



---

# **Government Operations Subcommittee**

**Tuesday, September 24, 2013  
3:30 PM  
Webster Hall (212 Knott)**

**Will Weatherford  
Speaker**

**Jim Boyd  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Subcommittee

**Start Date and Time:** Tuesday, September 24, 2013 03:30 pm  
**End Date and Time:** Tuesday, September 24, 2013 05:30 pm  
**Location:** Webster Hall (212 Knott)  
**Duration:** 2.00 hrs

Joint update by the Department of Financial Services and the Department of Management Services on:

- Implementation of CS/CS/HB 1309 (2013), relating to governmental accountability
- Implementation of CS/CS/HB 5401 (2013), relating to transparency in government spending

Update by the Department of Management Services on:

- Implementation of CS/CS/HB 1145 (2013), relating to state-owned or state-leased space
- The Partnership for Public Facilities and Infrastructure Act Guidelines Task Force, which was created by chapter 2013-223, L.O.F.

**NOTICE FINALIZED on 09/17/2013 16:02 by Sims-Davis.Linda**



**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 1309	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee; Government Operations Subcommittee; Albritton	116 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/CS/SB 1150)	<b>GOVERNOR'S ACTION:</b>	Approved

---

**SUMMARY ANALYSIS**

CS/CS/HB 1309 passed the House on April 4, 2013. The bill was amended by the Senate on April 29, 2013. CS/CS/HB 1309 as amended by the Senate was further amended by the House on May 3, 2013. The Senate concurred in the House amendment and subsequently passed the bill as amended on May 3, 2013. The bill makes several changes specific to grant agreements and the state agency procurement process.

The bill requires public agency contracts for services performed on behalf of the agency to contain contract provisions clarifying the public record responsibilities of the contractor. If a contractor does not comply with a public records request, the public agency must enforce the contract provisions in accordance with the contract.

The bill creates additional requirements for grant agreements and requires the Chief Financial Officer (CFO) to perform audits of executed grant agreements. It also requires agencies to designate a grant manager and provides training requirements for those managers.

The bill revises several provisions governing state agency procurement and contracting, including, but not limited to:

- Removing the requirement that the Department of Management Services (DMS) establish and maintain a vendor list;
- Permitting DMS to lead, rather than solely enter into, joint agreements with governmental entities;
- Requiring an invitation to bid be awarded to the vendor with the lowest responsive bid;
- Revising the training requirements for contract managers, including providing that both DMS and the CFO are jointly responsible for contract management training;
- Requiring the agency head to sign, rather than certify under oath, a written statement of emergency; and
- Requiring the CFO to audit executed contract documents and contract manager records.

The bill will likely have a minimal fiscal impact on state government. However, it is anticipated that the provisions of the bill will be handled within existing agency resources. See Fiscal Comments section for further information.

The bill was approved by the Governor on June 7, 2013, ch. 2013-154, L.O.F., and will become effective July 1, 2013, except as otherwise expressly provided in the act.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1309z1.GVOPS

**DATE:** June 10, 2013

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Public Records Law

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

Public policy regarding access to agency<sup>1</sup> 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 public record<sup>2</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Current law requires certain procurements of contractual services in excess of \$35,000 to provide a written agreement that includes a provision allowing unilateral cancellation by the state agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from public record requirements.<sup>3</sup> In addition, each contract for a proposed outsourcing that has an expected cost in excess of \$10 million within a single fiscal year must include a contractual provision that requires the contractor and its subcontractors to comply with public records laws, specifically to:<sup>4</sup>

- Keep and maintain the public records that ordinarily and necessarily would be required by the state agency in order to perform the service or activity;
- Provide the public with access to such public records on the same terms and conditions that the state agency would provide the records and at a cost that does not exceed that provided in chapter 119, F.S., or as otherwise provided by law;
- Ensure that records that are exempt or records that are confidential and exempt are not disclosed except as authorized by law; and
- Meet all requirements for retaining records and transfer to the state agency, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the state agency in a format that is compatible with the information technology systems of the state agency.

---

<sup>1</sup> Section 119.011(2), F.S., defines the term "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *See Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

<sup>2</sup> Section 119.011(12), F.S., defines the term "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

<sup>3</sup> Section 287.058(1)(c), F.S.

<sup>4</sup> Section 287.0571(5)(j), F.S.

### Department of Management Services

The Department of Management Services (DMS) provides administrative and support services to other state agencies and to state employees. DMS's areas of responsibility include, but are not limited to:<sup>5</sup>

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

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

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

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

Chapter 287, F.S., regulates state agency<sup>6</sup> procurement of personal property and services. DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.<sup>7</sup> DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.<sup>8</sup>

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:<sup>9</sup>

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.<sup>10</sup> Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by

<sup>5</sup> See the Department of Management Services' website at: <http://www.dms.myflorida.com/> (last visited March 8, 2013).

<sup>6</sup> Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

<sup>7</sup> See ss. 287.032 and 287.042, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> See s. 287.057, F.S.

<sup>10</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.” Specified contractual services and commodities are not subject to competitive solicitation requirements.<sup>11</sup>

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by DMS, a water management district, or certain other agencies.<sup>12</sup>

#### Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance to a recipient or subrecipient,<sup>13</sup> or that provides federal financial assistance to a subrecipient,<sup>14</sup> to include a provision specifying scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform, and a provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.<sup>15</sup>

#### Qualifications for Contract Managers and Contract Negotiators

For each contractual services contract the agency must designate an employee to function as contract manager who must be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Current law requires certain contract managers to attend training conducted by the Chief Financial Officer (CFO).<sup>16</sup> It also requires certain contract negotiators to be certified based upon rules adopted by DMS.<sup>17</sup>

#### MyFloridaMarketPlace

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

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

The CFO is an elected constitutional Cabinet member.<sup>18</sup> The CFO serves as the chief financial officer of the state and is responsible for setting and approving accounts against the state and keeping all state funds and securities.<sup>19</sup> Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,<sup>20</sup> paying state employee salaries,<sup>21</sup> and reporting all disbursements of funds administered by the CFO.<sup>22</sup>

The CFO also serves as the head of the Department of Financial Services (DFS), which executes the duties of the CFO.<sup>23</sup> DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshall;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;

---

<sup>11</sup> See s. 287.057(3)(f), F.S.

<sup>12</sup> See s. 287.042(2)(c), F.S.

<sup>13</sup> As defined in s. 215.97, F.S.

<sup>14</sup> As defined by applicable United States Office of Management and Budget circulars.

<sup>15</sup> See s. 215.971, F.S.

<sup>16</sup> See s. 287.057(14), F.S.

<sup>17</sup> See s. 287.057(16)(b), F.S.

<sup>18</sup> Art. 4, s. 4(a) and (c) of the State Constitution.

<sup>19</sup> Art. 4, s. 4(c) of the State Constitution, and s. 17.001, F.S.

<sup>20</sup> Section 17.04, F.S.

<sup>21</sup> See s. 17.09, F.S.

<sup>22</sup> Section 17.11, F.S.

<sup>23</sup> See s. 20.121, F.S.

- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Office of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>24</sup>

The Financial Services Commission; Board of Funeral, Cemetery, and Consumer Services; and Strategic Markets Research and Assessment Unit also are established within DFS.<sup>25</sup>

### **Effect of the Bill**

#### Public Records

The bill creates s. 119.0701, F.S., which requires specified public records provisions to be included in certain public agency<sup>26</sup> contracts. Specifically, the bill requires all public agency contracts for services in which the contractor is acting on behalf of the public agency to contain contract provisions clarifying the public record responsibilities of the contractor. The contract must include a provision that requires the contractor to comply with public records laws to:

- Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- Provide the public with access to such public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed that provided in chapter 119, F.S., or as otherwise provided by law;
- Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- Meet all requirements for retaining public records and transfer to the public agency, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the agency.

If the contractor does not comply with a public records request, the contracting governmental entity must enforce the contract provisions in accordance with the contract.

#### Agreements Funded with Federal or State Assistance

The bill requires that agreements funded with federal or state assistance contain additional provisions, which include:

- A provision specifying the financial consequences that apply if the recipient or subrecipient fails to perform the minimum level of service required in the agreement. The provision can be excluded in specified situations;
- A provision specifying that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period;

<sup>24</sup> Section 20.121(2), F.S.

<sup>25</sup> Sections 20.121(3), (4), and (6), F.S.

<sup>26</sup> The bill defines the term "public agency" to mean a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.



- A provision specifying that any balance of unobligated funds that has been advanced or paid must be refunded to the state agency;
- A provision specifying that any funds paid in excess of the amount to which the recipient or subrecipient is entitled must be refunded to the state agency; and
- Any additional information required pursuant to s. 215.97, F.S., which is the Florida Single Audit Act.

The bill requires an agency to designate an employee to function as a grant manager for each agreement funded with federal or state financial assistance. Each grant manager that is responsible for agreements in excess of \$35,000 must complete training conducted by the CFO for accountability in contracts and grant management. Additionally, effective December 1, 2014, each grant manager that is responsible for agreements in excess of \$100,000 annually must complete the training and become a certified contract manager, as provided in s. 287.057(14), F.S. All grant managers must become certified contract managers within 24 months after establishment of the training and certification requirements by DMS and DFS.

The bill requires the CFO to establish uniform procedures for grant management to ensure that services have been rendered in accordance with agreement terms before the agency processes an invoice for payment. It requires the grant manager to reconcile and verify all funds received against all funds expended during the grant period and final reconciliation report. It also requires the CFO to perform audits after the grant agreement has been executed.

#### Chapter 287, F.S., Procurement of Personal Property and Services

##### *Definitions*

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

The bill also amends the definitions for "best value," "commodity," "electronic posting," "extension," and "request for a quote."

##### *Vendor List*

The bill removes the requirement that DMS establish and maintain a vendor list from s. 287.042, F.S.

##### *Joint Agreements*

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

##### *Invitations to Bid*

The bill provides that a contract awarded in a procurement initiated with an invitation to bid must be awarded to the responsible and responsive vendor that submits the lowest responsive bid. This provision was in chapter 287, F.S., until 2010, when it was inadvertently removed.<sup>27</sup>

##### *Exemption from Competitive Solicitation: Emergency Action Exception*

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

##### *Exemption from Competitive Solicitation: Single Source Contracts*

<sup>27</sup> See chapter 2010-151, L.O.F.

The bill deletes provisions that require agencies to submit forms to DMS for approval for specified single source contracts prior to entering into contracts with vendors. According to DMS, these requirements were established to verify that agencies were noticing intent to enter into single source contracts and DMS has never utilized this provision to deny an agency's request to enter into such an agreement.<sup>28</sup>

#### *Contract Renewals and Extensions*

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

#### *MyFloridaMarketPlace*

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

#### *Training*

Effective December 1, 2014, the bill requires each contract manager who is responsible for contracts in excess of \$100,000 annually to be a certified contract manager. DMS is responsible for establishing and disseminating the requirements for certification, which includes completing the training conducted by the CFO for accountability in contracts and grant management. The training must be coordinated by DMS and conducted jointly by DMS and DFS. Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based on previous audits, contracts, and grant agreements.

All agency contract managers must become certified within 24 months after the establishment of the training and certification requirements by DMS and DFS.

#### *Audits of Executed Contracts*

The bill creates s. 287.136, F.S., which requires the CFO to perform audits of executed contract documents and a contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services. It provides that the CFO must discuss the audit and potential findings with the official whose office is subject to the audit and that the final audit must be submitted to the agency head. The agency head must submit a written response to the final audit within 30 days.

#### Effective Date

The bill provides an effective date of July 1, 2013, except as otherwise expressly provided.

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

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

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

None.

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

---

<sup>28</sup> According to a representative from DMS on March 8, 2013.

See below Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires specified employees to receive training and contract manager certification. Providing the certification could create a minimal fiscal impact on DMS and the CFO. The bill could create a minimal fiscal impact on agencies as well because certain agency personnel will be required to attend and obtain certification. However, despite the potential for a minimal fiscal impact, the provisions of the bill are anticipated to be accomplished within existing agency resources.



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1  
 2 An act relating to governmental accountability;  
 3 creating s. 119.0701, F.S.; providing definitions;  
 4 providing that each public agency contract for  
 5 services must meet specified requirements; requiring  
 6 the public agency to enforce contract provisions if a  
 7 contractor does not comply with a public records  
 8 request; amending s. 215.971, F.S.; requiring  
 9 agreements funded with state or federal financial  
 10 assistance to include additional provisions; requiring  
 11 state agencies to designate a grants manager for each  
 12 agreement and providing requirements and procedures  
 13 for managers; requiring the Chief Financial Officer to  
 14 perform audits of executed agreements and to discuss  
 15 such audits with agency officials; requiring the  
 16 agency head to respond to the audit; amending s.  
 17 287.012, F.S.; providing and revising definitions;  
 18 amending s. 287.042, F.S.; revising powers, duties,  
 19 and functions of the Department of Management  
 20 Services; eliminating a duty of the department to  
 21 maintain a vendor list; authorizing the department to  
 22 lead or enter into joint agreements with governmental  
 23 entities for the purchase of commodities or  
 24 contractual services that can be used by multiple  
 25 agencies; amending s. 287.057, F.S.; providing that  
 26 contracts awarded pursuant to an invitation to bid  
 27 shall be awarded to the responsible and responsive  
 28 vendor that submits the lowest responsive bid;



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

29           revising exceptions to the requirement that the  
 30           purchase of specified commodities or contractual  
 31           services be made only as a result of receiving  
 32           competitive sealed bids, competitive sealed proposals,  
 33           or competitive sealed replies; revising contractual  
 34           services and commodities that are not subject to  
 35           competitive solicitation requirements by virtue of  
 36           being available only from a single source; providing  
 37           that a contract for commodities or contractual  
 38           services may be awarded without competition if the  
 39           recipient of funds is established during the  
 40           appropriations process; revising provisions relating  
 41           to extension of a contract for commodities or  
 42           contractual services; authorizing an agency to  
 43           negotiate better pricing upon renewal of a contract;  
 44           providing training requirements for contract managers  
 45           responsible for contracts in excess of a specified  
 46           threshold amount; providing contract manager  
 47           certification for contract managers responsible for  
 48           contracts in excess of a specified threshold amount;  
 49           providing that the department is responsible for  
 50           establishing and disseminating the requirements for  
 51           certification of a contract manager; providing that  
 52           training will be conducted jointly by the Department  
 53           of Management Services and the Department of Financial  
 54           Services; providing training guidelines and  
 55           requirements; requiring the department, in  
 56           consultation with the Chief Financial Officer to



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

57 maintain a program for online procurement of  
 58 commodities and contractual services; amending s.  
 59 287.0571, F.S.; revising nonapplicability of a  
 60 business case to outsource; amending s. 287.058, F.S.;  
 61 defining the term "performance measure"; revising  
 62 references within provisions relating to purchase  
 63 orders used in lieu of written agreements for classes  
 64 of contractual services; revising terminology;  
 65 creating s. 287.136, F.S.; requiring the Chief  
 66 Financial Officer to perform audits of executed  
 67 contract documents and to discuss such audits with the  
 68 agency officials; requiring the agency head to respond  
 69 to the audit; amending s. 287.076, F.S.; providing  
 70 that Project Management Professionals training for  
 71 personnel involved in managing outsourcings and  
 72 negotiations is subject to annual appropriations;  
 73 amending ss. 16.0155, 283.33, 394.457, 402.7305,  
 74 409.9132, 427.0135, 445.024, 627.311, 627.351,  
 75 765.5155, and 893.055, F.S.; conforming cross-  
 76 references; providing effective dates.

77  
 78 Be It Enacted by the Legislature of the State of Florida:  
 79

80 Section 1. Section 119.0701, Florida Statutes, is created  
 81 to read:

- 82 119.0701 Contracts; public records.-  
 83 (1) For purposes of this section, the term:  
 84 (a) "Contractor" means an individual, partnership,



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

85 corporation, or business entity that enters into a contract for  
 86 services with a public agency and is acting on behalf of the  
 87 public agency as provided under s. 119.011(2).

88 (b) "Public agency" means a state, county, district,  
 89 authority, or municipal officer, or department, division, board,  
 90 bureau, commission, or other separate unit of government created  
 91 or established by law.

92 (2) In addition to other contract requirements provided by  
 93 law, each public agency contract for services must include a  
 94 provision that requires the contractor to comply with public  
 95 records laws, specifically to:

96 (a) Keep and maintain public records that ordinarily and  
 97 necessarily would be required by the public agency in order to  
 98 perform the service.

99 (b) Provide the public with access to public records on the  
 100 same terms and conditions that the public agency would provide  
 101 the records and at a cost that does not exceed the cost provided  
 102 in this chapter or as otherwise provided by law.

103 (c) Ensure that public records that are exempt or  
 104 confidential and exempt from public records disclosure  
 105 requirements are not disclosed except as authorized by law.

106 (d) Meet all requirements for retaining public records and  
 107 transfer, at no cost, to the public agency all public records in  
 108 possession of the contractor upon termination of the contract  
 109 and destroy any duplicate public records that are exempt or  
 110 confidential and exempt from public records disclosure  
 111 requirements. All records stored electronically must be provided  
 112 to the public agency in a format that is compatible with the



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

113 information technology systems of the public agency.

114 (3) If a contractor does not comply with a public records  
 115 request, the public agency shall enforce the contract provisions  
 116 in accordance with the contract.

117 Section 2. Section 215.971, Florida Statutes, is amended to  
 118 read:

119 215.971 Agreements funded with federal or ~~and~~ state  
 120 assistance.—

121 (1) For An agency agreement that provides state financial  
 122 assistance to a recipient or subrecipient, as those terms are  
 123 defined in s. 215.97, or that provides federal financial  
 124 assistance to a subrecipient, as defined by applicable United  
 125 States Office of Management and Budget circulars, must ~~the~~  
 126 ~~agreement shall~~ include all of the following:

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

130 (b) ~~(2)~~ A provision dividing the agreement into quantifiable  
 131 units of deliverables that must be received and accepted in  
 132 writing by the agency before payment. Each deliverable must be  
 133 directly related to the scope of work and ~~must~~ specify the  
 134 required minimum level of service to be performed and the  
 135 criteria for evaluating the successful completion of each  
 136 deliverable.

137 (c) A provision specifying the financial consequences that  
 138 apply if the recipient or subrecipient fails to perform the  
 139 minimum level of service required by the agreement. The  
 140 provision can be excluded from the agreement only if financial





ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

141 consequences are prohibited by the federal agency awarding the  
 142 grant. Funds refunded to a state agency from a recipient or  
 143 subrecipient for failure to perform as required under the  
 144 agreement may be expended only in direct support of the program  
 145 from which the agreement originated.

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

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

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

157 (g) Any additional information required pursuant to s.  
 158 215.97.

159 (2) For each agreement funded with federal or state  
 160 financial assistance, the state agency shall designate an  
 161 employee to function as a grant manager who shall be responsible  
 162 for enforcing performance of the agreement's terms and  
 163 conditions and who shall serve as a liaison with the recipient  
 164 or subrecipient.

165 (a)1. Each grant manager who is responsible for agreements  
 166 in excess of the threshold amount for CATEGORY TWO under s.  
 167 287.017 must, at a minimum, complete training conducted by the  
 168 Chief Financial Officer for accountability in contracts and



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

169 grant management.

170 2. Effective December 1, 2014, each grant manager  
 171 responsible for agreements in excess of \$100,000 annually must  
 172 complete the training and become a certified contract manager as  
 173 provided under s. 287.057(14). All grant managers must become  
 174 certified contract managers within 24 months after establishment  
 175 of the training and certification requirements by the Department  
 176 of Management Services and the Department of Financial Services.

177 (b) The Chief Financial Officer shall establish and  
 178 disseminate uniform procedures for grant management pursuant to  
 179 s. 17.03(3) to ensure that services have been rendered in  
 180 accordance with agreement terms before the agency processes an  
 181 invoice for payment. The procedures must include, but need not  
 182 be limited to, procedures for monitoring and documenting  
 183 recipient or subrecipient performance, reviewing and documenting  
 184 all deliverables for which payment is requested by the recipient  
 185 or subrecipient, and providing written certification by the  
 186 grant manager of the agency's receipt of goods and services.

187 (c) The grant manager shall reconcile and verify all funds  
 188 received against all funds expended during the grant agreement  
 189 period and produce a final reconciliation report. The final  
 190 report must identify any funds paid in excess of the  
 191 expenditures incurred by the recipient or subrecipient.

192 (3) After execution of a grant agreement, the Chief  
 193 Financial Officer shall perform audits of the executed state and  
 194 federal grant agreement documents and grant manager's records in  
 195 order to ensure that adequate internal controls are in place for  
 196 complying with the terms and conditions of such agreements and



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

197 for validation and receipt of goods and services.

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

202 (b) Within 30 days after receipt of the final audit report,  
 203 the agency head shall submit to the Chief Financial Officer or  
 204 designee his or her written statement of explanation or rebuttal  
 205 concerning findings requiring corrective action, including  
 206 corrective action to be taken to preclude a recurrence.

207 Section 3. Subsections (4) through (28) of section 287.012,  
 208 Florida Statutes, are amended to read:

209 287.012 Definitions.—As used in this part, the term:

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

213 (5) "Commodity" means any of the various supplies,  
 214 materials, goods, merchandise, food, equipment, information  
 215 technology, and other personal property, including a mobile  
 216 home, trailer, or other portable structure that has ~~with floor~~  
 217 ~~space of~~ less than 5,000 square feet of floor space, purchased,  
 218 leased, or otherwise contracted for by the state and its  
 219 agencies. The term "Commodity" also includes interest on  
 220 deferred-payment commodity contracts approved pursuant to s.  
 221 287.063 entered into by an agency for the purchase of other  
 222 commodities. However, commodities purchased for resale are  
 223 excluded from this definition. Printing of publications shall be  
 224 considered a commodity if procured ~~when let upon contract~~



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

225 pursuant to s. 283.33, whether purchased for resale or not.

226 (6) "Competitive solicitation" means the process of  
 227 requesting and receiving two or more sealed bids, proposals, or  
 228 replies submitted by responsive vendors in accordance with the  
 229 terms of a competitive process, regardless of the method of  
 230 procurement.

231 (7) "Contractor" means a person who contracts to sell  
 232 commodities or contractual services to an agency.

233 (8) "Contractual service" means the rendering by a  
 234 contractor of its time and effort rather than the furnishing of  
 235 specific commodities. The term applies only to those services  
 236 rendered by individuals and firms who are independent  
 237 contractors, and such services may include, but are not limited  
 238 to, evaluations; consultations; maintenance; accounting;  
 239 security; management systems; management consulting; educational  
 240 training programs; research and development studies or reports  
 241 on the findings of consultants engaged thereunder; and  
 242 professional, technical, and social services. The term  
 243 ~~"Contractual service"~~ does not include a ~~any~~ contract for the  
 244 furnishing of labor or materials for the construction,  
 245 renovation, repair, modification, or demolition of a ~~any~~  
 246 facility, building, portion of building, utility, park, parking  
 247 lot, or structure or other improvement to real property entered  
 248 into pursuant to chapter 255 and rules adopted thereunder.

249 (9) "Department" means the Department of Management  
 250 Services.

251 (10) "Electronic posting" or "electronically post" means  
 252 the noticing of solicitations, agency decisions or intended



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

253 decisions, or other matters relating to procurement on a  
 254 centralized Internet website designated by the department for  
 255 this purpose, and in the manner and form required under s.  
 256 120.57(3)(a).

257 (11) "Eligible user" means any person or entity authorized  
 258 by the department pursuant to rule to purchase from state term  
 259 contracts or to use the online procurement system.

260 (12) "Exceptional purchase" means any purchase of  
 261 commodities or contractual services excepted by law or rule from  
 262 the requirements for competitive solicitation, including, but  
 263 not limited to, purchases from a single source; purchases upon  
 264 receipt of less than two responsive bids, proposals, or replies;  
 265 purchases made by an agency, after receiving approval from the  
 266 department, from a contract procured, pursuant to s. 287.057(1),  
 267 or by another agency; and purchases made without advertisement  
 268 in the manner required under ~~by~~ s. 287.042(3)(b).

269 (13) "Extension" means an increase in the time allowed for  
 270 the contract period ~~due to circumstances which, without fault of~~  
 271 ~~either party, make performance impracticable or impossible, or~~  
 272 ~~which prevent a new contract from being executed, with or~~  
 273 ~~without a proportional increase in the total dollar amount, with~~  
 274 ~~any increase to be based on the method and rate previously~~  
 275 ~~established in the contract.~~

276 (14) "Governmental entity" means a political subdivision or  
 277 agency of this state or of any state of the United States,  
 278 including, but not limited to, state government, county,  
 279 municipality, school district, nonprofit public university or  
 280 college, single-purpose or multipurpose special district,



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

281 single-purpose or multipurpose public authority, metropolitan or  
 282 consolidated government, separate legal entity or administrative  
 283 entity, or any agency of the Federal Government.

284 (15)~~(14)~~ "Information technology" has the same meaning as  
 285 provided ~~ascribed~~ in s. 282.0041.

286 (16)~~(15)~~ "Invitation to bid" means a written or  
 287 electronically posted solicitation for competitive sealed bids.

288 (17)~~(16)~~ "Invitation to negotiate" means a written or  
 289 electronically posted solicitation for competitive sealed  
 290 replies to select one or more vendors with which to commence  
 291 negotiations for the procurement of commodities or contractual  
 292 services.

293 (18)~~(17)~~ "Minority business enterprise" has the same  
 294 meaning as provided ~~ascribed~~ in s. 288.703.

295 (19)~~(18)~~ "Office" means the Office of Supplier Diversity of  
 296 the Department of Management Services.

297 (20)~~(19)~~ "Outsource" means the process of contracting with  
 298 a vendor to provide a service as defined in s. 216.011(1)(f), in  
 299 whole or in part, or an activity as defined in s.  
 300 216.011(1)(rr), while a state agency retains the responsibility  
 301 and accountability for the service or activity and there is a  
 302 transfer of management responsibility for the delivery of  
 303 resources and the performance of those resources.

304 (21)~~(20)~~ "Renewal" means contracting with the same  
 305 contractor for an additional contract period after the initial  
 306 contract period, only if pursuant to contract terms specifically  
 307 providing for such renewal.

308 (22)~~(21)~~ "Request for information" means a written or



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

309 electronically posted request made by an agency to vendors for  
 310 information concerning commodities or contractual services.  
 311 Responses to these requests are not offers and may not be  
 312 accepted by the agency to form a binding contract.

313 (23)~~(22)~~ "Request for proposals" means a written or  
 314 electronically posted solicitation for competitive sealed  
 315 proposals.

316 (24)~~(23)~~ "Request for a quote" means an oral, electronic,  
 317 or written request for written pricing or services information  
 318 from a state term contract vendor for commodities or contractual  
 319 services available on a state term contract from that vendor.

320 (25)~~(24)~~ "Responsible vendor" means a vendor who has the  
 321 capability in all respects to fully perform the contract  
 322 requirements and the integrity and reliability that will assure  
 323 good faith performance.

324 (26)~~(25)~~ "Responsive bid," "responsive proposal," or  
 325 "responsive reply" means a bid, or proposal, or reply submitted  
 326 by a responsive and responsible vendor which ~~that~~ conforms in  
 327 all material respects to the solicitation.

328 (27)~~(26)~~ "Responsive vendor" means a vendor that has  
 329 submitted a bid, proposal, or reply that conforms in all  
 330 material respects to the solicitation.

331 (28)~~(27)~~ "State term contract" means a term contract that  
 332 is competitively procured by the department pursuant to s.  
 333 287.057 and that is used by agencies and eligible users pursuant  
 334 to s. 287.056.

335 (29)~~(28)~~ "Term contract" means an indefinite quantity  
 336 contract to furnish commodities or contractual services during a



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

337 defined period.

338 Section 4. Paragraph (a) of subsection (1), paragraph (b)  
 339 of subsection (2), and subsections (8) and (15) of section  
 340 287.042, Florida Statutes, are amended to read:

341 287.042 Powers, duties, and functions.—The department shall  
 342 have the following powers, duties, and functions:

343 (1)(a) To canvass all sources of supply, ~~establish and~~  
 344 ~~maintain a vendor list,~~ and contract for the purchase, lease, or  
 345 acquisition, including purchase by installment sales or lease-  
 346 purchase contracts which may provide for the payment of interest  
 347 on unpaid portions of the purchase price, of all commodities and  
 348 contractual services required by any agency under this chapter.  
 349 Any contract providing for deferred payments and the payment of  
 350 interest is ~~shall be~~ subject to specific rules adopted by the  
 351 department.

352 (2)

353 (b) As an alternative to any provision in s. 120.57(3)(c),  
 354 the department may proceed with the competitive solicitation or  
 355 contract award process of a term contract when the Secretary of  
 356 Management Services ~~the department~~ or his or her designee sets  
 357 forth in writing particular facts and circumstances that ~~which~~  
 358 demonstrate that the delay incident to staying the solicitation  
 359 or contract award process would be detrimental to the interests  
 360 of the state. After the award of a contract resulting from a  
 361 competitive solicitation in which a timely protest was received  
 362 and in which the state did not prevail, the contract may be  
 363 canceled and reawarded.

364 (8) To provide any commodity and contractual service





ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

365 purchasing rules to the Chief Financial Officer and all agencies  
 366 electronically or through an electronic medium or other means.  
 367 Agencies may not approve an ~~any~~ account or request any payment  
 368 of an ~~any~~ account for the purchase of any commodity or the  
 369 procurement of any contractual service covered by a purchasing  
 370 or contractual service rule except as authorized therein. The  
 371 department shall furnish copies of rules adopted by the  
 372 department to any county, municipality, or other local public  
 373 agency requesting them.

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

379 (a) Each agency that has been appropriated or has existing  
 380 funds for such purchase, shall, upon contract award by the  
 381 department, transfer its ~~their~~ portion of the funds into the  
 382 department's Operating Trust Fund for payment by the department.  
 383 The funds shall be transferred by the Executive Office of the  
 384 Governor pursuant to the agency budget amendment request  
 385 provisions under ~~in~~ chapter 216.

386 (b) Agencies that sign the joint agreements are financially  
 387 obligated for their portion of the agreed-upon funds. If an  
 388 agency becomes more than 90 days delinquent in paying the funds,  
 389 the department shall certify to the Chief Financial Officer the  
 390 amount due, and the Chief Financial Officer shall transfer the  
 391 amount due to the Operating Trust Fund of the department from  
 392 any of the agency's available funds. The Chief Financial Officer



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

393 shall report these transfers and the reasons for the transfers  
 394 to the Executive Office of the Governor and the legislative  
 395 appropriations committees.

396 Section 5. Paragraph (a) of subsection (1) and subsections  
 397 (3), (10), (12), (13), (16), and (22) of section 287.057,  
 398 Florida Statutes, are amended to read:

399 287.057 Procurement of commodities or contractual  
 400 services.—

401 (1) The competitive solicitation processes authorized in  
 402 this section shall be used for procurement of commodities or  
 403 contractual services in excess of the threshold amount provided  
 404 for CATEGORY TWO in s. 287.017. Any competitive solicitation  
 405 shall be made available simultaneously to all vendors, must  
 406 include the time and date for the receipt of bids, proposals, or  
 407 replies and of the public opening, and must include all  
 408 contractual terms and conditions applicable to the procurement,  
 409 including the criteria to be used in determining acceptability  
 410 and relative merit of the bid, proposal, or reply.

411 (a) *Invitation to bid.*—The invitation to bid shall be used  
 412 when the agency is capable of specifically defining the scope of  
 413 work for which a contractual service is required or when the  
 414 agency is capable of establishing precise specifications  
 415 defining the actual commodity or group of commodities required.

416 1. All invitations to bid must include:

417 a. A detailed description of the commodities or contractual  
 418 services sought; and

419 b. If the agency contemplates renewal of the contract, a  
 420 statement to that effect.



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

421           2. Bids submitted in response to an invitation to bid in  
 422 which the agency contemplates renewal of the contract must  
 423 include the price for each year for which the contract may be  
 424 renewed.

425           3. Evaluation of bids must ~~shall~~ include consideration of  
 426 the total cost for each year of the contract, including renewal  
 427 years, as submitted by the vendor.

428           4. The contract shall be awarded to the responsible and  
 429 responsive vendor who submits the lowest responsive bid.

430           (3) If ~~When~~ the purchase price of commodities or  
 431 contractual services exceeds the threshold amount provided in s.  
 432 287.017 for CATEGORY TWO, ~~no~~ purchase of commodities or  
 433 contractual services may not be made without receiving  
 434 competitive sealed bids, competitive sealed proposals, or  
 435 competitive sealed replies unless:

436           (a) The agency head determines in writing that an immediate  
 437 danger to the public health, safety, or welfare or other  
 438 substantial loss to the state requires emergency action. After  
 439 the agency head signs ~~makes~~ such a written determination, the  
 440 agency may proceed with the procurement of commodities or  
 441 contractual services necessitated by the immediate danger,  
 442 without receiving competitive sealed bids, competitive sealed  
 443 proposals, or competitive sealed replies. However, the ~~such~~  
 444 emergency procurement shall be made by obtaining pricing  
 445 information from at least two prospective vendors, which must be  
 446 retained in the contract file, unless the agency determines in  
 447 writing that the time required to obtain pricing information  
 448 will increase the immediate danger to the public health, safety,



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

449 or welfare or other substantial loss to the state. The agency  
 450 shall furnish copies of all written determinations ~~certified~~  
 451 ~~under oath~~ and any other documents relating to the emergency  
 452 action to the department. A copy of the written statement shall  
 453 be furnished to the Chief Financial Officer with the voucher  
 454 authorizing payment. The individual purchase of personal  
 455 clothing, shelter, or supplies which are needed on an emergency  
 456 basis to avoid institutionalization or placement in a more  
 457 restrictive setting is an emergency for the purposes of this  
 458 paragraph, and the filing with the department of such statement  
 459 is not required in such circumstances. In the case of the  
 460 emergency purchase of insurance, the period of coverage of such  
 461 insurance may ~~shall~~ not exceed ~~a period of~~ 30 days, and all such  
 462 emergency purchases shall be reported to the department.

463 (b) The purchase is made by an agency from a state term  
 464 contract procured, pursuant to this section, by the department  
 465 or by an agency, after receiving approval from the department,  
 466 from a contract procured, pursuant to subsection (1), by another  
 467 agency.

468 (c) Commodities or contractual services available only from  
 469 a single source may be excepted from the competitive-  
 470 solicitation requirements. If ~~When~~ an agency believes that  
 471 commodities or contractual services are available only from a  
 472 single source, the agency shall electronically post a  
 473 description of the commodities or contractual services sought  
 474 for ~~a period of~~ at least 7 business days. The description must  
 475 include a request that prospective vendors provide information  
 476 regarding their ability to supply the commodities or contractual



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

477 services described. If it is determined in writing by the  
 478 agency, after reviewing any information received from  
 479 prospective vendors, that the commodities or contractual  
 480 services are available only from a single source, the agency  
 481 shall:

482 ~~1. provide notice of its intended decision to enter a~~  
 483 ~~single-source purchase contract in the manner specified in s.~~  
 484 ~~120.57(3), if the amount of the contract does not exceed the~~  
 485 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR.~~

486 ~~2. Request approval from the department for the single-~~  
 487 ~~source purchase, if the amount of the contract exceeds the~~  
 488 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR. The~~  
 489 ~~agency shall initiate its request for approval in a form~~  
 490 ~~prescribed by the department, which request may be~~  
 491 ~~electronically transmitted. The failure of the department to~~  
 492 ~~approve or disapprove the agency's request for approval within~~  
 493 ~~21 days after receiving such request shall constitute prior~~  
 494 ~~approval of the department. If the department approves the~~  
 495 ~~agency's request, the agency shall provide notice of its~~  
 496 ~~intended decision to enter a single-source contract in the~~  
 497 ~~manner specified in s. 120.57(3).~~

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

503 (d)(e) Prescriptive assistive devices for the purpose of  
 504 medical, developmental, or vocational rehabilitation of clients



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

505 are excepted from competitive-solicitation requirements and  
 506 shall be procured pursuant to an established fee schedule or by  
 507 any other method that ~~which~~ ensures the best price for the  
 508 state, taking into consideration the needs of the client.

509 Prescriptive assistive devices include, but are not limited to,  
 510 prosthetics, orthotics, and wheelchairs. For purchases made  
 511 pursuant to this paragraph, state agencies shall annually file  
 512 with the department a description of the purchases and methods  
 513 of procurement.

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

517 1. Artistic services. As used in ~~For the purposes of~~ this  
 518 subsection, the term "artistic services" does not include  
 519 advertising or typesetting. As used in this subparagraph, the  
 520 term "advertising" means the making of a representation in any  
 521 form in connection with a trade, business, craft, or profession  
 522 in order to promote the supply of commodities or services by the  
 523 person promoting the commodities or contractual services.

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

526 3. Lectures by individuals.

527 4. Legal services, including attorney, paralegal, expert  
 528 witness, appraisal, or mediator services.

529 5. ~~a.~~ Health services involving examination, diagnosis,  
 530 treatment, prevention, medical consultation, or administration.

531 The term also includes,

532 ~~b. Beginning January 1, 2011, health services, including,~~



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

533 | but is not limited to, substance abuse and mental health  
 534 | services, involving examination, diagnosis, treatment,  
 535 | prevention, or medical consultation if, ~~when~~ such services are  
 536 | offered to eligible individuals participating in a specific  
 537 | program that qualifies multiple providers and uses a standard  
 538 | payment methodology. Reimbursement of administrative costs for  
 539 | providers of services purchased in this manner are ~~shall~~ also ~~be~~  
 540 | exempt. For purposes of this subparagraph ~~sub-subparagraph~~, the  
 541 | term "providers" means health professionals and, health  
 542 | facilities, or organizations that deliver or arrange for the  
 543 | delivery of health services.

544 |       6. Services provided to persons with mental or physical  
 545 | disabilities by not-for-profit corporations that ~~which~~ have  
 546 | obtained exemptions under ~~the provisions of~~ s. 501(c)(3) of the  
 547 | United States Internal Revenue Code or when such services are  
 548 | governed by the ~~provisions of~~ Office of Management and Budget  
 549 | Circular A-122. However, in acquiring such services, the agency  
 550 | shall consider the ability of the vendor, past performance,  
 551 | willingness to meet time requirements, and price.

552 |       7. Medicaid services delivered to an eligible Medicaid  
 553 | recipient unless the agency is directed otherwise in law.

554 |       8. Family placement services.

555 |       9. Prevention services related to mental health, including  
 556 | drug abuse prevention programs, child abuse prevention programs,  
 557 | and shelters for runaways, operated by not-for-profit  
 558 | corporations. However, in acquiring such services, the agency  
 559 | shall consider the ability of the vendor, past performance,  
 560 | willingness to meet time requirements, and price.



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

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

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

564 12. Services or commodities provided by governmental  
565 entities ~~agencies~~.

566 13. Statewide public service announcement programs provided  
567 by a Florida statewide nonprofit corporation under s. 501(c)(6)  
568 of the Internal Revenue Code which have, ~~with~~ a guaranteed  
569 documented match of at least \$3 to \$1.

570 (f) ~~(g)~~ Continuing education events or programs that are  
571 offered to the general public and for which fees have been  
572 collected which ~~that~~ pay all expenses associated with the event  
573 or program are exempt from requirements for competitive  
574 solicitation.

575 (10) A contract for commodities or contractual services may  
576 be awarded without competition if state or federal law  
577 prescribes with whom the agency must contract or if the rate of  
578 payment or the recipient of the funds is established during the  
579 appropriations process.

580 (12) Extension of a contract for commodities or contractual  
581 services ~~must~~ ~~shall~~ be in writing for a period not to exceed 6  
582 months and is ~~shall be~~ subject to the same terms and conditions  
583 set forth in the initial contract and any written amendments  
584 signed by the parties. There may ~~shall~~ be only one extension of  
585 a contract unless the failure to meet the criteria set forth in  
586 the contract for completion of the contract is due to events  
587 beyond the control of the contractor.

588 (13) Contracts for commodities or contractual services may





ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

589 be renewed for a period that may not exceed 3 years or the term  
 590 of the original contract, whichever ~~period~~ is longer. Renewal of  
 591 a contract for commodities or contractual services must ~~shall~~ be  
 592 in writing and is ~~shall be~~ subject to the same terms and  
 593 conditions set forth in the initial contract and any written  
 594 amendments signed by the parties. If the commodity or  
 595 contractual service is purchased as a result of the solicitation  
 596 of bids, proposals, or replies, the price of the commodity or  
 597 contractual service to be renewed must ~~shall~~ be specified in the  
 598 bid, proposal, or reply, except that an agency may negotiate  
 599 lower pricing. A renewal contract may not include any  
 600 compensation for costs associated with the renewal. Renewals are  
 601 ~~shall be~~ contingent upon satisfactory performance evaluations by  
 602 the agency and subject to the availability of funds. Exceptional  
 603 purchase contracts pursuant to paragraphs (3)(a) and (c) may not  
 604 be renewed. With the exception of subsection (10) ~~(12)~~, if a  
 605 contract amendment results in a longer contract term or  
 606 increased payments, a state agency may not renew or amend a  
 607 contract for the outsourcing of a service or activity that has  
 608 an original term value exceeding ~~the sum of~~ \$10 million before  
 609 submitting a written report concerning contract performance to  
 610 the Governor, the President of the Senate, and the Speaker of  
 611 the House of Representatives at least 90 days before execution  
 612 of the renewal or amendment.

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

616 1. ~~(a)~~ At least three persons to evaluate proposals and



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

617 | replies who collectively have experience and knowledge in the  
 618 | program areas and service requirements for which commodities or  
 619 | contractual services are sought.

620 |        2. ~~(b)~~ At least three persons to conduct negotiations during  
 621 | a competitive sealed reply procurement who collectively have  
 622 | experience and knowledge in negotiating contracts, contract  
 623 | procurement, and the program areas and service requirements for  
 624 | which commodities or contractual services are sought.

625 |        **(b)** If ~~When~~ the value of a contract is in excess of \$1  
 626 | million in any fiscal year, at least one of the persons  
 627 | conducting negotiations must be certified as a contract  
 628 | negotiator based upon department rules ~~adopted by the Department~~  
 629 | ~~of Management Services~~ in order to ensure that certified  
 630 | contract negotiators are knowledgeable about effective  
 631 | negotiation strategies, capable of successfully implementing  
 632 | those strategies, and involved appropriately in the procurement  
 633 | process. At a minimum, the rules must address the qualifications  
 634 | required for certification, the method of certification, and the  
 635 | procedure for involving the certified negotiator. If the value  
 636 | of a contract is in excess of \$10 million in any fiscal year, at  
 637 | least one of the persons conducting negotiations must be a  
 638 | Project Management Professional, as certified by the Project  
 639 | Management Institute.

640 |        (22) The department, in consultation with the Chief  
 641 | Financial Officer ~~Agency for Enterprise Information Technology~~  
 642 | ~~and the Comptroller~~, shall maintain ~~develop~~ a program for online  
 643 | procurement of commodities and contractual services. To enable  
 644 | the state to promote open competition and ~~to~~ leverage its buying



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

645 power, agencies shall participate in the online procurement  
 646 program, and eligible users may participate in the program. Only  
 647 vendors prequalified as meeting mandatory requirements and  
 648 qualifications criteria may participate in online procurement.

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

652 (b) The department, ~~in consultation with the agency,~~ shall  
 653 adopt rules, ~~pursuant to ss. 120.536(1) and 120.54,~~ to  
 654 administer the program for online procurement. The rules must  
 655 ~~shall~~ include, but not be limited to:

656 1. Determining the requirements and qualification criteria  
 657 for prequalifying vendors.

658 2. Establishing the procedures for conducting online  
 659 procurement.

660 3. Establishing the criteria for eligible commodities and  
 661 contractual services.

662 4. Establishing the procedures for providing access to  
 663 online procurement.

664 5. Determining the criteria warranting any exceptions to  
 665 participation in the online procurement program.

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

668 1. The fees may be imposed on an individual transaction  
 669 basis or as a fixed percentage of the cost savings generated. At  
 670 a minimum, the fees must be set in an amount sufficient to cover  
 671 the projected costs of the services, including administrative  
 672 and project service costs in accordance with the policies of the



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

673 department.

674         2. If the department contracts with a provider for online  
 675 procurement, the department, pursuant to appropriation, shall  
 676 compensate the provider from the fees after the department has  
 677 satisfied all ongoing costs. The provider shall report  
 678 transaction data to the department each month so that the  
 679 department may determine the amount due and payable to the  
 680 department from each vendor.

681         3. All fees that are due and payable to the state on a  
 682 transactional basis or as a fixed percentage of the cost savings  
 683 generated are subject to s. 215.31 and must be remitted within  
 684 40 days after receipt of payment for which the fees are due. For  
 685 fees that are not remitted within 40 days, the vendor shall pay  
 686 interest at the rate established under s. 55.03(1) on the unpaid  
 687 balance from the expiration of the 40-day period until the fees  
 688 are remitted.

689         4. All fees and surcharges collected under this paragraph  
 690 shall be deposited in the Operating Trust Fund as provided by  
 691 law.

692         Section 6. Effective December 1, 2014, subsection (14) of  
 693 section 287.057, Florida Statutes, is amended to read:

694         287.057 Procurement of commodities or contractual  
 695 services.—

696         (14) For each contractual services contract, the agency  
 697 shall designate an employee to function as contract manager who  
 698 is ~~shall be~~ responsible for enforcing performance of the  
 699 contract terms and conditions and serve as a liaison with the  
 700 contractor.



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

701        (a) Each contract manager who is responsible for contracts  
 702 in excess of the threshold amount for CATEGORY TWO must, at a  
 703 minimum, complete ~~attend~~ training conducted by the Chief  
 704 Financial Officer for accountability in contracts and grant  
 705 management. The Chief Financial Officer shall establish and  
 706 disseminate uniform procedures pursuant to s. 17.03(3) to ensure  
 707 that contractual services have been rendered in accordance with  
 708 the contract terms before the agency processes the invoice for  
 709 payment. The procedures must ~~shall~~ include, but need not be  
 710 limited to, procedures for monitoring and documenting contractor  
 711 performance, reviewing and documenting all deliverables for  
 712 which payment is requested by vendors, and providing written  
 713 certification by contract managers of the agency's receipt of  
 714 goods and services.

715        (b) Each contract manager who is responsible for contracts  
 716 in excess of \$100,000 annually must complete training in  
 717 contract management and become a certified contract manager. The  
 718 department is responsible for establishing and disseminating the  
 719 requirements for certification which include completing the  
 720 training conducted by the Chief Financial Officer for  
 721 accountability in contracts and grant management. Training and  
 722 certification must be coordinated by the department, and the  
 723 training must be conducted jointly by the department and the  
 724 Department of Financial Services. Training must promote best  
 725 practices and procedures related to negotiating, managing, and  
 726 ensuring accountability in agency contracts and grant  
 727 agreements, which must include the use of case studies based  
 728 upon previous audits, contracts, and grant agreements. All



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

729 agency contract managers must become certified within 24 months  
 730 after establishment of the training and certification  
 731 requirements by the department and the Department of Financial  
 732 Services.

733 Section 7. Paragraph (a) of subsection (3) of section  
 734 287.0571, Florida Statutes, is amended to read:

735 287.0571 Business case to outsource; applicability.-

736 (3) This section does not apply to:

737 (a) A procurement of commodities and contractual services  
 738 listed in s. 287.057(3)(d) and (e) ~~287.057(3)(e), (f), and (g)~~  
 739 and (21).

740 Section 8. Subsections (1), (2), and (5) of section  
 741 287.058, Florida Statutes, are amended to read:

742 287.058 Contract document.-

743 (1) Every procurement of contractual services in excess of  
 744 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
 745 except for the providing of health and mental health services or  
 746 drugs in the examination, diagnosis, or treatment of sick or  
 747 injured state employees or the providing of other benefits as  
 748 required by ~~the provisions of~~ chapter 440, shall be evidenced by  
 749 a written agreement embodying all provisions and conditions of  
 750 the procurement of such services, which shall, where applicable,  
 751 include, but not be limited to, a provision:

752 (a) That bills for fees or other compensation for services  
 753 or expenses be submitted in detail sufficient for a proper  
 754 preaudit and postaudit thereof.

755 (b) That bills for any travel expenses be submitted in  
 756 accordance with s. 112.061. A state agency may establish rates



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

757 lower than the maximum provided in s. 112.061.

758 (c) Allowing unilateral cancellation by the agency for  
 759 refusal by the contractor to allow public access to all  
 760 documents, papers, letters, or other material made or received  
 761 by the contractor in conjunction with the contract, unless the  
 762 records are exempt from s. 24(a) of Art. I of the State  
 763 Constitution and s. 119.07(1).

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

766 (e) Dividing the contract into quantifiable, measurable,  
 767 and verifiable units of deliverables that must be received and  
 768 accepted in writing by the contract manager before payment. Each  
 769 deliverable must be directly related to the scope of work and  
 770 specify a performance measure. As used in this paragraph, the  
 771 term "performance measure" means the required minimum acceptable  
 772 level of service to be performed and criteria for evaluating the  
 773 successful completion of each deliverable.

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

776 (g) Specifying that the contract may be renewed for a  
 777 period that may not exceed 3 years or the term of the original  
 778 contract, whichever ~~period~~ is longer, specifying the renewal  
 779 price for the contractual service as set forth in the bid,  
 780 proposal, or reply, specifying that costs for the renewal may  
 781 not be charged, and specifying that renewals are ~~shall be~~  
 782 contingent upon satisfactory performance evaluations by the  
 783 agency and subject to the availability of funds. Exceptional  
 784 purchase contracts pursuant to s. 287.057(3)(a) and (c) may not



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

785 | be renewed.

786 |       (h) Specifying the financial consequences that the agency  
787 | must apply if the contractor fails to perform in accordance with  
788 | the contract.

789 |       (i) Addressing the property rights of any intellectual  
790 | property related to the contract and the specific rights of the  
791 | state regarding the intellectual property if the contractor  
792 | fails to provide the services or is no longer providing  
793 | services.

794 |

795 | In lieu of a written agreement, the agency ~~department~~ may  
796 | authorize the use of a purchase order for classes of contractual  
797 | services, if the provisions of paragraphs (a)-(i) are included  
798 | in the purchase order or solicitation. The purchase order must  
799 | include, but need not be limited to, an adequate description of  
800 | the services, the contract period, and the method of payment. In  
801 | lieu of printing the provisions of paragraphs (a)-(c) and (g)  
802 | ~~(a)-(i)~~ in the contract document or purchase order, agencies may  
803 | incorporate the requirements of paragraphs (a)-(c) and (g) ~~(a)-~~  
804 | ~~(i)~~ by reference.

805 |       (2) The written agreement shall be signed by the agency  
806 | head or designee and the contractor before ~~prior to~~ the  
807 | rendering of any contractual service the value of which is in  
808 | excess of the threshold amount provided in s. 287.017 for  
809 | CATEGORY TWO, except in the case of a valid emergency as  
810 | certified by the agency head. The written statement  
811 | ~~certification~~ of an emergency must ~~shall~~ be prepared within 30  
812 | days after the contractor begins rendering the service and must





ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

813 ~~shall~~ state the particular facts and circumstances which  
 814 precluded the execution of the written agreement before ~~prior to~~  
 815 the rendering of the service. If the agency fails to have the  
 816 contract signed by the agency head or designee and the  
 817 contractor before ~~prior to~~ rendering the contractual service,  
 818 and if an emergency does not exist, the agency head shall,  
 819 within no later than 30 days after the contractor begins  
 820 rendering the service, certify the specific conditions and  
 821 circumstances to the department as well as describe actions  
 822 taken to prevent recurrence of such noncompliance. The agency  
 823 head may delegate the written statement ~~certification~~ only to  
 824 other senior management agency personnel. A copy of the written  
 825 statement ~~certification~~ shall be furnished to the Chief  
 826 Financial Officer with the voucher authorizing payment. The  
 827 department shall report repeated instances of noncompliance by  
 828 an agency to the Auditor General. ~~Nothing in~~ This subsection  
 829 does not shall be deemed to authorize additional compensation  
 830 prohibited under ~~by~~ s. 215.425. The procurement of contractual  
 831 services may ~~shall~~ not be divided so as to avoid the provisions  
 832 of this section.

833 (5) Unless otherwise provided in the General Appropriations  
 834 Act or the substantive bill implementing the General  
 835 Appropriations Act, the Chief Financial Officer may waive the  
 836 requirements of this section for services which are included in  
 837 s. 287.057(3)(e) ~~287.057(3)(f)~~.

838 Section 9. Section 287.136, Florida Statutes, is created to  
 839 read:

840 287.136 Audit of executed contract documents.—After



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

841 execution of a contract, the Chief Financial Officer shall  
 842 perform audits of the executed contract document and contract  
 843 manager's records to ensure that adequate internal controls are  
 844 in place for complying with the terms and conditions of the  
 845 contract and for the validation and receipt of goods and  
 846 services.

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

851 (2) Within 30 days after receipt of the final audit report,  
 852 the agency head shall submit to the Chief Financial Officer or  
 853 designee his or her written statement of explanation or rebuttal  
 854 concerning findings requiring corrective action, including  
 855 corrective action to be taken to preclude a recurrence.

856 Section 10. Section 287.076, Florida Statutes, is amended  
 857 to read:

858 287.076 Project Management Professionals training for  
 859 personnel involved in managing outsourcings and negotiations;  
 860 funding.—The department ~~of Management Services~~ may implement a  
 861 program to train state agency employees who are involved in  
 862 managing outsourcings as Project Management Professionals, as  
 863 certified by the Project Management Institute. Subject to annual  
 864 appropriations, ~~For the 2006-2007 fiscal year, the sum of~~  
 865 ~~\$500,000 in recurring funds from the General Revenue Fund is~~  
 866 ~~appropriated to the Department of Management Services to~~  
 867 ~~implement this program.~~ the department of Management Services,  
 868 in consultation with entities subject to this part act, shall



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

869 identify personnel to participate in this training based on  
 870 requested need and ensure that each agency is represented. The  
 871 department ~~of Management Services~~ may remit payment for this  
 872 training on behalf of all participating personnel.

873 Section 11. Subsection (3) of section 16.0155, Florida  
 874 Statutes, is amended to read:

875 16.0155 Contingency fee agreements.—

876 (3) Notwithstanding the exemption provided in s.  
 877 287.057(3)(e), if the Attorney General makes the determination  
 878 described in subsection (2), he or she ~~notwithstanding the~~  
 879 ~~exemption provided in s. 287.057(3)(f)~~, the Attorney General  
 880 shall request proposals from private attorneys to represent the  
 881 department on a contingency-fee basis, unless the Attorney  
 882 General determines in writing that requesting proposals is not  
 883 feasible under the circumstances. The written determination does  
 884 not constitute a final agency action subject to review pursuant  
 885 to ss. 120.569 and 120.57. For purposes of this subsection only,  
 886 the department is exempt from ~~the requirements of~~ s. 120.57(3),  
 887 and neither the request for proposals nor the contract award is  
 888 subject to challenge pursuant to ss. 120.569 and 120.57.

889 Section 12. Subsection (1) of section 283.33, Florida  
 890 Statutes, is amended to read:

891 283.33 Printing of publications; lowest bidder awards.—

892 (1) Publications may be printed and prepared in-house, by  
 893 another agency or the Legislature, or purchased on bid,  
 894 whichever is more economical and practicable as determined by  
 895 the agency. An agency may contract for binding separately when  
 896 more economical or practicable, whether or not the remainder of



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

897 the printing is done in-house. A vendor may subcontract for  
 898 binding and still be considered a responsible vendor as defined  
 899 in s. 287.012, notwithstanding s. 287.012(24).

900 Section 13. Subsection (3) of section 394.457, Florida  
 901 Statutes, is amended to read:

902 394.457 Operation and administration.—

903 (3) POWER TO CONTRACT.—The department may contract to  
 904 provide, and be provided with, services and facilities in order  
 905 to carry out its responsibilities under this part with the  
 906 following agencies: public and private hospitals; receiving and  
 907 treatment facilities; clinics; laboratories; departments,  
 908 divisions, and other units of state government; the state  
 909 colleges and universities; the community colleges; private  
 910 colleges and universities; counties, municipalities, and any  
 911 other governmental unit, including facilities of the United  
 912 States Government; and any other public or private entity which  
 913 provides or needs facilities or services. Baker Act funds for  
 914 community inpatient, crisis stabilization, short-term  
 915 residential treatment, and screening services must be allocated  
 916 to each county pursuant to the department's funding allocation  
 917 methodology. Notwithstanding s. 287.057(3)(e) ~~the provisions of~~  
 918 ~~s. 287.057(3)(f)~~, contracts for community-based Baker Act  
 919 services for inpatient, crisis stabilization, short-term  
 920 residential treatment, and screening provided under this part,  
 921 other than those with other units of government, to be provided  
 922 for the department must be awarded using competitive sealed bids  
 923 if ~~when~~ the county commission of the county receiving the  
 924 services makes a request to the department's district office by



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

925 January 15 of the contracting year. The district may ~~shall~~ not  
 926 enter into a competitively bid contract under this provision if  
 927 such action will result in increases of state or local  
 928 expenditures for Baker Act services within the district.  
 929 Contracts for these Baker Act services using competitive sealed  
 930 bids are ~~will be~~ effective for 3 years. The department shall  
 931 adopt rules establishing minimum standards for such contracted  
 932 services and facilities and shall make periodic audits and  
 933 inspections to assure that the contracted services are provided  
 934 and meet the standards of the department.

935 Section 14. Paragraph (a) of subsection (2) of section  
 936 402.7305, Florida Statutes, is amended to read:

937 402.7305 Department of Children and Family Services;  
 938 procurement of contractual services; contract management.—

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

940 (a) Notwithstanding s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~,  
 941 if ~~whenever~~ the department intends to contract with a public  
 942 postsecondary institution to provide a service, the department  
 943 must allow all public postsecondary institutions in this state  
 944 that are accredited by the Southern Association of Colleges and  
 945 Schools to bid on the contract. Thereafter, notwithstanding any  
 946 other provision of law ~~to the contrary~~, if a public  
 947 postsecondary institution intends to subcontract for any service  
 948 awarded in the contract, the subcontracted service must be  
 949 procured by competitive procedures.

950 Section 15. Section 409.9132, Florida Statutes, is amended  
 951 to read:

952 409.9132 Pilot project to monitor home health services.—The



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

953 Agency for Health Care Administration shall expand the home  
 954 health agency monitoring pilot project in Miami-Dade County on a  
 955 statewide basis effective July 1, 2012, except in counties in  
 956 which the program is ~~will~~ not ~~be~~ cost-effective, as determined  
 957 by the agency. The agency shall contract with a vendor to verify  
 958 the utilization and delivery of home health services and provide  
 959 an electronic billing interface for home health services. The  
 960 contract must require the creation of a program to submit claims  
 961 electronically for the delivery of home health services. The  
 962 program must verify telephonically visits for the delivery of  
 963 home health services using voice biometrics. The agency may seek  
 964 amendments to the Medicaid state plan and waivers of federal  
 965 laws, as necessary, to implement or expand the pilot project.  
 966 Notwithstanding s. 287.057(3)(e) ~~287.057(3)(f)~~, the agency must  
 967 award the contract through the competitive solicitation process  
 968 and may use the current contract to expand the home health  
 969 agency monitoring pilot project to include additional counties  
 970 as authorized under this section.

971 Section 16. Subsection (3) of section 427.0135, Florida  
 972 Statutes, is amended to read:

973 427.0135 Purchasing agencies; duties and responsibilities.—  
 974 Each purchasing agency, in carrying out the policies and  
 975 procedures of the commission, shall:

976 (3) Not procure transportation disadvantaged services  
 977 without initially negotiating with the commission, as provided  
 978 in s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~, or unless otherwise  
 979 authorized by statute. If the purchasing agency, after  
 980 consultation with the commission, determines that it cannot



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

981 reach mutually acceptable contract terms with the commission,  
 982 the purchasing agency may contract for the same transportation  
 983 services provided in a more cost-effective manner and of  
 984 comparable or higher quality and standards. The Medicaid agency  
 985 shall implement this subsection in a manner consistent with s.  
 986 409.908(18) and as otherwise limited or directed by the General  
 987 Appropriations Act.

988 Section 17. Paragraph (c) of subsection (5) of section  
 989 445.024, Florida Statutes, is amended to read:

990 445.024 Work requirements.—

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

995 (c) Notwithstanding the exemption from the competitive  
 996 sealed bid requirements provided in s. 287.057(3)(e)  
 997 ~~287.057(3)(f)~~ for certain contractual services, each contract  
 998 awarded under this chapter must be awarded on the basis of a  
 999 competitive sealed bid, except for a contract with a  
 1000 governmental entity as determined by the regional workforce  
 1001 board.

1002 Section 18. Paragraph (c) of subsection (5) of section  
 1003 627.311, Florida Statutes, is amended to read:

1004 627.311 Joint underwriters and joint reinsurers; public  
 1005 records and public meetings exemptions.—

1006 (5)

1007 (c) The operation of the plan shall be governed by a plan  
 1008 of operation that is prepared at the direction of the board of



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1009 | governors and approved by order of the office. The plan is  
 1010 | subject to continuous review by the office. The office may, by  
 1011 | order, withdraw approval of all or part of a plan if the office  
 1012 | determines that conditions have changed since approval was  
 1013 | granted and that the purposes of the plan require changes in the  
 1014 | plan. The plan of operation must ~~shall~~:

1015 |         1. Authorize the board to engage in the activities  
 1016 | necessary to implement this subsection, including, but not  
 1017 | limited to, borrowing money.

1018 |         2. Develop criteria for eligibility for coverage by the  
 1019 | plan, including, but not limited to, documented rejection by at  
 1020 | least two insurers which reasonably assures that insureds  
 1021 | covered under the plan are unable to acquire coverage in the  
 1022 | voluntary market.

1023 |         3. Require notice from the agent to the insured at the time  
 1024 | of the application for coverage that the application is for  
 1025 | coverage with the plan and that coverage may be available  
 1026 | through an insurer, group self-insurers' fund, commercial self-  
 1027 | insurance fund, or assessable mutual insurer through another  
 1028 | agent at a lower cost.

1029 |         4. Establish programs to encourage insurers to provide  
 1030 | coverage to applicants of the plan in the voluntary market and  
 1031 | to insureds of the plan, including, but not limited to:

1032 |             a. Establishing procedures for an insurer to use in  
 1033 | notifying the plan of the insurer's desire to provide coverage  
 1034 | to applicants to the plan or existing insureds of the plan and  
 1035 | in describing the types of risks in which the insurer is  
 1036 | interested. The description of the desired risks must be on a





ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1037 form developed by the plan.

1038       b. Developing forms and procedures that provide an insurer  
1039 with the information necessary to determine whether the insurer  
1040 wants to write particular applicants to the plan or insureds of  
1041 the plan.

1042       c. Developing procedures for notice to the plan and the  
1043 applicant to the plan or insured of the plan that an insurer  
1044 will insure the applicant or the insured of the plan, and notice  
1045 of the cost of the coverage offered; and developing procedures  
1046 for the selection of an insuring entity by the applicant or  
1047 insured of the plan.

1048       d. Provide for a market-assistance plan to assist in the  
1049 placement of employers. All applications for coverage in the  
1050 plan received 45 days before the effective date for coverage  
1051 shall be processed through the market-assistance plan. A market-  
1052 assistance plan specifically designed to serve the needs of  
1053 small, good policyholders as defined by the board must be  
1054 reviewed and updated periodically.

1055       5. Provide for policy and claims services to the insureds  
1056 of the plan of the nature and quality provided for insureds in  
1057 the voluntary market.

1058       6. Provide for the review of applications for coverage with  
1059 the plan for reasonableness and accuracy, using any available  
1060 historic information regarding the insured.

1061       7. Provide for procedures for auditing insureds of the plan  
1062 which are based on reasonable business judgment and are designed  
1063 to maximize the likelihood that the plan will collect the  
1064 appropriate premiums.



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1065           8. Authorize the plan to terminate the coverage of and  
 1066 refuse future coverage for any insured that submits a fraudulent  
 1067 application to the plan or provides fraudulent or grossly  
 1068 erroneous records to the plan or to any service provider of the  
 1069 plan in conjunction with the activities of the plan.

1070           9. Establish service standards for agents who submit  
 1071 business to the plan.

1072           10. Establish criteria and procedures to prohibit any agent  
 1073 who does not adhere to the established service standards from  
 1074 placing business with the plan or receiving, directly or  
 1075 indirectly, any commissions for business placed with the plan.

1076           11. Provide for the establishment of reasonable safety  
 1077 programs for all insureds in the plan. All insureds of the plan  
 1078 must participate in the safety program.

1079           12. Authorize the plan to terminate the coverage of and  
 1080 refuse future coverage to any insured who fails to pay premiums  
 1081 or surcharges when due; who, at the time of application, is  
 1082 delinquent in payments of workers' compensation or employer's  
 1083 liability insurance premiums or surcharges owed to an insurer,  
 1084 group self-insurers' fund, commercial self-insurance fund, or  
 1085 assessable mutual insurer licensed to write such coverage in  
 1086 this state; or who refuses to substantially comply with any  
 1087 safety programs recommended by the plan.

1088           13. Authorize the board of governors to provide the goods  
 1089 and services required by the plan through staff employed by the  
 1090 plan, through reasonably compensated service providers who  
 1091 contract with the plan to provide services as specified by the  
 1092 board of governors, or through a combination of employees and



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1093 service providers.

1094 a. Purchases that equal or exceed \$2,500 but are less than  
 1095 or equal to \$25,000, shall be made by receipt of written quotes,  
 1096 telephone quotes, or informal bids, if ~~whenever~~ practical. The  
 1097 procurement of goods or services valued over \$25,000 is subject  
 1098 to competitive solicitation, except in situations in which the  
 1099 goods or services are provided by a sole source or are deemed an  
 1100 emergency purchase, or the services are exempted from  
 1101 competitive-solicitation requirements under s. 287.057(3)(e)  
 1102 ~~287.057(3)(f)~~. Justification for the sole-sourcing or emergency  
 1103 procurement must be documented. Contracts for goods or services  
 1104 valued at or over \$100,000 are subject to board approval.

1105 b. The board shall determine whether it is more cost-  
 1106 effective and in the best interests of the plan to use legal  
 1107 services provided by in-house attorneys employed by the plan  
 1108 rather than contracting with outside counsel. In making such  
 1109 determination, the board shall document its findings and shall  
 1110 consider the expertise needed; whether time commitments exceed  
 1111 in-house staff resources; whether local representation is  
 1112 needed; the travel, lodging, and other costs associated with in-  
 1113 house representation; and such other factors that the board  
 1114 determines are relevant.

1115 14. Provide for service standards for service providers,  
 1116 methods of determining adherence to those service standards,  
 1117 incentives and disincentives for service, and procedures for  
 1118 terminating contracts for service providers that fail to adhere  
 1119 to service standards.

1120 15. Provide procedures for selecting service providers and



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1121 standards for qualification as a service provider that  
 1122 reasonably assure that any service provider selected will  
 1123 continue to operate as an ongoing concern and is capable of  
 1124 providing the specified services in the manner required.

1125 16. Provide for reasonable accounting and data-reporting  
 1126 practices.

1127 17. Provide for annual review of costs associated with the  
 1128 administration and servicing of the policies issued by the plan  
 1129 to determine alternatives by which costs can be reduced.

1130 18. Authorize the acquisition of such excess insurance or  
 1131 reinsurance as is consistent with the purposes of the plan.

1132 19. Provide for an annual report to the office on a date  
 1133 specified by the office and containing such information as the  
 1134 office reasonably requires.

1135 20. Establish multiple rating plans for various  
 1136 classifications of risk which reflect risk of loss, hazard  
 1137 grade, actual losses, size of premium, and compliance with loss  
 1138 control. At least one of such plans must be a preferred-rating  
 1139 plan to accommodate small-premium policyholders with good  
 1140 experience as defined in sub-subparagraph 22.a.

1141 21. Establish agent commission schedules.

1142 22. For employers otherwise eligible for coverage under the  
 1143 plan, establish three tiers of employers meeting the criteria  
 1144 and subject to the rate limitations specified in this  
 1145 subparagraph.

1146 a. Tier One.—

1147 (I) Criteria; rated employers.—An employer that has an  
 1148 experience modification rating shall be included in Tier One if



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1149 the employer meets all of the following:

1150 (A) The experience modification is below 1.00.

1151 (B) The employer had no lost-time claims subsequent to the

1152 applicable experience modification rating period.

1153 (C) The total of the employer's medical-only claims

1154 subsequent to the applicable experience modification rating

1155 period did not exceed 20 percent of premium.

1156 (II) Criteria; non-rated employers.—An employer that does

1157 not have an experience modification rating shall be included in

1158 Tier One if the employer meets all of the following:

1159 (A) The employer had no lost-time claims for the 3-year

1160 period immediately preceding the inception date or renewal date

1161 of the employer's coverage under the plan.

1162 (B) The total of the employer's medical-only claims for the

1163 3-year period immediately preceding the inception date or

1164 renewal date of the employer's coverage under the plan did not

1165 exceed 20 percent of premium.

1166 (C) The employer has secured workers' compensation coverage

1167 for the entire 3-year period immediately preceding the inception

1168 date or renewal date of the employer's coverage under the plan.

1169 (D) The employer is able to provide the plan with a loss

1170 history generated by the employer's prior workers' compensation

1171 insurer, except if the employer is not able to produce a loss

1172 history due to the insolvency of an insurer, the receiver shall

1173 provide to the plan, upon the request of the employer or the

1174 employer's agent, a copy of the employer's loss history from the

1175 records of the insolvent insurer if the loss history is

1176 contained in records of the insurer which are in the possession



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1177 of the receiver. If the receiver is unable to produce the loss  
 1178 history, the employer may, in lieu of the loss history, submit  
 1179 an affidavit from the employer and the employer's insurance  
 1180 agent setting forth the loss history.

1181 (E) The employer is not a new business.

1182 (III) Premiums.—The premiums for Tier One insureds shall be  
 1183 set at a premium level 25 percent above the comparable voluntary  
 1184 market premiums until the plan has sufficient experience as  
 1185 determined by the board to establish an actuarially sound rate  
 1186 for Tier One, at which point the board shall, subject to  
 1187 paragraph (e), adjust the rates, if necessary, to produce  
 1188 actuarially sound rates, provided such rate adjustment shall not  
 1189 take effect prior to January 1, 2007.

1190 b. Tier Two.—

1191 (I) Criteria; rated employers.—An employer that has an  
 1192 experience modification rating shall be included in Tier Two if  
 1193 the employer meets all of the following:

1194 (A) The experience modification is equal to or greater than  
 1195 1.00 but not greater than 1.10.

1196 (B) The employer had no lost-time claims subsequent to the  
 1197 applicable experience modification rating period.

1198 (C) The total of the employer's medical-only claims  
 1199 subsequent to the applicable experience modification rating  
 1200 period did not exceed 20 percent of premium.

1201 (II) Criteria; non-rated employers.—An employer that does  
 1202 not have any experience modification rating shall be included in  
 1203 Tier Two if the employer is a new business. An employer shall be  
 1204 included in Tier Two if the employer has less than 3 years of



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1205 | loss experience in the 3-year period immediately preceding the  
 1206 | inception date or renewal date of the employer's coverage under  
 1207 | the plan and the employer meets all of the following:

1208 |       (A) The employer had no lost-time claims for the 3-year  
 1209 | period immediately preceding the inception date or renewal date  
 1210 | of the employer's coverage under the plan.

1211 |       (B) The total of the employer's medical-only claims for the  
 1212 | 3-year period immediately preceding the inception date or  
 1213 | renewal date of the employer's coverage under the plan did not  
 1214 | exceed 20 percent of premium.

1215 |       (C) The employer is able to provide the plan with a loss  
 1216 | history generated by the workers' compensation insurer that  
 1217 | provided coverage for the portion or portions of such period  
 1218 | during which the employer had secured workers' compensation  
 1219 | coverage, except if the employer is not able to produce a loss  
 1220 | history due to the insolvency of an insurer, the receiver shall  
 1221 | provide to the plan, upon the request of the employer or the  
 1222 | employer's agent, a copy of the employer's loss history from the  
 1223 | records of the insolvent insurer if the loss history is  
 1224 | contained in records of the insurer which are in the possession  
 1225 | of the receiver. If the receiver is unable to produce the loss  
 1226 | history, the employer may, in lieu of the loss history, submit  
 1227 | an affidavit from the employer and the employer's insurance  
 1228 | agent setting forth the loss history.

1229 |       (III) Premiums.—The premiums for Tier Two insureds shall be  
 1230 | set at a rate level 50 percent above the comparable voluntary  
 1231 | market premiums until the plan has sufficient experience as  
 1232 | determined by the board to establish an actuarially sound rate



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1233 for Tier Two, at which point the board shall, subject to  
 1234 paragraph (e), adjust the rates, if necessary, to produce  
 1235 actuarially sound rates, provided such rate adjustment shall not  
 1236 take effect prior to January 1, 2007.

1237 c. Tier Three.—

1238 (I) Eligibility.—An employer shall be included in Tier  
 1239 Three if the employer does not meet the criteria for Tier One or  
 1240 Tier Two.

1241 (II) Rates.—The board shall establish, subject to paragraph  
 1242 (e), and the plan shall charge, actuarially sound rates for Tier  
 1243 Three insureds.

1244 23. For Tier One or Tier Two employers which employ no  
 1245 nonexempt employees or which report payroll which is less than  
 1246 the minimum wage hourly rate for one full-time employee for 1  
 1247 year at 40 hours per week, the plan shall establish actuarially  
 1248 sound premiums, provided, however, that the premiums may not  
 1249 exceed \$2,500. These premiums shall be in addition to the fee  
 1250 specified in subparagraph 26. When the plan establishes  
 1251 actuarially sound rates for all employers in Tier One and Tier  
 1252 Two, the premiums for employers referred to in this paragraph  
 1253 are no longer subject to the \$2,500 cap.

1254 24. Provide for a depopulation program to reduce the number  
 1255 of insureds in the plan. If an employer insured through the plan  
 1256 is offered coverage from a voluntary market carrier:

- 1257 a. During the first 30 days of coverage under the plan;
- 1258 b. Before a policy is issued under the plan;
- 1259 c. By issuance of a policy upon expiration or cancellation
- 1260 of the policy under the plan; or





ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1261           d. By assumption of the plan's obligation with respect to  
 1262 an in-force policy,  
 1263  
 1264 that employer is no longer eligible for coverage through the  
 1265 plan. The premium for risks assumed by the voluntary market  
 1266 carrier must be no greater than the premium the insured would  
 1267 have paid under the plan, and shall be adjusted upon renewal to  
 1268 reflect changes in the plan rates and the tier for which the  
 1269 insured would qualify as of the time of renewal. The insured may  
 1270 be charged such premiums only for the first 3 years of coverage  
 1271 in the voluntary market. A premium under this subparagraph is  
 1272 deemed approved and is not an excess premium for purposes of s.  
 1273 627.171.

1274           25. Require that policies issued and applications must  
 1275 include a notice that the policy could be replaced by a policy  
 1276 issued from a voluntary market carrier and that, if an offer of  
 1277 coverage is obtained from a voluntary market carrier, the  
 1278 policyholder is no longer eligible for coverage through the  
 1279 plan. The notice must also specify that acceptance of coverage  
 1280 under the plan creates a conclusive presumption that the  
 1281 applicant or policyholder is aware of this potential.

1282           26. Require that each application for coverage and each  
 1283 renewal premium be accompanied by a nonrefundable fee of \$475 to  
 1284 cover costs of administration and fraud prevention. The board  
 1285 may, with the prior approval of the office, increase the amount  
 1286 of the fee pursuant to a rate filing to reflect increased costs  
 1287 of administration and fraud prevention. The fee is not subject  
 1288 to commission and is fully earned upon commencement of coverage.



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1289 Section 19. Paragraph (e) of subsection (6) of section  
 1290 627.351, Florida Statutes, is amended to read:  
 1291 627.351 Insurance risk apportionment plans.—  
 1292 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—  
 1293 (e) Purchases that equal or exceed \$2,500, but are less  
 1294 than \$25,000, shall be made by receipt of written quotes,  
 1295 written record of telephone quotes, or informal bids, if  
 1296 ~~whenever~~ practical. The procurement of goods or services valued  
 1297 at or over \$25,000 is ~~shall be~~ subject to competitive  
 1298 solicitation, except in situations where the goods or services  
 1299 are provided by a sole source or are deemed an emergency  
 1300 purchase; the services are exempted from competitive  
 1301 solicitation requirements under s. 287.057(3)(e) ~~287.057(3)(f)~~;  
 1302 or the procurement of services is subject to s. 627.3513.  
 1303 Justification for the sole-sourcing or emergency procurement  
 1304 must be documented. Contracts for goods or services valued at or  
 1305 over \$100,000 are subject to approval by the board.  
 1306 Section 20. Subsection (2) of section 765.5155, Florida  
 1307 Statutes, is amended to read:  
 1308 765.5155 Donor registry; education program.—  
 1309 (2) The agency and the department shall jointly contract  
 1310 for the operation of a donor registry and education program. The  
 1311 contractor shall be procured by competitive solicitation  
 1312 pursuant to chapter 287, notwithstanding an any exemption under  
 1313 ~~in~~ s. 287.057(3)(e) ~~287.057(3)(f)~~. When awarding the contract,  
 1314 priority shall be given to existing nonprofit groups that are  
 1315 based within the state, have expertise working with procurement  
 1316 organizations, have expertise in conducting statewide organ and



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1317 tissue donor public education campaigns, and represent the needs  
 1318 of the organ and tissue donation community in the state.

1319 Section 21. Subsection (10) of section 893.055, Florida  
 1320 Statutes, is amended to read:

1321 893.055 Prescription drug monitoring program.—

1322 (10) All costs incurred by the department in administering  
 1323 the prescription drug monitoring program shall be funded through  
 1324 federal grants or private funding applied for or received by the  
 1325 state. The department may not commit funds for the monitoring  
 1326 program without ensuring funding is available. The prescription  
 1327 drug monitoring program and the implementation thereof are  
 1328 contingent upon receipt of the nonstate funding. The department  
 1329 and state government shall cooperate with the direct-support  
 1330 organization established pursuant to subsection (11) in seeking  
 1331 federal grant funds, other nonstate grant funds, gifts,  
 1332 donations, or other private moneys for the department if so long  
 1333 ~~as~~ the costs of doing so are not considered material.  
 1334 Nonmaterial costs for this purpose include, but are not limited  
 1335 to, the costs of mailing and personnel assigned to research or  
 1336 apply for a grant. Notwithstanding the exemptions to  
 1337 competitive-solicitation requirements under s. 287.057(3)(e)  
 1338 ~~287.057(3)(f)~~, the department shall comply with the competitive-  
 1339 solicitation requirements under s. 287.057 for the procurement  
 1340 of any goods or services required by this section. Funds  
 1341 provided, directly or indirectly, by prescription drug  
 1342 manufacturers may not be used to implement the program.

1343



ENROLLED

CS/CS/HB 1309, Engrossed 2

2013 Legislature

1344           Section 22. Except as otherwise expressly provided in this  
1345 act, this act shall take effect July 1, 2013.



**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

**BILL #:** HB 5401

**FINAL HOUSE FLOOR ACTION:**

**SPONSOR(S):** Government Operations  
Appropriations Subcommittee and  
Ingram

117 Y's

0 N's

**COMPANION  
BILLS:** SB 1764

**GOVERNOR'S ACTION:** Approved

---

**SUMMARY ANALYSIS**

HB 5401 passed the House on May 2, 2013, and subsequently passed the Senate on May 3, 2013. The bill amends section 215.985, F.S., relating to the Transparency Florida Act (Act). Specifically:

- Providing the definition of "Contract" for purposes of this section.
- Requiring the Executive Office of the Governor (EOG), in consultation with the appropriations committees of the House of Representatives and Senate, to:
  - Establish and maintain a single website that will provide access to all other websites required by the Act; provide style and formatting requirements for all of the websites required by the Act.
  - Maintain a website that provides information relating to the approved operating budget for each branch of state government and state agencies; provide search criteria and informational requirements of data stored on this website; and require the Office of Policy and Budget within the Executive Office of the Governor to ensure that data added to the website remains accessible to the public for ten years.
  - Establish and maintain a website that provides information relating to the fiscal planning for the state; provide information requirements of data stored on this website; and require the Office of Policy and Budget within the Executive Office of the Governor to ensure that data added to the website remains accessible to the public for ten years.
- Requiring the Department of Management Services (DMS) to establish and maintain a website that provides current data and information relating to state employee and officers, state universities, or State Board of Administration employees; provides search criteria and informational requirements of data stored on this website.
- Requiring the Joint Legislative Auditing Committee (Committee) to provide recommendations to the President of the Senate and Speaker of the House of Representatives on any additional information to be added to a website established in this Act; recommend a schedule for adding information to a website; and recommend a format for collecting and displaying the additional information.
- Requiring the manager of each website to submit to the Committee information regarding the cost of creating and maintaining websites required by this Act in addition to the number of times the websites have been accessed.
- Requiring the Chief Financial Officer (CFO) to establish and maintain a secure contract tracking system with sufficient security to deny the ability to alter or modify records available on the website; expands the posting requirements for the state contract tracking system to include contracts and certain procurement documents of all executive and judicial branch entities; provides exemptions from posting contract and procurement documents in certain instances; requires redaction of confidential or exempt information before contracts are uploaded to the website; provides a disclaimer from liability to the CFO and the Department of Financial Services for failure to properly redact information; and authorizes the CFO to adopt rules.
- Creating the "User Experience Task Force" (Task Force) to develop and recommend a design for consolidating existing state-managed transparency websites into one website.

The bill was approved by the Governor on May 20, 2013, ch. 2013-54, L.O.F., and will become effective on July 1, 2013.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h5401z1.GOAS

**DATE:** May 30, 2013

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### ***Transparency Florida Act***

The Transparency Florida Act<sup>1</sup> (Act) requires specified state fiscal information to be made publicly available via website or management system. A municipality or special district that has total annual revenues of less than \$10 million is exempt from the act.<sup>2</sup>

##### ***State Budget Website***

The Act requires the Executive Office of the Governor (EOG), in consultation with the appropriations committees of the House of Representatives and Senate, to establish and maintain a single website, directly accessible by the public through Florida's official internet portal,<sup>3</sup> to provide information relating to each appropriation in the General Appropriations Act (GAA) for each branch of state government and state agency.<sup>4</sup> At a minimum, the information must include:

- Disbursement data for each appropriation by the object code associated with the expenditure established within the Florida Accounting Information Resource Subsystem (FLAIR). Expenditure data must include the name of the payee, the date and amount of the expenditure, and the statewide document number.
- For each appropriation, any adjustments, including vetoes, approved supplemental appropriations included in legislation other than the GAA, budget amendments, other actions approved pursuant to chapter 216<sup>5</sup>, and any other adjustments authorized by law.
- The status of spending authority for each appropriation in the approved operating budget, including released, unreleased, reserved, and disbursed balances.
- Position and rate information for positions provided in the GAA.<sup>6</sup>

All data provided through the website must be data currently available in the Florida Financial Management Information System (FFMIS).<sup>7</sup> The Office of Policy and Budget in the EOG must ensure that all data added to the state budget website remains accessible to the public for 10 years.<sup>8</sup> The Joint Legislative Auditing Committee (Committee) is required to propose additional state fiscal information to be provided on the state budget website.<sup>9</sup> Additional information on the website may include, but is not limited to, the following information for state agencies:

- Details of nonoperating budget authority established pursuant to s. 216.181, F.S.
- Trust fund balance reports, including cash available, investments, and receipts.
- General revenue fund balance reports, including revenue received and amounts disbursed.
- Fixed capital outlay project data, including original appropriation and disbursements throughout the life of the project.
- A 10-year history of appropriations indicated by agency.

<sup>1</sup> Chapter 2009-74, s. 2, L.O.F. (codified at s. 215.985, F.S.).

<sup>2</sup> Section 215.985(11), F.S.

<sup>3</sup> The State of Florida's official internet portal is [www.myflorida.com](http://www.myflorida.com).

<sup>4</sup> Section 215.985(3), F.S.

<sup>5</sup> Chapter 216, F.S., provides planning and budgeting requirements.

<sup>6</sup> Section 215.985(3)(a), F.S.

<sup>7</sup> Section 215.985(3)(b), F.S.

<sup>8</sup> Section 215.985(14), F.S.

<sup>9</sup> Section 215.985(4), F.S.

- Links to state audits or reports related to the expenditure and dispersal of state funds.
  - Links to program or activity descriptions for which funds may be expended.
- The Act also requires the Committee to recommend a format for collecting and displaying information from state universities, Florida College System institutions, school districts, charter schools, charter technical career centers, local governmental units, and other governmental entities.<sup>10</sup>

By November 1, 2012, and annually thereafter, the Committee must develop a schedule for adding additional information to the website by type of information and governmental entity, including timeframes and development entity.<sup>11</sup> The Committee must submit the schedule to the President of the Senate and the Speaker of the House of Representatives. Additional information may include, but is not limited to:

- Disbursements by the governmental entity from funds established within the treasury of the governmental entity, including, for all branches of state government, allotment balances in the FLAIR.
- Revenues received by each governmental entity, including receipts or deposits by the governmental entity into funds established within the treasury of the governmental entity.
- Information relating to a governmental entity's bonded indebtedness, including, but not limited to, the total amount of obligation stated in terms of principal and interest, an itemization of each obligation, the term of each obligation, the source of funding for repayment of each obligation, the amounts of principal and interest previously paid to reduce each obligation, the balance remaining of each obligation, any refinancing of any obligation, and the cited statutory authority to issue such bonds.
- Links to available governmental entity websites.

The Committee also must prepare an annual report detailing progress in establishing the single website and providing recommendations for enhancement of the content and format of the website and related policies and procedures. The reports must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually by November 1.<sup>12</sup>

Other functions required by the Act include:

- By August 31 of each fiscal year, each executive branch agency, the state court system, and the Legislature shall establish allotments in the FLAIR for planned expenditures of state appropriations.<sup>13</sup>
- The Committee shall coordinate with the Financial Management Information Board<sup>14</sup> in developing any recommendations for including information on the website which is necessary to meet the requirements of s. 215.91(8), F.S.<sup>15</sup>
- Functional owners as defined in s. 215.94, F.S., and other governmental entities shall provide information necessary to accomplish the purposes of the Act.<sup>16</sup>

---

<sup>10</sup> Section 215.985(5), F.S. Section 215.985(2)(a), F.S., defines "governmental entity" to mean any state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, any department, division, bureau, commission, authority, district, or agency thereof, or any public school, Florida College System institution, state university, or associated board.

<sup>11</sup> Section 215.985(6), F.S.

<sup>12</sup> Section 215.985(15), F.S.

<sup>13</sup> Section 215.985(8), F.S.

<sup>14</sup> The Financial Management Information Board is part of the Administration Commission and is composed of the Governor, the Chief Financial Officer, the Commissioner of Agriculture, and the Attorney General (s. 215.95(1), F.S.). Its duties include management and oversight of the Florida Financial Management Information System (s. 215.95(2), F.S.).

<sup>15</sup> Section 215.985(9), F.S.

<sup>16</sup> Section 215.985(10), F.S.



## **Water Management District Websites**

The Act 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.<sup>17</sup>

### **State Contract Management System**

The Act requires the Chief Financial Officer (CFO) to provide public access to a state contract management system that provides information and documentation relating to contracts procured by governmental entities.<sup>18</sup> Data collected in the system must include, but is not limited to:

- The contracting agency.
- The procurement method.
- The contract beginning and ending dates.
- The type and purpose of the commodity or service.
- The compensation to be paid.
- Compliance information, such as performance metrics for the service or commodity.
- Contract violations.
- The number of extensions or renewals.
- The statutory authority for providing the service.<sup>19</sup>

Within 30 days after a major change to an existing contract or the execution of a new contract, agency procurement staff of the affected state governmental entity must update the necessary information in the state contract management system.<sup>20</sup> A major change to a contract includes, but is not limited to:

- A renewal, termination, or extension of the contract; or
- An amendment to the contract.

## **Data Available on State Websites**

### **State Budget Website**

The state budget website required by the Act is located at [transparencyflorida.gov](http://transparencyflorida.gov). The website includes:

- All information required to be posted on the website.
- All information suggested for inclusion on the website except:
  - Non-operating budget information.
  - Information relating to a governmental entity's bond indebtedness.
  - Information from state universities, Florida College System institutions, school districts, charter schools, charter technical centers, and local governmental units.
- Links to:
  - State audits or reports related to the expenditures and dispersal of state funds.
  - Program or activity descriptions for which funds may be expended.
  - Reports of public school districts.

---

<sup>17</sup> Section 215.985(12), F.S.

<sup>18</sup> Section 215.985(16), F.S.

<sup>19</sup> Section 215.985(16)(a), F.S.

<sup>20</sup> Section 215.985(16)(b), F.S.

## **State Contract Management System**

Currently, the Act does not require the state contract management system to be available via website; however, the CFO makes a limited number of contracts available online through the Florida Accountability Contract Tracking System (FACTS).<sup>21</sup> Contracts are searchable on FACTS by:

- Agency name.
- Vendor name.
- Agency assigned contract ID.
- Contract dollar value.
- Beginning and ending dates of the contract.
- Commodity or service type.

## **Additional Information**

Additional state governmental information available via website includes, but is not limited to:

- Monthly financial statements of WMDs, as required by the act.<sup>22</sup>
- Agency legislative budget requests, original and amended;<sup>23</sup> capital improvement plans; long-range performance plans; the Governor's budget recommendations;<sup>24</sup> legislative appropriations bills;<sup>25</sup> the conference report on the budget;<sup>26</sup> the Governor's veto message and a list of vetoed appropriations; fiscal analysis in brief; and planning and budgeting instructions and forms.<sup>27</sup>
- Payroll and position data for the executive and judicial branches; state universities;<sup>28</sup> and the legislative branch.<sup>29</sup>

## **Public Records Laws**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>30</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Government Sunset Review Act<sup>31</sup> provides that a public record or

<sup>21</sup> Available at <https://facts.fldfs.com/Search/ContractSearch.aspx> (last visited May 2, 2013).

<sup>22</sup> Available at <http://www.nwfwmd.state.fl.us/bizfinance.html>, <http://www.srwmd.state.fl.us/index.aspx?NID=136>, <http://floridaswater.com/financialstatements/>, <http://www.swfwmd.state.fl.us/business/financials/>, and [http://www.sfwmd.gov/portal/page/portal/xweb%20about%20us/agency%20reports#budget\\_strategic\\_plan](http://www.sfwmd.gov/portal/page/portal/xweb%20about%20us/agency%20reports#budget_strategic_plan). (last visited May 2, 2013.)

<sup>23</sup> Available via the Florida Fiscal Portal (<http://floridafiscalportal.state.fl.us>, (last visited May 2, 2013) and the Governor's "Let's Get to Work" website (<http://letsgettowork.state.fl.us/HomeFY14.htm>, (last visited May 2, 2013).

<sup>24</sup> Available via the Florida Fiscal Portal and the Governor's "Let's Get to Work" website (last visited May 2, 2013).

<sup>25</sup> Available via the Florida Fiscal Portal, the Governor's "Let's Get to Work" website, and the official websites of the Florida Senate and the Florida House of Representatives ([www.flsenate.gov](http://www.flsenate.gov) and [www.myfloridahouse.gov](http://www.myfloridahouse.gov), respectively (last visited May 2, 2013)).

<sup>26</sup> Available via the Florida Fiscal Portal and the official websites of the Florida Senate and the Florida House of Representatives. (last visited May 2, 2013.)

<sup>27</sup> Available via the Florida Fiscal Portal. (last visited May 2, 2013.)

<sup>28</sup> Available via the Governor's "Florida Has Right to Know" website (<http://www.floridahasarighttoknow.com/>, (last visited May 2, 2013).

<sup>29</sup> Available via the official websites of the Florida Senate and the Florida House of Representatives (last visited May 2, 2013).

<sup>30</sup> Article I, s. 24(c) of the State Constitution.

<sup>31</sup> See s. 119.15, F.S.

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.

### **Effect of the Bill**

#### ***Florida Transparency Act***

This bill amends the Florida Transparency Act (Act) as follows.

#### ***Definition***

The term "contract," which is currently used in the Act but not defined, is defined to mean a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance.

For purposes of subsection (h) of the bill, the term:

- "Procurement document" means any document or material provided to the public or any vendor as part of a formal competitive solicitation of goods or services undertaken by a state entity, and a document or material submitted in response to a formal competitive solicitation by any vendor who is awarded the resulting contract.
- "State entity" means an official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; a state attorney, public defender, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Justice Administrative Commission; the Public Service Commission; and any part of the judicial branch of state government.

#### ***Single Access Website***

The EOG, in consultation with the appropriations committees of the House of Representatives and Senate, is required to establish and maintain a single website that provides access to all other websites required by the Act. In addition, the single website and other websites required by the Act must meet style and formatting requirements as follows; the websites must:

- Be constructed for usability that, to the extent possible, provides an intuitive user experience.
- Provide a consistent visual design, interaction or navigation design, and information or data presentation.
- Be deployed in compliance with the Americans with Disabilities Act.<sup>32</sup>
- Be compatible with all major web browsers.

---

<sup>32</sup> The Americans with Disabilities Act (Pub. L. No. 101-336, § 2, 104 Stat. 328 (1991)) contains nondiscrimination requirements for state and local government websites. Suggestions for compliance include, but are not limited to, text equivalents for images, accessible formats for documents, and avoidance of dictating colors and font settings.

## **State Budget Website**

The bill amends provisions relating to the state budget website currently required by the Act. The bill removes the requirement that the state budget website be a single website that is directly accessible through Florida's internet portal. This requirement can be removed because the bill creates a new single access website, where all websites created by the Act will be accessible.

The bill creates search criteria and downloading requirements for the currently-required disbursement data for expenditures in FLAIR. That data must be searchable by the name of the payee, the paying agency, and fiscal year. It also requires such data to be downloadable in a format that allows offline analysis.

The bill expands information that must be included on the website to include:

- Position and rate information for positions provided in the GAA;
- Position and rate information for positions approved through an amendment to the operating budget;
- Positions established in the legislative branch;
- Allotments, and current balances of such allotments, for planned expenditures of state appropriations established by state agencies in FLAIR;
- Trust fund balance reports to include cash available, investments, and receipts;
- General revenue fund balance reports to include revenue received and amounts disbursed;
- Fixed capital outlay project data to include original appropriation and disbursements throughout the life of the project;
- A ten year history of appropriations indicated by agency;
- Links to state audits or reports related to the expenditure and dispersal of state funds; and
- Links to program or activity descriptions for which funds may be expended.

The bill also requires the Office of Policy and Budget in the EOG to ensure that all data added to the website remains accessible to the public for ten years.

## **State Fiscal Planning Website**

The EOG, in consultation with the appropriations committees of the House of Representatives and Senate, is required to establish and maintain a website that provides information relating to state fiscal planning. While the state budget website provides information for *approved* budgets and related data, the bill requires the state fiscal planning website to include information submitted prior to the adoption of a budget, including proposals and requests that may never take effect. This information includes, but is not limited to:

- The long-range financial outlook adopted by the Legislative Budget Commission.<sup>33</sup>
- Instructions to the agencies relating to legislative budget requests, capital improvement plans, and long-range program plans.
- Legislative budget requests submitted by each state agency or branch of state government, and any amendments to such requests.
- Capital improvement plans submitted by each state agency or branch of state government.
- Long-range program plans submitted by each state agency or branch of state government.
- The Governor's budget recommendations submitted pursuant to s. 216.163, F.S.<sup>34</sup>

---

<sup>33</sup> The joint Legislative Budget Commission is required to annually issue a long-range financial outlook setting out recommended fiscal strategies for the state and its departments and agencies in order to assist the legislature in making budget decisions (FLA. CONST., art. III, s. 19(c)(1)).

<sup>34</sup> Section 216.163, F.S., specifies requirements for the Governor's recommended budget.

Data on the State fiscal planning website must be searchable by fiscal year, agency, appropriation category, and keywords. In addition, the bill also requires the Office of Policy and Budget in the EOG to ensure that all data added to the website remains accessible to the public for ten years.

### ***Employee and Officer Information Website***

The Department of Management Services<sup>35</sup> (DMS) must establish and maintain a website providing current information relating to each employee or officer of a state agency, state university, or the State Board of Administration,<sup>36</sup> regardless of the appropriation category from which the person is paid. For each employee or officer, the information must include, at a minimum, his or her:

- Name and salary or hourly rate of pay.
- Position number, class code, and class title.
- Employing agency and budget entity.

The employee and officer information must be searchable by state agency, state university, and the State Board of Administration, and by employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.

### ***Joint Legislative Auditing Committee (Committee) Duties***

The bill increases the current Committee's responsibilities to include a recommendation to the President of the Senate and the Speaker of the House of Representatives by November 1, 2013, regarding any additional information to be added to a website such as whether to expand the scope of information provided to include state universities; Florida College System institutions; school districts; charter schools; charter technical career centers; local government units; and other governmental entities. In addition, the Committee shall recommend a format for collecting and displaying the additional information.

The bill requires that managers of the state budget website, the state fiscal planning website, and the state officer and employee information website submit to the Committee information on the cost of creating and maintaining their respective websites in addition to the number of times the websites have been accessed.

### ***State Contract Management System***

The bill requires state entities to upload to the CFO's Florida Accountability Contract Tracking System (FACTS) website, contracts and formal procurement documents that have been redacted to exclude confidential or exempt information to the contract tracking website within 30 days after execution. In addition to uploading the redacted contract and procurement documents, the agency must provide on the website information pertaining to the contract and procurement document, including the following information:

- The names of the contracting entities.
- The procurement method.
- The contract beginning and ending dates.
- The nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.

---

<sup>35</sup> The DMS provides administrative and support services to other state agencies and to state employees (*see* [www.dms.myflorida.com](http://www.dms.myflorida.com), last visited May 2, 2013)).

<sup>36</sup> The State Board of Administration is composed of the Governor, the CFO, and the Attorney General (FLA. CONST., art. IV, s. 4(e)). Its duties include, but are not limited to, the management of state investment fund such as the Florida Retirement System Pension Plan and Investment Plan (*see* <http://www.sbafla.com/fsb/TheFundsWeManage/tabid/731/Default.aspx>, last visited May 2, 2013)).

- Total compensation to be paid or received under the contract.
- All payments made to the contractor to date.
- Applicable contract measures.
- Information if a competitive solicitation was not used to procure the goods or services and justification of such action, including citation to a statutory exemption or exception from competitive solicitation, if any.
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential or exempt information.

State entities must update the information in the contract tracking system within 30 days of an amendment to the existing contract. State entities must also post to the contract tracking system the information required for each existing contract that was executed before July 1, 2013, with payment from state funds made after June 30, 2013.

The bill provides that records available on the contract tracking system must not reveal information made confidential or exempt by law. If a party to the contract or procurement document discovers that an electronic copy of the contract or procurement document has not been properly redacted, the bill provides a process for the entity to follow, upon being notified or discovering the error. The entity must immediately remove the contract or procurement document, redact the confidential or exempt information, and republish the contract or procurement document to the website within seven days. Entities must notify the CFO upon becoming aware that an electronic copy of a contract or procurement document posted on the website has not been properly redacted.

The bill provides that requests to redact confidential or exempt information must be made in writing and delivered by mail, facsimile, electronic transmission, or in person to the state entity that is a party to the contract. The request must identify the specific document, page numbers including the confidential or exempt information, the information that is confidential or exempt, and the applicable statutory exemption. The bill specifies that no fee can be charged for a redaction made pursuant to the request. The bill also provides that a party to a contract may petition the circuit court for an order directing compliance with provisions of this section.

The contract tracking system must display a notice of the right of an affected party to request redaction of confidential or exempt information.

The bill provides that the CFO, DFS, and any officer, employee, or contractor thereof, is not responsible for redacting confidential or exempt information from an electronic copy of a contract or procurement document posted by another state entity on the contract tracking system. In addition, the CFO, DFS, and any officer, employee, or contractor thereof, is not liable for the failure of a state entity to redact confidential or exempt information.

The bill provides that posting the contract on the contract tracking system does not supersede the duty of an entity to respond to a public records request or to a subpoena. The bill provides that a request or subpoena for a copy, or certified copy, of a contract or procurement document shall be made to the state entity that is party to the contract, not the CFO, DFS, and any officer, employee, or contractor thereof, unless the CFO or department is a party to the contract.

The bill requires the CFO to use appropriate internet security measures to ensure that no person has the ability to alter or modify records available on the website. Additionally, the CFO may regulate and prohibit the posting of records that could:

- Facilitate identity theft or fraud such as signatures;
- Compromise or reveal an agency investigation;
- Reveal the identity of undercover personnel;
- Reveal proprietary business information or trade secrets;
- Reveal an individual's medical information; or

- Reveal any other record or information that the CFO believes may jeopardize the health, safety, or welfare of the public.

The bill also provides that the CFO may adopt rules to administer the contract tracking system.

In lieu of posting in the contract tracking system administered by the CFO, the Department of Legal Affairs and the Department of Agriculture and Consumer Services may post the information described in the newly amended s. 215.985(14)(a)(b)(c), F.S., relating to contract and procurement documents, to its own agency-managed website. The data posted on the agency-managed website must be downloadable in a format that allows offline analysis.

### ***Additional Provisions***

The bill repeals an exemption from the Act for a municipality or special district that has total annual revenues of less than \$10 million.

### ***User Experience Task Force***

The bill creates a User Experience Task Force to develop and recommend a design for consolidating existing state-managed transparency websites into a single website. If necessary, the recommendation of the task force may include a complete redesign of data submission and inclusion.

The task force will be comprised of four members, one of each of whom will be designated by:

- The Governor;
- The Chief Financial Officer;
- The President of the Senate; and
- The Speaker of the House of Representatives.

The task force shall elect a chair from among its members. In addition, the officers of the task force may assign staff to assist the task force in performing its required duties.

By October 1, 2013, the task force must submit a work plan to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives that includes, but is not limited to, a review of:

- All relevant state-managed transparency websites.
- Options for reducing the number of websites without losing detailed data.
- Options for linking expenditure data with related invoices and contracts.

By March 1, 2014, the task force must submit its complete recommendation to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives. The recommendation must provide an intuitive and cohesive user experience that allows users to move easily between varied types of related data. If necessary, the recommendation may include a complete redesign of data submission and inclusion. The recommendation must also include a cost estimate for implementation of the design.

The section creating the task force expires June 30, 2014.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

The bill will have an indeterminate fiscal impact on state entities due to the responsibility for complying with the uploading of contract and formal procurement documents. State entities could require training on the contract tracking system and on public records exemptions. State entities could also incur costs associated with redacting the confidential or exempt information prior to uploading the contract or formal procurement documents.

The EOG is estimated to incur insignificant annual expenditures to host the new web sites. The DMS is estimated to incur \$25,050 in nonrecurring costs for enhancing the existing employee and officer payroll information website. It is anticipated that the provisions of the bill will be handled within existing agency resources.

The bill conforms to the General Appropriation Act for FY 2013-2014, as Specific Appropriations 2255, 2257, 2258, 2259, and 2264 provide \$713,167 and 4.00 FTE to implement the CFO's FACTS System.





ENROLLED

HB 5401, Engrossed 1

2013 Legislature

1  
 2 An act relating to transparency in government  
 3 spending; amending s. 215.985, F.S.; adding a  
 4 definition; requiring the Executive Office of the  
 5 Governor to establish a single website providing  
 6 access to other websites; revising provisions relating  
 7 to the establishment of a website relating to the  
 8 approved operating budget; requiring the office to  
 9 establish a website providing information about fiscal  
 10 planning for the state and specifying the information  
 11 to be included on the website; requiring the  
 12 Department of Management Services to maintain a  
 13 website that provides current information on state  
 14 employees and officers; revising provisions requiring  
 15 the Legislative Auditing Committee to provide  
 16 recommendations to the Legislature about adding other  
 17 information to a website; requiring website managers  
 18 to provide information about the cost of creating and  
 19 maintaining each website; revising provisions relating  
 20 to access to the state contract management system to  
 21 require that such information be accessible through a  
 22 website; requiring the Chief Financial Officer to  
 23 establish and maintain a secure contract tracking  
 24 system; requiring that such system be available for  
 25 viewing and downloading by the public through a secure  
 26 website; requiring state entities to post certain  
 27 information on the system and to update that  
 28 information; requiring that exempt and confidential



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

29 information be redacted from contracts and procurement  
 30 documents posted on the system; providing procedures  
 31 for removing such information from the system;  
 32 providing applicability of public record requests for  
 33 information posted on the website; providing an  
 34 exemption; providing for service of subpoenas for  
 35 contract or procurement documents; authorizing the  
 36 Chief Financial Officer to regulate and prohibit the  
 37 posting of certain information that could facilitate  
 38 identity theft or cause harm; authorizing the Chief  
 39 Financial Officer to adopt rules; providing  
 40 definitions; authorizing certain departments to post  
 41 specified information on agency-managed websites in  
 42 lieu of posting through the contract tracking system;  
 43 creating the User Experience Task Force to develop and  
 44 recommend a design for consolidating existing state-  
 45 managed websites; providing for membership; providing  
 46 for staffing; requiring reports; providing for  
 47 expiration; providing an effective date.

48  
 49 Be It Enacted by the Legislature of the State of Florida:

50  
 51 Section 1. Section 215.985, Florida Statutes, is reordered  
 52 and amended to read:

53 215.985 Transparency in government spending.—

54 (1) This section may be cited as the "Transparency Florida  
 55 Act."

56 (2) As used in this section, the term:



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

57        (a)~~(e)~~ "Committee" means the Legislative Auditing  
 58 Committee created in s. 11.40.

59        (b) "Contract" means a written agreement or purchase order  
 60 issued for the purchase of goods or services or a written  
 61 agreement for the receipt of state or federal financial  
 62 assistance.

63        (c)~~(a)~~ "Governmental entity" means a ~~any~~ state, regional,  
 64 county, municipal, special district, or other political  
 65 subdivision whether executive, judicial, or legislative,  
 66 including, but not limited to, a ~~any~~ department, division,  
 67 bureau, commission, authority, district, or agency thereof, or  
 68 ~~any~~ public school, Florida College System institution, state  
 69 university, or associated board.

70        (d)~~(b)~~ "Website" means a site on the Internet which is  
 71 easily accessible to the public at no cost and does not require  
 72 the user to provide ~~any~~ information.

73        (3) The Executive Office of the Governor, in consultation  
 74 with the appropriations committees of the Senate and the House  
 75 of Representatives, shall establish and maintain a single  
 76 website that provides access to all other websites required by  
 77 this section. Such single website and other websites must:

78        (a) Be constructed for usability that, to the extent  
 79 possible, provides an intuitive user experience.

80        (b) Provide a consistent visual design, interaction or  
 81 navigation design, and information or data presentation.

82        (c) Be deployed in compliance with the Americans with  
 83 Disabilities Act.

84        (d) Be compatible with all major web browsers.



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

85            ~~(4)(3)~~ The Executive Office of the Governor, in  
 86 consultation with the appropriations committees of the Senate  
 87 and the House of Representatives, shall establish and maintain a  
 88 ~~single website that, directly accessible through the state's~~  
 89 ~~official Internet portal, which~~ provides information relating to  
 90 the approved operating budget each appropriation in the General  
 91 ~~Appropriations Act~~ for each branch of state government and state  
 92 agency.

93            (a) At a minimum, the information ~~provided~~ must include:

94            1. Disbursement data for each appropriation by the object  
 95 code associated with each expenditure established within the  
 96 Florida Accounting Information Resource Subsystem. Expenditure  
 97 data must include the name of the payee, the date of the  
 98 expenditure, the amount of the expenditure, and the statewide  
 99 document number. Such data must be searchable by the name of the  
 100 payee, the paying agency, and fiscal year, and must be  
 101 downloadable in a format that allows offline analysis.

102            2. For each appropriation, any adjustments, including  
 103 vetoes, approved supplemental appropriations included in  
 104 legislation other than the General Appropriations Act, budget  
 105 amendments, other actions approved pursuant to chapter 216, and  
 106 ~~any~~ other adjustments authorized by law.

107            3. Status of spending authority for each appropriation in  
 108 the approved operating budget, including released, unreleased,  
 109 reserved, and disbursed balances.

110            4. Position and rate information for positions provided in  
 111 the General Appropriations Act or approved through an amendment  
 112 to the approved operating budget and position information for



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

113 | positions established in the legislative branch.

114 |       5. Allotments for planned expenditures of state  
 115 | appropriations established by state agencies in the Florida  
 116 | Accounting Information Resource Subsystem, and the current  
 117 | balances of such allotments.

118 |       6. Trust fund balance reports, including cash available,  
 119 | investments, and receipts.

120 |       7. General revenue fund balance reports, including revenue  
 121 | received and amounts disbursed.

122 |       8. Fixed capital outlay project data, including original  
 123 | appropriation and disbursements throughout the life of the  
 124 | project.

125 |       9. A 10-year history of appropriations indicated by  
 126 | agency.

127 |       10. Links to state audits or reports related to the  
 128 | expenditure and dispersal of state funds.

129 |       11. Links to program or activity descriptions for which  
 130 | funds may be expended.

131 |       (b) All data provided through the website must be data  
 132 | currently available in the state's financial management  
 133 | information system referenced in s. 215.93. The Office of Policy  
 134 | and Budget in the Executive Office of the Governor shall ensure  
 135 | that all data added to the website remains accessible to the  
 136 | public for 10 years.

137 |       ~~(4) The committee shall propose providing additional state~~  
 138 | ~~fiscal information, which may include, but is not limited to,~~  
 139 | ~~the following information for state agencies:~~

140 |       ~~(a) Details of nonoperating budget authority established~~



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

141 ~~pursuant to s. 216.181.~~

142 ~~(b) Trust fund balance reports, including cash available,~~

143 ~~investments, and receipts.~~

144 ~~(c) General revenue fund balance reports, including~~

145 ~~revenue received and amounts disbursed.~~

146 ~~(d) Fixed capital outlay project data, including original~~

147 ~~appropriation and disbursements throughout the life of the~~

148 ~~project.~~

149 ~~(e) A 10-year history of appropriations indicated by~~

150 ~~agency.~~

151 ~~(f) Links to state audits or reports related to the~~

152 ~~expenditure and dispersal of state funds.~~

153 ~~(g) Links to program or activity descriptions for which~~

154 ~~funds may be expended.~~

155 (5) The Executive Office of the Governor, in consultation

156 with the appropriations committees of the Senate and the House

157 of Representatives, shall establish and maintain a website that

158 provides information relating to fiscal planning for the state.

159 (a) At a minimum, the information must include:

160 1. The long-range financial outlook adopted by the

161 Legislative Budget Commission.

162 2. The instructions to the agencies relating to

163 legislative budget requests, capital improvement plans, and

164 long-range program plans.

165 3. The legislative budget requests submitted by each state

166 agency or branch of state government, and any amendments to such

167 requests.

168 4. The capital improvement plans submitted by each state



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

169 agency or branch of state government.

170 5. The long-range program plans submitted by each state  
 171 agency or branch of state government.

172 6. The Governor's budget recommendation submitted pursuant  
 173 to s. 216.163.

174 (b) The data must be searchable by the fiscal year,  
 175 agency, appropriation category, and keywords.

176 (c) The Office of Policy and Budget in the Executive  
 177 Office of the Governor shall ensure that all data added to the  
 178 website remains accessible to the public for 10 years.

179 ~~(5) The committee shall recommend a format for collecting~~  
 180 ~~and displaying information from state universities, Florida~~  
 181 ~~College System institutions, school districts, charter schools,~~  
 182 ~~charter technical career centers, local governmental units, and~~  
 183 ~~other governmental entities.~~

184 (6) The Department of Management Services shall establish  
 185 and maintain a website that provides current information  
 186 relating to each employee or officer of a state agency, a state  
 187 university, or the State Board of Administration, regardless of  
 188 the appropriation category from which the person is paid.

189 (a) For each employee or officer, the information must  
 190 include, at a minimum, his or her:

- 191 1. Name and salary or hourly rate of pay.
- 192 2. Position number, class code, and class title.
- 193 3. Employing agency and budget entity.

194 (b) The information must be searchable by state agency,  
 195 state university, and the State Board of Administration, and by  
 196 employee name, salary range, or class code and must be



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

197 | downloadable in a format that allows offline analysis.

198 |       ~~(7)(6)~~ By November 1, 2013 ~~2012~~, and annually thereafter,

199 | the committee shall recommend to the President of the Senate and

200 | the Speaker of the House of Representatives:

201 |       (a) Additional information to be added to a website, such

202 | as whether to expand the scope of the information provided to

203 | include state universities, Florida College System institutions,

204 | school districts, charter schools, charter technical career

205 | centers, local government units, and other governmental

206 | entities.

207 |       (b) develop A schedule for adding ~~additional~~ information

208 | to the website by type of information and governmental entity,

209 | including timeframes and development entity.

210 |       (c) A format for collecting and displaying the additional

211 | information. The schedule for adding additional information

212 | ~~shall be submitted to the President of the Senate and the~~

213 | ~~Speaker of the House of Representatives. Additional information~~

214 | ~~may include:~~

215 |       ~~(a) Disbursements by the governmental entity from funds~~

216 | ~~established within the treasury of the governmental entity,~~

217 | ~~including, for all branches of state government, allotment~~

218 | ~~balances in the Florida Accounting Information Resource~~

219 | ~~Subsystem.~~

220 |       ~~(b) Revenues received by each governmental entity,~~

221 | ~~including receipts or deposits by the governmental entity into~~

222 | ~~funds established within the treasury of the governmental~~

223 | ~~entity.~~

224 |       ~~(c) Information relating to a governmental entity's bonded~~





ENROLLED

HB 5401, Engrossed 1

2013 Legislature

225 ~~indebtedness, including, but not limited to, the total amount of~~  
 226 ~~obligation stated in terms of principal and interest, an~~  
 227 ~~itemization of each obligation, the term of each obligation, the~~  
 228 ~~source of funding for repayment of each obligation, the amounts~~  
 229 ~~of principal and interest previously paid to reduce each~~  
 230 ~~obligation, the balance remaining of each obligation, any~~  
 231 ~~refinancing of any obligation, and the cited statutory authority~~  
 232 ~~to issue such bonds.~~

233 ~~(d) Links to available governmental entity websites.~~

234 (8) (7) The manager of each website described in  
 235 subsections (4), (5), and (6) shall submit to the committee  
 236 information relating to the cost of creating and maintaining  
 237 such website, and A counter shall be established on the website  
 238 ~~to show~~ the number of times the website has been accessed.

239 ~~(8) By August 31 of each fiscal year, each executive~~  
 240 ~~branch agency, the state court system, and the Legislature shall~~  
 241 ~~establish allotments in the Florida Accounting Information~~  
 242 ~~Resource Subsystem for planned expenditures of state~~  
 243 ~~appropriations.~~

244 (9) The committee shall coordinate with the Financial  
 245 Management Information Board in developing ~~any~~ recommendations  
 246 for including information on the website which is necessary to  
 247 meet the requirements of s. 215.91(8).

248 (10) Functional owners as described ~~defined~~ in s. 215.94  
 249 and other governmental entities shall provide information  
 250 necessary to accomplish the purposes of this section.

251 ~~(11) A municipality or special district that has total~~  
 252 ~~annual revenues of less than \$10 million is exempt from this~~



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

253 ~~section.~~

254 ~~(11)(12)~~ By September 1, 2011, Each water management  
 255 district shall provide a monthly financial statement to its  
 256 governing board and make such statement available for public  
 257 access on its website.

258 ~~(12)(13)~~ This section does not require or permit the  
 259 disclosure of information that is considered confidential under  
 260 by state or federal law.

261 ~~(14)~~ The Office of Policy and Budget in the Executive  
 262 Office of the Governor shall ensure that all data added to the  
 263 website remains accessible to the public for 10 years.

264 ~~(13)(15)~~ The committee shall prepare an annual report  
 265 detailing progress in establishing the single website and  
 266 providing recommendations for enhancement of the content and  
 267 format of the website and related policies and procedures. The  
 268 ~~first~~ report shall be submitted to the Governor, the President  
 269 of the Senate, and the Speaker of the House of Representatives  
 270 by ~~November 1, 2011,~~ and annually by November 1 thereafter.

271 ~~(14)(16)~~ The Chief Financial Officer shall establish and  
 272 maintain a secure contract tracking ~~provide public access to a~~  
 273 ~~state contract management~~ system available for viewing and  
 274 downloading by the public through a secure website. The Chief  
 275 Financial Officer shall use appropriate Internet security  
 276 measures to ensure that no person has the ability to alter or  
 277 modify records available on the website ~~that provides~~  
 278 ~~information and documentation relating to contracts procured by~~  
 279 ~~governmental entities.~~

280 (a) Within 30 calendar days after executing a contract,



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

281 each state entity shall post the following information relating  
 282 to the contract on the contract tracking system:

- 283 1. The names of the contracting entities.
- 284 2. The procurement method.
- 285 3. The contract beginning and ending dates.
- 286 4. The nature or type of the commodities or services  
 287 purchased.
- 288 5. Applicable contract unit prices and deliverables.
- 289 6. Total compensation to be paid or received under the  
 290 contract.
- 291 7. All payments made to the contractor to date.
- 292 8. Applicable contract performance measures.
- 293 9. If a competitive solicitation was not used to procure  
 294 the goods or services, the justification of such action,  
 295 including citation to a statutory exemption or exception from  
 296 competitive solicitation, if any.

297 10. Electronic copies of the contract and procurement  
 298 documents that have been redacted to exclude confidential or  
 299 exempt information ~~The data collected in the system must~~  
 300 ~~include, but need not be limited to, the contracting agency; the~~  
 301 ~~procurement method; the contract beginning and ending dates; the~~  
 302 ~~type of commodity or service; the purpose of the commodity or~~  
 303 ~~service; the compensation to be paid; compliance information,~~  
 304 ~~such as performance metrics for the service or commodity;~~  
 305 ~~contract violations; the number of extensions or renewals; and~~  
 306 ~~the statutory authority for providing the service.~~

307 (b) Within 30 calendar days after an amendment ~~a major~~  
 308 ~~change to an existing contract,~~ or the execution of a new



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

309 ~~contract, agency procurement staff of the state entity that is a~~  
 310 ~~party to the contract must affected state governmental entity~~  
 311 ~~shall~~ update the ~~necessary~~ information described in paragraph  
 312 (a) in the state contract tracking management system. An  
 313 amendment ~~A major change~~ to a contract includes, but is not  
 314 limited to, a renewal, termination, or extension of the contract  
 315 or a modification of an amendment to the terms of the contract.

316 (c) By January 1, 2014, each state entity shall post to  
 317 the contract tracking system the information required in  
 318 paragraph (a) for each existing contract that was executed  
 319 before July 1, 2013, with payment from state funds made after  
 320 June 30, 2013.

321 (d)1. Records made available on the contract tracking  
 322 system may not reveal information made confidential or exempt by  
 323 law.

324 2. Each state entity that is a party to a contract must  
 325 redact confidential or exempt information from the contract and  
 326 procurement documents before posting an electronic copy on the  
 327 contract tracking system. If a state entity that is a party to  
 328 the contract becomes aware that an electronic copy of a contract  
 329 or a procurement document has been posted but has not been  
 330 properly redacted, the state entity must immediately notify the  
 331 Chief Financial Officer and must immediately remove the contract  
 332 or procurement document from the contract tracking system.  
 333 Within 7 business days, the state entity must post a properly  
 334 redacted copy of the contract or procurement document on the  
 335 contract tracking system.

336 3.a. If a party to a contract, or an authorized



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

337 representative of a party to a contract, discovers that an  
 338 electronic copy of a contract or procurement document has been  
 339 posted to the contract tracking system but has not been properly  
 340 redacted, the party or representative may request the state  
 341 entity that is a party to the contract to redact the  
 342 confidential or exempt information. Upon receipt of the request,  
 343 the state entity shall redact the confidential or exempt  
 344 information.

345 b. A request to redact confidential or exempt information  
 346 must be made in writing and delivered by mail, facsimile,  
 347 electronic transmission, or in person to the state entity that  
 348 is a party to the contract. The request must identify the  
 349 specific document, the page numbers that include the  
 350 confidential or exempt information, the information that is  
 351 confidential or exempt, and the applicable statutory exemption.  
 352 A fee may not be charged for a redaction made pursuant to the  
 353 request.

354 c. A party to a contract may petition the circuit court  
 355 for an order directing compliance with this paragraph.

356 4. The contract tracking system shall display a notice of  
 357 the right of an affected party to request redaction of  
 358 confidential or exempt information contained on the system.

359 5.a. The Chief Financial Officer, the Department of  
 360 Financial Services, or an officer, employee, or contractor  
 361 thereof, is not responsible for redacting confidential or exempt  
 362 information from an electronic copy of a contract or procurement  
 363 document posted by another state entity on the system.

364 b. The Chief Financial Officer, the Department of



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

365 Financial Services, or an officer, employee, or contractor  
 366 thereof, is not liable for the failure of a state entity to  
 367 redact the confidential or exempt information.

368 (e)1. The posting of information on the contract tracking  
 369 system or the provision of contract information on a website for  
 370 public viewing and downloading does not supersede the duty of a  
 371 state entity to respond to a public records request or subpoena  
 372 for the information.

373 2. A request for a copy of a contract or procurement  
 374 document or certified copy of a contract or procurement document  
 375 shall be made to the state entity that is party to the contract.  
 376 The request may not be made to the Chief Financial Officer, the  
 377 Department of Financial Services, or an officer, employee, or  
 378 contractor thereof, unless the Chief Financial Officer or the  
 379 department is a party to the contract.

380 3. A subpoena for a copy of a contract or procurement  
 381 document or certified copy of a contract or procurement document  
 382 must be served on the state entity that is a party to the  
 383 contract and that maintains the original documents. The Chief  
 384 Financial Officer, the Department of Financial Services, or an  
 385 officer, employee, or contractor thereof, may not be served a  
 386 subpoena for those records unless the Chief Financial Officer or  
 387 the department is a party to the contract.

388 (f) The Chief Financial Officer may regulate and prohibit  
 389 the posting of records that could facilitate identity theft or  
 390 fraud, such as signatures; compromise or reveal an agency  
 391 investigation; reveal the identity of undercover personnel;  
 392 reveal proprietary business information or trade secrets; reveal



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

393 an individual's medical information; or reveal another record or  
 394 information that the Chief Financial Officer believes may  
 395 jeopardize the health, safety, or welfare of the public.  
 396 However, such action by the Chief Financial Officer does not  
 397 supersede the duty of a state entity to provide a copy of a  
 398 public record upon request.

399 (g) The Chief Financial Officer may adopt rules to  
 400 administer this subsection.

401 (h) For purposes of this subsection, the term:

402 1. "Procurement document" means any document or material  
 403 provided to the public or any vendor as part of a formal  
 404 competitive solicitation of goods or services undertaken by a  
 405 state entity, and a document or material submitted in response  
 406 to a formal competitive solicitation by any vendor who is  
 407 awarded the resulting contract.

408 2. "State entity" means an official, officer, commission,  
 409 board, authority, council, committee, or department of the  
 410 executive branch of state government; a state attorney, public  
 411 defender, criminal conflict and civil regional counsel, capital  
 412 collateral regional counsel, and the Justice Administrative  
 413 Commission; the Public Service Commission; and any part of the  
 414 judicial branch of state government.

415 (i) In lieu of posting in the contract tracking system  
 416 administered by the Chief Financial Officer, the Department of  
 417 Legal Affairs and the Department of Agriculture and Consumer  
 418 Services may post the information described in paragraphs (a)  
 419 through (c) to its own agency-managed website. The data posted  
 420 on the agency-managed website must be downloadable in a format



ENROLLED

HB 5401, Engrossed 1

2013 Legislature

421 that allows offline analysis.

422 (j) The requirement under paragraphs (a) through (c) that  
 423 each agency post information and documentation relating to  
 424 contracts on the tracking system does not apply to any record  
 425 that could reveal attorney work product or strategy.

426 Section 2. User Experience Task Force.-

427 (1) The User Experience Task Force is created to develop  
 428 and recommend a design for consolidating existing state-managed  
 429 websites that provide public access to state operational and  
 430 fiscal information into a single website. If necessary, the  
 431 recommendation may include a complete redesign of data  
 432 submission and inclusion.

433 (2) The task force shall be comprised of four members:

434 (a) One member designated by the Governor.

435 (b) One member designated by the Chief Financial Officer.

436 (c) One member designated by the President of the Senate.

437 (d) One member designated by the Speaker of the House of

438 Representatives.

439 (3) The task force shall elect a chair from among its  
 440 members.

441 (4) The Governor, the Chief Financial Officer, the  
 442 President of the Senate, and the Speaker of the House of  
 443 Representatives shall assign staff to assist the task force in  
 444 performing its duties.

445 (5) By October 1, 2013, the task force shall submit a work  
 446 plan to the Governor, the Chief Financial Officer, the President  
 447 of the Senate, and the Speaker of the House of Representatives.  
 448 The work plan must include, but is not limited to, a review of:





ENROLLED

HB 5401, Engrossed 1

2013 Legislature

449           (a) All relevant state-managed websites.  
 450           (b) Options for reducing the number of websites without  
 451 losing detailed data.  
 452           (c) Options for linking expenditure data with related  
 453 invoices and contracts.  
 454           (6) By March 1, 2014, the task force shall submit its  
 455 complete recommendation to the Governor, the Chief Financial  
 456 Officer, the President of the Senate, and the Speaker of the  
 457 House of Representatives. The recommended design must provide an  
 458 intuitive and cohesive user experience that allows users to move  
 459 easily between varied types of related data. The recommendation  
 460 must also include a cost estimate for implementation of the  
 461 design.  
 462           (7) This section expires June 30, 2014.  
 463           Section 3. This act shall take effect July 1, 2013.



**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/HB 1145	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	State Affairs Committee; Government Operations Appropriations Subcommittee; Government Operations Subcommittee; La Rosa Subcommittee; La Rosa (CS/CS/SB 1074)	115 Y's	0 N's
<b>COMPANION BILLS:</b>		<b>GOVERNOR'S ACTION:</b>	Approved

---

**SUMMARY ANALYSIS**

CS/CS/CS/HB 1145 passed the House on April 24, 2013, and subsequently passed the Senate on April 26, 2013. The bill addresses various inventory, sales, lease, and reporting requirements applicable to state-owned and state-leased property.

The bill:

- Revises reporting requirements applicable to the annual inventory of state-owned facilities, and provides and revises various reporting and notice requirements applicable to surplus property.
- Requires the Division of State Lands in the Department of Environmental Protection to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of certain surplus lands.
- Requires a state agency, state university, or Florida College System institution to submit a plan for the proposed use of a building or parcel determined to be surplus that the entity seeks to lease.
- Requires the Board of Trustees of the Internal Improvement Trust Fund to adopt rules.
- Defines terms.
- Modifies requirements applicable to notices relating to the occupation of state-owned and state-leased facilities.
- Authorizes the Department of Management Services (DMS) to direct certain agencies to occupy or relocate to space in any state-owned office building.
- Requires DMS to include the strategic leasing plan in the annual master leasing report, and to submit the report by October 1 of each year.
- Requires the leasing report to contain recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.
- Subjects the Department of Transportation to DMS' leasing procedures as established by rule.
- Removes the ability of certain agencies to negotiate a replacement lease if that agency determines it is in its best interest to remain in its current space, and authorizes DMS to make the determination.
- Authorizes DMS to approve the emergency acquisition of space without competitive bids under certain conditions.
- Revises energy performance analysis requirements.

The bill is likely to have a minimal fiscal impact on state agencies. It is anticipated that the provisions of the bill will be handled within existing agency resources.

The bill was approved by the Governor on June 7, 2013, ch. 2013-152, L.O.F., and will become effective on July 1, 2013, except as otherwise provided by the act.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1145z1.GVOPS

DATE: June 10, 2013

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Inventory of Facilities and Real Property**

##### Background

##### *State-owned and State-leased Facilities*

Current law requires the Department of Management Services (DMS) to develop and maintain an automated inventory of all facilities<sup>1</sup> owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. DMS must use the data for determining maintenance needs and conducting strategic analyses.<sup>2</sup>

For assessing needed repairs and renovations of facilities, DMS must update its inventory with condition information for facilities of 3,000 square feet or more, and the inventories must record acquisitions of new facilities and significant changes in existing facilities as they occur. DMS must provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch.<sup>3</sup>

Each agency and the judicial branch must report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility must be updated at least every five years.<sup>4</sup> DMS must publish a complete report detailing this inventory every three years, and must publish an annual update of the report.<sup>5</sup>

##### *State-owned Real Property*

In 2010, the Legislature required the Department of Environmental Protection (DEP) to create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district.<sup>6</sup> The comprehensive state-owned real property system must allow the Board of Trustees of the Internal Improvement Trust Fund to perform its statutory responsibilities and the Division of State Lands in DEP to conduct strategic analyses and prepare annual valuation and disposition analyses and recommendations for all state real property assets.<sup>7</sup>

The division must annually submit a report that lists the state-owned real property recommended for disposition, including a report by DMS of surplus buildings recommended for disposition. The report must include specific information that documents the valuation and analysis process used to identify the specific state-owned real property recommended for disposition.<sup>8</sup>

DEP and DMS are implementing the Florida State Owned Lands and Records Information System, designed with two main components:

- Facility Information Tracking System (FITS); and
- Lands Information Tracking System.

---

<sup>1</sup> Section 216.0152(1), F.S., defines the term "facility" to mean buildings, structures, and building systems, but does not include transportation facilities of the state transportation system.

<sup>2</sup> Section 216.0152(1), F.S.

<sup>3</sup> Section 216.0152(2), F.S.

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

<sup>5</sup> Section 216.0152(3), F.S.

<sup>6</sup> Chapter 2010-280, L.O.F.; codified as s. 216.0153, F.S.

<sup>7</sup> Section 216.0153(1), F.S.

<sup>8</sup> Section 216.0153(3), F.S.

The FITS component is now operational and is designed to give agencies an online interface to record data on state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.<sup>9</sup>

#### Effect of the Bill

The bill revises s. 216.0152, F.S., to require:

- By July 1 of each year, the Board of Governors of the State University System and DEP to provide to DMS an inventory of all state university and community college facilities.
- By October 1 of each year, DMS and DEP to publish a complete report of the inventory of all state-owned facilities, including the inventories of the Board of Governors, the Department of Education, and the Department of Transportation, excluding the transportation facilities of the state transportation system. The report must include the report on state-owned real property recommended for disposition.

The bill clarifies that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund.

### **Surplus of State-Owned Lands**

#### Background

The Board of Trustees of the Internal Improvement Trust Fund (board) is authorized and directed to administer all state-owned lands. The board is responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to ensure maximum benefit and use.<sup>10</sup>

The board must determine which lands, the title to which is vested in the board, may be surplus.<sup>11</sup> The sale price of land determined to be surplus must be determined by DEP's Division of State Lands (division) and must take into consideration an appraisal if the property if the estimated value is over \$100,000. At the discretion of the division, a second appraisal may be required if the value is determined to be equal or greater than \$1 million. All property less than \$100,000 may be valued by a comparable sales analysis or a broker's opinion of value.<sup>12</sup>

Before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and community colleges, with a priority consideration given to state universities and community colleges. Once a state agency, county, or local government has requested the use of surplus property, it has six months to secure the property under lease.<sup>13</sup>

#### Effect of the Bill

The bill requires the division to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of lands determined to be surplus if such property has an estimated value of \$500,000 or less, instead of \$100,000 or less. It permits the division to obtain a second appraisal regardless of the value of the surplus property.

---

<sup>9</sup> Information available at:

[http://www.dms.myflorida.com/business\\_operations/real\\_estate\\_development\\_management/facilities\\_management/facilities\\_inventory\\_tracking\\_system\\_fits](http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/facilities_inventory_tracking_system_fits) (last visited March 23, 2013).

<sup>10</sup> Section 253.03(7)(a), F.S.

<sup>11</sup> For conservation lands, the board must make a determination that the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board must make a determination that the lands are no longer needed and may dispose of them by an affirmative vote of at least three members. Section 253.034(6), F.S.

<sup>12</sup> Section 253.034(6)(g), F.S.

<sup>13</sup> Section 253.03(15), F.S.

The bill requires parcels with a market value of over \$500,000 to initially be offered for sale by competitive bid. Parcels that are not sold by competitive bid, and parcels with a market value of \$500,000 or less, may be sold by any reasonable means, including through real estate services, auction, negotiated direct sales, or other appropriate services.

The bill decreases the time a state agency, county, or local government has to secure surplus property under lease from six months to 90 days after being notified that it may use such property.

Before a building or parcel of land is offered for lease or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and Florida College System institutions. Within 60 days after the offer of lease of a surplus building or parcel, a state university or Florida College System institution that requests the lease must offer a plan for review and approval by the board regarding the intended use, including future use, of the building or parcel of land before approval of the lease. Within 60 days after the offer of lease of a surplus building or parcel, a state agency that requests the lease must offer a plan for review and approval by the board. The state agency plan must, at a minimum, include the proposed use, the estimated cost of renovation, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot otherwise be met, and other criteria developed by board rule.

The plan must be submitted for review and approval by the board regarding the intended use of the building or parcel of land before approval of a lease. The board or its designee must compare the estimated value of the building or parcel to any submitted plan for proposed use of the building or parcel to determine if the lease or sale is in the best interest of the state.

The bill requires the board to adopt rules to implement s. 253.034, F.S.

## **State Agency Leasing**

### Background

#### *Leasing and DMS Authority*

Current law provides the statutory authority for DMS to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space.<sup>14</sup>

A state agency may not lease a building unless prior approval of the lease conditions and the need is provided by DMS.<sup>15</sup> For a lease of less than 5,000 square feet, a state agency must notify DMS at least 30 days before the execution of the lease. DMS must review the lease and determine whether suitable space is available in a state-owned building located in the same geographic region.<sup>16</sup>

Except for emergency space needs,<sup>17</sup> no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.<sup>18</sup> While DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency.

Current law requires DMS to promulgate rules to provide procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings;

---

<sup>14</sup> See ss. 255.248-255.25, F.S.

<sup>15</sup> Section 255.25(2)(a), F.S.

<sup>16</sup> Section 255.25(2)(b), F.S.

<sup>17</sup> Section 255.25(10), F.S., provides that DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.

<sup>18</sup> Section 255.25(3)(a), F.S. The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by s. 3, chapter 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, chapter 99-399, L.O.F.

evaluating the proposals received; exempting from competitive bidding requirements any lease for which the purpose is the provision of care and living space for persons or emergency space needs as; and securing at least three documented quotes for a lease that is not required to be competitively bid.<sup>19</sup>

In 2007, the Legislature granted DMS the authority to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities and required DMS to submit an annual master leasing report to the Legislature. The report must contain analyses and other information on the status of state-owned facilities and private sector leased space. To assist DMS in preparing the report, state agencies must provide projected requirements for leased space based on active and planned full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation.<sup>20</sup>

#### *Legislative Direction on Leased Space*

In 2009, the Legislature directed DMS to compile a list of all state-owned surplus real property that has a value greater than \$1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, identify current contracts for leased office space in which the leased space is not fully used or occupied, and include a plan for contract renegotiation or subletting unoccupied space.<sup>21</sup> DMS subsequently reported<sup>22</sup> the following regarding space leased by state agencies:

- There are 566 private leases with 1.3 million square feet in potential excess space.
- More than 500,000 square feet of potential excess space is in Leon County.
- There are 276 leases with potential excess space with terms of 24 months or less.
- Eighty percent of the leases have less than 2,500 square feet of potential excess space.

In 2011, DMS was directed to use the services of a tenant broker to renegotiate all leases over 150,000 square feet,<sup>23</sup> and report to the Legislative Budget Commission the projected savings, implementation costs, and recommendations for leases to terminate.

#### *Energy Performance and Reporting*

The "Florida Energy Conservation and Sustainable Buildings Act"<sup>24</sup> creates duties for agencies and DMS with regards to energy efficiency in buildings leased and owned by the state.

Section 255.252(4), F.S., encourages agencies to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state and the vendor. Such energy contracts may be funded from the operating budget.

Section 255.254, F.S., requires DMS to evaluate life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities. Agencies must perform an energy performance analysis for all leased facilities larger than 5,000 square feet. The energy performance analysis must project forward through the term of the proposed lease the annual energy consumption and cost of the major energy-consuming systems and the analysis must be based on actual expenses. Potential leases may only be made where there is a showing that the energy costs incurred by the state are minimal compared to available like facilities. A lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to DMS by the owner of the building.

---

<sup>19</sup> Section 255.249(4), F.S.

<sup>20</sup> Section 255.249(3), F.S.

<sup>21</sup> Chapter 2009-15, L.O.F.

<sup>22</sup> DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.

<sup>23</sup> Section 76, Chapter 2011-47, L.O.F.

<sup>24</sup> Sections 255.251-255.2575, F.S.

Section 255.257, F.S., requires all agencies to collect energy consumption and cost data for all state-owned and metered state-leased facilities of 5,000 square feet and larger, and report all such data to DMS.

#### *Consultants' Competitive Negotiation Act*

The Consultants' Competitive Negotiation Act (CCNA)<sup>25</sup> is used by public entities for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services in construction, rehabilitation, or renovation activities. The CCNA must be used when professional services on a project for which the basic cost of construction, as estimated by the agency, will exceed \$325,000, or for planning or study activity where compensation exceeds \$35,000. The CCNA process generally involves a competitive selection process, in which compensation is not considered, followed by a competitive negotiation process, during which compensation is determined.

#### Effect of the Bill

As used in ss. 255.248-255.25, F.S., the bill defines the terms:

- "Managing agency" as an agency that serves as the title entity or that leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building; and
- "Tenant broker" as a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

The bill requires an agency that intends to terminate a lease of privately owned space before the expiration of its base term to notify DMS 90 days before termination.

DMS may direct a state agency to occupy or relocate to space in any state-owned office building within existing appropriation, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by DEP. The Cabinet member agencies are exempt from this authority, but may elect to comply.

The bill requires DMS to include the strategic leasing plan in the annual master leasing report, and directs DMS to submit the report to the Executive Office of the Governor and the Legislature by October 1 of each year instead of September 15. DMS must include in the leasing report recommendations for using capital improvement funds to consolidate state agencies into state-owned office buildings.

For purposes of complying with the annual reporting requirements in current law, the bill allows a state agency to use the services of a tenant broker when preparing information that must be furnished to DMS such as agency programs that affect the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, and business case analyses related to consolidation plans by an agency.

The bill also requires a title entity or managing agency to report to DMS any vacant or underutilized space for all state-owned office buildings and any restrictions that apply to any other agency occupying the vacant or underutilized space. The title entity or managing agency must notify DMS of any significant changes to its occupancy for the coming fiscal year. The Cabinet member agencies are exempt from this requirement, but may elect to comply.

A state agency must notify DMS at least 90 days before the execution of a lease of less than 5,000 square feet, including a lease for nominal or no consideration. DMS must determine if suitable space is available in a state-owned or state-leased building in the same geographic region. If DMS determines that the lease is not in the best interests of the state, it must notify in writing the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

---

<sup>25</sup> Section 287.055, F.S.



The bill subjects the Department of Transportation to DMS's leasing procedures as established by rule.

The bill removes the authorization for an agency to negotiate a replacement lease with the lessor if that agency determines that it is in its best interest to remain in the space it currently occupies. The Cabinet member agencies are exempt and retain the authority to negotiate a replacement lease as specified in current law. For other state agencies, DMS may approve a replacement lease for an agency to remain in the space it currently occupies if it is, in the judgment of DMS, in the best interest of the state.

The bill requires a lessor to provide DMS with documentation that a facility meets all uniform firesafety standards of the State Fire Marshal, and prohibits the state from taking occupancy without the Division of the State Fire Marshal's final approval.

The bill provides that s. 255.25, F.S., applies to leases for nominal or no consideration.

The bill authorizes DMS to approve emergency acquisition of space without competitive bids if an agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action, and if the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no other agency-controlled space is available to meet this emergency need. Such lease may not exceed 11 months.

The bill provides that a vendor for an energy contract may be selected in accordance with s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act.

The bill requires that an energy performance analysis that calculates the total annual energy consumption and energy costs be performed for leased facilities larger than 2,000 square feet. The analysis also must compare the energy performance of the proposed lease to similar facilities. A lease may not be finalized until the energy performance analysis has been approved by DMS. The bill removes the requirement of a showing that the energy costs incurred by the state are minimal compared to available like facilities. The bill repeals the requirement that a lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to DMS by the owner of the building.

The bill requires each state agency to collect data on energy consumption and cost for each state-owned and state-leased facility.

#### **Effective Date**

The bill provides an effective date of July 1, 2013, except as otherwise expressly provided in the bill.

## **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:

None.

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

None.

**D. FISCAL COMMENTS:**

This bill may increase the workload on state agencies due to the various reporting requirements. However, this increase in workload is expected to be minimal and can be handled within existing agency resources. The bill allows DMS to direct agencies to occupy or relocate to state-owned space, but this must be done within agencies' existing appropriations.

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

1  
2 An act relating to state-owned or state-leased space;  
3 amending s. 216.0152, F.S.; revising provisions  
4 relating to the update of an inventory of certain  
5 facilities needing repairs or innovation maintained by  
6 the Department of Management Services; revising  
7 provisions relating to a report detailing an inventory  
8 of state-owned facilities; amending s. 253.031, F.S.;  
9 clarifying that deeds may be signed by agents of the  
10 Board of Trustees of the Internal Improvement Trust  
11 Fund; amending s. 253.034, F.S.; revising provisions  
12 relating to decisions by the board to surplus lands;  
13 revising the valuation of lands that are subject to  
14 certain requirements; requiring a state agency to  
15 submit a plan if a building or parcel is offered for  
16 use to the agency; requiring the board of trustees to  
17 adopt rules; amending s. 255.248, F.S.; defining the  
18 terms "managing agency" and "tenant broker"; amending  
19 s. 255.249, F.S.; revising the responsibilities of the  
20 Department of Management Services with respect to  
21 state-owned buildings; prohibiting a state agency from  
22 leasing space in a private building under certain  
23 circumstances; requiring an agency to notify the  
24 department of an early termination of a lease within a  
25 certain timeframe; authorizing the department to  
26 direct state agencies to occupy space in a state-owned  
27 building; revising the contents of the master leasing  
28 report; authorizing state agencies to use the services

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

29 of a tenant broker to provide certain information to  
 30 the department; requiring the title entity or managing  
 31 agency to report any vacant or underutilized space to  
 32 the department; amending s. 255.25, F.S.; revising  
 33 requirements for the construction or lease of certain  
 34 building space; revising an exemption that allows  
 35 certain agencies to negotiate a replacement lease  
 36 under certain circumstances; amending s. 255.252,  
 37 F.S.; specifying that a vendor for certain energy  
 38 efficiency contracts must be selected in accordance  
 39 with state procurement requirements; amending s.  
 40 255.254, F.S.; revising provisions relating to  
 41 requirements for energy performance analysis for  
 42 certain buildings; amending 255.257, F.S.; requiring  
 43 all state-owned facilities to report energy  
 44 consumption and cost data; amending ss. 110.171 and  
 45 985.682, F.S.; conforming cross-references; providing  
 46 effective dates.

47  
 48 Be It Enacted by the Legislature of the State of Florida:

49  
 50 Section 1. Section 216.0152, Florida Statutes, is amended  
 51 to read:

52 216.0152 Inventory of state-owned facilities or state-  
 53 occupied facilities.-

54 (1) The Department of Management Services shall develop  
 55 and maintain an automated inventory of all facilities owned,  
 56 leased, rented, or otherwise occupied or maintained by a state

ENROLLED  
 CS/CS/CS/HB 1145

2013 Legislature

57 | ~~any agency of the state,~~ the judicial branch, or the water  
 58 | management districts. The inventory data shall be provided  
 59 | annually by July 1 by the owning or operating agency in a format  
 60 | prescribed by the department and must ~~shall~~ include the  
 61 | location, occupying agency, ownership, size, condition  
 62 | assessment, valuations, operating costs, maintenance record,  
 63 | age, parking and employee facilities, building uses, full-time  
 64 | equivalent occupancy, known restrictions or historic  
 65 | designations, leases or subleases, associated revenues, and  
 66 | other information as required by ~~in a~~ rule adopted by the  
 67 | department. The department shall use this data for determining  
 68 | maintenance needs, conducting strategic analyses, including, but  
 69 | not limited to, analyzing and identifying candidates for  
 70 | surplus, valuation, and disposition, and life-cycle cost  
 71 | evaluations of the facility. ~~Inventory data shall be provided to~~  
 72 | ~~the department on or before July 1 of each year by the owning or~~  
 73 | ~~operating agency in a format prescribed by the department.~~ The  
 74 | inventory need not include a condition assessment or maintenance  
 75 | record of facilities not owned by a state agency, the judicial  
 76 | branch, or a water management district. The term "facility," as  
 77 | used in this section, means buildings, structures, and building  
 78 | systems, but does not include transportation facilities of the  
 79 | state transportation system.

80 |       (a) For reporting purposes, the Department of  
 81 | Transportation shall develop and maintain an inventory of the  
 82 | transportation facilities of the state transportation system.  
 83 | The Department of Transportation shall also identify and dispose  
 84 | of surplus property pursuant to ss. 337.25 and 339.04.

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

85           **(b)** The Board of Governors of the State University System  
86 and the Department of Education, respectively, shall develop and  
87 maintain an inventory, in the manner prescribed by the  
88 Department of Management Services, of all state university and  
89 community college facilities and, by July 1 of each year,  
90 provide this inventory shall make the data available in a format  
91 acceptable to the Department of Management Services. ~~By March~~  
92 ~~15, 2011, the department shall adopt rules pursuant to ss.~~  
93 ~~120.536 and 120.54 to administer this section.~~

94           ~~(2) For the purpose of assessing needed repairs and~~  
95 ~~renovations of facilities, the Department of Management Services~~  
96 ~~shall update its inventory with condition information for~~  
97 ~~facilities of 3,000 square feet or more and cause to be updated~~  
98 ~~the other inventories required by subsection (1) at least once~~  
99 ~~every 5 years, but the inventories shall record acquisitions of~~  
100 ~~new facilities and significant changes in existing facilities as~~  
101 ~~they occur. The Department of Management Services shall provide~~  
102 ~~each agency and the judicial branch with the most recent~~  
103 ~~inventory applicable to that agency or to the judicial branch.~~  
104 ~~Each agency and the judicial branch shall, in the manner~~  
105 ~~prescribed by the Department of Management Services, report~~  
106 ~~significant changes in the inventory as they occur. Items~~  
107 ~~relating to the condition and life-cycle cost of a facility~~  
108 ~~shall be updated at least every 5 years.~~

109           **(2)(3)** The Department of Management Services and the  
110 Department of Environmental Protection shall, by October 1 of  
111 each year, every 3 years, publish a complete report detailing  
112 the ~~this~~ inventory of all state-owned facilities, including the

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

113 | inventories of the Board of Governors of the State University  
 114 | System, the Department of Education, and the Department of  
 115 | Transportation, excluding the transportation facilities of the  
 116 | state transportation system. The annual report of state-owned  
 117 | real property recommended for disposition required under s.  
 118 | 216.0153 must be included in this report and shall publish an  
 119 | annual update of the report. The department shall furnish the  
 120 | updated report to the Executive Office of the Governor and the  
 121 | Legislature no later than September 15 of each year.

122 |       (3) The Department of Management Services shall adopt  
 123 | rules to administer this section.

124 |       Section 2. Subsection (8) of section 253.031, Florida  
 125 | Statutes, is amended to read:

126 |       253.031 Land office; custody of documents concerning land;  
 127 | moneys; plats.—

128 |       (8) The board shall keep a suitable seal of office. An  
 129 | impression of this seal shall be made upon the deeds conveying  
 130 | lands sold by the state, by the Board of Education, and by the  
 131 | Board of Trustees of the Internal Improvement Trust Fund of this  
 132 | state; and all such deeds shall be ~~personally~~ signed by the  
 133 | ~~officers or trustees~~ or their agents as authorized under s.  
 134 | 253.431, making the same and impressed with the ~~said~~ seal and  
 135 | are ~~shall be~~ operative and valid without witnesses to the  
 136 | execution thereof; and the impression of such seal on any such  
 137 | deeds ~~entitles shall entitle~~ the same to record and to be  
 138 | received in evidence in all courts.

139 |       Section 3. Subsections (6) and (15) of section 253.034,  
 140 | Florida Statutes, are amended to read:

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

141 253.034 State-owned lands; uses.-

142 (6) The Board of Trustees of the Internal Improvement  
143 Trust Fund shall determine which lands, the title to which is  
144 vested in the board, may be surplused. For conservation lands,  
145 the board shall determine whether ~~make a determination that~~ the  
146 lands are no longer needed for conservation purposes and may  
147 dispose of them by an affirmative vote of at least three  
148 members. In the case of a land exchange involving the  
149 disposition of conservation lands, the board must determine by  
150 an affirmative vote of at least three members that the exchange  
151 will result in a net positive conservation benefit. For all  
152 other lands, the board shall determine whether ~~make a~~  
153 ~~determination that~~ the lands are no longer needed and may  
154 dispose of them by an affirmative vote of at least three  
155 members.

156 (a) For the purposes of this subsection, all lands  
157 acquired by the state before ~~prior to~~ July 1, 1999, using  
158 proceeds from ~~the~~ Preservation 2000 bonds, the Conservation and  
159 Recreation Lands Trust Fund, the Water Management Lands Trust  
160 Fund, Environmentally Endangered Lands Program, and the Save Our  
161 Coast Program and titled to the board, ~~which lands~~ are  
162 identified as core parcels or within original project boundaries  
163 are, ~~shall be~~ deemed to have been acquired for conservation  
164 purposes.

165 (b) For any lands purchased by the state on or after July  
166 1, 1999, before ~~a determination shall be made by the board prior~~  
167 ~~to~~ acquisition, the board must determine which ~~as to those~~  
168 parcels must ~~that shall~~ be designated as having been acquired



ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

169 | for conservation purposes. ~~No~~ Lands acquired for use by the  
 170 | Department of Corrections, the Department of Management Services  
 171 | for use as state offices, the Department of Transportation,  
 172 | except those specifically managed for conservation or recreation  
 173 | purposes, or the State University System or the Florida  
 174 | Community College System may not ~~shall~~ be designated as having  
 175 | been purchased for conservation purposes.

176 |       (c) At least every 10 years, as a component of each land  
 177 | management plan or land use plan and in a form and manner  
 178 | prescribed by rule by the board, each manager shall evaluate and  
 179 | indicate to the board those lands that are not being used for  
 180 | the purpose for which they were originally leased. For  
 181 | conservation lands, the council shall review and ~~shall~~  
 182 | recommend to the board whether such lands should be retained in public  
 183 | ownership or disposed of by the board. For nonconservation  
 184 | lands, the division shall review such lands and ~~shall~~  
 185 | recommend to the board whether such lands should be retained in public  
 186 | ownership or disposed of by the board.

187 |       (d) Lands owned by the board which are not actively  
 188 | managed by any state agency or for which a land management plan  
 189 | has not been completed pursuant to subsection (5) must ~~shall~~ be  
 190 | reviewed by the council or its successor for its recommendation  
 191 | as to whether such lands should be disposed of by the board.

192 |       (e) Before ~~Prior to~~ any decision by the board to surplus  
 193 | lands, the Acquisition and Restoration Council shall review and  
 194 | make recommendations to the board concerning the request for  
 195 | surplus. The council shall determine whether the request for  
 196 | surplus is compatible with the resource values of and

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

197 management objectives for such lands.

198 (f) In reviewing lands owned by the board, the council  
199 shall consider whether such lands would be more appropriately  
200 owned or managed by the county or other unit of local government  
201 in which the land is located. The council shall recommend to the  
202 board whether a sale, lease, or other conveyance to a local  
203 government would be in the best interests of the state and local  
204 government. The provisions of this paragraph in no way limit the  
205 provisions of ss. 253.111 and 253.115. Such lands shall be  
206 offered to the state, county, or local government for a period  
207 of 45 days. Permittable uses for such surplus lands may include  
208 public schools; public libraries; fire or law enforcement  
209 substations; governmental, judicial, or recreational centers;  
210 and affordable housing meeting the criteria of s. 420.0004(3).  
211 County or local government requests for surplus lands shall be  
212 expedited throughout the surplusing process. If the county or  
213 local government does not elect to purchase such lands in  
214 accordance with s. 253.111, ~~then~~ any surplusing determination  
215 involving other governmental agencies shall be made when ~~upon~~  
216 the board decides ~~deciding~~ the best public use of the lands.  
217 Surplus properties in which governmental agencies have expressed  
218 no interest must ~~shall~~ then be available for sale on the private  
219 market.

220 (g) ~~1-~~ The sale price of lands determined to be surplus  
221 pursuant to this subsection and s. 253.82 shall be determined by  
222 the division, which shall consider ~~and shall take into~~  
223 ~~consideration~~ an appraisal of the property, or, if ~~when~~ the  
224 estimated value of the land is \$500,000 or less ~~than \$100,000~~, a

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

225 comparable sales analysis or a broker's opinion of value. ~~If the~~  
226 ~~appraisal referenced in this paragraph yields a value equal to~~  
227 ~~or greater than \$1 million,~~ The division, ~~in its sole~~  
228 ~~discretion,~~ may require a second appraisal. The individual or  
229 entity that requests ~~requesting~~ to purchase the surplus parcel  
230 shall pay all ~~appraisal~~ costs associated with determining the  
231 property's value, if any.

232 1.2.a. A written valuation of land determined to be  
233 surplus pursuant to this subsection and s. 253.82, and related  
234 documents used to form the valuation or which pertain to the  
235 valuation, are confidential and exempt from s. 119.07(1) and s.  
236 24(a), Art. I of the State Constitution.

237 a.b. The exemption expires 2 weeks before the contract or  
238 agreement regarding the purchase, exchange, or disposal of the  
239 surplus land is first considered for approval by the board.

240 b.e. Before ~~Prior to~~ expiration of the exemption, the  
241 division may disclose confidential and exempt appraisals,  
242 valuations, or valuation information regarding surplus land:

243 (I) During negotiations for the sale or exchange of the  
244 land.

245 (II) During the marketing effort or bidding process  
246 associated with the sale, disposal, or exchange of the land to  
247 facilitate closure of such effort or process.

248 (III) When the passage of time has made the conclusions of  
249 value invalid.

250 (IV) When negotiations or marketing efforts concerning the  
251 land are concluded.

252 2.3. A unit of government that acquires title to lands

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

253 hereunder for less than appraised value may not sell or transfer  
254 title to all or any portion of the lands to any private owner  
255 for ~~a period of~~ 10 years. Any unit of government seeking to  
256 transfer or sell lands pursuant to this paragraph must ~~shall~~  
257 first allow the board of trustees to reacquire such lands for  
258 the price at which the board sold such lands.

259 (h) Parcels with a market value over \$500,000 must be  
260 initially offered for sale by competitive bid. The division may  
261 use agents, as authorized by s. 253.431, for this process. Any  
262 parcels unsuccessfully offered for sale by competitive bid, and  
263 parcels with a market value of \$500,000 or less, may be sold by  
264 any reasonable means, including procuring real estate services,  
265 open or exclusive listings, competitive bid, auction, negotiated  
266 direct sales, or other appropriate services, to facilitate the  
267 sale.

268 (i) ~~(h)~~ After reviewing the recommendations of the council,  
269 the board shall determine whether lands identified for surplus  
270 are to be held for other public purposes or ~~whether such lands~~  
271 are no longer needed. The board may require an agency to release  
272 its interest in such lands. A state ~~For an~~ agency, county, or  
273 local government that has requested the use of a property that  
274 was to be declared as surplus, ~~said agency~~ must secure ~~have~~ the  
275 property under lease within 90 days after being notified that it  
276 may use such property ~~6 months of the date of expiration of the~~  
277 ~~notice provisions required under this subsection and s. 253.111.~~

278 (j) ~~(i)~~ Requests for surplusizing may be made by any public  
279 or private entity or person. All requests shall be submitted to  
280 the lead managing agency for review and recommendation to the

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

281 council or its successor. Lead managing agencies ~~shall~~ have 90  
282 days to review such requests and make recommendations. Any  
283 surplus requests that have not been acted upon within the 90-  
284 day time period shall be immediately scheduled for hearing at  
285 the next regularly scheduled meeting of the council or its  
286 successor. Requests for surplus pursuant to this paragraph  
287 are ~~shall~~ not ~~be~~ required to be offered to local or state  
288 governments as provided in paragraph (f).

289 (k) ~~(j)~~ Proceeds from any sale of surplus lands pursuant to  
290 this subsection shall be deposited into the fund from which such  
291 lands were acquired. However, if the fund from which the lands  
292 were originally acquired no longer exists, such proceeds shall  
293 be deposited into an appropriate account to be used for land  
294 management by the lead managing agency assigned the lands before  
295 ~~prior to~~ the lands were ~~being~~ declared surplus. Funds received  
296 from the sale of surplus nonconservation lands, or lands that  
297 were acquired by gift, by donation, or for no consideration,  
298 shall be deposited into the Internal Improvement Trust Fund.

299 (l) ~~(k)~~ Notwithstanding ~~the provisions of~~ this subsection,  
300 ~~no~~ such disposition of land may not ~~shall~~ be made if it ~~such~~  
301 ~~disposition~~ would have the effect of causing all or any portion  
302 of the interest on any revenue bonds issued to lose the  
303 exclusion from gross income for federal income tax purposes.

304 (m) ~~(l)~~ The sale of filled, formerly submerged land that  
305 does not exceed 5 acres in area is not subject to review by the  
306 council or its successor.

307 (n) ~~(m)~~ The board may adopt rules to administer ~~implement~~  
308 ~~the provisions of~~ this section, which may include procedures for

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

309 administering surplus land requests and criteria for when the  
310 division may approve requests to surplus nonconservation lands  
311 on behalf of the board.

312 (15) Before a building or parcel of land is offered for  
313 lease, ~~sublease,~~ or sale to a local or federal unit of  
314 government or a private party, it shall first be offered for  
315 lease to state agencies, state universities, and Florida College  
316 System institutions ~~community colleges,~~ with priority  
317 consideration given to state universities and Florida College  
318 System institutions ~~community colleges.~~ Within 60 days after the  
319 offer for lease of a surplus building or parcel, a state  
320 university or Florida College System institution that requests  
321 the lease ~~community college~~ must submit a plan for review and  
322 approval by the Board of Trustees of the Internal Improvement  
323 Trust Fund regarding the intended use, including future use, of  
324 the building or parcel of land before approval of a lease.  
325 Within 60 days after the offer for lease of a surplus building  
326 or parcel, a state agency that requests the lease of such  
327 facility or parcel must submit a plan for review and approval by  
328 the board of trustees regarding the intended use. The state  
329 agency plan must, at a minimum, include the proposed use of the  
330 facility or parcel, the estimated cost of renovation, a capital  
331 improvement plan for the building, evidence that the building or  
332 parcel meets an existing need that cannot otherwise be met, and  
333 other criteria developed by rule by the board of trustees. The  
334 board or its designee shall compare the estimated value of the  
335 building or parcel to any submitted business plan to determine  
336 if the lease or sale is in the best interest of the state. The

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

337 board of trustees shall adopt rules pursuant to chapter 120 for  
338 the implementation of this section.

339 Section 4. Section 255.248, Florida Statutes, is amended  
340 to read:

341 255.248 Definitions; ~~ss. 255.249 and 255.25.~~—As used in  
342 this section and ss. 255.249–255.25 ~~255.249 and 255.25~~, the  
343 term:

344 (1) "Best leasing value" means the highest overall value  
345 to the state based on objective factors that include, but are  
346 not limited to, rental rate, renewal rate, operational and  
347 maintenance costs, tenant-improvement allowance, location, lease  
348 term, condition of facility, landlord responsibility, amenities,  
349 and parking.

350 (2) "Competitive solicitation" means an invitation to bid,  
351 a request for proposals, or an invitation to negotiate.

352 (3) "Department" means the Department of Management  
353 Services.

354 (4) "Managing agency" means an agency that serves as the  
355 title entity or that leases property from the Board of Trustees  
356 of the Internal Improvement Trust Fund for the operation and  
357 maintenance of a state-owned office building.

358 ~~(5)~~(4) "Privately owned building" means any building not  
359 owned by a governmental agency.

360 ~~(6)~~(5) "Responsible lessor" means a lessor that ~~who~~ has  
361 the capability in all respects to fully perform the contract  
362 requirements and the integrity and reliability that will assure  
363 good faith performance.

364 ~~(7)~~(6) "Responsive bid," "responsive proposal," or

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

365 "responsive reply" means a bid or proposal, or reply submitted  
366 by a responsive and responsible lessor, which conforms in all  
367 material respects to the solicitation.

368 (8)~~(7)~~ "Responsive lessor" means a lessor that has  
369 submitted a bid, proposal, or reply that conforms in all  
370 material respects to the solicitation.

371 (9)~~(8)~~ "State-owned office building" means any building  
372 whose title to which is vested in the state and which is used by  
373 one or more executive agencies predominantly for administrative  
374 direction and support functions. The ~~This~~ term excludes:

375 (a) District or area offices established for field  
376 operations where law enforcement, military, inspections, road  
377 operations, or tourist welcoming functions are performed.

378 (b) All educational facilities and institutions under the  
379 supervision of the Department of Education.

380 (c) All custodial facilities and institutions used  
381 primarily for the care, custody, or treatment of wards of the  
382 state.

383 (d) Buildings or spaces used for legislative activities.

384 (e) Buildings purchased or constructed from agricultural  
385 or citrus trust funds.

386 (10) "Tenant broker" means a private real estate broker or  
387 brokerage firm licensed to do business in this state and under  
388 contract with the department to provide real estate transaction,  
389 portfolio management, and strategic planning services for state  
390 agencies.

391 Section 5. Section 255.249, Florida Statutes, is amended  
392 to read:



ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

393 255.249 Department of Management Services; responsibility;  
394 department rules.—

395 (1) The department shall have responsibility and authority  
396 for the operation, custodial care, and preventive maintenance,  
397 repair, alteration, modification, and allocation of space for ~~of~~  
398 all buildings in the Florida Facilities Pool and adjacent ~~the~~  
399 grounds ~~located adjacent thereto~~.

400 (2) A state agency may not lease space in a private  
401 building that is to be constructed for state use without first  
402 obtaining prior approval of the architectural design and  
403 preliminary construction from the department.

404 (3)(2) The department shall require a ~~any~~ state agency  
405 planning to terminate a lease for the purpose of occupying space  
406 in a new state-owned office building, ~~the funds for which are~~  
407 ~~appropriated after June 30, 2000,~~ to state why the proposed  
408 relocation is in the best interest of the state.

409 (4)(3)(a) An agency that intends to terminate a lease of  
410 privately owned space before the expiration of its base term,  
411 must notify the department 90 days before the termination. The  
412 department shall, to the extent feasible, coordinate the  
413 vacation of privately owned leased space with the expiration of  
414 the lease on that space and, when a lease is terminated before  
415 expiration of its base term, will make a reasonable effort to  
416 place another state agency in the space vacated. A ~~Any~~ state  
417 agency may lease the space in any building that was subject to a  
418 lease terminated by a state agency for a period of time equal to  
419 the remainder of the base term without ~~the requirement of~~  
420 competitive solicitation.

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

421       (5) The department may direct a state agency to occupy, or  
 422 relocate to, space in any state-owned office building, including  
 423 all state-owned space identified in the Florida State-Owned  
 424 Lands and Records Information System managed by the Department  
 425 of Environmental Protection. The Department of Legal Affairs,  
 426 the Department of Agriculture and Consumer Services, and the  
 427 Department of Financial Services are excluded from this  
 428 subsection. However, the Department of Legal Affairs, the  
 429 Department of Agriculture and Consumer Services, and the  
 430 Department of Financial Services may elect to comply with the  
 431 provisions of this subsection in whole or in part. Any  
 432 relocation of an agency at the direction of the department shall  
 433 be implemented within existing appropriations of the agency and  
 434 shall not require a transfer of any funds pursuant to chapter  
 435 216.

436       (6)(b) The department shall develop and implement a  
 437 strategic leasing plan. The strategic leasing plan must ~~shall~~  
 438 forecast space needs for all state agencies and identify  
 439 opportunities for reducing costs through consolidation,  
 440 relocation, reconfiguration, capital investment, and the  
 441 renovation, building, or acquisition of state-owned space.

442       (7)(e) The department shall annually publish a master  
 443 leasing report that includes the strategic leasing plan created  
 444 under subsection (6). The department shall annually submit  
 445 ~~furnish~~ the ~~master~~ leasing report to the Executive Office of the  
 446 Governor and the Legislature by October 1. The report must  
 447 provide September 15 of each year which provides the following  
 448 information:

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

449        (a)1- A list, by agency and by geographic market, of all  
450 leases that are due to expire within 24 months.

451        (b)2- Details of each lease, including location, size,  
452 cost per leased square foot, lease-expiration date, and a  
453 determination of whether sufficient state-owned office space  
454 will be available at the expiration of the lease to accommodate  
455 affected employees.

456        (c)3- A list of amendments and supplements to and waivers  
457 of terms and conditions in lease agreements that have been  
458 approved pursuant to s. 255.25(2)~~(a)~~ during the previous 12  
459 months and an associated comprehensive analysis, including  
460 financial implications, showing that any amendment, supplement,  
461 or waiver is in the state's long-term best interest.

462        (d)4- Financial impacts to the Florida Facilities Pool  
463 rental rate due to the sale, removal, acquisition, or  
464 construction of pool facilities.

465        (e)5- Changes in occupancy rate, maintenance costs, and  
466 efficiency costs of leases in the state portfolio. Changes to  
467 occupancy costs in leased space by market and changes to space  
468 consumption by agency and by market.

469        (f)6- An analysis of portfolio supply and demand.

470        (g)7- Cost-benefit analyses of acquisition, build, and  
471 consolidation opportunities, recommendations for strategic  
472 consolidation, and strategic recommendations for disposition,  
473 acquisition, and building.

474        (h) Recommendations for using capital improvement funds to  
475 implement the consolidation of state agencies into state-owned  
476 office buildings.

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

477            (i)~~8~~ The updated plan required by s. 255.25(4)(c).  
 478            (8)~~(d)~~ Annually, by June 30: ~~of each year,~~  
 479            (a) Each state agency shall ~~annually~~ provide to the  
 480 department all information regarding agency programs affecting  
 481 the need for or use of space by that agency, reviews of lease-  
 482 expiration schedules for each geographic area, active and  
 483 planned full-time equivalent data, business case analyses  
 484 related to consolidation plans by an agency, a telework program  
 485 under s. 110.171, and current occupancy and relocation costs,  
 486 inclusive of furnishings, fixtures and equipment, data, and  
 487 communications. State agencies may use the services of a tenant  
 488 broker in preparing this information.

489            (b) The title entity or managing agency shall report to  
 490 the department any vacant or underutilized space for all state-  
 491 owned office buildings and any restrictions that apply to any  
 492 other agency occupying the vacant or underutilized space. The  
 493 title entity or managing agency shall also notify the department  
 494 of any significant changes to its occupancy for the coming  
 495 fiscal year. The Department of Legal Affairs, the Department of  
 496 Agriculture and Consumer Services, and the Department of  
 497 Financial Services are excluded from this subsection. However,  
 498 the Department of Legal Affairs, the Department of Agriculture  
 499 and Consumer Services, and the Department of Financial Services  
 500 may elect to comply with the provisions of this subsection in  
 501 whole or in part.

502            (9)~~(4)~~ The department shall adopt rules ~~pursuant to~~  
 503 ~~chapter 120~~ providing:

504            (a) Methods for accomplishing the duties outlined in

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

505 subsection (1).

506 (b) Procedures for soliciting and accepting competitive  
507 solicitations for leased space of 5,000 square feet or more in  
508 privately owned buildings, for evaluating ~~the~~ proposals  
509 received, for exemption from competitive solicitations  
510 requirements of any lease for ~~the purpose of which is~~ the  
511 provision of care and living space for persons or emergency  
512 space needs as provided in s. 255.25(10), and for ~~the~~ securing  
513 ~~of~~ at least three documented quotes for a lease that is not  
514 required to be competitively solicited.

515 (c) A standard method for determining square footage or  
516 any other measurement used as the basis for lease payments or  
517 other charges.

518 (d) Methods of allocating space in both state-owned office  
519 buildings and privately owned buildings leased by the state  
520 based on use, personnel, and office equipment.

521 (e)~~1.~~ Acceptable terms and conditions for inclusion in  
522 lease agreements.

523 ~~2.~~ At a minimum, such terms and conditions must ~~shall~~  
524 include, ~~at a minimum,~~ the following clauses, which may not be  
525 amended, supplemented, or waived:

526 1.a. As provided in s. 255.2502, "The State of Florida's  
527 performance and obligation to pay under this contract is  
528 contingent upon an annual appropriation by the Legislature."

529 2.b. "The lessee has ~~shall have~~ the right to terminate  
530 this lease, without penalty, if ~~this lease in the event~~ a state-  
531 owned building becomes available to the lessee for occupancy and  
532 the lessee has given ~~upon giving~~ 6 months' advance written

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

533 notice to the lessor by certified mail, return receipt  
534 requested."

535 ~~(f) Maximum rental rates, by geographic areas or by~~  
536 ~~county, for leasing privately owned space.~~

537 (f)~~(g)~~ A standard method for the assessment of rent to  
538 state agencies and other authorized occupants of state-owned  
539 office space, notwithstanding the source of funds.

540 (g)~~(h)~~ For full disclosure of the names and the extent of  
541 interest of the owners holding a 4 percent ~~4 percent~~ or more  
542 interest in ~~any~~ privately owned property leased to the state or  
543 in the entity holding title to the property, for exemption from  
544 such disclosure of any beneficial interest that ~~which~~ is  
545 represented by stock in a ~~any~~ corporation registered with the  
546 Securities and Exchange Commission or registered pursuant to  
547 chapter 517~~7~~ which ~~stock~~ is for sale to the general public, and  
548 for exemption from such disclosure of any leasehold interest in  
549 property located outside the territorial boundaries of the  
550 United States.

551 (h)~~(i)~~ For full disclosure of the names of all public  
552 officials, agents, or employees holding any interest in any  
553 privately owned property leased to the state or in the entity  
554 holding title to the property, and the nature and extent of  
555 their interest, for exemption from such disclosure of any  
556 beneficial interest that ~~which~~ is represented by stock in any  
557 corporation registered with the Securities and Exchange  
558 Commission or registered pursuant to chapter 517~~7~~ which ~~stock~~ is  
559 for sale to the general public, and for exemption from such  
560 disclosure of any leasehold interest in property located outside

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

561 the territorial boundaries of the United States.

562 (i)~~(j)~~ A method for reporting leases for nominal or no  
563 consideration.

564 (j)~~(k)~~ For a lease of less than 5,000 square feet, a  
565 method for certification by the agency head or the agency head's  
566 designated representative that all criteria for leasing have  
567 been fully complied with and for ~~the~~ filing ~~of~~ a copy of such  
568 lease and all supporting documents with the department for its  
569 review and approval as to technical sufficiency and whether it  
570 is in the best interests of the state.

571 (k)~~(l)~~ A standardized format for state agency reporting of  
572 the information required by paragraph (8)(a) ~~(3)(d)~~.

573 (10)~~(5)~~ The department shall prepare a form listing all  
574 conditions and requirements adopted pursuant to this chapter  
575 which must be met by any state agency leasing any building or  
576 part thereof. Before executing any lease, this form must ~~shall~~  
577 be certified by the agency head or the agency head's designated  
578 representative and submitted to the department.

579 (11)~~(6)~~ The department may contract for real estate  
580 consulting or tenant brokerage services in order to carry out  
581 its duties relating to the strategic leasing plan under  
582 subsection (6). The contract must ~~shall~~ be procured pursuant to  
583 s. 287.057. The vendor ~~that is~~ awarded the contract shall be  
584 compensated ~~by the department,~~ subject to the provisions of the  
585 contract, and such compensation is subject to appropriation by  
586 the Legislature. A ~~The~~ real estate consultant or tenant broker  
587 may not receive compensation directly from a lessor for services  
588 that are rendered pursuant to the contract. Moneys paid by a

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

589 lessor to the department under a facility-leasing arrangement  
590 are not subject to the charges imposed under s. 215.20.

591 Section 6. Paragraphs (a), (b), (c), (d), and (f) of  
592 subsection (3) and subsections (1), (2), (5), (6), (7), (9),  
593 (10), and (11) of section 255.25, Florida Statutes, are amended  
594 to read:

595 255.25 Approval required before ~~prior to~~ construction or  
596 lease of buildings.-

597 (1) ~~(a) A state agency may not lease space in a private  
598 building that is to be constructed for state use unless prior  
599 approval of the architectural design and preliminary  
600 construction plans is first obtained from the department.~~

601 ~~(b)~~ During the term of existing leases, each agency shall  
602 consult with the department regarding opportunities for  
603 consolidation, use of state-owned space, build-to-suit space,  
604 and potential acquisitions; shall monitor market conditions; and  
605 shall initiate a competitive solicitation or, if appropriate,  
606 lease-renewal negotiations for each lease held in the private  
607 sector to effect the best overall lease terms reasonably  
608 available to that agency.

609 (a) Amendments to leases may be permitted to modify any  
610 lease provisions or ~~any~~ other terms or conditions unless, ~~except~~  
611 ~~to the extent~~ specifically prohibited under ~~by~~ this chapter.

612 (b) The department shall serve as a mediator in lease-  
613 renewal negotiations if the agency and the lessor are unable to  
614 reach a compromise within 6 months after renegotiation and if  
615 ~~either~~ the agency or lessor requests intervention by the  
616 department.



ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

617 (c) If ~~When specifically~~ authorized by the General  
618 Appropriations Act, and in accordance with s. 255.2501, if  
619 applicable, the department may approve a lease-purchase, sale-  
620 leaseback, or tax-exempt leveraged lease contract or other  
621 financing technique for the acquisition, renovation, or  
622 construction of a state fixed capital outlay project if ~~when~~ it  
623 is in the best interest of the state.

624 (2) ~~(a)~~ Except as provided in ss. 255.249 and ~~s.~~ 255.2501,  
625 a state agency may not lease a building or any part thereof  
626 unless prior approval of the lease conditions and of the need  
627 for the lease ~~therefor~~ is first obtained from the department. An  
628 ~~Any~~ approved lease may include an option to purchase or an  
629 option to renew the lease, or both, upon such terms and  
630 conditions as are established by the department, subject to  
631 final approval by the head of the department ~~of Management~~  
632 ~~Services~~ and s. 255.2502.

633 (a) ~~(b)~~ For the lease of less than 5,000 square feet of  
634 space, including space leased for nominal or no consideration, a  
635 state agency must notify the department at least 90 ~~30~~ days  
636 before the execution of the lease. The department shall review  
637 the lease and determine whether suitable space is available in a  
638 state-owned or state-leased building located in the same  
639 geographic region. If the department determines that space is  
640 not available, the department shall determine whether the state  
641 agency lease is in the best interests of the state. If the  
642 department determines that the execution of the lease is not in  
643 the best interests of the state, the department shall notify the  
644 agency proposing the lease, the Governor, the President of the

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

645 Senate, and the Speaker of the House of Representatives ~~and the~~  
646 ~~presiding officers of each house of the Legislature~~ of such  
647 finding in writing. A lease that is for a term extending beyond  
648 the end of a fiscal year is subject to ~~the provisions of~~ ss.  
649 216.311, 255.2502, and 255.2503.

650 (b)(e) The department shall adopt ~~as a rule~~ uniform  
651 leasing procedures by rule for use by each state agency ~~other~~  
652 ~~than the Department of Transportation~~. Each state agency shall  
653 ensure that the leasing practices of that agency are in  
654 substantial compliance with the uniform leasing rules adopted  
655 under this section and ss. 255.249, 255.2502, and 255.2503.

656 (c)(d) ~~Notwithstanding paragraph (a) and except as~~  
657 ~~provided in ss. 255.249 and 255.2501, a state agency may not~~  
658 ~~lease a building or any part thereof unless prior approval of~~  
659 ~~the lease terms and conditions and of the need therefor is first~~  
660 ~~obtained from the department~~. The department may not approve any  
661 term or condition in a lease agreement which has been amended,  
662 supplemented, or waived unless a comprehensive analysis,  
663 including financial implications, demonstrates that such  
664 amendment, supplement, or waiver is in the state's long-term  
665 best interest. An ~~Any~~ approved lease may include an option to  
666 purchase or an option to renew the lease, or both, upon such  
667 terms and conditions as are established by the department,  
668 subject to final approval by the head of the department, ~~of~~  
669 ~~Management Services~~ and the provisions of s. 255.2502.

670 (3)(a) Except as provided in subsection (10), a state  
671 agency may not enter into a lease as lessee for the use of 5,000  
672 square feet or more of space in a privately owned building

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

673 | except upon advertisement for and receipt of competitive  
674 | solicitations.

675 |       1.a. An invitation to bid must ~~shall~~ be made available  
676 | simultaneously to all lessors and ~~must~~ include a detailed  
677 | description of the space sought; the time and date for the  
678 | receipt of bids and of the public opening; and all contractual  
679 | terms and conditions applicable to the procurement, including  
680 | the criteria to be used in determining the acceptability of the  
681 | bid. If the agency contemplates renewing ~~renewal of~~ the  
682 | contract, that fact must be stated in the invitation to bid. The  
683 | bid must include the price for each year for which the contract  
684 | may be renewed. Evaluation of bids must ~~shall~~ include  
685 | consideration of the total cost for each year as submitted by  
686 | the lessor. Criteria that were not set forth in the invitation  
687 | to bid may not be used in determining the acceptability of the  
688 | bid.

689 |       b. The contract shall be awarded with reasonable  
690 | promptness by written notice to the responsible and responsive  
691 | lessor that submits the lowest responsive bid. The contract file  
692 | must contain a written determination that the bid meets ~~This bid~~  
693 | ~~must be determined in writing to meet~~ the requirements and  
694 | criteria set forth in the invitation to bid.

695 |       2.a. If an agency determines in writing that the use of an  
696 | invitation to bid is not practicable, leased space shall be  
697 | procured by competitive sealed proposals. A request for  
698 | proposals shall be made available simultaneously to all lessors  
699 | and must include a statement of the space sought; the time and  
700 | date for the receipt of proposals and of the public opening; and

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

701 all contractual terms and conditions applicable to the  
702 procurement, including the criteria, which must include, but  
703 need not be limited to, price, to be used in determining the  
704 acceptability of the proposal. The relative importance of price  
705 and other evaluation criteria must ~~shall~~ be indicated. If the  
706 agency contemplates renewing ~~renewal~~ of the contract, that fact  
707 must be stated in the request for proposals. The proposal must  
708 include the price for each year for which the contract may be  
709 renewed. Evaluation of proposals must ~~shall~~ include  
710 consideration of the total cost for each year as submitted by  
711 the lessor.

712         b. The contract shall be awarded to the responsible and  
713 responsive lessor whose proposal is determined in writing to be  
714 the most advantageous to the state, taking into consideration  
715 the price and the other criteria set forth in the request for  
716 proposals. The contract file must contain documentation  
717 supporting the basis on which the award is made.

718         3.a. If the agency determines in writing that the use of  
719 an invitation to bid or a request for proposals will not result  
720 in the best leasing value to the state, the agency may procure  
721 leased space by competitive sealed replies. The agency's written  
722 determination must specify reasons ~~that explain~~ why negotiation  
723 may be necessary in order for the state to achieve the best  
724 leasing value and must be approved in writing by the agency head  
725 or his or her designee before ~~prior to the~~ advertisement of an  
726 invitation to negotiate. Cost savings related to the agency  
727 procurement process are not sufficient justification for using  
728 an invitation to negotiate. An invitation to negotiate shall be

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

729 made available to all lessors simultaneously and must include a  
730 statement of the space sought; the time and date for the receipt  
731 of replies and of the public opening; and all terms and  
732 conditions applicable to the procurement, including the criteria  
733 to be used in determining the acceptability of the reply. If the  
734 agency contemplates renewing ~~renewal~~ of the contract, that fact  
735 must be stated in the invitation to negotiate. The reply must  
736 include the price for each year for which the contract may be  
737 renewed.

738         b. The agency shall evaluate and rank responsive replies  
739 against all evaluation criteria set forth in the invitation to  
740 negotiate and ~~shall~~ select, based on the ranking, one or more  
741 lessors with which to commence negotiations. After negotiations  
742 are conducted, the agency shall award the contract to the  
743 responsible and responsive lessor that the agency determines  
744 will provide the best leasing value to the state. The contract  
745 file must contain a short, plain statement that explains the  
746 basis for lessor selection and sets forth the lessor's  
747 deliverables and price pursuant to the contract, and an  
748 explanation of how these deliverables and price provide the best  
749 leasing value to the state.

750         (b) The department ~~of Management Services~~ shall have the  
751 authority to approve a lease for 5,000 square feet or more of  
752 space which ~~that~~ covers more than 12 consecutive months ~~1 fiscal~~  
753 ~~year,~~ subject to ~~the provisions of~~ ss. 216.311, 255.2501,  
754 255.2502, and 255.2503, if such lease is, in the judgment of the  
755 department, in the best interests of the state. In determining  
756 best interest, the department shall consider availability of

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

757 state-owned space and analyses of build-to-suit and acquisition  
758 opportunities. This paragraph does not apply to buildings or  
759 facilities of any size leased for the purpose of providing care  
760 and living space to individuals ~~for persons~~.

761 (c) The department may approve extensions of an existing  
762 lease of 5,000 square feet or more of space if such extensions  
763 are determined to be in the best interests of the state;  
764 however, ~~but in no case shall~~ the total of such extensions may  
765 not exceed 11 months. If at the end of the 11th month an agency  
766 still needs that space, it must ~~shall~~ be procured by competitive  
767 bid in accordance with s. 255.249(9)(b) ~~255.249(4)(b)~~. However,  
768 if the Department of Agriculture and Consumer Services, the  
769 Department of Financial Services, or the Department of Legal  
770 Affairs ~~an agency that~~ determines that it is in its best  
771 interest to remain in the space it currently occupies, it may  
772 negotiate a replacement lease with the lessor if an independent  
773 comparative market analysis demonstrates that the rates offered  
774 are within market rates for the space and the cost of the new  
775 lease does not exceed the cost of a comparable lease plus  
776 documented moving costs. A present-value analysis and the  
777 consumer price index shall be used in the calculation of lease  
778 costs. The term of the replacement lease may not exceed the base  
779 term of the expiring lease. For those agencies for which the  
780 department may approve lease actions, the department may approve  
781 a replacement lease with a lessor for an agency to remain in the  
782 space it currently occupies if such lease is, in the judgment of  
783 the department, in the best interests of the state. In  
784 determining best interest, the department shall consider

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

785 availability of state-owned space and analyses of build-to-suit  
786 and acquisition opportunities. The term of the replacement lease  
787 may not exceed the base term of the expiring lease. Any  
788 relocation of an agency at the direction of the department shall  
789 be within existing appropriations and shall not require a  
790 transfer of any funds pursuant to chapter 216.

791 (d) Any person who files an action protesting a decision  
792 or intended decision pertaining to a competitive solicitation  
793 for space to be leased by the agency pursuant to s. 120.57(3)(b)  
794 shall post with the state agency at the time of filing the  
795 formal written protest a bond payable to the agency in an amount  
796 equal to 1 percent of the estimated total rental of the basic  
797 lease period or \$5,000, whichever is greater, which bond is  
798 ~~shall be~~ conditioned on ~~upon~~ the payment of all costs that may  
799 be adjudged against him or her in the administrative hearing in  
800 which the action is brought and in any subsequent appellate  
801 court proceeding. If the agency prevails after completion of the  
802 administrative hearing process and any appellate court  
803 proceedings, it shall recover all costs and charges, which must  
804 ~~shall~~ be included in the final order or judgment, excluding  
805 attorney ~~attorney's~~ fees. Upon payment of such costs and charges  
806 by the person protesting the award, the bond shall be returned  
807 to him or her. If the person protesting the award prevails, the  
808 bond shall be returned to that person and he or she shall  
809 recover from the agency all costs and charges, which must ~~shall~~  
810 be included in the final order of judgment, excluding attorney  
811 ~~attorney's~~ fees.

812 (f) The unamortized portion of tenant improvements, if

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

813 appropriated, shall be paid in equal monthly installments over  
814 the remaining term of the lease. If any portion of the original  
815 leased premises is occupied after termination but during the  
816 original term by a tenant who ~~that~~ does not require material  
817 changes to the premises, the repayment of the cost of tenant  
818 improvements applicable to the occupied but unchanged portion  
819 shall be abated during occupancy. The portion of the repayment  
820 to be abated must ~~shall~~ be based on the ratio of leased space to  
821 unleased space.

822 (5) Before construction or renovation of any state-owned  
823 building or state-leased space is commenced, the department ~~of~~  
824 ~~Management Services~~ shall determine ~~ascertain~~, through the ~~by~~  
825 submission of proposed plans to the Division of State Fire  
826 Marshal for review, whether ~~that~~ the proposed construction or  
827 renovation plan complies with the uniform firesafety standards  
828 required by the division ~~of State Fire Marshal~~. The review of  
829 construction or renovation plans for state-leased space must  
830 ~~shall~~ be completed within 10 calendar days after ~~of~~ receipt of  
831 the plans by the division ~~of State Fire Marshal~~. The review of  
832 construction or renovation plans for a state-owned building must  
833 ~~shall~~ be completed within 30 calendar days after ~~of~~ receipt of  
834 the plans by the division ~~of State Fire Marshal~~. The  
835 responsibility for submission and retrieval of the plans may  
836 ~~called for in this subsection shall~~ not be imposed on the design  
837 architect or engineer, but is ~~shall be~~ the responsibility of the  
838 two agencies. If ~~Whenever~~ the division ~~of State Fire Marshal~~  
839 determines that a construction or renovation plan is not in  
840 compliance with ~~such~~ uniform firesafety standards, the division



ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

841 ~~of State Fire Marshal~~ may issue an order to cease all  
 842 construction or renovation activities until compliance is  
 843 obtained, except those activities required to achieve ~~such~~  
 844 compliance. The lessor shall provide the department with ~~of~~  
 845 Management Services documentation certifying that the facility  
 846 meets all of ~~shall withhold approval of any proposed lease until~~  
 847 ~~the construction or renovation plan complies with~~ the uniform  
 848 firesafety standards ~~of the Division of State Fire Marshal~~. The  
 849 cost of all modifications or renovations made for the purpose of  
 850 bringing leased property into compliance with the uniform  
 851 firesafety standards are ~~shall be~~ borne by the lessor. The state  
 852 may not take occupancy without the division's final approval.

853 (6) Before construction or substantial improvement of any  
 854 state-owned building is commenced, the department ~~of Management~~  
 855 ~~Services~~ must determine ~~ascertain~~ that the proposed construction  
 856 or substantial improvement complies with the flood plain  
 857 management criteria for mitigation of flood hazards, as  
 858 prescribed in the October 1, 1986, rules and regulations of the  
 859 Federal Emergency Management Agency, and the department shall  
 860 monitor the project to assure compliance with the criteria. ~~In~~  
 861 ~~accordance with chapter 120,~~ The department ~~of Management~~  
 862 ~~Services~~ shall adopt rules ~~any~~ necessary ~~rules~~ to ensure that  
 863 all ~~such~~ proposed state construction and substantial improvement  
 864 of state buildings in designated flood-prone areas complies with  
 865 the flood plain management criteria. If ~~Whenever~~ the department  
 866 determines that a construction or substantial improvement  
 867 project is not in compliance with such ~~with the established~~  
 868 ~~flood plain management~~ criteria, the department may issue an

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

869 order to cease all construction or improvement activities until  
870 compliance is obtained, except those activities required to  
871 achieve such compliance.

872 (7) This section does not apply to any lease having a term  
873 of less than 120 consecutive days for the purpose of securing  
874 the one-time special use of the leased property. ~~This section~~  
875 ~~does not apply to any lease for nominal or no consideration.~~

876 (9) Specialized educational facilities, excluding  
877 classrooms, are ~~shall be~~ exempt from the competitive bid  
878 requirements for leasing pursuant to this section if the  
879 executive head of a ~~any~~ state agency certifies in writing that  
880 the said facility is available from a single source and that the  
881 competitive bid requirements would be detrimental to the state.  
882 Such certification must ~~shall~~ include documentation of evidence  
883 of steps taken to determine sole-source status.

884 (10) The department ~~of Management Services~~ may approve  
885 emergency acquisition of space without competitive bids if  
886 existing state-owned or state-leased space is destroyed or  
887 rendered uninhabitable by an act of God, fire, malicious  
888 destruction, or structural failure, or by legal action, or if  
889 the agency head certifies in writing that there is an immediate  
890 danger to the public health, safety, or welfare, or if other  
891 substantial loss to the state requires emergency action and ~~if~~  
892 the chief administrator of the state agency or the chief  
893 administrator's designated representative certifies in writing  
894 that no other agency-controlled space is available to meet this  
895 emergency need; however, but in no case shall the lease for such  
896 space may not exceed 11 months. If the lessor elects not to

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

897 | replace or renovate the destroyed or uninhabitable facility, the  
898 | agency shall procure the needed space by competitive bid in  
899 | accordance with s. 255.249(9)(b) ~~255.249(4)(b)~~. If the lessor  
900 | elects to replace or renovate the destroyed or uninhabitable  
901 | facility and the construction or renovations will not be  
902 | complete at the end of the 11-month lease, the agency may modify  
903 | the lease to extend it on a month-to-month basis for up to an  
904 | ~~additional~~ 6 months to allow completion of such construction or  
905 | renovations.

906 |       (11) In any leasing of space which occurs ~~that is~~  
907 | ~~accomplished~~ without competition, the individuals taking part in  
908 | the development or selection of criteria for evaluation, in the  
909 | evaluation, and in the award processes must ~~shall~~ attest in  
910 | writing that they are independent of, and have no conflict of  
911 | interest in, the entities evaluated and selected.

912 |       Section 7. Subsection (4) of section 255.252, Florida  
913 | Statutes, is amended to read:

914 |       255.252 Findings and intent.—

915 |       (4) In addition to designing and constructing new  
916 | buildings to be energy-efficient, it is the policy of the state  
917 | to operate and maintain state facilities in a manner that  
918 | minimizes energy consumption and maximizes building  
919 | sustainability and to operate facilities leased by the state so  
920 | as to minimize energy use. It is further the policy of the state  
921 | that the renovation of existing state facilities be in  
922 | accordance with a sustainable building rating or a national  
923 | model green building code. State agencies are encouraged to  
924 | consider shared savings financing of energy-efficiency and

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

925 conservation projects, using contracts that split the resulting  
926 savings for a specified period of time between the state agency  
927 and the private firm or cogeneration contracts and that  
928 otherwise permit the state to lower its net energy costs. Such  
929 energy contracts may be funded from the operating budget. The  
930 vendor for such energy contracts may be selected in accordance  
931 with s. 287.055.

932 Section 8. Effective July 1, 2014, subsection (1) of  
933 section 255.254, Florida Statutes, is amended to read:

934 255.254 No facility constructed or leased without life-  
935 cycle costs.-

936 (1) A ~~No~~ state agency may not ~~shall~~ lease, construct, or  
937 have constructed, within limits prescribed in this section, a  
938 facility without having secured from the department an  
939 evaluation of life-cycle costs based on sustainable building  
940 ratings. ~~Furthermore,~~ Construction shall proceed only upon  
941 disclosing to the department, for the facility chosen, the life-  
942 cycle costs as determined in s. 255.255, the facility's  
943 sustainable building rating goal, and the capitalization of the  
944 initial construction costs of the building. The life-cycle costs  
945 and the sustainable building rating goal shall be primary  
946 considerations in the selection of a building design. For leased  
947 facilities larger buildings more than 2,000 5,000 square feet in  
948 area within a given building boundary, an energy performance  
949 analysis that calculates ~~consisting of a projection of the total~~  
950 annual energy consumption and energy costs in dollars per square  
951 foot of major energy-consuming equipment and systems based on  
952 actual expenses from the last 3 years and projected forward for

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

953 ~~the term of the proposed lease shall be performed. The analysis~~  
 954 ~~must also compare the energy performance of the proposed lease~~  
 955 ~~to lease shall only be made where there is a showing that the~~  
 956 ~~energy costs incurred by the state are minimal compared to~~  
 957 ~~available like facilities. A lease may not be finalized until~~  
 958 ~~the energy performance analysis has been approved by the~~  
 959 ~~department. A lease agreement for any building leased by the~~  
 960 ~~state from a private sector entity shall include provisions for~~  
 961 ~~monthly energy use data to be collected and submitted monthly to~~  
 962 ~~the department by the owner of the building.~~

963 Section 9. Effective July 1, 2014, subsection (1) of  
 964 section 255.257, Florida Statutes, is amended to read:

965 255.257 Energy management; buildings occupied by state  
 966 agencies.—

967 (1) ENERGY CONSUMPTION AND COST DATA.— Each state agency  
 968 shall collect data on energy consumption and cost for all. ~~The~~  
 969 ~~data gathered shall be on~~ state-owned facilities and metered  
 970 state-leased facilities ~~of 5,000 net square feet or more~~. These  
 971 data will be used in the computation of the effectiveness of the  
 972 state energy management plan and the effectiveness of the energy  
 973 management program of each of the state agencies. Collected data  
 974 shall be reported annually to the department in a format  
 975 prescribed by the department.

976 Section 10. Subsection (7) of section 110.171, Florida  
 977 Statutes, is amended to read:

978 110.171 State employee telework program.—

979 (7) Agencies that have a telework program shall establish  
 980 and track performance measures that support telework program

ENROLLED  
CS/CS/CS/HB 1145

2013 Legislature

981 analysis and report data annually to the department in  
982 accordance with s. 255.249(8) ~~255.249(3)(d)~~. Such measures must  
983 include, but need not be limited to, those that quantify  
984 financial impacts associated with changes in office space  
985 requirements resulting from the telework program. Agencies  
986 operating in office space owned or managed by the department  
987 shall consult the department to ensure consistency with the  
988 strategic leasing plan required under s. 255.249(6)  
989 ~~255.249(3)(b)~~.

990 Section 11. Paragraph (b) of subsection (15) of section  
991 985.682, Florida Statutes, is amended to read:

992 985.682 Siting of facilities; study; criteria.-  
993 (15)

994 (b) Notwithstanding s. 255.25(1) ~~(b)~~, the department may  
995 enter into lease-purchase agreements to provide juvenile justice  
996 facilities for ~~the~~ housing ~~of~~ committed youths, contingent upon  
997 available funds. The facilities provided through such agreements  
998 must ~~shall~~ meet the program plan and specifications of the  
999 department. The department may enter into such lease agreements  
1000 with private corporations and other governmental entities.  
1001 However, notwithstanding ~~the provisions of~~ s. 255.25(3)(a), a ~~no~~  
1002 ~~such~~ lease agreement may not be entered into except upon  
1003 advertisement for the receipt of competitive bids and award to  
1004 the lowest and best bidder except if ~~when~~ contracting with other  
1005 governmental entities.

1006 Section 12. Except as otherwise expressly provided in this  
1007 act, this act shall take effect July 1, 2013.



**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 85	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee; Government Operations Subcommittee; Steube and others	111 Y's	4 N's
<b>COMPANION BILLS:</b>	(CS/CS/CS/SB 84)	<b>GOVERNOR'S ACTION:</b>	Approved

---

**SUMMARY ANALYSIS**

CS/CS/HB 85 passed the House on April 25, 2013. The bill was amended by the Senate on May 3, 2013, and subsequently passed the House on May 3, 2013. The bill authorizes public-private partnerships for certain purposes and establishes requirements for such partnerships.

The bill:

- Authorizes public-private partnerships to contract for public service work with a not-for-profit-organization or charitable youth organization, and provides certain requirements for contracts specific to park land and public education buildings.
- Creates an alternative procurement process and requirements for public-private partnerships to facilitate the construction of public-purpose projects.
- Creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to recommend guidelines for the Legislature to consider for the purpose of creating a uniform process for establishing public-private partnerships.
- Authorizes the use of public-private partnerships for purposes of county road projects, and permits counties to receive or solicit proposals and enter into agreements with private entities to construct, extend, or improve a county road if certain requirements are met.
- Extends the terms for leases that the Orlando-Orange County Expressway Authority may enter into from 40 years to 99 years.

The bill has an insignificant negative fiscal impact on the Department of Management Services related to administrative support costs associated with the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force. The bill has an indeterminate fiscal impact on local governments. See Fiscal Comments section for further discussion.

The bill was approved by the Governor on June 27, 2013, ch. 2013-223, L.O.F., and will become effective on July 1, 2013.



# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### BACKGROUND

#### **Public-Private Partnerships**

##### Overview

Public-private partnerships (PPP) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects.<sup>1</sup> Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.<sup>2</sup>

There are different types of PPPs each with varying levels of private sector involvement. The most common is called a Design-Build-Finance-Operate transaction, where the government contracts with a private vendor, granting the private sector partner the right to develop a new piece of public infrastructure.<sup>3</sup> The private entity takes on full responsibility and risk for the delivery and operation of the public project in accordance with the terms of the partnership. The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a "shadow toll" or "availability charge"). Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.<sup>4</sup>

Another PPP procurement process is the Unsolicited Proposal Procurement Model. This procurement process allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.<sup>5</sup> Generally, the public entity requires a processing or review fee to cover costs of the technical and legal review.<sup>6</sup>

##### Florida Department of Transportation

The Florida Department of Transportation (FDOT) currently operates a public-private partnership program.<sup>7</sup> The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.<sup>8</sup>

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that FDOT determines to be in the public's best interest.<sup>9</sup>

---

<sup>1</sup> See The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery website, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on May 7, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> See The Oregon Department of Transportation, the Power of Public-Private Partnerships, available at <http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf> (last visited on May 7, 2013).

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

<sup>5</sup> See *Innovative Models for Design, Build, Operations and Financing of Public Infrastructure*, John J. Fumero, at 2.

<sup>6</sup> *Id.*

<sup>7</sup> See s. 334.30, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 334.30(3), F.S.

Current law allows FDOT to advance projects programmed in the adopted 5-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds for the project.<sup>10</sup> In accomplishing this, FDOT may use state resources to participate in funding and financing the project as provided for under FDOT's enabling legislation for projects on the State Highway System.<sup>11</sup>

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.<sup>12</sup> If FDOT receives an unsolicited proposal, it is required to publish a notice in the Florida Administrative Weekly<sup>13</sup> and a newspaper of general circulation stating FDOT has received the proposal and it will accept other proposals for the same project.<sup>14</sup> In addition, FDOT requires that an initial payment of \$50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.<sup>15</sup>

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.<sup>16</sup> FDOT may request proposals from private entities for public-private transportation projects.<sup>17</sup> The partnerships must be qualified by FDOT as part of the procurement process outlined in the procurement documents.<sup>18</sup> These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.<sup>19</sup> FDOT must rank the proposals in the order of preference.<sup>20</sup> FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm. If negotiations with the second ranked firm are unsuccessful, FDOT must move to the third-ranked firm.<sup>21</sup> FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.<sup>22</sup>

Current law authorizes FDOT to use innovative finance techniques associated with a PPP, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.<sup>23</sup> PPP agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years.<sup>24</sup> In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund PPP projects.<sup>25</sup>

---

<sup>10</sup> Section 334.30(1), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.

<sup>14</sup> Section 334.30(6)(a), F.S.

<sup>15</sup> See chapter 14-107.0011, F.A.C.

<sup>16</sup> See s. 287.055, F.S.

<sup>17</sup> Section 334.30(6)(a), F.S.

<sup>18</sup> Section 334.30(6)(b), F.S.

<sup>19</sup> Section 334.30(6)(c), F.S.

<sup>20</sup> See s. 334.30(6)(d), F.S. In ranking the proposals, FDOT may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.

<sup>21</sup> Section 334.30(6)(d), F.S.

<sup>22</sup> Section 334.30(6)(e), F.S.

<sup>23</sup> Section 334.30(7), F.S.

<sup>24</sup> Section 334.30(11), F.S.

<sup>25</sup> Section 334.30(12), F.S.

### Expressway Authority

Current law authorizes an authority created and established pursuant to the Florida Expressway Authority Act<sup>26</sup> to acquire, hold, construct, improve, maintain, operate, and own an expressway system.<sup>27</sup> For purposes of such authority, the Legislature declared “that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public’s interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.”<sup>28</sup>

An expressway authority may receive or solicit proposals and enter into agreements with private entities for the building, operation, ownership, or financing of authority transportation facilities.<sup>29</sup> Current law provides a process that must be followed if an expressway authority chooses to pursue a public-private partnership.<sup>30</sup>

### *The Orlando-Orange County Expressway Authority*

The Orlando-Orange County Expressway Authority currently serves Orange County and is authorized to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in the county, as well as outside the jurisdictional boundaries of Orange County with the consent of the county within whose jurisdiction the activities occur.<sup>31</sup> Section 348.754(2)(d), F.S., authorizes the Orlando-Orange County Expressway Authority to enter into and make leases for terms not exceeding 40 years.

## **Procurement by Governmental Entities**

### Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency<sup>32</sup> procurement of personal property and services. The Department of Management Services (department) 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.<sup>33</sup> The department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state’s buying power.<sup>34</sup>

Current law requires contracts for commodities or contractual services in excess of \$35,000 to be procured utilizing a competitive solicitation process.<sup>35</sup> Section 287.012(6), F.S., provides that competitive solicitation means “the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.”

### The Consultants’ Competitive Negotiation Act

---

<sup>26</sup> See part I of chapter 348, F.S., which is comprised of the Florida Expressway Authority Act and related provisions. In addition, s. 348.0001, F.S., provides that sections 20-31 of chapter 90-136, L.O.F., may be cited as the Florida Expressway Authority Act.

<sup>27</sup> Section 348.0004(1)(a), F.S.

<sup>28</sup> Section 348.0004(9), F.S.

<sup>29</sup> Section 348.0004(9)(a), F.S.

<sup>30</sup> See s. 348.0004(9), F.S.

<sup>31</sup> Section 348.754(2)(n), F.S.

<sup>32</sup> Section 287.012(1), F.S., defines agency as “any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. ‘Agency’ does not include the university and college boards of trustees or the state universities and colleges.”

<sup>33</sup> See ss. 287.032 and 287.042, F.S.

<sup>34</sup> *Id.*

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

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA) was enacted in 1973<sup>36</sup> to specify the procedures to follow when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.<sup>37</sup>

Currently, the CCNA specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.<sup>38</sup> The CCNA requires that agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000; or
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The CCNA provides a two-phase selection process.<sup>39</sup> In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders ranked in order of preference that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders, including willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.<sup>40</sup>

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.<sup>41</sup>

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

## Procurement of Construction Services

---

<sup>36</sup> Chapter 73-19, L.O.F.

<sup>37</sup> Chapter 88-108, L.O.F.

<sup>38</sup> Section 287.055, F.S.

<sup>39</sup> Section 287.055(4) and (5), F.S.

<sup>40</sup> See s. 287.055(4)(b), F.S.

<sup>41</sup> Section 287.055(2)(d), F.S.

Chapter 255, F.S., regulates construction services<sup>42</sup> for public property and publically-owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts.
- Procedures for awarding each state agency construction project to the lowest qualified bidder.
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the department to be in the best interest of the state.
- Procedures for entering into performance-based contracts for the development of public facilities when the department determines the use of such contracts to be in the best interest of the state.<sup>43</sup>

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>44</sup> In addition, such projects must be advertised in the Florida Administrative Weekly at least 21 days prior to the bid opening.<sup>45</sup> State construction projects that are projected to exceed \$500,000 are required to be published 30 days prior to a bid opening in the Florida Administrative Weekly, and at least once in a newspaper of general circulation in the county where the project is located.<sup>46</sup> Counties, municipalities, special districts,<sup>47</sup> or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.<sup>48</sup>

#### Special Contracts with Charitable Youth Organizations

Notwithstanding the competitive sealed bid procedures required in chapters 255 and 287, F.S., the state or the governing body of any political subdivision of the state may contract for public service work, such as highway and park maintenance, if the state or governing body complies with s. 255.60, F.S. Section 255.60, F.S., governs special contracts with charitable youth organizations. It requires the contractor or supplier to be a not-for-profit organization; the contractor or supplier must hold exempt status under s. 501(a) of the Internal Revenue Code, as an organization described in s. 501(c)(3) of the Internal Revenue Code; the corporate charter of the contractor or supplier must state that the corporation is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program; and administrative salaries and benefits for any such corporation must not exceed 15 percent of gross revenues.<sup>49</sup>

Any contract entered into under the section must provide at a minimum that labor must be performed exclusively by at-risk youth and their direct supervisors, and must not be subject to subcontracting; payment must be production-based; the contract will terminate should the supplier or contractor no longer meet certain qualifications under this section; the supplier or contractor has instituted a drug-free workplace program; and the contractor or supplier agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure compliance.<sup>50</sup>

Contracts entered into under this section may not exceed \$250,000 annually.<sup>51</sup>

---

<sup>42</sup> Section 255.072(2), F.S., defines construction services as "all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property." The term does not include contracts or work performed by the Department of Transportation.

<sup>43</sup> Section 255.29, F.S.

<sup>44</sup> See chapters 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

<sup>45</sup> Section 255.0525(1), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> Section 189.403(1), F.S., defines special district as a "local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."

<sup>48</sup> See s. 255.20(1), F.S.

<sup>49</sup> Section 255.60(1), F.S.

<sup>50</sup> Section 255.60(2), F.S.

<sup>51</sup> Section 255.60(3), F.S.

## EFFECT OF THE BILL

### **Special Contracts with Charitable Youth or Not-for-Profit Organizations**

The bill amends s. 255.60, F.S., to authorize public-private partnerships to contract for public service work with not-for-profit organizations or charitable youth organizations. The bill specifies that for the preservation, maintenance, and improvement of park land, the property must be at least 20 acres with contiguous public facilities that are capable of seating at least 5,000 people in a permanent structure. A contract for public education buildings must provide that the building be at least 90,000 square feet.

### **Public-Private Partnerships for Public-Purpose Facilities**

The bill creates s. 287.05712, F.S., to govern the procurement process for public-private partnerships for public purpose projects.

### Definitions

The bill provides for definitions to be used in this section, including the following:

- “Affected local jurisdiction” means a county, municipality, or special district in which all or a portion of a qualifying project is located.
- “Qualifying project” means:
  - A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
  - An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
  - A water, wastewater, or surface water management facility or other related infrastructure; or
  - Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.
- “Responsible public entity” means a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

### Legislative Intent

The bill provides legislative findings to support the need for public-private partnerships in Florida, which includes a need for timely and cost-effective acquisition, design, construction, and maintenance of projects that serve a public purpose, and that such need may not be wholly satisfied by existing methods of procurement. The bill provides that it is the intent of the Legislature to encourage investment in the state by private entities and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

### Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

The bill creates the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (task force) to recommend guidelines for the Legislature to consider for purposes of creating a uniform process for establishing PPPs. The seven-member task force is comprised of the Secretary of the Department of Management Services and six members appointed by the Governor who represent the

county government, municipal government, district school board, and business community. The department must provide administrative and technical support to the task force.

The task force members must be appointed by July 31, 2013, and must meet to establish procedures for the conduct of its business by August 31, 2013. All meetings must be held in Tallahassee, except that no more than two meetings may be held in other locations for the purpose of taking public testimony. Task force members are not compensated and are not entitled to reimbursement for per diem and travel expenses.

The bill provides that the task force must submit a final report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2014, and it is terminated December 31, 2014.

Public entities may participate in public-private partnerships prior to the adoption of any guidelines by the state. The bill provides that a responsible public entity may adopt guidelines so long as such guidelines are not inconsistent with s. 287.05712, F.S.

#### Procurement Procedures

The bill provides that a responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.

#### Unsolicited Proposals

The bill provides the following requirements for unsolicited proposals:

- The responsible public entity may establish a reasonable application fee to accompany unsolicited proposals sufficient to pay the costs of evaluating the proposal.
- If an unsolicited proposal is received and the public entity intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the responsible public entity must publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals. Public entities must determine the timeframe in which to accept other proposals based upon the complexity of the project and the benefit gained by allowing longer or shorter periods of time; however, the timeframe for accepting other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication.

#### Project Approval Requirements

Before project approval, the responsible public entity must determine that the proposed project is in the public's best interest; is for a facility that is owned by a responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity; has adequate safeguards to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity; has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project; and will be owned by the responsible public entity upon completion or termination and upon payments of the amounts financed.

An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying projects, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

- The name and address of the person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.

#### Project Qualification and Process

The private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional architectural, engineering, and contractual services for traditional procurement projects.

The bill requires the responsible public entity to ensure that provisions are made for the private entity's performance and payment of subcontractors, ensure the most efficient pricing of the security package, and ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs. Before the procurement process is initiated or before the contract is awarded, the responsible public entity must perform an independent analysis of the proposed public-private partnership that demonstrates the cost-effectiveness and overall public benefit.

After the notification period has expired for unsolicited proposals, the responsible public entity must rank the proposals received in order of preference. For purposes of ranking, the responsible public entity may consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, and finance plans. If negotiations with the first ranked firm are unsuccessful, the responsible public entity may begin negotiations with the second ranked firm. The bill does not require the responsible public entity to choose any of the firms that apply or for more than one firm to respond to the solicitation.

The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the requests, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors and consultants.

The bill provides that the responsible public entity may approve the development or operation of an educational facility, a water or wastewater management facility, a technology or other government infrastructure, or a government facility needed by the responsible public entity as a qualifying project if:

- There is a public need for or benefit derived from the project that the private entity proposes as the qualifying project.
- The estimated cost of the qualifying project is reasonable in relation to similar facilities.
- The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

#### Notice to Affected Local Jurisdictions

The bill requires the responsible public entity to notify each affected local jurisdiction when considering a qualifying project. The bill provides that each affected local jurisdiction may, within 60 days, submit written comments to the responsible public entity. The responsible public entity is required to consider the comments submitted by the affected local jurisdiction.

#### Interim Agreement

The bill provides that before entering a comprehensive agreement, the public entity may enter into an interim agreement with the public entity, which does not obligate the public entity to enter into a comprehensive agreement. Interim agreements must be limited to provisions that:



- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain any other provision related to any aspect of the development or operation of a qualifying project.

#### Comprehensive Agreement

The bill requires the responsible public entity and private entity to enter into a comprehensive agreement prior to developing or operating the qualifying project. The comprehensive agreement must provide for:

- Delivery of performance and payment bonds, letters of credit, and other security in connection with the development or operation of the qualifying project.
- Review of plans and specifications for the project by the responsible public entity. This does not require the private entity to complete the design of the project prior to executing the comprehensive agreement.
- Inspection of the qualifying project by the responsible public entity.
- Maintenance of a policy of public liability insurance.
- Monitoring of the practices of the private entity by the responsible public entity to ensure the project is properly maintained.
- Filing of financial statements on a periodic basis by the private entity.
- Procedures governing the rights and responsibilities of the responsible public entity and private entity in the event of a termination of the agreement or a material default.
- Fees, lease payments, or service payments as may be established by agreement of the parties.
- Duties of the private entity, including terms and conditions that the responsible public entity determines serve the public purpose of the project.

The bill provides that the comprehensive agreement may include the following:

- An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or any agency or instrumentality thereof.
- A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.
- A provision that terminates the authority and duties of the private entity and dedicates the qualifying project to the responsible public entity.

#### Fees

The bill provides that the comprehensive agreement may authorize the private entity to impose fees to members of the public for the use of the facility. Any revenues must be regulated by the responsible public entity pursuant to the agreement, and a negotiated portion of the revenues must be returned to the responsible public entity over the life of the agreement.

#### Financing

The bill provides multiple financing options for public-private partnerships, which include the private entity obtaining private-source financing, the responsible public entity lending funds to the private entity, or the use of other innovative finance techniques associated with private-public partnerships. A responsible public entity must appropriate on a priority basis a contractual payment obligation, annual or otherwise, from the enterprise or other government fund from which the qualifying projects will be funded.

#### Powers and Duties of the Private Entity

The bill requires the private entity to develop, operate, and maintain the qualifying project in accordance with the comprehensive agreement. The private entity must cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and other

facilities and infrastructure. The private entity must comply with the terms of the comprehensive agreement and any other lease or contract.

#### Expiration or Termination of Agreements

The bill provides that, upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The bill provides that the assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than from revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

#### Sovereign Immunity

The bill provides that sovereign immunity is not waived by any responsible public entity, any affected local jurisdiction, or any officer or employee with respect to the qualifying project. In addition, it provides that cities, counties, and towns possess sovereign immunity with respect to the design, construction, and operation of the project.

#### Construction

The bill provides that it must be liberally construed to effectuate its purposes. In addition, the bill provides that it does not waive any requirement in s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act.

#### **Public-Private Partnerships for County Road Projects**

The bill creates s. 336.71, F.S., which authorizes counties to utilize public-private partnerships for purposes of county road construction. Specifically, the bill authorizes a county to receive or solicit proposals and enter into agreements with private entities to construct, extend, or improve a county road or portion thereof within a county.

Before the county can approve such a partnership, the county must conduct a noticed public hearing and determine that the partnership is in the best interest of the public, would only use county funds for portions of the project that will be part of the county road system, would have adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the traveling public and citizens of the state, would be owned by the county upon completion of the agreement, and would result in a financial benefit to the public by completing the project at a cost to the public significantly lower than if the project was constructed by the county using the normal procurement process.

The bill requires the county to publish notice for the public hearing at least 14 days before the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to accept the proposal and enter into an agreement. The determination of cost savings must be supported by a professional engineer's cost estimate made available to the public at least 14 days before the public meeting and placed in the record for that meeting.

#### **Orlando-Orange County Expressway Authority Lease**

The bill amends s. 348.754(2)(d), F.S., extending the limit for leases that the Orlando-Orange County Expressway Authority may enter into from 40 years to 99 years. The 99 year maximum lease term is consistent with FDOT's current authority to make leases.<sup>52</sup>

---

<sup>52</sup> Section 337.251(1), F.S., authorizes FDOT to enter certain leases for terms not exceeding 99 years.

**Effective Date**

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT****A. FISCAL IMPACT ON STATE GOVERNMENT:****1. Revenues:**

The bill does not appear to impact state government revenues.

**2. Expenditures:**

The bill will have an insignificant negative fiscal impact on the Department of Management Services related to administrative support costs associated with the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:****1. Revenues:**

The bill has an indeterminate fiscal impact on local governments that enter into public-private partnerships.

**2. Expenditures:**

The bill has an indeterminate fiscal impact on local governments that enter into public-private partnerships. Local government expenditures would be based on currently unidentified agreements with public-private partnerships.

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

The bill may provide for more opportunities for the private sector to enter into contracts for construction services with local governments.

**D. FISCAL COMMENTS:**

None.

## CHAPTER 2013-223

### Committee Substitute for Committee Substitute for House Bill No. 85

An act relating to public-private partnerships; amending s. 255.60, F.S.; authorizing certain public entities to contract for public service works with not-for-profit organizations; revising eligibility and contract requirements for not-for-profit organizations contracting with certain public entities; creating s. 287.05712, F.S.; providing definitions; providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; creating a task force to establish specified guidelines; providing procurement procedures; providing requirements for project approval; providing project qualifications and process; providing for notice to affected local jurisdictions; providing for interim and comprehensive agreements between a public and a private entity; providing for use fees; providing for financing sources for certain projects by a private entity; providing powers and duties of private entities; providing for expiration or termination of agreements; providing for the applicability of sovereign immunity for public entities with respect to qualified projects; providing for construction of the act; creating s. 336.71, F.S.; authorizing counties to enter into public-private partnership agreements to construct, extend, or improve county roads; providing requirements and limitations for such agreements; providing procurement procedures; requiring a fee for certain proposals; amending s. 348.754, F.S.; revising the limit on terms for leases that the Orlando-Orange County Expressway Authority may enter; providing an effective date.

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

Section 1. Section 255.60, Florida Statutes, is amended to read:

255.60 Special contracts with charitable ~~or not-for-profit~~ youth organizations.—The state, ~~or~~ the governing body of any political subdivision of the state, or a public-private partnership is authorized, but not required, to contract for public service work with a not-for-profit organization or charitable youth organization such as highway and park maintenance, notwithstanding competitive sealed bid procedures required under this chapter, ~~or chapter 287, or any municipal or county charter~~, upon compliance with this section.

(1) The contractor or supplier must meet the following conditions:

(a) The contractor or supplier must be a not-for-profit corporation incorporated under chapter 617 and in good standing.

(b) The contractor or supplier must hold exempt status under s. 501(a) of the Internal Revenue Code, as an organization described in s. 501(c)(3) of the Internal Revenue Code.

(c) For youth organizations, the corporate charter of the contractor or supplier must state that the corporation is organized as a charitable not-for-profit youth organization exclusively for at-risk youths enrolled in a work-study program.

(d) Administrative salaries and benefits for any such corporation shall not exceed 15 percent of gross revenues. Field supervisors shall not be considered administrative overhead.

(2) The contract, if approved by authorized agency personnel of the state, or the governing body of a political subdivision, or the public-private partnership, as appropriate, must provide at a minimum that:

(a) For youth organizations, labor shall be performed exclusively by at-risk youth and their direct supervisors; and shall not be subject to subcontracting.

(b) For the preservation, maintenance, and improvement of park land, the property must be at least 20 acres with contiguous public facilities that are capable of seating at least 5,000 people in a permanent structure.

(c) For public education buildings, the building must be at least 90,000 square feet.

~~(d)~~(b) Payment must be production-based.

~~(e)~~(e) The contract will terminate should the contractor or supplier no longer qualify under subsection (1).

~~(f)~~(d) The supplier or contractor has instituted a drug-free workplace program substantially in compliance with the provisions of s. 287.087.

~~(g)~~(e) The contractor or supplier agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure that the contractor or supplier has complied with this section.

(3) A ~~No~~ contract under this section may not exceed the annual sum of \$250,000.

(4) Should a court find that a contract purporting to have been entered into pursuant to this section does not so qualify, the court may order that the contract be terminated on reasonable notice to the parties. The court shall not require disgorgement of any moneys earned for goods or services actually delivered or supplied.

(5) Nothing in this section shall excuse any person from compliance with ss. 287.132-287.134.

Section 2. Section 287.05712, Florida Statutes, is created to read:

287.05712 Public-private partnerships.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Affected local jurisdiction” means a county, municipality, or special district in which all or a portion of a qualifying project is located.

(b) “Develop” means to plan, design, finance, lease, acquire, install, construct, or expand.

(c) “Fees” means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(d) “Lease payment” means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.

(e) “Material default” means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

(f) “Operate” means to finance, maintain, improve, equip, modify, or repair.

(g) “Private entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public-benefit corporation, nonprofit entity, or other private business entity.

(h) “Proposal” means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) “Qualifying project” means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;

3. A water, wastewater, or surface water management facility or other related infrastructure; or

4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.

(j) "Responsible public entity" means a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) "Service contract" means a contract between a public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There may be state and federal tax incentives that promote partnerships between public and private entities to develop and operate qualifying projects.

4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

(3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.

(a) There is created the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force for the purpose of recommending guidelines for the Legislature to consider for purposes of creating a uniform process for establishing public-private partnerships, including the types of factors responsible public entities should review and consider when processing requests for public-private partnership projects pursuant to this section.

(b) The task force shall be composed of seven members, as follows:

1. The Secretary of Management Services or his or her designee, who shall serve as chair of the task force.

2. Six members appointed by the Governor, as follows:

a. One county government official.

b. One municipal government official.

c. One district school board member.

d. Three representatives of the business community.

(c) Task force members must be appointed by July 31, 2013. By August 31, 2013, the task force shall meet to establish procedures for the conduct of its business and to elect a vice chair. The task force shall meet at the call of the chair. A majority of the members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings shall be held in Tallahassee, unless otherwise decided by the task force, and then no more than two such meetings may be held in other locations for the purpose of taking public testimony. Administrative and technical support shall be provided by the department. Task force members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.



(d) In reviewing public-private partnerships and developing recommendations, the task force must consider:

1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal.

2. Reasonable criteria for choosing among competing proposals.

3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.

4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority.

5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project.

6. The adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition.

7. Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal.

8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity.

(e) The task force must submit a final report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2014.

(f) The task force is terminated December 31, 2014. The establishment of guidelines pursuant to this section or the adoption of such guidelines by a responsible public entity is not required for such entity to request or receive proposals for a qualifying project or to enter into a comprehensive agreement for a qualifying project. A responsible public entity may adopt guidelines so long as such guidelines are not inconsistent with this section.

(4) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(a) The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section. The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation.

(b) The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal for a public-private project and the public entity intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the public entity may accept other proposals shall be determined by the public entity on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. A copy of the notice must be mailed to each local government in the affected area.

(c) A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.

(d) Before approval, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest.
2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.
3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.
4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
5. Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (11); the project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.

(f) Additional material or information that the responsible public entity reasonably requests.

(6) PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that provision is made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the public entity is not satisfied with the results of the negotiations, the public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

(a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project.

(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, any development of regional impact processes or timelines, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

(8) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.

(b) Establish the process and timing of the negotiation of the comprehensive agreement.

(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

(9) COMPREHENSIVE AGREEMENT.—

(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

1. Delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.

4. Maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. Monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. Periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.

(10) FEES.—An agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships.

(b) The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a public-private partnership agreement.

(d) Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

(11) FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing by the responsible public entity with a pledge of security interest, and any such provision is void.

(d) A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, from the enterprise or other government fund from which the qualifying projects will be funded. This required payment obligation must be appropriated before other noncontractual obligations payable from the same enterprise or other government fund.

(12) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

(a) The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.



2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.

3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions of the comprehensive agreement.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(14) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(15) CONSTRUCTION.—This section shall be liberally construed to effectuate the purposes of this section. This section shall be construed as cumulative and supplemental to any other authority or power vested in or exercised by the governing board of a county, district, or municipal hospital or health care system including those contained in acts of the Legislature establishing such public hospital boards or s. 155.40. This section does not affect any agreement or existing relationship with a supporting organization involving such governing board or system in effect as of January 1, 2013.

(a) This section does not limit a political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory authority.

(b) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(c) This section does not waive any requirement of s. 287.055.

Section 3. Section 336.71, Florida Statutes, is created to read:

336.71 Public-private cooperation in construction of county roads.—

(1) If a county receives a proposal, solicited or unsolicited, from a private entity seeking to construct, extend, or improve a county road or portion thereof, the county may enter into an agreement with the private entity for completion of the road construction project, which agreement may provide for payment to the private entity, from public funds, if the county conducts a noticed public hearing and finds that the proposed county road construction project:

(a) Is in the best interest of the public.

(b) Would only use county funds for portions of the project that will be part of the county road system.

(c) Would have adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the traveling public and citizens of the state.

(d) Upon completion, would be a part of the county road system owned by the county.

(e) Would result in a financial benefit to the public by completing the subject project at a cost to the public significantly lower than if the project were constructed by the county using the normal procurement process.

(2) The notice for the public hearing provided for in subsection (1) must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to accept the proposal and enter into an agreement pursuant thereto. The determination of cost savings pursuant to paragraph (1)(e) must be supported by a professional engineer's cost estimate made available to the public at least 14 days before the public meeting and placed in the record for that meeting.

(3) If the process in subsection (1) is followed, the project and agreement are exempt from s. 255.20 pursuant to s. 255.20(1)(c)11.

(4) Except as otherwise expressly provided in this section, this section does not affect existing law by granting additional powers to or imposing further restrictions on local government entities.

Section 4. Paragraph (d) of subsection (2) of section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

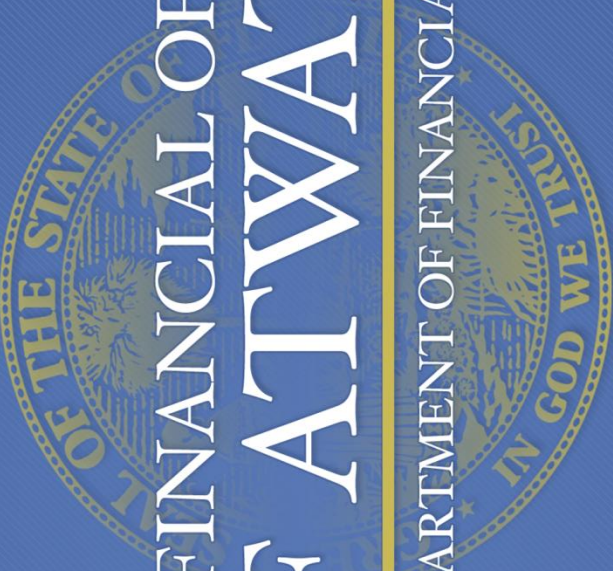
(d) To enter into and make leases for terms not exceeding ~~99~~ 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in this part.

Section 5. This act shall take effect July 1, 2013.

Approved by the Governor June 27, 2013.

Filed in Office Secretary of State June 27, 2013.





CHIEF FINANCIAL OFFICER  
**JEFF ATWATER**

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

**Overview of Governmental Accountability Legislation  
and CFO's Contract Reporting Website:  
Florida Accountability Contract Tracking System  
FACTS**

*House Government Operations Subcommittee*  
September 24, 2013

# Governmental Accountability

HB 1309

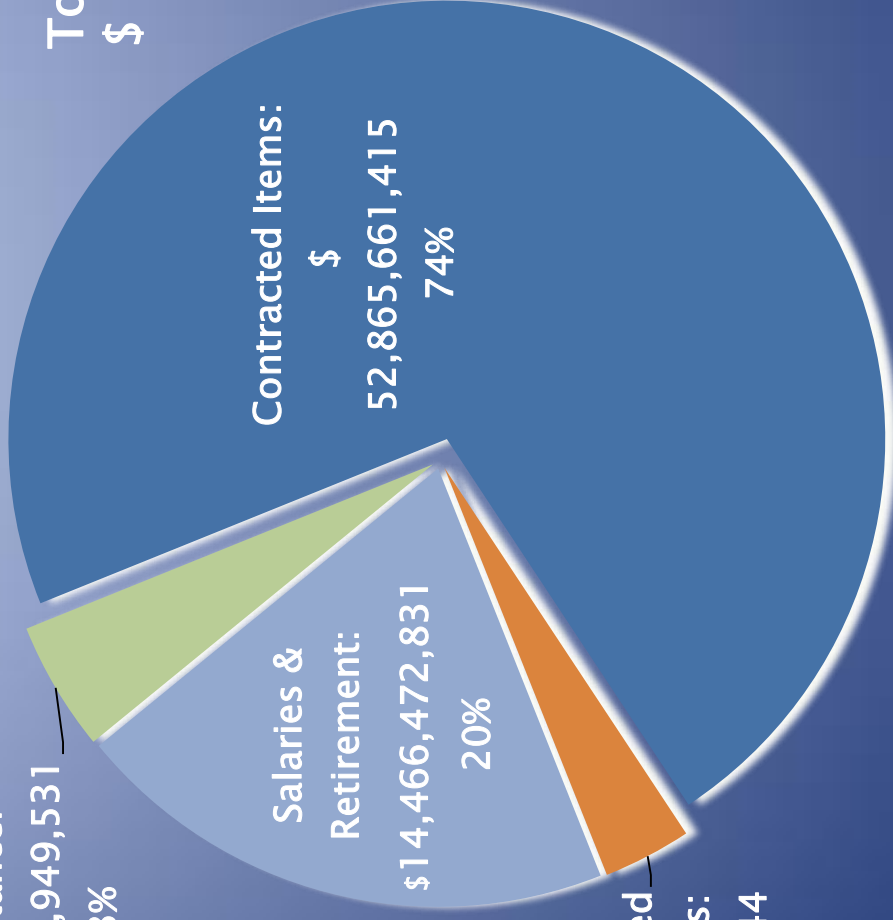
# Total State Spend for Fiscal Year 2012-2013

Unemployment  
Comp & Public  
Assistance:

\$ 2,331,949,531  
3%

Total Spend:  
\$ 71,905,451,621

Total Available Budget:  
\$ 85,143,912,946

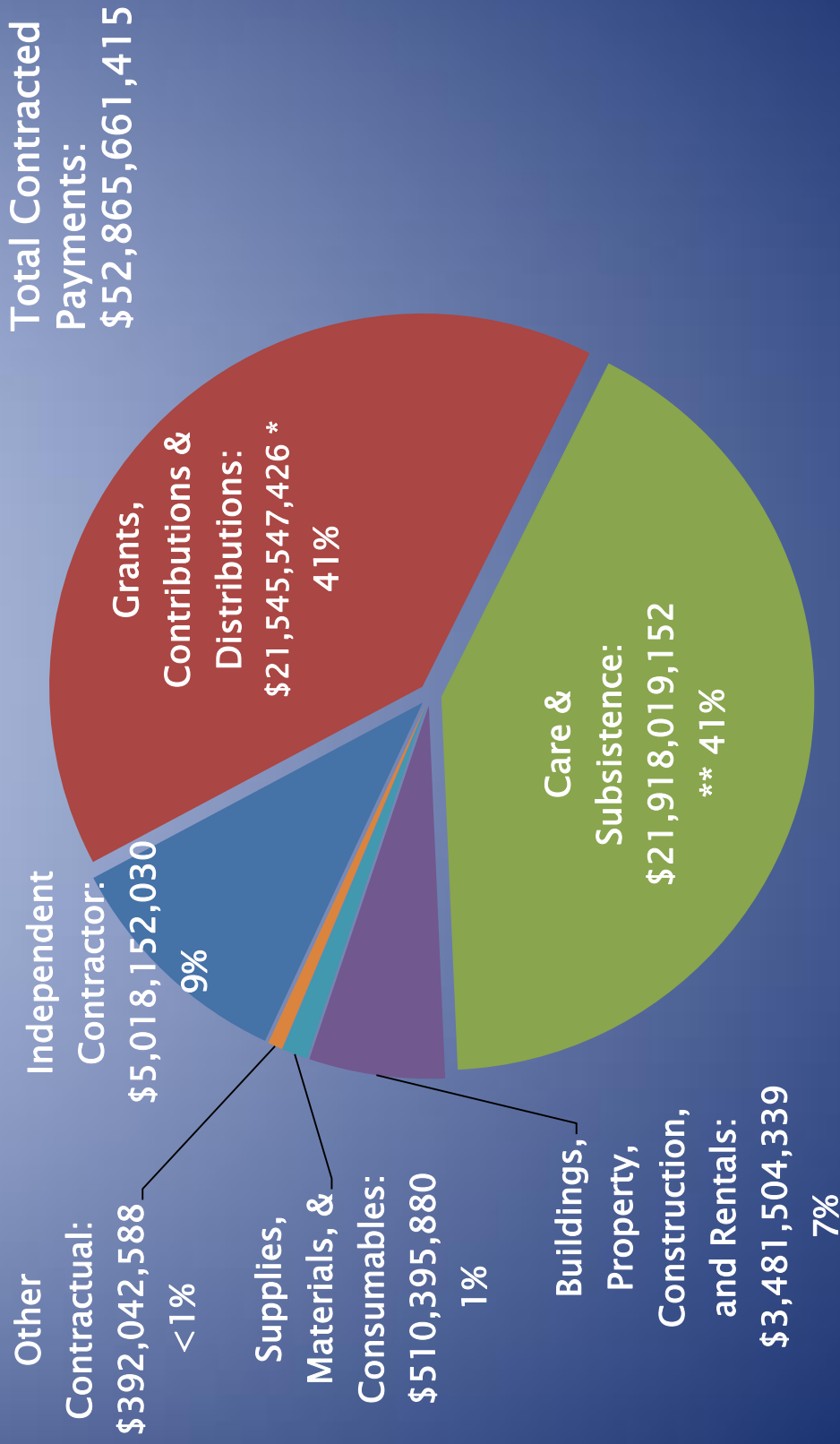


Contracted Items:  
\$  
52,865,661,415  
74%

Salaries &  
Retirement:  
\$14,466,472,831  
20%

Non-Contracted  
Misc. Payments:  
\$2,241,367,844  
3%

# Breakdown of Contracted Spending for Fiscal Year 2012-2013



\* Includes Florida Education Finance Program (FEFP) payments totaling \$12,419,810,227

\*\* Includes Medicaid payments totaling \$20,335,564,165



# Statutory Requirements – HB 1309

DFS specific impacts are:

- New requirements in Section 215.971, F.S. for the accountability and management of grant funds. Several of the standards are already in Chapter 287, F.S. for contracts
- Contract/Grant manager training and certification
- Requires the CFO to perform audits of the contract and grant agreements and the manager's records in order to ensure that adequate internal controls are in place for complying with the terms and conditions and for validation and receipt of goods and services

# Statutory Requirements – HB 1309

Grant agreements must include the following:

- Financial consequences if the recipient or sub-recipient fails to perform the minimum level of service
- A provision that grant funds may only be expended for allowable costs
- A provision specifying that any balance of unobligated funds must be refunded to the State Agency

# Statutory Requirements – HB 1309

State Agencies must designate a Grant manager similar to a contract manager. Grant managers must:

- Attend training and become certified if managing an agreement in excess of \$100,000
- Monitor and document recipient and subrecipient performance
- Review and verify all deliverables have been provided in accordance with the agreement prior to approving payment
- At the end of the agreement term, reconcile and verify that all funds have been expended for the agreement and produce a final report

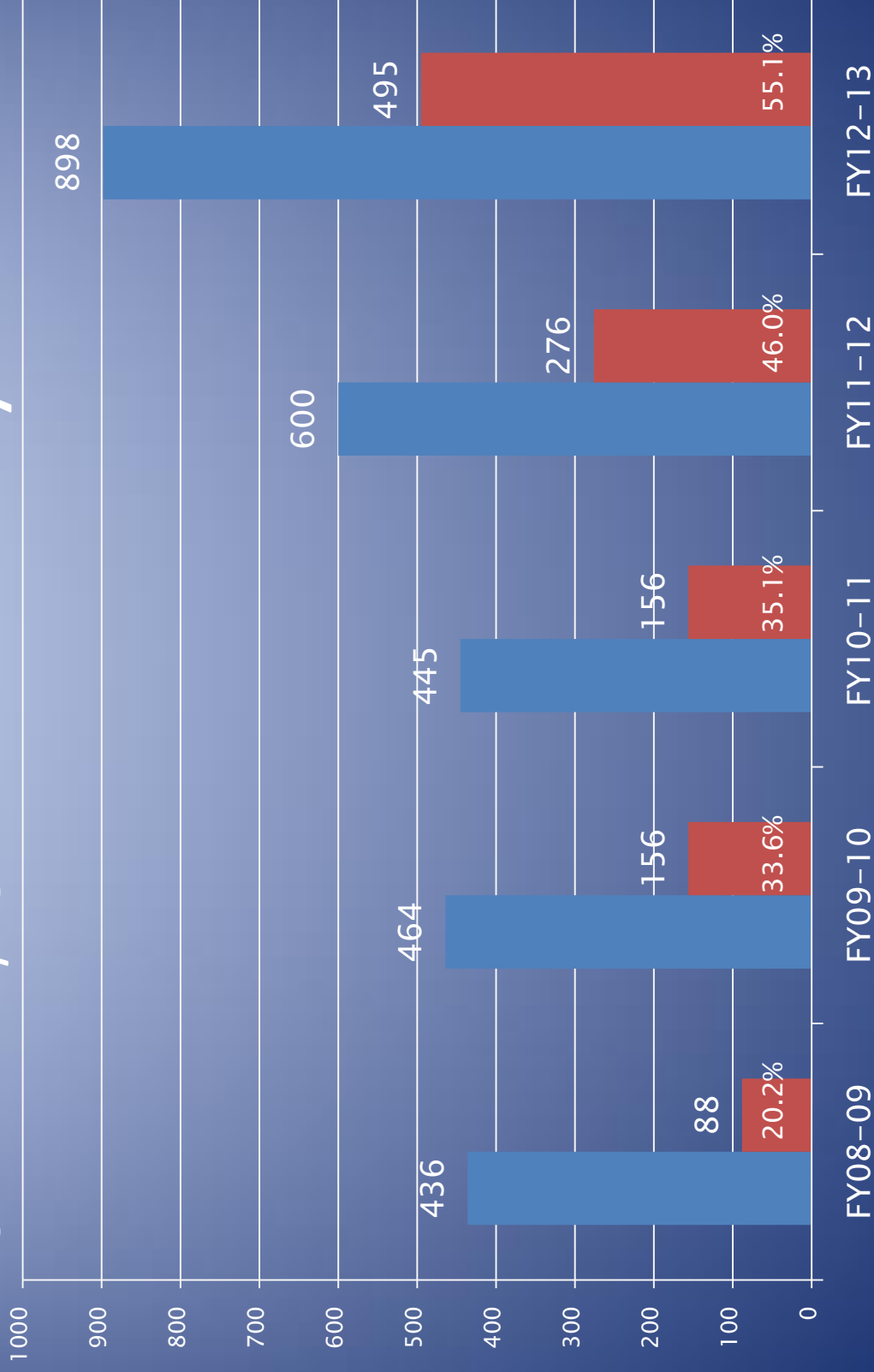
## DFS Activities – Training

- DFS continues to provide two classes associated with contracts/grants:
  - “Advancing Accountability – Best Practices for Contract and Grant Management”
  - “Contract/Grant Monitoring – Steps for Success”
- Partnered with DMS to review and update training curriculum for the contract manager certification process, required to begin on December 1, 2014
- Training must cover procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements. Curriculum must include the use of case studies based upon previous audits, contracts, and grant agreements

## DFS Activities – Audits

- DFS continues to perform contact/grant manager reviews. The final reports and agency responses are posted on the CFO's transparency website: [http://www.myfloridacfo.com/aadir/auditing\\_activity.htm](http://www.myfloridacfo.com/aadir/auditing_activity.htm)
- Audit procedures include the review of documents associated with the grant manager's responsibilities for monitoring performance, validation of deliverables, and the reconciliation of grant funds

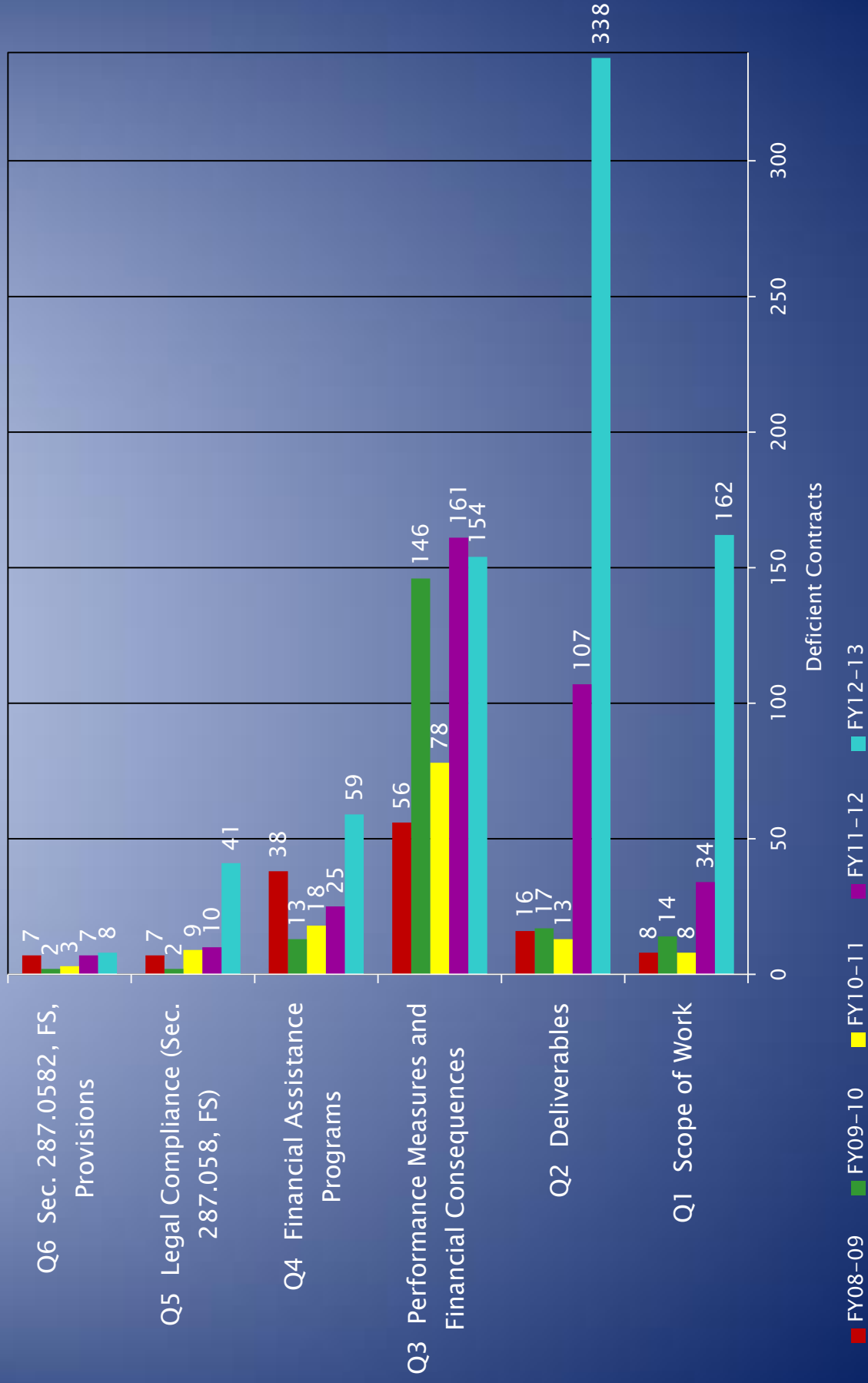
# Contract / Grant Reviews by Fiscal Year



■ Number of Contracts Reviewed ■ Number of Contracts with deficiencies

# Error Types for Contracts/Grants Reviewed

## FY 2008-09 through FY 2012-13



# Transparency

## HB 5401



# Statutory Requirements - Transparency

- SB 2096 was adopted into Law (2011-49) during the 2011 Session
  - “The Chief Financial Officer shall provide public access to a state contract management system that provides information and documentation relating to contracts procured by **governmental entities**”
- HB 5401 was adopted into Law (2013-54) during the 2013 Session and replaced reporting required for “governmental entities” with “**state entities**”

# Statutory Requirements – Transparency

HB 5401 also included the following:

- Defines a contract as “a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance”
- Defines a procurement document as “any document or material provided to the public or any vendor as part of a formal competitive solicitation of goods or services undertaken by a state entity, and a document or material submitted in response to a formal competitive solicitation by any vendor who is awarded the resulting contract”

# Statutory Requirements – Transparency

- Added electronic copies of contracts and procurement documents to the reporting requirements
- Added a requirement for use of appropriate internet security
- Added a requirement for the redaction/removal of information that is exempt from public record requirements
- Allows the Department of Legal Affairs and Department of Agriculture and Consumer Services to post information on their own Agency–managed website
- By January 1, 2014, each state entity shall post existing contracts that were executed before July 1, 2013, with payment from state funds made after June 30, 2013

# Statutory Requirements - Transparency

- Requires the EOG, in consultation with the Appropriations committees of the House and Senate, to establish and maintain a single website that provides access to all the other transparency websites provided by state entities
- Creates the User Experience Task Force to develop and recommend a design for consolidating the existing state-managed transparency websites into a single website
- The task force consists of 4 members designated each by the Governor, Chief Financial Officer, President of the Senate and Speaker of the House of Representatives

# Statutory Requirements - Transparency

- The task force must submit a work plan to the Governor, Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives by October 1, 2013
- The task force had their first meeting on Friday, September 13 and will meet to discuss their proposed work plan on Friday, September 27
- The complete recommendations must be submitted by March 1, 2014. These recommendations must provide an intuitive and cohesive user experience, allowing users to move easily between the varied types of data provided on the state's transparency sites

# FACTS Project Overview

- Phase 1 – Contract Information (Completed April 2012)
- Phase 2 – Payment Information (Completed July 2012)
- Phase 3 – Contract Audits (Completed October 2012)
- Phase 4 – Contract Images (Partial Completion August 2012). Piloted functionality with the Department of Transportation and the Department of Financial Services. Remaining agencies are scheduled to begin loading images in October 2013

Note: For data integrity, FACTS has been integrated with FLAIR and the DFS contract audit system.

# FACTS Project Overview

- Phase 5A - Grant Disbursements (Target October 2013) Agencies will need 3 to 6 months to complete the upload of their grant disbursement information
- Phase 5B - Grant Award (Target March 2014) Agencies will need 3 to 6 months to complete the upload of their grant award information
- Phase 6 - Purchase Order Information (Target October 2013) PO data is loaded from the State's procurement system, MyFloridaMarketPlace

# FACTS is accessible from the CFO's transparency homepage

The screenshot shows the homepage of the Florida Transparency website. At the top is a dark blue navigation bar with white text for 'Home', 'News', 'Contact Us', 'About the Agency', 'Español', and 'Search'. Below this is a large dark blue banner with the Florida state seal, the name 'JEFF ATWATER', the title 'FLORIDA'S CHIEF FINANCIAL OFFICER', and the main heading 'TRANSPARENCY FLORIDA' in large white letters. Underneath the heading is the tagline 'An Open Door to Florida's Finances'. A central text box contains a paragraph about transparency and accountability, accompanied by a small portrait of Jeff Atwater. To the right, there are several interactive buttons: 'CFO'S INITIATIVES' (with sub-links for Transparency Florida, Finances & Economy, and Fraud & Consumer Protection), 'FIND A SERVICE', and a grid of four topic buttons: 'State Budget', 'State Contract Search: FACTS', 'Where State Dollars Go: Your Money Matters', and 'State Contract Audits'. Each button features a representative image. At the bottom right, the page number '20' is visible.

Home News Contact Us About the Agency Español Search

JEFF ATWATER FLORIDA'S CHIEF FINANCIAL OFFICER

# TRANSPARENCY FLORIDA

*An Open Door to Florida's Finances*

 Transparency ensures accountability, and Floridians have a right to see how every penny of the money they send to their government is spent. This website allows Floridians to scrutinize state budgets, payments and contracts and hold their government accountable for how every dollar is spent.

Home > Transparency Florida

### CFO'S INITIATIVES

- Transparency Florida
- Finances & Economy
- Fraud & Consumer Protection

### FIND A SERVICE

- State Budget
- State Contract Search: FACTS
- Where State Dollars Go: Your Money Matters
- State Contract Audits

20



# Main Search page is easy to use

## Main Search

Quick Tips

### Search Contracts

[Advanced Contract Search](#)

To search for contract information, please enter at least one search criteria in the fields below. If you would like to see details for all agencies or all commodity groups, please provide additional criteria in any of the remaining fields.

Agency Name DEPARTMENT OF FINANCIAL SERVICES	Vendor Name Wells
Agency Assigned Contract ID (if known)	Contract Dollar Value From To
Beginning and/or Ending Dates of Contract (mm/dd/yyyy) Begin End	Commodity/Service Type ALL COMMODITY GROUPS

Show contracts with published audits only

By using this Search you agree to [terms and conditions](#) of the Search.

Reset Search Contracts

### Results

Displaying 1 to 4 of 4 Download Results

CONTRACT SHORT TITLE ▲	AGENCY NAME	VENDOR NAME	AGENCY ASSIGNED CONTRACT ID	TOTAL CONTRACT AMOUNT	COMMODITY/SERVICE TYPE	CONTRACT TYPE	VIEW AUDITS
<a href="#">Banking</a>	DEPARTMENT OF FINANCIAL SERVICES	WELLS FARGO BANKS	TR139	\$0.00	Multiple	Standard Two Party A...	<a href="#">View</a>
<a href="#">DPA</a>	DEPARTMENT OF FINANCIAL SERVICES	WELLS FARGO BANKS	TR115	\$5,870,000.00	Multiple	Standard Two Party A...	<a href="#">View</a>
<a href="#">EFT &amp; Disb</a>	DEPARTMENT OF FINANCIAL SERVICES	WELLS FARGO BANKS	TR174	\$0.00	Multiple	Standard Two Party A...	<a href="#">View</a>

# Contract summary information is always displayed at the top of each page. **Details** page groups contract information in boxes for easy identification

Back to Contract Search

### Summary

Agency Name: DEPARTMENT OF FINANCIAL SERVICES  
Long Title: EFT and Controlled Disbursement  
Total Contract Amount: \$0.00  
Total Payments to date: \$232,230.82  
Agency Contract ID: TR174  
Vendor Name: WELLS FARGO BANKS  
Total Budgetary Amount: \$5,881,681.92  
Date of Execution: 02/19/2013  
General Description: This Contract is with a financial institution to provide banking services related to the State of Florida's Electronic Funds Transfer (EFT), warrant disbursements, and their settlement.

### Main Information

Agency Contract ID: TR174  
FLAIR Contract ID: D0716  
Short Title: EFT & Disb  
Long Title: EFT and Controlled Disbursement  
Contract Type: Standard Two Party Agreement by Statute  
Contract Status: Active  
Date of Execution: 02/19/2013  
Date of Beginning: 02/19/2013  
Original End Date: 02/28/2016  
Agency Service Area: TR  
Statutory Authority: 17.52  
Contract Involves State or Federal Financial Assistance: No  
Recipient Type:  
Provide for Administrative Cost: No  
Provide for Periodic Increase: No

### Procurement Information

Authorized Advanced Payment: No  
Method of Procurement: Agency Invitation to Negotiate [s. 287.057 (1) (c), FAC]  
State Contract Term ID:  
Contract's Exemption Justification:  
Agency Reference Number: DFS TR ITN 11/12-12  
Business Case Study Done: No  
Legal Challenges to Procurement: No

### Outsourcing / Capital Improvements

Was the Contracted Function Previously Performed by the State: Yes  
Was the Contracted Function Considered for Insourcing back to the State: No  
Did the Vendor Make Capital Improvements on State Property: No

Details Deliverables Payments Documents Audits

2011 © FLORIDA DEPARTMENT OF FINANCIAL SERVICES

# Details page also includes budget information, contract changes, and grant numbers (CFDA/CSFA) when applicable

[BACK TO TOP](#) ↑

**Budget Information**

Original Contract Amount: \$0.00  
 Total Contract Amount: \$0.00  
 Total Recurring Budgetary Amount: \$5,881,681.92

As of Date: 3/4/2013

Total Non-Recurring Budgetary Amount: \$0.00  
 Total Budgetary Amount: \$5,881,681.92  
 Total Unfunded Amount: (\$5,881,681.92)

[Download Budget Information](#)

RECURRING BUDGETARY AMOUNT	ACCOUNT CODE	FISCAL YEAR EFFECTIVE DATE	FY	COST ACCUMULATOR	AGENCY AMENDMENT REFERENCE
\$1,899,847.71	43-20-2-725001-43100300-00-100777-00	04/01/2013	2012-2013		
\$3,981,834.21	43-10-1-000122-43200100-00-100777-00	02/19/2013	2012-2013		

No Non-Recurring Budgetary records Found for this contract.

**Contract Change**

No Contract Changes Found for the contract.

[BACK TO TOP](#) ↑

**Vendor**

[Download Vendor](#)

NAME	CITY STATE ZIP	MINORITY VENDOR DESIGNATION
WELLS FARGO BANKS	MINNEAPOLIS MN 554850000	Non-Minority

**CFDA**

No CFDA Codes Found for the contract.

[BACK TO TOP](#) ↑

**CSFA**

No CSFA Codes Found for the contract.

[BACK TO TOP](#) ↑

# Deliverables page provides details on the contract's pricing, performance measures, and financial consequences

Contract Information
Back to Contract Search

**Summary**

Agency Name: DEPARTMENT OF FINANCIAL SERVICES      Agency Contract ID: TR174

Long Title: EFT and Controlled Disbursement      Vendor Name: WELLS FARGO BANKS

Total Contract Amount: \$0.00      Total Budgetary Amount: \$5,881,681.92

Total Payments to date: \$232,230.82      Date of Execution: 02/19/2013

**General Description:** This Contract is with a financial institution to provide banking services related to the State of Florida's Electronic Funds Transfer (EFT), warrant disbursements, and their settlement.

Details
Deliverables
Payments
Documents
Audits

Expand All Deliverables    Download Deliverables

MORE	DELIVERABLE NUMBER	COMMODITY/SERVICE TYPE	MAJOR DELIVERABLE	METHOD OF PAYMENT
<input type="checkbox"/>		BANKING, FINANCIAL SERVICES	Project Plan for file interface	Fixed Fee / Unit Rate
<input type="checkbox"/>		BANKING, FINANCIAL SERVICES	Solution Architecture and Design	Fixed Fee / Unit Rate
<input type="checkbox"/>		BANKING, FINANCIAL SERVICES	Production Implementation Guide	Fixed Fee / Unit Rate
<input type="checkbox"/>		BANKING, FINANCIAL SERVICES	Test Plan for Services	Fixed Fee / Unit Rate
<input type="checkbox"/>		BANKING, FINANCIAL SERVICES	Go-Live	Fixed Fee / Unit Rate
<input type="checkbox"/>		BANKING, FINANCIAL SERVICES	Pay State Warrants	Fixed Fee / Unit Rate

Major Deliverable: Pay State Warrants  
Deliverable Price: \$0.07  
Non Price Justification:  
Performance Metrics: Receipt of processed file.  
Financial Consequences: The Department will be unable to fund the warrants presented for settlement.  
Source Documentation Page Reference: 35  
Deliverable Number:

<input type="checkbox"/>	BANKING, FINANCIAL SERVICES	Notification of System Changes	Fixed Fee / Unit Rate
<input type="checkbox"/>	BANKING, FINANCIAL SERVICES	System Interface files	Fixed Fee / Unit Rate

2011 © FLORIDA DEPARTMENT OF FINANCIAL SERVICES

# Payments page displays payment information that has been recorded to the contract number in the State's accounting system (FLAIR)

Back to Contract Search

---

**Summary**

Agency Name: DEPARTMENT OF FINANCIAL SERVICES

Long Title: EFT and Controlled Disbursement

Total Contract Amount: \$0.00

Total Payments to date: \$232,230.82

General Description: This Contract is with a financial institution to provide banking services related to the State of Florida's Electronic Funds Transfer (EFT), warrant disbursements, and their settlement.

Agency Contract ID: TR174

Vendor Name: WELLS FARGO BANKS

Total Budgetary Amount: \$5,881,681.92

Date of Execution: 02/19/2013

Details
Deliverables
Payments
Documents
Audits

Payments are also referred to as expenditures (creating or incurring a legal obligation to disburse money) or disbursements (the payment of expenditures). Payments include disbursements and accounting adjustments made on a contract. Payments are always positive amounts while accounting adjustments may be positive or negative depending on the type of adjustment.

**Payment Details**

"Date" in the listing below indicates the date the payment voucher was recorded in the system, not the date the payment was issued.

MORE

2013-2014

FISCAL YEAR		TOTAL AMOUNT											
STATEWIDE DOCUMENT #	AGENCY DOCUMENT #	VENDOR NAME	AMOUNT	L1	GF	SF	FID	BE	IBI	CAT	YR	CFI	DATE
D4000122646	V0028450001	WELLS FARGO BANKS	\$26,465.94	43	10	1	000122	43200100	00	100777	00		09/04/2013
D4000122648	V0028470001	WELLS FARGO BANKS	\$8,583.15	43	20	2	725001	43100300	00	100777	00		09/04/2013

TOTAL AMOUNT

\$36,049.09

2012-2013

TOTAL AMOUNT

\$197,181.73

If a payment or adjustment to a contract was made before July 1, 2012, the information may not be posted in this system.

# Documents page allows the public access to scanned images of the original contract and any subsequent amendments

[Back to Contract Search](#)

## Contract Information

### Summary



Agency Name: DEPARTMENT OF FINANCIAL SERVICES  
Long Title: EFT and Controlled Disbursement  
Total Contract Amount: \$0.00  
Total Payments to date: \$232,230.82  
Agency Contract ID: TR174  
Vendor Name: WELLS FARGO BANKS  
Total Budgetary Amount: \$5,881,681.92  
Date of Execution: 02/19/2013

General Description: This Contract is with a financial institution to provide banking services related to the State of Florida's Electronic Funds Transfer (EFT), warrant disbursements, and their settlement.

[Details](#) | [Deliverables](#) | [Payments](#) | [Documents](#) | [Audits](#)

### Documents

**Contract Documents**  
*Click on the pdf icon to view the document*

CONTRACT/AMENDMENT	CHANGE TYPE	EXECUTED DATE	DOCUMENT UPLOAD DATE	VIEW
Original Contract - D0716	Original Contract	02/19/2013	3/5/2013 8:41:29 AM	 

### Agency Resources

Description: There are no additional agency resources at this time.

# Audits page will display the results of contract reviews completed by the CFO's office

## Contract Information

[Back to Contract Search](#)

### Summary

Agency Name: DEPARTMENT OF FINANCIAL SERVICES

Agency Contract ID: TR174

Long Title: EFT and Controlled Disbursement

Vendor Name: WELLS FARGO BANKS

Total Contract Amount: \$0.00

Total Budgetary Amount: \$5,881,681.92

Total Payments to date: \$232,230.82

Date of Execution: 02/19/2013

**General Description:** This Contract is with a financial institution to provide banking services related to the State of Florida's Electronic Funds Transfer (EFT), warrant disbursements, and their settlement.

Details

Deliverables

Payments

Documents

Audits

Audit results posted prior to June 30, 2012, appear in a summarized form. As of July 1, 2012, the audit reporting process was expanded to include additional questions and comments from the Bureau of Auditing. As audits are captured in electronic format, they will be posted to this system. If you are interested in seeing audit reports by Fiscal Year and Agency Action Plans, please click [here](#) to navigate to the Transparency Florida Contract Audit page.

AUDIT TYPE	REVIEW DATE	FISCAL YEAR	VIEW
Contract Review	05/31/2013	2012-2013	<a href="#">View</a>



**FACTS** also provides interesting Charts and Reports associated with all the active contracts currently in the system.

The screenshot shows the website for the Florida Accountability Contract Tracking System. The header includes the name 'JEFF ATWATER FLORIDA'S CHIEF FINANCIAL OFFICER' and navigation links: 'HOME', 'NEWS', 'ABOUT THE AGENCY', and 'MEET THE CFO'. The main navigation bar contains 'Contract Search', 'FAQ Questions?', 'Contact Us State Agencies', 'Message From CFO Atwater & Reports Florida', 'Charts', and 'Transparency'. The 'Charts' section is highlighted with a blue arrow pointing to a list of report links: 'Number of Active Contracts by Agency', 'Number of Active Contracts by Contract Type', 'Contract Amount by Method of Procurement', 'Contract Amount By Agency', and 'Contract Amount by Contract Type'.



**FACTS** charts allow the public to click on the pie totals and see a report that provides details associated with the chart

**FACTS** FLORIDA ACCOUNTABILITY CONTRACT TRACKING SYSTEM

Contract Search    FAQ Questions?    Contact Us State Agencies    Message From CFO Atwater    Charts & Reports    Transparency Florida

### Contract Amount by Method of Procurement

**Contract Amount by Method of Procurement**  
**Total Dollar Amount \$70,555,790,213.82**

Method of Procurement	Amount
C - Competitively Procured	\$50.02B
E - Exempt	\$20.54B

2011 © FLORIDA DEPARTMENT OF FINANCIAL SERVICES

29

# FACTS – the public can use the advanced search page to pull a listing of contracts for each method of procurement identified on this report

## Exempt Method of Procurements

METHOD OF PROCUREMENT	CONTRACT AMOUNT	NUMBER OF CONTRACTS
Exempt. Legal services, including Attorney, paralegal, expert witness, appraisal and mediator services [s. 287.057 (3) (f) 4, FS]	\$234,116,624.71	5077
Exempt. Services or Commodities provided by Governmental Agencies [s. 287.057 (3) (f) 12, & s. 287.057 (22), FS]	\$3,922,174,382.27	3463
DEP Exempt. Preapproved Site Rehabilitation Program 376.30711(2)(a), F.S.	\$85,370,087.30	2942
Exempt. Federal or state law prescribes with whom the agency must contract [s. 287.057 (10), FS]	\$8,002,390,768.86	2795
Exempt. Health services, including examination, diagnosis, treatment, prevention, medical consultation or administration. [s. 287.057 (3) (f) 5a, FS & Rule 60A-1002 (4) (k) FAC]	\$2,449,861,467.37	1355
Revenue Generating Procurement	\$1,541,604,654.27	957
Exempt. Regulated utilities and government franchised and public communications, except long distance telecommunications services or governmental franchise SVCCS. [Rule 60A-1.002(4) (a) & (b), FAC]	\$145,405,404.31	757
Exempt. Services to persons w/ mental/physical disabilities by non-profit corporations [s. 287.057 (3) (f) 6, FS & Rule 60A-1.002 (4) (k) FAC]	\$844,834,764.90	547
No Cost Procurement	\$43,370,109.17	390
Exempt. Transportation for the Disadvantaged [s. 427.011 (5), FS]	\$404,780,405.20	386
Single source \$2,500 or greater, not to exceed Category Two [Rule 60A-1.002 (3), FAC]	\$28,307,499.75	250
Purchase under \$2,500 [Rule 60A-1.002(2), FAC]	\$24,053,920.40	237
Exempt. Training and education services [s. 287.057 (3) (f) 10, & s.440.491 (6), FS]	\$144,704,720.10	226
Single source approval over Category Two [s. 287.057 (3) (c), FS & Rule 60A-1.045, FAC]	\$255,013,994.39	221
DOT Exemption, Funding grants for Aviation/Airport programs and projects [Section 332.007, F.S.]	\$269,018,866.84	119
Exempt. Prevention services related to mental health, substance and child abuse, shelters/runaways, by non-profits [s. 287.057 (3) (f) 9, FS & Rule 60A-1.002 (4) (k), FAC]	\$240,515,271.83	119
DOT Exemption, JPAs/LAP: Aid and contributions by governmental entities for FDOT projects: federal aid [Section 339.12, F.S.]	\$230,343,450.01	113
Non-competitively awarded grants to governmental entities, non-profits or for-profit organizations.	\$39,768,465.21	104

# Questions?

Office of Legislative Affairs  
850.413.2863  
[LegAffairs@myfloridacfo.com](mailto:LegAffairs@myfloridacfo.com)