

department, not to exceed \$3 million annually, either to establish positions exclusively responsible for contract management activities or to contract for these services.

This bill substantially amends section 20.19, Florida Statutes, 1996 Supplement.

II. Present Situation:

The 1997 Legislature created a Department of Health and transferred to it several health-related programs previously assigned to the Department of Health and Rehabilitative Services (HRS), as well as health programs that had been assigned to other agencies.

The department responsible for the programs remaining in HRS on January 1, 1997, was renamed the Department of Children and Family Services and its residual program responsibility following reorganization now relates to:

- Economic Self-Sufficiency;
- Family Safety and Preservation
- Developmental Services;
- Alcohol, Drug Abuse, and Mental Health.

Between FYs 1985-86 and 1996-97, the amount of services purchased from private service providers on behalf of HRS clients in these four identified program areas increased from \$386 million to \$1.1 billion. The percentage of the department's services for clients that is provided currently through a contractual arrangement varies from about 60 percent to nearly 95 percent, depending upon the program.

The Department of Children and Family Services is under the direction of a Secretary who is appointed by the Governor, subject to confirmation by the Senate. The department is divided into 15 geographic service districts under which all service programs are planned and administered. Each district has an administrator who has direct line authority over all departmental programs assigned to the district.

The district administrator is authorized to appoint a district program manager for social services, a district manager for administrative services, and program supervisors for each program area. Programs may be combined at the discretion of the district administrator and may be placed under a program manager or program supervisor if approved by the Secretary of the department.

The most conventional organizational structure, as it relates to contract management, places contract managers under the appropriate district program administrator. In such a structure, contract administrators are placed under the district manager for administration and have no direct line authority over contract managers. In some districts there has been an effort to centralize functions and this centralization has resulted, in the opinion of staff from those districts, in increased effectiveness and efficiency.

The delegation of responsibility from the headquarters office of the Department of Children and Families to the district level has diminished the ability of headquarters staff to make contracting

decisions, while placing the decision-making responsibility increasingly in the hands of the district administrator. Thus, the structure of the contracting “office” as well as certain contracting processes varies from district to district.

The reorganization and reassignment of duties and programs also has decreased the ability of the department headquarters staff to ensure the quality of services and the fiscal accountability of providers. Although it appears that a great deal of the responsibility for monitoring the degree to which districts are ensuring accountability on the part of providers is placed in the Office of Standards and Evaluation (s. 20.19(3), F.S.), the extent to which this office has been doing so is unclear. The research conducted for the interim report found that there was insufficient oversight of district contracting practices by headquarters staff.

The law creates a headquarters program office to set policy for, monitor, and provide technical assistance to the districts. The interim project report found that the contract management training that had been offered to the districts by the headquarters program offices generally was perceived as helpful to district staff. The project also determined that district staff want and need more training, particularly in developing performance standards and in measuring outcomes of district service providers.

The Assistant Secretary for Administration is responsible for various duties related to administration and management practices in the department. These duties include, among other responsibilities, developing and implementing uniform policies, procedures, and guidelines with respect to finance and accounting, contract administration, and procurement.

Generally, when the department identifies either a breach of contract on the part of a provider or shortcomings related to standards of service, the measures that can be taken are limited to either a corrective action plan or cancellation of the contract. Currently, there is no requirement for the department to include provisions related to intermediate penalties in its rules or contracts. This means that the service districts and contract managers currently lack the ability to impose intermediate sanctions in the event a service provider fails to comply with a corrective action plan or in some other manner fails to comply with the terms of his or her contract.

When an employee of the department who is responsible for contracting activities does not make every effort possible to ensure that a provider of contracted client services meets the provisions of the contract, there is no formalized process in place for the department to discipline that employee.

The interim project team found that the employees representing the Department of Children and Family Services rarely are able to match the experience and expertise of the service provider representatives in the contract-negotiation process. Employees of the department who are responsible for negotiating a contract are often individuals who have a human services or social work background, some administrative experience, and generally, no formal education and limited training in contract negotiation. The department is unable, generally, to provide its contract managers with legal and fiscal assistance during contract negotiation meetings to adequately

represent the interests of the state. In contrast to department staff, individuals who represent service providers during contract negotiations— particularly large providers negotiating large contracts—are often contract attorneys, certified public accountants, or other individuals who have extensive negotiating experience.

The 1997 update to the 1996 interim project traced the development of contractor-administered programs over a multi-year period and provided a review of such programs in three additional state agencies. Some 30 percent of the state operating budget is comprised of these “Special Category” appropriations. They are experiencing a growth rate greater than that of revenues alone and are responsible for the significant leveling of state-funded full-time equivalent positions. The issues affecting the use of no-governmental providers of public services has been discussed widely, most recently in *Social Service Privatization: Expansion Poses Challenges in Ensuring Accountability for Program Results*, Report B-276630, General Accounting Office, October 20, 1997.

Departmental staff responsible for contract negotiation and contract management are frequently assigned other duties. This means that contracting responsibilities only represent a portion of an employee’s total job responsibilities. Although the department provides many educational or training opportunities for its contract managers, those employees indicated during the research for the interim project that they would like more training opportunities.

Contrary to the general practice observed in other state agencies surveyed, employees of the Department of Children and Family Services responsible for contract management and contract administration activities are assigned a variety of job classifications throughout the state that vary among and within districts. Pay grades associated with these positions statewide range from a pay grade 18 (annual salary range \$22,677-\$37,395) to a pay grade 25 (annual salary range \$35,032-\$59,239) [1997 pay grade levels]. This results in significant pay disparity among these employees that is not necessarily related to the individual employee’s job responsibilities or to the quality of that person’s job performance.

Section 287.057(3)(f), F.S., provides a list of services that are exempted from a competitive procurement process when any agency is contracting for these services. Nearly all client services provided by the Department of Children and Family Services are exempt from the competitive procurement process, although the statute does not prohibit the department from competitively bidding any client-service contract. The department generally takes advantage of the exemption provision, in part because of the workload that would be created in competitively procuring services through the traditional request for proposal process or the invitation to bid process. In FY 1996-97, only about 13 percent of the client services contracts were procured competitively by the Department of Children and Family Services.

Chapter 120, F.S., the Administrative Procedure Act, generally governs the actions of state agencies if the actions affect the substantial interests of citizens or organizations. Section 120.57, F.S., specifies the procedures that are applicable to protests in the award of a contract or the bidding preceding a contract award. According to staff of the Department of Children and Family

Services, bid protests filed under the Administrative Procedure Act can take from 6 months to 2 years to be resolved.

Many of the above-stated provisions were contained in CS/CS SB 384 passed by the Senate during the 1997 Legislative Session. The salary rate pool is not a feature of CS/SB 156.

III. Effect of Proposed Changes:

Increased Reporting by the Department

CS/SB 156 requires the Office of Standards and Evaluation in the Department of Children and Family Services to evaluate and report annually to the Legislature on a variety of issues specifically related to client services and contracting, in addition to providing information about the status of the department's compliance with provisions currently in statute. The new issues on which the office would report include:

- The effectiveness of the department's contracts in accomplishing program outcomes and in supporting statewide quality assurance programs.
- The effectiveness of the contract evaluation teams established pursuant to this act. (See s. 20.19(9)(g), F.S.)
- The adequacy of resources and internal controls used by the district program offices to ensure the quality of client services through performance standards and other agreements.
- The effectiveness and quality of contracted services for each client target group as determined by annual performance reporting and the results of quality assurance monitoring.

This requirement for evaluation and reporting would provide the Legislature with a regular opportunity to review those mechanisms the department uses to ensure that state funds are being spent as intended and that the services provided are of the highest quality possible. The Office of Standards and Evaluation reports directly to the Secretary of the department and thus, can keep the Secretary fully informed about the status of these requirements as well as problems related to other programs of the department.

The headquarters program offices also would be assigned additional duties relative to contract monitoring and quality assurance. The law would be amended to require each program office to ensure compliance of the district programs with statewide program standards and performance measures. The Tallahassee program offices also would provide general supervision of the district services in their respective program areas. The duties of headquarters offices would include developing and coordinating additional training; coordinating program-area research; identifying statewide needs and potential solutions and priorities; providing district staff with technical assistance; and monitoring programs and districts to ensure quality throughout the state.

In addition to the current responsibilities that are assigned to the Assistant Secretary of Administration, the bill would require the assistant secretary to evaluate and report to the Legislature by July 1, 1999, and annually thereafter, on the methods used by each district program office to ensure the fiscal accountability of providers of client services with whom the department contracts. The assistant secretary also would be required to evaluate the service district administrative operations and to require corrective action plans of those district administrative functions which do not conform to the uniform operating procedures of the department.

Competitive Procurement

Although the department has the ability to competitively procure contracts for client services, it does not typically do so since its services are included in the list of services that are exempt from competitive procurement requirements. CS/SB 156 would require the department to competitively procure any contract for client services under any of the following circumstances:

- If, after a reasonable opportunity, a contract provider fails to meet cost and performance standards established by the department.
- If a new program or service is authorized and funded and the annual contract value is \$300,000 or more.
- If a program or service is expanded based on an increased appropriation of more than 10 percent of the prior year appropriation for that program or service and the annual value of the contract is \$300,000 or more.
- If the department, after reviewing market prices and program outcomes, determines that improved performance can be realized through its contract resources. The agency shall undertake a biennial review of such factors and report on them in its annual performance submission to the Legislature and shall provide an opportunity for public comment on its review.
- Exceptions to these standards must be specified with individual particularity, may not exceed one year in duration and must be predicated on documented adversity to affected client populations, facilities or community infrastructure.

According to the Department of Children and Family Services, these requirements relative to contracts will ensure that an estimated 70 percent of all contracted client service dollars—approximately \$600 million—are expended using competitive procurement. The department could phase in the competitive procurement of the appropriate contracted client services over a period of 3 years. The department also would be authorized to contract for or to provide assessment services and cases management services independently.

The department would be given authority to develop rules outlining a competitive-procurement process as an alternative to the request-for-proposal (RFP) or the invitation-to-bid (ITB) process. The department would solicit statements attesting to the professional qualifications of at least three service providers for each contract. The statements of professional qualifications would be evaluated by district staff before a district requests a service proposal. A service proposal would

only be requested of the service providers determined by department staff to offer the highest level of professional capability in meeting contract requirements.

Compliance and Accountability of Contract Client Service Providers

When a provider of contracted client services is not in compliance with contract performance standards, the law currently affords the Department of Children and Family Services two alternatives to address the deficiency: execution of a corrective action plan or contract cancellation. *The law presently does not permit the department to impose intermediate sanctions or liquidated damages against a service provider under any circumstances.*

CS/SB 156 would require the department to adopt rules authorizing intermediate sanctions to be imposed against a service provider that fails to comply with a corrective action plan or that otherwise fails to provide the contracted services. Any fine imposed on a contractor would be paid by the contractor from funds other than those used to pay for client services. The department would notify the board of directors and other responsible parties of any corporate service provider in the event a financial penalty is imposed.

The Department of Children and Family Services would be authorized to competitively procure and contract for treatment and service systems from multiple providers, rather than contracting separately with each available vendor. Any other governmental agency that contributes substantially to the treatment or service system also could participate with the department in the procurement and selection of service providers.

The bill would require that the department implement systems and controls to ensure financial integrity and service quality in the Developmental Services Medicaid Waiver program by December 31, 1998. The Auditor General would be required to audit the Medicaid Waiver program specifically as part of the audit of the Department of Children and Family Services for FY 1997-98. Similarly, the Office of Program Performance and Government Accountability (OPPAGA) would be required to review the Developmental Services Medicaid Waiver program and to submit a report to the Legislature by December 31, 1999.

The department would be specifically required to cancel any contract if a service provider fails to meet performance standards set in the contract. The service provider would first be given a reasonable opportunity to address performance deficiencies. However, absent extenuating circumstances, the contract would be canceled and the department would be precluded for 24 months from entering a new contract for the same services with the provider.

New provisions of CS/SB 156 permit the department to include language in its standard contract document which permits it to file a lien against property which has been constructed or modified substantially with state funds in order to protect its financial interest in the asset. No lien is required if the interest does not exceed the lesser of \$25,000 or 10% of the contract amount. Contractor disposition of the property prior to vacation of the department's interest shall provide

for a proportionate return of the agency's financial interest less depreciation calculated over a twenty-year term.

Provisions Relating to Employees

An employee of the Department of Children and Family Services who has responsibility for the management or administration of a contract has a degree of responsibility for the compliance of the provider and the quality of the services provided. The department would be directed to develop standards of conduct for its employees and a range of disciplinary actions which are specifically related to an employee's responsibilities relating to contract management.

The department would be required to seek outside assistance in providing training for employees who negotiate contracts. The training would enable contract managers to better represent the state's interests when negotiating contracts for client services. To further improve the negotiating position of the department, the department would be responsible for ensuring that individuals with particular expertise in legal and fiscal matters and staff who are particularly skilled in negotiating are available to the employees who negotiate client services contracts.

District Organization

The Department of Children and Family Services would be directed to create contract management units at the district level. The contract management units would be staffed by individuals who are specifically trained to perform the functions related to contract management. These contracting units would be similar to those that have already been created in a few districts in the state. District contract managers would be career service employees and would be assigned to the same pay grade to the extent possible. These contract management units would be required to be in operation throughout the state no later than March 1, 1999.

The department would report to the Legislature by December 15, 1999 on the efforts that have been made in each of the 15 districts related to centralization of contracting functions. Should a district choose not to centralize contract management activities, the report would explain the reasons for that decision as well as the efforts the district has made to increase efficiency related to the duties associated with contract management activities.

Budget and Personnel Flexibility

Effective October 1, 1997, the department would be authorized to transfer up to 0.25 percent of the total funds from categories used to pay for contractually provided client services of any budget entity within the department, not to exceed \$3 million annually. The department could use the funds either to establish positions exclusively responsible for contract management activities or to contract for these services, whichever is determined to be more cost-effective. These positions would be created notwithstanding ss. 216.262(1)(a) and 216.351, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of the bill that would require the Department of Children and Family Services to competitively procure contracts for services with a value of \$500,000 or more, and smaller contracts under specified circumstances, could result in a positive impact on businesses that would like to provide services to clients of the department but, because of the current practice of non-competitive procurement, have not had the opportunity to compete. Alternatively, the competitive procurement process could adversely affect those businesses that have been providing contracted services to clients of the department for a number of years without competing for their contract.

It is also likely that private-sector service providers would incur legal expenses associated with bid disputes since the award of a competitive contract by a state agency may be subject to challenge.

C. Government Sector Impact:

The provisions related to competitive procurement in the bill could result in the state's receiving better services for the money it expends in the procurement of services for clients of the Department of Children and Family Services. The department reports that it will need additional staff in order to comply with several requirements of the bill, however.

In its 1997 review of CS/CS SB 384 the department estimated a need for 8 additional FTEs to perform the work associated with competitively procuring all contracts for client services

under the conditions specified in the bill. The bill would authorize the award of such contracts over 3 years. The department anticipates increased work associated with drawing up invitations to bid, requests for proposals, and other similar documents. The department also anticipates increased litigation relating to bid protests associated with the requirement to competitively procure services that have not traditionally been procured competitively. It is not possible to predict the number of bid protests that will occur nor the number of FTEs that will be needed to handle the increase in bid protests.

The department estimated the following costs related to the requirements and new duties imposed by CS/CS/SB 384, which should still apply to CS/SB 156:

Staff to Ensure Competition of Service Contracts

6 FTEs - \$360,001 recurring costs \$23,406 non-recurring costs

Staff to Provide Negotiation Support and to Handle Bid Protests

14 FTEs - \$837,675 recurring costs \$54,614 non-recurring costs

Monitoring, Oversight, Evaluation, and Reporting Duties: Assistant Secretary for Administration, Office of Standards and Evaluation, and Headquarters Program Offices

16 FTEs - \$1,098,323 recurring costs \$70,218 non-recurring costs

The total fiscal impact to the department is estimated to be \$3.1 million. This estimate does not include the costs likely to be incurred at the district level relating to creation of the contract management units or the costs associated with assigning the employees in the new units to the same pay grade.

The Department of Children and Family Services estimates that the provision in the bill allowing the department to transfer up to 0.25 percent of the total funds from categories used to pay for contractually-provided client services of any budget entity within the department, not to exceed \$3 million annually, likely would provide the funds necessary to implement the requirements of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 156 specifically authorizes the Department of Children and Family Services to adopt rules relating to alternate methods of competitive procurement and to the imposition of intermediate sanctions on contract service providers. There are adequate guidelines in the legislation relating to the adoption of the new rules.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
