

2018 Regular Session

HOUSE BILL NO. 590

BY REPRESENTATIVE EDMONDS

STATE AGENCIES: Creates the Efficient Government Act and provides for the Council on Efficient Government and its powers and duties

1 AN ACT

2 To enact R.S. 36:4(B)(1)(t) and Chapter 6 of Title 49 of the Louisiana Revised Statutes of
3 1950, to be comprised of R.S. 49:351 through 359, relative to privatization of state
4 services; to provide for the Efficient Government Act; to create the Council on
5 Efficient Government in the office of the Governor; to provide for its membership,
6 powers, and duties; to provide for the duties of the governor, legislative auditor, and
7 the office of planning and budget in the division of administration relative thereto;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 6 of Title 49 of the Louisiana Revised Statutes of 1950, comprised
11 of R.S. 49:351 through 359, is hereby enacted to read as follows:

12 CHAPTER 6. EFFICIENT GOVERNMENT ACT

13 §351. Short title

14 This Chapter shall be known and may be cited as the "Efficient Government
15 Act".

16 §352. Council on Efficient Government; members; terms; vacancies

17 A. The Council on Efficient Government, hereinafter referred to in this
18 Chapter as the "council", is established in the office of the governor and shall be
19 composed of the following members:

1 (1) The chief executive or administrative officer of a state agency who is
2 appointed by the governor.

3 (2) Two members who are engaged in private enterprise and who are
4 appointed by the governor.

5 (3) Two members who are engaged in private enterprise and who are
6 appointed by the president of the Senate.

7 (4) Two members who are engaged in private enterprise and who are
8 appointed by the speaker of the House of Representatives.

9 B. The term of office of each council member shall be two years. However,
10 the governor, the speaker of the House of Representatives, and the president of the
11 Senate shall each designate one of their respective appointees to serve an initial term
12 of one year. Further, if the chief executive or administrative officer of a state agency
13 appointed by the governor ceases to hold office during the term, the governor shall
14 fill the vacancy in the manner provided in Subsection G of this Section.

15 C. A member of the council who is engaged in private enterprise shall serve
16 without compensation but may receive reimbursement of expenses incurred in the
17 furtherance of his council duties in accordance with the provisions for the
18 reimbursement of such expenses to state employees pursuant to regulations
19 established by the division of administration.

20 D. A member of the council shall not participate in a council review of a
21 business case to outsource if his state agency is conducting the proposed outsourcing.
22 A member of the council engaged in private enterprise shall not participate in a
23 council review of a business case to outsource if the member has a business
24 relationship with an entity that is involved or potentially could be involved in the
25 proposed outsourcing. A member of the council shall not participate in a council
26 review of a business case to outsource if he otherwise has a conflict of interest as
27 provided in the Code of Governmental Ethics.

28 E. No member of the council may appoint a designee to serve in his place
29 on the council.

1 F. Four members of the council shall constitute a quorum.

2 G. A vacancy on the council shall be filled in the same manner as the
3 original appointment, and any member appointed to fill a vacancy shall serve only
4 for the unexpired term.

5 H. The council shall select a chairperson from among its members.

6 §353. Powers and duties of the council; annual report

7 A. The council shall:

8 (1) Review goods and services provided by a state agency and determine
9 whether it could be outsourced to provide the same type and quality of good or
10 service and result in cost savings or best value. The council may hold public
11 hearings as part of its evaluation process and shall report its recommendations to the
12 governor, the president of the Senate, and the speaker of the House of
13 Representatives.

14 (2) Review outsourcing of a good or service at the request of a state agency
15 or a private enterprise.

16 (3) Review issues concerning agency competition with one or more private
17 enterprises to determine ways to eliminate any unfair competition with a private
18 enterprise.

19 (4) Recommend outsourcing to a state agency if a proposed business case is
20 demonstrated to provide a more cost efficient or more effective manner of providing
21 a good or service.

22 (5) Employ a standard process for reviewing business cases to outsource.

23 (6) Review and evaluate business cases to outsource as requested by the
24 governor or the state agency head whose agency is proposing to outsource.

25 (7) No later than thirty days before a state agency's issuance of a proposal
26 to outsource as described in R.S. 49:355(C), review the business case and provide
27 an advisory report to the state agency conducting the procurement, the governor, the
28 president of the Senate, and the speaker of the House of Representatives, the Joint
29 Legislative Committee on the Budget, and the office of planning and budget in the

1 division of administration. The report must contain all versions of the business case,
2 an evaluation of the business case, any relevant recommendations, and sufficient
3 information to assist the state agency proposing to outsource in determining whether
4 the business case to outsource should be included in the agency's budget request.

5 (8) Recommend and implement standard processes for a state agency and the
6 council to use to review and evaluate state agency business cases to outsource,
7 including templates for state agencies to use in submitting business cases to the
8 council.

9 (9) Recommend standards, processes, and guidelines for use by state
10 agencies in developing business cases to outsource.

11 (10) Incorporate any lessons learned from outsourcing services and activities
12 into council standards, procedures, and guidelines, as appropriate, and identify and
13 disseminate to agencies information regarding best practices in outsourcing efforts.

14 (11) Develop guidelines for assisting state employees whose jobs are
15 eliminated as a result of outsourcing.

16 (12) Receive complaints of violations of this Chapter and transmit them to
17 the state agency alleged to be in violation.

18 (13) Hold public hearings on complaints received and determine whether the
19 agency identified in the complaint is in violation of this Chapter.

20 (14) Issue a written report of its findings to the complainant within ninety
21 days after receiving the state agency's response.

22 (15) Transmit to the governor, the president of the Senate, and the speaker
23 of the House of Representatives a complete report of each meeting, including
24 recommendations to correct violations of prohibitions on competition with private
25 enterprise and findings on necessary exceptions to the prohibitions.

26 B. The council may:

27 (1) Solicit petitions of interest from private sector service providers. The
28 council may evaluate and review the petitions and may hold public hearings as part

1 of the evaluation process. The council may recommend some or all of the petitions
2 to the governor for further review.

3 (2) Evaluate and review all state agency exemptions and exemptions to the
4 restrictions on competition with private enterprise in this Chapter and may determine
5 that any function of a state agency is in violation of this Chapter. The council shall
6 report its findings and recommendations to the governor, the president of the Senate,
7 and the speaker of the House of Representatives.

8 (3) The council may appoint advisory groups to conduct studies, research,
9 or analyses and make reports and recommendations with respect to a matter within
10 the jurisdiction of the council. At least one member of the council shall serve on
11 each advisory group.

12 C. The council shall prepare an annual report on:

13 (1) Recommendations on innovative methods of delivering government
14 services that would improve the efficiency, effectiveness, or competition in the
15 delivery thereof, including enterprise-wide proposals.

16 (2) Outsourcing efforts of each state agency, including the number of
17 outsourcing business cases and solicitations, the number and dollar value of
18 outsourcing contracts, descriptions of performance results as applicable, any contract
19 violations or project slippages, and the status of extensions, renewals, and
20 amendments of outsourcing contracts.

21 (3) The council's activities.

22 (4) The status of the inventory created as prescribed in R.S. 49:354.

23 D. The council shall submit the annual report created pursuant to Subsection
24 C of this Section to the governor, the president of the Senate, and the speaker of the
25 House of Representatives no later than January fifteenth immediately following the
26 calendar year for which the report is made. The council shall report to the Joint
27 Legislative Committee on the Budget and the office of planning and budget in the
28 division of administration.

1 E. Each state agency shall submit to the council all information, documents,
2 and other materials required by the council pursuant this Chapter.

3 F. (1) At the request of the council and on approval of the Legislative Audit
4 Advisory Council, the legislative auditor shall provide performance audit and other
5 required information relating to state agency budgets and functions. The legislative
6 auditor may assist in the development and review of the agency inventory of
7 commercial activities prescribed in R.S. 49:354.

8 (2) The legislative auditor shall employ an adequate number of staff to
9 provide significant expertise and experience as required to carry out the
10 responsibilities of this Chapter.

11 G. Except as provided in R.S. 49:355(D) and (E), the provisions of this
12 Chapter shall not preclude a state agency from outsourcing the provision of a good
13 or service independent of the council.

14 H. Any person aggrieved by actions pursuant to this Chapter may directly
15 seek judicial relief. However, the failure of the council to consider a petition of
16 interest or make a recommendation as authorized in Subsection (B)(1) of this Section
17 shall not give rise to a cause of action.

18 §354. Commercial activities inventory and review

19 A. On or before January 1, 2020, the council shall create an inventory of
20 activities of state agencies to classify whether each activity or elements of the
21 activity are:

22 (1) A commercial activity that can be provided in whole or in part by a
23 private enterprise.

24 (2) An inherently governmental activity.

25 B. The council shall update the inventory created under this Section at least
26 every two years.

27 C. The council shall make the inventory available to the public through
28 electronic means.

1 D. State agencies shall cooperate with inventory requests made by the
2 council.

3 §355. Business cases to outsource; review and analysis; requirement

4 A. For any proposed outsourcing, the state agency shall develop a business
5 case that justifies the proposal to outsource. The content of the business case shall
6 not be subject to challenge or protest. The business case must include:

7 (1) A detailed description of the service or activity for which the outsourcing
8 is proposed.

9 (2) A description and analysis of the state agency's current performance
10 based on existing performance measures if the state agency is currently performing
11 the service or activity.

12 (3) The goals desired to be achieved through the proposed outsourcing and
13 the rationale for the goals.

14 (4) A citation to the existing or proposed legal authority for outsourcing the
15 service or activity.

16 (5) A description of available options for achieving the goals. If state
17 employees are currently performing the service or activity, at least one option
18 involving maintaining state provision of the service or activity shall be included.

19 (6) An analysis of the advantages and disadvantages of each option,
20 including potential performance improvements and risks.

21 (7) A description of the current market for the contractual services that are
22 under consideration for outsourcing.

23 (8) A cost benefit analysis documenting the direct and indirect specific
24 baseline costs, savings, and qualitative and quantitative benefits involved in or
25 resulting from the implementation of the recommended option or options. The
26 analysis must specify the schedule that must be adhered to in order to achieve the
27 estimated savings. All elements of cost must be clearly identified in the cost benefit
28 analysis and supported by applicable records and reports. The state agency head
29 shall attest that based on the data and information underlying the business case and

1 to the best of the state agency head's knowledge all projected costs, savings and
2 benefits are believed to be achievable. For the purposes of this Paragraph:

3 (a) "Cost" means the reasonable, relevant, and verifiable cost, which may
4 include elements such as personnel, materials, supplies, services, equipment, capital
5 depreciation, rent, maintenance, repairs, utilities, insurance, personnel travel,
6 overhead, and interim and final payments. The appropriate elements shall depend
7 on the nature of the specific initiative.

8 (b) "Savings" means the difference between the direct and indirect actual
9 annual baseline costs compared to the projected annual costs of the contracted
10 functions or responsibilities in any succeeding fiscal year during the term of the
11 contract.

12 (9) A description of differences among current state agency policies and
13 processes and, as appropriate, a discussion of options for or a plan to standardize,
14 consolidate, or revise current policies and processes to reduce the customization of
15 any proposed solution that would otherwise be required.

16 (10) A description of the specific performance standards that must be met
17 to ensure adequate performance.

18 (11) The projected time frame for key events from the beginning of the
19 procurement process through the expiration of a contract.

20 (12) A plan to ensure compliance with the Public Records Law.

21 (13) A specific and feasible contingency plan addressing contractor
22 nonperformance and a description of the tasks involved in and costs required for its
23 implementation.

24 (14) The transition plan for addressing changes in the number of agency
25 personnel, affected business processes, employee transition issues, and
26 communication with affected stakeholders, such as agency clients and the public.
27 The transition plan must contain a reemployment and retraining assistance plan for
28 employees who are not retained by the state agency or employed by the contractor.

1 (15) A plan for ensuring access by persons with disabilities in compliance
2 with applicable state and federal law.

3 (16) A description of legislative and budgetary actions necessary to
4 accomplish the proposed outsourcing.

5 B. Each contract for a proposed outsourcing pursuant to this section shall
6 include the following:

7 (1) A scope-of-work provision that clearly specifies each service or
8 deliverable to be provided, including a description of each deliverable or activity that
9 is quantifiable, measurable, and verifiable. This provision must include a clause
10 stating that if a particular service or deliverable is inadvertently omitted or not
11 clearly specified but determined to be operationally necessary and verified to have
12 been performed by the agency within the twelve months before the execution of the
13 contract, the service or deliverable will be provided by the contractor through the
14 identified contract amendment process.

15 (2) A service-level agreement provision describing all services to be
16 provided under the terms of the agreement, the state agency's service requirements
17 and performance objectives, specific responsibilities of the state agency and the
18 contractor, and the process for amending any portion of the service level agreement.
19 Each service level agreement must contain an exclusivity clause that allows the state
20 agency to retain the right to perform the service or activity, directly or with another
21 contractor, if service levels are not being achieved.

22 (3) A provision that identifies all associated costs, specific payment terms
23 and payment schedules, provisions governing incentives and financial disincentives,
24 and criteria governing payment.

25 (4) A provision that identifies a clear and specific transition plan that will be
26 implemented in order to complete all required activities needed to transfer the
27 service or activity from the state agency to the contractor and operate the service or
28 activity successfully.

1 (5) A performance standards provision that identifies all required
2 performance standards, which must include at a minimum:

3 (a) Detailed and measurable acceptance criteria for each deliverable and
4 service to be provided to the state agency under the terms of the contract that
5 document the required performance level.

6 (b) A method for monitoring and reporting progress in achieving specified
7 performance standards and levels.

8 (c) The sanctions or disincentives that will be imposed for nonperformance
9 by the contractor or state agency.

10 (6) A provision that requires the contractor and its subcontractors to maintain
11 adequate accounting records that comply with all applicable federal and state laws
12 and generally accepted accounting principles.

13 (7) A provision that authorizes the state agency to have access to and audit
14 all records related to the contract and subcontracts, or any responsibilities or
15 functions under the contract and subcontracts, for purposes of legislative oversight
16 and a requirement for audits by a service organization pursuant to professional
17 auditing standards, if appropriate.

18 (8) A provision that requires the contractor to interview and consider for
19 employment each displaced state employee who is interested in such employment.

20 (9) A contingency plan provision that describes the mechanism for
21 continuing the operation of the service or activity, including transferring the service
22 or activity back to the state agency or successor contractor if the contractor fails to
23 perform and comply with the performance standards and levels of the contract and
24 the contract is terminated.

25 (10) A provision that requires the contractor and its subcontractors to comply
26 with public records laws and to:

27 (a) Keep and maintain the public records that ordinarily and necessarily
28 would be required by the state agency in order to perform the service or activity.

1 (b) Provide the public with access to the public records on the same terms
2 and conditions that the state agency would provide the records.

3 (c) Ensure that records that are exempt or records that are confidential and
4 exempt are not disclosed except as authorized by law.

5 (d) Meet all requirements for retaining records and transfer to the state
6 agency, at no cost, all public records in possession of the contractor on termination
7 of the contract and destroy any duplicate public records that are exempt or
8 confidential. All records stored electronically must be provided to the state agency
9 in a format that is compatible with the information technology systems of the state
10 agency.

11 (11) If applicable, a provision that addresses ownership of intellectual
12 property.

13 (12) If applicable, a provision that allows the state agency to purchase from
14 the contractor, at the depreciated value, assets used by the contractor in the
15 performance of the contract. If assets have not depreciated, the state agency shall
16 retain the right to negotiate to purchase at an agreed upon cost.

17 C. A proposal to outsource having a projected cost of more than ten million
18 dollars in any fiscal year shall require:

19 (1) An initial business case analysis conducted by the state agency and
20 submitted to the council, the governor, the president of the Senate, and the speaker
21 of the House of Representatives at least sixty days before the solicitation is issued.
22 The council shall evaluate the business case analysis and submit an advisory report
23 to the state agency, the governor, the president of the Senate, and the speaker of the
24 House of Representatives when the advisory report is completed, but at least thirty
25 days before the agency issues the solicitation.

26 (2) A final business case analysis conducted by the state agency and
27 submitted after the conclusion of any negotiations, at least thirty days before
28 execution of a contract, to the council, the governor, the president of the Senate, and
29 the speaker of the House of Representatives

1 D. A proposal to outsource having a projected cost of at least one million
2 dollars but not more than ten million dollars in any fiscal years shall require:

3 (1) An initial business case analysis conducted by the state agency and
4 submission of the business case, at least thirty days before issuing a solicitation, to
5 the council, the governor, the president of the Senate, and the speaker of the House
6 of Representatives.

7 (2) A final business case analysis conducted by the state agency and
8 submitted after the conclusion of any negotiations, at least thirty days before
9 execution of a contract, to the council, the governor, the president of the Senate, and
10 the speaker of the House of Representatives.

11 E. A proposal to outsource having a projected cost of less than one million
12 dollars in any fiscal year shall require a final business case analysis conducted by the
13 state agency after the conclusion of any negotiations and provided to the council at
14 least thirty days before execution of a contract.

15 §356. Council accounting method.

16 The council, by rule, shall establish an accounting method that:

17 (1) Is similar to generally accepted accounted principles used by a private
18 enterprise.

19 (2) Allows an agency to identify the total actual cost of engaging in a
20 commercial activity in a manner similar to how a private enterprise identifies the
21 total actual cost to the private enterprise, including the following:

22 (a) Labor expenses, such as compensation and benefits, costs of training,
23 costs of paying overtime, costs of supervising labor, or other personnel expenses.

24 (b) Operating costs, such as vehicle maintenance and repair, marketing,
25 advertising or other sales expenses, office expenses, costs of an accounting operation
26 such as billing, insurance expenses, real estate or equipment costs, debt service costs,
27 or a proportionate amount of other overhead or capital expenses, such as vehicle
28 depreciation and depreciation of other fixed assets.

29 (c) Contract management costs.

1 (d) Other costs particular to a person supplying the good or service.

2 (3) Provides a process to estimate the taxes a state agency would pay related
3 to engaging in a commercial activity if the state agency were required to pay federal,
4 state, and local taxes to the same extent as a private enterprise engaging in the
5 commercial activity.

6 §357. Governor; required review of commercial activities

7 Beginning fiscal year 2019-2020, the governor, at least once every two fiscal
8 years, shall select at least three commercial activities that are being performed by a
9 state agency to be examined by the office of planning and budget in the division of
10 administration.

11 §358. Duties of the office of planning and budget in the division of administration

12 A. The office of planning and budget in the division of administration shall:

13 (1) Determine the amount of an appropriation that is no longer needed by an
14 executive branch agency because all or a portion of the agency's provision of a good
15 or service is privatized.

16 (2) Adjust the executive budget recommendation to reflect the amount that
17 is determined under Paragraph (A)(1) of this Subsection.

18 (3) Report its findings to the president of the Senate and the speaker of the
19 House of Representatives.

20 B. The provisions of this Section shall not prevent the governor from making
21 a budget recommendation regarding the restoration of a portion of the appropriation
22 to a state agency that is reduced pursuant to this Section.

23 §359. Applicability

24 This Chapter shall not apply to contracts in support of the planning,
25 development, implementation, operation, or maintenance of the roads, bridges, and
26 public transportation infrastructure by the Department of Transportation and
27 Development.

1 Section 2. R.S. 36:4(B)(1)(t) is hereby enacted to read as follows:

2 §4. Structure of executive branch of state government

3 * * *

4 B. The office of the governor shall be in the executive branch of state
5 government.

6 (1) The following agencies and their powers, duties, functions, and
7 responsibilities are hereby transferred to the office of the governor:

8 * * *

9 (t) The Council on Efficient Government (R.S. 49:351, et seq.).

10 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 590 Engrossed 2018 Regular Session Edmonds

Abstract: Creates the Council on Efficient Government (council) and provides a mechanism for the council to review and evaluate potential contracts to privatize state goods and services.

Proposed law creates the council within the governor's office, composed of the following members:

- (1) The chief executive or administrative officer of a state agency appointed by the governor.
- (2) Two members from private enterprise appointed by the governor.
- (3) Two members from private enterprise appointed by the president of the Senate (president).
- (4) Two members from private enterprise appointed by the speaker of the House of Representatives (speaker).

Proposed law assigns several duties and powers to the council relevant to the review of and recommendations regarding potential contracts to privatize goods and services provided by state agencies. Requires the council to report their recommendations to the governor, president, speaker, Joint Legislative Committee on the Budget, and the division of administration.

Proposed law requires the governor to review privatized goods and services every two years.

Proposed law requires the legislative auditor to conduct performance audits.

Proposed law requires the office of planning and budget in the division of administration report budget reductions as a result of privatization to the president and speaker.

Proposed law does not apply to contracts entered into by the Dept. of Transportation and Development relative to roads, bridges, or infrastructure.

(Adds R.S. 36:4(B)(1)(t) and R.S. 49:351-359)