

By Senator Dyer

14-27-00

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

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

1           11.066 Suits seeking monetary damages against the  
2 state or its agencies; payment of judgments; appropriations  
3 required.--

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

9           Section 2. Section 112.3175, Florida Statutes, is  
10 amended to read:

11           112.3175 Remedies; contracts voidable.--

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

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

15           (b)~~(2)~~ In any circuit court, by any appropriate  
16 action, by:

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

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

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

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

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

29           112.3185 Contractual services.--

30           (3) No agency employee shall, after retirement, or  
31 termination, or resignation, have or hold any employment or

1 contractual relationship with any business entity other than  
2 an agency in connection with any contract in which the agency  
3 employee participated personally and substantially through  
4 decision, approval, disapproval, recommendation, rendering of  
5 advice, or investigation while an officer or employee.

6 Section 4. Subsection (1) of section 287.058, Florida  
7 Statutes, is amended to read:

8 287.058 Contract document.--

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

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

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

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

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

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

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

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

28 Section 5. Section 287.059, Florida Statutes, is  
29 amended to read:

30 287.059 Private attorney services.--  
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1           (1) For purposes of this section, the term "agency" or  
2 "state agency" includes state officers, departments, boards,  
3 commissions, divisions, bureaus, councils, and units of  
4 organization, however designated, of the executive branch of  
5 state government, community and junior colleges, and  
6 multicounty special districts exclusive of those created by  
7 interlocal agreement or which have elected governing boards.

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

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

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

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

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

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

24           (f) Procured by the Board of Trustees for the Florida  
25 School for the Deaf and the Blind.

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

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

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

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

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

4 (d) Competitive fees for similar attorney services.

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

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

12 (g) Any other information which the Attorney General  
13 deems appropriate for the proper evaluation of the need for  
14 such private attorney services.

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

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

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

3 (a) Type of controversy involved and complexity of the  
4 legal services needed.

5 (b) Geographic area where the attorney services are to  
6 be provided.

7 (c) Novelty of the legal questions involved.

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

10 (e) Other factors deemed appropriate by the Attorney  
11 General.

12 (f) The most cost-effective or appropriate billing  
13 methodology.

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

17 1. Thirty percent of any recovery of an amount less  
18 than \$2 million.

19 2. Twenty percent of any recovery of an amount equal  
20 to \$2 million or greater, but less than \$10 million.

21 3. Ten percent of any recovery of an amount equal to  
22 \$10 million or greater.

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

30 (8)(7) All agencies, when contracting for private  
31 attorney services, must use the standard fee schedule for



1 private attorney services as established pursuant to this  
2 section unless the head of the agency, or his or her designee,  
3 waives use of the schedule and sets forth the reasons for  
4 deviating from the schedule in writing to the Attorney  
5 General. Such waiver must demonstrate necessity based upon  
6 criteria for deviation from the schedule which the Attorney  
7 General shall establish by rule.

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

12 (10)~~(9)~~ Agencies are encouraged to use the following  
13 criteria when selecting outside firms for attorney services:

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

27 (11)~~(10)~~ The Attorney General shall develop a standard  
28 addendum to every contract for attorney services that must be  
29 used by all agencies, unless waived by the Attorney General,  
30 describing in detail what is expected of both the contracted  
31 private attorney and the contracting agency. The addendum must

1 address the internal system of governance if multiple law  
2 firms are parties to the contract and must, at a minimum,  
3 require that each firm identify one member who is authorized  
4 to legally bind the firm.

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

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

19 (14)~~(13)~~ The office of the Attorney General is  
20 authorized to competitively bid and contract with one or more  
21 court reporting services, on a circuitwide basis, on behalf of  
22 all state agencies in accordance with s. 287.057(2). The  
23 office of the Attorney General shall develop requests for  
24 proposal for court reporter services in consultation with the  
25 Florida Court Reporters Association. All agencies shall  
26 utilize the contracts for court reporting services entered  
27 into by the Office of the Attorney General where in force,  
28 unless otherwise ordered by a court or unless an agency has a  
29 contract for court reporting services executed prior to May 5,  
30 1993.

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1           ~~(14)~~ (15) The Attorney General's office may, by rule,  
2 adopt standard fee schedules for court reporting services for  
3 each judicial circuit in consultation with the Florida Court  
4 Reporters Association. Agencies, when contracting for court  
5 reporting services, must use the standard fee schedule for  
6 court reporting services established pursuant to this section,  
7 provided no state contract is applicable or unless the head of  
8 the agency or his or her designee waives use of the schedule  
9 and sets forth the reasons for deviating from the schedule in  
10 writing to the Attorney General. Such waiver must demonstrate  
11 necessity based upon criteria for deviation from the schedule  
12 which the Attorney General shall establish by rule. Any  
13 proposed fee schedule under this section shall be submitted to  
14 the Governor, the Speaker of the House of Representatives, the  
15 President of the Senate, and the Chief Justice of the Florida  
16 Supreme Court at least 60 days prior to publication of the  
17 notice to adopt the rule.

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

29           Section 6. This act shall take effect July 1, 2000.  
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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 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.)