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CS/HB 273

2016 Legislature

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2 An act relating to public records; amending s.
3 119.0701, F.S.; requiring a public agency contract for
4 services to include a statement providing the contact
5 information of the public agency's custodian of public
6 records; prescribing the form of the statement;
7 revising required provisions in a public agency
8 contract for services regarding a contractor's
9 compliance with public records laws; requiring a
10 public records request relating to records for a
11 public agency's contract for services to be made
12 directly to the public agency; requiring a contractor
13 to provide requested records to the public agency or
14 allow inspection or copying of requested records under
15 specified circumstances; providing penalties;
16 specifying circumstances under which a court must
17 award the reasonable costs of enforcement against a
18 contractor; specifying what constitutes sufficient
19 notice; providing that a contractor who takes certain
20 actions is not liable for the reasonable costs of
21 enforcement; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 119.0701, Florida Statutes, is amended
26 to read:

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27 | 119.0701 Contracts; public records; request for contractor
 28 | records; civil action.-

29 | (1) DEFINITIONS.-For purposes of this section, the term:

30 | (a) "Contractor" means an individual, partnership,
 31 | corporation, or business entity that enters into a contract for
 32 | services with a public agency and is acting on behalf of the
 33 | public agency as provided under s. 119.011(2).

34 | (b) "Public agency" means a state, county, district,
 35 | authority, or municipal officer, or department, division, board,
 36 | bureau, commission, or other separate unit of government created
 37 | or established by law.

38 | (2) CONTRACT REQUIREMENTS.-In addition to other contract
 39 | requirements provided by law, each public agency contract for
 40 | services entered into or amended on or after July 1, 2016, must
 41 | include:

42 | (a) The following statement, in substantially the
 43 | following form, identifying the contact information of the
 44 | public agency's custodian of public records in at least 14-point
 45 | boldfaced type:

46 |
 47 | IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
 48 | CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO
 49 | PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE
 50 | CUSTODIAN OF PUBLIC RECORDS AT ... (telephone number, e-mail
 51 | address, and mailing address)....

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53 (b) A provision that requires the contractor to comply
54 with public records laws, specifically to:

55 1.(a) Keep and maintain public records ~~that ordinarily and~~
56 ~~necessarily would be~~ required by the public agency ~~in order~~ to
57 perform the service.

58 2.(b) Upon request from the public agency's custodian of
59 public records, provide the public agency with a copy of the
60 requested records or allow the access to public records to be
61 inspected or copied within a reasonable time ~~on the same terms~~
62 ~~and conditions that the public agency would provide the records~~
63 ~~and~~ at a cost that does not exceed the cost provided in this
64 chapter or as otherwise provided by law.

65 3.(e) Ensure that public records that are exempt or
66 confidential and exempt from public records disclosure
67 requirements are not disclosed except as authorized by law for
68 the duration of the contract term and following completion of
69 the contract if the contractor does not transfer the records to
70 the public agency.

71 4.(d) Upon completion of the contract, Meet all
72 ~~requirements for retaining public records and~~ transfer, at no
73 cost, to the public agency all public records in possession of
74 the contractor or keep and maintain public records required by
75 the public agency to perform the service. If the contractor
76 transfers all public records to the public agency upon
77 completion of the contract, the contractor shall upon
78 ~~termination of the contract and~~ destroy any duplicate public

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79 records that are exempt or confidential and exempt from public
 80 records disclosure requirements. If the contractor keeps and
 81 maintains public records upon completion of the contract, the
 82 contractor shall meet all applicable requirements for retaining
 83 public records. All records stored electronically must be
 84 provided to the public agency, upon request from the public
 85 agency's custodian of public records, in a format that is
 86 compatible with the information technology systems of the public
 87 agency.

88 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.—

89 (a) A request to inspect or copy public records relating
 90 to a public agency's contract for services must be made directly
 91 to the public agency. If the public agency does not possess the
 92 requested records, the public agency shall immediately notify
 93 the contractor of the request, and the contractor must provide
 94 the records to the public agency or allow the records to be
 95 inspected or copied within a reasonable time.

96 (b) ~~(3)~~ If a contractor does not comply with the a public
 97 agency's ~~records~~ request for records, the public agency shall
 98 enforce the contract provisions in accordance with the contract.

99 (c) A contractor who fails to provide the public records
 100 to the public agency within a reasonable time may be subject to
 101 penalties under s. 119.10.

102 (4) CIVIL ACTION.—

103 (a) If a civil action is filed against a contractor to
 104 compel production of public records relating to a public

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105 agency's contract for services, the court shall assess and award
 106 against the contractor the reasonable costs of enforcement,
 107 including reasonable attorney fees, if:

108 1. The court determines that the contractor unlawfully
 109 refused to comply with the public records request within a
 110 reasonable time; and

111 2. At least 8 business days before filing the action, the
 112 plaintiff provided written notice of the public records request,
 113 including a statement that the contractor has not complied with
 114 the request, to the public agency and to the contractor.

115 (b) A notice complies with subparagraph (a)2. if it is
 116 sent to the public agency's custodian of public records and to
 117 the contractor at the contractor's address listed on its
 118 contract with the public agency or to the contractor's
 119 registered agent. Such notices must be sent by common carrier
 120 delivery service or by registered, Global Express Guaranteed, or
 121 certified mail, with postage or shipping paid by the sender and
 122 with evidence of delivery, which may be in an electronic format.

123 (c) A contractor who complies with a public records
 124 request within 8 business days after the notice is sent is not
 125 liable for the reasonable costs of enforcement.

126 Section 2. This act shall take effect upon becoming a law.