

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Efficiency in Procurement and Contracting

SPONSOR(S): Anderson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 542

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Economic Development & Community Affairs Policy Council			
3)	Government Operations Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

According to the Department of Management Services, the total vendor payments in fiscal year 2006-07 totaled \$10,620,203,783.

HB 137 creates the Advisory Committee on State Procurement. The bill expressly states legislative policy with respect to the procurement of goods, services, and facilities by the state. The purpose of the committee is to evaluate the state's procurement and contracting process in its entirety and to oversee the implementation of legislative procurement policy. The advisory committee is made up of 11 members, three of whom are appointed by the Governor, three are appointed by the President of the Senate, three are appointed by the Speaker of the House, one is appointed by the Chief Financial Officer, and one is appointed by the Auditor General. Members must be appointed within 60 days of the day the bill becomes law.

HB 137 authorizes the committee to appoint an executive director, appoint and fix the compensation of committee personnel, and procure the services of experts and consultants. The committee also is authorized to enter into contracts with private organizations and nonprofit institutions to carry out studies and prepare reports to facilitate the committee's work.

The committee may make interim reports as it deems necessary; but, it is required to issue a final report by December 31, 2009, to the Governor, Speaker of the House of Representatives, the President of the Senate, the Chief Financial Officer, and the Auditor General. The final report must include its findings and recommendations for changes in law, rules, policies, procedures, and organization necessary to carry out the legislative policy enumerated in the bill. After submission of the report, the committee and its staff are to draft or to assist in final preparation of legislative or administrative proposals to carry out its recommendations.

The Advisory Committee on State Procurement ceases to exist 120 days after the submission of the report.

HB 137 contains a \$5 million appropriation from the General Revenue Fund.

The bill takes effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

According to the Department of Management Services, the total vendor payments in fiscal year 2006-07 totaled \$10,620,203,783.¹

HB 137 creates the Advisory Committee on State Procurement and expressly states legislative policy with respect to the procurement of goods services and facilities by the state. The purpose of the committee is to evaluate the state's procurement process in its entirety, and to oversee the implementation of legislative procurement policy. Aspects of the procurement process the committee will examine include: organization, staffing, leadership, planning, and controls used in the procurement and contracting process.

The bill describes the goal of legislative procurement policy stating "[I]t is the policy of the Legislature to promote economy, efficiency, and effectiveness in the procurement of goods, services, and facilities by and for the executive branch of state government..." The bill lists, at length, several specific means of achieving its stated goal. The means identified in the bill relate to:

- Assuring that procured items will be of requisite quality, lowest reasonable cost, and procured in a timely manner;
- Improving the quality, efficiency, economy, and performance of those involved in procurement;
- Avoiding duplication of procurement activities;
- Addressing deficiencies in law and regulation concerning procurement;
- Simplifying the procurement process;
- Coordinating policies among various agencies;
- Replicating successful procurement policies;
- Improving the understanding of law and policy among those doing business with the state;
- Promoting fair dealing;
- Promoting economy, efficiency, and effectiveness in state procurement organizations, operations, and uniform reporting;
- Giving special consideration to the Federal Government's procurement process and that of other states; and
- Promoting economy, efficiency, and effectiveness in procurement, contract management, and project management operations.

¹ The information provided by the Department of Management Services is based on information provided through FLAIR. FLAIR captures all spending on contracts throughout the state. The FY 2006-2007 figure is the most up to date figure available.

The bill also includes a “catch all” provision that authorizes the committee to promote economy, efficiency, and effectiveness in state procurement organizations and operations by “any means the committee deems beneficial and appropriate.”

The advisory committee is made up of 11 members, three of whom are appointed by the President of the Senate, three are appointed by the Speaker of the House, three are appointed by the Governor, one is appointed by the Chief Financial Officer, and one is appointed by the Auditor General. Two of the appointees by the Speaker must be members of the House of Representatives from different political parties. Likewise, two of the appointees by the President must be Senators from different political parties. The third appointee by the Speaker and the President must be someone who is from outside state government. With respect to the Governor’s appointees, two must be from within the executive branch of government, and two must be from outside state government. In addition, the Auditor General or a designee is to provide technical assistance to the advisory committee. Members of the advisory committee who are members of the Legislature, or who are officers or employees in the executive branch serve without compensation but are entitled to reimbursement for per diem and travel expenses.

The bill gives the advisory committee the responsibility of studying current laws and procurement policies and practices followed throughout the various state agencies of the executive branch. In addition, the advisory committee has the duty to investigate organizations and management processes involved in a state procurement before the award of the procurement contract, during the bid solicitation process, during the evaluation and negotiation of contracts, and after the award of contracts, for the purpose of determining the extent to which legislative policy is being facilitated.

The advisory committee is given the power to hold hearings, administer oaths, take testimony, and obtain information directly from the head of any state agency to carry out its duty to study and investigate implementation and administration of the procurement process.

In addition, the advisory committee is empowered to appoint an executive director and employ and set the compensation for advisory committee personnel. The bill authorizes the advisory committee to hire experts and consultants. Also, the advisory committee is authorized to enter into contracts with private organizations and nonprofit institutions to conduct studies and prepare reports for the advisory committee.

Finally, the bill requires the advisory committee to issue a final report on December 31, 2009, containing its findings and recommendations, and to deliver it to the Governor, President of the Senate, Speaker of the House of Representatives, the Chief Financial Officer, and the Auditor General. The advisory committee and its staff are to provide or assist in providing legislative or administrative proposals to carry out recommendations of the report.

The bill provides that the advisory committee shall terminate 120 days after submission of its final report.

B. SECTION DIRECTORY:

Section 1. Creates s. 287.0575, F.S., establishing the Advisory Committee on State Procurement.

Section 2. Provides an appropriation for FY 2009-2010 of \$5 million from the General Revenue Fund.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

HB 137 contains a \$5 million appropriation from the General Revenue Fund for purposes of carrying out the provisions of the bill. The work of the advisory committee will be completed and the committee will cease to exist no later than May 1, 2010.

Expenses incurred by the advisory committee are indeterminate at this time, but will depend upon factors such as the number of hearings the advisory committee, a subcommittee, or member will hold; how many staff it will employ and their rate of compensation; whether members of the advisory committee who are not members of the Legislature or associated with the executive branch of government will receive compensation or even receive per diem and expenses; the number of consultants and experts the advisory committee uses and the length of that use; the number and value of contracts with private organizations the advisory committee enters into; and the amount of reimbursable services pursuant to agreements between a state department or agency and the chair or vice chair of the advisory committee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Often when a provision is not going to exist for more than 1 year, it is placed in chapter law but not in the statute. This avoids having to repeal the provision during the next legislative session.

The bill contains a provision that states: "Nothing in this subsection shall be construed as limiting the committee's means of facilitating the legislative policy expressed herein, the inquiries of the committee,

or the committee's authority to investigate additional areas the committee deems significant, relevant, or important." Without expressly saying so this provision clearly implies the advisory committee has broad authority. That broad implied authority is not defined except to say the advisory committee's authority to investigate includes "additional areas" deemed important. This provision may authorize inquiry by the advisory committee into areas far removed or only indirectly related to issues of state procurement as long as a majority of the advisory committee members deem a matter "significant" or "important."

The bill clearly provides those members of the advisory committee who are within state government serve without compensation; the bill, however is silent with respect to those members appointed from outside of state government. It is unclear from the provisions of this bill whether the intention is to compensate those members appointed from outside of state government or even whether they will receive per diem or reimbursement for expenses.

Paragraph (a) of subsection (5) related to powers of the advisory committee, states "[t]he advisory committee, or any subcommittee or any individual member thereof, may hold hearings and take testimony." (emphasis added) With respect to the reference to *any subcommittee*, this language implies that the advisory committee is granted the authority to create subcommittees, which could in turn conduct business on behalf of the advisory committee with less than the required six member quorum. In addition, this provision would allow an *individual member* of the advisory committee to conduct full hearings complete with the administration of oaths and the taking of testimony.

The bill authorizes the advisory committee to enter into contracts with private organizations for the purpose of carrying out studies and preparing reports provides no selection criteria or eligibility requirements. For example, an individual within a private organization contracted with the committee to prepare a report evaluating a particular procurement, also could be an individual with a vested interest in seeing a particular result due to a conflict of interest with, or a financial interest in, a present or prospective contract bidder. Selection criteria or eligibility requirements would be necessary to avoid such potential conflicts.

According to the analysis of HB 137 by the Florida Auditor General, the requirement that the Auditor General appoint a member of the advisory committee may provide some challenges with respect to the Auditor General's compliance with auditing standards relating to independence.²

Several provisions relating to the responsibility and actions of the advisory committee are not advisory in nature.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

² Florida Auditor General bill analysis of HB 137, dated January 29, 2009.