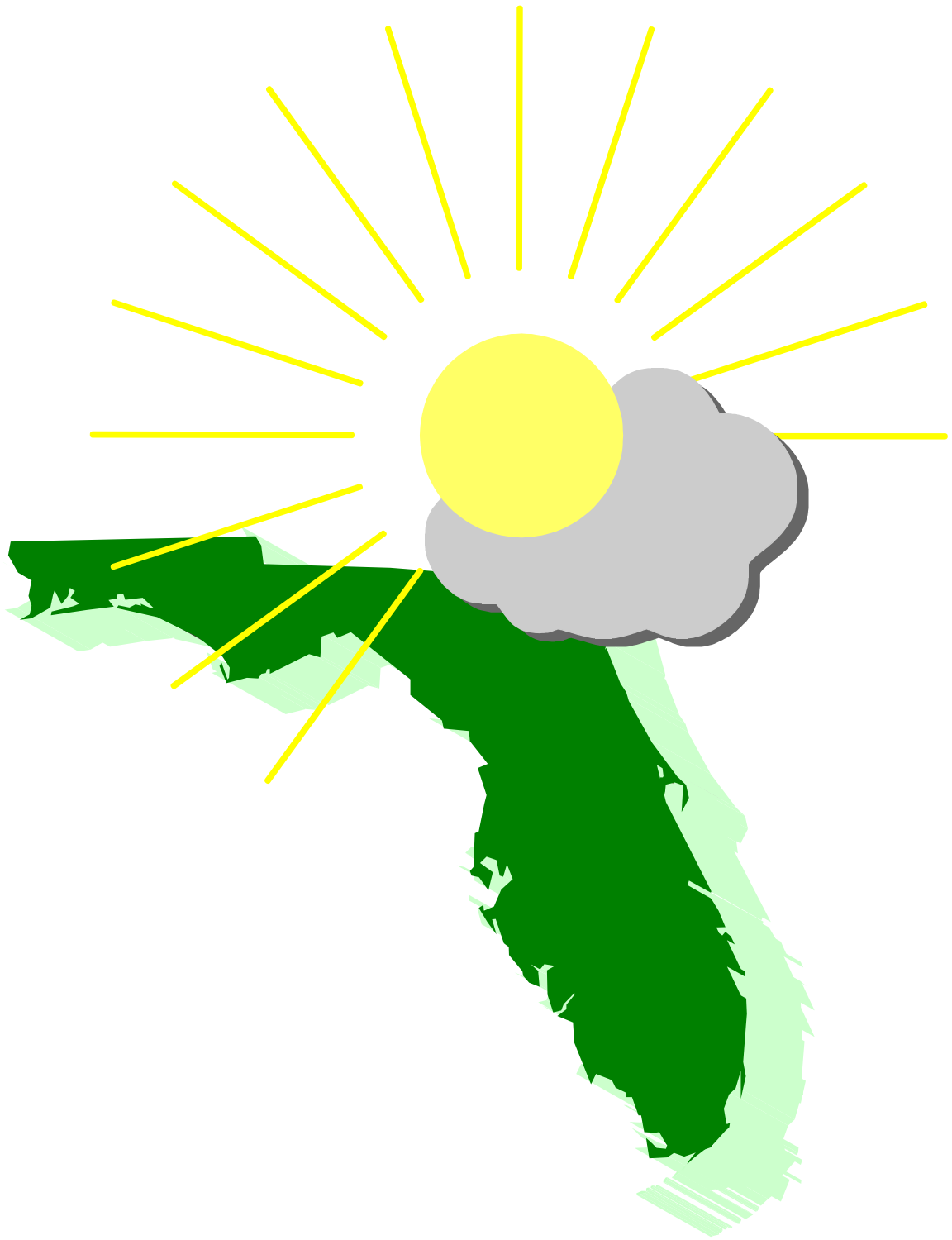


# **Shady Deals in the Sunshine State: The Florida Model of Privatization**



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## **Introduction:**

***It is not the job of government to constantly seek more revenue for itself, but to provide essential services responsibly, to create a climate of achievement, and to let families, entrepreneurs, and communities do the rest.***

(Florida Governor Jeb Bush, State of the State Address, 1/22/02).

With much fanfare, Governor Bush ushered in the era of privatization in Florida. Between 1999 and early 2005, the Governor entered into approximately 140 contracts with private entities for services that had been provided by state workers. This drive to privatize was called “The Florida Model” and held as an example for other states to follow. ([www.rppi.org/floridamodel.shtml](http://www.rppi.org/floridamodel.shtml)).

The wholesale privatization of services in Florida has had a profound impact on its workers, its lawmakers and, most importantly, its residents and taxpayers. But has Governor Bush lived up to the ideal he set forth in his State of the State address? Has the state been able to “provide essential services responsibly”? Has privatization created a “climate of achievement” for entrepreneurs, communities, and families? Have the private vendors that have taken over these services succeeded in whole or in part?

Privatization of this size and scope is unprecedented, and while Florida’s experiment has not been in place long enough for a comprehensive analysis, an overview of several major initiatives shows cause for serious concern. Those initiatives include:

- People First, under contract to Convergys, which was established to take over the human resources function from the state;
- MyFloridaMarketplace, the purchasing function, under contract to Accenture;
- the Department of Corrections, and;

- foster care and adoption services in the Department of Children and Families.

In Governor Bush's 2003 inaugural address, he said:

***“There will be no greater tribute to our maturity as a society than if we can make these buildings around us empty of workers; as silent monuments to the time when government played a larger role than it deserved or could adequately fill.”***

The Governor's rapid pace in emptying those buildings drew concern, even from some of his allies. The president of Florida Tax Watch, a self-described, “watchdog of citizens' hard-earned tax dollars”, stated, “I'm a strong believer in the competitive delivery of government services, but if it's not done right and in a thorough, disciplined, and accountable fashion, it can backfire.” (<http://www.floridataxwatch.org/aboutus/index.php>)

To determine whether privatization “backfired,” People First, the state's largest contracting out venture, is a good place to begin.

## **People First**

***The problem you run into with a lot of this is, once you dismantle the public apparatus, it's hard to reassemble it. It's gone. The cost to ramp back up and restore our human-resource function, for instance, in our state would just be astronomical.***

***Senate President Tom Lee, (R, Bradenton)***

*The Tallahassee Democrat. “State wary of outsourcing: Accountability sought in private deals.” Bill Cotterell. Jan. 24, 2005.*

Under People First, Florida's human resources function was to be outsourced to Convergys, in the state's largest privatization venture ever. This program was phased in beginning May 1, 2003, and was to be completed by January 1, 2004.

According to the state Auditor General's Report Number 2005-047, dated October 2004, problems with this contract began during the planning process.

No cost-benefit analysis was completed prior to releasing an Invitation to Negotiate (ITN) in March 2001. Nor was a risk analysis or a needs assessment done. There were no systems established to track costs associated with the project and any savings, and no estimates of costs in the event that the state had to take back the functions. In fact, at no time did the Department of Management Services “ever demonstrate that viable alternatives, potential hazards, and costs of outsourcing had been fully considered prior to launching the procurement process.” (Report No. 2005-047 p.3.)

Once the ITN was issued and Convergys was selected, additional questions were raised, including whether the best vendor received the contract. According to the auditor’s report, there is no evidence that “the State obtained the best prices, terms, and conditions in contracting the required services.” (2005-047, intro.) Also, the Department had no authority over changes to Convergys’ subcontractors. While subcontractors were considered during the evaluation process, once People First was in operation Convergys could change its subcontractors without getting state permission or even providing notice. The contract establishes that the People First provider conduct background checks since, by its very nature, People First handles confidential information. However, subcontractor employees do not have to have background checks. But the State is still responsible for ensuring that employees’ confidential information stays that way. (p. 6-7)

Convergys missed “Go-Live” dates for three out of four primary functions. They missed deadlines for Payroll, Human Resources, and Benefits Administration functions and met the deadline for the Staffing Administration function. (2005-047, p.13) The initial contract between the State and Convergys had a monetary penalty payable for each day that the company was late implementing its programs. As of July 2004, after several rounds of contract revisions, the contract was amended to allow the Department to recover \$6.6 million for delays in project implementation, and receive \$10.3 million in credit. The contract was also extended by two years. (2005-047).

If Convergys were a state employee, it would have been given the pink slip long ago. News articles begin to illustrate the far-ranging problems:

- The company failed to perform during its initial test. During a trial run, with a small sampling of state payroll, Convergys had a stunning 37 percent error rate. Future testing was immediately put on hold.

(*Tallahassee Democrat*. “Payroll test proves problematic.” Cotterell, Bill, Feb. 22, 2004)

- State workers have had their insurance coverage canceled. In one case, a University of Florida faculty member went for a routine checkup, only to be told that she was uninsured, despite proof of insurance. (*Independent Florida Alligator*. “Insurance coverage issues arise.” Sirmons, Jeff, Mar. 18, 2005.)
- A former Convergys employee, who pleaded guilty to stealing state employees’ personal data, was sentenced to four years in prison for identity theft. The company said it had done a routine background check, but somehow this person was hired. (*Tallahassee Democrat*. “Convergys employee pleads guilty to theft.” Cotterell, Bill, Jun. 10, 2005)

Of course, any major initiative can hit snags. Unfortunately, this is by no means an isolated case. Another venture, with Accenture, also proved problematic. In this case, online purchasing for the state was privatized.

## **MyFloridaMarketplace and State Purchasing**

***Even Governor Jeb Bush, who sent shock waves through Tallahassee’s major industry by speculating about emptying downtown office buildings in his second inaugural address, last week acknowledged that his administration made ‘mistakes’ in negotiating big-ticket deals.....***

*Tallahassee Democrat*. “State Wary of Outsourcing.” Bill Cotterell, Jan. 24, 2005

According to the Auditor General’s Report, the Department of Management Services entered into a contract with Accenture on October 9, 2002 to outsource the development and operation of a Web-based electronic procurement system. (2005-116, p.1)

This “eProcurement” system, MyFloridaMarketPlace (MFMP), allows government agencies and some local governments to make purchases online, and allows companies to register to do business with the state. By April 2005, there were headlines exclaiming, “Measure fixing Accenture contract stalled; House, Senate disagree on bill’s implementation date.”

(*Tallahassee Democrat*. Lauer, Nancy Cook, Apr. 18, 2005) However, there were early warning signs, way back in January 2002, when the Joint Legislative Auditing Committee criticized the initial contract to create a call center and online licensing system. The committee criticized the contract for various reasons including the lack of a feasibility study, inadequate records during negotiations with the company, and signing the contract before compensation had even been agreed on. (*Tallahassee Democrat*. “Florida agency defends contract with Accenture.” Lauer, Nancy Cook, Jan. 29, 2002.)

As with People First, the state decided to forgo cost-benefit or risk analyses. In fact, the Department could not document that any meaningful analysis had been completed prior to preparation of the ITN. End-users, stakeholders, experts and technology project managers were not consulted at the front end. (2005-116, p.3) The Department never established a process to track costs associated with MFMP. Without a system in place, it was impossible to accurately document any savings or efficiency. (2005-116 p. 7).

MyFloridaMarketplace was to be funded by a one-percent transaction fee. Companies register and agree to pay one-percent of any contract awarded and, in return, be notified of new contracting opportunities. The money collected essentially went into Accenture’s private bank account. Accenture then paid the state for its operating expenses, and kept the rest.

In 2005, Senate Bill 400, a bill that would fix problems in this \$92million state contract, was introduced and passed. SB 400 required that the money be deposited in the state treasury instead.

In 2004, Florida canceled two of Accenture’s contracts: one for \$46.7 million to manage the state’s computer functions, and one for \$86.7 million to operate the State’s computer help desk. (*Tallahassee Democrat*. “Licensing system under scrutiny; Senate visit casts doubt on department’s efficiency.” Lauer, Nancy Cook, Dec. 6, 2004.) Although these functions were not part of MFMP, they underscore difficulties that the state had with the company.

Accenture’s poor performance in MFMP and in other venues led the Chair of the Senate Governmental Oversight and Productivity Committee, Nancy Argenziano, R-Dunnellon, to state, “I’m not anti-privatization, but there are times when privatization doesn’t work.” (*Tallahassee Democrat*. Hirth, Diane. February 7, 2005.) She also said, “Let’s be clear, I’m not

antiprivatization. I'm anti the state being taken advantage of." (*St. Petersburg Times*. James, Joni. February 19, 2005.)

The two examples above are relatively recent, so perhaps some of the problems could be worked out over time. Unfortunately, that's not been the state's record. The State of Florida has a much longer history of privatizing prisons. That experience has been equally troubling.

## Corrections

***Our review showed numerous instances where vendors' interests were considered over the State's interests.***

(Inspector's General Report, 2005)

The Department of Management Services Inspector General's Report, "Contract Management of Private Correctional Facilities," dated June 30, 2005, illustrates myriad problems with Florida's contracting and managing of private correctional facilities. (Report Number 2005-16.)

Prison privatization goes back a long way in Florida. In 1989, the state legislature authorized the Department of Corrections (DOC) to contract with private vendors to construct, design, and operate correctional facilities, *if substantial savings could be realized*. (Italics added.) The next year, the legislature instructed the DOC to contract with a private vendor to construct and operate a facility in Gadsden County. The DOC issued a Request for Proposals (RFP) that mandated savings of ten percent for construction along with ten percent savings for operations. Prospective vendors, however, were unable to achieve that threshold.

In 1991, another RFP was issued that mandated a ten percent savings for operations and *substantial savings* for construction. This contract was awarded to U.S. Corrections Corporation, whose proposal offered a five percent savings on construction costs over those of the DOC, and a savings on operating costs of 11.6 percent. After the DOC entered in to this contract in 1994, the Gadsden Correctional Facility was in operation by March 1995.

In the meantime, the Correctional Privatization Commission (CPC) was created. This commission, established in 1993, was chartered for the purpose of entering into contracts with private vendors for designing, financing, acquiring, leasing, constructing, and operating private correctional facilities. At this point, the legislature required that any new contract show a seven percent savings over the costs of a similar DOC facility.

On July 1, 2004, the legislature transferred responsibilities and duties for managing and contracting private correctional facilities to the Department of Management Services, and, effective July 1, 2005, it abolished the CPC. The commission had been plagued by problems almost since its inception. In 2001, the Florida Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) found that it overpaid two prisons \$1.3 million through favorable contract provisions. There were ethical problems, too. The commission's primary consultant, Charles Thomas, was fined by the Florida Commission on Ethics in 1999 for hiding financial ties to two private prison companies that have business with the state. (*Tallahassee Democrat*. "Good Government: Kill the commission on private prisons." Cotterell, Bill. Mar. 14, 2001.)

Under the CPC, the state incurred approximately \$12.7 million in "questionable and excessive costs" from a variety of sources according to Report 2005-16:

- *The State paid facility vendors over \$4.4 million in payments for vacant staff positions. This occurred because the CPC did not require vendors to report vacant staff positions for a major portion of the contract terms. Moreover, when vendors did report vacancies, the CPC did not correctly calculate the number of vacant days by staff position and did not reduce vendors' invoices by the correct amount. (p.8)*
- *The CPC waived contractually required staffing patterns for certain staff at all correctional facilities for the period of April 2003 through March 2005. The blanket waivers violated both contract requirements and Florida Administrative Code. As a result of the blanket waivers, the CPC did not require vendors to refund a portion of the per diem payments they continued to receive for full staffing levels. Consequently, the waivers cost the state a minimum of \$290,000 in additional costs. (p.12)*
- *The vendor at the South Bay Correctional Facility received excess CAD (competitive area differential) and per diem in lieu of CAD totaling about*



*\$3.4 million during the period of January 1999 through December 2004. The vendor also billed the State for additional overhead, or burden, on CAD payments. The CPC authorized payment of about \$1.57 million for these costs during the period from February 1997 through December 2004. It submitted invoices in the amount of \$104,000 for CAD payments for employees who were no longer employed at the facility, and used CAD payments to offset salary costs rather than to enhance employees' salaries. (pp. 15-21)*

- *Gadsden Correctional Facility received an additional per diem payment of \$2.30 per inmate for the first 768 inmates or about \$645,000 per year for the facility's routine and major maintenance and repair. However, records show that the vendor's expenditures averaged only \$170,000 annually for calendar years 1999 through 2004. As a result, the State paid about \$2.85 million more for maintenance and repair than was expended. (p.23)*

The former director of the CPC, Alan Duffee, said, in regard to the Inspector General's Report, "I agree with 100 percent of what's in here." He went on to say the report, "illustrates weaknesses in privatization as companies holding contracts use lobbyists to fend off competition and set specifications favorable to their bottom line." (*Tallahassee Democrat*. "State audit hammers prison panel," Cotterell, Bill, Jul. 26, 2005.)

The final example of privatization gone awry in Florida is the Department of Children and Families, the department responsible for Florida's most needy and vulnerable residents.

## **Department of Children and Families**

***"In these handoffs to private agencies and then back to the state when they splatter, chaos has consumed the bureaucracy that's supposed to be protecting children. In the whirlpool of paperwork and political struggles, children are lost."***

*(Orlando Sentinel. "Care agency is going down—kids will suffer." Ritchie, Lauren, Feb. 16. 2005.)*

Child welfare systems across the country are in crisis, with brutal workloads and inadequate resources. Florida is no exception. In April 2005, Florida

privatized its child welfare programs. It had been moving in that direction over several years, privatizing in piecemeal fashion by county or region. Privatization initially began in 1996, when the Legislature directed the Department of Children and Families (DCF) to establish five pilot projects. Four of the five pilots failed. Even so, a 1998 law mandated that all foster care and related services statewide be privatized by December 2002. The legislation required that DCF contract with community-based lead agencies responsible for planning, administering, and delivering services. (OPPAGA Report, 05-12, p.2)

The 2002 deadline, and subsequent deadlines, were missed. By 2003, myriad problems led the Legislature to enact further requirements, including assessments of the operational readiness of each district and lead agency. Despite these new regulations, the March 2005 OPPAGA report found that DCF was making strides in the transition to full privatization, yet still had a long way to go. An August 2005 OPPAGA Report Number 05-40 stated that the community-based lead agencies have not implemented a new child welfare training program, as required. The challenges cited include the “decentralized structure” of service delivery, and lack of guidance to investigating entities and lead agencies (pp. 1-2).

OPPAGA Report 05-12 made the following recommendations:

- *To adequately monitor lead agency performance, the department must have reliable data on all critical performance measures.*
- *Lead agencies need to be able to address complex funding issues and changes in federal and state requirements. We continue to recommend that the department systematically track technical assistance requests. We also recommend that the department complete its technical assistance website to serve as an information clearinghouse for lead agencies.*
- *As the department implements its lead agency viability profile, we recommend that it develop criteria for determining when poor performance warrants further review.*
- *To better align funding to lead agency caseloads, the department needs to establish a more effective methodology for allocating federal Title IV-E funds to lead agencies.*
- *We recommend that the department strengthen its quality assurance efforts by collecting more Title IV-E specific data that identifies the*

*degree of error and the extent to which the various parties involved in the eligibility determination process made mistakes.*

- *We also recommend that the department evaluate quality assurance data at the statewide level to assess the state's overall performance in Title IV-E eligibility.*
- *If the department proceeds with outsourcing its fiscal monitoring of contracts, we recommend that it develop a plan for comprehensively reviewing both the programmatic and fiscal performance of lead agencies. We recommend that this plan clarify which department staff will be responsible for compiling and monitoring results and reviewing results for overlapping problems. (Report No. 05-12, p.9)*

Looking beyond child protective services, in 2004 the DCF published a report, "Modernization of the Economic Self-Sufficiency Program," that compared performance of eligibility work for food stamps, welfare assistance, and Medicaid by state employees and an outside vendor. The report found that moving to a privatized system would not save money. In fact, the report found that the only disadvantage of using state workers, as opposed to a private company, to determine eligibility is that it requires a larger number of full-time state employees.

On the other hand, the report cites multiple disadvantages to issuing \$701.4 million to a contractor to perform the state work, including:

- The need for a federal waiver;
- Additional administrative costs of a third-party evaluation;
- Potential risks to the state and to clients if the vendor defaults on the state contract, and;
- A 30-month implementation period that will require a dual system and additional overhead.

*(Tallahassee Democrat. "Florida may go with DCF privatization; Contract might be awarded without evidence of savings." Hirth, Diane, Dec. 26, 2004.)*

The DCF has more than 1,500 contracts with the private sector. Bidding has been rife with irregularities. The DCF's top contracting official resigned, citing the lack of sufficient time to prepare for the major, complex contracts he was about to administer, coupled with acute cuts in staff. He had reported suspect bidding practices, which were borne out after an investigation revealed favoritism in awarding contracts. *(Palm Beach Post. "Abusing DCF*

contracts.” OP-ED, Jan. 1, 2005.) The Department Secretary, Jerry Regier, resigned amid revelations of \$4 million worth of improperly bid contracts. (*Governing*. “*Sweetheart Deals*.” Greenblatt, Alan, Dec. 2004)

The contracting agencies have had problems. For example, Kids Central, Inc. was cited for serious deficiencies in performance, including allowing adoptable children to linger for too long in state care. The number of children re-abused while under the care of Kid’s Central was the highest in the state for the first quarter of the 2005 fiscal year. Kids Central blamed this high number on a data entry error.

Another contractor, United for Families, has also had problems. After one year of working with this agency, caseworkers and clients alike stated that the system is worse than it was under the state’s jurisdiction. According to one caseworker, “They [United for Families] were given a pretty well-functioning system, and blew it to bits.” A foster parent said that the DCF “was like a reliable old Chevy with a few dents and needing a tuneup.” He continues, “What they did was they traded in the Chevy and got us a Yugo.” (*Palm Beach Post*. “Families, workers say private foster care adrift.” Taylor, Jill. May 8, 2005.)

When the contract began, United for Families said that they hoped to increase the number of foster parents by approximately 25 percent. However, the total number of foster parents fell by 23 percent (*ibid.*).

While no one would deny that Florida’s child welfare system needed improvement, privatizing the system has had the opposite effect.

## **All the king’s horses and all the king’s men. . .**

**“I’m amazed that 41% of a \$57 billion state budget is in (private) contract services. We should have more accountability for that.”  
Senator Nancy Argenziano (R-Dunnellon) Chair of the Senate  
Governmental Oversight and Productivity Committee**

(Tallahassee Democrat 2/2/04)

The Governor’s vision of Florida as a state where families, entrepreneurs and communities take care of the needs of state residents, and state office

buildings are empty, may sound good. But the reality is another matter entirely. State workers, who are also taxpayers and citizens, suffered. Lawmakers spent valuable time monitoring these new schemes rather than addressing issues that could have a positive impact on Florida. State residents got inefficient and ineffective public services. In some cases, in the Department of Children and Families, there have been real tragedies that have cost children's lives.

A January 2004 OPPAGA Information Brief presented findings from approximately 100 audits at seven agencies, as well as reports from the Auditor General, and identified major deficiencies in outsourcing and contracting practices, including:

- *A lack of centralized statewide direction, which has led to inconsistent and deficient contracting practices;*
- *Lack of formal guidance for performing and documenting needs assessments for privatizing services;*
- *No statewide system to train or certify agency contracting personnel;*
- *Little sharing of best contracting practices among agencies; and*
- *Inadequate systems for monitoring and rating vendor performance.*

The reality, as many public officials have learned, is that contracting is hard work. Contracts must be effectively negotiated and monitored, which can add about 20 percent to the cost of a contract. Even in the best of circumstances, public needs and emergencies are not predictable, yet contractors are bound only by their written agreement. And in the final analysis, it is government that people expect to provide the service, government they will blame if it is not provided and government that is legally responsible to its citizens. The Florida Model has proven costly for that state. It has clearly illustrated that efficiency, effectiveness, and ethics can fall by the wayside when public services are put into private hands.

Given the myriad problems with the Florida Model, the state's Republican legislature in 2005 passed SB 1146. The bill created a commission to approve all state contracts worth more than \$1 million, and annually review contracts worth over \$10 million. In addition, it prohibited lobbyists from becoming members of the state's ethics commission, and clamped down on former state employees who want to lobby state government. In June 2005, Governor Bush vetoed the bill. The Governor's veto claimed, "This legislation could have a Draconian impact on the ability of the state to recruit

employees who eventually aspire to return to the private sector.” (*Miami Herald*. “Gov. Bush shoots down ethics bill.” Fineout, Gary. Jun. 16, 2005.)

It now appears that we have come full circle: Governor Bush initially sought to empty state government buildings of workers. Now he is concerned about recruiting state workers who can acquire the information and expertise they need to go into the private sector to provide state services.

Other states would do well not to follow this model.