



Government Operations Subcommittee

**Monday, February 6, 2012
2:15 PM
306 HOB**

Meeting Packet

**Dean Cannon
Speaker**

**Jimmy Patronis
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Monday, February 06, 2012 02:15 pm
End Date and Time: Monday, February 06, 2012 03:15 pm
Location: 306 HOB
Duration: 1.00 hrs

Consideration of the following bill(s):

HB 495 State University System Optional Retirement Program by Jones
HB 959 Scrutinized Companies by Bileca
HB 1409 State Contracting by Albritton
PCS for HB 1417 -- State Investments

NOTICE FINALIZED on 02/02/2012 16:21 by Godwin.Chandra

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 495 State University System Optional Retirement Program

SPONSOR(S): Jones

TIED BILLS: IDEN./SIM. BILLS: CS/SB 198

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|--------------|--|
| 1) Government Operations Subcommittee | | Meadows (CW) | Williamson <i>RAW</i> |
| 2) Higher Education Appropriations Subcommittee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The optional retirement program for the State University System (SUSORP) is a retirement plan that is provided as an alternative to membership in the Florida Retirement System for eligible State University System faculty, administrators, and administrative, professional, and executive service personnel. Currently, members of the SUSORP are authorized to choose from five companies to provide their retirement and death benefits.

The bill increases the number of provider companies that the Department of Management Services is authorized to contract with for the SUSORP from five to six companies.

The bill does not appear to create a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The optional retirement program for the State University System (SUSORP or program) is a retirement plan that is provided as an alternative to membership in the Florida Retirement System (FRS) for eligible State University System faculty, administrators, and administrative, professional, and executive service personnel.¹ The SUSORP is a 403(b), Internal Revenue Code, qualified defined contribution plan that provides full and immediate vesting of all contributions submitted to the participating companies on behalf of the participant.²

SUSORP became effective July 1, 1984, for eligible State University System faculty and administrators. The program was expanded in 1988, to include the State University System Executive Service and in 1999, to include administrative and professional staff. The program was created to offer more portability to the employees being recruited by the State University System.³

Through this program, participants elect coverage as an alternative to membership in the FRS.⁴ Contracts providing retirement and death benefits may be purchased for eligible members of the SUSORP.⁵

The Department of Management Services (DMS) is responsible for administering the program. The Board of Governors of the State University System (board) provides recommendations on contract providers for the SUSORP to DMS.⁶ The recommendations must include:

- The nature and extent of the rights and benefits in relation to the required contributions; and
- The suitability of the rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of eligible employees.⁷

After receiving and considering the recommendations of the board, DMS must designate up to five companies that may offer contracts under the SUSORP.⁸ The investment products offered by provider companies are subject to review by the State Board of Administration.⁹

DMS indicates there are approximately 17,000 eligible members who have elected participation in the SUSORP, as of June 30, 2011.¹⁰ SUSORP currently offers five investment provider choices. Those choices are:

- ING (3,042 participants);
- Jefferson National Life Insurance Company (134 participants);
- MetLife Investors USA Insurance Company (1,853 participants);

¹ See s. 121.35(2)(a), F.S.

² See s. 121.35(1), F.S.

³ Information provided by telephone on January 27, 2012, by Mr. Garry Green, Operations & Management Consultant Manager, Division of Retirement, Research and Education Section, Department of Management Services.

⁴ SUSORP is available to certain instructional and research faculty, administrative and professional personnel, and the Chancellor and university presidents. See s. 121.35(2)(a), F.S. Faculty members at a college with faculty practice plans are required to participate in the program. See s. 121.051(1)(a)2., F.S.

⁵ Section 121.35(1), F.S.

⁶ Section 121.35(6)(a), F.S.

⁷ Section 121.35(6)(a)1. and 2., F.S.

⁸ Section 121.35(6)(b), F.S.

⁹ Section 121.35 (6)(c), F.S.

¹⁰ Analysis of HB 495, Department of Management Services, October 27, 2011, at 1 (on file with the Government Operations Subcommittee). Information confirmed by telephone on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

- Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF) (8,870 participants); and
- VALIC Retirement (4,615 participants).¹¹

All contracts currently in place expire between March and December of 2014.¹²

Effect of the Proposed Changes

The bill authorizes DMS to increase the number of authorized companies available for inclusion in the optional retirement program for the State University System from five companies to six.

B. SECTION DIRECTORY:

Section 1 amends s. 121.35, F.S., to increase the number of authorized companies from which contracts may be purchased under the SUSORP to no more than six.

Section 2 provides an effective date of July 1, 2012.

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:

DMS does not anticipate an actuarial impact should this bill pass, as the number of participants and the funds available for investment remain the same.¹³ In addition, the Board of Governors of the State University System does not anticipate a fiscal impact on universities.¹⁴

¹¹ The number of participants cited is as of June 30, 2011. Information provided on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

¹² The VALIC contract expires March 2014, followed by MetLife in April 2014, with the remaining contracts all set to expire December 2014. Information provided by telephone on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

¹³ Information provided on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

¹⁴ Analysis of HB 495, Florida Board of Governors, November 21, 2011, at 2 (on file with the Government Operations Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although existing contracts do not expire until 2014, a new provider could potentially enter into the program prior to that time. It is unknown whether a contract offered to such a provider would have an initial expiration date of 2014, to align with existing contract terms.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

1 A bill to be entitled
 2 An act relating to the State University System
 3 optional retirement program; amending s. 121.35, F.S.;
 4 increasing to no more than six the number of companies
 5 from which contracts may be purchased under the
 6 program; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:
 9

10 Section 1. Paragraph (b) of subsection (6) of section
 11 121.35, Florida Statutes, is amended to read:

12 121.35 Optional retirement program for the State
 13 University System.—

14 (6) ADMINISTRATION OF PROGRAM.—

15 (b) After receiving and considering the recommendations of
 16 the Board of Governors of the State University System, the
 17 department shall designate no more than six ~~five~~ companies from
 18 which contracts may be purchased under the program and shall
 19 approve the form and content of the optional retirement program
 20 contracts. Any domestic company that has been designated as of
 21 July 1, 2005, shall be included in the six ~~five~~ companies until
 22 expiration of its existing contract with the department. The
 23 domestic company may assign its contract with the department to
 24 an affiliated qualified company that is wholly owned by the
 25 domestic company's parent company and has assumed 100 percent of
 26 the responsibility for the contracts purchased from the domestic
 27 company.

28 Section 2. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 495 (2012)

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 Stafford offered the following:

4
5 **Amendment (with directory and title amendments)**

6 Remove line 28 and insert:

7 (7) PROCUREMENT OF ADDITIONAL PROVIDERS.-If the department
8 chooses to designate an additional provider company from which
9 contracts may be purchased under the program as provided in
10 paragraph (6)(b), the department shall conduct a competitive
11 procurement and the designation of the additional provider is
12 effective from July 1, 2012, until December 31, 2014. All
13 companies seeking a designation that is effective on or after
14 January 1, 2015, shall participate together in a separate
15 competitive procurement conducted by the department for the
16 purpose of selecting the total number of provider companies
17 authorized in paragraph (6)(b) and deemed reasonable and prudent
18 by the department.

19 Section 2. This act shall take effect upon becoming a law.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 495 (2012)

Amendment No.

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D I R E C T O R Y A M E N D M E N T

Remove line 11 and insert:

121.35, Florida Statutes, is amended, and subsection (7) is added to that section, to read:


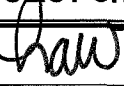
T I T L E A M E N D M E N T

Remove line 6 and insert:

program; providing for a procurement process for additional providers; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 Scrutinized Companies
SPONSOR(S): Bileca and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1144

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|--------|---|--|
| 1) Government Operations Subcommittee | | Meadows  | Williamson  |
| 2) Civil Justice Subcommittee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The State Board of Administration (SBA or board) is established by Article IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution.

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA). The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund, to assemble and publish a list of scrutinized companies that have prohibited business operations in Sudan and Iran.

The bill expands the scrutinized companies list to include companies with prohibited business operations in Cuba and Syria. It prohibits the SBA from investing in companies that have specified business relationships with Cuba and Syria. In addition, it requires divestiture of investments in certain situations.

The bill requires the SBA to create a "Scrutinized Companies with Activities in Cuba List," and a "Scrutinized Companies with Activities in Syria List," and to use those lists consistent with the duties in the PFIA.

The bill provides that a contract with an agency or local government, after July 1, 2012, must include a provision allowing for termination if the company is found to have submitted a false certification or been placed on a scrutinized companies list.

The bill directs the Department of Management Services to inform the Attorney General of the United States of the inclusion of companies on the Scrutinized Companies with Activities in Cuba List and the Scrutinized Companies with Activities in Syria List.

The bill has a significant fiscal impact on state government.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Board of Administration

The State Board of Administration (SBA or board) is established by Article IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board members are commonly referred to as "Trustees." The board derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution.

The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan, which represent approximately \$125.1 billion (85 percent) of the \$147.5 billion in assets managed by the SBA, as of November 30, 2011.¹ The SBA also manages 33 other investment portfolios, with combined assets of \$21.7 billion², including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.

Divestiture from Cuba

Current law prohibits the SBA from investing in stocks, securities, or other obligations of any institution or company domiciled in the United States that does business of any kind with Cuba, in violation of federal law.³ In addition, the SBA is prohibited from investing in any company domiciled outside of the United States if the President of the United States has applied sanctions against the country in which that company is domiciled.⁴

Florida law also provides that state agencies are prohibited from investing in any financial institution or company domiciled in the United States, which directly through the domestically domiciled company or a foreign subsidiary, issues a loan, extends credit, or makes purchases or trades goods with Cuba.⁵ State agencies are also prohibited from investing in any foreign company if the President of the United States has applied sanctions to the country in which that company is domiciled.⁶

The Protecting Florida's Investments Act

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA)⁷. The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of scrutinized companies that have prohibited business operations in Sudan and Iran.⁸ Once placed on the list of scrutinized companies, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies do not cease the prohibited activities or take certain compensating actions.⁹ The implementation of the PFIA by the SBA does not affect any FRSTF investments in United States companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.¹⁰

¹ See State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, issued December 31, 2011, at 7 (on file with the Government Operations Subcommittee).

² *Id.*

³ See s. 215.471, F.S.

⁴ *Id.*

⁵ Section 215.472(1), F.S.

⁶ Section 215.472(2), F.S.

⁷ See chapter 2007-88, L.O.F.

⁸ See s. 215.473(2)(a) and (b), F.S.

⁹ See s. 215.473(3), F.S.

¹⁰ Substantive Analysis for HB 1417, State Board of Administration, January 9, 2012, at 3 (on file with the Government Operations Subcommittee).

Iran and Sudan

Current law provides for the identification and divestiture of funds in certain companies with prohibited business operations with Iran and Sudan.

Florida law provides that the public fund¹¹ must make best efforts to identify all scrutinized companies in which it has direct or indirect holdings or could possibly have such holdings in the future. A scrutinized company means any company that:

- Has business operations involving contracts with or provides supplies or services to the governments of Iran or Sudan; companies in which such governments have any direct or indirect equity share, consortiums, or projects commissioned by the government; or companies involved in consortiums or projects commissioned by such governments.
- Is complicit in the Darfur genocide.
- Supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.¹²

The public fund must create a “Scrutinized Companies with Activities in Sudan List” and a “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List”.¹³ The lists must be updated quarterly and made publicly available.¹⁴ The public fund must file a report with each member of the board of trustees of the SBA, the President of the Senate, and the Speaker of the House of Representatives that includes the scrutinized company lists, within 30 days after the creation of the list.¹⁵

The public fund must provide written notice to any company, with inactive business operations, informing the company of this act and encouraging it to continue to refrain from initiating business with Iran or Sudan. Correspondence must occur semiannually.¹⁶

For any scrutinized company having active business operations with Iran or Sudan, the public fund must send written notice informing the company of its scrutinized status and informing the company that it may become subject to divestment.¹⁷ If, within 90 days, a company ceases scrutinized business operations, then that company must be removed from the lists.¹⁸ The public fund must sell, redeem, divest, or withdraw all publicly traded securities of the company within 12 months if, after 90 days, the company continues scrutinized active business operations.¹⁹

A company that the United States affirmatively declares to be excluded from present or future federal sanctions regime relating to Sudan or Iran is not subject to divestment or the investment prohibition.²⁰ In addition, divestment and the investment prohibition do not apply to indirect holdings in actively managed investment funds.²¹

¹¹ Section 215.473(1)(q), F.S., defines “public fund” as all funds, assets, trustees, and other designates under the SBA pursuant to chapter 121, F.S.

¹² Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

¹³ Section 215.473(2)(b), F.S.

¹⁴ Section 215.473(2)(c), F.S.

¹⁵ Section 215.473(4)(a), F.S.

¹⁶ Section 215.473(3)(a)2., F.S.

¹⁷ Section 215.473(3)(a)3., F.S.

¹⁸ Section 215.473(3)(a)4., F.S.

¹⁹ Section 215.473(3)(b)1., F.S.

²⁰ Section 215.473(3)(d), F.S.

²¹ The public fund, however, must submit letters to the managers of such investment funds containing companies that have scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies.

Current law requires the public fund to issue quarterly reports to the board of trustees of the SBA, President of the Senate, Speaker of the House of Representatives, United States Presidential Special Envoy to Sudan, and United States Presidential Special Envoy to Iran.²² The reports must include:

- A summary of correspondence with engaged companies;
- A listing of all investments sold, redeemed, divested, or withdrawn;
- A listing of all prohibited investments;
- A description of any progress related to external managers offering PFIA compliant funds; and
- A list of all publicly traded securities held directly by the state.²³

Current law provides that relevant portions of the act are discontinued if the United States Congress, or the President of the United States passes legislation, or issues an executive order or other written certification that:

- Darfur genocide has been halted for at least 12 months;
- Sanctions imposed against the Government of Sudan are revoked;
- The government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;
- The government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
- Sanctions imposed against the government of Iran are revoked; or
- Mandatory divestment of the type provided for by the PFIA interferes with the conduct of United States foreign policy.²⁴

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods such as economic embargoes, and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.

The State of Florida has practiced divestment four times in modern history.²⁵ From 1986 to 1993, the Legislature directed the SBA to divest from companies doing business with South Africa.²⁶ Beginning October 1, 1988, the Legislature placed restrictions on investments in any institution or company doing business in or with Northern Ireland.²⁷ From 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies.²⁸ From 2007 to present, the Legislature has directed the SBA to divest funds of companies that are actively seeking and providing certain business opportunities with Iran and Sudan.²⁹

Effect of Proposed Changes

The bill adds Cuba and Syria as nations subject to the PFIA and requiring investing prohibitions and potential investment divestiture by the SBA.

²² Section 215.473(4)(b), F.S.

²³ Section 215.473(4)(b)1. – 5., F.S.

²⁴ See s. 215.473(5), F.S.

²⁵ Information provided on February 3, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration.

²⁶ *Id.*

²⁷ See s. 121.153, F.S.

²⁸ Information provided on February 3, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration.

²⁹ See s. 215.473, F.S.

The bill expands the definition of “scrutinized companies” to include institutions or companies with prohibited business operations in Cuba and Syria. It provides that the definition of scrutinized companies now includes any company that:

- Has business operations involving contracts with or provides supplies or services to the governments of Cuba³⁰ or Syria³¹; companies in which such governments have any direct or indirect equity share, consortiums, or projects commissioned by the government; or companies involved in consortiums or projects commissioned by such governments; and
- Supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.

The bill requires the SBA to create a “Scrutinized Companies with Activities in Cuba List,” and a “Scrutinized Companies with Activities in Syria List,” and use those lists consistent with the duties in the PFIA.

The bill provides that if any of the following occur, the SBA may no longer scrutinize the affected company, no longer produce the scrutinized companies list, and cease divestment and investment prohibitions:

- The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Cuba or Syria has ceased to acquire weapons of mass destruction and support international terrorism;
- The United States revokes all sanctions imposed against the government of Cuba or Syria; or
- The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

The bill provides that a contract with an agency or local government, for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must include a provision allowing for termination if the company is found to have submitted a false certification or been placed on a scrutinized companies list. It also provides conditions that state agencies and local governments may use to determine, on a case by case basis, whether to enter into a contract for goods or services in excess of \$1 million with a company on a scrutinized companies list.

The bill directs the Department of Management Services to inform the Attorney General of the United States of the inclusion of companies on the Scrutinized Companies with Activities in Cuba List and the Scrutinized Companies with Activities in Syria List.

The bill provides for an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1 amends s. 215.473, F.S., to provide legislative findings; to revise and provide definitions; to create divestiture requirements related to Cuba and Syria.

³⁰ With regards to Cuba, more than 10 percent of the company’s total revenue or assets are linked to Cuba, and the company has failed to take substantial action; and, the company has, with actual knowledge, on or after January 1, 1959, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period.

³¹ With regards to Syria, more than 10 percent of the company’s total revenues or assets are linked to Syria and involve oil-related activities, and the company has failed to take substantial action; or the company has, with actual knowledge, on or after March 8, 1963, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Syria’s ability to develop the petroleum resources of Syria.

Section 2 amends s. 287.135, F.S., to prohibit a state agency or local government entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria List; to require a contract provision if the company is found to have been placed on such list; to provide exceptions; to require the Department of Management Services to notify the United States Attorney General after the act becomes law.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown.

2. Expenditures:

The SBA estimates that it will cost \$20 - \$30 million during fiscal year 2012-2013, to divest and reinvest funds with ties to Cuba and Syria.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The SBA would be prohibited from investing in those companies placed on a scrutinized companies list. Staff of the SBA advises that as proposed, the bill could potentially affect up to 13 foreign companies with business operations in Syria, 194 foreign companies with business operations in Cuba, and 33 United States companies with business operations in Cuba.

D. FISCAL COMMENTS:

The SBA will be required to divest of any holdings that have equity ties to Cuba or Syria. If this activity results in lost investment income, or administrative costs associated with divestment and replacement of the divested funds, those costs will have to be absorbed by the FRS or ultimately, the State of Florida, to maintain the solvency of the FRS Pension Plan.

The SBA provided the following fiscal comments:

As proposed the, the bill creates material negative short-term and potentially material long-term impacts on the FRS:

- The sale of \$9.2 billion in Cuba and Syrian related securities and reinvestment would have direct and indirect costs of \$30 million.
- In the most recent year, the securities lending program earned \$5.6 million lending Cuban and Syrian related securities. This trust fund income would be lost if the securities were prohibited.
- Roughly 8 percent of the universe of United States stocks and 21 percent of the universe of foreign stocks would be prohibited. These large

exclusions will increase trust fund portfolio risk and may cause higher employer contributions.³²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 a state tax shared in the aggregate with counties or municipalities.

2. Other:

Federal Issues – Federal Commerce Clause

In 2006, a constitutional challenge was filed by the National Foreign Trade Council, Inc. (NFTC), eight municipal pension funds and eight individual beneficiaries of state and local pension funds impacted by the 2005 Illinois Act to End Atrocities and Terrorism in the Sudan (“Illinois Sudan Act”).³³ The intent of the Illinois Act was to help stop the atrocities in the Republic of Sudan. It contained two major changes, one dealing with Deposit of State Moneys and another with the public Pension Code. The intent of the provisions dealing with the Pension Code was to prohibit a fiduciary of a public retirement system or public pension fund from investing in any entity with ties to Sudan and ultimately, to compel total divestment of pension assets with ties to Sudan.

The plaintiffs based their challenge on four grounds: (a) that the Act violated the United States Constitution’s Supremacy Clause because the Act is preempted by federal laws governing relations with Sudan; (b) that the Act intrudes on the federal government’s exclusive authority to conduct foreign affairs; (c) that the Act violates the Foreign Commerce Clause of the United States Constitution; and (d) that the provisions relating to the Deposit of State Moneys is preempted by the National Bank Act.³⁴

On February 23, 2007, the Federal District Court for the Northern District of Illinois declared the entire Illinois Sudan Act unconstitutional and permanently enjoined enforcement of the Act. The Court found the Pension Code amendments unconstitutional as violative of the Foreign Commerce Clause of the United States Constitution.³⁵

The opinion noted that courts are split on the issue of whether the market participant exception to the Commerce Clause applies to the Foreign Commerce Clause.³⁶ The United States Supreme Court has not addressed whether a “market participant” exception applies to the Foreign Commerce Clause. To the extent that the market participant exception to the Foreign Commerce Clause does apply and to the extent that the State Board of Administration acts exclusively as a market participant as to the public fund, the bill may not violate the Foreign Commerce Clause.

³² Memorandum provided by the State Board of Administration, delivered on January 31, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

³³ See National Foreign Trade Council, Inc. v. Giannoulis, 532 F.Supp.2d 731 (N.D.Ill., 2007).

³⁴ *Id.* at 737.

³⁵ *Id.*

³⁶ *Id.* at 747. See also College Sav. Bank v. Fla. Prepaid Postsecondary Ed. Expense Bd., 527 U.S. 666, 685, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999) (“Since state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants, evenhandedness suggests that, when acting as proprietors, States should similarly share existing freedoms from federal constraints, including the inherent limits of the Commerce Clause.”); Reeves, Inc. v. Stake, 100 S.Ct. 2271, 2278 (1980)(Moreover, state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants. Evenhandedness suggests that, when acting as proprietors, States should similarly share existing freedoms from federal constraints, including the inherent limits of the Commerce Clause.)

The Commerce Clause – Market Participant

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”³⁷ The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.³⁸

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. “If a statute ‘directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,’ the court may declare it unconstitutional as applied, without further inquiry.”³⁹
2. “. . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state’s interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits.”⁴⁰

However, when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.⁴¹ A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.⁴²

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments - SBA

The SBA provided the following comment:

If plan participants, retirees, or their associations believe that divestment threatens the security or level of their benefits, they may seek class action or individual relief in the courts on different grounds including impairment of contract and breach of fiduciary duty. This risk is particularly acute for defined contribution plans as their benefit (i.e., account value) is directly related to investment returns. In addition to claims to make the trust fund or individual accounts whole, there is the risk of damages against plan fiduciaries for breach of duty.⁴³

Drafting Issue

On line 832 of the bill, the word Cuba should be replaced by Syria.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

³⁷ U.S. CONST. art. I, s. 8, cl. 3.

³⁸ See Gibbons v. Ogden, 22 U.S. 1 (1824).

³⁹ National Collegiate Athletic Ass’n v. Associated Press, 18 So. 3d 1201, 1211(Fla. 1st DCA 2009) (citing Brown-Forman Distillers Corp. v. New York State Liquor Authority, 476 U.S. 573, 578-579).

⁴⁰ *Id.* (citations omitted); See Bainbridge v. Turner, 311 F.3d 1104, 1108-1109.

⁴¹ See White v. Massachusetts Council of Constr. Employers, 460 U.S. 204, 204 (1983).

⁴² *Id.*

⁴³ Substantive Analysis for HB 959, State Board of Administration, January 9, 2012, at 9 (on file with the Government Operations Subcommittee).

1 A bill to be entitled
 2 An act relating to scrutinized companies; amending s.
 3 215.473, F.S.; providing legislative findings;
 4 revising and providing definitions; requiring the
 5 State Board of Administration to identify all
 6 companies in which public moneys are invested that are
 7 doing certain types of business in or with Cuba or
 8 Syria; requiring the board to create and maintain
 9 certain scrutinized companies lists that name all such
 10 companies; requiring the board to periodically contact
 11 all scrutinized companies and encourage them to
 12 refrain from engaging in certain types of business in
 13 or with Cuba or Syria; requiring the board to inform
 14 scrutinized companies of their status as a scrutinized
 15 company and to provide notice of the opportunity to
 16 clarify the nature of the company's business
 17 activities; providing for removal of a company from
 18 the list under certain conditions; requiring the board
 19 to divest all publicly traded securities of a
 20 scrutinized company under certain conditions;
 21 providing for reintroduction of a company onto the
 22 list; providing exceptions to the divestment
 23 requirement; prohibiting the board from acquiring
 24 securities of scrutinized companies that have active
 25 business operations; providing an exemption to the
 26 divestment requirement and investment prohibition;
 27 providing an additional exception from the divestment
 28 requirement and the investment prohibition for certain

29 indirect holdings in actively managed investment
 30 funds; providing procedures of the board with respect
 31 to requesting removal of scrutinized companies from
 32 actively managed investment funds and defined
 33 contribution plans or the creation of a similar fund
 34 that excludes such companies; providing reporting
 35 requirements of the board; providing for cessation of
 36 assembly of the Scrutinized Companies with Activities
 37 in Cuba List and the Scrutinized Companies with
 38 Activities in Syria List, cessation of engagement and
 39 divestment of such companies, and restoration of
 40 authority to reinvest in such companies under
 41 specified conditions; authorizing the board to cease
 42 divesting or reinvesting in certain companies having
 43 scrutinized active business operations under specified
 44 conditions; amending s. 287.135, F.S.; prohibiting a
 45 state agency or local governmental entity from
 46 contracting for goods and services of more than a
 47 certain amount with a company that is on the
 48 Scrutinized Companies with Activities in Cuba List or
 49 the Scrutinized Companies with Activities in Syria
 50 List; requiring a contract provision that allows for
 51 termination of the contract if the company is found to
 52 have been placed on such list; providing exceptions;
 53 requiring certification upon submission of a bid or
 54 proposal for a contract, or before a company enters
 55 into or renews a contract, with an agency or
 56 governmental entity that the company is not on the

57 | Scrutinized Companies with Activities in Cuba List or
 58 | the Scrutinized Companies with Activities in Syria
 59 | List; providing procedures upon determination that a
 60 | company has submitted a false certification; providing
 61 | for civil action; providing penalties; providing
 62 | attorney fees and costs; providing a statute of
 63 | repose; prohibiting a private right of action;
 64 | requiring the Department of Management Services to
 65 | notify the Attorney General after the act becomes law;
 66 | providing an effective date.

67 |
 68 | WHEREAS, with a population of approximately 11 million,
 69 | Cuba is a totalitarian communist state that does not tolerate
 70 | opposition to official policy, and

71 | WHEREAS, the current government of Cuba assumed power on
 72 | January 1, 1959, and

73 | WHEREAS, although the Cuban constitution recognizes the
 74 | unicameral National Assembly as the supreme authority in Cuba,
 75 | the Communist Party is recognized in the constitution as the
 76 | only legal party and "the superior leading force of society and
 77 | of the state," and

78 | WHEREAS, elections in January 2008 for the Cuban National
 79 | Assembly were neither free nor fair, and all of the candidates
 80 | had to be preapproved by a Communist Party candidacy commission,
 81 | with the result that the Communist Party candidates and their
 82 | allies won 98.7 percent of the vote and 607 of 614 seats in the
 83 | National Assembly, and

84 | WHEREAS, the Cuban government continues to deny its

85 citizens their basic human rights, including the right to change
 86 their government, and has committed numerous and serious abuses
 87 against the citizens of Cuba, and

88 WHEREAS, among the human rights problems reported within
 89 Cuba are beatings and abuse of prisoners and detainees, harsh
 90 and life-threatening prison conditions, including denial of
 91 medical care, harassment, and beatings, and threats against
 92 political opponents by government-recruited mobs, police, and
 93 state security officials who acted with impunity, and

94 WHEREAS, arbitrary arrest and detention of human rights
 95 advocates and members of independent professional organizations,
 96 and denial of fair trial for at least 194 political prisoners
 97 and as many as 5,000 persons who have been convicted of
 98 potential "dangerousness" without being charged with any
 99 specific crime are also reported, and

100 WHEREAS, there have also been severe limitations on freedom
 101 of speech and the press, denial of peaceful assembly and
 102 association, restrictions on freedom of movement, including
 103 selective denial of exit permits to citizens and the forcible
 104 removal of persons from Havana to their hometowns, restrictions
 105 on freedom of religion and refusal to recognize domestic human
 106 rights groups or permit them to function legally, discrimination
 107 against persons of African descent, and severe restrictions on
 108 workers' rights, including the right to form independent unions,
 109 and

110 WHEREAS, other problems that are prevalent in Cuba include
 111 increasing incidences of domestic violence, underage
 112 prostitution, and trafficking in human beings, and

113 WHEREAS, Cuba is on the United States Department of State's
 114 list of State Sponsors of Terrorism, and for nearly half a
 115 century the United States has unilaterally imposed an economic,
 116 commercial, and financial embargo against Cuba, and

117 WHEREAS, the embargo, partially imposed on Cuba in October
 118 1960, was enacted after Cuba nationalized the properties of
 119 United States citizens and corporations and it was strengthened
 120 to a near-total embargo on February 7, 1962, and

121 WHEREAS, though the severity and the scope of the sanctions
 122 have varied, depending upon political developments in Cuba, the
 123 United States, and the rest of the world, the United States
 124 Government Accountability Office has stated that "the embargo on
 125 Cuba is the most comprehensive set of United States sanctions on
 126 any country, including other countries designated by the United
 127 States Government to be state sponsors of terrorism," and

128 WHEREAS, also on the Department of State's list of State
 129 Sponsors of Terrorism is the nation of Syria, and

130 WHEREAS, on March 8, 1963, the Baath Party in Syria enacted
 131 an emergency law that suspended basic constitutional rights such
 132 as freedom of speech and assembly and instituted martial law,
 133 and

134 WHEREAS, in February 1982, the Syrian army, under the
 135 orders of Syrian President Hafez al-Assad, effectively ended a
 136 campaign begun in 1976 by Sunni Islamic groups against the Assad
 137 regime with what is now known as "the Hama massacre," the
 138 quelling of a revolt by the Sunni Muslim community against the
 139 al-Assad regime that resulted in Syrian deaths, the estimates of
 140 which range from 10,000 to possibly as many as 40,000 Syrian

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141 citizens according to the Syrian Human Rights Committee, and
 142 WHEREAS, the Hama massacre has been described as being
 143 among "the single deadliest acts by any Arab government against
 144 its own people in the Middle East," and

145 WHEREAS, in 2011 the "Syrian uprising" began in that
 146 country, and

147 WHEREAS, the Syrian uprising is an ongoing internal
 148 conflict occurring in Syria that began with protests that
 149 started on January 26, 2011, and then escalated to an uprising
 150 by March 15, 2011, and

151 WHEREAS, the demands of protesters in this sustained
 152 campaign of civil resistance include the allowance by the ruling
 153 Baath Party of other political parties, the end of President
 154 Bashar al-Assad's presidency, equal rights for Kurds, and broad
 155 political freedoms such as freedom of the press, free speech,
 156 and freedom to assemble, and

157 WHEREAS, as protests continued, the Syrian government used
 158 tanks and snipers to force Syrian citizens off the streets,
 159 water and electricity were shut off, and security forces began
 160 confiscating flour and food in various areas of the country, and

161 WHEREAS, violence escalated as the crisis wore on and as a
 162 result more than 3,000 people were killed, many more were
 163 injured, and thousands of protesters have been detained, with
 164 dozens of detainees reportedly having been tortured and killed,
 165 and

166 WHEREAS, since the beginning of the uprising, the Syrian
 167 government has made several concessions, including the repeal on
 168 April 21, 2011, of the 1963 emergency law which allowed the

169 government sweeping authority to suspend constitutional rights,
 170 though the concessions are widely considered trivial and
 171 superficial by protesters demanding more meaningful reform,
 172 especially in light of the fact that government crackdowns on
 173 protesters have continued to heighten, and

174 WHEREAS, the oppressive Assad Regime blatantly murders
 175 protesters of the regime in mass, regularly detains political
 176 and human rights activists and journalists, engages in
 177 widespread media censorship, and is associated with the
 178 disappearance of citizens opposed to the Assad regime, and

179 WHEREAS, the United States Government and other nations
 180 throughout the world have openly called for President Assad to
 181 step down from office, and

182 WHEREAS, effective August 18, 2011, President Barack Obama
 183 issued a new Executive Order imposing significant new economic
 184 sanctions on Syria, and

185 WHEREAS, the action greatly expanded United States
 186 international trade restrictions against Syria and its
 187 government in certain important respects, representing a more
 188 comprehensive unilateral economic embargo, and

189 WHEREAS, most notably, the sanctions now include a freeze
 190 on the property and interests of property of the Government of
 191 Syria in the United States or held by United States persons,
 192 defined to include entities in the United States and their
 193 foreign branch offices, United States citizens or lawful
 194 permanent residents, and anyone of any nationality acting or
 195 located within the United States, and

196 WHEREAS, the sanctions include prohibitions on United
 197 States persons engaging in any transactions with the Syrian
 198 Government, making new investments in Syria, providing any
 199 services to Syria, or conducting business dealings in or related
 200 to petroleum or petroleum products of Syrian origin, and

201 WHEREAS, the sanctions also include a ban on the
 202 importation of Syrian-origin petroleum products into the United
 203 States and a prohibition against United States persons
 204 facilitating, approving, financing, or guaranteeing a
 205 transaction or dealing with a foreign person related to any of
 206 the prohibitions in place against Syria, and

207 WHEREAS, both the Government of Cuba and the Government of
 208 Syria have repeatedly committed human rights violations through
 209 intimidation by military and security forces, through
 210 bureaucratic and administrative obstruction, through acts of
 211 terrorism and atrocities directed against civilians, and through
 212 the displacement of citizens from their homes, and

213 WHEREAS, the Federal Government has imposed sanctions
 214 against the Government of Cuba and the Government of Syria, and
 215 such sanctions are monitored through the United States Treasury
 216 Department's Office of Foreign Assets Control (OFAC), and

217 WHEREAS, according to a former chair of the United States
 218 Securities and Exchange Commission, the fact that a foreign
 219 company is doing material business with a country, government,
 220 or entity on OFAC's sanctions list is, in the SEC staff's view,
 221 substantially likely to be significant to a reasonable
 222 investor's decision about whether to invest in that company, and

223 WHEREAS, because the United States Secretary of State has

224 | determined that both Cuba and Syria are countries whose
 225 | governments have provided support for acts of international
 226 | terrorism, as a result, the United States has restricted
 227 | assistance, defense exports, defense sales, financial
 228 | transactions, and various other transactions with the Government
 229 | of Cuba and the Government of Syria, and

230 | WHEREAS, a 2006 report by the United States House of
 231 | Representatives states that "a company's association with
 232 | sponsors of terrorism and human rights abuses, no matter how
 233 | large or small, can have a materially adverse result on a public
 234 | company's operations, financial condition, earnings, and stock
 235 | prices, all of which can negatively affect the value of an
 236 | investment," and

237 | WHEREAS, in response to the financial risk posed by
 238 | investments in companies doing business with a state that
 239 | sponsors terrorists, the Securities and Exchange Commission
 240 | established its Office of Global Security Risk to provide for
 241 | enhanced disclosure of material information regarding such
 242 | companies, and

243 | WHEREAS, divestment actions precipitated by such
 244 | sponsorship of terrorism and human rights violations encompass
 245 | universities, municipalities, states, and private pension plans,
 246 | and

247 | WHEREAS, companies facing such widespread divestment
 248 | present further material risk to remaining investors, and

249 | WHEREAS, it is a fundamental responsibility of the State of
 250 | Florida to decide where, how, and by whom financial resources in
 251 | its control should be invested, taking into account numerous

252 | pertinent factors, and

253 | WHEREAS, it is the prerogative and desire of the State of
 254 | Florida, with respect to investment resources in its control and
 255 | to the extent reasonable, with due consideration for return on
 256 | investment on behalf of the state and its investment
 257 | beneficiaries, not to participate in an ownership or capital-
 258 | providing capacity with entities that provide significant
 259 | practical support for terrorism and human rights violations,
 260 | including certain non-United States companies presently doing
 261 | business in such countries, and

262 | WHEREAS, while divestiture should be considered with the
 263 | intent to improve investment performance and by the rules of
 264 | prudence, fiduciaries must take into account all relevant
 265 | substantive factors in arriving at an investment decision, and

266 | WHEREAS, the State of Florida is deeply concerned about
 267 | investments in publicly traded companies that have business
 268 | activities in and ties to Cuba and Syria as a financial risk to
 269 | the shareholders, and

270 | WHEREAS, by investing in publicly traded companies having
 271 | ties to Cuba and Syria, the Florida State Board of
 272 | Administration is putting the funds it oversees at substantial
 273 | financial risk, and

274 | WHEREAS, divestiture from markets that are vulnerable to
 275 | embargo, loan restrictions, and sanctions from the United States
 276 | and the international community, including the United Nations
 277 | Security Council, is in accordance with the rules of prudence,
 278 | and

279 | WHEREAS, the Legislature finds that this act should remain

280 | in effect only insofar as it continues to be consistent with and
 281 | does not unduly interfere with the foreign policy of the United
 282 | States as determined by the Federal Government, and

283 | WHEREAS, to protect Florida's assets, it is in the best
 284 | interest of the state to enact a statutory prohibition regarding
 285 | the investments managed by the State Board of Administration
 286 | doing business in Cuba and Syria, NOW, THEREFORE,

287 |

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

289 |

290 | Section 1. Section 215.473, Florida Statutes, is amended
 291 | to read:

292 | 215.473 Divestiture by the State Board of Administration;
 293 | Sudan; Iran; Cuba; Syria.—

294 | (1) DEFINITIONS.—As used in this act, the term:

295 | (a) "Active business operations" means all business
 296 | operations that are not inactive business operations.

297 | (b) "Business operations" means engaging in commerce in
 298 | any form in Sudan, ~~or~~ Iran, Cuba, or Syria, including, but not
 299 | limited to, acquiring, developing, maintaining, owning, selling,
 300 | possessing, leasing, or operating equipment, facilities,
 301 | personnel, products, services, personal property, real property,
 302 | or any other apparatus of business or commerce.

303 | (c) "Company" means any sole proprietorship, organization,
 304 | association, corporation, partnership, joint venture, limited
 305 | partnership, limited liability partnership, limited liability
 306 | company, or other entity or business association, including all
 307 | wholly owned subsidiaries, majority-owned subsidiaries, parent

308 | companies, or affiliates of such entities or business
 309 | associations, that exists for the purpose of making profit.

310 | (d) "Complicit" means taking actions during any preceding
 311 | 20-month period which have directly supported or promoted:

312 | 1. The genocidal campaign in Darfur, including, but not
 313 | limited to, preventing Darfur's victimized population from
 314 | communicating with each other;

315 | 2. Encouraging Sudanese citizens to speak out against an
 316 | internationally approved security force for Darfur;

317 | 3. Actively working to deny, cover up, or alter the record
 318 | on human rights abuses in Darfur; or

319 | 4. Other similar actions.

320 | (e) "Cuba" means the nation of Cuba.

321 | (f)-(e) "Direct holdings" in a company means all securities
 322 | of that company that are held directly by the public fund or in
 323 | an account or fund in which the public fund owns all shares or
 324 | interests.

325 | (g) "Government of Cuba" means the government of Cuba,
 326 | under the control of General Raul Castro and the Cuban Communist
 327 | Party, its instrumentalities, and companies owned or controlled
 328 | by the government of Cuba.

329 | (h)-(f) "Government of Iran" means the government of Iran,
 330 | its instrumentalities, and companies owned or controlled by the
 331 | government of Iran.

332 | (i)-(g) "Government of Sudan" means the government in
 333 | Khartoum, Sudan, that is led by the National Congress Party,
 334 | formerly known as the National Islamic Front, or any successor
 335 | government formed on or after October 13, 2006, including the

336 coalition National Unity Government agreed upon in the
 337 Comprehensive Peace Agreement for Sudan, and does not include
 338 the regional government of southern Sudan.

339 (j) "Government of Syria" means the government of Syria,
 340 under the control of President Bashar Al-Assad and the Arab
 341 Socialist Baath Party, its instrumentalities, and companies
 342 owned or controlled by the government of Syria.

343 (k)~~(h)~~ "Inactive business operations" means the mere
 344 continued holding or renewal of rights to property previously
 345 operated for the purpose of generating revenues but not
 346 presently deployed for such purpose.

347 (l)~~(i)~~ "Indirect holdings" in a company means all
 348 securities of that company that are held in an account or fund,
 349 such as a mutual fund, managed by one or more persons not
 350 employed by the public fund, in which the public fund owns
 351 shares or interests together with other investors not subject to
 352 the provisions of this act.

353 (m)~~(j)~~ "Iran" means the Islamic Republic of Iran.

354 (n)~~(k)~~ "Marginalized populations of Sudan" include, but
 355 are not limited to, the portion of the population in the Darfur
 356 region that has been genocidally victimized; the portion of the
 357 population of southern Sudan victimized by Sudan's north-south
 358 civil war; the Beja, Rashidiya, and other similarly underserved
 359 groups of eastern Sudan; the Nubian and other similarly
 360 underserved groups in Sudan's Abyei, Southern Blue Nile, and
 361 Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other
 362 similarly underserved groups of northern Sudan.

363 (o)~~(l)~~ "Military equipment" means weapons, arms, military

364 supplies, and equipment that may readily be used for military
 365 purposes, including, but not limited to, radar systems,
 366 military-grade transport vehicles, or supplies or services sold
 367 or provided directly or indirectly to any force actively
 368 participating in armed conflict in Sudan, Cuba, or Syria.

369 (p)~~(m)~~ "Mineral-extraction activities" include the
 370 exploring, extracting, processing, transporting, or wholesale
 371 selling or trading of elemental minerals or associated metal
 372 alloys or oxides (ore), including gold, copper, chromium,
 373 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
 374 and zinc, as well as facilitating such activities, including
 375 providing supplies or services in support of such activities.

376 (q)~~(n)~~ "Oil-related activities" include, but are not
 377 limited to, owning rights to oil blocks; exporting, extracting,
 378 producing, refining, processing, exploring for, transporting,
 379 selling, or trading of oil; constructing, maintaining, or
 380 operating a pipeline, refinery, or other oil-field
 381 infrastructure; and facilitating such activities, including
 382 providing supplies or services in support of such activities,
 383 except that the mere retail sale of gasoline and related
 384 consumer products is not considered an oil-related activity.

385 (r)~~(e)~~ "Petroleum resources" means petroleum, petroleum
 386 byproducts, or natural gas.

387 (s)~~(p)~~ "Power-production activities" means any business
 388 operation that involves a project commissioned by the National
 389 Electricity Corporation (NEC) of Sudan or other similar entity
 390 of the government of Sudan whose purpose is to facilitate power
 391 generation and delivery, including, but not limited to,

392 establishing power-generating plants or hydroelectric dams,
 393 selling or installing components for the project, providing
 394 service contracts related to the installation or maintenance of
 395 the project, as well as facilitating such activities, including
 396 providing supplies or services in support of such activities.

397 (t)~~(e)~~ "Public fund" means all funds, assets, trustee, and
 398 other designates under the State Board of Administration
 399 pursuant to chapter 121.

400 (u)~~(r)~~ "Scrutinized active business operations" means
 401 active business operations that have resulted in a company
 402 becoming a scrutinized company.

403 (v)~~(s)~~ "Scrutinized business operations" means business
 404 operations that have resulted in a company becoming a
 405 scrutinized company.

406 (w)~~(t)~~ "Scrutinized company" means any company that meets
 407 any of the following criteria:

408 1. The company has business operations that involve
 409 contracts with or provision of supplies or services to the
 410 government of Sudan, companies in which the government of Sudan
 411 has any direct or indirect equity share, consortiums or projects
 412 commissioned by the government of Sudan, or companies involved
 413 in consortiums or projects commissioned by the government of
 414 Sudan, and:

415 a. More than 10 percent of the company's revenues or
 416 assets linked to Sudan involve oil-related activities or
 417 mineral-extraction activities; less than 75 percent of the
 418 company's revenues or assets linked to Sudan involve contracts
 419 with or provision of oil-related or mineral-extracting products

420 or services to the regional government of southern Sudan or a
 421 project or consortium created exclusively by that regional
 422 government; and the company has failed to take substantial
 423 action; or

424 b. More than 10 percent of the company's revenues or
 425 assets linked to Sudan involve power-production activities; less
 426 than 75 percent of the company's power-production activities
 427 include projects whose intent is to provide power or electricity
 428 to the marginalized populations of Sudan; and the company has
 429 failed to take substantial action.

430 2. The company is complicit in the Darfur genocide.

431 3. The company supplies military equipment within Sudan,
 432 unless it clearly shows that the military equipment cannot be
 433 used to facilitate offensive military actions in Sudan or the
 434 company implements rigorous and verifiable safeguards to prevent
 435 use of that equipment by forces actively participating in armed
 436 conflict. Examples of safeguards include post-sale tracking of
 437 such equipment by the company, certification from a reputable
 438 and objective third party that such equipment is not being used
 439 by a party participating in armed conflict in Sudan, or sale of
 440 such equipment solely to the regional government of southern
 441 Sudan or any internationally recognized peacekeeping force or
 442 humanitarian organization.

443 4. The company has business operations that involve
 444 contracts with or provision of supplies or services to the
 445 government of Iran, companies in which the government of Iran
 446 has any direct or indirect equity share, consortiums, or
 447 projects commissioned by the government of Iran, or companies

448 involved in consortiums or projects commissioned by the
 449 government of Iran and:

450 a. More than 10 percent of the company's total revenues or
 451 assets are linked to Iran and involve oil-related activities or
 452 mineral-extraction activities; and the company has failed to
 453 take substantial action; or

454 b. The company has, with actual knowledge, on or after
 455 August 5, 1996, made an investment of \$20 million or more, or
 456 any combination of investments of at least \$10 million each,
 457 which in the aggregate equals or exceeds \$20 million in any 12-
 458 month period, and which directly or significantly contributes to
 459 the enhancement of Iran's ability to develop the petroleum
 460 resources of Iran.

461 5. The company has business operations that involve
 462 contracts with or provision of supplies or services to the
 463 government of Cuba, companies in which the government of Cuba
 464 has any direct or indirect equity share, consortiums or projects
 465 commissioned by the government of Cuba, or companies involved in
 466 consortiums or projects commissioned by the government of Cuba
 467 and:

468 a. More than 10 percent of the company's total revenues or
 469 assets are linked to Cuba, and the company has failed to take
 470 substantial action; or

471 b. The company has, with actual knowledge, on or after
 472 January 1, 1959, made an investment of \$20 million or more, or
 473 any combination of investments of at least \$10 million each,
 474 which in the aggregate equals or exceeds \$20 million in any 12-
 475 month period.

476 6. The company supplies military equipment within Cuba,
 477 unless it clearly shows that the military equipment cannot be
 478 used to facilitate offensive military actions in Cuba or the
 479 company implements rigorous and verifiable safeguards to prevent
 480 use of that equipment by forces actively participating in armed
 481 conflict. Examples of safeguards include post-sale tracking of
 482 such equipment by the company, certification from a reputable
 483 and objective third party that such equipment is not being used
 484 by a party participating in armed conflict in Cuba, or sale of
 485 such equipment solely to any internationally recognized
 486 peacekeeping force or humanitarian organization.

487 7. The company has business operations that involve
 488 contracts with or provision of supplies or services to the
 489 government of Syria, companies in which the government of Syria
 490 has any direct or indirect equity share, consortiums or projects
 491 commissioned by the government of Syria, or companies involved
 492 in consortiums or projects commissioned by the government of
 493 Syria and:

494 a. More than 10 percent of the company's total revenues or
 495 assets are linked to Syria and involve oil-related activities,
 496 and the company has failed to take substantial action; or

497 b. The company has, with actual knowledge, on or after
 498 March 8, 1963, made an investment of \$20 million or more, or any
 499 combination of investments of at least \$10 million each, which
 500 in the aggregate equals or exceeds \$20 million in any 12-month
 501 period, and which directly or significantly contributes to the
 502 enhancement of Syria's ability to develop the petroleum
 503 resources of Syria.

504 8. The company supplies military equipment within Syria,
 505 unless it clearly shows that the military equipment cannot be
 506 used to facilitate offensive military actions in Syria or the
 507 company implements rigorous and verifiable safeguards to prevent
 508 use of that equipment by forces actively participating in armed
 509 conflict. Examples of safeguards include post-sale tracking of
 510 such equipment by the company, certification from a reputable
 511 and objective third party that such equipment is not being used
 512 by a party participating in armed conflict in Syria, or sale of
 513 such equipment solely to any internationally recognized
 514 peacekeeping force or humanitarian organization.

515 (x)-(u) "Social-development company" means a company whose
 516 primary purpose in Sudan is to provide humanitarian goods or
 517 services, including medicine or medical equipment; agricultural
 518 supplies or infrastructure; educational opportunities;
 519 journalism-related activities; information or information
 520 materials; spiritual-related activities; services of a purely
 521 clerical or reporting nature; food, clothing, or general
 522 consumer goods that are unrelated to oil-related activities;
 523 mineral-extraction activities; or power-production activities.

524 (y) "Substantial action specific to Cuba" means adopting,
 525 publicizing, and implementing a formal plan to cease scrutinized
 526 business operations within 1 year and to refrain from any such
 527 new business operations.

528 (z)-(v) "Substantial action specific to Iran" means
 529 adopting, publicizing, and implementing a formal plan to cease
 530 scrutinized business operations within 1 year and to refrain
 531 from any such new business operations.

532 (aa)~~(w)~~ "Substantial action specific to Sudan" means
 533 adopting, publicizing, and implementing a formal plan to cease
 534 scrutinized business operations within 1 year and to refrain
 535 from any such new business operations; undertaking humanitarian
 536 efforts in conjunction with an international organization, the
 537 government of Sudan, the regional government of southern Sudan,
 538 or a nonprofit entity evaluated and certified by an independent
 539 third party to be substantially in a relationship to the
 540 company's Sudan business operations and of benefit to one or
 541 more marginalized populations of Sudan; or, through engagement
 542 with the government of Sudan, materially improving conditions
 543 for the genocidally victimized population in Darfur.

544 (bb) "Substantial action specific to Syria" means
 545 adopting, publicizing, and implementing a formal plan to cease
 546 scrutinized business operations within 1 year and to refrain
 547 from any such new business operations.

548 (cc) "Syria" means the nation of Syria.

549 (2) IDENTIFICATION OF COMPANIES.—

550 (a) Within 90 days after the effective date of this act,
 551 the public fund shall make its best efforts to identify all
 552 scrutinized companies in which the public fund has direct or
 553 indirect holdings or could possibly have such holdings in the
 554 future. Such efforts include:

555 1. Reviewing and relying, as appropriate in the public
 556 fund's judgment, on publicly available information regarding
 557 companies having business operations in Sudan, including
 558 information provided by nonprofit organizations, research firms,
 559 international organizations, and government entities;

560 2. Contacting asset managers contracted by the public fund
561 that invest in companies having business operations in Sudan; or

562 3. Contacting other institutional investors that have
563 divested from or engaged with companies that have business
564 operations in Sudan.

565 4. Reviewing the laws of the United States regarding the
566 levels of business activity that would cause application of
567 sanctions for companies conducting business or investing in
568 countries that are designated state sponsors of terror.

569 (b) By the first meeting of the public fund following the
570 90-day period described in paragraph (a), the public fund shall
571 assemble all scrutinized companies that fit criteria specified
572 in subparagraphs (1)(w)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into
573 a "Scrutinized Companies with Activities in Sudan List," ~~and~~
574 shall assemble all scrutinized companies that fit criteria
575 specified in subparagraph (1)(w)4. ~~(1)(t)4.~~ into a "Scrutinized
576 Companies with Activities in the Iran Petroleum Energy Sector
577 List," ~~and~~ shall assemble all scrutinized companies that fit
578 criteria specified in subparagraphs (1)(w)5. and 6. into a
579 "Scrutinized Companies with Activities in Cuba List," and shall
580 assemble all scrutinized companies that fit criteria specified
581 in subparagraphs (1)(w)7. and 8. into a "Scrutinized Companies
582 with Activities in Syria List."

583 (c) The public fund shall update and make publicly
584 available quarterly the Scrutinized Companies with Activities in
585 Sudan List, ~~and~~ the Scrutinized Companies with Activities in the
586 Iran Petroleum Energy Sector List, the Scrutinized Companies
587 with Activities in Cuba List, and the Scrutinized Companies with

588 Activities in Syria List based on evolving information from,
 589 among other sources, those listed in paragraph (a).

590 (d) Notwithstanding the provisions of this act, a social-
 591 development company that is not complicit in the Darfur genocide
 592 is not considered a scrutinized company under subparagraph
 593 (1)(w)1. ~~(1)(t)1.~~, subparagraph (1)(w)2. ~~(1)(t)2.~~, or
 594 subparagraph (1)(w)3. ~~(1)(t)3.~~

595 (3) REQUIRED ACTIONS.—The public fund shall adhere to the
 596 following procedure for assembling companies on the Scrutinized
 597 Companies with Activities in Sudan List, ~~and~~ the Scrutinized
 598 Companies with Activities in the Iran Petroleum Energy Sector
 599 List, the Scrutinized Companies with Activities in Cuba List,
 600 and the Scrutinized Companies with Activities in Syria List:

601 (a) Engagement.—

602 1. The public fund shall immediately determine the
 603 companies on the Scrutinized Companies with Activities in Sudan
 604 List, ~~and~~ the Scrutinized Companies with Activities in the Iran
 605 Petroleum Energy Sector List, the Scrutinized Companies with
 606 Activities in Cuba List, and the Scrutinized Companies with
 607 Activities in Syria List in which the public fund owns direct or
 608 indirect holdings.

609 2. For each company identified in this paragraph that has
 610 only inactive business operations, the public fund shall send a
 611 written notice informing the company of this act and encouraging
 612 it to continue to refrain from initiating active business
 613 operations in Sudan, ~~or~~ Iran, Cuba, or Syria until it is able to
 614 avoid scrutinized business operations. The public fund shall
 615 continue such correspondence semiannually.

616 3. For each company newly identified under this paragraph
 617 that has active business operations, the public fund shall send
 618 a written notice informing the company of its scrutinized
 619 company status and that it may become subject to divestment by
 620 the public fund. The notice must inform the company of the
 621 opportunity to clarify its Sudan-related, ~~or~~ Iran-related, Cuba-
 622 related, or Syria-related activities and encourage the company,
 623 within 90 days, to cease its scrutinized business operations or
 624 convert such operations to inactive business operations in order
 625 to avoid qualifying for divestment by the public fund.

626 4. If, within 90 days after the public fund's first
 627 engagement with a company pursuant to this paragraph, that
 628 company ceases scrutinized business operations, the company
 629 shall be removed from the Scrutinized Companies with Activities
 630 in Sudan List, ~~and~~ the Scrutinized Companies with Activities in
 631 the Iran Petroleum Energy Sector List, the Scrutinized Companies
 632 with Activities in Cuba List, and the Scrutinized Companies with
 633 Activities in Syria List, and the provisions of this act shall
 634 cease to apply to that company unless that company resumes
 635 scrutinized business operations. If, within 90 days after the
 636 public fund's first engagement, the company converts its
 637 scrutinized active business operations to inactive business
 638 operations, the company is subject to all provisions relating to
 639 inactive business operations. A company may be removed from one
 640 list but remain on the other list, in which case the company
 641 shall be subject to the provisions applicable to the list on
 642 which the company remains.

643 (b) Divestment.—

644 1. If, after 90 days following the public fund's first
 645 engagement with a company pursuant to paragraph (a), the company
 646 continues to have scrutinized active business operations, and
 647 only while such company continues to have scrutinized active
 648 business operations, the public fund shall sell, redeem, divest,
 649 or withdraw all publicly traded securities of the company,
 650 except as provided in paragraph (d), from the public fund's
 651 assets under management within 12 months after the company's
 652 most recent appearance on the Scrutinized Companies with
 653 Activities in Sudan List, ~~or on~~ the Scrutinized Companies with
 654 Activities in the Iran Petroleum Energy Sector List, the
 655 Scrutinized Companies with Activities in Cuba List, or the
 656 Scrutinized Companies with Activities in Syria List.

657 2. If a company that ceased scrutinized active business
 658 operations following engagement pursuant to paragraph (a)
 659 resumes such operations, this paragraph immediately applies, and
 660 the public fund shall send a written notice to the company. The
 661 company shall also be immediately reintroduced onto the
 662 Scrutinized Companies with Activities in Sudan List, ~~or on~~ the
 663 Scrutinized Companies with Activities in the Iran Petroleum
 664 Energy Sector List, the Scrutinized Companies with Activities in
 665 Cuba List, or the Scrutinized Companies with Activities in Syria
 666 List, as applicable.

667 (c) Prohibition.—The public fund may not acquire
 668 securities of companies on the Scrutinized Companies with
 669 Activities in Sudan List, ~~or~~ the Scrutinized Companies with
 670 Activities in the Iran Petroleum Energy Sector List, the
 671 Scrutinized Companies with Activities in Cuba List, or the

672 Scrutinized Companies with Activities in Syria List that have
 673 active business operations, except as provided in paragraph (d).

674 (d) Exemption.—A company that the United States Government
 675 affirmatively declares to be excluded from its present or any
 676 future federal sanctions regime relating to Sudan, ~~or~~ Iran,
 677 Cuba, or Syria is not subject to divestment or the investment
 678 prohibition pursuant to paragraphs (b) and (c).

679 (e) Excluded securities.—Notwithstanding the provisions of
 680 this act, paragraphs (b) and (c) do not apply to indirect
 681 holdings in actively managed investment funds. However, the
 682 public fund shall submit letters to the managers of such
 683 investment funds containing companies that have scrutinized
 684 active business operations requesting that they consider
 685 removing such companies from the fund or create a similar
 686 actively managed fund having indirect holdings devoid of such
 687 companies. If the manager creates a similar fund, the public
 688 fund shall replace all applicable investments with investments
 689 in the similar fund in an expedited timeframe consistent with
 690 prudent investing standards. For the purposes of this section, a
 691 private equity fund is deemed to be an actively managed
 692 investment fund.

693 (f) Further exclusions.—Notwithstanding any other
 694 provision of this act, the public fund, when discharging its
 695 responsibility for operation of a defined contribution plan,
 696 shall engage the manager of the investment offerings in such
 697 plans requesting that they consider removing scrutinized
 698 companies from the investment offerings or create an alternative
 699 investment offering devoid of scrutinized companies. If the

700 manager creates an alternative investment offering and the
 701 offering is deemed by the public fund to be consistent with
 702 prudent investor standards, the public fund shall consider
 703 including such investment offering in the plan.

704 (4) REPORTING.—

705 (a) The public fund shall file a report with each member
 706 of the Board of Trustees of the State Board of Administration,
 707 the President of the Senate, and the Speaker of the House of
 708 Representatives that includes the Scrutinized Companies with
 709 Activities in Sudan List, ~~and~~ the Scrutinized Companies with
 710 Activities in the Iran Petroleum Energy Sector List, the
 711 Scrutinized Companies with Activities in Cuba List, and the
 712 Scrutinized Companies with Activities in Syria List within 30
 713 days after the list is created. This report shall be made
 714 available to the public.

715 (b) At each quarterly meeting of the Board of Trustees
 716 thereafter, the public fund shall file a report, which shall be
 717 made available to the public and to each member of the Board of
 718 Trustees of the State Board of Administration, the President of
 719 the Senate, and the Speaker of the House of Representatives, and
 720 send a copy of that report to the United States Presidential
 721 Special Envoy to Sudan, ~~and~~ the United States Presidential
 722 Special Envoy to Iran, the United States Presidential Special
 723 Envoy to Cuba, and the United States Presidential Special Envoy
 724 to Syria, or an appropriate designee or successor, which
 725 includes:

- 726 1. A summary of correspondence with companies engaged by
 727 the public fund under subparagraphs (3) (a)2. and 3.;

728 2. All investments sold, redeemed, divested, or withdrawn
729 in compliance with paragraph (3)(b);

730 3. All prohibited investments under paragraph (3)(c);

731 4. Any progress made under paragraph (3)(e); and

732 5. A list of all publicly traded securities held directly
733 by this state.

734 (5) EXPIRATION.—This act expires upon the occurrence of
735 all of the following:

736 (a) If any of the following occur, the public fund shall
737 no longer scrutinize companies according to subparagraphs
738 (1)(w)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer
739 assemble the Scrutinized Companies with Activities in Sudan
740 List, shall cease engagement and divestment of such companies,
741 and may reinvest in such companies as long as such companies do
742 not satisfy the criteria for inclusion in the Scrutinized
743 Companies with Activities in the Iran Petroleum Energy Sector
744 List, the Scrutinized Companies with Activities in Cuba List, or
745 the Scrutinized Companies with Activities in Syria List:

746 1. The Congress or President of the United States,
747 affirmatively and unambiguously states, by means including, but
748 not limited to, legislation, executive order, or written
749 certification from the President to Congress, that the Darfur
750 genocide has been halted for at least 12 months;

751 2. The United States revokes all sanctions imposed against
752 the government of Sudan;

753 3. The Congress or President of the United States
754 affirmatively and unambiguously states, by means including, but
755 not limited to, legislation, executive order, or written

756 certification from the President to Congress, that the
 757 government of Sudan has honored its commitments to cease attacks
 758 on civilians, demobilize and demilitarize the Janjaweed and
 759 associated militias, grant free and unfettered access for
 760 deliveries of humanitarian assistance, and allow for the safe
 761 and voluntary return of refugees and internally displaced
 762 persons; or

763 4. The Congress or President of the United States
 764 affirmatively and unambiguously states, by means including, but
 765 not limited to, legislation, executive order, or written
 766 certification from the President to Congress, that mandatory
 767 divestment of the type provided for in this act interferes with
 768 the conduct of United States foreign policy.

769 (b) If any of the following occur, the public fund shall
 770 no longer scrutinize companies according to subparagraph
 771 (1)(w)4. ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized
 772 Companies with Activities in the Iran Petroleum Energy Sector
 773 List and shall cease engagement, investment prohibitions, and
 774 divestment. The public fund may reinvest in such companies as
 775 long as such companies do not satisfy the criteria for inclusion
 776 in the Scrutinized Companies with Activities in Sudan List, the
 777 Scrutinized Companies with Activities in Cuba List, or the
 778 Scrutinized Companies with Activities in Syria List:

779 1. The Congress or President of the United States
 780 affirmatively and unambiguously states, by means including, but
 781 not limited to, legislation, executive order, or written
 782 certification from the President to Congress, that the
 783 government of Iran has ceased to acquire weapons of mass

784 | destruction and support international terrorism;

785 | 2. The United States revokes all sanctions imposed against
786 | the government of Iran; or

787 | 3. The Congress or President of the United States
788 | affirmatively and unambiguously declares, by means including,
789 | but not limited to, legislation, executive order, or written
790 | certification from the President to Congress, that mandatory
791 | divestment of the type provided for in this act interferes with
792 | the conduct of United States foreign policy.

793 | (c) If any of the following occur, the public fund shall
794 | no longer scrutinize companies according to subparagraphs
795 | (1)(w)5. and 6. and shall no longer assemble the Scrutinized
796 | Companies with Activities in Cuba List and shall cease
797 | engagement, investment prohibitions, and divestment. The public
798 | fund may reinvest in such companies as long as such companies do
799 | not satisfy the criteria for inclusion in the Scrutinized
800 | Companies with Activities in Sudan List, the Scrutinized
801 | Companies with Activities in the Iran Petroleum Energy Sector
802 | List, or the Scrutinized Companies with Activities in Syria
803 | List:

804 | 1. The Congress or President of the United States
805 | affirmatively and unambiguously states, by means including, but
806 | not limited to, legislation, executive order, or written
807 | certification from the President to Congress, that the
808 | government of Cuba has ceased to acquire weapons of mass
809 | destruction and support international terrorism;

810 | 2. The United States revokes all sanctions imposed against
811 | the government of Cuba; or

812 3. The Congress or President of the United States
 813 affirmatively and unambiguously declares, by means including,
 814 but not limited to, legislation, executive order, or written
 815 certification from the President to Congress, that mandatory
 816 divestment of the type provided for in this act interferes with
 817 the conduct of United States foreign policy.

818 (d) If any of the following occur, the public fund shall
 819 no longer scrutinize companies according to subparagraphs
 820 (1)(w)7. and 8. and shall no longer assemble the Scrutinized
 821 Companies with Activities in Syria List and shall cease
 822 engagement, investment prohibitions, and divestment. The public
 823 fund may reinvest in such companies as long as such companies do
 824 not satisfy the criteria for inclusion in the Scrutinized
 825 Companies with Activities in Sudan List, the Scrutinized
 826 Companies with Activities in the Iran Petroleum Energy Sector
 827 List, or the Scrutinized Companies with Activities in Cuba List:

828 1. The Congress or President of the United States
 829 affirmatively and unambiguously states, by means including, but
 830 not limited to, legislation, executive order, or written
 831 certification from the President to Congress, that the
 832 government of Cuba has ceased to acquire weapons of mass
 833 destruction and support international terrorism;

834 2. The United States revokes all sanctions imposed against
 835 the government of Syria; or

836 3. The Congress or President of the United States
 837 affirmatively and unambiguously declares, by means including,
 838 but not limited to, legislation, executive order, or written
 839 certification from the President to Congress, that mandatory

840 divestment of the type provided for in this act interferes with
 841 the conduct of United States foreign policy.

842 (6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public
 843 fund's actions taken in compliance with this act, including all
 844 good faith determinations regarding companies as required by
 845 this act, shall be adopted and incorporated into the public
 846 fund's investment policy statement (the IPS) as set forth in s.
 847 215.475.

848 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED
 849 ACTIVE BUSINESS OPERATIONS.—Notwithstanding any other provision
 850 of this act to the contrary, the public fund may cease divesting
 851 from certain scrutinized companies pursuant to paragraph (3)(b)
 852 or reinvest in certain scrutinized companies from which it
 853 divested pursuant to paragraph (3)(b) if clear and convincing
 854 evidence shows that the value of all assets under management by
 855 the public fund becomes equal to or less than 99.50 percent, or
 856 50 basis points, of the hypothetical value of all assets under
 857 management by the public fund assuming no divestment for any
 858 company had occurred under paragraph (3)(b). Cessation of
 859 divestment, reinvestment, or any subsequent ongoing investment
 860 authorized by this act is limited to the minimum steps necessary
 861 to avoid the contingency set forth in this subsection or that no
 862 divestment of any company is required for less than fair value.
 863 For any cessation of divestment, reinvestment, or subsequent
 864 ongoing investment authorized by this act, the public fund shall
 865 provide a written report to each member of the Board of Trustees
 866 of the State Board of Administration, the President of the
 867 Senate, and the Speaker of the House of Representatives in

868 advance of initial reinvestment, updated semiannually thereafter
 869 as applicable, setting forth the reasons and justification,
 870 supported by clear and convincing evidence, for its decisions to
 871 cease divestment, reinvest, or remain invested in companies
 872 having scrutinized active business operations. This act does not
 873 apply to reinvestment in companies on the grounds that they have
 874 ceased to have scrutinized active business operations.

875 Section 2. Section 287.135, Florida Statutes, is amended
 876 to read:

877 287.135 Prohibition against contracting with scrutinized
 878 companies.—

879 (1) In addition to the terms defined in ss. 287.012 and
 880 215.473, as used in this section, the term:

881 (a) "Awarding body" means, for purposes of state
 882 contracts, an agency or the department, and for purposes of
 883 local contracts, the governing body of the local governmental
 884 entity.

885 (b) "Local governmental entity" means a county,
 886 municipality, special district, or other political subdivision
 887 of the state.

888 (2) A company that, at the time of bidding or submitting a
 889 proposal for a new contract or renewal of an existing contract,
 890 is on the Scrutinized Companies with Activities in Sudan List,
 891 ~~or~~ the Scrutinized Companies with Activities in the Iran
 892 Petroleum Energy Sector List, the Scrutinized Companies with
 893 Activities in Cuba List, or the Scrutinized Companies with
 894 Activities in Syria List, created pursuant to s. 215.473, is
 895 ineligible for, and may not bid on, submit a proposal for, or

896 enter into or renew a contract with an agency or local
 897 governmental entity for goods or services of \$1 million or more.

898 (3) (a) Any contract with an agency or local governmental
 899 entity for goods or services of \$1 million or more entered into
 900 or renewed on or after July 1, 2011, through June 30, 2012, must
 901 contain a provision that allows for the termination of such
 902 contract at the option of the awarding body if the company is
 903 found to have submitted a false certification as provided under
 904 subsection (5) or been placed on the Scrutinized Companies with
 905 Activities in Sudan List or the Scrutinized Companies with
 906 Activities in the Iran Petroleum Energy Sector List.

907 (b) Any contract with an agency or local governmental
 908 entity for goods or services of \$1 million or more entered into
 909 or renewed on or after July 1, 2012, must contain a provision
 910 that allows for the termination of such contract at the option
 911 of the awarding body if the company is found to have submitted a
 912 false certification as provided under subsection (5) or been
 913 placed on the Scrutinized Companies with Activities in Sudan
 914 List, the Scrutinized Companies with Activities in the Iran
 915 Petroleum Energy Sector List, the Scrutinized Companies with
 916 Activities in Cuba List, or the Scrutinized Companies with
 917 Activities in Syria List.

918 (4) Notwithstanding subsection (2) or subsection (3), an
 919 agency or local governmental entity, on a case-by-case basis,
 920 may permit a company on the Scrutinized Companies with
 921 Activities in Sudan List, ~~or~~ the Scrutinized Companies with
 922 Activities in the Iran Petroleum Energy Sector List, the
 923 Scrutinized Companies with Activities in Cuba List, or the

924 Scrutinized Companies with Activities in Syria List to be
 925 eligible for, bid on, submit a proposal for, or enter into or
 926 renew a contract for goods or services of \$1 million or more
 927 under ~~either of the following~~ conditions set forth in paragraph
 928 (a) or the conditions set forth in paragraph (b):

929 (a)1. With respect to a company on the Scrutinized
 930 Companies with Activities in Sudan List or the Scrutinized
 931 Companies with Activities in the Iran Petroleum Energy Sector
 932 List, all of the following occur:

933 a.1. The scrutinized business operations were made before
 934 July 1, 2011.

935 b.2. The scrutinized business operations have not been
 936 expanded or renewed after July 1, 2011.

937 c.3. The agency or local governmental entity determines
 938 that it is in the best interest of the state or local community
 939 to contract with the company.

940 d.4. The company has adopted, has publicized, and is
 941 implementing a formal plan to cease scrutinized business
 942 operations and to refrain from engaging in any new scrutinized
 943 business operations.

944 2. With respect to a company on the Scrutinized Companies
 945 with Activities in Cuba List or the Scrutinized Companies with
 946 Activities in Syria List, all of the following occur:

947 a. The scrutinized business operations were made before
 948 July 1, 2012.

949 b. The scrutinized business operations have not been
 950 expanded or renewed after July 1, 2012.

951 c. The agency or local governmental entity determines that

952 | it is in the best interest of the state or local community to
 953 | contract with the company.

954 | d. The company has adopted, has publicized, and is
 955 | implementing a formal plan to cease scrutinized business
 956 | operations and to refrain from engaging in any new scrutinized
 957 | business operations.

958 | (b) One of the following occurs:

959 | 1. The local governmental entity makes a public finding
 960 | that, absent such an exemption, the local governmental entity
 961 | would be unable to obtain the goods or services for which the
 962 | contract is offered.

963 | 2. For a contract with an executive agency, the Governor
 964 | makes a public finding that, absent such an exemption, the
 965 | agency would be unable to obtain the goods or services for which
 966 | the contract is offered.

967 | 3. For a contract with an office of a state constitutional
 968 | officer other than the Governor, the state constitutional
 969 | officer makes a public finding that, absent such an exemption,
 970 | the office would be unable to obtain the goods or services for
 971 | which the contract is offered.

972 | (5) At the time a company submits a bid or proposal for a
 973 | contract or before the company enters into or renews a contract
 974 | with an agency or governmental entity for goods or services of
 975 | \$1 million or more, the company must certify that the company is
 976 | not on the Scrutinized Companies with Activities in Sudan List,
 977 | ~~or~~ the Scrutinized Companies with Activities in the Iran
 978 | Petroleum Energy Sector List, the Scrutinized Companies with
 979 | Activities in Cuba List, or the Scrutinized Companies with

980 Activities in Syria List.

981 (a) If, after the agency or the local governmental entity
 982 determines, using credible information available to the public,
 983 that the company has submitted a false certification, the agency
 984 or local governmental entity shall provide the company with
 985 written notice of its determination. The company shall have 90
 986 days following receipt of the notice to respond in writing and
 987 to demonstrate that the determination of false certification was
 988 made in error. If the company does not make such demonstration
 989 within 90 days after receipt of the notice, the agency or the
 990 local governmental entity shall bring a civil action against the
 991 company. If a civil action is brought and the court determines
 992 that the company submitted a false certification, the company
 993 shall pay the penalty described in subparagraph 1. and all
 994 reasonable attorney ~~attorney's~~ fees and costs, including any
 995 costs for investigations that led to the finding of false
 996 certification.

997 1. A civil penalty equal to the greater of \$2 million or
 998 twice the amount of the contract for which the false
 999 certification was submitted shall be imposed.

1000 2. The company is ineligible to bid on any contract with
 1001 an agency or local governmental entity for 3 years after the
 1002 date the agency or local governmental entity determined that the
 1003 company submitted a false certification.

1004 (b) A civil action to collect the penalties described in
 1005 paragraph (a) must commence within 3 years after the date the
 1006 false certification is submitted.

1007 (6) Only the agency or local governmental entity that is a

1008 party to the contract may cause a civil action to be brought
 1009 under this section. This section does not create or authorize a
 1010 private right of action or enforcement of the penalties provided
 1011 in this section. An unsuccessful bidder, or any other person
 1012 other than the agency or local governmental entity, may not
 1013 protest the award of a contract or contract renewal on the basis
 1014 of a false certification.

1015 (7) This section preempts any ordinance or rule of any
 1016 agency or local governmental entity involving public contracts
 1017 for goods or services of \$1 million or more with a company
 1018 engaged in scrutinized business operations.

1019 (8) The department shall submit to the Attorney General of
 1020 the United States a written notice:

1021 (a) Describing this section within 30 days after July 1,
 1022 2011.

1023 (b) Within 30 days after July 1, 2012, apprising the
 1024 Attorney General of the United States of the inclusion of
 1025 companies on the Scrutinized Companies with Activities in Cuba
 1026 List and the Scrutinized Companies with Activities in Syria List
 1027 within the provisions of this section.

1028 (9) This section becomes inoperative on the date that
 1029 federal law ceases to authorize the states to adopt and enforce
 1030 the contracting prohibitions of the type provided for in this
 1031 section.

1032 Section 3. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 959 (2012)

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 Representatives Bileca and Trujillo offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 215.471, Florida Statutes, is amended
8 to read:

9 215.471 Divestiture by the State Board of Administration;
10 reporting requirements.-

11 (1) The State Board of Administration shall divest any
12 investment under s. 121.151 and ss. 215.44-215.53, and is
13 prohibited from investment in stocks, securities, or other
14 obligations of:

15 (a)~~(1)~~ Any institution or company domiciled in the United
16 States, or foreign subsidiary of a company domiciled in the
17 United States, doing business in or with Cuba, or with agencies
18 or instrumentalities thereof in violation of federal law.

Amendment No.

19 (b) (2) Any institution or company domiciled outside of the
20 United States if the President of the United States has applied
21 sanctions against the foreign country in which the institution
22 or company is domiciled pursuant to s. 4 of the Cuban Democracy
23 Act of 1992.

24 (2) The State Board of Administration may not be a
25 fiduciary under this section with respect to voting on, and may
26 not have the right to vote in favor of, any proxy resolution
27 advocating expanded United States trade with Cuba or Syria. The
28 board's staff shall report on its activities in its Annual Proxy
29 Voting Report.

30 Section 2. This act shall take effect July 1, 2012.
31
32

33 -----
34 **T I T L E A M E N D M E N T**

35 Remove the entire title and insert:

36 A bill to be entitled
37 An act relating to divestiture by the State Board of
38 Administration; amending s. 215.471, F.S.; prohibiting the State
39 Board of Administration from being a fiduciary with respect to
40 voting on any proxy resolution advocating expanded United States
41 trade with Cuba or Syria; prohibiting the State Board of
42 Administration from being a fiduciary with respect to having the
43 right to vote in favor of any proxy resolution advocating
44 expanded United States trade with Cuba or Syria; creating
45 reporting requirements; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1409 State Contracting
SPONSOR(S): Albritton
TIED BILLS: IDEN./SIM. BILLS: SB 1626

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---------------|---------------------------------------|
| 1) Government Operations Subcommittee | | Naf <i>in</i> | Williamson <i>Law</i> |
| 2) Government Operations Appropriations Subcommittee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

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

The bill transfers uniform policy authority and oversight of agency procurement to the Department of Financial Services, but leaves with the Department of Management Services the responsibility for the actual procurement of commodities and contractual services for agencies. It makes changes to conform to the transfer of policy and oversight authority and establishes related duties for the Department of Financial Services. It also provides an appropriation to the Chief Financial Officer for the newly-created duties.

The bill makes additional revisions to state agency procurement and contracting provisions, including, but not limited to:

- Revision of the Department of Management Services' power to maintain a vendor list;
- Revision of exemptions from competitive-solicitation requirements;
- Revision of contract or grant manager qualifications;
- Revision of requirements for agreements funded with federal and state assistance; and
- Revision of reporting requirements for state agency contract information.

The bill revises reporting duties of the Auditor General relating to transparency requirements.

The bill amends the requirement in the Transparency Florida Act that the Chief Financial Officer to provide public access to a state contract management system to, among other provisions, require specified governmental entities to post information about their contracts.

The bill requires the Chief Financial Officer to review and report recommendations relating to the state's system of procurement, and provides an appropriation for completion of the report.

The bill provides for the future repeal of ch. 287, F.S., relating to the procurement of personal property and services.

The bill provides an effective date of July 1, 2012.

The bill appears likely to have an indeterminate fiscal impact on state and local governments due to the transfer of duties from the Department of Management Services to the Department of Financial Services and the reporting requirements.

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

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. The DMS's areas of responsibility include, but are not limited to:

- Employee benefits (retirement and insurance);
- Human resource management;
- Business operations (real estate development and management, state purchasing, and specialized services);
- Telecommunications; and
- Agency administration.¹

Divisions and programs established within the DMS to execute such duties are the:

- 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.²

State Procurement of and Contracts for Personal Property and Services

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency³ procurement of personal property and services.⁴ The DMS is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.⁵ The Division of State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors.

These include the following:

- "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;

¹ See the Department of Management Services website, <http://www.dms.myflorida.com/> (last visited February 3, 2012).

² See s. 20.22(2), F.S.

³ As defined in s. 287.012(1), F.S., "agency" means 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.

⁴ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

⁵ See ss. 287.032 and 287.042, F.S.

- "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;
- "Requests for proposals," 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 high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁶

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁷ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.⁸

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.⁹

Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance to a recipient or subrecipient,¹⁰ or that provides federal financial assistance to a subrecipient,¹¹ 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.¹²

Reporting of State Agency Contract Information

Current law requires each state agency to report to the Department of Financial Services (DFS) the following information relating to certain contracted activities:

- The nature of the commodities or services provided;
- The term of the contract;
- The final obligation made by the agency;
- A summary of any time constraints that apply to the procurement;
- The justification for not using the competitive solicitation, including any statutory exemption or exception; and
- Other information regarding the contract or the procurement that the DFS requires.¹³

Chief Financial Officer and Department of Financial Services

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member.¹⁴ The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the

⁶ See ss. 287.012(6) and 287.057, F.S.

⁷ 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. As defined in s. 287.012(6), F.S., "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.

⁸ See s. 287.057(3)(f), F.S.

⁹ See s. 287.042(2)(c), F.S.

¹⁰ As defined in s. 215.97, F.S.

¹¹ As defined by applicable United States Office of Management and Budget circulars.

¹² See s. 215.971, F.S.

¹³ See s. 216.0111, F.S.

¹⁴ See art. 4, s. 4(a) and (c), Fla. Const.

state and keeping all state funds and securities.¹⁵ Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,¹⁶ paying state employee salaries,¹⁷ and reporting all disbursements of funds administered by the CFO.¹⁸

The CFO also serves as the head of the DFS, which executes the duties of the CFO.¹⁹ The DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshal;
- 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 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.²⁰

The Financial Services Commission;²¹ Board of Funeral, Cemetery, and Consumer Services;²² and Strategic Markets Research and Assessment Unit²³ also are established within the DFS.

Auditor General

The Auditor General is appointed by the Legislature to conduct audits of records and to perform related duties as prescribed by law.²⁴ Such duties include, but are not limited to:

- Conducting financial audits of state government, state universities, state colleges, and district school boards;
- Conducting operational and performance audits of accounts and records of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind;
- Conducting performance audits of local government financial reporting systems; and
- Conducting performance audits of the Department of Revenue's administration of the ad valorem tax laws.²⁵

¹⁵ See art. 4, s. 4(c), Fla. Const., and s. 17.001, F.S.

¹⁶ See s. 17.04, F.S.

¹⁷ See s. 17.09, F.S.

¹⁸ See s. 17.11, F.S.

¹⁹ See s. 20.121, F.S.

²⁰ Section 20.121(2), F.S.

²¹ The Financial Services Commission is composed of the Governor and of the Cabinet members, and includes the Office of Insurance Regulation and the Office of Financial Regulation. The offices are responsible for activities of the commission relating to regulation and investigation of violations of laws relating to insurance and financial institutions. See s. 20.121(3)(a), F.S.

²² The Board of Funeral, Cemetery, and Consumer Services is created within the Division of Funeral, Cemetery, and Consumer Services, and regulates licenses issued under ch. 497, F.S. (Funeral, Cemetery, and Consumer Services). See ss. 20.121(4) and 497.103, F.S.

²³ The Strategic Markets Research and Assessment Unit creates reports on issues, trends, and threats that broadly impact the condition of the financial services industries. See s. 20.121(6), F.S.

²⁴ See art. III, s. 2, Fla. Const., and s. 11.45(2)(a), F.S.

²⁵ See s. 11.45(2)(a), F.S.

The Auditor General also must engage in certain reporting activities, such as:

- Notification of the Legislative Auditing Committee²⁶ of any local governmental entity, district school board, charter school, or charter technical career center that does not comply with annual financial audit reporting requirements;²⁷ and
- Annual notification of the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services of all educational entities and water management districts that have failed to comply with transparency requirements as identified in certain audit reports.²⁸

Transparency Florida Act

The Transparency Florida Act (act)²⁹ created financial reporting requirements for certain public entities for the purpose of making that information publicly available. Among other provisions, it required:

- The Executive Office of the Governor to establish a website making certain information relating to state financial expenditures available to the public;³⁰
- Each water management district to make a monthly financial statement available on its website;³¹ and
- The CFO to provide public access to a state contract management system providing information and documentation relating to government contracts. The act specifies data that must be collected in the system and provides that in the event of a major contract change or a new contract, the affected state governmental entity must update the system within 30 days.³²

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.³³

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 Act³⁴ 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.

²⁶ The Legislative Auditing Committee is a joint committee authorized to take under investigation any matter within the scope of an audit, review, or examination either completed or then being conducted by the Auditor General or the Office of Program Policy Analysis and Government Accountability and, in connection with such investigation, may exercise subpoena powers. See s. 11.40(1), F.S.

²⁷ See s. 11.45(7)(a), F.S.

²⁸ See s. 11.45(7)(i), F.S.

²⁹ Chapter 2009-74, s. 2, L.O.F. (codified at s. 215.985, F.S.).

³⁰ See s. 215.985(3), F.S.

³¹ See s. 215.985(12), F.S.

³² See s. 215.985(16), F.S.

³³ Article I, s. 24(c) of the Fla. Const.

³⁴ See s. 119.15, F.S.

EFFECT OF PROPOSED CHANGES

State Procurement of and Contracts for Personal Property and Services

Authority over State Procurement and Contracts

The bill transfers the following authority from the DMS to the DFS:

- To provide uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users; and
- To monitor agencies for compliance with established policies, rules, and procedures.

The bill creates related duties of the DFS, including, but not limited to,

- Establishment of a system of uniform policies, procedures, and practices;
- Prescription of methods of securing solicitation responses and procuring information technology services;
- Governance of the purchase by an agency of any commodity or contractual service;
- Education of governmental entities and other stakeholders regarding procurement;
- Establishment and maintenance of a list of vendors allowed to do business with the state; and
- Review and approval of contracts.

The bill leaves with the DMS the responsibility for the actual procurement of commodities and contractual services for agencies. It makes changes to conform to the transfer of policymaking and oversight authority.

Process for State Procurement

The bill adds to current provisions governing the DMS's power to establish and maintain a vendor list to require the DMS to develop a list of interested vendors that must be maintained by classes of commodities and contractual services. It prohibits a vendor barred by the CFO from inclusion on the list.

The bill adds to current provisions governing the use of products by the corporation operating the correctional industry program to require the DMS to issue a commodity number for all products of the corporation that meet or exceed the DMS's specifications.

Exemptions from Competitive Solicitation Requirements

The bill removes the following contractual services from the category of those that are not subject to competitive solicitation requirements:

- Artistic services;
- Certain academic program reviews;
- Lectures by individuals;
- Training and education services provided to injured employees.

It also authorizes an agency to purchase commodities or services through another agency's existing contract instead of through competitive competition³⁵ if the use of such contract is in the best interest of the state.

Protest of Procurement Decisions

The bill specifies that the statutory requirements for a protest of procurement decisions or intended decisions do not apply to protests filed by the Office of Supplier Diversity.

Agreements Funded with Federal and State Assistance

The bill amends the provision governing agreements funded with federal and state assistance to:

- Create a definition for "performance measure" from current statutory language;

³⁵ See Drafting Comments.

- Require review and approval of such an agreement in accordance with rules adopted by the DFS before execution;
- Require an agency entering into such an agreement to designate a grant manager, and specifies required qualifications for certain grant managers; and
- Require the CFO to create uniform procedures for payment requests to ensure that services are rendered in accordance with the agreement terms before the agency processes an invoice for payment.

Reporting of State Agency Contract Information

The bill repeals the existing section of law governing state agency contract information that must be reported to the DFS. It requires the types of information that must be reported under that section to be posted to the CFO's intergovernmental contract tracking system that is modified by the bill, and subjects *all* contracts to the reporting requirements, instead of only those that meet a certain threshold.

Contract or Grant Manager Qualifications

The bill requires the DFS to establish a certification program for contract and grant managers, and provides that only a certified manager may manage an agreement in excess of a certain threshold amount. It specifies areas of training for the program, allows the DFS to revoke a manager's certification under specified circumstances, and authorizes the DFS to adopt rules to administer the section.

The bill changes the threshold for which a contract manager must meet certain training requirements and also requires certification pursuant to the program created by the bill instead of training.

Reporting Requirements for the Auditor General

The bill amends the provision requiring the Auditor General (AG) to notify the Legislative Auditing Committee (LAC) of a local governmental entity's or a certain educational entity's failure to comply with annual financial audit reporting requirements to also require the AG to notify the LAC of such entities' failure to comply with the reporting requirements of the Transparency Florida Act.

The bill also amends the provision requiring the AG to notify the presiding officers of the Legislature and the DFS of the failure of certain entities to comply with transparency requirements as identified in certain audit reports to specify that the transparency requirements are those located in the Transparency Florida Act.

Transparency Florida Act

The bill amends the provision in the Transparency Florida Act requiring the CFO to provide public access to a state contract management system to:

- Make a terminology change to instead provide that the CFO must "establish a secure, shared, intergovernmental contract tracking" system.
- Authorize the CFO to make information on the system available to the public, instead of requiring it.
- Revise time frames and requirements for information that must be posted relating to a new contract or a major change in a contract.
- Add each local governmental entity and independent special district, each district school board, the Board of Governors of the State University System, and each Florida College System institution board of trustees to the entities required to comply with the posting requirements, effective October 1, 2013.
- Create provisions governing redaction of any exempt or confidential information contained in documents posted on the system.
- Create requirements and authorizations relating to the CFO's ability to make certain information posted on the system publicly available via website.
- Specify that the posting of information on the system or on the website does not eliminate the duty of a governmental entity to provide a public record upon request.

- Authorize the DFS to adopt rules to administer the subsection.

Other Provisions

Procurement Review and Report

The bill creates an unnumbered section of law to express policies of the state relating to procurement and to require the CFO to review the current situation of procurement. It specifies areas that the CFO must investigate and authorizes the CFO to obtain certain information. The bill requires the CFO to submit a report of findings and recommendations for changes in procurement to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

The bill appropriates a nonrecurring sum of \$400,000 for fiscal year 2012-2013 for the purpose of completing the review.

Future Repeal of Chapter 287, Florida Statutes

The bill provides that ch. 287, F.S., will repeal effective July 30, 2014.

Appropriation to the CFO for Newly-Created Duties

The bill appropriates \$400,000 in recurring funds and an unspecified number of full-time equivalent positions at an unspecified salary rate to the CFO for the purpose of implementing the expanded duties under the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 11.45, F.S., making conforming changes.

Section 2 amends s. 215.971, F.S., relating to agreements funded with state and federal assistance.

Section 3 amends s. 215.985, F.S., relating to transparency in government.

Section 4 repeals s. 216.0111, F.S., relating to state agency contracts; required information to be provided to the Department of Financial Services.

Section 5 amends s. 287.032, F.S., relating to responsibilities of the Department of Management Services.

Section 6 amends s. 287.042, F.S., relating to the powers, duties, and functions of the Department of Management Services.

Section 7 creates s. 287.044, F.S., relating to powers, duties, and functions of the Department of Financial Services.

Section 8 amends s. 287.057, F.S., relating to procurement of commodities or contractual services.

Section 9 amends s. 287.058, F.S., relating to contract documents.

Section 10 creates s. 287.1312, F.S., relating to contract manager certification.

Section 11 amends s. 287.133, F.S., relating to denial or revocation of the right to transact business with public entities.

Section 12 amends s. 255.25, F.S., making drafting changes and conforming a cross-reference.

Section 14 amends s. 402.7305, F.S., making drafting changes and conforming a cross-reference.

Section 15 amends s. 427.0135, F.S., conforming a cross-reference.

Section 16 amends s. 946.515, F.S., making drafting changes and conforming cross-references.

Section 17 creates an unnumbered section of law, relating to a procurement review and report.

Section 18 repeals ch. 287, F.S., on a future date.

Section 19 makes a nonrecurring appropriation for the procurement review and report.

Section 20 provides an effective date of July 1, 2012.

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 state may incur indeterminate costs associated with the transfer of oversight authority of state procurement from the DMS to the DFS and the additional reporting requirements created by the bill.

Local governments will likely incur indeterminate costs associated with the Florida Transparency Act reporting requirements created by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires local governmental entities to redact and submit documentation for *all* contracts to the CFO's intergovernmental contract tracking system; 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.

2. Other:

The State Constitution requires any newly-created or expanded public record exemption to be contained in a bill separate from other legislation and to contain a public necessity statement.³⁶ Therefore, the bill's apparent creation of an exemption for trade secrets posted to the CFO's intergovernmental contract tracking system would require a separate bill and a public necessity statement.

B. RULE-MAKING AUTHORITY:

The constitutional separation of powers doctrine³⁷ prevents the Legislature from delegating its constitutional duties.³⁸ Because legislative power involves the exercise of policy-related discretion over the content of law,³⁹ 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."⁴⁰ The bill grants rulemaking authority to the DFS to implement the provisions of the bill. The related provisions appear to satisfy the threshold of "some minimal standards and guidelines."

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Comments

Line 1006 of the bill refers to "competitive competition." It appears that it should instead refer to "competitive solicitation."

Section 19 of the bill provides an appropriation of full-time positions to the CFO, but does not specify the number of positions or the associated salary rate.

Other Comments: Office of the Auditor General

The bill requires the Auditor General to notify the Legislative Auditing Committee of any local governmental entity or certain educational entity that does not comply with the Transparency Florida Act.⁴¹ The Office of the Auditor General provided the following comments on that requirement:⁴²

Section 215.985(12), F.S., requires each water management district to provide a monthly financial statement to its governing board and make such statement available for public access on its website. The primary duty the Auditor General has currently related to the Transparency Florida Act [act] is to review audit reports of the independent water management district auditors to verify that the districts have complied with the act.

The amendments to s. 11.45(7)(a), F.S., could be read to require the Auditor General to report to the auditing committee the failure of any local governmental entity, district school board, charter school, or charter technical career center to post the data now required by s. 215.985(16), F.S.⁴³ This interpretation would require the Auditor General to report on compliance with the act by entities the Auditor General does not audit and that may not be audited at all. The resources required to comply with this requirement would be significant and this interpretation of the bill appears inconsistent with the title to the bill, which

³⁶ See art. I, s. 24(c), Fla. Const.

³⁷ Article II, s. 3, Fla. Const.

³⁸ See *Florida State Bd. Of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

³⁹ See *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

⁴⁰ See *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

⁴¹ Section 1 of the bill.

⁴² See "Re: Senate Bill 1626," Office of the Auditor General (dated January 19, 2012) (on file with the Government Operations Subcommittee). Although the analysis is written to the Senate companion to HB 1409, the bills were identical at the time the analysis was submitted.

⁴³ The requirements in s. 215.985(16), F.S., are those relating to the CFO's duty to provide public access to a state contract management system that provides information and documentation relating to government contracts.

indicates the amendment to s. 11.45, F.S., is only to conform provisions to changes made by the act.

The Office of the Auditor General proposed an amendment to address the concern.

Other Comments: Public Records

The bill specifies certain governmental entities that must participate in the government contract tracking system established by the CFO and requires them to redact exempt or confidential information⁴⁴ from documents posted on the system.⁴⁵ It also provides a process by which a posted document that has not been properly redacted under the bill's provisions may be replaced. However, case law provides that once protected information has been released, it may no longer be withheld by a custodial agency.

The bill also appears to create a public record exemption in violation of the constitutional requirement that a new exemption be created in separate legislation⁴⁶ by providing that trade secrets must be redacted. The First DCA has construed a public necessity statement codified in statute as a public record exemption for all trade secrets as defined in s. 812.081(1)(c), F.S.⁴⁷ Even if that interpretation were upheld, only items qualifying as "trade secrets" under that definition would be exempt.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁴⁴ 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).

⁴⁵ Section 3 of the bill.

⁴⁶ See art. I, s. 24(c) of the Fla. Const., and the above discussion in "Other Constitutional Issues".

⁴⁷ See *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So.2d 781 (Fla. 1st DCA 2003), review denied sub nom., *Crist v. Florida Department of Environmental Protection*, 911 So.2d 791 (Fla. 2005).

1 A bill to be entitled
 2 An act relating to state contracting; amending s.
 3 11.45, F.S.; conforming provisions to changes made by
 4 the act; amending s. 215.971, F.S.; requiring
 5 agreements funded with state or federal financial
 6 assistance to include a performance measure for each
 7 deliverable, to be reviewed and approved in accordance
 8 with rules adopted by the Department of Financial
 9 Services, and to have the contracting entity assign a
 10 grants manager who is responsible for enforcing
 11 performance of the agreement; amending s. 215.985,
 12 F.S.; revising provisions relating to the Chief
 13 Financial Officer's intergovernmental contract
 14 tracking system under the Transparency Florida Act;
 15 specifying the entities that are included in the
 16 tracking system; requiring that exempt and
 17 confidential information be redacted from contracts
 18 and procurement documents posted on the system;
 19 authorizing the Chief Financial Officer to make
 20 available the information posted on the system to the
 21 public through a secure website; repealing s.
 22 216.0111, F.S., relating to a requirement that state
 23 agencies report certain contract information to the
 24 Department of Financial Services and transferring that
 25 requirement to s. 215.985, F.S.; amending s. 287.032,
 26 F.S.; dividing the responsibilities of the Department
 27 of Management Services under ch. 287, F.S., with the
 28 Department of Financial Services; amending s. 287.042,

29 F.S.; limiting the duties of the Department of
 30 Management Services to the procurement of commodities
 31 and contractual services; directing the department to
 32 develop a list of interested vendors; deleting
 33 provisions requiring that the department perform
 34 duties relating to procurement and contracting
 35 policies and procedures; creating s. 287.044, F.S.;
 36 assigning duties relating to procurement and
 37 contracting policies and procedures to the Department
 38 of Financial Services; requiring the department to
 39 develop a list of vendors not allowed to do business
 40 with the state; requiring the department to review and
 41 approve contracts in accordance with rules adopted by
 42 the department; providing that the department have
 43 authority to waive procedures under certain
 44 circumstances; providing that the department have
 45 flexibility in accomplishing its duties and
 46 responsibilities including the use of different
 47 contracting methods on a pilot basis; amending s.
 48 287.057, F.S.; revising the list of contractual
 49 services and commodities that are exempt from
 50 competitive solicitation to delete certain services
 51 from the exemption; revising provisions prohibiting an
 52 agency from dividing a solicitation; authorizing an
 53 agency to purchase commodities or services through
 54 another agency's contract; amending s. 287.058, F.S.;
 55 requiring contracts to include a performance measure
 56 for each deliverable; creating s. 287.1312, F.S.;

57 requiring certification of contract managers by the
 58 Department of Financial Services for contracts of more
 59 than a certain amount; requiring the training program
 60 for the certification to provide training in certain
 61 areas; authorizing the department to adopt rules to
 62 administer the program; amending s. 287.133, F.S.;
 63 revising the definition of "department" to mean the
 64 Department of Financial Services rather than the
 65 Department of Management Services with respect to
 66 provisions governing public entity crimes and
 67 placement on the convicted vendor list; amending ss.
 68 255.25, 287.012, 402.7305, 427.0135, and 946.515,
 69 F.S.; conforming cross-references; providing state
 70 policies with regards to procurement and requiring the
 71 Chief Financial Officer to conduct a study of current
 72 procurement laws pursuant to such policies; requiring
 73 that the Chief Financial Officer submit a report to
 74 the Legislature and Governor by a certain date on such
 75 study; repealing ch. 287, F.S., on a future date;
 76 providing an appropriation; providing an effective
 77 date.

78
 79 WHEREAS, during the 2010-2011 fiscal year, the state spent
 80 nearly \$51 billion, or approximately 57 percent, of the state
 81 budget on contracts and agreements for goods and services, and

82 WHEREAS, during the same fiscal year, the Department of
 83 Financial Services reviewed 364 contract and grant agreements,
 84 each valued at \$1 million or more, and found that 26 percent had

85 significant deficiencies in their scope of work, deliverables,
 86 or performance standards, and

87 WHEREAS, if this 26 percent error rate applied to the total
 88 contractual amount spent during the fiscal year, approximately
 89 \$13 billion in taxpayer dollars was obligated to poorly written
 90 contracts, and

91 WHEREAS, the state does not have uniform standards for
 92 state contracts which incorporate a comprehensive and precise
 93 scope of work, clearly defined deliverables, and minimum
 94 performance standards that include financial consequences for
 95 failing to deliver goods and services, and

96 WHEREAS, the Legislature believes that there is an acute
 97 need to initiate reforms that ensure that the state contracting
 98 process reflects the highest ethical and fiscal standards; is
 99 clear, consistent, and measurable; and is conducted in the most
 100 efficient manner possible while delivering goods and services to
 101 state residents, and

102 WHEREAS, the Legislature recognizes that the poor
 103 management of a good contract could lead to the waste and misuse
 104 of tax dollars, and

105 WHEREAS, the Legislature believes that state residents
 106 deserve to receive the goods and services for which they are
 107 paying, and

108 WHEREAS, the Legislature also believes that this state is a
 109 business-friendly state where people doing business with the
 110 state provide goods and services in good faith and deserve to
 111 know what is expected of them, and

112 WHEREAS, there remains an acute need to provide greater

113 transparency and accountability in public transactions, and
 114 WHEREAS, the Legislature supports additional high-level
 115 training and certification of state contract managers,
 116 especially as it relates to contracts valued at \$325,000 or
 117 more, and

118 WHEREAS, the Legislature believes that a thorough review of
 119 the state's procurement system to evaluate its efficiency and
 120 effectiveness has not been performed for many years, and

121 WHEREAS, the Legislature has determined that the Chief
 122 Financial Officer should conduct an evaluation of the state
 123 procurement process of the executive branch of government, and

124 WHEREAS, the Legislature fully supports promoting the
 125 value, integrity, transparency, accountability of, and the
 126 public confidence in, the state's procurement and contracting
 127 processes, NOW, THEREFORE,

128

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

130

131 Section 1. Paragraphs (a) and (i) of subsection (7) of
 132 section 11.45, Florida Statutes, are amended to read:

133 11.45 Definitions; duties; authorities; reports; rules.—

134 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

135 (a) The Auditor General must ~~shall~~ notify the Legislative
 136 Auditing Committee of any local governmental entity, district
 137 school board, charter school, or charter technical career center
 138 that does not comply with the reporting requirements of s.
 139 215.985 or s. 218.39.

140 (i) Beginning in 2012, the Auditor General shall annually

141 transmit by July 15, to the President of the Senate, the Speaker
 142 of the House of Representatives, and the Department of Financial
 143 Services, a list of all school districts, charter schools,
 144 charter technical career centers, Florida College System
 145 institutions, state universities, and water management districts
 146 that have failed to comply with the transparency requirements of
 147 s. 215.985 as identified in the audit reports reviewed pursuant
 148 to paragraph (b) and those conducted pursuant to subsection (2).

149 Section 2. Section 215.971, Florida Statutes, is amended
 150 to read:

151 215.971 Agreements funded with federal and state
 152 assistance.—

153 (1) For an agency agreement that provides state financial
 154 assistance to a recipient or subrecipient, as those terms are
 155 defined in s. 215.97, or that provides federal financial
 156 assistance to a subrecipient, as defined by applicable United
 157 States Office of Management and Budget circulars, the agreement
 158 must ~~shall~~ include a provision:

159 (a)-(1) ~~A provision~~ Specifying a scope of work that clearly
 160 establishes the tasks that the recipient or subrecipient is
 161 required to perform; and

162 (b)-(2) ~~A provision~~ Dividing the agreement into
 163 quantifiable units of deliverables which ~~that~~ must be received
 164 and accepted in writing by the agency before payment. Each
 165 deliverable must be directly related to the scope of work and
 166 ~~must~~ specify a performance measure. As used in this paragraph,
 167 the term "performance measure" means the required minimum level
 168 of service to be performed and the criteria for evaluating the

169 successful completion of each deliverable.

170 (2) Before execution, agreements to be funded with state
 171 or federal financial assistance must be submitted for review and
 172 approval in accordance with rules adopted by the Department of
 173 Financial Services. The review must ensure that the agreement
 174 document contains a clear statement of work, quantifiable and
 175 measurable deliverables, performance measures, and financial
 176 consequences for nonperformance. An agreement that does not
 177 comply with this subsection may be rejected and returned to the
 178 submitting agency for revision.

179 (3) For each agreement funded with federal or state
 180 assistance, the contracting agency shall designate an employee
 181 to function as grant manager who shall be responsible for
 182 enforcing performance of the agreement terms and conditions and
 183 serve as a liaison with the recipient. A grant manager who is
 184 responsible for one or more agreements in excess of the
 185 threshold amount provided in s. 287.017 for CATEGORY FIVE must
 186 be certified under s. 287.1312. The Chief Financial Officer
 187 shall establish and disseminate uniform procedures for payment
 188 requests pursuant to s. 17.03(3) to ensure that services are
 189 rendered in accordance with the agreement terms before the
 190 agency processes an invoice for payment. The procedures must
 191 include, but need not be limited to, procedures for monitoring
 192 and documenting a recipient's performance, reviewing and
 193 documenting all deliverables for which payment is requested by
 194 the recipient, and providing written certification by the grant
 195 manager of the agency's receipt of goods and services.

196 Section 3. Subsection (16) of section 215.985, Florida

197 Statutes, is amended to read:

198 215.985 Transparency in government spending.—

199 (16) The Chief Financial Officer shall establish a secure,
 200 shared, intergovernmental contract tracking ~~provide public~~
 201 ~~access to a state contract management system.~~

202 (a) Within 30 calendar days after executing a contract,
 203 each state agency as defined in s. 216.011(1), and, effective
 204 October 1, 2013, each local governmental entity and independent
 205 special district as defined in s. 218.31, each district school
 206 board as described in s. 1001.32, the Board of Governors of the
 207 State University System as described in s. 1001.70, and each
 208 Florida College System institution board of trustees as
 209 described in s. 1001.61 must post the following that provides
 210 information and documentation relating to that contract on the
 211 contract tracking system: ~~contracts procured by governmental~~
 212 entities.

213 1. The name of the contracting entities;

214 2. The procurement method;

215 3. The contract beginning and ending dates;

216 4. The nature or type of the commodities or services
 217 purchased;

218 5. Applicable contract unit prices and deliverables;

219 6. Total compensation to be paid or received under the
 220 contract;

221 7. All payments made to the contract vendor to date;

222 8. All commodities or services received from the contract
 223 vendor to date;

224 9. Applicable contract performance measures;

225 10. Contract extensions or renewals, if any;
 226 11. The justification for not using competitive
 227 solicitation to procure the contract, including citation to any
 228 statutory exemption or exception from competitive solicitation,
 229 if applicable;

230 12. Electronic copies of the contract and procurement
 231 documents, including any provision that may have been redacted
 232 to conceal exempt or confidential information; and

233 13. Any other information regarding the contract or the
 234 procurement which may be required by the Department of Financial
 235 Services.

236 ~~(a) The data collected in the system must include, but~~
 237 ~~need not be limited to, the contracting agency; the procurement~~
 238 ~~method; the contract beginning and ending dates; the type of~~
 239 ~~commodity or service; the purpose of the commodity or service;~~
 240 ~~the compensation to be paid; compliance information, such as~~
 241 ~~performance metrics for the service or commodity; contract~~
 242 ~~violations; the number of extensions or renewals; and the~~
 243 ~~statutory authority for providing the service.~~

244 (b) Within 30 calendar days after a major modification or
 245 amendment change to an existing contract, ~~or the execution of a~~
 246 ~~new contract,~~ agency procurement staff of the affected state
 247 governmental entity must ~~shall~~ update the necessary information
 248 described in paragraph (a) in the state contract tracking
 249 ~~management~~ system. A major modification or amendment change to a
 250 contract includes, but is not limited to, a renewal,
 251 termination, or extension of the contract, or an amendment to
 252 the contract as determined by the Chief Financial Officer.

253 (c) Each entity identified in paragraph (a) must redact,
 254 as defined in s. 119.011, any exempt or confidential
 255 information, including trade secrets as defined in s. 688.002 or
 256 s. 812.081, from the contract or procurement documents before
 257 posting an electronic copy of such documents on the contract
 258 tracking system.

259 1. If an entity becomes aware that an electronic copy of a
 260 contract or procurement document that it posted has not been
 261 properly redacted, the entity must replace the electronic copy
 262 of the documents with a redacted copy.

263 2. If a party to a contract, or an authorized
 264 representative thereof, discovers that an electronic copy of a
 265 contract or procurement document on the system has not been
 266 properly redacted, the party or representative may request the
 267 entity that posted the document to redact the exempt or
 268 confidential information. Upon receipt of a request in
 269 compliance with this subparagraph, the entity that posted the
 270 document shall redact the exempt or confidential information.

271 a. Such request must be in writing and delivered by mail,
 272 facsimile, or electronic transmission, or in person to the
 273 entity that posted the information. The request must identify
 274 the specific document, the page numbers that include the exempt
 275 or confidential information, the information that is exempt or
 276 confidential, and the relevant statutory exemption. A fee may
 277 not be charged for a redaction made pursuant to such request.

278 b. If necessary, a party to the contract may petition the
 279 circuit court for an order directing compliance with this
 280 paragraph.

281 3. The Chief Financial Officer, the Department of
 282 Financial Services, or any officer, employee, or contractor
 283 thereof, is not responsible for redacting exempt or confidential
 284 information from an electronic copy of a contract or procurement
 285 document posted by another entity on the system, and is not
 286 liable for the failure of the entity to redact the exempt or
 287 confidential information. The Department of Financial Services
 288 may notify the posting entity if it discovers that a document
 289 posted on the tracking system contains exempt or confidential
 290 information.

291 (d) Pursuant to ss. 119.01 and 119.07, the Chief Financial
 292 Officer may make information posted on the contract tracking
 293 system available for viewing and downloading by the public
 294 through a secure website. Unless otherwise provided by law,
 295 information retrieved electronically pursuant to this paragraph
 296 is not admissible in court as an authenticated document.

297 1. The Chief Financial Officer may regulate and prohibit
 298 the posting of records that could facilitate identity theft or
 299 fraud, such as signatures; compromise or reveal an agency
 300 investigation; reveal the identity of undercover personnel;
 301 reveal proprietary confidential business information or trade
 302 secrets; reveal an individual's medical information; or reveal
 303 any other record or information that the Chief Financial Officer
 304 believes may jeopardize the health, safety, or welfare of the
 305 public. However, such prohibition does not eliminate the duty of
 306 an entity to provide a copy of a public record upon request. The
 307 Chief Financial Officer shall use appropriate Internet security
 308 measures to ensure that no person has the ability to alter or

309 modify records available on the website.

310 2. Records made available on the website, including
 311 electronic copies of contracts or procurement documents, may not
 312 reveal information made exempt or confidential by law. Notice of
 313 the right of an affected party to request redaction of exempt or
 314 confidential information pursuant to paragraph (c) must be
 315 conspicuously and clearly displayed on the website. This
 316 includes, but is not limited to:

317 a. Criminal intelligence or criminal investigative
 318 information as defined in s. 119.011;

319 b. Surveillance techniques or procedures or personnel;

320 c. The identity of a confidential informant or
 321 confidential source;

322 d. The identify of undercover personnel of a criminal
 323 justice agency;

324 e. A security system plan; or

325 f. Trade secret as defined in s. 688.002 or s. 812.081.

326 (e) The posting of information on the contract tracking
 327 system or the provision of contract information on a website for
 328 public viewing and downloading does not eliminate the duty of an
 329 entity to respond to a public record request for such
 330 information or to a subpoena for such information.

331 1. A request for a copy of a contract or procurement
 332 document or a certified copy of a contract or procurement
 333 document shall be made to the entity that is party to the
 334 contract and that maintains the original documents. Such request
 335 may not be made to the Chief Financial Officer or the Department
 336 of Financial Services or any officer, employee, or contractor

337 thereof unless the Chief Financial Officer or the department is
 338 a party to the contract.

339 2. A subpoena for a copy of a contract or procurement
 340 document or certified copy of a contract or procurement document
 341 must be served on the entity that is a party to the contract and
 342 that maintains the original documents. The Chief Financial
 343 Officer or the Department of Financial Services or any officer,
 344 employee, or contractor thereof may not be served a subpoena for
 345 those records unless the Chief Financial Officer or the
 346 department is a party to the contract.

347 (f) The Department of Financial Services may adopt rules
 348 to administer this subsection.

349 Section 4. Section 216.0111, Florida Statutes, is
 350 repealed.

351 Section 5. Section 287.032, Florida Statutes, is amended
 352 to read:

353 287.032 Departmental responsibility ~~purpose of~~
 354 ~~department.~~ Pursuant to the administration of this chapter:

355 (1) It shall be The responsibility ~~purpose~~ of the
 356 Department of Management Services is to:

357 (a)(1) To Promote efficiency, economy, and the
 358 conservation of energy and ~~coordinate to effect coordination in~~
 359 the purchase of commodities and contractual services for the
 360 state.

361 ~~(2) To provide uniform commodity and contractual service~~
 362 ~~procurement policies, rules, procedures, and forms for use by~~
 363 ~~agencies and eligible users.~~

364 (b)(3) To Procure and distribute federal surplus tangible

365 personal property allocated to the state by the Federal
 366 Government.

367 (2) The responsibility of the Department of Financial
 368 Services is to:

369 (a) Provide uniform commodity and contractual service
 370 procurement policies, rules, procedures, and forms for use by
 371 agencies and eligible users.

372 (b) Monitor agencies with respect to compliance with
 373 established policies, rules, and procedures.

374 Section 6. Section 287.042, Florida Statutes, is amended
 375 to read:

376 287.042 Powers, duties, and functions of the Department of
 377 Management Services.—The department is responsible for the
 378 procurement of commodities and contractual services for agencies
 379 and has ~~shall have~~ the following powers, duties, and functions:

380 (1) ~~(a)~~ To canvass all sources of supply, establish and
 381 maintain a vendor list, and contract for the purchase, lease, or
 382 acquisition, including purchase by installment sales or lease-
 383 purchase contracts which may provide for the payment of interest
 384 on unpaid portions of the purchase price, of all commodities and
 385 contractual services required by an ~~any~~ agency under this
 386 chapter. A ~~Any~~ contract providing for deferred payments and the
 387 payment of interest is ~~shall be~~ subject to specific rules
 388 adopted by the Department of Financial Services.

389 (a) ~~(b)~~ The department shall develop a list of interested
 390 vendors to be maintained by classes of commodities and
 391 contractual services. The list may not be used to prequalify a
 392 vendor or to exclude an interested vendor from bidding. However,

393 a vendor barred by the Chief Financial Officer pursuant to s.
 394 287.044(7) may not be included on the list. The department may
 395 remove from the ~~its~~ vendor list any source of supply which fails
 396 to fulfill any of its duties specified in a contract with the
 397 state. The department ~~It~~ may reinstate ~~any~~ such source of supply
 398 if the department ~~when it~~ is satisfied that further instances of
 399 default will not occur.

400 (b)(e) In order to promote the cost-effective procurement
 401 of commodities and contractual services, the department or an
 402 agency may enter into contracts that limit the liability of a
 403 vendor consistent with s. 672.719.

404 ~~(d) The department shall issue commodity numbers for all~~
 405 ~~products of the corporation operating the correctional industry~~
 406 ~~program which meet or exceed department specifications.~~

407 (c)(e) The department shall include the products offered
 408 by the corporation operating the correctional industry program
 409 on any listing prepared by the department which lists state term
 410 contracts executed by the department. The products or services
 411 shall be placed on such list in a category based upon
 412 specification criteria developed through a joint effort of the
 413 department and the corporation and approved by the department.

414 1.(f) The corporation may submit products and services to
 415 the department for testing, analysis, and review relating to the
 416 quality and cost comparability. If, after review and testing,
 417 the department approves ~~of~~ the products and services, the
 418 department shall give written notice ~~thereof~~ to the corporation.
 419 The corporation shall pay a reasonable fee ~~charged~~ for the
 420 testing of its products by the Department of Agriculture and

421 Consumer Services.

422 2. The department shall issue a commodity number for all
 423 products of the corporation which meet or exceed department
 424 specifications.

425 (d)~~(g)~~ The department shall include products and services
 426 that are offered by a qualified nonprofit agency for the blind
 427 or for the other severely handicapped ~~organized pursuant to~~
 428 ~~chapter 413~~ and that have been determined to be suitable for
 429 purchase pursuant to s. 413.035 on a ~~any~~ department listing of
 430 state term contracts. The products and services shall be placed
 431 on such list in a category based upon specification criteria
 432 developed by the department in consultation with the ~~qualified~~
 433 nonprofit agency.

434 (e)~~(h)~~ The department may collect fees for the use of its
 435 electronic information services. The fees may be imposed on an
 436 individual transaction basis or as a fixed subscription for a
 437 designated period of time. At a minimum, the fees shall be
 438 determined in an amount sufficient to cover the department's
 439 projected costs for ~~of~~ the services, including overhead, in
 440 accordance with the policies of the department ~~of Management~~
 441 ~~Services~~ for computing its administrative assessment. All fees
 442 collected under this paragraph shall be deposited in the
 443 Operating Trust Fund for disbursement as provided by law.

444 (2)~~(a)~~ To establish purchasing agreements and procure
 445 state term contracts for commodities and contractual services,
 446 pursuant to s. 287.057, under which state agencies shall, and
 447 eligible users may, make purchases pursuant to s. 287.056.

448 (a) The department may restrict purchases by ~~from some~~

449 | ~~term contracts to~~ state agencies from ~~only for these~~ term
 450 | contracts if ~~where~~ the inclusion of other governmental entities
 451 | will have an adverse effect on competition or on ~~to these~~
 452 | federal facilities located in this state. In such planning or
 453 | purchasing, the office ~~of Supplier Diversity~~ may monitor to
 454 | ensure that opportunities are afforded for contracting with
 455 | minority business enterprises. The department, for state term
 456 | contracts, and all agencies, for multiyear contractual services
 457 | or term contracts, shall explore reasonable and economical means
 458 | to use ~~utilize~~ certified minority business enterprises.
 459 | Purchases by any county, municipality, private nonprofit
 460 | community transportation coordinator designated pursuant to
 461 | chapter 427, ~~while~~ conducting business related solely to the
 462 | Commission for the Transportation Disadvantaged, or other local
 463 | public agency under the provisions in the state purchasing
 464 | contracts, and purchases, from the corporation operating the
 465 | correctional work programs, of products or services that are
 466 | subject to paragraph (1)(c) ~~(1)(f)~~, are exempt from the
 467 | competitive solicitation requirements otherwise applying to
 468 | their purchases.

469 | (b) As an alternative to ~~any provision in~~ s. 120.57(3)(c),
 470 | the department may proceed with the competitive solicitation or
 471 | contract award process of a term contract if ~~when~~ the secretary
 472 | of the department or his or her designee sets forth in writing
 473 | particular facts and circumstances that ~~which~~ demonstrate that
 474 | the delay incident to staying the solicitation or contract award
 475 | process would be detrimental to the interests of the state. If,
 476 | after the award of the ~~a~~ contract resulting from a competitive

477 solicitation in which a timely protest was received and in which
 478 the state did not prevail, the contract may be canceled and
 479 reawarded.

480 (c) Any person who files an action protesting a decision
 481 or intended decision pertaining to contracts administered by the
 482 department, a water management district, or an agency pursuant
 483 to s. 120.57(3)(b) shall, at the same time, also post a bond
 484 equal to 1 percent of the estimated contract amount with, and
 485 payable to, the department, the water management district, or
 486 the agency, as applicable ~~at the time of filing the formal~~
 487 ~~written protest a bond payable to the department, the water~~
 488 ~~management district, or agency in an amount equal to 1 percent~~
 489 ~~of the estimated contract amount.~~ For protests of decisions or
 490 intended decisions pertaining to exceptional purchases, the bond
 491 must ~~shall be in an amount equal to~~ 1 percent of the estimated
 492 contract amount for the exceptional purchase.

493 1. The estimated contract amount shall be based upon the
 494 contract price submitted by the protestor or, if no contract
 495 price was submitted, the department, water management district,
 496 or agency shall estimate the contract amount based on factors,
 497 including, but not limited to, the price of previous or existing
 498 contracts for similar commodities or contractual services, the
 499 amount appropriated by the Legislature for the contract, or the
 500 fair market value of similar commodities or contractual
 501 services. The agency shall provide the estimated contract amount
 502 to the vendor within 72 hours, excluding Saturdays, Sundays, and
 503 state holidays, after the filing of the notice of protest by the
 504 vendor. The estimated contract amount is not subject to protest

505 pursuant to s. 120.57(3).

506 2. The bond shall be conditioned upon the payment of all
 507 costs and charges that are adjudged against the protestor in the
 508 administrative hearing in which the action is brought and in any
 509 subsequent appellate court proceeding.

510 3. In lieu of a bond, the department, ~~the~~ water management
 511 district, or agency may, ~~in either case,~~ accept a cashier's
 512 check, official bank check, or money order in the amount of the
 513 bond.

514 4. If, after completion of the administrative hearing
 515 process and any appellate court proceedings, the department,
 516 water management district, or agency prevails, it shall recover
 517 all costs and charges, which must ~~shall~~ be included in the final
 518 order or judgment, excluding attorney ~~attorney's~~ fees. ~~This~~
 519 ~~section shall not apply to protests filed by the Office of~~
 520 ~~Supplier Diversity.~~ Upon payment of such costs and charges by
 521 the protestor, the bond, cashier's check, official bank check,
 522 or money order shall be returned to the protestor. If, after the
 523 completion of the administrative hearing process and any
 524 appellate court proceedings, the protestor prevails, the
 525 protestor may ~~shall~~ recover from the department, water
 526 management district, or agency all costs and charges that are
 527 ~~which shall be~~ included in the final order or judgment,
 528 excluding attorney ~~attorney's~~ fees.

529 5. This paragraph does not apply to protests filed by the
 530 office.

531 ~~(3) To establish a system of coordinated, uniform~~
 532 ~~procurement policies, procedures, and practices to be used by~~

533 ~~agencies in acquiring commodities and contractual services,~~
 534 ~~which shall include, but not be limited to:~~

535 ~~(a) Development of a list of interested vendors to be~~
 536 ~~maintained by classes of commodities and contractual services.~~
 537 ~~This list shall not be used to prequalify vendors or to exclude~~
 538 ~~any interested vendor from bidding.~~

539 ~~(b)1. Development of procedures for advertising~~
 540 ~~solicitations. These procedures must provide for electronic~~
 541 ~~posting of solicitations for at least 10 days before the date~~
 542 ~~set for receipt of bids, proposals, or replies, unless the~~
 543 ~~department or other agency determines in writing that a shorter~~
 544 ~~period of time is necessary to avoid harming the interests of~~
 545 ~~the state. The Office of Supplier Diversity may consult with the~~
 546 ~~department regarding the development of solicitation~~
 547 ~~distribution procedures to ensure that maximum distribution is~~
 548 ~~afforded to certified minority business enterprises as defined~~
 549 ~~in s. 288.703.~~

550 ~~2. Development of procedures for electronic posting. The~~
 551 ~~department shall designate a centralized website on the Internet~~
 552 ~~for the department and other agencies to electronically post~~
 553 ~~solicitations, decisions or intended decisions, and other~~
 554 ~~matters relating to procurement.~~

555 ~~(c) Development of procedures for the receipt and opening~~
 556 ~~of bids, proposals, or replies by an agency. Such procedures~~
 557 ~~shall provide the Office of Supplier Diversity an opportunity to~~
 558 ~~monitor and ensure that the contract award is consistent with~~
 559 ~~the requirements of s. 287.09451.~~

560 ~~(d) Development of procedures to be used by an agency in~~

561 ~~deciding to contract, including, but not limited to, identifying~~
 562 ~~and assessing in writing project needs and requirements,~~
 563 ~~availability of agency employees, budgetary constraints or~~
 564 ~~availability, facility equipment availability, current and~~
 565 ~~projected agency workload capabilities, and the ability of any~~
 566 ~~other state agency to perform the services.~~

567 ~~(e) Development of procedures to be used by an agency in~~
 568 ~~maintaining a contract file for each contract which shall~~
 569 ~~include, but not be limited to, all pertinent information~~
 570 ~~relating to the contract during the preparatory stages; a copy~~
 571 ~~of the solicitation; documentation relating to the solicitation~~
 572 ~~process; opening of bids, proposals, or replies; evaluation and~~
 573 ~~tabulation of bids, proposals, or replies; and determination and~~
 574 ~~notice of award of contract.~~

575 ~~(f) Development of procedures to be used by an agency for~~
 576 ~~issuing solicitations that include requirements to describe~~
 577 ~~commodities, services, scope of work, and deliverables in a~~
 578 ~~manner that promotes competition.~~

579 ~~(g) Development of procedures to be used by an agency when~~
 580 ~~issuing requests for information and requests for quotes.~~

581 ~~(h) Development of procedures to be used by state agencies~~
 582 ~~when procuring information technology commodities and~~
 583 ~~contractual services that ensure compliance with public records~~
 584 ~~requirements and records retention and archiving requirements.~~

585 ~~(4) (a) To prescribe the methods of securing competitive~~
 586 ~~sealed bids, proposals, and replies. Such methods may include,~~
 587 ~~but are not limited to, procedures for identifying vendors;~~
 588 ~~setting qualifications; conducting conferences or written~~

589 ~~question and answer periods for purposes of responding to vendor~~
 590 ~~questions; evaluating bids, proposals, and replies; ranking and~~
 591 ~~selecting vendors; and conducting negotiations.~~

592 ~~(b) To prescribe procedures for procuring information~~
 593 ~~technology and information technology consultant services that~~
 594 ~~provide for public announcement and qualification, competitive~~
 595 ~~solicitations, contract award, and prohibition against~~
 596 ~~contingent fees. Such procedures are limited to information~~
 597 ~~technology consultant contracts for which the total project~~
 598 ~~costs, or planning or study activities, are estimated to exceed~~
 599 ~~the threshold amount provided in s. 287.017, for CATEGORY TWO.~~

600 ~~(3)(5)~~ To prescribe specific commodities and quantities to
 601 be purchased locally.

602 ~~(6)(a) To govern the purchase by any agency of any~~
 603 ~~commodity or contractual service and to establish standards and~~
 604 ~~specifications for any commodity.~~

605 ~~(4)(b)~~ Except for the purchase of insurance, to the
 606 department may delegate to agencies the authority for the
 607 procurement of and contracting for commodities or contractual
 608 services.

609 ~~(7) To establish definitions and classes of commodities~~
 610 ~~and contractual services. Agencies shall follow the definitions~~
 611 ~~and classes of commodities and contractual services established~~
 612 ~~by the department in acquiring or purchasing commodities or~~
 613 ~~contractual services. The authority of the department under this~~
 614 ~~section shall not be construed to impair or interfere with the~~
 615 ~~determination by state agencies of their need for, or their use~~
 616 ~~of, services including particular specifications.~~

617 ~~(8) To provide any commodity and contractual service~~
 618 ~~purchasing rules to the Chief Financial Officer and all agencies~~
 619 ~~through an electronic medium or other means. Agencies may not~~
 620 ~~approve any account or request any payment of any account for~~
 621 ~~the purchase of any commodity or the procurement of any~~
 622 ~~contractual service covered by a purchasing or contractual~~
 623 ~~service rule except as authorized therein. The department shall~~
 624 ~~furnish copies of rules adopted by the department to any county,~~
 625 ~~municipality, or other local public agency requesting them.~~

626 (5)~~(9)~~ To require that every agency furnish information
 627 relative to its commodity and contractual services purchases and
 628 methods of purchasing commodities and contractual services to
 629 the department when so requested.

630 (6)~~(10)~~ To prepare statistical data concerning the method
 631 of procurement, terms, usage, and disposition of commodities and
 632 contractual services by agencies. All agencies shall furnish
 633 such information for this purpose to the office and to the
 634 department, as the department or office may call for, but at
 635 least ~~no less frequently than~~ annually, on such forms or in such
 636 manner as the department may prescribe.

637 ~~(11) To establish and maintain programs for the purpose of~~
 638 ~~disseminating information to government, industry, educational~~
 639 ~~institutions, and the general public concerning policies,~~
 640 ~~procedures, rules, and forms for the procurement of commodities~~
 641 ~~and contractual services.~~

642 (7)~~(12)~~ Except as otherwise provided in this section
 643 ~~herein~~, to adopt rules necessary to carry out the purposes of
 644 this section, including the authority to delegate to any agency

645 any and all of the responsibility conferred by this section,
 646 retaining to the department any and all authority for
 647 supervision thereof. Such purchasing of commodities and
 648 procurement of contractual services by state agencies must also
 649 ~~shall~~ be in strict accordance with the rules and procedures
 650 prescribed by the Department of Financial Services.

651 (8)~~(13)~~ If the department determines in writing that it is
 652 in the best interest of the state, to award to multiple
 653 suppliers contracts for commodities and contractual services
 654 established by the department for use by all agencies. Such
 655 awards may be on a statewide or regional basis. If regional
 656 contracts are established by the department, multiple supplier
 657 awards may be based upon multiple awards for regions. Agencies
 658 may award contracts to a responsible and responsive vendor on a
 659 statewide or regional basis.

660 (9)~~(14)~~ To procure and distribute federal surplus tangible
 661 personal property allocated to the state by the Federal
 662 Government.

663 (10)~~(15)~~ To enter into joint agreements with governmental
 664 agencies, as defined in s. 163.3164, for the purpose of pooling
 665 funds for the purchase of commodities or information technology
 666 that can be used by multiple agencies.

667 (a) Each agency that has been appropriated or has existing
 668 funds for such purchase, shall, upon contract award by the
 669 department, transfer their portion of the funds into the
 670 department's Operating Trust Fund for payment by the department.
 671 The funds shall be transferred by the Executive Office of the
 672 Governor pursuant to the agency budget amendment request

673 provisions in chapter 216.

674 (b) Agencies that sign the joint agreements are
 675 financially obligated for their portion of the agreed-upon
 676 funds. If an agency becomes more than 90 days delinquent in
 677 paying the funds, the department shall certify to the Chief
 678 Financial Officer the amount due, and the Chief Financial
 679 Officer shall transfer the amount due to the Operating Trust
 680 Fund of the department from any of the agency's available funds.
 681 The Chief Financial Officer shall report these transfers and the
 682 reasons for the transfers to the Executive Office of the
 683 Governor and the legislative appropriations committees.

684 (11)~~(16)~~ To evaluate contracts let by the Federal
 685 Government, another state, or a political subdivision for the
 686 provision of commodities and contract services, and, if it is
 687 determined in writing to be cost-effective and in the best
 688 interest of the state, to enter into a written agreement
 689 authorizing an agency to make purchases under such contract.

690 (12)~~(17)~~~~(a)~~ To enter into contracts pursuant to chapter
 691 957 for the designing, financing, acquiring, leasing,
 692 constructing, or operating of private correctional facilities.
 693 The department shall enter into such ~~a contract or~~ contracts
 694 with one contractor per facility ~~for the designing, acquiring,~~
 695 ~~financing, leasing, constructing, and operating of that facility~~
 696 or may, if specifically authorized by the Legislature,
 697 separately contract for each of ~~any~~ such services.

698 (a)~~(b)~~ The department shall also ~~to~~ manage and enforce
 699 compliance with existing or future contracts entered into
 700 pursuant to chapter 957.

701 (b) The department may not delegate the responsibilities
 702 conferred by this subsection.

703 Section 7. Section 287.044, Florida Statutes, is created
 704 to read:

705 287.044 Powers, duties, and functions of the Department of
 706 Financial Services.—The Department of Financial Services is
 707 responsible for establishing and enforcing procurement and
 708 contracting policies and procedures for the Department of
 709 Management Services and all agencies. The Department of
 710 Financial Services has the following powers, duties, and
 711 functions:

712 (1) To establish a system of coordinated and uniform
 713 procurement policies, procedures, and practices to be used by
 714 agencies when acquiring commodities and contractual services,
 715 which includes, but is not limited to:

716 (a) The development of procedures to be used by an agency
 717 for issuing or advertising solicitations which include
 718 requirements for the agency to describe commodities, services,
 719 scope of work, and deliverables in a manner that promotes
 720 competition.

721 1. Such procedures must provide for electronic posting of
 722 solicitations at least 10 days before the date set for receipt
 723 of bids, proposals, or replies, unless the agency determines in
 724 writing that a shorter period of time is necessary to avoid
 725 harming the interests of the state.

726 2. The office may consult with the department regarding
 727 the development of solicitation distribution procedures to
 728 ensure that maximum distribution is afforded to certified

729 | minority business enterprises as defined in s. 288.703.

730 | 3. The department shall designate a centralized website on
 731 | the Internet for the department and other agencies to
 732 | electronically post solicitations, decisions or intended
 733 | decisions, and other matters relating to procurement.

734 | 4. State agencies shall be prepared to provide an
 735 | explanation to unsuccessful bidders, if requested, of the
 736 | reasons for which the bidders did not win a bid, in order to
 737 | improve the bidders' chances for future success and encourage
 738 | greater competition in the marketplace.

739 | (b) The development of procedures to be used by an agency
 740 | when issuing requests for information and requests for quotes.

741 | (c) The development of procedures to be used by state
 742 | agencies when procuring information technology commodities and
 743 | contractual services which ensure compliance with public records
 744 | requirements and records retention and archiving requirements.

745 | (d) The development of procedures for the receipt and
 746 | opening of bids, proposals, or replies by an agency. Such
 747 | procedures must provide the office an opportunity to monitor and
 748 | to ensure that the contract award is consistent with the
 749 | requirements of s. 287.09451.

750 | (e) The development of procedures to be used by an agency
 751 | in deciding to contract, including, but not limited to,
 752 | identifying and assessing in writing project needs and
 753 | requirements, availability of agency employees, budgetary
 754 | availability or constraints, availability of facility equipment,
 755 | current and projected agency workload capabilities, and the
 756 | ability of another state agency to perform the services.

757 (f) The development of a methodology to calculate cost
 758 savings or cost avoidance achieved under a contract. Each agency
 759 must annually report any action taken and the amount of cost
 760 savings or cost avoidance which resulted from using the
 761 methodology developed by the department. At a minimum, the
 762 methodology should address:

- 763 1. The assessment of financial consequences for
 764 nonperformance.
- 765 2. Criteria for renegotiating the contract.
- 766 3. Refinement of the scope of work or deliverables.
- 767 4. The use of additional competition during the
 768 procurement process which results in awarding the contract at a
 769 lower price than the previous award.

770 (g) The development of procedures for recording and
 771 maintaining support documentation for a cost or price analysis
 772 to be performed before the award of a contract in excess of the
 773 threshold amount provided in s. 287.017 for CATEGORY FOUR. The
 774 cost or price analysis shall be used to validate the
 775 reasonableness of bids, proposals, or replies.

776 (h) The development of procedures to be used by state
 777 agencies when entering into contracts which ensure standard
 778 formats, quantifiable and measurable deliverables, performance
 779 measures, and financial consequences for nonperformance.

780 (i) The development of procedures to be used by an agency
 781 in maintaining a contract file for each contract which includes,
 782 but is not limited to, all pertinent information relating to the
 783 contract during the preparatory stages; the solicitation
 784 process, including a copy of the solicitation; the opening of

785 bids, proposals, or replies; the evaluation and tabulation of
 786 bids, proposals, or replies; and the determination and notice of
 787 contract award.

788 (2) To prescribe the methods of securing competitive
 789 sealed bids, proposals, and replies. Such methods may include,
 790 but are not limited to, procedures for identifying vendors;
 791 setting qualifications; conducting conferences or written
 792 question and answer periods for purposes of responding to vendor
 793 questions; evaluating bids, proposals, and replies; ranking and
 794 selecting vendors; and conducting negotiations.

795 (3) To prescribe procedures for procuring information
 796 technology and information technology consultant services which
 797 provide for public announcement and qualification, competitive
 798 solicitations, the contract award, and a prohibition against
 799 contingent fees. Such procedures are limited to information
 800 technology consultant contracts for which the total project
 801 costs, or planning or study activities, are estimated to exceed
 802 the threshold amount provided in s. 287.017 for CATEGORY TWO.

803 (4) To govern the purchase by an agency of any commodity
 804 or contractual service and to establish standards and
 805 specifications for a commodity. The Chief Financial Officer
 806 shall establish definitions and classes of commodities and
 807 contractual services which agencies must adhere to in acquiring
 808 or purchasing commodities or contractual services. The
 809 department's authority under this section may not impair or
 810 interfere with an agency's determination of its need for, or use
 811 of, services that include particular specifications.

812 (5) To provide to agencies through an electronic medium or

813 other means rules for purchasing commodities and contractual
 814 services. Agencies may not approve any account, or request
 815 payment of any account, for the purchase of any commodity or the
 816 procurement of any contractual service covered by a purchasing
 817 or contractual service rule except as authorized by such rule.
 818 The department shall furnish copies of rules adopted by the
 819 department to any county, municipality, or other local public
 820 agency requesting them.

821 (6) To establish and maintain programs that disseminate
 822 information to governmental entities, industry vendors,
 823 educational institutions, and the general public concerning
 824 policies, procedures, rules, and forms for the procurement of
 825 commodities and contractual services.

826 (7) To establish and maintain a list of vendors that are
 827 not allowed to do business with the state pursuant to ss.
 828 287.132(4) and 287.133. The department may add to the list
 829 vendors that are not compliant with federal or state laws, or
 830 that the department determines have uncollected accounts that
 831 are owed to the state.

832 (8) To review and approve contracts subject to this
 833 chapter before the execution of such contracts in accordance
 834 with rules adopted by the department. The review must ensure
 835 that all contracting laws have been met; that the contract
 836 document contains a clear statement of work, quantifiable and
 837 measureable deliverables, performance measures, financial
 838 consequences for nonperformance, and clear terms and conditions
 839 that protect the interests of the state; that documentation is
 840 available to support the contract; and that the associated costs

841 of the contract are not unreasonable or inappropriate. A
 842 contract that does not comply with this subsection may be
 843 rejected and returned to the submitting agency for revision.

844 (a) For contracts in excess of the threshold amount
 845 provided in s. 287.017 for CATEGORY THREE, the review must
 846 include, but need not be limited to:

847 1. Evidence of advertising the procurement opportunity, if
 848 applicable;

849 2. The bid, proposal, or reply itself, whether an
 850 invitation to bid, request for proposals, or invitation to
 851 negotiate, as applicable;

852 3. The preprocurement conference questions and answers;

853 4. Any additional documentation provided to bidders,
 854 proposers, or repliers;

855 5. The list of bidders, proposers, or repliers solicited;

856 6. The evaluation instrument and process description
 857 related to the contract;

858 7. The bid tabulation or evaluation record;

859 8. Documentation that supports the agency's determination
 860 of vendor responsibility;

861 9. The successful bid, proposal, or reply in addition to
 862 the unsuccessful bids, proposals, or replies;

863 10. Documentation that supports the selection of the
 864 contractor;

865 11. The reasonableness of the price;

866 12. Verification that all statutory and regulatory
 867 requirements have been met; and

868 13. The proposed contract.

869 (b) The department shall verify that a competitive process
 870 was used if required by law and that the contract was
 871 appropriately awarded on the basis of lowest price or best value
 872 to a responsive and reasonable bidder, proposer, or replier. For
 873 contracts not competitively awarded, the procurement record
 874 shall be reviewed for restrictive specifications and the
 875 agency's justification for the noncompetitive method used in
 876 awarding the contract, including justification for the selection
 877 of the vendor and the reasonableness of the terms.

878 (c) The department has 90 days to make a final
 879 determination regarding approval of a contract. The department
 880 and the agency entering into the contract may agree to a longer
 881 review period to ensure the thorough consideration of the
 882 procurement process and its results.

883 (d) In order to ensure that the parties to the contract
 884 are aware that a contract is not effective unless approved by
 885 the department, the following language must be included in each
 886 state contract or amendment to such contract:

887
 888 If this contract, or an amendment to a contract, is
 889 valued at or greater than \$65,000 or if the state
 890 agrees to give something other than money, which
 891 consideration has a value or reasonably estimated
 892 value at or greater than \$35,000, the contract or
 893 amendment is not valid, effective, or binding upon the
 894 state unless the contract or amendment has been
 895 approved by the Chief Financial Officer.
 896

897 (e) Contracts and grants or grants-type contracts must be
 898 treated similarly. Therefore, if a for-profit entity joins the
 899 competition for a grant, normal contract rules apply even though
 900 they may not be appropriate for a grant procurement.

901 (9) To waive minor deviations from current procedures in
 902 order to prevent a delay in awarding an otherwise favorable
 903 contract if a vendor is not adversely affected and current law
 904 is not violated. The Chief Financial Officer shall provide
 905 recommendations to the Legislature to resolve such deviations,
 906 where appropriate, at the next regular legislative session.

907 (10) To have flexibility in accomplishing the intent of
 908 this section. If situations arise that current law does not
 909 anticipate, the department may work with state agencies to use
 910 different contracting methods on a pilot basis for the remainder
 911 of the calendar year. The Chief Financial Officer must provide
 912 recommendations to the Legislature to resolve such situations,
 913 where appropriate, at the next regular legislative session.

914 Section 8. Paragraph (f) of subsection (3), subsection
 915 (9), and subsection (14) of section 287.057, Florida Statutes,
 916 are amended, and subsection (24) is added to that section, to
 917 read:

918 287.057 Procurement of commodities or contractual
 919 services.—

920 (3) When the purchase price of commodities or contractual
 921 services exceeds the threshold amount provided in s. 287.017 for
 922 CATEGORY TWO, no purchase of commodities or contractual services
 923 may be made without receiving competitive sealed bids,
 924 competitive sealed proposals, or competitive sealed replies

925 unless:

926 (f) The following contractual services and commodities are
 927 not subject to the competitive-solicitation requirements of this
 928 section:

929 ~~1. Artistic services. For the purposes of this subsection,~~
 930 ~~the term "artistic services" does not include advertising or~~
 931 ~~typesetting. As used in this subparagraph, the term~~
 932 ~~"advertising" means the making of a representation in any form~~
 933 ~~in connection with a trade, business, craft, or profession in~~
 934 ~~order to promote the supply of commodities or services by the~~
 935 ~~person promoting the commodities or contractual services.~~

936 ~~2. Academic program reviews if the fee for such services~~
 937 ~~does not exceed \$50,000.~~

938 ~~3. Lectures by individuals.~~

939 1.4. Legal services, including attorney, paralegal, expert
 940 witness, appraisal, or mediator services.

941 2.5.a. Health services involving examination, diagnosis,
 942 treatment, prevention, medical consultation, or administration,
 943 and,

944 ~~b.~~ beginning January 1, 2011, health services, including,
 945 but not limited to, substance abuse and mental health services,
 946 involving examination, diagnosis, treatment, prevention, or
 947 medical consultation, if ~~when~~ such services are offered to
 948 eligible individuals participating in a specific program that
 949 qualifies multiple providers and uses a standard payment
 950 methodology. Reimbursement of administrative costs for providers
 951 of services purchased in this manner are ~~shall~~ also ~~be~~ exempt.

952 For purposes of this subparagraph ~~sub-subparagraph~~, the term

953 "providers" means health professionals, health facilities, or
 954 organizations that deliver or arrange for the delivery of health
 955 services.

956 ~~3.6.~~ Services provided to persons with mental or physical
 957 disabilities by not-for-profit corporations that ~~which~~ have
 958 obtained exemptions under ~~the provisions of~~ s. 501(c)(3) of the
 959 United States Internal Revenue Code or if ~~when~~ such services are
 960 governed by the provisions of Office of Management and Budget
 961 Circular A-122. However, in acquiring such services, the agency
 962 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past
 963 performance, willingness to meet time requirements, and price.

964 ~~4.7.~~ Medicaid services delivered to an eligible Medicaid
 965 recipient, unless the agency is directed otherwise in law.

966 ~~5.8.~~ Family placement services.

967 ~~6.9.~~ Prevention services related to mental health,
 968 including drug abuse prevention programs, child abuse prevention
 969 programs, and shelters for runaways, operated by not-for-profit
 970 corporations. However, in acquiring such services, the agency
 971 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past
 972 performance, willingness to meet time requirements, and price.

973 ~~10.~~ ~~Training and education services provided to injured~~
 974 ~~employees pursuant to s. 440.491(6).~~

975 ~~7.11.~~ Contracts entered into pursuant to s. 337.11.

976 ~~8.12.~~ Services or commodities provided by governmental
 977 agencies.

978 (9) An agency may ~~shall~~ not divide the solicitation of
 979 commodities or contractual services so as to avoid the
 980 requirements of subsections (1)-(3) and reduce the ability of

981 businesses to openly compete. For the purposes of this
 982 subsection, state agencies shall consider all purchases of the
 983 same commodity or service during one year to be part of a single
 984 purchase.

985 (14) For each contractual services contract, the agency
 986 shall designate an employee to function as contract manager who
 987 shall be responsible for enforcing performance of the contract
 988 terms and conditions and serve as a liaison with the contractor.
 989 Each contract manager who is responsible for one or more
 990 contracts in excess of the threshold amount provided under s.
 991 287.017 for CATEGORY FIVE ~~TWO~~ must be certified pursuant to s.
 992 287.1312 attend training conducted by the Chief Financial
 993 Officer for accountability in contracts and grant management.
 994 The Chief Financial Officer shall establish and disseminate
 995 uniform procedures pursuant to s. 17.03(3) to ensure that
 996 contractual services have been rendered in accordance with the
 997 contract terms before the agency processes the invoice for
 998 payment. The procedures must ~~shall~~ include, but need not be
 999 limited to, procedures for monitoring and documenting contractor
 1000 performance, reviewing and documenting all deliverables for
 1001 which payment is requested by vendors, and providing written
 1002 certification by contract managers of the agency's receipt of
 1003 goods and services.

1004 (24) An agency may purchase commodities or services
 1005 through another agency's existing contract rather than through
 1006 competitive competition if the use of such contract is in the
 1007 best interest of the state.

1008 Section 9. Paragraph (e) of subsection (1) of section

1009 287.058, Florida Statutes, is amended to read:

1010 287.058 Contract document.—

1011 (1) Every procurement of contractual services in excess of
 1012 the threshold amount provided in s. 287.017 for CATEGORY TWO,
 1013 except for the providing of health and mental health services or
 1014 drugs in the examination, diagnosis, or treatment of sick or
 1015 injured state employees or the providing of other benefits as
 1016 required by the provisions of chapter 440, shall be evidenced by
 1017 a written agreement embodying all provisions and conditions of
 1018 the procurement of such services, which shall, where applicable,
 1019 include, but not be limited to, a provision:

1020 (e) Dividing the contract into quantifiable, measurable,
 1021 and verifiable units of deliverables which ~~that~~ must be received
 1022 and accepted in writing by the contract manager before payment.
 1023 Each deliverable must be directly related to the scope of work
 1024 and specify a performance measure. As used in this paragraph,
 1025 the term "performance measure" means the required minimum level
 1026 of service to be performed and criteria for evaluating the
 1027 successful completion of each deliverable.

1028

1029 In lieu of a written agreement, the department may authorize the
 1030 use of a purchase order for classes of contractual services, if
 1031 the provisions of paragraphs (a)-(i) are included in the
 1032 purchase order or solicitation. The purchase order must include,
 1033 but need not be limited to, an adequate description of the
 1034 services, the contract period, and the method of payment. In
 1035 lieu of printing the provisions of paragraphs (a)-(i) in the
 1036 contract document or purchase order, agencies may incorporate

1037 | the requirements of paragraphs (a)-(i) by reference.

1038 | Section 10. Section 287.1312, Florida Statutes, is created
1039 | to read:

1040 | 287.1312 Contract manager certification.-

1041 | (1) The Department of Financial Services shall establish a
1042 | certification program for contract and grant managers. A state
1043 | employee may not manage a contract or grant agreement in excess
1044 | of the threshold amount provided in s. 287.017 for CATEGORY FIVE
1045 | without obtaining a valid certification from the Department of
1046 | Financial Services under this section. The program must include
1047 | training in the following areas:

1048 | (a) Procurement and the development of contracts.

1049 | (b) Development and administration of grant agreements
1050 | involving federal and state financial assistance.

1051 | (c) Responsibilities of a contract manager in the
1052 | management of state contracts and grant agreements.

1053 | (d) Federal and state audit and reporting requirements.

1054 | (e) Laws and rules relating to procurement and contract
1055 | administration.

1056 | (f) Any other subject matter that the Chief Financial
1057 | Officer determines will promote accountability in contract and
1058 | grant management.

1059 | (2) The program shall provide for periodic
1060 | recertification, as necessary. The Department of Financial
1061 | Services shall determine course requirements, maintain
1062 | information on certifications, and monitor the performance of
1063 | contract and grant managers. As part of such monitoring, the
1064 | department shall annually publish the results of agency manager

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1065 audits and error rates related to contract and grant management
 1066 on its website.

1067 (3) The Department of Financial Services may revoke a
 1068 manager's certification for incompetence or conduct inconsistent
 1069 with the responsibilities of contract or grant management.

1070 (4) The Department of Financial Services shall adopt rules
 1071 to administer this section.

1072 Section 11. Paragraph (d) of subsection (1) of section
 1073 287.133, Florida Statutes, is amended to read:

1074 287.133 Public entity crime; denial or revocation of the
 1075 right to transact business with public entities.-

1076 (1) As used in this section:

1077 (d) "Department" means the Department of Financial
 1078 ~~Management~~ Services.

1079 Section 12. Paragraph (h) of subsection (3) of section
 1080 255.25, Florida Statutes, is amended to read:

1081 255.25 Approval required prior to construction or lease of
 1082 buildings.-

1083 (3)

1084 (h) ~~The Department of Management Services may,~~ Pursuant to
 1085 s. 287.042(2)(a), the department shall procure a term contract
 1086 for real estate consulting and brokerage services. A state
 1087 agency may not purchase services from the contract unless the
 1088 contract has been procured under s. 287.057(1) after March 1,
 1089 2007, and contains the following provisions or requirements:

1090 1. Awarded brokers ~~must~~ maintain an office or presence in
 1091 the market served. In awarding the contract, preference must be
 1092 given to brokers who ~~that~~ are licensed in this state under

1093 chapter 475 and who ~~that~~ have 3 or more years of experience in
 1094 the market served. The contract may be made with up to three
 1095 tenant brokers in order to serve the marketplace in the north,
 1096 central, and south areas of the state.

1097 2. Each contracted tenant broker works ~~shall work~~ under
 1098 the direction, supervision, and authority of the state agency,
 1099 subject to the rules governing lease procurements.

1100 3. The department provides ~~shall provide~~ training for the
 1101 awarded tenant brokers concerning the rules governing the
 1102 procurement of leases.

1103 4. Tenant brokers ~~must~~ comply with all applicable
 1104 provisions of s. 475.278.

1105 5. Real estate consultants and tenant brokers are ~~shall be~~
 1106 compensated by the state agency, subject to the provisions of
 1107 the term contract, and such compensation is subject to
 1108 appropriation by the Legislature. A real estate consultant or
 1109 tenant broker may not receive compensation directly from a
 1110 lessor for services that are rendered under the term contract.
 1111 Moneys paid by a lessor to the state agency under a facility
 1112 leasing arrangement are not subject to the charges imposed under
 1113 s. 215.20. All terms relating to the compensation of the real
 1114 estate consultant or tenant broker must ~~shall~~ be specified in
 1115 the term contract and may not be supplemented or modified by the
 1116 state agency using the contract.

1117 6. The department conducts ~~shall conduct~~ periodic
 1118 customer-satisfaction surveys.

1119 7. Each state agency reports ~~shall report~~ the following
 1120 information to the department:

1121 a. The number of leases that adhere to the goal of the
 1122 workspace-management initiative of 180 square feet per full-time
 1123 employee FTE.

1124 b. The quality of space leased and the adequacy of tenant-
 1125 improvement funds.

1126 c. The timeliness of lease procurement, measured from the
 1127 date of the agency's request to the finalization of the lease.

1128 d. Whether cost-benefit analyses were performed before
 1129 execution of the lease in order to ensure that the lease is in
 1130 the best interest of the state.

1131 e. The lease costs compared to market rates for similar
 1132 types and classifications of space according to the official
 1133 classifications of the Building Owners and Managers Association.

1134 Section 13. Subsection (12) of section 287.012, Florida
 1135 Statutes, is amended to read:

1136 287.012 Definitions.—As used in this part, the term:

1137 (12) "Exceptional purchase" means any purchase of
 1138 commodities or contractual services excepted by law or rule from
 1139 the requirements for competitive solicitation, including, but
 1140 not limited to, purchases from a single source; purchases upon
 1141 receipt of fewer ~~less~~ than two responsive bids, proposals, or
 1142 replies; purchases made by an agency, after receiving approval
 1143 from the department, from a contract procured, pursuant to s.
 1144 287.057(1), or by another agency; and purchases made without
 1145 advertisement in the manner required under ~~by~~ s. 287.044(1)(a)
 1146 ~~287.042(3)(b)~~.

1147 Section 14. Paragraph (a) of subsection (2) of section
 1148 402.7305, Florida Statutes, is amended to read:

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1149 402.7305 Department of Children and Family Services;
 1150 procurement of contractual services; contract management.—
 1151 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—
 1152 (a) Notwithstanding s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~,
 1153 if ~~whenever~~ the department intends to contract with a public
 1154 postsecondary institution to provide a service, the department
 1155 must allow all public postsecondary institutions in this state
 1156 which ~~that~~ are accredited by the Southern Association of
 1157 Colleges and Schools to bid on the contract. Thereafter,
 1158 notwithstanding any other provision of law ~~to the contrary~~, if a
 1159 public postsecondary institution intends to subcontract for any
 1160 service awarded in the contract, the subcontracted service must
 1161 be procured by competitive procedures.

1162 Section 15. Subsection (3) of section 427.0135, Florida
 1163 Statutes, is amended to read:

1164 427.0135 Purchasing agencies; duties and
 1165 responsibilities.—Each purchasing agency, in carrying out the
 1166 policies and procedures of the commission, shall:

1167 (3) Not procure transportation disadvantaged services
 1168 without initially negotiating with the commission, as provided
 1169 in s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, or unless otherwise
 1170 authorized by statute. If the purchasing agency, after
 1171 consultation with the commission, determines that it cannot
 1172 reach mutually acceptable contract terms with the commission,
 1173 the purchasing agency may contract for the same transportation
 1174 services provided in a more cost-effective manner and of
 1175 comparable or higher quality and standards. The Medicaid agency
 1176 shall implement this subsection in a manner consistent with s.

1177 409.908(18) and as otherwise limited or directed by the General
 1178 Appropriations Act.

1179 Section 16. Subsection (2) of section 946.515, Florida
 1180 Statutes, is amended to read:

1181 946.515 Use of goods and services produced in correctional
 1182 work programs.—

1183 (2) A ~~No~~ similar product or service of comparable price
 1184 and quality found necessary for use by any state agency may not
 1185 be purchased from any source other than the corporation if the
 1186 corporation certifies that the product is manufactured by, or
 1187 the service is provided by, inmates and the product or service
 1188 meets the comparable performance specifications and comparable
 1189 price and quality requirements as specified under s.

1190 287.042(1)(c) ~~287.042(1)(f)~~ or as determined by an individual
 1191 agency as provided in this section. The purchasing authority of
 1192 ~~any~~ such state agency may make reasonable determinations of
 1193 need, price, and quality with reference to products or services
 1194 available from the corporation. In the event of a dispute
 1195 between the corporation and a ~~any~~ purchasing authority based
 1196 upon price or quality under this section or s. 287.042(1)(c)
 1197 ~~287.042(1)(f)~~, either party may request a hearing with the
 1198 Department of Management Services and, if not resolved, ~~either~~
 1199 ~~party~~ may request a proceeding pursuant to ss. 120.569 and
 1200 120.57, which shall be referred to the Division of
 1201 Administrative Hearings within 60 days after such request, to
 1202 resolve any dispute under this section. A ~~No~~ party is not
 1203 entitled to any appeal pursuant to s. 120.68.

1204 Section 17. Procurement review and report.—

1205 (1) It is the policy of this state to promote the
 1206 effective procurement of goods, services, and facilities by and
 1207 for the executive branch of state government through the
 1208 following:

1209 (a) Establishment of policies, procedures, and practices
 1210 that require the state to procure goods, services, and
 1211 facilities in a timely manner, of requisite quality, and at the
 1212 lowest reasonable cost, using competitive bidding to the maximum
 1213 extent possible.

1214 (b) Improvement in the quality, efficiency, economy, and
 1215 performance of organizations and personnel involved in the
 1216 procurement of goods, services, and facilities by the state.

1217 (c) Elimination of unnecessary, overlapping, or
 1218 duplication of procurement and related activities, such as in
 1219 contract administration.

1220 (d) Elimination of unnecessary or redundant requirements
 1221 placed on contractors or on officials in charge of state
 1222 procurement procedures.

1223 (e) Identification of gaps, omissions, or inconsistencies
 1224 in state laws, rules, and directives relating to state
 1225 procurement which should be brought to the attention of the
 1226 Legislature.

1227 (f) Attainment of greater uniformity in and simplification
 1228 of procurement procedures, whenever appropriate.

1229 (g) Coordination of the procurement policies and programs
 1230 of the various state agencies, whenever possible.

1231 (h) Conformation of procurement policies and programs to
 1232 other successfully established state policies and programs,

1233 whenever appropriate.

1234 (i) Minimization of the possible disruptive effects of
 1235 state procurement on particular industries, areas, or
 1236 occupations.

1237 (j) Improvement of training with respect to, and the
 1238 understanding of, the laws and policies of the state relating to
 1239 state procurement, not only within state government but on the
 1240 part of organizations and individuals doing business with the
 1241 state.

1242 (k) Promotion of fair dealing and equitable relationships
 1243 among the parties to state contracting.

1244 (l) Promotion of economy, efficiency, and effectiveness in
 1245 state procurement organizations, operations, and the uniform
 1246 reporting of procurement activities by any means that the Chief
 1247 Financial Officer deems beneficial and appropriate.

1248 (m) Special consideration given to the procurement laws,
 1249 policies, procedures, practices, organization, staffing,
 1250 leadership, and controls of the procurement processes of the
 1251 Federal Government and other states.

1252 (n) Promotion of economy, efficiency, and effectiveness in
 1253 procurement, contract management, and project management
 1254 operations.

1255 (2) In keeping with the policies expressed in subsection
 1256 (1), the Chief Financial Officer shall review and investigate:

1257 (a) All current state laws that govern the state
 1258 procurement of goods, services, and facilities;

1259 (b) The procurement policies, rules, procedures, and
 1260 practices followed by the state agencies, boards, commissions,

1261 offices, and other instrumentalities of the executive branch of
 1262 state government;

1263 (c) The organization and management processes involved in
 1264 the state procurement of goods, services, and facilities before
 1265 the award of a state procurement contract, during the
 1266 solicitation of bids, the evaluation, and the negotiation of a
 1267 contract, and subsequent to the award of the contract to
 1268 determine the extent to which these organization and management
 1269 processes facilitate the legislative policy set forth in this
 1270 act; and

1271 (d) Any other areas that the Chief Financial Officer deems
 1272 relevant to facilitating the policies expressed in subsection
 1273 (1).

1274 (3) In order to accomplish the procurement review directed
 1275 by this section, the Chief Financial Officer may:

1276 (a) Acquire information directly from the head of any
 1277 state department or agency for the purpose of conducting this
 1278 review. All departments and agencies shall cooperate with the
 1279 Chief Financial Officer and furnish all information requested to
 1280 the extent permitted by law.

1281 (b) Procure the services of experts and consultants.

1282 (c) Contract with private organizations and nonprofit
 1283 institutions to carry out studies and prepare reports to
 1284 facilitate the review.

1285 (4) By December 31, 2012, the Chief Financial Officer
 1286 shall submit to the Governor, the President of the Senate, and
 1287 the Speaker of the House of Representatives a report of findings
 1288 and recommendations for changes in statutes, rules, policies,

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1289 procedures, and organization necessary to carry out the policies
 1290 set forth in this act.

1291 Section 18. The Legislature recognizes the need to reform
 1292 the purchasing cycle, from the development of a purchasing
 1293 agreement to the payment for goods or services provided to the
 1294 state. Therefore, chapter 287, Florida Statutes, is repealed
 1295 effective July 30, 2014.

1296 Section 19. (1) For the 2012-2013 fiscal year, the sum of
 1297 \$400,000 in nonrecurring funds is appropriated from the
 1298 Administrative Trust Fund in the Department of Financial
 1299 Services to contract for the Chief Financial Officer's review of
 1300 the state's procurement process.

1301 (2) For the 2012-2013 fiscal year, the sum of \$400,000 in
 1302 recurring funds from the General Revenue fund and full-time
 1303 equivalent positions and associated salary rate of are
 1304 appropriated to the Chief Financial Officer for the purpose of
 1305 implementing the Chief Financial Officer's expanded contract
 1306 auditing responsibilities under this act. Funds remaining
 1307 unexpended or unencumbered from this appropriation as of June
 1308 30, 2013, shall revert and be reappropriated for the same
 1309 purpose in the 2013-2014 fiscal year.

1310 Section 20. This act shall take effect July 1, 2012.

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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:
4

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (a) and (i) of subsection (7) of
8 section 11.45, Florida Statutes, are amended to read:

9 11.45 Definitions; duties; authorities; reports; rules.—

10 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

11 (a) The Auditor General must ~~shall~~ notify the Legislative
12 Auditing Committee of any local governmental entity, district
13 school board, charter school, or charter technical career center
14 that does not comply with the reporting requirements of s.
15 215.985 or s. 218.39.

16 (i) Beginning in 2012, the Auditor General shall annually
17 transmit by July 15, to the President of the Senate, the Speaker
18 of the House of Representatives, and the Department of Financial
19 Services, a list of all school districts, charter schools,

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20 charter technical career centers, Florida College System
21 institutions, state universities, and water management districts
22 that have failed to comply with the transparency requirements of
23 s. 215.985 as identified in the audit reports reviewed pursuant
24 to paragraph (b) and those conducted pursuant to subsection (2).

25 Section 2. Section 215.971, Florida Statutes, is amended
26 to read:

27 215.971 Agreements funded with federal and state
28 assistance.—

29 (1) For an agency agreement that provides state financial
30 assistance to a recipient or subrecipient, as those terms are
31 defined in s. 215.97, or that provides federal financial
32 assistance to a subrecipient, as defined by applicable United
33 States Office of Management and Budget circulars, the agreement
34 must ~~shall~~ include a provision:

35 (a) ~~(1)~~ ~~A provision~~ Specifying a scope of work that clearly
36 establishes the tasks that the recipient or subrecipient is
37 required to perform; and

38 (b) ~~(2)~~ ~~A provision~~ Dividing the agreement into
39 quantifiable units of deliverables which ~~that~~ must be received
40 and accepted in writing by the agency before payment. Each
41 deliverable must be directly related to the scope of work and
42 ~~must~~ specify a performance measure. As used in this paragraph,
43 the term "performance measure" means the required minimum level
44 of service to be performed and the criteria for evaluating the
45 successful completion of each deliverable.

46 (2) Effective October 1, 2012, before execution,
47 agreements to be funded with state or federal financial

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48 assistance must be submitted for review and approval in
49 accordance with rules adopted by the Department of Financial
50 Services. The review must ensure that the agreement document
51 contains a clear statement of work, quantifiable and measureable
52 deliverables, performance measures, and financial consequences
53 for nonperformance. An agreement that does not comply with this
54 subsection may be rejected and returned to the submitting agency
55 for revision.

56 (3) The Chief Financial Officer may establish dollar
57 thresholds and other criteria for sampling the agreements that
58 are to be reviewed prior to execution. The Chief Financial
59 Officer may revise such thresholds and other criteria for an
60 agency or the unit of any agency as he or she deems appropriate.

61 (4) The department has 30 days to make a final
62 determination regarding approval of an agreement. The department
63 and the agency entering into the agreement may agree to a longer
64 review period to ensure the thorough consideration of the
65 procurement process and its results.

66 (5) For each agreement funded with federal or state
67 assistance, the contracting agency shall designate an employee
68 to function as grant manager who shall be responsible for
69 enforcing performance of the agreement terms and conditions and
70 serve as a liaison with the recipient. A grant manager who is
71 responsible for one or more agreements in excess of the
72 threshold amount provided in s. 287.017 for CATEGORY FIVE must
73 be certified under s. 287.1312. The Chief Financial Officer
74 shall establish and disseminate uniform procedures for payment
75 requests pursuant to s. 17.03(3) to ensure that services are

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76 rendered in accordance with the agreement terms before the
77 agency processes an invoice for payment. The procedures must
78 include, but need not be limited to, procedures for monitoring
79 and documenting a recipient's performance, reviewing and
80 documenting all deliverables for which payment is requested by
81 the recipient, and providing written certification by the grant
82 manager of the agency's receipt of goods and services.

83 Section 3. Subsection (16) of section 215.985, Florida
84 Statutes, is amended to read:

85 215.985 Transparency in government spending.—

86 (16) The Chief Financial Officer shall establish and
87 maintain a secure, shared, intergovernmental contract tracking
88 provide public access to a state contract management system.

89 (a) Within 30 calendar days after executing a contract,
90 each state agency as defined in s. 216.011(1), and, effective
91 November 1, 2013, each local governmental entity and independent
92 special district as defined in s. 218.31, each district school
93 board as described in s. 1001.32, the Board of Governors of the
94 State University System as described in s. 1001.70, and each
95 Florida College System institution board of trustees as
96 described in s. 1001.61 must post the following that provides
97 information and documentation relating to that contract on the
98 contract tracking system: ~~contracts procured by governmental~~
99 entities.

- 100 1. The name of the contracting entities;
101 2. The procurement method;
102 3. The contract beginning and ending dates;

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103 4. The nature or type of the commodities or services
104 purchased;

105 5. Applicable contract unit prices and deliverables;

106 6. Total compensation to be paid or received under the
107 contract;

108 7. All payments made to the contract vendor to date;

109 8. All commodities or services received from the contract
110 vendor to date;

111 9. Applicable contract performance measures;

112 10. Contract extensions or renewals, if any;

113 11. The justification for not using competitive
114 solicitation to procure the contract, including citation to any
115 statutory exemption or exception from competitive solicitation,
116 if applicable;

117 12. Electronic copies of the contract and procurement
118 documents, including any provision that may have been redacted
119 to conceal exempt or confidential information; and

120 13. Any other information regarding the contract or the
121 procurement which may be required by the Department of Financial
122 Services.

123 ~~(a) The data collected in the system must include, but~~
124 ~~need not be limited to, the contracting agency; the procurement~~
125 ~~method; the contract beginning and ending dates; the type of~~
126 ~~commodity or service; the purpose of the commodity or service;~~
127 ~~the compensation to be paid; compliance information, such as~~
128 ~~performance metrics for the service or commodity; contract~~
129 ~~violations; the number of extensions or renewals; and the~~
130 ~~statutory authority for providing the service.~~

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131 (b) Within 30 calendar days after a major modification or
132 amendment change to an existing contract, ~~or the execution of a~~
133 ~~new contract, agency procurement staff of~~ the affected state
134 ~~governmental~~ entity must ~~shall~~ update the necessary information
135 described in paragraph (a) in the ~~state~~ contract tracking
136 ~~management~~ system. A major modification or amendment change to a
137 contract includes, but is not limited to, a renewal,
138 termination, or extension of the contract, or an amendment to
139 the contract as determined by the Chief Financial Officer.

140 (c) Each entity identified in paragraph (a) must redact,
141 as defined in s. 119.011, any exempt or confidential information
142 from the contract or procurement documents before posting an
143 electronic copy of such documents on the contract tracking
144 system.

145 1. If an entity becomes aware that an electronic copy of a
146 contract or procurement document that it posted has not been
147 properly redacted, the entity must replace the electronic copy
148 of the documents with a redacted copy.

149 2. If a party to a contract, or an authorized
150 representative thereof, discovers that an electronic copy of a
151 contract or procurement document on the system has not been
152 properly redacted, the party or representative may request the
153 entity that posted the document to redact the exempt or
154 confidential information. Upon receipt of a request in
155 compliance with this subparagraph, the entity that posted the
156 document shall redact the exempt or confidential information.

157 a. Such request must be in writing and delivered by mail,
158 facsimile, or electronic transmission, or in person to the

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159 entity that posted the information. The request must identify
160 the specific document, the page numbers that include the exempt
161 or confidential information, the information that is exempt or
162 confidential, and the relevant statutory exemption. A fee may
163 not be charged for a redaction made pursuant to such request.

164 b. If necessary, a party to the contract may petition the
165 circuit court for an order directing compliance with this
166 paragraph.

167 3. The Chief Financial Officer, the Department of
168 Financial Services, or any officer, employee, or contractor
169 thereof, is not responsible for redacting exempt or confidential
170 information from an electronic copy of a contract or procurement
171 document posted by another entity on the system, and is not
172 liable for the failure of the entity to redact the exempt or
173 confidential information. The Department of Financial Services
174 may notify the posting entity if it discovers that a document
175 posted on the tracking system contains exempt or confidential
176 information.

177 (d) Pursuant to ss. 119.01 and 119.07, the Chief Financial
178 Officer may make information posted on the contract tracking
179 system available for viewing and downloading by the public
180 through a secure website. Unless otherwise provided by law,
181 information retrieved electronically pursuant to this paragraph
182 is not admissible in court as an authenticated document.

183 1. The Chief Financial Officer may regulate and prohibit
184 the posting of records that could facilitate identity theft or
185 fraud, such as signatures; compromise or reveal an agency
186 investigation; reveal the identity of undercover personnel;

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187 reveal proprietary confidential business information or trade
188 secrets; reveal an individual's medical information; or reveal
189 any other record or information that the Chief Financial Officer
190 believes may jeopardize the health, safety, or welfare of the
191 public. However, such prohibition does not eliminate the duty of
192 an entity to provide a copy of a public record upon request. The
193 Chief Financial Officer shall use appropriate Internet security
194 measures to ensure that no person has the ability to alter or
195 modify records available on the website.

196 2. Records made available on the website, including
197 electronic copies of contracts or procurement documents, may not
198 reveal information made exempt or confidential by law. Notice of
199 the right of an affected party to request redaction of exempt or
200 confidential information pursuant to paragraph (c) must be
201 conspicuously and clearly displayed on the website.

202 (e) The posting of information on the contract tracking
203 system or the provision of contract information on a website for
204 public viewing and downloading does not eliminate the duty of an
205 entity to respond to a public record request for such
206 information or to a subpoena for such information.

207 1. A request for a copy of a contract or procurement
208 document or a certified copy of a contract or procurement
209 document shall be made to the entity that is party to the
210 contract and that maintains the original documents. Such request
211 may not be made to the Chief Financial Officer or the Department
212 of Financial Services or any officer, employee, or contractor
213 thereof unless the Chief Financial Officer or the department is
214 a party to the contract.

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215 2. A subpoena for a copy of a contract or procurement
216 document or certified copy of a contract or procurement document
217 must be served on the entity that is a party to the contract and
218 that maintains the original documents. The Chief Financial
219 Officer or the Department of Financial Services or any officer,
220 employee, or contractor thereof may not be served a subpoena for
221 those records unless the Chief Financial Officer or the
222 department is a party to the contract.

223 (f) The Department of Financial Services may adopt rules
224 to administer this subsection.

225 Section 4. Section 216.0111, Florida Statutes, is
226 repealed.

227 Section 5. Effective October 1, 2013, section 287.032,
228 Florida Statutes, is amended to read:

229 287.032 Departmental responsibility ~~purpose of~~
230 ~~department.~~ Pursuant to the administration of this chapter:

231 (1) It shall be The responsibility ~~purpose~~ of the
232 Department of Management Services is to:

233 (a)(1) To Promote efficiency, economy, and the
234 conservation of energy and ~~coordinate to effect coordination in~~
235 the purchase of commodities and contractual services for the
236 state.

237 ~~(2) To provide uniform commodity and contractual service~~
238 ~~procurement policies, rules, procedures, and forms for use by~~
239 ~~agencies and eligible users.~~

240 (b)(3) To Procure and distribute federal surplus tangible
241 personal property allocated to the state by the Federal
242 Government.

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243 (2) The responsibility of the Department of Financial
244 Services is to:

245 (a) Provide uniform commodity and contractual service
246 procurement policies, rules, procedures, and forms for use by
247 agencies and eligible users.

248 (b) Monitor agencies with respect to compliance with
249 established policies, rules, and procedures.

250 Section 6. Effective October 1, 2013, section 287.042,
251 Florida Statutes, is amended to read:

252 287.042 Powers, duties, and functions of the Department of
253 Management Services.—The department is responsible for the
254 procurement of commodities and contractual services for agencies
255 and has ~~shall have~~ the following powers, duties, and functions:

256 (1)~~(a)~~ To canvass all sources of supply, establish and
257 maintain a vendor list, and contract for the purchase, lease, or
258 acquisition, including purchase by installment sales or lease-
259 purchase contracts which may provide for the payment of interest
260 on unpaid portions of the purchase price, of all commodities and
261 contractual services required by an ~~any~~ agency under this
262 chapter. A ~~Any~~ contract providing for deferred payments and the
263 payment of interest is ~~shall be~~ subject to specific rules
264 adopted by the Department of Financial Services.

265 (a)~~(b)~~ The department shall develop a list of interested
266 vendors to be maintained by classes of commodities and
267 contractual services. The list may not be used to prequalify a
268 vendor or to exclude an interested vendor from bidding. However,
269 a vendor barred by the Chief Financial Officer pursuant to s.
270 287.044(7) may not be included on the list. The department may

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271 remove from the ~~its~~ vendor list any source of supply which fails
272 to fulfill any of its duties specified in a contract with the
273 state. The department ~~It~~ may reinstate ~~any~~ such source of supply
274 if the department ~~when it~~ is satisfied that further instances of
275 default will not occur.

276 (b)-(e) In order to promote the cost-effective procurement
277 of commodities and contractual services, the department or an
278 agency may enter into contracts that limit the liability of a
279 vendor consistent with s. 672.719.

280 ~~(d) The department shall issue commodity numbers for all~~
281 ~~products of the corporation operating the correctional industry~~
282 ~~program which meet or exceed department specifications.~~

283 (c)-(e) The department shall include the products offered
284 by the corporation operating the correctional industry program
285 on any listing prepared by the department which lists state term
286 contracts executed by the department. The products or services
287 shall be placed on such list in a category based upon
288 specification criteria developed through a joint effort of the
289 department and the corporation and approved by the department.

290 1.(f) The corporation may submit products and services to
291 the department for testing, analysis, and review relating to the
292 quality and cost comparability. If, after review and testing,
293 the department approves ~~of~~ the products and services, the
294 department shall give written notice ~~thereof~~ to the corporation.
295 The corporation shall pay a reasonable fee ~~charged~~ for the
296 testing of its products by the Department of Agriculture and
297 Consumer Services.

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298 2. The department shall issue a commodity number for all
299 products of the corporation which meet or exceed department
300 specifications.

301 ~~(d)(g)~~ The department shall include products and services
302 that are offered by a qualified nonprofit agency for the blind
303 or for the other severely handicapped ~~organized pursuant to~~
304 ~~chapter 413~~ and that have been determined to be suitable for
305 purchase pursuant to s. 413.035 on a ~~any~~ department listing of
306 state term contracts. The products and services shall be placed
307 on such list in a category based upon specification criteria
308 developed by the department in consultation with the ~~qualified~~
309 nonprofit agency.

310 ~~(e)(h)~~ The department may collect fees for the use of its
311 electronic information services. The fees may be imposed on an
312 individual transaction basis or as a fixed subscription for a
313 designated period of time. At a minimum, the fees shall be
314 determined in an amount sufficient to cover the department's
315 projected costs for ~~of~~ the services, including overhead, in
316 accordance with the policies of the department ~~of Management~~
317 ~~Services~~ for computing its administrative assessment. All fees
318 collected under this paragraph shall be deposited in the
319 Operating Trust Fund for disbursement as provided by law.

320 ~~(2)(a)~~ To establish purchasing agreements and procure
321 state term contracts for commodities and contractual services,
322 pursuant to s. 287.057, under which state agencies shall, and
323 eligible users may, make purchases pursuant to s. 287.056.

324 ~~(a)~~ The department may restrict purchases by ~~from some~~
325 ~~term contracts to~~ state agencies from ~~only for these~~ term

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326 contracts if ~~where~~ the inclusion of other governmental entities
327 will have an adverse effect on competition or on ~~to these~~
328 federal facilities located in this state. In such planning or
329 purchasing, the office of ~~Supplier Diversity~~ may monitor to
330 ensure that opportunities are afforded for contracting with
331 minority business enterprises. The department, for state term
332 contracts, and all agencies, for multiyear contractual services
333 or term contracts, shall explore reasonable and economical means
334 to use ~~utilize~~ certified minority business enterprises.
335 Purchases by any county, municipality, private nonprofit
336 community transportation coordinator designated pursuant to
337 chapter 427, ~~while~~ conducting business related solely to the
338 Commission for the Transportation Disadvantaged, or other local
339 public agency under the provisions in the state purchasing
340 contracts, and purchases, from the corporation operating the
341 correctional work programs, of products or services that are
342 subject to paragraph (1)(c) ~~(1)(f)~~, are exempt from the
343 competitive solicitation requirements otherwise applying to
344 their purchases.

345 (b) As an alternative to ~~any provision in~~ s. 120.57(3)(c),
346 the department may proceed with the competitive solicitation or
347 contract award process of a term contract if ~~when~~ the secretary
348 of the department or his or her designee sets forth in writing
349 particular facts and circumstances that ~~which~~ demonstrate that
350 the delay incident to staying the solicitation or contract award
351 process would be detrimental to the interests of the state. If,
352 after the award of the ~~a~~ contract resulting from a competitive
353 solicitation in which a timely protest was received and in which

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354 the state did not prevail, the contract may be canceled and
355 reawarded.

356 (c) Any person who files an action protesting a decision
357 or intended decision pertaining to contracts administered by the
358 department, a water management district, or an agency pursuant
359 to s. 120.57(3)(b) shall post with the department, the water
360 management district, or the agency at the time of filing the
361 formal written protest a bond payable to the department, the
362 water management district, or agency in an amount equal to 1
363 percent of the estimated contract amount. For protests of
364 decisions or intended decisions pertaining to exceptional
365 purchases, the bond must ~~shall be in an amount~~ equal ~~to~~ 1
366 percent of the estimated contract amount for the exceptional
367 purchase.

368 1. The estimated contract amount shall be based upon the
369 contract price submitted by the protestor or, if no contract
370 price was submitted, the department, water management district,
371 or agency shall estimate the contract amount based on factors,
372 including, but not limited to, the price of previous or existing
373 contracts for similar commodities or contractual services, the
374 amount appropriated by the Legislature for the contract, or the
375 fair market value of similar commodities or contractual
376 services. The agency shall provide the estimated contract amount
377 to the vendor within 72 hours, excluding Saturdays, Sundays, and
378 state holidays, after the filing of the notice of protest by the
379 vendor. The estimated contract amount is not subject to protest
380 pursuant to s. 120.57(3).

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381 2. The bond shall be conditioned upon the payment of all
382 costs and charges that are adjudged against the protestor in the
383 administrative hearing in which the action is brought and in any
384 subsequent appellate court proceeding.

385 3. In lieu of a bond, the department, ~~the~~ water management
386 district, or agency may, ~~in either case,~~ accept a cashier's
387 check, official bank check, or money order in the amount of the
388 bond.

389 4. If, after completion of the administrative hearing
390 process and any appellate court proceedings, the department,
391 water management district, or agency prevails, it shall recover
392 all costs and charges, which must ~~shall~~ be included in the final
393 order or judgment, excluding attorney ~~attorney's~~ fees. ~~This~~
394 ~~section shall not apply to protests filed by the Office of~~
395 ~~Supplier Diversity.~~ Upon payment of such costs and charges by
396 the protestor, the bond, cashier's check, official bank check,
397 or money order shall be returned to the protestor. If, after the
398 completion of the administrative hearing process and any
399 appellate court proceedings, the protestor prevails, the
400 protestor may ~~shall~~ recover from the department, water
401 management district, or agency all costs and charges that are
402 ~~which shall be~~ included in the final order or judgment,
403 excluding attorney ~~attorney's~~ fees.

404 5. This paragraph does not apply to protests filed by the
405 office.

406 ~~(3) To establish a system of coordinated, uniform~~
407 ~~procurement policies, procedures, and practices to be used by~~

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408 ~~agencies in acquiring commodities and contractual services,~~
409 ~~which shall include, but not be limited to:~~

410 ~~(a) Development of a list of interested vendors to be~~
411 ~~maintained by classes of commodities and contractual services.~~
412 ~~This list shall not be used to prequalify vendors or to exclude~~
413 ~~any interested vendor from bidding.~~

414 ~~(b)1. Development of procedures for advertising~~
415 ~~solicitations. These procedures must provide for electronic~~
416 ~~posting of solicitations for at least 10 days before the date~~
417 ~~set for receipt of bids, proposals, or replies, unless the~~
418 ~~department or other agency determines in writing that a shorter~~
419 ~~period of time is necessary to avoid harming the interests of~~
420 ~~the state. The Office of Supplier Diversity may consult with the~~
421 ~~department regarding the development of solicitation~~
422 ~~distribution procedures to ensure that maximum distribution is~~
423 ~~afforded to certified minority business enterprises as defined~~
424 ~~in s. 288.703.~~

425 ~~2. Development of procedures for electronic posting. The~~
426 ~~department shall designate a centralized website on the Internet~~
427 ~~for the department and other agencies to electronically post~~
428 ~~solicitations, decisions or intended decisions, and other~~
429 ~~matters relating to procurement.~~

430 ~~(c) Development of procedures for the receipt and opening~~
431 ~~of bids, proposals, or replies by an agency. Such procedures~~
432 ~~shall provide the Office of Supplier Diversity an opportunity to~~
433 ~~monitor and ensure that the contract award is consistent with~~
434 ~~the requirements of s. 287.09451.~~

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435 ~~(d) Development of procedures to be used by an agency in~~
436 ~~deciding to contract, including, but not limited to, identifying~~
437 ~~and assessing in writing project needs and requirements,~~
438 ~~availability of agency employees, budgetary constraints or~~
439 ~~availability, facility equipment availability, current and~~
440 ~~projected agency workload capabilities, and the ability of any~~
441 ~~other state agency to perform the services.~~

442 ~~(e) Development of procedures to be used by an agency in~~
443 ~~maintaining a contract file for each contract which shall~~
444 ~~include, but not be limited to, all pertinent information~~
445 ~~relating to the contract during the preparatory stages; a copy~~
446 ~~of the solicitation; documentation relating to the solicitation~~
447 ~~process; opening of bids, proposals, or replies; evaluation and~~
448 ~~tabulation of bids, proposals, or replies; and determination and~~
449 ~~notice of award of contract.~~

450 ~~(f) Development of procedures to be used by an agency for~~
451 ~~issuing solicitations that include requirements to describe~~
452 ~~commodities, services, scope of work, and deliverables in a~~
453 ~~manner that promotes competition.~~

454 ~~(g) Development of procedures to be used by an agency when~~
455 ~~issuing requests for information and requests for quotes.~~

456 ~~(h) Development of procedures to be used by state agencies~~
457 ~~when procuring information technology commodities and~~
458 ~~contractual services that ensure compliance with public records~~
459 ~~requirements and records retention and archiving requirements.~~

460 ~~(4) (a) To prescribe the methods of securing competitive~~
461 ~~sealed bids, proposals, and replies. Such methods may include,~~
462 ~~but are not limited to, procedures for identifying vendors;~~

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463 ~~setting qualifications; conducting conferences or written~~
464 ~~question and answer periods for purposes of responding to vendor~~
465 ~~questions; evaluating bids, proposals, and replies; ranking and~~
466 ~~selecting vendors; and conducting negotiations.~~

467 ~~(b) To prescribe procedures for procuring information~~
468 ~~technology and information technology consultant services that~~
469 ~~provide for public announcement and qualification, competitive~~
470 ~~solicitations, contract award, and prohibition against~~
471 ~~contingent fees. Such procedures are limited to information~~
472 ~~technology consultant contracts for which the total project~~
473 ~~costs, or planning or study activities, are estimated to exceed~~
474 ~~the threshold amount provided in s. 287.017, for CATEGORY TWO.~~

475 ~~(3)-(5) To prescribe specific commodities and quantities to~~
476 ~~be purchased locally.~~

477 ~~(6) (a) To govern the purchase by any agency of any~~
478 ~~commodity or contractual service and to establish standards and~~
479 ~~specifications for any commodity.~~

480 ~~(4) (b) Except for the purchase of insurance, to the~~
481 ~~department may delegate to agencies the authority for the~~
482 ~~procurement of and contracting for commodities or contractual~~
483 ~~services.~~

484 ~~(7) To establish definitions and classes of commodities~~
485 ~~and contractual services. Agencies shall follow the definitions~~
486 ~~and classes of commodities and contractual services established~~
487 ~~by the department in acquiring or purchasing commodities or~~
488 ~~contractual services. The authority of the department under this~~
489 ~~section shall not be construed to impair or interfere with the~~

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490 ~~determination by state agencies of their need for, or their use~~
491 ~~of, services including particular specifications.~~

492 ~~(8) To provide any commodity and contractual service~~
493 ~~purchasing rules to the Chief Financial Officer and all agencies~~
494 ~~through an electronic medium or other means. Agencies may not~~
495 ~~approve any account or request any payment of any account for~~
496 ~~the purchase of any commodity or the procurement of any~~
497 ~~contractual service covered by a purchasing or contractual~~
498 ~~service rule except as authorized therein. The department shall~~
499 ~~furnish copies of rules adopted by the department to any county,~~
500 ~~municipality, or other local public agency requesting them.~~

501 ~~(5)(9)~~ To require that every agency furnish information
502 relative to its commodity and contractual services purchases and
503 methods of purchasing commodities and contractual services to
504 the department when so requested.

505 ~~(6)(10)~~ To prepare statistical data concerning the method
506 of procurement, terms, usage, and disposition of commodities and
507 contractual services by agencies. All agencies shall furnish
508 such information for this purpose to the office and to the
509 department, as the department or office may call for, but at
510 least ~~no less frequently than~~ annually, on such forms or in such
511 manner as the department may prescribe.

512 ~~(11) To establish and maintain programs for the purpose of~~
513 ~~disseminating information to government, industry, educational~~
514 ~~institutions, and the general public concerning policies,~~
515 ~~procedures, rules, and forms for the procurement of commodities~~
516 ~~and contractual services.~~

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517 (7)~~(12)~~ Except as otherwise provided in this section
518 ~~herein~~, to adopt rules necessary to carry out the purposes of
519 this section, including the authority to delegate to any agency
520 any and all of the responsibility conferred by this section,
521 retaining to the department any and all authority for
522 supervision thereof. Such purchasing of commodities and
523 procurement of contractual services by state agencies must also
524 ~~shall~~ be in strict accordance with the rules and procedures
525 prescribed by the Department of Financial Services.

526 (8)~~(13)~~ If the department determines in writing that it is
527 in the best interest of the state, to award to multiple
528 suppliers contracts for commodities and contractual services
529 established by the department for use by all agencies. Such
530 awards may be on a statewide or regional basis. If regional
531 contracts are established by the department, multiple supplier
532 awards may be based upon multiple awards for regions. Agencies
533 may award contracts to a responsible and responsive vendor on a
534 statewide or regional basis.

535 (9)~~(14)~~ To procure and distribute federal surplus tangible
536 personal property allocated to the state by the Federal
537 Government.

538 (10)~~(15)~~ To enter into joint agreements with governmental
539 agencies, as defined in s. 163.3164, for the purpose of pooling
540 funds for the purchase of commodities or information technology
541 that can be used by multiple agencies.

542 (a) Each agency that has been appropriated or has existing
543 funds for such purchase, shall, upon contract award by the
544 department, transfer their portion of the funds into the

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545 department's Operating Trust Fund for payment by the department.
546 The funds shall be transferred by the Executive Office of the
547 Governor pursuant to the agency budget amendment request
548 provisions in chapter 216.

549 (b) Agencies that sign the joint agreements are
550 financially obligated for their portion of the agreed-upon
551 funds. If an agency becomes more than 90 days delinquent in
552 paying the funds, the department shall certify to the Chief
553 Financial Officer the amount due, and the Chief Financial
554 Officer shall transfer the amount due to the Operating Trust
555 Fund of the department from any of the agency's available funds.
556 The Chief Financial Officer shall report these transfers and the
557 reasons for the transfers to the Executive Office of the
558 Governor and the legislative appropriations committees.

559 ~~(11)(16)~~ To evaluate contracts let by the Federal
560 Government, another state, or a political subdivision for the
561 provision of commodities and contract services, and, if it is
562 determined in writing to be cost-effective and in the best
563 interest of the state, to enter into a written agreement
564 authorizing an agency to make purchases under such contract.

565 ~~(12)(17)(a)~~ To enter into contracts pursuant to chapter
566 957 for the designing, financing, acquiring, leasing,
567 constructing, or operating of private correctional facilities.
568 The department shall enter into such ~~a contract or~~ contracts
569 with one contractor per facility ~~for the designing, acquiring,~~
570 ~~financing, leasing, constructing, and operating of that facility~~
571 or may, if specifically authorized by the Legislature,
572 separately contract for each of any such services.

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573 (a) ~~(b)~~ The department shall also ~~to~~ manage and enforce
574 compliance with existing or future contracts entered into
575 pursuant to chapter 957.

576 (b) The department may not delegate the responsibilities
577 conferred by this subsection.

578 Section 7. Effective October 1, 2013, section 287.044,
579 Florida Statutes, is created to read:

580 287.044 Powers, duties, and functions of the Department of
581 Financial Services.—The Department of Financial Services is
582 responsible for establishing and enforcing procurement and
583 contracting policies and procedures for the Department of
584 Management Services and all agencies. The Department of
585 Financial Services has the following powers, duties, and
586 functions:

587 (1) To establish a system of coordinated and uniform
588 procurement policies, procedures, and practices to be used by
589 agencies when acquiring commodities and contractual services,
590 which includes, but is not limited to:

591 (a) The development of procedures to be used by an agency
592 for issuing or advertising solicitations which include
593 requirements for the agency to describe commodities, services,
594 scope of work, and deliverables in a manner that promotes
595 competition.

596 1. Such procedures must provide for electronic posting of
597 solicitations at least 10 days before the date set for receipt
598 of bids, proposals, or replies, unless the agency determines in
599 writing that a shorter period of time is necessary to avoid
600 harming the interests of the state.

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601 2. The office may consult with the department regarding
602 the development of solicitation distribution procedures to
603 ensure that maximum distribution is afforded to certified
604 minority business enterprises as defined in s. 288.703.

605 3. The department shall designate a centralized website on
606 the Internet for the department and other agencies to
607 electronically post solicitations, decisions or intended
608 decisions, and other matters relating to procurement.

609 (b) The development of procedures to be used by an agency
610 when issuing requests for information and requests for quotes.

611 (c) The development of procedures to be used by state
612 agencies when procuring information technology commodities and
613 contractual services which ensure compliance with public records
614 requirements and records retention and archiving requirements.

615 (d) The development of procedures for the receipt and
616 opening of bids, proposals, or replies by an agency. Such
617 procedures must provide the office an opportunity to monitor and
618 to ensure that the contract award is consistent with the
619 requirements of s. 287.09451.

620 (e) The development of procedures to be used by an agency
621 in deciding to contract, including, but not limited to,
622 identifying and assessing in writing project needs and
623 requirements, availability of agency employees, budgetary
624 availability or constraints, availability of facility equipment,
625 current and projected agency workload capabilities, and the
626 ability of another state agency to perform the services.

627 (f) The development of procedures for recording and
628 maintaining support documentation for a cost or price analysis

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629 to be performed before the award of a contract in excess of the
630 threshold amount provided in s. 287.017 for CATEGORY FOUR. The
631 cost or price analysis shall be used to validate the
632 reasonableness of bids, proposals, or replies.

633 (g) The development of procedures to be used by state
634 agencies when entering into contracts which ensure standard
635 formats, quantifiable and measurable deliverables, performance
636 measures, and financial consequences for nonperformance.

637 (h) The development of procedures to be used by an agency
638 in maintaining a contract file for each contract which includes,
639 but is not limited to, all pertinent information relating to the
640 contract during the preparatory stages; the solicitation
641 process, including a copy of the solicitation; the opening of
642 bids, proposals, or replies; the evaluation and tabulation of
643 bids, proposals, or replies; and the determination and notice of
644 contract award.

645 (2) To prescribe the methods of securing competitive
646 sealed bids, proposals, and replies. Such methods may include,
647 but are not limited to, procedures for identifying vendors;
648 setting qualifications; conducting conferences or written
649 question and answer periods for purposes of responding to vendor
650 questions; evaluating bids, proposals, and replies; ranking and
651 selecting vendors; and conducting negotiations.

652 (3) To prescribe procedures for procuring information
653 technology and information technology consultant services which
654 provide for public announcement and qualification, competitive
655 solicitations, the contract award, and a prohibition against
656 contingent fees. Such procedures are limited to information

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657 technology consultant contracts for which the total project
658 costs, or planning or study activities, are estimated to exceed
659 the threshold amount provided in s. 287.017 for CATEGORY TWO.

660 (4) To govern the purchase by an agency of any commodity
661 or contractual service and to establish standards and
662 specifications for a commodity. The Chief Financial Officer
663 shall establish definitions and classes of commodities and
664 contractual services which agencies must adhere to in acquiring
665 or purchasing commodities or contractual services. The
666 department's authority under this section may not impair or
667 interfere with an agency's determination of its need for, or use
668 of, services that include particular specifications.

669 (5) To provide to agencies through an electronic medium or
670 other means rules for purchasing commodities and contractual
671 services. Agencies may not approve any account, or request
672 payment of any account, for the purchase of any commodity or the
673 procurement of any contractual service covered by a purchasing
674 or contractual service rule except as authorized by such rule.
675 The department shall furnish copies of rules adopted by the
676 department to any county, municipality, or other local public
677 agency requesting them.

678 (6) To establish and maintain programs that disseminate
679 information to governmental entities, industry vendors,
680 educational institutions, and the general public concerning
681 policies, procedures, rules, and forms for the procurement of
682 commodities and contractual services.

683 (7) To establish and maintain a list of vendors that are
684 not allowed to do business with the state pursuant to ss.

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685 287.132(4) and 287.133. The department may add to the list
686 vendors that are not compliant with federal or state laws, or
687 that the department determines have uncollected accounts that
688 are owed to the state.

689 Section 8. Paragraph (f) of subsection (3) and subsections
690 (9), (14), and (16) of section 287.057, Florida Statutes, are
691 amended, and subsection (24) is added to that section, to read:

692 287.057 Procurement of commodities or contractual
693 services.—

694 (3) When the purchase price of commodities or contractual
695 services exceeds the threshold amount provided in s. 287.017 for
696 CATEGORY TWO, no purchase of commodities or contractual services
697 may be made without receiving competitive sealed bids,
698 competitive sealed proposals, or competitive sealed replies
699 unless:

700 (f) The following contractual services and commodities are
701 not subject to the competitive-solicitation requirements of this
702 section:

703 ~~1. Artistic services. For the purposes of this subsection,~~
704 ~~the term "artistic services" does not include advertising or~~
705 ~~typesetting. As used in this subparagraph, the term~~
706 ~~"advertising" means the making of a representation in any form~~
707 ~~in connection with a trade, business, craft, or profession in~~
708 ~~order to promote the supply of commodities or services by the~~
709 ~~person promoting the commodities or contractual services.~~

710 ~~2. Academic program reviews if the fee for such services~~
711 ~~does not exceed \$50,000.~~

712 ~~3. Lectures by individuals.~~

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1409 (2012)

Amendment No.

713 ~~1.4.~~ Legal services, including attorney, paralegal, expert
714 witness, appraisal, or mediator services.

715 ~~2.5.a.~~ Health services involving examination, diagnosis,
716 treatment, prevention, medical consultation, or administration,
717 and,

718 ~~b.~~ beginning January 1, 2011, health services, including,
719 but not limited to, substance abuse and mental health services,
720 involving examination, diagnosis, treatment, prevention, or
721 medical consultation, if ~~when~~ such services are offered to
722 eligible individuals participating in a specific program that
723 qualifies multiple providers and uses a standard payment
724 methodology. Reimbursement of administrative costs for providers
725 of services purchased in this manner are ~~shall~~ also ~~be~~ exempt.
726 For purposes of this subparagraph ~~sub-subparagraph~~, the term
727 "providers" means health professionals, health facilities, or
728 organizations that deliver or arrange for the delivery of health
729 services.

730 ~~3.6.~~ Services provided to persons with mental or physical
731 disabilities by not-for-profit corporations that ~~which~~ have
732 obtained exemptions under ~~the provisions of~~ s. 501(c) (3) of the
733 United States Internal Revenue Code or if ~~when~~ such services are
734 governed by the provisions of Office of Management and Budget
735 Circular A-122. However, in acquiring such services, the agency
736 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past
737 performance, willingness to meet time requirements, and price.

738 ~~4.7.~~ Medicaid services delivered to an eligible Medicaid
739 recipient, unless the agency is directed otherwise in law.

740 ~~5.8.~~ Family placement services.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1409 (2012)

Amendment No.

741 ~~6.9.~~ Prevention services related to mental health,
742 including drug abuse prevention programs, child abuse prevention
743 programs, and shelters for runaways, operated by not-for-profit
744 corporations. However, in acquiring such services, the agency
745 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past
746 performance, willingness to meet time requirements, and price.

747 ~~10. Training and education services provided to injured~~
748 ~~employees pursuant to s. 440.491(6).~~

749 ~~7.11.~~ Contracts entered into pursuant to s. 337.11.

750 ~~8.12.~~ Services or commodities provided by governmental
751 agencies.

752 (9) An agency may ~~shall~~ not divide the solicitation of
753 commodities or contractual services so as to avoid the
754 requirements of subsections (1)-(3) and reduce the ability of
755 businesses to openly compete.

756 (14) For each contractual services contract, the agency
757 shall designate an employee to function as contract manager who
758 shall be responsible for enforcing performance of the contract
759 terms and conditions and serve as a liaison with the contractor.
760 Each contract manager who is responsible for one or more
761 contracts in excess of the threshold amount provided under s.
762 287.017 for CATEGORY FIVE ~~TWO~~ must be certified pursuant to s.
763 287.1312 ~~attend training conducted by the Chief Financial~~
764 ~~Officer for accountability in contracts and grant management.~~

765 The Chief Financial Officer shall establish and disseminate
766 uniform procedures pursuant to s. 17.03(3) to ensure that
767 contractual services have been rendered in accordance with the
768 contract terms before the agency processes the invoice for

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769 payment. The procedures must ~~shall~~ include, but need not be
770 limited to, procedures for monitoring and documenting contractor
771 performance, reviewing and documenting all deliverables for
772 which payment is requested by vendors, and providing written
773 certification by contract managers of the agency's receipt of
774 goods and services.

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

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

782 (b) At least three persons to conduct negotiations during
783 a competitive sealed reply procurement who collectively have
784 experience and knowledge in negotiating contracts, contract
785 procurement, and the program areas and service requirements for
786 which commodities or contractual services are sought. When the
787 value of a contract is in excess of \$1 million in any fiscal
788 year, at least one of the persons conducting negotiations must
789 be certified as a contract negotiator based upon rules adopted
790 by the Department of Financial Services ~~Management Services~~ in
791 order to ensure that certified contract negotiators are
792 knowledgeable about effective negotiation strategies, capable of
793 successfully implementing those strategies, and involved
794 appropriately in the procurement process. At a minimum, the
795 rules must address the qualifications required for
796 certification, the method of certification, and the procedure

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797 for involving the certified negotiator. If the value of a
798 contract is in excess of \$10 million in any fiscal year, at
799 least one of the persons conducting negotiations must be a
800 Project Management Professional, as certified by the Project
801 Management Institute.

802 (24) An agency or other eligible user may purchase
803 commodities or services through another agency's existing
804 contract rather than through competitive solicitation if the use
805 of such contract is in the best interest of the state.

806 Section 9. Paragraph (e) of subsection (1) of section
807 287.058, Florida Statutes, is amended, and subsections (7)
808 through (11) are added to that section, to read:

809 287.058 Contract document.—

810 (1) Every procurement of contractual services in excess of
811 the threshold amount provided in s. 287.017 for CATEGORY TWO,
812 except for the providing of health and mental health services or
813 drugs in the examination, diagnosis, or treatment of sick or
814 injured state employees or the providing of other benefits as
815 required by the provisions of chapter 440, shall be evidenced by
816 a written agreement embodying all provisions and conditions of
817 the procurement of such services, which shall, where applicable,
818 include, but not be limited to, a provision:

819 (e) Dividing the contract into quantifiable, measurable,
820 and verifiable units of deliverables which ~~that~~ must be received
821 and accepted in writing by the contract manager before payment.
822 Each deliverable must be directly related to the scope of work
823 and specify a performance measure. As used in this paragraph,
824 the term "performance measure" means the required minimum level

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825 of service to be performed and criteria for evaluating the
826 successful completion of each deliverable.

827

828 In lieu of a written agreement, the department may authorize the
829 use of a purchase order for classes of contractual services, if
830 the provisions of paragraphs (a)-(i) are included in the
831 purchase order or solicitation. The purchase order must include,
832 but need not be limited to, an adequate description of the
833 services, the contract period, and the method of payment. In
834 lieu of printing the provisions of paragraphs (a)-(i) in the
835 contract document or purchase order, agencies may incorporate
836 the requirements of paragraphs (a)-(i) by reference.

837 (7) The Chief Financial Officer may review and approve
838 contracts subject to this chapter before the execution of such
839 contracts in accordance with rules adopted by the department.
840 The review must ensure that all contracting laws have been met;
841 that the contract document contains a clear statement of work,
842 quantifiable and measureable deliverables, performance measures,
843 financial consequences for nonperformance, and clear terms and
844 conditions that protect the interests of the state; that
845 documentation is available to support the contract; and that the
846 associated costs of the contract are not unreasonable or
847 inappropriate. A contract that does not comply with this
848 subsection may be rejected and returned to the submitting agency
849 for revision.

850 (8) The Chief Financial Officer may establish dollar
851 thresholds and other criteria for sampling the agreements that
852 are to be reviewed prior to execution. The Chief Financial

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853 Officer may revise such thresholds and other criteria for an
854 agency or the unit of any agency as he or she deems appropriate.

855 (9) The department's review of contract documentation may
856 include, but need not be limited to:

857 (a) Evidence of advertising the procurement opportunity,
858 if applicable;

859 (b) The bid, proposal, or reply itself, whether an
860 invitation to bid, request for proposals, or invitation to
861 negotiate, as applicable;

862 (c) The preprocurement conference questions and answers;

863 (d) Any additional documentation provided to bidders,
864 proposers, or repliers;

865 (e) The list of bidders, proposers, or repliers solicited;

866 (f) The evaluation instrument and process description
867 related to the contract;

868 (g) The bid tabulation or evaluation record;

869 (h) Documentation that supports the agency's determination
870 of vendor responsibility;

871 (i) The successful bid, proposal, or reply in addition to
872 the unsuccessful bids, proposals, or replies;

873 (j) Documentation that supports the selection of the
874 contractor;

875 (k) The reasonableness of the price;

876 (l) Verification that all statutory and regulatory
877 requirements have been met; and

878 (m) The proposed contract.

879 (10) The department shall verify that a competitive
880 process was used, if required by law, and that the contract was

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881 appropriately awarded on the basis of lowest price or best value
882 to a responsive and reasonable bidder, proposer, or replier. For
883 contracts not competitively awarded, the procurement record
884 shall be reviewed for restrictive specifications and the
885 agency's justification for the noncompetitive method used in
886 awarding the contract, including justification for the selection
887 of the vendor and the reasonableness of the terms.

888 (11) The department has 30 days to make a final
889 determination regarding approval of a contract. The department
890 and the agency entering into the contract may agree to a longer
891 review period to ensure the thorough consideration of the
892 procurement process and its results.

893 Section 10. Subsection (3) of section 287.095, Florida
894 Statutes, is repealed.

895 Section 11. Section 287.1312, Florida Statutes, is created
896 to read:

897 287.1312 Contract manager certification.-

898 (1) The Department of Financial Services shall establish a
899 training certification program for contract and grant managers
900 and negotiators of contracts and grants. A state employee may
901 not manage a contract or grant agreement in excess of the
902 threshold amount provided in s. 287.017 for CATEGORY FIVE
903 without obtaining a valid certification from the Department of
904 Financial Services under this section. The program must include
905 training in the following areas:

906 (a) Procurement and the development of contracts.

907 (b) Development and administration of grant agreements
908 involving federal and state financial assistance.

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- 909 (c) Responsibilities of a contract manager in the
910 management of state contracts and grant agreements.
- 911 (d) Federal and state audit and reporting requirements.
- 912 (e) Laws and rules relating to procurement and contract
913 administration.
- 914 (f) Any other subject matter that the Chief Financial
915 Officer determines will promote accountability in contract and
916 grant management.
- 917 (2) The program shall provide for periodic
918 recertification, as necessary. The Department of Financial
919 Services shall determine course requirements, maintain
920 information on certifications, and monitor the performance of
921 contract and grant managers. As part of such monitoring, the
922 department shall annually publish the results of agency manager
923 audits and error rates related to contract and grant management
924 on its website.
- 925 (3) The Department of Financial Services may revoke a
926 manager's certification for incompetence or conduct inconsistent
927 with the responsibilities of contract or grant management.
- 928 (4) The Department of Financial Services shall adopt rules
929 to administer this section.

930 Section 12. Paragraph (d) of subsection (1) of section
931 287.133, Florida Statutes, is amended to read:

932 287.133 Public entity crime; denial or revocation of the
933 right to transact business with public entities.—

934 (1) As used in this section:

935 (d) "Department" means the Department of Financial
936 Management Services.

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937 Section 13. Paragraph (h) of subsection (3) of section
938 255.25, Florida Statutes, is amended to read:

939 255.25 Approval required prior to construction or lease of
940 buildings.—

941 (3)

942 (h) ~~The Department of Management Services may,~~ Pursuant to
943 s. 287.042(2)(a), the department shall procure a term contract
944 for real estate consulting and brokerage services. A state
945 agency may not purchase services from the contract unless the
946 contract has been procured under s. 287.057(1) after March 1,
947 2007, and contains the following provisions or requirements:

948 1. Awarded brokers ~~must~~ maintain an office or presence in
949 the market served. In awarding the contract, preference must be
950 given to brokers who ~~that~~ are licensed in this state under
951 chapter 475 and who ~~that~~ have 3 or more years of experience in
952 the market served. The contract may be made with up to three
953 tenant brokers in order to serve the marketplace in the north,
954 central, and south areas of the state.

955 2. Each contracted tenant broker works ~~shall work~~ under
956 the direction, supervision, and authority of the state agency,
957 subject to the rules governing lease procurements.

958 3. The department provides ~~shall provide~~ training for the
959 awarded tenant brokers concerning the rules governing the
960 procurement of leases.

961 4. Tenant brokers ~~must~~ comply with all applicable
962 provisions of s. 475.278.

963 5. Real estate consultants and tenant brokers are ~~shall be~~
964 compensated by the state agency, subject to the provisions of

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965 the term contract, and such compensation is subject to
966 appropriation by the Legislature. A real estate consultant or
967 tenant broker may not receive compensation directly from a
968 lessor for services that are rendered under the term contract.
969 Moneys paid by a lessor to the state agency under a facility
970 leasing arrangement are not subject to the charges imposed under
971 s. 215.20. All terms relating to the compensation of the real
972 estate consultant or tenant broker must ~~shall~~ be specified in
973 the term contract and may not be supplemented or modified by the
974 state agency using the contract.

975 6. The department conducts ~~shall conduct~~ periodic
976 customer-satisfaction surveys.

977 7. Each state agency reports ~~shall report~~ the following
978 information to the department:

979 a. The number of leases that adhere to the goal of the
980 workspace-management initiative of 180 square feet per full-time
981 employee FTE.

982 b. The quality of space leased and the adequacy of tenant-
983 improvement funds.

984 c. The timeliness of lease procurement, measured from the
985 date of the agency's request to the finalization of the lease.

986 d. Whether cost-benefit analyses were performed before
987 execution of the lease in order to ensure that the lease is in
988 the best interest of the state.

989 e. The lease costs compared to market rates for similar
990 types and classifications of space according to the official
991 classifications of the Building Owners and Managers Association.

Amendment No.

992 Section 14. Subsection (12) of section 287.012, Florida
993 Statutes, is amended to read:

994 287.012 Definitions.—As used in this part, the term:

995 (12) "Exceptional purchase" means any purchase of
996 commodities or contractual services excepted by law or rule from
997 the requirements for competitive solicitation, including, but
998 not limited to, purchases from a single source; purchases upon
999 receipt of fewer ~~less~~ than two responsive bids, proposals, or
1000 replies; purchases made by an agency, after receiving approval
1001 from the department, from a contract procured, pursuant to s.
1002 287.057(1), or by another agency; and purchases made without
1003 advertisement in the manner required under ~~by~~ s. 287.044(1)(a)
1004 ~~287.042(3)(b)~~.

1005 Section 15. Paragraph (a) of subsection (2) of section
1006 402.7305, Florida Statutes, is amended to read:

1007 402.7305 Department of Children and Family Services;
1008 procurement of contractual services; contract management.—

1009 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

1010 (a) Notwithstanding s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~,
1011 ~~if whenever~~ the department intends to contract with a public
1012 postsecondary institution to provide a service, the department
1013 must allow all public postsecondary institutions in this state
1014 which ~~that~~ are accredited by the Southern Association of
1015 Colleges and Schools to bid on the contract. Thereafter,
1016 notwithstanding any other provision of law ~~to the contrary~~, if a
1017 public postsecondary institution intends to subcontract for any
1018 service awarded in the contract, the subcontracted service must
1019 be procured by competitive procedures.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1409 (2012)

Amendment No.

1020 Section 16. Subsection (3) of section 427.0135, Florida
1021 Statutes, is amended to read:

1022 427.0135 Purchasing agencies; duties and
1023 responsibilities.—Each purchasing agency, in carrying out the
1024 policies and procedures of the commission, shall:

1025 (3) Not procure transportation disadvantaged services
1026 without initially negotiating with the commission, as provided
1027 in s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, or unless otherwise
1028 authorized by statute. If the purchasing agency, after
1029 consultation with the commission, determines that it cannot
1030 reach mutually acceptable contract terms with the commission,
1031 the purchasing agency may contract for the same transportation
1032 services provided in a more cost-effective manner and of
1033 comparable or higher quality and standards. The Medicaid agency
1034 shall implement this subsection in a manner consistent with s.
1035 409.908(18) and as otherwise limited or directed by the General
1036 Appropriations Act.

1037 Section 17. Subsection (2) of section 946.515, Florida
1038 Statutes, is amended to read:

1039 946.515 Use of goods and services produced in correctional
1040 work programs.—

1041 (2) A ~~No~~ similar product or service of comparable price
1042 and quality found necessary for use by any state agency may not
1043 be purchased from any source other than the corporation if the
1044 corporation certifies that the product is manufactured by, or
1045 the service is provided by, inmates and the product or service
1046 meets the comparable performance specifications and comparable
1047 price and quality requirements as specified under s.

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1048 287.042(1)(c) ~~287.042(1)(f)~~ or as determined by an individual
1049 agency as provided in this section. The purchasing authority of
1050 ~~any~~ such state agency may make reasonable determinations of
1051 need, price, and quality with reference to products or services
1052 available from the corporation. In the event of a dispute
1053 between the corporation and a ~~any~~ purchasing authority based
1054 upon price or quality under this section or s. 287.042(1)(c)
1055 ~~287.042(1)(f)~~, either party may request a hearing with the
1056 Department of Management Services and, if not resolved, ~~either~~
1057 ~~party~~ may request a proceeding pursuant to ss. 120.569 and
1058 120.57, which shall be referred to the Division of
1059 Administrative Hearings within 60 days after such request, to
1060 resolve any dispute under this section. A ~~No~~ party is not
1061 entitled to any appeal pursuant to s. 120.68.

1062 Section 18. Procurement review and report.—

1063 (1) The Chief Financial Officer shall review and
1064 investigate:

1065 (a) All current state laws that govern the state
1066 procurement of goods, services, and facilities;

1067 (b) The procurement policies, rules, procedures, and
1068 practices followed by the state agencies, boards, commissions,
1069 offices, and other instrumentalities of the executive branch of
1070 state government;

1071 (c) The organization and management processes involved in
1072 the state procurement of goods, services, and facilities before
1073 the award of a state procurement contract, during the
1074 solicitation of bids, the evaluation, and the negotiation of a
1075 contract, and subsequent to the award of the contract to

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1076 determine the extent to which these organization and management
1077 processes facilitate the legislative policy set forth in this
1078 act; and

1079 (d) Any other areas that the Chief Financial Officer deems
1080 relevant to the review and investigation.

1081 (2) In order to accomplish the procurement review directed
1082 by this section, the Chief Financial Officer may:

1083 (a) Acquire information directly from the head of any
1084 state department or agency for the purpose of conducting this
1085 review. All departments and agencies shall cooperate with the
1086 Chief Financial Officer and furnish all information requested to
1087 the extent permitted by law.

1088 (b) Procure the services of experts and consultants.

1089 (c) Contract with private organizations and nonprofit
1090 institutions to carry out studies and prepare reports to
1091 facilitate the review.

1092 (3) By December 31, 2012, the Chief Financial Officer
1093 shall submit to the Governor, the President of the Senate, and
1094 the Speaker of the House of Representatives a report of findings
1095 and recommendations for changes in statutes, rules, policies,
1096 procedures, and organization necessary to carry out the policies
1097 set forth in this act.

1098 Section 19. The Legislature recognizes the need to reform
1099 the purchasing cycle, from the development of a purchasing
1100 agreement to the payment for goods or services provided to the
1101 state. Therefore, chapter 287, Florida Statutes, is repealed
1102 effective July 30, 2014.

Amendment No.

1103 Section 20. (1) For the 2012-2013 fiscal year, the sum of
1104 \$400,000 in nonrecurring funds is appropriated from the
1105 Administrative Trust Fund in the Department of Financial
1106 Services to contract for the Chief Financial Officer's review of
1107 the state's procurement process.

1108 (2) For the 2012-2013 fiscal year, the sum of \$375,000 in
1109 nonrecurring funds is appropriated from the Administrative Trust
1110 Fund in the Department of Financial Services to contract for the
1111 Chief Financial Officer's administration of the certified
1112 contract manager and negotiator programs.

1113 (3) For the 2012-2013 fiscal year, the sum of \$4,067,000
1114 in recurring funds from the General Revenue fund and 36 full-
1115 time equivalent positions and associated salary rate of
1116 1,902,588 are appropriated to the Chief Financial Officer for
1117 the purpose of implementing the Chief Financial Officer's
1118 expanded contract auditing responsibilities under this act.
1119 Funds remaining unexpended or unencumbered from this
1120 appropriation as of June 30, 2013, shall revert and be
1121 reappropriated for the same purpose in the 2013-2014 fiscal
1122 year.

1123 Section 21. Except as otherwise expressly provided in this
1124 act, this act shall take effect July 1, 2012.

1125
1126
1127 -----
1128 **T I T L E A M E N D M E N T**

1129 Remove the entire title and insert:

1130 A bill to be entitled

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1409 (2012)

Amendment No.

1131 An act relating to state contracting; amending s.
1132 11.45, F.S.; conforming provisions to changes made by
1133 the act; amending s. 215.971, F.S.; requiring
1134 agreements funded with state or federal financial
1135 assistance to include a performance measure for each
1136 deliverable, to be reviewed and approved in accordance
1137 with rules adopted by the Department of Financial
1138 Services, and to have the contracting entity assign a
1139 grants manager who is responsible for enforcing
1140 performance of the agreement; amending s. 215.985,
1141 F.S.; revising provisions relating to the Chief
1142 Financial Officer's intergovernmental contract
1143 tracking system under the Transparency Florida Act;
1144 specifying the entities that are included in the
1145 tracking system; requiring that exempt or confidential
1146 information be redacted from contracts and procurement
1147 documents posted on the system; authorizing the Chief
1148 Financial Officer to make available the information
1149 posted on the system to the public through a secure
1150 website; authorizing the Department of Financial
1151 Services to adopt rules; repealing s. 216.0111, F.S.,
1152 relating to a requirement that state agencies report
1153 certain contract information to the Department of
1154 Financial Services and transferring that requirement
1155 to s. 215.985, F.S.; amending s. 287.032, F.S.;
1156 dividing the responsibilities of the Department of
1157 Management Services under ch. 287, F.S., with the
1158 Department of Financial Services; amending s. 287.042,

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1409 (2012)

Amendment No.

1159 F.S.; limiting the duties of the Department of
1160 Management Services to the procurement of commodities
1161 and contractual services; directing the department to
1162 develop a list of interested vendors; deleting
1163 provisions requiring that the department perform
1164 duties relating to procurement and contracting
1165 policies and procedures; creating s. 287.044, F.S.;
1166 assigning duties relating to procurement and
1167 contracting policies and procedures to the Department
1168 of Financial Services; requiring the department to
1169 develop a list of vendors not allowed to do business
1170 with the state; amending s. 287.057, F.S.; revising
1171 the list of contractual services and commodities that
1172 are exempt from competitive solicitation to delete
1173 certain services from the exemption; revising
1174 provisions prohibiting an agency from dividing a
1175 solicitation; conforming provisions to changes made by
1176 the act; authorizing an agency or other eligible user
1177 to purchase commodities or services through another
1178 agency's contract; amending s. 287.058, F.S.;
1179 requiring contracts to include a performance measure
1180 for each deliverable; authorizing the Chief Financial
1181 Officer to review and approve contracts; providing
1182 requirements for such reviews; authorizing the Chief
1183 Financial Officer to establish dollar thresholds and
1184 another criteria for sampling agreements that are to
1185 be reviewed before execution; providing criteria for
1186 the department's review of contract documentation;

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1409 (2012)

Amendment No.

1187 requiring that the department verify that a
1188 competitive process was used and that a contract was
1189 appropriately awarded; providing for the review of
1190 procurement record for contracts not competitively
1191 awarded; specifying the number of days that the
1192 department must make its final determination regarding
1193 the approval of a contract; authorizing the department
1194 and the agency to agree to a longer review period;
1195 repealing s. 287.095(3), F.S.; relating to certain
1196 products produced by inmate labor; creating s.
1197 287.1312, F.S.; requiring certification of contract
1198 managers by the Department of Financial Services for
1199 contracts of more than a certain amount; requiring the
1200 training program for the certification to provide
1201 training in certain areas; authorizing the department
1202 to adopt rules to administer the program; amending s.
1203 287.133, F.S.; revising the definition of "department"
1204 to mean the Department of Financial Services rather
1205 than the Department of Management Services with
1206 respect to provisions governing public entity crimes
1207 and placement on the convicted vendor list; amending
1208 ss. 255.25, 287.012, 402.7305, 427.0135, and 946.515,
1209 F.S.; conforming cross-references; requiring the Chief
1210 Financial Officer to conduct a study of current
1211 procurement laws pursuant to such policies; requiring
1212 that the Chief Financial Officer submit a report to
1213 the Legislature and Governor by a certain date on such

COMMITTEE/SUBCOMMITTEE AMENDMENT



Bill No. HB 1409 (2012)

Amendment No.

1214 study; repealing ch. 287, F.S., on a future date;
1215 providing appropriations; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1417 State Investments
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 880

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---|--|
| Orig. Comm.: Government Operations Subcommittee | | Meadows  | Williamson  |

SUMMARY ANALYSIS

The State Board of Administration (SBA or board) is created in Art. IV, s. 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution. The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan.

The SBA's ability to invest the FRS assets is governed by a "legal list" of the types of investments provided in current law. The "legal list" of guidelines specific to the investment of FRS Pension Plan assets includes the ability to invest 10 percent of any fund in alternative investments.

The bill authorizes the SBA to invest up to 20 percent of any fund in alternative investments, up from 10 percent.

The bill appears to have an unknown fiscal impact on the state.

The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The State Board of Administration (SBA or board) is established by Article IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board members are commonly referred to as "Trustees." The board derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution.

The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan, which represent approximately \$125.1 billion (85 percent) of the \$147.5 billion in assets managed by the SBA, as of November 30, 2011.¹ The SBA also manages 33 other investment portfolios, with combined assets of \$21.7 billion², including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.

The SBA must follow fiduciary standards of care when investing assets, subject to certain limitations.³ A six-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.⁴

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. The "legal list" of guidelines⁵ specific to the investment of FRS Pension Plan assets includes the authorization to invest no more than 10 percent of assets in alternative investments⁶, alternative investment vehicles⁷, and other non publicly-traded investments.⁸ The cap on alternative investments was last changed in 2008, when it was raised from five percent to 10 percent.⁹

¹ See State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, issued December 31, 2011, at 7 (on file with the Government Operations Subcommittee).

² *Id.*

³ See s. 215.44, F.S.

⁴ See s. 215.444, F.S.

⁵ The legal list of guidelines specific to the investment of FRS Pension Plan assets includes:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than three percent of equity assets should be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 35 percent of assets should be invested in foreign securities.
- No more than 10 percent of assets should be invested in alternative investments, alternative investment vehicles, and other non publicly-traded investments.

⁶ Section 215.4401(3)(a)1., F.S., defines an "alternative investment" as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."

⁷ Section 215.4401(3)(a)2., F.S., defines an "alternative investment vehicle" as "the limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."

⁸ See s. 215.47, F.S.

⁹ See chapter 2008-31, L.O.F.

Currently, the SBA has nine percent of its funds invested in alternative investments.¹⁰ Current alternative investments include strategic investments¹¹ and private equity^{12, 13}. As of November 30, 2011, the pension plan had \$5.7 billion in private equity, and \$4.9 billion in strategic investments.¹⁴ The SBA's current allocation to alternative investments is relatively low compared to other large and leading public and corporate pension plans.¹⁵

Hewitt EnnisKnupp¹⁶ (HEK) performed asset liability studies on the SBA's investment strategy in 2010 and 2011. The recommendations from the studies provided by HEK would require the SBA to have increased authority to allocate funds to alternative investments.¹⁷ HEK's recommendations to increase the allocation to alternative investments were approved by the SBA Investment Advisory Council and the board in 2010 and 2011.¹⁸

Effect of Proposed Changes

The bill authorizes the SBA to invest up to 20 percent of any fund in alternative investments, up from the current 10 percent.

B. SECTION DIRECTORY:

Section 1 amends s. 215.47, F.S., to increase the amount of money that may be invested in alternative investments by the SBA.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown. See Fiscal Comments.

2. Expenditures:

Unknown. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁰ Information provided by electronic mail on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

¹¹ Strategic investments may include: debt oriented funds, infrastructure, absolute return funds, long and short equity, global macro and multi-strategy funds, commodities, and timberland. Definition provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

¹² Private equity is investment strategies that provide working capital to companies in order to nurture expansion, new product development, or the restructuring of operations, management, or ownership. Definition provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

¹³ Information provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

¹⁴ See State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, issued December 31, 2011, at 7 (on file with the Government Operations Subcommittee).

¹⁵ Analysis of HB 1417, State Board of Administration, January 10, 2012, at 2 (on file with the Government Operations Subcommittee).

¹⁶ Hewitt EnnisKnupp is an advisor to institutional investors, including numerous large public pension funds such as the one overseen by the SBA.

¹⁷ Analysis of HB 1417, State Board of Administration, January 10, 2012, at 2 (on file with the Government Operations Subcommittee).

¹⁸ *Id.*

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an unknown positive impact for portfolio investment managers.¹⁹

D. FISCAL COMMENTS:

The fiscal impact to the state is unknown. The fiscal impact is determinate on the long term market performance of the investments made by the SBA.²⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

¹⁹ *Id.* at 3.

²⁰ Information provided by telephone on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration.

PCS for HB 1417

ORIGINAL

2012

1 A bill to be entitled
 2 An act relating to state investments; amending s.
 3 215.47, F.S.; increasing the amount of money that may
 4 be invested in alternative investments by the State
 5 Board of Administration; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Subsection (15) of section 215.47, Florida
 10 Statutes, is amended to read:

11 215.47 Investments; authorized securities; loan of
 12 securities.—Subject to the limitations and conditions of the
 13 State Constitution or of the trust agreement relating to a trust
 14 fund, moneys available for investments under ss. 215.44-215.53
 15 may be invested as follows:

16 (15) With no more, in the aggregate, than 20 ~~10~~ percent of
 17 any fund in alternative investments, ~~as defined in s.~~
 18 ~~215.4401(3)(a)1.~~, through participation in an alternative
 19 investment vehicle as those terms are the vehicles defined in s.
 20 215.4401(3)(a)~~2.~~, or in securities or investments that are not
 21 publicly traded and ~~are~~ not otherwise authorized by this
 22 section.

23 Section 2. This act shall take effect July 1, 2012.