



## 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.<sup>1</sup>

The bill 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 advisory 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 advisory 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.

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<sup>1</sup> 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 director of the Office of Program Policy and Government Accountability. 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.

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.

The bill authorizes the advisory committee to hire experts and consultants. Also, the advisory committee is authorized to enter into contract with private organizations and nonprofit institutions to conduct studies and prepare reports for the advisory committee.

The Office of Program Policy and Government Accountability must staff the advisory committee and provide administrative support, administer contracts with outside consultants, and provide evaluative research support to 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, and the Chief Financial Officer. 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:

The bill contains a \$3.5 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; 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:

Several provisions relating to the responsibility and actions of the advisory committee are not advisory in nature, such as, administering oaths or affirmations to witnesses at an advisory committee meeting, which could be held by one member; procuring services of experts and consultants; and entering into contracts with private organizations and nonprofit institutions to carry out studies and prepare reports to facilitate the committee's work. Because of this, there is concern that the elected officials who sit as members of the advisory committee could be considered to be holding more than one office under the government of the state at the same time. This is specifically prohibited under section 5 of Article II of the Florida Constitution.

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 is silent on the provision of per diem and reimbursement for expenses for members of the advisory committee.

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.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18, 2009, the Governmental Affairs Policy Committee adopted a strike-all amendment and passed the bill as a committee substitute. The differences between the original bill and the committee substitute are as follows:

- Removes the requirement for the Auditor General to appoint a member to the advisory committee and to attend or have a designee attend committee meetings;
- Requires the director of the Office of Program Policy and Government Analysis (OPPAGA) to appoint a member to the advisory committee;
- Removes references to payment of compensation, per diem, and travel expenses for advisory committee members;
- Removes the authority to appoint an executive director and appoint and set the salary for advisory committee personnel;
- Requires OPPAGA to staff the advisory committee and provide administrative support, administer contracts with outside consultants and provide evaluative research support to the advisory committee; and
- Reduces the appropriation to \$3.5 million.