

1 A bill to be entitled
2 An act relating to government accountability
3 and legal proceedings; creating s. 60.08, F.S.;
4 providing for injunctions without bond when
5 sought by the state or its agencies; providing
6 for severability; amending s. 11.066, F.S.;
7 providing that property of the state or a
8 monetary recovery made on behalf of the state
9 is not subject to a lien unless authorized by
10 law; amending s. 112.3175, F.S.; providing that
11 certain contracts executed in violation of part
12 III of ch. 112, F.S., are presumed void or
13 voidable; amending s. 112.3185, F.S.;
14 prohibiting a state employee from holding
15 certain employment or contractual relationships
16 following resignation of such employment;
17 amending s. 287.058, F.S.; requiring that
18 certain state contracts be subject to
19 cancellation upon refusal by the contractor to
20 allow access to public records; amending s.
21 287.059, F.S.; providing additional
22 requirements for contracts for private attorney
23 services; providing requirements for
24 contingency fee contracts; providing
25 requirements if multiple law firms are parties
26 to a contract; providing requirements for
27 private attorneys with respect to maintaining
28 documents and records and making such documents
29 and records available for inspection; providing
30 an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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

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

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

13 Section 2. Section 112.3175, Florida Statutes, is
14 amended to read:

15 112.3175 Remedies; contracts voidable.--

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

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

19 (b)~~(2)~~ In any circuit court, by any appropriate
20 action, by:

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

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

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

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

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

3 112.3185 Contractual services.--

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

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

13 287.058 Contract document.--

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

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

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

30 (c) A provision allowing unilateral cancellation by
31 the agency for refusal by the contractor to allow public

1 access to all documents, papers, letters, or other material
2 ~~subject to the provisions of chapter 119 and~~ made or received
3 by the contractor in conjunction with the contract, unless the
4 records are exempt from s. 119.07(1).

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

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

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

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

1 Section 5. Section 287.059, Florida Statutes, is
2 amended to read:

3 287.059 Private attorney services.--

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

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

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

18 (b) Provided by legal services organizations to
19 indigent clients.

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

23 (d) Procured by the Board of Regents and the
24 universities of the State University System.

25 (e) Procured by community and junior colleges and
26 multicounty special districts.

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

29 (3) An agency requesting approval for the use of
30 private attorney services shall first offer to contract with
31 the Department of Legal Affairs for such attorney services at

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

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

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

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

7 (d) Competitive fees for similar attorney services.

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

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

15 (g) Any other information which the Attorney General
16 deems appropriate for the proper evaluation of the need for
17 such private attorney services.

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

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

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

6 (a) Type of controversy involved and complexity of the
7 legal services needed.

8 (b) Geographic area where the attorney services are to
9 be provided.

10 (c) Novelty of the legal questions involved.

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

13 (e) Other factors deemed appropriate by the Attorney
14 General.

15 (f) The most cost-effective or appropriate billing
16 methodology.

17 (7)(a) A contingency fee contract must be commercially
18 reasonable. As used in this subsection, the term "commercially
19 reasonable" means the amount permissible pursuant to Rule
20 4-1.5 of the Rules Regulating The Florida Bar and case law
21 interpreting that rule.

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

29 ~~(8)(7)~~ All agencies, when contracting for private
30 attorney services, must use the standard fee schedule for
31 private attorney services as established pursuant to this

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

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

11 (10)~~(9)~~ Agencies are encouraged to use the following
12 criteria when selecting outside firms for attorney services:

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

26 (11)~~(10)~~ The Attorney General shall develop a standard
27 addendum to every contract for attorney services that must be
28 used by all agencies, unless waived by the Attorney General,
29 describing in detail what is expected of both the contracted
30 private attorney and the contracting agency. The addendum must
31 address the internal system of governance if multiple law

1 firms are parties to the contract and must, at a minimum,
2 require that each firm identify one member who is authorized
3 to legally bind the firm.

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

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

18 (14)~~(13)~~ The office of the Attorney General is
19 authorized to competitively bid and contract with one or more
20 court reporting services, on a circuitwide basis, on behalf of
21 all state agencies in accordance with s. 287.057(2). The
22 office of the Attorney General shall develop requests for
23 proposal for court reporter services in consultation with the
24 Florida Court Reporters Association. All agencies shall
25 utilize the contracts for court reporting services entered
26 into by the Office of the Attorney General where in force,
27 unless otherwise ordered by a court or unless an agency has a
28 contract for court reporting services executed prior to May 5,
29 1993.

30 (15)~~(14)~~ The Attorney General's office may, by rule,
31 adopt standard fee schedules for court reporting services for

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

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

27 Section 6. Section 60.08, Florida Statutes, is created
28 to read:

29 60.08 Injunctions sought by the state pursuant to
30 statute shall issue without bond.--In any action for
31 injunctive relief sought by the state or one of its agencies

1 as provided in ss. 501.207(1)(b), 542.23, and 895.05(5), any
2 injunction sought shall issue without bond or surety and no
3 bond or surety shall be required during the term of the
4 injunction.

5 Section 7. If any provision of this act or the
6 application thereof to any person or circumstance is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the act which can be given effect without the
9 invalid provision or application, and to this end the
10 provisions of this act are declared severable.

11 Section 8. This act shall take effect July 1, 2000.
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