

By Senator Dyer

14-7A-99

1 A bill to be entitled
2 An act relating to government accountability;
3 amending s. 11.066, F.S.; providing that
4 property of the state or a monetary recovery
5 made on behalf of the state is not subject to a
6 lien unless authorized by law; amending s.
7 112.3175, F.S.; providing that certain
8 contracts executed in violation of part III of
9 ch. 112, F.S., are presumed void or voidable;
10 amending s. 112.3185, F.S.; prohibiting a state
11 employee from holding certain employment or
12 contractual relationships following resignation
13 of such employment; amending s. 287.058, F.S.;
14 requiring that certain state contracts be
15 subject to cancellation upon refusal by the
16 contractor to allow access to public records;
17 amending s. 287.059, F.S.; providing additional
18 requirements for contracts for private attorney
19 services; providing requirements for
20 contingency fee contracts; providing
21 requirements if multiple law firms are parties
22 to a contract; providing requirements for
23 private attorneys with respect to maintaining
24 documents and records and making such documents
25 and records available for inspection; providing
26 an effective date.

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28 WHEREAS, the Legislature is advised that monetary
29 recoveries made on behalf of the people of this state have
30 become the subject of attorney-charging liens that have
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1 frustrated access to such recoveries by and on behalf of the
2 people of this state, and

3 WHEREAS, such attorney-charging liens are not
4 authorized under the common or statutory laws of this state,
5 and

6 WHEREAS, such attorney-charging liens are anathema to
7 the sovereign immunity of the State of Florida, disrupt the
8 orderly administration of government, encroach upon the public
9 treasury, and are not authorized by the Legislature, and

10 WHEREAS, the Legislature reaffirms its intention that
11 such attorney-charging liens are contrary to its will and to
12 the well-being of the State of Florida and to the state's
13 sovereign immunity, and

14 WHEREAS, the Legislature reaffirms its intention that
15 all conflicts of interest between agency employees and the
16 private sector are prohibited regardless of the manner in
17 which agency employment is ended and regardless of the nature
18 of the personal and substantial role of the agency employee,
19 and

20 WHEREAS, the Legislature reaffirms its intention that
21 the payment of state-contracted attorney's fees shall be
22 subject to appropriation, shall be commercially reasonable,
23 and may not result in a "windfall"; that documentation
24 substantiating such services shall be maintained and be
25 reasonably accessible to the public; and that the sanctity of
26 the attorney-client relationship shall be honored and
27 enforced, NOW, THEREFORE,

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29 Be It Enacted by the Legislature of the State of Florida:

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1 Section 1. Subsection (5) is added to section 11.066,
2 Florida Statutes, to read:

3 11.066 Suits seeking monetary damages against the
4 state or its agencies; payment of judgments; appropriations
5 required.--

6 (5) The property of the state, the property of any
7 state agency, or any monetary recovery made on behalf of the
8 state or any state agency is not subject to a lien of any
9 kind, and a person may not institute an action on any such
10 lien unless expressly authorized by law.

11 Section 2. Section 112.3175, Florida Statutes, is
12 amended to read:

13 112.3175 Remedies; contracts voidable.--

14 (1) Any contract ~~that~~ ~~which~~ has been executed in
15 violation of this part is voidable:

16 (a)~~(1)~~ By any party to the contract.

17 (b)~~(2)~~ In any circuit court, by any appropriate
18 action, by:

19 1.~~(a)~~ The commission.

20 2.~~(b)~~ The Attorney General.

21 3.~~(c)~~ Any citizen materially affected by the contract
22 and residing in the jurisdiction represented by the officer or
23 agency entering into such contract.

24 (2) Any contract that has been executed in violation
25 of this part is presumed void with respect to any former
26 employee of a state agency and is voidable with respect to any
27 private-sector third party who employs or retains in any
28 capacity such former agency employee.

29 Section 3. Subsection (3) of section 112.3185, Florida
30 Statutes, is amended to read:

31 112.3185 Contractual services.--

1 (3) No agency employee shall, after retirement,or
2 termination, or resignation, have or hold any employment or
3 contractual relationship with any business entity other than
4 an agency in connection with any contract in which the agency
5 employee participated personally and substantially through
6 decision, approval, disapproval, recommendation, rendering of
7 advice, or investigation while an officer or employee.

8 Section 4. Subsection (1) of section 287.058, Florida
9 Statutes, 1998 Supplement, is amended to read:

10 287.058 Contract document.--

11 (1) Every procurement of contractual services in
12 excess of the threshold amount provided in s. 287.017 for
13 CATEGORY TWO, except for the providing of health and mental
14 health services or drugs in the examination, diagnosis, or
15 treatment of sick or injured state employees or the providing
16 of other benefits as required by the provisions of chapter
17 440, shall be evidenced by a written agreement embodying all
18 provisions and conditions of the procurement of such services,
19 which provisions and conditions shall, where applicable,
20 include, but shall not be limited to:

21 (a) A provision that bills for fees or other
22 compensation for services or expenses be submitted in detail
23 sufficient for a proper preaudit and postaudit thereof.

24 (b) A provision that bills for any travel expenses be
25 submitted in accordance with s. 112.061. A state agency may
26 establish rates lower than the maximum provided in s. 112.061.

27 (c) A provision allowing unilateral cancellation by
28 the agency for refusal by the contractor to allow public
29 access to all documents, papers, letters, or other material
30 ~~subject to the provisions of chapter 119 and made or received~~
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1 by the contractor in conjunction with the contract, unless the
2 records are exempt from s. 119.07(1).

3 (d) A provision dividing the contract into units of
4 deliverables, which shall include, but not be limited to,
5 reports, findings, and drafts, that must be received and
6 accepted in writing by the contract manager prior to payment.

7 (e) A provision specifying the criteria and the final
8 date by which such criteria must be met for completion of the
9 contract.

10 (f) A provision specifying that the contract may be
11 renewed on a yearly basis for a period of up to 2 years after
12 the initial contract or for a period no longer than the term
13 of the original contract, whichever period is longer,
14 specifying the terms under which the cost may change as
15 determined in the invitation to bid or request for proposals,
16 and specifying that renewals shall be contingent upon
17 satisfactory performance evaluations by the agency and subject
18 to the availability of funds.

19
20 In lieu of a written agreement, the department may authorize
21 the use of a purchase order for classes of contractual
22 services, provided the provisions of paragraphs (a)-(f) are
23 included in the purchase order, invitation to bid, or request
24 for proposals. The purchase order shall include an adequate
25 description of the services, the contract period, and the
26 method of payment. In lieu of printing the provisions of
27 paragraphs (a)-(f) in the contract document or purchase order,
28 agencies may incorporate the requirements of paragraphs
29 (a)-(f) by reference.

30 Section 5. Section 287.059, Florida Statutes, is
31 amended to read:

1 287.059 Private attorney services.--

2 (1) For purposes of this section, the term "agency" or
3 "state agency" includes state officers, departments, boards,
4 commissions, divisions, bureaus, councils, and units of
5 organization, however designated, of the executive branch of
6 state government, community and junior colleges, and
7 multicounty special districts exclusive of those created by
8 interlocal agreement or which have elected governing boards.

9 (2) No agency shall contract for private attorney
10 services without the prior written approval of the Attorney
11 General, except that such written approval is not required for
12 private attorney services:

13 (a) Procured by the Executive Office of the Governor
14 or any department under the exclusive jurisdiction of a single
15 Cabinet officer.

16 (b) Provided by legal services organizations to
17 indigent clients.

18 (c) Necessary to represent the state in litigation
19 involving the Florida Casualty Insurance Risk Management Trust
20 Fund pursuant to part II of chapter 284.

21 (d) Procured by the Board of Regents and the
22 universities of the State University System.

23 (e) Procured by community and junior colleges and
24 multicounty special districts.

25 (3) An agency requesting approval for the use of
26 private attorney services shall first offer to contract with
27 the Department of Legal Affairs for such attorney services at
28 a cost pursuant to mutual agreement. The Attorney General
29 shall decide on a case-by-case basis to accept or decline to
30 provide such attorney services as staffing, expertise, or
31 other legal or economic considerations warrant. If the

1 Attorney General declines to provide the requested attorney
2 services, the Attorney General's written approval shall
3 include a statement that the private attorney services
4 requested cannot be provided by the office of the Attorney
5 General or that such private attorney services are
6 cost-effective in the opinion of the Attorney General. The
7 Attorney General shall not consider political affiliation in
8 making such decision. The office of the Attorney General
9 shall respond to the request of an agency for prior written
10 approval within 10 working days after receiving such request.
11 The Attorney General may request additional information
12 necessary for evaluation of a request. The Attorney General
13 shall respond to the request within 10 working days after
14 receipt of the requested information. Those agencies exempt
15 from written approval from the Attorney General, as described
16 in paragraphs (2)(a)-(f), may contract with the Department of
17 Legal Affairs for attorney services. The Attorney General
18 shall determine on a case-by-case basis whether to provide
19 such attorney services as staffing, expertise, or other legal
20 considerations warrant. The Attorney General may adopt, by
21 rule, a form on which agencies requesting written approval for
22 private attorney services shall provide information
23 concerning:

24 (a) The nature of the attorney services to be provided
25 and the issues involved.

26 (b) The need for use of private attorneys, rather than
27 agency staff attorneys, utilizing the criteria provided in
28 subsection (9)~~(8)~~.

29 (c) The criteria by which the agency selected the
30 private attorney or law firm it proposes to employ, utilizing
31 the criteria provided in subsection (10)~~(9)~~.

1 (d) Competitive fees for similar attorney services.

2 (e) The agency's analysis estimating the number of
3 hours for attorney services, the costs, the total contract
4 amount, and, when appropriate, a risk or cost-benefit
5 analysis.

6 (f) Which partners, associates, paralegals, research
7 associates, or other personnel will be used, and how their
8 time will be billed to the agency.

9 (g) Any other information which the Attorney General
10 deems appropriate for the proper evaluation of the need for
11 such private attorney services.

12 (4) When written approval has been received from the
13 Attorney General, the general counsel for the agency shall
14 review the form and legality of the contract for private
15 attorney services and shall indicate his or her approval by
16 signing the contract ~~written final approval must be obtained~~
17 ~~from the agency head, or designee of the agency head, prior to~~
18 ~~the contracting for private attorney services.~~ After a
19 contract is approved by the general counsel, the agency head
20 shall sign and maintain custody of the contract.

21 (5) The agency head or a designee shall give written
22 approval prior to contracting for private attorney services
23 for all agencies exempt from written approval of the Attorney
24 General as described in paragraphs (2)(a)-(f).

25 (6) The Attorney General shall, by rule, adopt a
26 standard fee schedule for private attorney services using
27 hourly rates or an alternative billing methodology. The
28 Attorney General shall take into consideration the following
29 factors:

30 (a) Type of controversy involved and complexity of the
31 legal services needed.

1 (b) Geographic area where the attorney services are to
2 be provided.

3 (c) Novelty of the legal questions involved.

4 (d) Amount of experience desired for the particular
5 kind of attorney services to be provided.

6 (e) Other factors deemed appropriate by the Attorney
7 General.

8 (f) The most cost-effective or appropriate billing
9 methodology.

10 (7)(a) A contingency fee contract must be commercially
11 reasonable. As used in this subsection, the term "commercially
12 reasonable" means a reasonable fee that does not exceed:

13 1. Thirty percent of any recovery of an amount less
14 than \$2 million.

15 2. Twenty percent of any recovery of an amount equal
16 to \$2 million but less than \$10 million.

17 3. Ten percent of any recovery of an amount equal to
18 \$10 million or greater.

19 (b) If the amount of the fee is in dispute, the
20 counsel retained by the state shall participate in mandatory,
21 binding arbitration. Payment of all attorney's fees is subject
22 to appropriation. Attorney's fees shall be forfeited if,
23 during the pendency of the case, the counsel retained by the
24 state takes a public position that is adverse to the state's
25 litigation or settlement posture.

26 (8)(7) All agencies, when contracting for private
27 attorney services, must use the standard fee schedule for
28 private attorney services as established pursuant to this
29 section unless the head of the agency, or his or her designee,
30 waives use of the schedule and sets forth the reasons for
31 deviating from the schedule in writing to the Attorney

1 General. Such waiver must demonstrate necessity based upon
2 criteria for deviation from the schedule which the Attorney
3 General shall establish by rule.

4 (9)~~(8)~~ The Attorney General shall develop guidelines
5 that may be used by agencies to determine when it is necessary
6 and appropriate to seek private attorney services in lieu of
7 staff attorney services.

8 (10)~~(9)~~ Agencies are encouraged to use the following
9 criteria when selecting outside firms for attorney services:

- 10 (a) The magnitude or complexity of the case.
11 (b) The firm's ratings and certifications.
12 (c) The firm's minority status.
13 (d) The firm's physical proximity to the case and the
14 agency.
15 (e) The firm's prior experience with the agency.
16 (f) The firm's prior experience with similar cases or
17 issues.
18 (g) The firm's billing methodology and proposed rate.
19 (h) The firm's current or past adversarial position,
20 or conflict of interest, with the agency.
21 (i) The firm's willingness to use resources of the
22 agency to minimize costs.

23 (11)~~(10)~~ The Attorney General shall develop a standard
24 addendum to every contract for attorney services that must be
25 used by all agencies, unless waived by the Attorney General,
26 describing in detail what is expected of both the contracted
27 private attorney and the contracting agency. The addendum must
28 address the internal system of governance if multiple law
29 firms are parties to the contract and must, at a minimum,
30 require that each firm identify one member who is authorized
31 to legally bind the firm.

1 (12)~~(11)~~ Contracts for attorney services shall be
2 originally executed for 1 year only, except that multiyear
3 contracts may be entered into provided they are subject to
4 annual appropriations and annual written approval from the
5 Attorney General as described in subsection (3). Any
6 amendments to extend the contract period or increase the
7 billing rate or overall contract amount shall be considered
8 new contracts for purposes of the written approval process
9 described in subsection (3).

10 (13)~~(12)~~ The office of the Attorney General shall
11 periodically prepare and distribute to agencies a roster by
12 geographic location of private attorneys under contract with
13 agencies, their fees, and primary area of legal
14 specialization.

15 (14)~~(13)~~ The office of the Attorney General is
16 authorized to competitively bid and contract with one or more
17 court reporting services, on a circuitwide basis, on behalf of
18 all state agencies in accordance with s. 287.057(2). The
19 office of the Attorney General shall develop requests for
20 proposal for court reporter services in consultation with the
21 Florida Court Reporters Association. All agencies shall
22 utilize the contracts for court reporting services entered
23 into by the Office of the Attorney General where in force,
24 unless otherwise ordered by a court or unless an agency has a
25 contract for court reporting services executed prior to May 5,
26 1993.

27 (15)~~(14)~~ The Attorney General's office may, by rule,
28 adopt standard fee schedules for court reporting services for
29 each judicial circuit in consultation with the Florida Court
30 Reporters Association. Agencies, when contracting for court
31 reporting services, must use the standard fee schedule for

1 court reporting services established pursuant to this section,
2 provided no state contract is applicable or unless the head of
3 the agency or his or her designee waives use of the schedule
4 and sets forth the reasons for deviating from the schedule in
5 writing to the Attorney General. Such waiver must demonstrate
6 necessity based upon criteria for deviation from the schedule
7 which the Attorney General shall establish by rule. Any
8 proposed fee schedule under this section shall be submitted to
9 the Governor, the Speaker of the House of Representatives, the
10 President of the Senate, and the Chief Justice of the Florida
11 Supreme Court at least 60 days prior to publication of the
12 notice to adopt the rule.

13 (16) Each private attorney who is under contract to
14 provide attorney services for the state or a state agency
15 shall, from the inception of the contractual relationship
16 until at least 4 years after the contract expires or
17 terminates, maintain detailed current records, including
18 documentation of all expenses, disbursements, charges,
19 credits, underlying receipts and invoices, and other financial
20 transactions that concern the provision of such attorney
21 services. The private attorney shall make all such records
22 available for inspection and copying upon request in
23 accordance with chapter 119.

24 Section 6. This act shall take effect July 1, 1999.
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SENATE SUMMARY

Prohibits the placement of a lien upon state property or a monetary recovery made on the state's behalf unless authorized by law. Provides that a contract executed in violation of part III of ch. 112, F.S., is presumed void. Prohibits a state employee from entering into certain employment or contractual relationships following the resignation of state employment. Provides that certain state contracts are subject to cancellation upon refusal by the contractor to allow access to public records. Provides certain limitations on contingency fee contracts. Requires that a private attorney who contracts with the state maintain documents and records and make such documents and records available for inspection. (See bill for details.)