must~~ specify the required minimum level of service to be  
25 performed and the criteria for evaluating the successful  
26 completion of each deliverable.

27 (c) A provision specifying the financial consequences that  
28 apply if the recipient or subrecipient fails to perform the  
29 minimum level of service required by the agreement. The  
30 provision can be excluded from the agreement only if financial  
31 consequences are prohibited by the federal agency awarding the  
32 grant. Funds refunded to a state agency from a recipient or  
33 subrecipient for failure to perform as required under the  
34 agreement may be expended only in direct support of the program  
35 from which the agreement originated.

36 (d) A provision specifying that a recipient or  
37 subrecipient of federal or state financial assistance may expend  
38 funds only for allowable costs resulting from obligations  
39 incurred during the specified agreement period.

40 (e) A provision specifying that any balance of unobligated  
41 funds which has been advanced or paid must be refunded to the  
42 state agency.

43 (f) A provision specifying that any funds paid in excess  
44 of the amount to which the recipient or subrecipient is entitled  
45 under the terms and conditions of the agreement must be refunded  
46 to the state agency.



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47 (g) Any additional information required pursuant to s.  
48 215.97.

49 (2) For each agreement funded with federal or state  
50 financial assistance, the state agency shall designate an  
51 employee to function as a grant manager who shall be responsible  
52 for enforcing performance of the agreement's terms and  
53 conditions and who shall serve as a liaison with the recipient  
54 or subrecipient.

55 (a) Each grant manager who is responsible for agreements  
56 in excess of the threshold amount for CATEGORY TWO under s.  
57 287.017 must complete the training and become a certified  
58 contract manager as provided under s. 287.057(14).

59 (b) The Chief Financial Officer shall establish and  
60 disseminate uniform procedures for grant management pursuant to  
61 s. 17.03(3) to ensure that services have been rendered in  
62 accordance with agreement terms before the agency processes an  
63 invoice for payment. The procedures must include, but need not  
64 be limited to, procedures for monitoring and documenting  
65 recipient or subrecipient performance, reviewing and documenting  
66 all deliverables for which payment is requested by the recipient  
67 or subrecipient, and providing written certification by the  
68 grant manager of the agency's receipt of goods and services.

69 (c) The grant manager shall reconcile and verify all funds  
70 received against all funds expended during the grant agreement  
71 period and produce a final reconciliation report. The final  
72 report must identify any funds paid in excess of the  
73 expenditures incurred by the recipient or subrecipient.



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74       (3) After the execution of a grant agreement, the Chief  
75 Financial Officer shall perform audits of the executed state and  
76 federal grant agreement documents and grant manager's records in  
77 order to ensure that adequate internal controls are in place for  
78 complying with the terms and conditions of such agreements and  
79 for validation and receipt of goods and services.

80       (a) At the conclusion of the audit, the Chief Financial  
81 Officer's designee shall discuss the audit and potential  
82 findings with the official whose office is subject to audit. The  
83 final audit report shall be submitted to the agency head.

84       (b) Within 30 days after the receipt of the final audit  
85 report, the agency head shall submit to the Chief Financial  
86 Officer or designee, his or her written statement of explanation  
87 or rebuttal concerning findings requiring corrective action,  
88 including corrective action to be taken to preclude a  
89 recurrence.

90       Section 2. Subsection (16) of section 215.985, Florida  
91 Statutes, is amended to read:

92       215.985 Transparency in government spending.—

93       (16) The Chief Financial Officer shall establish and  
94 maintain a secure, contract tracking ~~provide public access to a~~  
95 ~~state contract management~~ system available for viewing and  
96 downloading by the public through a secure website. The Chief  
97 Financial Officer shall use appropriate Internet security  
98 measures to ensure that no person has the ability to alter or  
99 modify records available on the website ~~that provides~~  
100 ~~information and documentation relating to contracts procured by~~  
101 ~~governmental entities.~~



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102 (a) Within 30 calendar days after executing a contract,  
103 each state agency must post the following information relating  
104 to that contract on the contract tracking system: ~~The data~~  
105 ~~collected in the system must include, but need not be limited~~  
106 ~~to, the contracting agency; the procurement method; the contract~~  
107 ~~beginning and ending dates; the type of commodity or service;~~  
108 ~~the purpose of the commodity or service; the compensation to be~~  
109 ~~paid; compliance information, such as performance metrics for~~  
110 ~~the service or commodity; contract violations; the number of~~  
111 ~~extensions or renewals; and the statutory authority for~~  
112 ~~providing the service.~~

113 1. The names of the contracting entities;

114 2. The procurement method;

115 3. The contract beginning and ending dates;

116 4. The nature or type of the commodities or services  
117 purchased;

118 5. Applicable contract unit prices and deliverables;

119 6. Total compensation to be paid or received under the  
120 contract;

121 7. All payments made to the contractor to date;

122 8. Applicable contract performance measures; and

123 9. Electronic copies of the contract that have been  
124 redacted to exclude confidential or exempt information.

125 (b) Within 30 days after an amendment ~~a major change~~ to an  
126 existing contract, ~~or the execution of a new contract,~~ agency  
127 ~~procurement staff~~ of the state agency that is a party to the  
128 contract must ~~affected state governmental entity shall~~ update  
129 the ~~necessary~~ information described in paragraph (a) in the





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130 ~~state contract tracking management~~ system. An amendment A major  
131 ~~change~~ to a contract includes, but is not limited to, a renewal,  
132 termination, or extension of the contract or any modification an  
133 ~~amendment~~ to the terms of the contract.

134 (c) No later than January 1, 2014, each state agency must  
135 post to the contract tracking system the information required in  
136 paragraph (a) for each existing contract that was executed more  
137 than 30 calendar days prior to July 1, 2013.

138 (d)1. Records made available on the contract tracking  
139 system may not reveal information made confidential or exempt by  
140 law.

141 2. Each state agency that is a party to a contract must  
142 redact any confidential or exempt information from the contract  
143 before posting an electronic copy on the contract tracking  
144 system. If a state agency that is a party to the contract  
145 becomes aware that an electronic copy of a contract has been  
146 posted that has not been properly redacted, such state agency  
147 must immediately notify the Chief Financial Officer and must  
148 immediately remove the contract from the contract tracking  
149 system. Within seven business days, the state agency must post a  
150 properly redacted copy of the contract on the contract tracking  
151 system.

152 3.a. If a party to a contract, or an authorized  
153 representative thereof, discovers that an electronic copy of a  
154 contract has been posted to the contract tracking system that  
155 has not been properly redacted, the party or representative may  
156 request the state agency that is a party to the contract to  
157 redact the confidential or exempt information. Upon receipt of



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158 the request, such state agency shall redact the confidential or  
159 exempt information.

160 b. A request to redact confidential or exempt information  
161 must be made in writing and delivered by mail, facsimile, or  
162 electronic transmission, or in person to the state agency that  
163 is a party to the contract. The request must identify the  
164 specific document, the page numbers that include the  
165 confidential or exempt information, the information that is  
166 confidential or exempt, and the applicable statutory exemption.  
167 A fee may not be charged for a redaction made pursuant to such  
168 request.

169 4. The contract tracking system must display a notice of  
170 the right of an affected party to request redaction of  
171 confidential or exempt information contained on the system.

172 5.a. The Chief Financial Officer, the Department of  
173 Financial Services, or any officer, employee, or contractor  
174 thereof, is not responsible for redacting confidential or exempt  
175 information from an electronic copy of a contract posted by  
176 another state agency on the system.

177 b. The Chief Financial Officer, the Department of  
178 Financial Services, or any officer, employee, or contractor  
179 thereof, is not liable for the failure of a state agency to  
180 redact the confidential or exempt information.

181 (e)1. The posting of information on the contract tracking  
182 system or the provision of contract information on a website for  
183 public viewing and downloading does not supersede the duty of a  
184 state agency to respond to a public record request for such  
185 information or to a subpoena for such information.



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186        2. A request for a copy of a contract or certified copy of  
187 a contract shall be made to the state agency that is party to  
188 the contract. Such request may not be made to the Chief  
189 Financial Officer or the Department of Financial Services or any  
190 officer, employee, or contractor thereof, unless the Chief  
191 Financial Officer or the department is a party to the contract.

192        3. A subpoena for a copy of a contract or certified copy  
193 of a contract must be served on the state agency that is a party  
194 to the contract and that maintains the original documents. The  
195 Chief Financial Officer or the Department of Financial Services  
196 or any officer, employee, or contractor thereof may not be  
197 served a subpoena for those records unless the Chief Financial  
198 Officer or the department is a party to the contract.

199        (f) The Chief Financial Officer may adopt rules to  
200 administer this subsection.

201        (g) For purposes of this subsection, the term "state  
202 agency" means a state agency as defined in s. 216.011, excluding  
203 the judicial branch, the Department of Legal Affairs, the  
204 Department of Agriculture and Consumer Services, and the  
205 Department of Financial Services. However, the judicial branch,  
206 the Department of Legal Affairs, the Department of Agriculture  
207 and Consumer Services, and the Department of Financial Services  
208 may elect to comply with the provisions of this subsection in  
209 whole or in part.

210        Section 3. Chapter 287, Florida Statutes, is renamed as  
211 "Procurement of Commodities and Contractual Services."

212        Section 4. Subsections (4), (5), (10), and (13) through  
213 (28) of section 287.012, Florida Statutes, are amended to read:



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214 287.012 Definitions.—As used in this part, the term:

215 (4) "Best value" means the highest overall value to the  
216 state based on ~~objective~~ factors that include, but are not  
217 limited to, price, quality, design, and workmanship.

218 (5) "Commodity" means any of the various supplies,  
219 materials, goods, merchandise, food, equipment, information  
220 technology, and other personal property, including a mobile  
221 home, trailer, or other portable structure with floor space of  
222 less than 5,000 square feet, purchased, leased, or otherwise  
223 contracted for by the state and its agencies. "Commodity" also  
224 includes interest on deferred-payment commodity contracts  
225 approved pursuant to s. 287.063 entered into by an agency for  
226 the purchase of other commodities. However, commodities  
227 purchased for resale are excluded from this definition. Printing  
228 of publications shall be considered a commodity when procured  
229 ~~let upon contract~~ pursuant to s. 283.33, whether purchased for  
230 resale or not.

231 (10) "Electronic posting" or "electronically post" means  
232 the noticing of solicitations, agency decisions or intended  
233 decisions, or other matters relating to procurement, on a  
234 centralized Internet website designated by the department for  
235 this purpose, in the manner and form required by s.

236 120.57(3)(a).

237 (13) "Extension" means an increase in the time allowed for  
238 the contract period ~~due to circumstances which, without fault of~~  
239 ~~either party, make performance impracticable or impossible, or~~  
240 ~~which prevent a new contract from being executed, with or~~  
241 ~~without a proportional increase in the total dollar amount, with~~



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242 ~~any increase to be based on the method and rate previously~~  
243 ~~established in the contract.~~

244 (14) "Governmental entity" means a political subdivision  
245 or agency of this state or of any state of the United States,  
246 including, but not limited to, state government, county, city,  
247 school district, nonprofit public university or college, single-  
248 purpose or multipurpose special district, single-purpose or  
249 multipurpose public authority, metropolitan or consolidated  
250 government, separate legal entity or administrative entity, or  
251 any agency of the Federal Government.

252 (15)~~(14)~~ "Information technology" has the meaning ascribed  
253 in s. 282.0041.

254 (16)~~(15)~~ "Invitation to bid" means a written or  
255 electronically posted solicitation for competitive sealed bids.

256 (17)~~(16)~~ "Invitation to negotiate" means a written or  
257 electronically posted solicitation for competitive sealed  
258 replies to select one or more vendors with which to commence  
259 negotiations for the procurement of commodities or contractual  
260 services.

261 (18)~~(17)~~ "Minority business enterprise" has the meaning  
262 ascribed in s. 288.703.

263 (19)~~(18)~~ "Office" means the Office of Supplier Diversity  
264 of the Department of Management Services.

265 (20)~~(19)~~ "Outsource" means the process of contracting with  
266 a vendor to provide a service as defined in s. 216.011(1)(f), in  
267 whole or in part, or an activity as defined in s.  
268 216.011(1)(rr), while a state agency retains the responsibility  
269 and accountability for the service or activity and there is a



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270 transfer of management responsibility for the delivery of  
271 resources and the performance of those resources.

272 ~~(21)~~~~(20)~~ "Renewal" means contracting with the same  
273 contractor for an additional contract period after the initial  
274 contract period, only if pursuant to contract terms specifically  
275 providing for such renewal.

276 ~~(22)~~~~(21)~~ "Request for information" means a written or  
277 electronically posted request made by an agency to vendors for  
278 information concerning commodities or contractual services.  
279 Responses to these requests are not offers and may not be  
280 accepted by the agency to form a binding contract.

281 ~~(23)~~~~(22)~~ "Request for proposals" means a written or  
282 electronically posted solicitation for competitive sealed  
283 proposals.

284 ~~(24)~~~~(23)~~ "Request for a quote" means an electronic, oral  
285 or written request for written pricing or services information  
286 from a state term contract vendor for commodities or contractual  
287 services available on a state term contract from that vendor.

288 ~~(25)~~~~(24)~~ "Responsible vendor" means a vendor who has the  
289 capability in all respects to fully perform the contract  
290 requirements and the integrity and reliability that will assure  
291 good faith performance.

292 ~~(26)~~~~(25)~~ "Responsive bid," "responsive proposal," or  
293 "responsive reply" means a bid, or proposal, or reply submitted  
294 by a responsive and responsible vendor that conforms in all  
295 material respects to the solicitation.



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296        ~~(27)~~~~(26)~~ "Responsive vendor" means a vendor that has  
297 submitted a bid, proposal, or reply that conforms in all  
298 material respects to the solicitation.

299        ~~(28)~~~~(27)~~ "State term contract" means a term contract that  
300 is competitively procured by the department pursuant to s.  
301 287.057 and that is used by agencies and eligible users pursuant  
302 to s. 287.056.

303        ~~(29)~~~~(28)~~ "Term contract" means an indefinite quantity  
304 contract to furnish commodities or contractual services during a  
305 defined period.

306        Section 5. Paragraph (b) of subsection (2), and  
307 subsections (8) and (15) of section 287.042, Florida Statutes,  
308 are amended to read:

309        287.042 Powers, duties, and functions.—The department  
310 shall have the following powers, duties, and functions:

311        (2)

312        (b) As an alternative to any provision in s. 120.57(3)(c),  
313 the department may proceed with the competitive solicitation or  
314 contract award process of a term contract in the following  
315 circumstances:

316        1. When the Secretary of Management Services ~~the~~  
317 ~~department~~ or his or her designee sets forth in writing  
318 particular facts and circumstances that ~~which~~ demonstrate that  
319 the delay incident to staying the solicitation or contract award  
320 process would be detrimental to the interests of the state.  
321 After the award of a contract resulting from a competitive  
322 solicitation in which a timely protest was received and in which



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323 the state did not prevail, the contract may be canceled and  
324 reawarded.

325 2. When a vendor protests a notice of intent to award a  
326 contract to multiple vendors, the intended award may proceed  
327 unless the protesting vendor submits to the department in  
328 writing particular facts and circumstances that demonstrate a  
329 reasonable basis for protesting the award to the other vendor or  
330 vendors. The Secretary of Management Services or his or her  
331 designee shall determine in writing whether the vendor has  
332 demonstrated a sufficient basis for stay of the intended award.  
333 If the vendor prevails in the protest, the vendor shall be added  
334 to the contract with the same terms and conditions as the other  
335 awarded vendors.

336 (8) To provide any commodity and contractual service  
337 purchasing rules to the Chief Financial Officer and all agencies  
338 electronically or through an electronic medium or other means.  
339 Agencies may not approve any account or request any payment of  
340 any account for the purchase of any commodity or the procurement  
341 of any contractual service covered by a purchasing or  
342 contractual service rule except as authorized therein. The  
343 department shall furnish copies of rules adopted by the  
344 department to any county, municipality, or other local public  
345 agency requesting them.

346 (15) To lead or enter into joint agreements with  
347 governmental entities agencies, as defined in s. 163.3164, for  
348 the purpose of pooling funds for the purchase of commodities or  
349 contractual services information technology that can be used by  
350 multiple agencies.





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351 (a) Each agency that has been appropriated or has existing  
352 funds for such purchase, shall, upon contract award by the  
353 department, transfer their portion of the funds into the  
354 department's Operating Trust Fund for payment by the department.  
355 The funds shall be transferred by the Executive Office of the  
356 Governor pursuant to the agency budget amendment request  
357 provisions in chapter 216.

358 (b) Agencies that sign the joint agreements are  
359 financially obligated for their portion of the agreed-upon  
360 funds. If an agency becomes more than 90 days delinquent in  
361 paying the funds, the department shall certify to the Chief  
362 Financial Officer the amount due, and the Chief Financial  
363 Officer shall transfer the amount due to the Operating Trust  
364 Fund of the department from any of the agency's available funds.  
365 The Chief Financial Officer shall report these transfers and the  
366 reasons for the transfers to the Executive Office of the  
367 Governor and the legislative appropriations committees.

368 Section 6. Subsection (1) of section 287.056, Florida  
369 Statutes, is amended to read:

370 287.056 Purchases from purchasing agreements and state  
371 term contracts.—

372 (1) Agencies shall, and eligible users may, purchase  
373 commodities and contractual services from purchasing agreements  
374 established and state term contracts procured, pursuant to s.  
375 287.057, by the department. ~~Each agency agreement made under~~  
376 ~~this subsection shall include:~~



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377 ~~(a) A provision specifying a scope of work that clearly~~  
378 ~~establishes all tasks that the contractor is required to~~  
379 ~~perform.~~

380 ~~(b) A provision dividing the contract into quantifiable,~~  
381 ~~measurable, and verifiable units of deliverables that must be~~  
382 ~~received and accepted in writing by the contract manager before~~  
383 ~~payment. Each deliverable must be directly related to the scope~~  
384 ~~of work and specify the required minimum level of service to be~~  
385 ~~performed and the criteria for evaluating the successful~~  
386 ~~completion of each deliverable.~~

387 Section 7. Paragraph (a) of subsection (1) and subsections  
388 (3), (10), (12), (13), (14), (16), and (22) of section 287.057,  
389 Florida Statutes, are amended to read:

390 287.057 Procurement of commodities or contractual  
391 services.-

392 (1) The competitive solicitation processes authorized in  
393 this section shall be used for procurement of commodities or  
394 contractual services in excess of the threshold amount provided  
395 for CATEGORY TWO in s. 287.017. Any competitive solicitation  
396 shall be made available simultaneously to all vendors, must  
397 include the time and date for the receipt of bids, proposals, or  
398 replies and of the public opening, and must include all  
399 contractual terms and conditions applicable to the procurement,  
400 including the criteria to be used in determining acceptability  
401 and relative merit of the bid, proposal, or reply.

402 (a) Invitation to bid.-The invitation to bid shall be used  
403 when the agency is capable of specifically defining the scope of  
404 work for which a contractual service is required or when the



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405 agency is capable of establishing precise specifications  
406 defining the actual commodity or group of commodities required.

407 1. All invitations to bid must include:

408 a. A detailed description of the commodities or  
409 contractual services sought; and

410 b. If the agency contemplates renewal of the contract, a  
411 statement to that effect.

412 2. Bids submitted in response to an invitation to bid in  
413 which the agency contemplates renewal of the contract must  
414 include the price for each year for which the contract may be  
415 renewed.

416 3. Evaluation of bids shall include consideration of the  
417 total cost for each year of the contract, including renewal  
418 years, as submitted by the vendor.

419 4. The contract shall be awarded to the responsible and  
420 responsive vendor that submits the lowest responsive bid.

421 (3) When the purchase price of commodities or contractual  
422 services exceeds the threshold amount provided in s. 287.017 for  
423 CATEGORY TWO, no purchase of commodities or contractual services  
424 may be made without receiving competitive sealed bids,  
425 competitive sealed proposals, or competitive sealed replies  
426 unless:

427 (a) The agency head determines in writing that an  
428 immediate danger to the public health, safety, or welfare or  
429 other substantial loss to the state requires emergency action.  
430 After the agency head signs ~~makes such~~ a written determination,  
431 the agency may proceed with the procurement of commodities or  
432 contractual services necessitated by the immediate danger,



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433 without receiving competitive sealed bids, competitive sealed  
434 proposals, or competitive sealed replies. However, such  
435 emergency procurement shall be made by obtaining pricing  
436 information from at least two prospective vendors, which must be  
437 retained in the contract file, unless the agency determines in  
438 writing that the time required to obtain pricing information  
439 will increase the immediate danger to the public health, safety,  
440 or welfare or other substantial loss to the state. The agency  
441 shall furnish copies of all written determinations ~~certified~~  
442 ~~under oath~~ and any other documents relating to the emergency  
443 action to the department. A copy of the written statement shall  
444 be furnished to the Chief Financial Officer with the voucher  
445 authorizing payment. The individual purchase of personal  
446 clothing, shelter, or supplies which are needed on an emergency  
447 basis to avoid institutionalization or placement in a more  
448 restrictive setting is an emergency for the purposes of this  
449 paragraph, and the filing with the department of such statement  
450 is not required in such circumstances. In the case of the  
451 emergency purchase of insurance, the period of coverage of such  
452 insurance shall not exceed a period of 30 days, and all such  
453 emergency purchases shall be reported to the department.

454 (b) The purchase is made by an agency from a state term  
455 contract procured, pursuant to this section, by the department  
456 or by an agency, after receiving approval from the department,  
457 from a contract procured, pursuant to subsection (1), by another  
458 agency.

459 (c) Commodities or contractual services available only  
460 from a single source may be excepted from the competitive-



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461 solicitation requirements. When an agency believes that  
462 commodities or contractual services are available only from a  
463 single source, the agency shall electronically post a  
464 description of the commodities or contractual services sought  
465 for a period of at least 7 business days. The description must  
466 include a request that prospective vendors provide information  
467 regarding their ability to supply the commodities or contractual  
468 services described. If it is determined in writing by the  
469 agency, after reviewing any information received from  
470 prospective vendors, that the commodities or contractual  
471 services are available only from a single source, the agency  
472 shall:

473 1. provide notice of its intended decision to enter a  
474 single-source purchase contract in the manner specified in s.  
475 120.57(3), ~~if the amount of the contract does not exceed the~~  
476 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR.~~

477 2. ~~Request approval from the department for the single-~~  
478 ~~source purchase, if the amount of the contract exceeds the~~  
479 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR. The~~  
480 ~~agency shall initiate its request for approval in a form~~  
481 ~~prescribed by the department, which request may be~~  
482 ~~electronically transmitted. The failure of the department to~~  
483 ~~approve or disapprove the agency's request for approval within~~  
484 ~~21 days after receiving such request shall constitute prior~~  
485 ~~approval of the department. If the department approves the~~  
486 ~~agency's request, the agency shall provide notice of its~~  
487 ~~intended decision to enter a single-source contract in the~~  
488 ~~manner specified in s. 120.57(3).~~



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489 ~~(d) When it is in the best interest of the state, the~~  
490 ~~secretary of the department or his or her designee may authorize~~  
491 ~~the Support Program to purchase insurance by negotiation, but~~  
492 ~~such purchase shall be made only under conditions most favorable~~  
493 ~~to the public interest.~~

494 (d)~~(e)~~ Prescriptive assistive devices for the purpose of  
495 medical, developmental, or vocational rehabilitation of clients  
496 are excepted from competitive-solicitation requirements and  
497 shall be procured pursuant to an established fee schedule or by  
498 any other method which ensures the best price for the state,  
499 taking into consideration the needs of the client. Prescriptive  
500 assistive devices include, but are not limited to, prosthetics,  
501 orthotics, and wheelchairs. For purchases made pursuant to this  
502 paragraph, state agencies shall annually file with the  
503 department a description of the purchases and methods of  
504 procurement.

505 (e)~~(f)~~ The following contractual services and commodities  
506 are not subject to the competitive-solicitation requirements of  
507 this section:

508 1. Artistic services. For the purposes of this subsection,  
509 the term "artistic services" does not include advertising or  
510 typesetting. As used in this subparagraph, the term  
511 "advertising" means the making of a representation in any form  
512 in connection with a trade, business, craft, or profession in  
513 order to promote the supply of commodities or services by the  
514 person promoting the commodities or contractual services.

515 2. Academic program reviews if the fee for such services  
516 does not exceed \$50,000.



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517 3. Lectures by individuals.

518 4. Legal services, including attorney, paralegal, expert  
519 witness, appraisal, or mediator services.

520 5.a. Health services involving examination, diagnosis,  
521 treatment, prevention, medical consultation, or administration.

522 b. Beginning January 1, 2011, health services, including,  
523 but not limited to, substance abuse and mental health services,  
524 involving examination, diagnosis, treatment, prevention, or  
525 medical consultation, when such services are offered to eligible  
526 individuals participating in a specific program that qualifies  
527 multiple providers and uses a standard payment methodology.

528 Reimbursement of administrative costs for providers of services  
529 purchased in this manner shall also be exempt. For purposes of  
530 this sub-subparagraph, "providers" means health professionals,  
531 health facilities, or organizations that deliver or arrange for  
532 the delivery of health services.

533 6. Services provided to persons with mental or physical  
534 disabilities by not-for-profit corporations which have obtained  
535 exemptions under the provisions of s. 501(c)(3) of the United  
536 States Internal Revenue Code or when such services are governed  
537 by the provisions of Office of Management and Budget Circular A-  
538 122. However, in acquiring such services, the agency shall  
539 consider the ability of the vendor, past performance,  
540 willingness to meet time requirements, and price.

541 7. Medicaid services delivered to an eligible Medicaid  
542 recipient unless the agency is directed otherwise in law.

543 8. Family placement services.



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544 9. Prevention services related to mental health, including  
545 drug abuse prevention programs, child abuse prevention programs,  
546 and shelters for runaways, operated by not-for-profit  
547 corporations. However, in acquiring such services, the agency  
548 shall consider the ability of the vendor, past performance,  
549 willingness to meet time requirements, and price.

550 10. Training and education services provided to injured  
551 employees pursuant to s. 440.491(6).

552 11. Contracts entered into pursuant to s. 337.11.

553 12. Services or commodities provided by governmental  
554 entities ~~agencies~~.

555 13. Statewide public service announcement programs  
556 provided by a Florida statewide nonprofit corporation under s.  
557 501(c)(6) of the Internal Revenue Code, with a guaranteed  
558 documented match of at least \$3 to \$1.

559 ~~(f)~~ ~~(g)~~ Continuing education events or programs that are  
560 offered to the general public and for which fees have been  
561 collected that pay all expenses associated with the event or  
562 program are exempt from requirements for competitive  
563 solicitation.

564 (10) A contract for commodities or contractual services  
565 may be awarded without competition if state or federal law  
566 prescribes with whom the agency must contract or if the rate of  
567 payment or the recipient of the funds is established during the  
568 appropriations process.

569 (12) Extension of a contract for commodities or  
570 contractual services shall be in writing for a period not to  
571 exceed 6 months and shall be subject to the same terms and





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572 conditions set forth in the initial contract and any written  
573 amendments signed by the parties. There shall be only one  
574 extension of a contract unless the failure to meet the criteria  
575 set forth in the contract for completion of the contract is due  
576 to events beyond the control of the contractor.

577 (13) Contracts for commodities or contractual services may  
578 be renewed for a period that may not exceed 3 years or the term  
579 of the original contract, whichever period is longer. Renewal of  
580 a contract for commodities or contractual services shall be in  
581 writing and shall be subject to the same terms and conditions  
582 set forth in the initial contract and any written amendments  
583 signed by the parties. If the commodity or contractual service  
584 is purchased as a result of the solicitation of bids, proposals,  
585 or replies, the price of the commodity or contractual service to  
586 be renewed shall be specified in the bid, proposal, or reply,  
587 except that an agency may negotiate lower pricing. A renewal  
588 contract may not include any compensation for costs associated  
589 with the renewal. Renewals shall be contingent upon satisfactory  
590 performance evaluations by the agency and subject to the  
591 availability of funds. Exceptional purchase contracts pursuant  
592 to paragraphs (3)(a) and (c) may not be renewed. With the  
593 exception of subsection (10)-(12), if a contract amendment  
594 results in a longer contract term or increased payments, a state  
595 agency may not renew or amend a contract for the outsourcing of  
596 a service or activity that has an original term value exceeding  
597 the sum of \$10 million before submitting a written report  
598 concerning contract performance to the Governor, the President



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599 of the Senate, and the Speaker of the House of Representatives  
600 at least 90 days before execution of the renewal or amendment.

601 (14) For each contractual services contract, the agency  
602 shall designate an employee to function as contract manager who  
603 is shall be responsible for enforcing performance of the  
604 contract terms and conditions and serve as a liaison with the  
605 contractor. Each contract manager who is responsible for  
606 contracts in excess of the threshold amount for CATEGORY TWO  
607 established under s. 287.017 must be a certified contract  
608 manager. The Department of Management Services is responsible  
609 for establishing and disseminating the requirements for  
610 certification, which include completing the attend training  
611 conducted by the Chief Financial Officer for accountability in  
612 contracts and grant management. The Chief Financial Officer  
613 shall establish and disseminate uniform procedures pursuant to  
614 s. 17.03(3) to ensure that contractual services have been  
615 rendered in accordance with the contract terms before the agency  
616 processes the invoice for payment. The procedures must shall  
617 include, but need not be limited to, procedures for monitoring  
618 and documenting contractor performance, reviewing and  
619 documenting all deliverables for which payment is requested by  
620 vendors, and providing written certification by contract  
621 managers of the agency's receipt of goods and services.

622 (16) For a contract in excess of the threshold amount  
623 provided in s. 287.017 for CATEGORY FOUR, the agency head shall  
624 appoint:

625 (a) At least three persons to evaluate proposals and  
626 replies who collectively have experience and knowledge in the



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627 program areas and service requirements for which commodities or  
628 contractual services are sought.

629 (b) At least three persons to conduct negotiations during  
630 a competitive sealed reply procurement who collectively have  
631 experience and knowledge in negotiating contracts, contract  
632 procurement, and the program areas and service requirements for  
633 which commodities or contractual services are sought.

634 (c) When the value of a contract is in excess of \$1  
635 million in any fiscal year, at least one of the persons  
636 conducting negotiations must be certified as a contract  
637 negotiator based upon rules adopted by the Department of  
638 Management Services in order to ensure that certified contract  
639 negotiators are knowledgeable about effective negotiation  
640 strategies, capable of successfully implementing those  
641 strategies, and involved appropriately in the procurement  
642 process. At a minimum, the rules must address the qualifications  
643 required for certification, the method of certification, and the  
644 procedure for involving the certified negotiator. If the value  
645 of a contract is in excess of \$10 million in any fiscal year, at  
646 least one of the persons conducting negotiations must be a  
647 Project Management Professional, as certified by the Project  
648 Management Institute.

649 (22) The department, in consultation with the Chief  
650 Financial Officer Agency for Enterprise Information Technology  
651 ~~and the Comptroller~~, shall maintain develop a program for online  
652 procurement of commodities and contractual services. To enable  
653 the state to promote open competition and to leverage its buying  
654 power, agencies shall participate in the online procurement



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655 program, and eligible users may participate in the program. Only  
656 vendors prequalified as meeting mandatory requirements and  
657 qualifications criteria may participate in online procurement.

658 (a) The department, ~~in consultation with the agency,~~ may  
659 contract for equipment and services necessary to develop and  
660 implement online procurement.

661 (b) The department, ~~in consultation with the agency,~~ shall  
662 adopt rules, pursuant to ss. 120.536(1) and 120.54, to  
663 administer the program for online procurement. The rules shall  
664 include, but not be limited to:

665 1. Determining the requirements and qualification criteria  
666 for prequalifying vendors.

667 2. Establishing the procedures for conducting online  
668 procurement.

669 3. Establishing the criteria for eligible commodities and  
670 contractual services.

671 4. Establishing the procedures for providing access to  
672 online procurement.

673 5. Determining the criteria warranting any exceptions to  
674 participation in the online procurement program.

675 (c) The department may impose and shall collect all fees  
676 for the use of the online procurement systems.

677 1. The fees may be imposed on an individual transaction  
678 basis or as a fixed percentage of the cost savings generated. At  
679 a minimum, the fees must be set in an amount sufficient to cover  
680 the projected costs of the services, including administrative  
681 and project service costs in accordance with the policies of the  
682 department.



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683           2. If the department contracts with a provider for online  
684 procurement, the department, pursuant to appropriation, shall  
685 compensate the provider from the fees after the department has  
686 satisfied all ongoing costs. The provider shall report  
687 transaction data to the department each month so that the  
688 department may determine the amount due and payable to the  
689 department from each vendor.

690           3. All fees that are due and payable to the state on a  
691 transactional basis or as a fixed percentage of the cost savings  
692 generated are subject to s. 215.31 and must be remitted within  
693 40 days after receipt of payment for which the fees are due. For  
694 fees that are not remitted within 40 days, the vendor shall pay  
695 interest at the rate established under s. 55.03(1) on the unpaid  
696 balance from the expiration of the 40-day period until the fees  
697 are remitted.

698           4. All fees and surcharges collected under this paragraph  
699 shall be deposited in the Operating Trust Fund as provided by  
700 law.

701           Section 8. Paragraph (a) of subsection (3) of section  
702 287.0571, Florida Statutes, is amended to read:

703           287.0571 Business case to outsource; applicability.-

704           (3) This section does not apply to:

705           (a) A procurement of commodities and contractual services  
706 listed in s. 287.057(3)(d) and (e) and (21) 287.057(3)(e), (f),  
707 and (g) and (21).

708           Section 9. Subsections (1) and (2) of section 287.058,  
709 Florida Statutes, are amended to read:

710           287.058 Contract document.-



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711 (1) Every procurement of contractual services in excess of  
712 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
713 except for the providing of health and mental health services or  
714 drugs in the examination, diagnosis, or treatment of sick or  
715 injured state employees or the providing of other benefits as  
716 required by the provisions of chapter 440, shall be evidenced by  
717 a written agreement embodying all provisions and conditions of  
718 the procurement of such services, which shall, where applicable,  
719 include, but not be limited to, a provision:

720 (a) That bills for fees or other compensation for services  
721 or expenses be submitted in detail sufficient for a proper  
722 preaudit and postaudit thereof.

723 (b) That bills for any travel expenses be submitted in  
724 accordance with s. 112.061. A state agency may establish rates  
725 lower than the maximum provided in s. 112.061.

726 (c) Allowing unilateral cancellation by the agency for  
727 refusal by the contractor to allow public access to all  
728 documents, papers, letters, or other material made or received  
729 by the contractor in conjunction with the contract, unless the  
730 records are exempt from s. 24(a) of Art. I of the State  
731 Constitution and s. 119.07(1).

732 (d) Specifying a scope of work that clearly establishes  
733 all tasks the contractor is required to perform.

734 (e) Dividing the contract into quantifiable, measurable,  
735 and verifiable units of deliverables that must be received and  
736 accepted in writing by the contract manager before payment. Each  
737 deliverable must be directly related to the scope of work and  
738 specify a performance measure. As used in this paragraph,



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739 performance measure means the required minimum acceptable level  
740 of service to be performed and criteria for evaluating the  
741 successful completion of each deliverable.

742 (f) Specifying the criteria and the final date by which  
743 such criteria must be met for completion of the contract.

744 (g) Specifying that the contract may be renewed for a  
745 period that may not exceed 3 years or the term of the original  
746 contract, whichever period is longer, specifying the renewal  
747 price for the contractual service as set forth in the bid,  
748 proposal, or reply, specifying that costs for the renewal may  
749 not be charged, and specifying that renewals shall be contingent  
750 upon satisfactory performance evaluations by the agency and  
751 subject to the availability of funds. Exceptional purchase  
752 contracts pursuant to s. 287.057(3)(a) and (c) may not be  
753 renewed.

754 (h) Specifying the financial consequences that the agency  
755 must apply if the contractor fails to perform in accordance with  
756 the contract.

757 (i) Addressing the property rights of any intellectual  
758 property related to the contract and the specific rights of the  
759 state regarding the intellectual property if the contractor  
760 fails to provide the services or is no longer providing  
761 services.

762  
763 In lieu of a written agreement, the agency ~~department~~ may  
764 authorize the use of a purchase order for classes of contractual  
765 services, if the provisions of paragraphs (a)-(i) are included  
766 in the purchase order or solicitation. The purchase order must



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767 include, but need not be limited to, an adequate description of  
768 the services, the contract period, and the method of payment. In  
769 lieu of printing the provisions of paragraphs (a)-(c) and (g)  
770 ~~(a)-(i)~~ in the contract document or purchase order, agencies may  
771 incorporate the requirements of paragraphs (a)-(c) and (g) ~~(a)-~~  
772 ~~(i)~~ by reference.

773 (2) The written agreement shall be signed by the agency  
774 head or designee and the contractor before ~~prior to~~ the  
775 rendering of any contractual service the value of which is in  
776 excess of the threshold amount provided in s. 287.017 for  
777 CATEGORY TWO, except in the case of a valid emergency as  
778 certified by the agency head. The ~~certification~~ written  
779 statement of an emergency shall be prepared within 30 days after  
780 the contractor begins rendering the service and shall state the  
781 particular facts and circumstances which precluded the execution  
782 of the written agreement before ~~prior to~~ the rendering of the  
783 service. If the agency fails to have the contract signed by the  
784 agency head or designee and the contractor before ~~prior to~~  
785 rendering the contractual service, and if an emergency does not  
786 exist, the agency head shall, no later than 30 days after the  
787 contractor begins rendering the service, certify the specific  
788 conditions and circumstances to the department as well as  
789 describe actions taken to prevent recurrence of such  
790 noncompliance. The agency head may delegate the written  
791 statement ~~certification~~ only to other senior management agency  
792 personnel. A copy of the written statement ~~certification~~ shall  
793 be furnished to the Chief Financial Officer with the voucher  
794 authorizing payment. The department shall report repeated





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795 instances of noncompliance by an agency to the Auditor General.  
796 Nothing in this subsection shall be deemed to authorize  
797 additional compensation prohibited by s. 215.425. The  
798 procurement of contractual services shall not be divided so as  
799 to avoid the provisions of this section.

800 Section 10. Section 287.076, Florida Statutes, is amended  
801 to read:

802 287.076 Project Management Professionals training for  
803 personnel involved in managing outsourcings and negotiations;  
804 funding.—The Department of Management Services may implement a  
805 program to train state agency employees who are involved in  
806 managing outsourcings as Project Management Professionals, as  
807 certified by the Project Management Institute. Subject to annual  
808 appropriations, For the 2006-2007 fiscal year, the sum of  
809 \$500,000 in recurring funds from the General Revenue Fund is  
810 appropriated to the Department of Management Services to  
811 implement this program. the Department of Management Services,  
812 in consultation with entities subject to this act, shall  
813 identify personnel to participate in this training based on  
814 requested need and ensure that each agency is represented. The  
815 Department of Management Services may remit payment for this  
816 training on behalf of all participating personnel.

817 Section 11. Section 287.136, F.S., is created to read:

818 287.136 Audit of executed contract documents.— After the  
819 execution of a contract, the Chief Financial Officer shall  
820 perform audits of the executed contract documents and contract  
821 manager's records to ensure that adequate internal controls are  
822 in place for complying with the terms and conditions of the



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823 contract and for the validation and receipt of goods and  
824 services.

825 (1) At the conclusion of the audit, the Chief Financial  
826 Officer's designee shall discuss the audit and potential  
827 findings with the official whose office is subject to audit. The  
828 final audit report shall be submitted to the agency head.

829 (2) Within 30 days after the receipt of the final audit  
830 report, the agency head shall submit to the Chief Financial  
831 Officer or designee, his or her written statement of explanation  
832 or rebuttal concerning findings requiring corrective action,  
833 including corrective action to be taken to preclude a  
834 recurrence.

835 Section 12. Subsection (3) of section 16.0155, Florida  
836 Statutes, is amended to read:

837 16.0155 Contingency fee agreements.-

838 (3) If the Attorney General makes the determination  
839 described in subsection (2), notwithstanding the exemption  
840 provided in s. 287.057(3) ~~(e)-(f)~~, the Attorney General shall  
841 request proposals from private attorneys to represent the  
842 department on a contingency-fee basis, unless the Attorney  
843 General determines in writing that requesting proposals is not  
844 feasible under the circumstances. The written determination does  
845 not constitute a final agency action subject to review pursuant  
846 to ss. 120.569 and 120.57. For purposes of this subsection only,  
847 the department is exempt from the requirements of s. 120.57(3),  
848 and neither the request for proposals nor the contract award is  
849 subject to challenge pursuant to ss. 120.569 and 120.57.



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850 Section 13. Subsection (1) of section 283.33, Florida  
851 Statutes, is amended to read:

852 283.33 Printing of publications; lowest bidder awards.—

853 (1) Publications may be printed and prepared in-house, by  
854 another agency or the Legislature, or purchased on bid,  
855 whichever is more economical and practicable as determined by  
856 the agency. An agency may contract for binding separately when  
857 more economical or practicable, whether or not the remainder of  
858 the printing is done in-house. A vendor may subcontract for  
859 binding and still be considered a responsible vendor,  
860 notwithstanding s. 287.012(25) ~~287.012(24)~~.

861 Section 14. Subsection (3) of section 394.457, Florida  
862 Statutes, is amended to read:

863 394.457 Operation and administration.—

864 (3) POWER TO CONTRACT.—The department may contract to  
865 provide, and be provided with, services and facilities in order  
866 to carry out its responsibilities under this part with the  
867 following agencies: public and private hospitals; receiving and  
868 treatment facilities; clinics; laboratories; departments,  
869 divisions, and other units of state government; the state  
870 colleges and universities; the community colleges; private  
871 colleges and universities; counties, municipalities, and any  
872 other governmental unit, including facilities of the United  
873 States Government; and any other public or private entity which  
874 provides or needs facilities or services. Baker Act funds for  
875 community inpatient, crisis stabilization, short-term  
876 residential treatment, and screening services must be allocated  
877 to each county pursuant to the department's funding allocation



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878 methodology. Notwithstanding the provisions of s. 287.057(3)(e)  
879 ~~287.057(3)(f)~~, contracts for community-based Baker Act services  
880 for inpatient, crisis stabilization, short-term residential  
881 treatment, and screening provided under this part, other than  
882 those with other units of government, to be provided for the  
883 department must be awarded using competitive sealed bids when  
884 the county commission of the county receiving the services makes  
885 a request to the department's district office by January 15 of  
886 the contracting year. The district shall not enter into a  
887 competitively bid contract under this provision if such action  
888 will result in increases of state or local expenditures for  
889 Baker Act services within the district. Contracts for these  
890 Baker Act services using competitive sealed bids will be  
891 effective for 3 years. The department shall adopt rules  
892 establishing minimum standards for such contracted services and  
893 facilities and shall make periodic audits and inspections to  
894 assure that the contracted services are provided and meet the  
895 standards of the department.

896 Section 15. Paragraph (a) of subsection (2) of section  
897 402.7305, Florida Statutes, is amended to read:

898 402.7305 Department of Children and Family Services;  
899 procurement of contractual services; contract management.-

900 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.-

901 (a) Notwithstanding s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~,  
902 whenever the department intends to contract with a public  
903 postsecondary institution to provide a service, the department  
904 must allow all public postsecondary institutions in this state  
905 that are accredited by the Southern Association of Colleges and



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906 Schools to bid on the contract. Thereafter, notwithstanding any  
907 other provision to the contrary, if a public postsecondary  
908 institution intends to subcontract for any service awarded in  
909 the contract, the subcontracted service must be procured by  
910 competitive procedures.

911 Section 16. Section 409.9132, Florida Statutes, is amended  
912 to read:

913 409.9132 Pilot project to monitor home health services.-  
914 The Agency for Health Care Administration shall expand the home  
915 health agency monitoring pilot project in Miami-Dade County on a  
916 statewide basis effective July 1, 2012, except in counties in  
917 which the program will not be cost-effective, as determined by  
918 the agency. The agency shall contract with a vendor to verify  
919 the utilization and delivery of home health services and provide  
920 an electronic billing interface for home health services. The  
921 contract must require the creation of a program to submit claims  
922 electronically for the delivery of home health services. The  
923 program must verify telephonically visits for the delivery of  
924 home health services using voice biometrics. The agency may seek  
925 amendments to the Medicaid state plan and waivers of federal  
926 laws, as necessary, to implement or expand the pilot project.  
927 Notwithstanding s. 287.057(3)(e) ~~287.057(3)(f)~~, the agency must  
928 award the contract through the competitive solicitation process  
929 and may use the current contract to expand the home health  
930 agency monitoring pilot project to include additional counties  
931 as authorized under this section.

932 Section 17. Subsection (3) of section 427.0135, Florida  
933 Statutes, is amended to read:



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934 427.0135 Purchasing agencies; duties and  
935 responsibilities.—Each purchasing agency, in carrying out the  
936 policies and procedures of the commission, shall:

937 (3) Not procure transportation disadvantaged services  
938 without initially negotiating with the commission, as provided  
939 in s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~, or unless otherwise  
940 authorized by statute. If the purchasing agency, after  
941 consultation with the commission, determines that it cannot  
942 reach mutually acceptable contract terms with the commission,  
943 the purchasing agency may contract for the same transportation  
944 services provided in a more cost-effective manner and of  
945 comparable or higher quality and standards. The Medicaid agency  
946 shall implement this subsection in a manner consistent with s.  
947 409.908(18) and as otherwise limited or directed by the General  
948 Appropriations Act.

949 Section 18. Paragraph (c) of subsection (5) of section  
950 445.024, Florida Statutes, is amended to read:

951 445.024 Work requirements.—

952 (5) USE OF CONTRACTS.—Regional workforce boards shall  
953 provide work activities, training, and other services, as  
954 appropriate, through contracts. In contracting for work  
955 activities, training, or services, the following applies:

956 (c) Notwithstanding the exemption from the competitive  
957 sealed bid requirements provided in s. 287.057(3)(e)  
958 ~~287.057(3)(f)~~ for certain contractual services, each contract  
959 awarded under this chapter must be awarded on the basis of a  
960 competitive sealed bid, except for a contract with a



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961 governmental entity as determined by the regional workforce  
962 board.

963 Section 19. Paragraph (c) of subsection (5) of section  
964 627.311, Florida Statutes, is amended to read:

965 627.311 Joint underwriters and joint reinsurers; public  
966 records and public meetings exemptions.-

967 (5)

968 (c) The operation of the plan shall be governed by a plan  
969 of operation that is prepared at the direction of the board of  
970 governors and approved by order of the office. The plan is  
971 subject to continuous review by the office. The office may, by  
972 order, withdraw approval of all or part of a plan if the office  
973 determines that conditions have changed since approval was  
974 granted and that the purposes of the plan require changes in the  
975 plan. The plan of operation shall:

976 1. Authorize the board to engage in the activities  
977 necessary to implement this subsection, including, but not  
978 limited to, borrowing money.

979 2. Develop criteria for eligibility for coverage by the  
980 plan, including, but not limited to, documented rejection by at  
981 least two insurers which reasonably assures that insureds  
982 covered under the plan are unable to acquire coverage in the  
983 voluntary market.

984 3. Require notice from the agent to the insured at the  
985 time of the application for coverage that the application is for  
986 coverage with the plan and that coverage may be available  
987 through an insurer, group self-insurers' fund, commercial self-



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988 insurance fund, or assessable mutual insurer through another  
989 agent at a lower cost.

990 4. Establish programs to encourage insurers to provide  
991 coverage to applicants of the plan in the voluntary market and  
992 to insureds of the plan, including, but not limited to:

993 a. Establishing procedures for an insurer to use in  
994 notifying the plan of the insurer's desire to provide coverage  
995 to applicants to the plan or existing insureds of the plan and  
996 in describing the types of risks in which the insurer is  
997 interested. The description of the desired risks must be on a  
998 form developed by the plan.

999 b. Developing forms and procedures that provide an insurer  
1000 with the information necessary to determine whether the insurer  
1001 wants to write particular applicants to the plan or insureds of  
1002 the plan.

1003 c. Developing procedures for notice to the plan and the  
1004 applicant to the plan or insured of the plan that an insurer  
1005 will insure the applicant or the insured of the plan, and notice  
1006 of the cost of the coverage offered; and developing procedures  
1007 for the selection of an insuring entity by the applicant or  
1008 insured of the plan.

1009 d. Provide for a market-assistance plan to assist in the  
1010 placement of employers. All applications for coverage in the  
1011 plan received 45 days before the effective date for coverage  
1012 shall be processed through the market-assistance plan. A market-  
1013 assistance plan specifically designed to serve the needs of  
1014 small, good policyholders as defined by the board must be  
1015 reviewed and updated periodically.





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1016 5. Provide for policy and claims services to the insureds  
1017 of the plan of the nature and quality provided for insureds in  
1018 the voluntary market.

1019 6. Provide for the review of applications for coverage  
1020 with the plan for reasonableness and accuracy, using any  
1021 available historic information regarding the insured.

1022 7. Provide for procedures for auditing insureds of the  
1023 plan which are based on reasonable business judgment and are  
1024 designed to maximize the likelihood that the plan will collect  
1025 the appropriate premiums.

1026 8. Authorize the plan to terminate the coverage of and  
1027 refuse future coverage for any insured that submits a fraudulent  
1028 application to the plan or provides fraudulent or grossly  
1029 erroneous records to the plan or to any service provider of the  
1030 plan in conjunction with the activities of the plan.

1031 9. Establish service standards for agents who submit  
1032 business to the plan.

1033 10. Establish criteria and procedures to prohibit any  
1034 agent who does not adhere to the established service standards  
1035 from placing business with the plan or receiving, directly or  
1036 indirectly, any commissions for business placed with the plan.

1037 11. Provide for the establishment of reasonable safety  
1038 programs for all insureds in the plan. All insureds of the plan  
1039 must participate in the safety program.

1040 12. Authorize the plan to terminate the coverage of and  
1041 refuse future coverage to any insured who fails to pay premiums  
1042 or surcharges when due; who, at the time of application, is  
1043 delinquent in payments of workers' compensation or employer's



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1044 liability insurance premiums or surcharges owed to an insurer,  
1045 group self-insurers' fund, commercial self-insurance fund, or  
1046 assessable mutual insurer licensed to write such coverage in  
1047 this state; or who refuses to substantially comply with any  
1048 safety programs recommended by the plan.

1049 13. Authorize the board of governors to provide the goods  
1050 and services required by the plan through staff employed by the  
1051 plan, through reasonably compensated service providers who  
1052 contract with the plan to provide services as specified by the  
1053 board of governors, or through a combination of employees and  
1054 service providers.

1055 a. Purchases that equal or exceed \$2,500 but are less than  
1056 or equal to \$25,000, shall be made by receipt of written quotes,  
1057 telephone quotes, or informal bids, whenever practical. The  
1058 procurement of goods or services valued over \$25,000 is subject  
1059 to competitive solicitation, except in situations in which the  
1060 goods or services are provided by a sole source or are deemed an  
1061 emergency purchase, or the services are exempted from  
1062 competitive-solicitation requirements under s. 287.057(3)(e)  
1063 ~~287.057(3)(f)~~. Justification for the sole-sourcing or emergency  
1064 procurement must be documented. Contracts for goods or services  
1065 valued at or over \$100,000 are subject to board approval.

1066 b. The board shall determine whether it is more cost-  
1067 effective and in the best interests of the plan to use legal  
1068 services provided by in-house attorneys employed by the plan  
1069 rather than contracting with outside counsel. In making such  
1070 determination, the board shall document its findings and shall  
1071 consider the expertise needed; whether time commitments exceed



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1072 in-house staff resources; whether local representation is  
1073 needed; the travel, lodging, and other costs associated with in-  
1074 house representation; and such other factors that the board  
1075 determines are relevant.

1076 14. Provide for service standards for service providers,  
1077 methods of determining adherence to those service standards,  
1078 incentives and disincentives for service, and procedures for  
1079 terminating contracts for service providers that fail to adhere  
1080 to service standards.

1081 15. Provide procedures for selecting service providers and  
1082 standards for qualification as a service provider that  
1083 reasonably assure that any service provider selected will  
1084 continue to operate as an ongoing concern and is capable of  
1085 providing the specified services in the manner required.

1086 16. Provide for reasonable accounting and data-reporting  
1087 practices.

1088 17. Provide for annual review of costs associated with the  
1089 administration and servicing of the policies issued by the plan  
1090 to determine alternatives by which costs can be reduced.

1091 18. Authorize the acquisition of such excess insurance or  
1092 reinsurance as is consistent with the purposes of the plan.

1093 19. Provide for an annual report to the office on a date  
1094 specified by the office and containing such information as the  
1095 office reasonably requires.

1096 20. Establish multiple rating plans for various  
1097 classifications of risk which reflect risk of loss, hazard  
1098 grade, actual losses, size of premium, and compliance with loss  
1099 control. At least one of such plans must be a preferred-rating



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1100 plan to accommodate small-premium policyholders with good  
1101 experience as defined in sub-subparagraph 22.a.

1102 21. Establish agent commission schedules.

1103 22. For employers otherwise eligible for coverage under  
1104 the plan, establish three tiers of employers meeting the  
1105 criteria and subject to the rate limitations specified in this  
1106 subparagraph.

1107 a. Tier One.—

1108 (I) Criteria; rated employers.—An employer that has an  
1109 experience modification rating shall be included in Tier One if  
1110 the employer meets all of the following:

1111 (A) The experience modification is below 1.00.

1112 (B) The employer had no lost-time claims subsequent to the  
1113 applicable experience modification rating period.

1114 (C) The total of the employer's medical-only claims  
1115 subsequent to the applicable experience modification rating  
1116 period did not exceed 20 percent of premium.

1117 (II) Criteria; non-rated employers.—An employer that does  
1118 not have an experience modification rating shall be included in  
1119 Tier One if the employer meets all of the following:

1120 (A) The employer had no lost-time claims for the 3-year  
1121 period immediately preceding the inception date or renewal date  
1122 of the employer's coverage under the plan.

1123 (B) The total of the employer's medical-only claims for  
1124 the 3-year period immediately preceding the inception date or  
1125 renewal date of the employer's coverage under the plan did not  
1126 exceed 20 percent of premium.



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1127 (C) The employer has secured workers' compensation  
1128 coverage for the entire 3-year period immediately preceding the  
1129 inception date or renewal date of the employer's coverage under  
1130 the plan.

1131 (D) The employer is able to provide the plan with a loss  
1132 history generated by the employer's prior workers' compensation  
1133 insurer, except if the employer is not able to produce a loss  
1134 history due to the insolvency of an insurer, the receiver shall  
1135 provide to the plan, upon the request of the employer or the  
1136 employer's agent, a copy of the employer's loss history from the  
1137 records of the insolvent insurer if the loss history is  
1138 contained in records of the insurer which are in the possession  
1139 of the receiver. If the receiver is unable to produce the loss  
1140 history, the employer may, in lieu of the loss history, submit  
1141 an affidavit from the employer and the employer's insurance  
1142 agent setting forth the loss history.

1143 (E) The employer is not a new business.

1144 (III) Premiums.—The premiums for Tier One insureds shall  
1145 be set at a premium level 25 percent above the comparable  
1146 voluntary market premiums until the plan has sufficient  
1147 experience as determined by the board to establish an  
1148 actuarially sound rate for Tier One, at which point the board  
1149 shall, subject to paragraph (e), adjust the rates, if necessary,  
1150 to produce actuarially sound rates, provided such rate  
1151 adjustment shall not take effect prior to January 1, 2007.

1152 b. Tier Two.—



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1153 (I) Criteria; rated employers.—An employer that has an  
1154 experience modification rating shall be included in Tier Two if  
1155 the employer meets all of the following:

1156 (A) The experience modification is equal to or greater  
1157 than 1.00 but not greater than 1.10.

1158 (B) The employer had no lost-time claims subsequent to the  
1159 applicable experience modification rating period.

1160 (C) The total of the employer's medical-only claims  
1161 subsequent to the applicable experience modification rating  
1162 period did not exceed 20 percent of premium.

1163 (II) Criteria; non-rated employers.—An employer that does  
1164 not have any experience modification rating shall be included in  
1165 Tier Two if the employer is a new business. An employer shall be  
1166 included in Tier Two if the employer has less than 3 years of  
1167 loss experience in the 3-year period immediately preceding the  
1168 inception date or renewal date of the employer's coverage under  
1169 the plan and the employer meets all of the following:

1170 (A) The employer had no lost-time claims for the 3-year  
1171 period immediately preceding the inception date or renewal date  
1172 of the employer's coverage under the plan.

1173 (B) The total of the employer's medical-only claims for  
1174 the 3-year period immediately preceding the inception date or  
1175 renewal date of the employer's coverage under the plan did not  
1176 exceed 20 percent of premium.

1177 (C) The employer is able to provide the plan with a loss  
1178 history generated by the workers' compensation insurer that  
1179 provided coverage for the portion or portions of such period  
1180 during which the employer had secured workers' compensation



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1181 coverage, except if the employer is not able to produce a loss  
1182 history due to the insolvency of an insurer, the receiver shall  
1183 provide to the plan, upon the request of the employer or the  
1184 employer's agent, a copy of the employer's loss history from the  
1185 records of the insolvent insurer if the loss history is  
1186 contained in records of the insurer which are in the possession  
1187 of the receiver. If the receiver is unable to produce the loss  
1188 history, the employer may, in lieu of the loss history, submit  
1189 an affidavit from the employer and the employer's insurance  
1190 agent setting forth the loss history.

1191 (III) Premiums.—The premiums for Tier Two insureds shall  
1192 be set at a rate level 50 percent above the comparable voluntary  
1193 market premiums until the plan has sufficient experience as  
1194 determined by the board to establish an actuarially sound rate  
1195 for Tier Two, at which point the board shall, subject to  
1196 paragraph (e), adjust the rates, if necessary, to produce  
1197 actuarially sound rates, provided such rate adjustment shall not  
1198 take effect prior to January 1, 2007.

1199 c. Tier Three.—

1200 (I) Eligibility.—An employer shall be included in Tier  
1201 Three if the employer does not meet the criteria for Tier One or  
1202 Tier Two.

1203 (II) Rates.—The board shall establish, subject to  
1204 paragraph (e), and the plan shall charge, actuarially sound  
1205 rates for Tier Three insureds.

1206 23. For Tier One or Tier Two employers which employ no  
1207 nonexempt employees or which report payroll which is less than  
1208 the minimum wage hourly rate for one full-time employee for 1



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1209 year at 40 hours per week, the plan shall establish actuarially  
1210 sound premiums, provided, however, that the premiums may not  
1211 exceed \$2,500. These premiums shall be in addition to the fee  
1212 specified in subparagraph 26. When the plan establishes  
1213 actuarially sound rates for all employers in Tier One and Tier  
1214 Two, the premiums for employers referred to in this paragraph  
1215 are no longer subject to the \$2,500 cap.

1216 24. Provide for a depopulation program to reduce the  
1217 number of insureds in the plan. If an employer insured through  
1218 the plan is offered coverage from a voluntary market carrier:

1219 a. During the first 30 days of coverage under the plan;

1220 b. Before a policy is issued under the plan;

1221 c. By issuance of a policy upon expiration or cancellation  
1222 of the policy under the plan; or

1223 d. By assumption of the plan's obligation with respect to  
1224 an in-force policy,

1225  
1226 that employer is no longer eligible for coverage through the  
1227 plan. The premium for risks assumed by the voluntary market  
1228 carrier must be no greater than the premium the insured would  
1229 have paid under the plan, and shall be adjusted upon renewal to  
1230 reflect changes in the plan rates and the tier for which the  
1231 insured would qualify as of the time of renewal. The insured may  
1232 be charged such premiums only for the first 3 years of coverage  
1233 in the voluntary market. A premium under this subparagraph is  
1234 deemed approved and is not an excess premium for purposes of s.  
1235 627.171.





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1236 25. Require that policies issued and applications must  
1237 include a notice that the policy could be replaced by a policy  
1238 issued from a voluntary market carrier and that, if an offer of  
1239 coverage is obtained from a voluntary market carrier, the  
1240 policyholder is no longer eligible for coverage through the  
1241 plan. The notice must also specify that acceptance of coverage  
1242 under the plan creates a conclusive presumption that the  
1243 applicant or policyholder is aware of this potential.

1244 26. Require that each application for coverage and each  
1245 renewal premium be accompanied by a nonrefundable fee of \$475 to  
1246 cover costs of administration and fraud prevention. The board  
1247 may, with the prior approval of the office, increase the amount  
1248 of the fee pursuant to a rate filing to reflect increased costs  
1249 of administration and fraud prevention. The fee is not subject  
1250 to commission and is fully earned upon commencement of coverage.

1251 Section 20. Paragraph (e) of subsection (6) of section  
1252 627.351, Florida Statutes, is amended to read:

1253 627.351 Insurance risk apportionment plans.—

1254 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1255 (e) Purchases that equal or exceed \$2,500, but are less  
1256 than \$25,000, shall be made by receipt of written quotes,  
1257 written record of telephone quotes, or informal bids, whenever  
1258 practical. The procurement of goods or services valued at or  
1259 over \$25,000 shall be subject to competitive solicitation,  
1260 except in situations where the goods or services are provided by  
1261 a sole source or are deemed an emergency purchase; the services  
1262 are exempted from competitive solicitation requirements under s.  
1263 287.057(3)(e) ~~287.057(3)(f)~~; or the procurement of services is



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1264 subject to s. 627.3513. Justification for the sole-sourcing or  
1265 emergency procurement must be documented. Contracts for goods or  
1266 services valued at or over \$100,000 are subject to approval by  
1267 the board.

1268 Section 21. Subsection (2) of section 765.5155, Florida  
1269 Statutes, is amended to read:

1270 765.5155 Donor registry; education program.—

1271 (2) The agency and the department shall jointly contract  
1272 for the operation of a donor registry and education program. The  
1273 contractor shall be procured by competitive solicitation  
1274 pursuant to chapter 287, notwithstanding any exemption in s.  
1275 287.057(3)(e) ~~287.057(3)(f)~~. When awarding the contract,  
1276 priority shall be given to existing nonprofit groups that are  
1277 based within the state, have expertise working with procurement  
1278 organizations, have expertise in conducting statewide organ and  
1279 tissue donor public education campaigns, and represent the needs  
1280 of the organ and tissue donation community in the state.

1281 Section 22. Subsection (10) of section 893.055, Florida  
1282 Statutes, is amended to read:

1283 893.055 Prescription drug monitoring program.—

1284 (10) All costs incurred by the department in administering  
1285 the prescription drug monitoring program shall be funded through  
1286 federal grants or private funding applied for or received by the  
1287 state. The department may not commit funds for the monitoring  
1288 program without ensuring funding is available. The prescription  
1289 drug monitoring program and the implementation thereof are  
1290 contingent upon receipt of the nonstate funding. The department  
1291 and state government shall cooperate with the direct-support



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1292 organization established pursuant to subsection (11) in seeking  
1293 federal grant funds, other nonstate grant funds, gifts,  
1294 donations, or other private moneys for the department so long as  
1295 the costs of doing so are not considered material. Nonmaterial  
1296 costs for this purpose include, but are not limited to, the  
1297 costs of mailing and personnel assigned to research or apply for  
1298 a grant. Notwithstanding the exemptions to competitive-  
1299 solicitation requirements under s. 287.057(3)(e) ~~287.057(3)(f)~~,  
1300 the department shall comply with the competitive-solicitation  
1301 requirements under s. 287.057 for the procurement of any goods  
1302 or services required by this section. Funds provided, directly  
1303 or indirectly, by prescription drug manufacturers may not be  
1304 used to implement the program.

1305 Section 23. This act shall take effect July 1, 2013.

1308 -----  
1309 **T I T L E A M E N D M E N T**

1310 Remove everything before the enacting clause and insert:

1311 An act relating to the procurement of commodities and  
1312 contractual services; amending s. 215.971, F.S.; providing  
1313 additional information that must be included in an agency  
1314 agreement that provides state financial assistance to a  
1315 recipient or subrecipient; requiring each state agency to  
1316 designate an employee to function as a grant manager for  
1317 purposes of the agreement; requiring training for certain grant  
1318 managers; requiring the Chief Financial Officer to establish and  
1319 disseminate uniform procedures for grant management; requiring



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1320 the grant manager to report certain information; requiring the  
1321 Chief Financial Officer to perform audits of executed grant  
1322 agreements; amending s. 215.985, F.S.; requiring the Chief  
1323 Financial Officer to establish and maintain a secure, tract  
1324 tracking system; providing requirements for the system;  
1325 requiring state agencies to post certain information on the  
1326 contract tracking system within a specified timeframe;  
1327 specifying information that must be posted on the contract  
1328 tracking system; providing that records posted on the system may  
1329 not contain confidential or exempt information; requiring state  
1330 agencies to redact confidential or exempt information prior to  
1331 posting records on the system; providing a process for a party  
1332 to the contract to request redaction of confidential or exempt  
1333 information; providing notice requirements; providing that  
1334 posting of information on the contract tracking system does not  
1335 supersede the duty of a state agency to respond t a public  
1336 record request; providing that a subpoena for certain contract  
1337 information must be served on the state agency that is party to  
1338 the contract; authorizing the Chief Financial Officer to adopt  
1339 rules; defining the term "state agency"; authorizing the  
1340 judicial branch, Department of Legal Affairs, Department of  
1341 Agriculture and Consumer Services, and Department of Financial  
1342 Services to elect to comply with the posting requirements;  
1343 renaming chapter 287, F.S.; amending s. 287.012, F.S.; providing  
1344 and revising definitions; amending s. 287.042, F.S.; revising  
1345 powers, duties, and functions of the Department of Management  
1346 Services; providing an additional circumstance under which the  
1347 department may proceed with a competitive solicitation or



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1348 contract award process of a term contract as an alternative to  
1349 the stay of such process pursuant to a formal written protest  
1350 under the Administrative Procedure Act; authorizing the  
1351 department to lead or enter into joint agreements with  
1352 governmental entities for the purchase of commodities or  
1353 contractual services that can be used by multiple agencies;  
1354 amending s. 287.056, F.S.; eliminating provisions requiring  
1355 certain inclusions in agency agreements; amending s. 287.057,  
1356 F.S.; providing that contracts awarded pursuant to an invitation  
1357 to bid shall be awarded to the responsible and responsive vendor  
1358 that submits the lowest responsive bid; revising exceptions to  
1359 the requirement that the purchase of specified commodities or  
1360 contractual services be made only as a result of receiving  
1361 competitive sealed bids, competitive sealed proposals, or  
1362 competitive sealed replies; revising contractual services and  
1363 commodities that are not subject to competitive solicitation  
1364 requirements by virtue of being available only from a single  
1365 source; providing that a contract for commodities or contractual  
1366 services may be awarded without competition if the recipient of  
1367 funds is established during the appropriations process; revising  
1368 provisions relating to extension of a contract for commodities  
1369 or contractual services; authorizing an agency to negotiate  
1370 better pricing upon renewal of a contract; providing training  
1371 requirements for contract managers responsible for contracts in  
1372 excess of a specified threshold amount; providing that the  
1373 Department of Management Services is responsible for  
1374 establishing and disseminating the requirements for  
1375 certification of a contract manager; requiring the department,



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1376 in consultation with the Chief Financial Officer to maintain a  
1377 program for online procurement of commodities and contractual  
1378 services; amending s. 287.0571, F.S.; revising nonapplicability  
1379 of a business case to outsource; amending s. 287.058, F.S.;  
1380 defining the term "performance measure"; revising references  
1381 within provisions relating to purchase orders used in lieu of  
1382 written agreements for classes of contractual services; revising  
1383 terminology; amending s. 287.076, F.S.; providing that Project  
1384 Management Professionals training for personnel involved in  
1385 managing outsourcings and negotiations is subject to annual  
1386 appropriations; creating s. 287.136, F.S.; requiring the Chief  
1387 Financial Officer to perform audits of executed contracts;  
1388 creating reporting requirements; amending ss. 16.0155, 283.33,  
1389 394.457, 402.7305, 409.9132, 427.0135, 445.024, 627.311,  
1390 627.351, 765.5155, and 893.055, F.S.; conforming cross-  
1391 references; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1311 Pub. Rec./DSO/Office of Supplier Diversity/DMS  
SPONSOR(S): Albritton  
TIED BILLS: HB 1309 IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

Current law establishes the Office of Supplier Diversity within the Department of Management Services to assist minority business enterprises in becoming suppliers of commodities, services, and construction services to state government.

House Bill 1309 (2013) permits the Office of Supplier Diversity (office) to transfer certain operations to a direct-support organization (DSO). The bill requires the Department of Management Services to establish and govern a DSO to assist the department in carrying out the duties of the Secretary of Management Services with respect to supplier diversity. The purpose of the DSO is to raise money; submit requests for and receive grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; receive, hold, invest, and administer property; and make expenditures to or for the benefit of the mission of the office. House Bill 1309 provides that funds solicited by the DSO must be held in a separate depository account in the name of the DSO.

The bill creates a public record exemption for the identity of a donor or prospective donor to the DSO who desires to remain anonymous.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution. The bill also provides an effective date that is contingent upon the passage of House Bill 1309.

The bill does not appear to have a fiscal impact on state or local government.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Public Record Exemptions, Donor Information

Current law provides several public record exemptions for the identity of a donor or prospective donor to a direct-support organization who desires to remain anonymous. Examples include the direct-support organization for the Florida Agricultural Museum,<sup>3</sup> the direct-support organization for the John and Mable Ringling Museum of Art,<sup>4</sup> and the direct-support organization for the Department of Veterans' Affairs.<sup>5</sup>

##### Office of Supplier Diversity

Section 287.09451, F.S., provides that the Legislature finds that there is evidence of a systematic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system. Because of the disparity, the state has enacted race and gender-conscious remedial programs to ensure minority participation in state contracts. The Office of Supplier Diversity is created within the Department of Management Services to assist minority business enterprises in becoming suppliers of commodities, services, and construction services to state government.

##### House Bill 1309

House Bill 1309 (2013) permits the Office of Supplier Diversity (office) to transfer certain operations to a direct-support organization (DSO). The bill requires the Department of Management Services to establish and govern a DSO to assist the department in carrying out the duties of the Secretary of

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 570.903(6), F.S.

<sup>4</sup> Section 1004.45(2)(h), F.S.

<sup>5</sup> Section 292.055(9), F.S.

Management Services with respect to supplier diversity. The bill provides that the DSO must be incorporated under the provisions of chapter 617, F.S. and approved by the Department of State as a not for profit corporation.

The purpose of the DSO is to raise money; submit requests for and receive grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; receive, hold, invest, and administer property; and make expenditures to or for the benefit of the mission of the office. House Bill 1309 provides that funds solicited by the DSO must be held in a separate depository account in the name of the DSO. In addition, the DSO must provide an annual financial audit, pursuant to s. 215.981, F.S. The department and the Auditor General must have access to all records of the DSO.<sup>6</sup>

### **Effect of the Bill**

The bill creates a public record exemption for certain information regarding a donor or prospective donor to the DSO for the Office of Supplier Diversity. Specifically, the identity of a donor or prospective donor to the DSO who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt<sup>7</sup> from public records requirements. Such information is confidential and exempt so long as the contribution, gift, or bequest is received anonymously. If the donation is received anonymously, then it is unclear what specific information the DSO would be protecting from public disclosure. If a donation is received anonymously then it would seem the DSO would not have any information identifying the anonymous donor or prospective donor.

The bill also provides that such anonymity must be maintained in the auditor's report.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>8</sup>

### **B. SECTION DIRECTORY:**

Section 1 amends s. 287.09451, F.S., to create a public record exemption for the direct-support organization authorized to assist the Office of Supplier Diversity within the Department of Management Services.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

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

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

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<sup>6</sup> Direct-support organizations are considered state agencies within the public records law and as such, the records that the DSO must make available to the department and Auditor General are public records. As such, the provision in House Bill 1309 may be unnecessary and better placed in House Bill 1311. *See Palm Beach Community College Foundation, Inc. v. WTFT, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993).

<sup>7</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>8</sup> Section 24(c), Art. I of the State Constitution.

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on the direct-support organization (DSO), because staff responsible for complying with public record requests could require training related to the public record exemption. In addition, the DSO could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the DSO.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the identity of a donor or prospective donor to the DSO who desires to remain anonymous. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

None.

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

The bill creates a public record exemption for the identity of a donor or prospective donor to the direct-support organization (DSO) who desires to remain anonymous so long as the contribution, gift, or bequest is received anonymously. It is unclear what identifying information the DSO would receive if the exemption only applies when the information is received anonymously. As such, the exemption would not seem necessary.

Other similar exemptions do not contain the requirement that the contribution be received anonymously. As such, the sponsor may wish to amend the bill to remove the phrase "so long as the contribution, gift, or bequest is received anonymously." This would allow the exemption for the DSO to mirror other similar public record exemptions.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2       An act relating to public records; amending s.  
 3       287.09451, F.S.; providing an exemption from public  
 4       records requirements for the identity of a donor or  
 5       prospective donor to the direct-support organization  
 6       authorized to assist the Office of Supplier Diversity  
 7       within the Department of Management Services, and all  
 8       information identifying such donor or prospective  
 9       donor; providing conditions for the exemption;  
 10      providing for future review and repeal of the  
 11      exemption; providing a statement of public necessity;  
 12      providing a contingent effective date.

13  
 14   Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Paragraph (h) is added to subsection (7) of s.  
 17   287.09451, Florida Statutes, as amended by HB 1309, 2013 Regular  
 18   Session, to read:

19           287.09451 Office of Supplier Diversity; powers, duties,  
 20   and functions.—

21           (7) The Office of Supplier Diversity may administratively  
 22   transfer certain operations to a direct-support organization as  
 23   described in this subsection.

24           (h)1. The identity of a donor or prospective donor to the  
 25   direct-support organization who desires to remain anonymous, and  
 26   all information identifying such donor or prospective donor, is  
 27   confidential and exempt from the provisions of s. 119.07(1) and  
 28   section 24(a), Article I of the State Constitution, so long as

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2013

29 the contribution, gift, or bequest is received anonymously. Such  
30 anonymity must be maintained in the auditor's report.

31 2. Subparagraph 1. is subject to the Open Government  
32 Sunset Review Act in accordance with s. 119.15 and shall stand  
33 repealed on October 2, 2018, unless reviewed and saved from  
34 repeal through reenactment by the Legislature.

35 Section 2. The Legislature finds that it is a public  
36 necessity that the identity of a donor or prospective donor to  
37 the direct-support organization authorized to assist the Office  
38 of Supplier Diversity within the Department of Management  
39 Services, and all information identifying such donor or  
40 prospective donor, be made confidential and exempt from public  
41 records requirements, if such donor or prospective donor desires  
42 to remain anonymous and the donor's contribution, gift, or  
43 bequest is received anonymously. In order to encourage private  
44 support for the mission of the Office of Supplier Diversity, it  
45 is a public necessity to promote the giving of gifts to the  
46 office and the raising of private funds for the office's  
47 operation. An essential element of an effective plan for  
48 promoting the donation of private gifts and private fundraising  
49 efforts is the need to protect the identity of prospective and  
50 actual donors who desire to remain anonymous. If the identity of  
51 prospective and actual donors who desire to remain anonymous is  
52 subject to public disclosure, the result is a chilling effect on  
53 donations that arises from donor concerns over personal  
54 information being revealed that could lead to theft,  
55 particularly identity theft, and that could possibly place the  
56 personal safety and security of a donor in jeopardy. Therefore,

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57 the Legislature finds that it is a public necessity that the  
 58 identity of a donor or prospective donor to the direct-support  
 59 organization authorized to assist the Office of Supplier  
 60 Diversity within the Department of Management Services, and all  
 61 information identifying such donor or prospective donor, be made  
 62 confidential and exempt from public records requirements, if  
 63 such donor or prospective donor desires to remain anonymous and  
 64 the donor's contribution, gift, or bequest is received  
 65 anonymously.

66 Section 3. This act shall take effect on the same date  
 67 that HB 1309 or similar legislation takes effect, if such  
 68 legislation is adopted in the same legislative session or an  
 69 extension thereof and becomes law.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 4029 Governor's Private Secretary  
**SPONSOR(S):** Fitzenhagen  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		JS Stramski	Williamson <i>Kaw</i>
2) State Affairs Committee			

**SUMMARY ANALYSIS**

Current law allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor; however, the staff of the Executive Office of the Governor is under the state personnel system with state-approved titles. It is unclear when this provision might have been used.

The bill repeals this provision.

The bill has no fiscal impact.

The bill takes effect July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Enacted in 1845, s. 14.03, F.S., allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor. This person is to serve at the pleasure of the Governor in that capacity and as "clerk for the executive department." The person is to work daily at the capitol during office hours and is to perform other duties as directed by the Governor. In order to qualify for the position, the person "must be fit and proper to hold office."

The staff of the Executive Office of the Governor are under the state personnel system with state approved titles. The Executive Office of the Governor is under what is known as Pay Plans 07, 08, 09, and 15. Employees of the Executive Office of the Governor are exempt from the career service system and serve at the pleasure of the Governor.<sup>1</sup>

Administrative services, personnel staff of the Executive Office of the Governor, and state personnel system staff of the Department of Management Services were not aware of when the provisions of s. 14.03, F.S., relating to the private secretary of the Governor, might have been used last.<sup>2</sup>

##### Effect of the Bill

The bill repeals s. 14.03, F.S., relating to the private secretary of the Governor, as it is not used in the state personnel system governing the Executive Office of the Governor.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 14.03, F.S., relating to the Governor's appointment and commission of a person to be his or her private secretary and to serve as clerk for the executive department.

Section 2 provides an effective date of July 1, 2013.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

None.

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<sup>1</sup> Section 110.205(2)(l), F.S.

<sup>2</sup> The statute refers to the private secretary serving as "clerk for the executive department." In 2012, when identical HB 4091 was under consideration, the Workforce Design and Compensation Manager of the Department of Management Services, Division of Human Resource Management, informed staff that in the 31 years that the manager had been involved with the state personnel system, he was not aware of it having ever been used. House of Representatives Staff Analysis for HB 4091, fn. 4 (January 12, 2012).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 4029

2013

1                   A bill to be entitled  
2           An act relating to the Governor's private secretary;  
3           repealing s. 14.03, F.S., relating to the Governor's  
4           authority to appoint and commission a private  
5           secretary; providing an effective date.  
6

7   Be It Enacted by the Legislature of the State of Florida:  
8

9           Section 1. Section 14.03, Florida Statutes, is repealed.

10          Section 2. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 13-05 OGSR Paratransit Services

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** IDEN./SIM. BILLS: SB 1768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Americans with Disabilities Act of 1990 requires public entities operating non-commuter fixed route transportation services to provide paratransit and other special transportation services to individuals who are unable to use the fixed route system. The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility.

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency, is confidential and exempt from public record requirements. The confidential and exempt information must be disclosed in certain circumstances.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Paratransit Services

The Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit<sup>4</sup> and other special transportation services to individuals who are unable to use the fixed route system.<sup>5</sup> The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility. Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance;
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed; and
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.<sup>6</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." (49 CFR. 37.3) Florida law defines "paratransit" to mean "those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, 'dial-a-ride,' buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature." (Section 427.011(9), F.S.)

<sup>5</sup> 49 CFR 37, Subpart F.

<sup>6</sup> 49 CFR 37.123.

Federal law also requires that each state plan to provide Medicaid services indicate that the Medicaid agency “will ensure necessary transportation for recipients to and from providers; and describe the methods that the agency will use to meet this requirement.”<sup>7</sup> The Medicaid agency in Florida is the Agency for Health Care Administration (AHCA).

Florida law requires each agency that purchases transportation services for the transportation disadvantaged, including AHCA, to pay the rates established in the service plan or negotiated statewide contract, unless a more cost-effective method exists or if the community transportation coordinator (CTC) does not coordinate such services.<sup>8</sup> These services are referred to as Medicaid Non-Emergency Transportation Services.

The Commission for the Transportation Disadvantaged<sup>9</sup> (commission) manages such services.<sup>10</sup> The commission contracts with a CTC and a planning agency in each county to provide transportation services.<sup>11</sup> The local coordinating board<sup>12</sup> develops applicant-qualifying criteria. The CTC uses the qualifying criteria to determine eligibility for services.<sup>13</sup> Applicants must submit an application that requires the disclosure of medical and disability information, among other information.

#### Public Record Exemption under Review

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency,<sup>14</sup> is confidential and exempt<sup>15</sup> from public record requirements.<sup>16</sup> The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or recipient, or the legally authorized representative of such applicant or recipient;
- In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;
- By court order upon a showing of good cause; or
- To another agency in the performance of its duties and responsibilities.<sup>17</sup>

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<sup>7</sup> 42 CFR 431.53

<sup>8</sup> See s. 427.0135, F.S.

<sup>9</sup> Part I of chapter 427, F.S., establishes the Commission for the Transportation Disadvantaged (commission) with a purpose of coordinating transportation services provided to the transportation disadvantaged and a goal of providing cost-effective transportation by qualified community transportation coordinators or operators. The commission is housed within the Department of Transportation and consists of seven members appointed by the Governor. In addition, a technical working group advises the commission on issues of importance to the state. Section 427.012, F.S.

<sup>10</sup> The commission has been providing transportation for AHCA under a fixed fee basis since 2004. The current multi-year contract between AHCA and the commission was executed in December 2008. *2012 Annual Performance Report Florida Commission for the Transportation Disadvantaged*, at 13 (January 1, 2013). The report is available at: <http://www.dot.state.fl.us/ctd/programinfo/commissioninformation/commissioninformatton.htm> (last visited March 10, 2013).

<sup>11</sup> See ss. 427.013 and 427.0155, F.S.

<sup>12</sup> The local coordinating board is appointed and staffed by the metropolitan planning organization or designated official planning agency, and oversees and annually evaluates the CTC.

<sup>13</sup> See ss. 427.0155 and 427.0157, F.S.

<sup>14</sup> Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>15</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>16</sup> Section 119.071(5)(h)1., F.S.

<sup>17</sup> Section 119.071(5)(h)3., F.S.



Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to state and local government agencies as part of the Open Government Sunset Review process. Those agencies responding to the questionnaire indicated that there is a public necessity to continue to protect the confidential and exempt information, and recommended reenactment of the public record exemption under review.

**Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information of an applicant for or a recipient of paratransit services, which is held by an agency. The bill also makes clarifying changes.

**B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for personal identifying information of an applicant for or recipient of paratransit services.

Section 2 provides an effective date of October 1, 2013.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

YEAR

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 119.071, F.S., relating  
 4           to an exemption from public record requirements for  
 5           personal identifying information of an applicant for  
 6           or recipient of paratransit services; making  
 7           clarifying changes; removing the scheduled repeal of  
 8           the exemption; providing an effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12           Section 1. Paragraph (h) of subsection (5) of section  
 13           119.071, Florida Statutes, is amended to read:

14           119.071 General exemptions from inspection or copying of  
 15           public records.—

16           (5) OTHER PERSONAL INFORMATION.—

17           (h)1. Personal identifying information of an applicant for  
 18           or a recipient of paratransit services which is held by an  
 19           agency is confidential and exempt from s. 119.07(1) and s.  
 20           24(a), Art. I of the State Constitution.

21           2. This exemption applies to personal identifying  
 22           information of an applicant for or a recipient of paratransit  
 23           services which is held by an agency before, on, or after the  
 24           effective date of this exemption.

25           3. Confidential and exempt personal identifying  
 26           information shall be disclosed:

27           a. With the express written consent of the applicant or  
 28           recipient, ~~individual~~ or the ~~individual's~~ legally authorized

BILL

ORIGINAL

YEAR

29 | representative of such applicant or recipient;

30 |       b. In a medical emergency, but only to the extent that is  
 31 | necessary to protect the health or life of the applicant or  
 32 | recipient individual;

33 |       c. By court order upon a showing of good cause; or

34 |       d. To another agency in the performance of its duties and  
 35 | responsibilities.

36 |       ~~4. This paragraph is subject to the Open Government Sunset~~  
 37 | ~~Review Act in accordance with s. 119.15, and shall stand~~  
 38 | ~~repealed on October 2, 2013, unless reviewed and saved from~~  
 39 | ~~repeal through reenactment by the Legislature.~~

40 |       Section 2. This act shall take effect October 1, 2013.