

STORAGE NAME: h0505.cjcl

DATE: March 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE AND CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 505

RELATING TO: Private attorney services

SPONSOR(S): Representative Bainter

STATUTE(S) AFFECTED: s. 287.059, F.S.

COMPANION BILL(S): SB 0922

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) COMMITTEE ON CIVIL JUSTICE AND CLAIMS

(2)

(3)

(4)

(5)

I. SUMMARY:

Private attorneys contracting with a state agency would not be allowed to represent any other person in a proceeding against the state under the provisions of HB 505. Members of any contracted attorneys firm would also be prohibited from representing any other person in a proceeding against any state agency. The Attorney General would be allowed to impose an administrative fine up to \$500,000 for violating the provisions of HB 505.

The fiscal impact of HB 505 is uncertain.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

HB 505 provides additional regulations for state agencies contracting the services of private attorneys. In order to understand the provisions of this bill, it is necessary to review s. 287.059, F.S., relating to private attorney services.

State agencies requesting the services of a private attorney must receive written approval from the Attorney General. However, written approval is not required for private attorney services (a) procured by the Executive Office of the Governor or any department under the exclusive jurisdiction of a single Cabinet Officer; (b) provided by legal services organizations to indigent clients; (c) necessary to represent the state in litigation involving the Florida Casualty Insurance Risk Management Trust Fund; (d) procured by the Board of Regents and the universities of the State University System; (e) procured by community and junior colleges and multi-county special districts.

Agencies requesting approval of private attorney services must submit an initial offer to contract with the Department of Legal Affairs(DLA). If the DLA is unable to provide the requested attorney services, the Attorney General will provide a letter to such effect. At this step in the process, agencies are given written approval to contract the services of a private attorney services.

Furthermore, the Attorney General adopts a standard fee schedule for private attorney services using an hourly rate or alternative billing methodology. All agencies utilize the fee schedule unless an agency head or his designee waives the use of the schedule. The Attorney General also develops agency guidelines used to determine the necessity and appropriateness for contracting private attorney services. Services are contracted on a yearly basis, but multi-year contracts are allowed, if annual appropriations are secured and the Attorney General provides written approval.

Every attorney practicing in the State of Florida is governed by the Florida Rules of Court, a document used to guide the professional, ethical and practical conduct of lawyers. The rules address the conflict of interest issue raised in HB 505 by directing a lawyer in the following manner:

“ (a) . . . A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless: (1) the lawyer reasonable believes the representation will not adversely affect the lawyer’s responsibilities to and the relationship with the other client; and (2) each client consents after consultation.” ¹

The Florida Rules of Court have determined that “client loyalty” is an essential element in a lawyers relationship to a client. To accept any representation which would impair the ability of a lawyer to represent his client is not advised. In general, an attorney’s loyalty to a client prevents undertaking representation directly adverse to that clients or another

¹ FLORIDA RULES OF COURT, (West Publishing Company 1996) (1968).

client's interests without the affected client's consent; moreover, client loyalty prevents undertaking representation which would impair a lawyers ability to consider, recommend or carry out an appropriate course of action for the client because of the lawyer's responsibilities or interests. ²

HB 505 also raises the question of whether a contracted attorney represents a government agency or the government as a whole. The Florida Rules of Court address this issue accordingly:

“ . . . when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. . . defining precisely the identity of the client and preserving the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole . . .” ³

The Attorney General cannot impose administrative fines on contracted attorneys or their law firms for representing clients with proceedings against the state.

B. EFFECT OF PROPOSED CHANGES:

Presently, private attorneys and members of their firms who have entered into service contracts with state agencies, may represent clients in suits against state agencies during the terms of those contracts. HB 505 would require the Attorney General to include an addendum in any contract for private attorney services which states that neither the attorney nor any member of the attorney's law firm will represent any other person in a proceeding against any agency during the term of the contract. An affidavit to the above agreement would have to be signed before a contract would be considered binding. In addition, the attorney General could impose an administrative penalty of no more than \$500,000 on any attorney or firm violating the provisions of HB 505.

The Legislature would statutorily define “government” as any of its agencies; therefore, attorneys representing a governmental agency would be representing the government as a whole. This definition, in itself, limits the ability of lawyers to represent simuntaneously governmental agencies and other parties with proceedings against any governmental agency.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

² See id.

³ See id.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. HB 505 would increase the number of private law firms contracted to represent state agencies, but it adversely affects the business of firms contracted to provide services. A private attorney or any member of the attorney's law firm would not represent any other person in a proceeding against any agency during the term of the contract.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Attorney General will have new responsibilities such as amending the current forms for contracting private attorney services and finding more private law firms to contract with state agencies. Private law firms would not be allowed to represent other parties with cases against state agencies if contracted to represent any state agency.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

NA.

b. Does the bill require or authorize an increase in any fees?

NA.

c. Does the bill reduce total taxes, both rates and revenues?

NA.

d. Does the bill reduce total fees, both rates and revenues?

NA.

e. Does the bill authorize any fee or tax increase by any local government?

NA.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill decreases the allowable options of private attorneys or attorneys employed by the same firm that have contracted with a state agency to provide services. These attorneys and attorneys employed by the same firm would not be allowed to represent other persons in proceedings against any state agency.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No. The Attorney General is the cabinet officer presently designated to regulate the contracting of private attorney services to state agencies, with exceptions. Any change in these responsibilities would affect indirectly private attorneys or private law firms.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

b. Does the bill directly affect the legal rights and obligations between family members?

NA.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

The fiscal impact of HB 505 is presently indeterminate. However, it should be noted that the changes proposed in HB 505 will directly affect the economic environment of Florida's practicing attorneys.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the state constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

Key Issues - This subsection uses a question format to stimulate debate about private attorney services.

1. Should private attorneys or law firms which have entered into a contract to provide services to state agencies be allowed to accept suits against any state agency during the term of the contract?

(a) In cases involving a state agency, what situation constitutes a conflict of representation.

(b) Should "agency" be defined by the Legislature, and if so, how should it be defined.

(c) Should the State of Florida have representation without conflict when it appears in court.

2. By enacting this bill, will the state restrict the freedom of private attorneys or law firms to conduct business?
3. Should the Legislature enact HB 505, will this enactment be considered an attempt to regulate attorneys, a group which is not currently regulated by the State of Florida?
4. Would HB 505 prevent state agencies from contracting private attorneys or private law firms with specific areas of expertise, thereby reducing the competency of legal services available to state agencies?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

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Bridget Edmond