

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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3		.	
4		.	

ORIGINAL STAMP BELOW

11 Representative(s) Mack offered the following:

Amendment (with title amendment)

14 Remove from the bill: Everything after the enacting clause
15
16 and insert in lieu thereof:

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

19 11.066 Suits seeking monetary damages against the
20 state or its agencies; payment of judgments; appropriations
21 required.--

22 (5) The property of the state, the property of any
23 state agency, or any monetary recovery made on behalf of the
24 state or any state agency is not subject to a lien of any
25 kind.

26 Section 2. Section 112.3175, Florida Statutes, is
27 amended to read:

28 112.3175 Remedies; contracts voidable.--

29 (1) Any contract that which has been executed in
30 violation of this part is voidable:

31 (a)(1) By any party to the contract.

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

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

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

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

8 (2) Any contract that has been executed in violation
9 of this part is presumed void with respect to any former
10 employee or former public official of a state agency and is
11 voidable with respect to any private-sector third party who
12 employs or retains in any capacity such former agency employee
13 or former public official.

14 Section 3. Subsection (1) of section 287.058, Florida
15 Statutes, is amended to read:

16 287.058 Contract document.--

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

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

30 (b) A provision that bills for any travel expenses be
31 submitted in accordance with s. 112.061. A state agency may

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1 establish rates lower than the maximum provided in s. 112.061.

2 (c) A provision allowing unilateral cancellation by
3 the agency for refusal by the contractor to allow public
4 access to all documents, papers, letters, or other material
5 ~~subject to the provisions of chapter 119 and~~ made or received
6 by the contractor in conjunction with the contract, unless the
7 records are exempt from s. 24, (a) Art. I of the State
8 Constitution and s. 119.07(1).

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

13 (e) A provision specifying the criteria and the final
14 date by which such criteria must be met for completion of the
15 contract.

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

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

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1 method of payment. In lieu of printing the provisions of
2 paragraphs (a)-(f) in the contract document or purchase order,
3 agencies may incorporate the requirements of paragraphs
4 (a)-(f) by reference.

5 Section 4. Section 287.059, Florida Statutes, is
6 amended to read:

7 287.059 Private attorney services.--

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

15 (2) No agency shall contract for private attorney
16 services without the prior written approval of the Attorney
17 General, except that such written approval is not required for
18 private attorney services:

19 (a) Procured by the Executive Office of the Governor
20 or any department under the exclusive jurisdiction of a single
21 Cabinet officer.

22 (b) Provided by legal services organizations to
23 indigent clients.

24 (c) Necessary to represent the state in litigation
25 involving the State Risk Management Trust Fund pursuant to
26 part II of chapter 284.

27 (d) Procured by the Board of Regents and the
28 universities of the State University System.

29 (e) Procured by community and junior colleges and
30 multicounty special districts.

31 (f) Procured by the Board of Trustees for the Florida

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

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

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

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

9 (d) Competitive fees for similar attorney services.

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

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

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

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

31 (5) The agency head or a designee shall give written

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1 approval prior to contracting for private attorney services
2 for all agencies exempt from written approval of the Attorney
3 General as described in paragraphs (2)(a)-(f).

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

9 (a) Type of controversy involved and complexity of the
10 legal services needed.

11 (b) Geographic area where the attorney services are to
12 be provided.

13 (c) Novelty of the legal questions involved.

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

16 (e) Other factors deemed appropriate by the Attorney
17 General.

18 (f) The most cost-effective or appropriate billing
19 methodology.

20 (7)(a) A contingency fee contract must be commercially
21 reasonable. As used in this subsection, the term "commercially
22 reasonable" means no more than the amount permissible pursuant
23 to rule 4-1.5 of the rules regulating The Florida Bar and case
24 law interpreting that rule.

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

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1 ~~(8)(7)~~ All agencies, when contracting for private
2 attorney services, must use the standard fee schedule for
3 private attorney services as established pursuant to this
4 section unless the head of the agency, or his or her designee,
5 waives use of the schedule and sets forth the reasons for
6 deviating from the schedule in writing to the Attorney
7 General. Such waiver must demonstrate necessity based upon
8 criteria for deviation from the schedule which the Attorney
9 General shall establish by rule.

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

14 ~~(10)(9)~~ Agencies are encouraged to use the following
15 criteria when selecting outside firms for attorney services:

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

29 ~~(11)(10)~~ The Attorney General shall develop a standard
30 addendum to every contract for attorney services that must be
31 used by all agencies, unless waived by the Attorney General,

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1 describing in detail what is expected of both the contracted
2 private attorney and the contracting agency. The addendum must
3 address the internal system of governance if multiple law
4 firms are parties to the contract and must, at a minimum,
5 require that each firm identify one member who is authorized
6 to legally bind the firm.

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

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

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

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1 1993.

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

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

30 Section 5. Section 60.08, Florida Statutes, is created
31 to read:

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1 60.08 Injunctions sought by the state pursuant to
2 statute shall issue without bond.--In any action for
3 injunctive relief sought by the state or one of its agencies
4 as provided in ss. 501.207(1)(b), 542.23, and 895.05(5), any
5 injunction sought shall issue without bond or surety and no
6 bond or surety shall be required during the term of the
7 injunction.

8 Section 6. Subsection (5) of section 16.01, Florida
9 Statutes, is amended to read:

10 16.01 Residence, office, and duties of Attorney
11 General.--The Attorney General:

12 (5) Shall appear in and attend to such suits or
13 prosecutions in any other of the courts of this state or in
14 any courts of any other state or of the United States. This
15 subsection is not intended to authorize the joinder of the
16 Attorney General as a party in such suits or prosecutions.

17 Section 7. Sections 45.051, Florida Statutes, is
18 amended to read : 45.051 Execution of supersedeas bond when
19 required of the state or its political subdivisions.--

20 (1) When a supersedeas bond is required by the
21 appellate court under Rule 9.310(b)(2), Florida Rules of
22 Appellate Procedure or an appeal or other proceeding is taken
23 in any court and there is no court rule or statute exempting
24 the parties from giving supersedeas, cost, or other required
25 bond, the parties are authorized to make and execute the
26 required bond with a corporate surety thereon duly licensed to
27 do business in this state. The premium or other cost for the
28 bond may be paid from the general necessary and regular
29 appropriation of the party taking the appeal, in the case of
30 the state or any of its officers, boards, commissioners or
31 other agencies, and from the county general fund, district

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1 school general fund, or otherwise as the case may be, in the
2 case of a political subdivision of the state or any of its
3 officers, boards, commissions or other agencies. The officers
4 of the state and its political subdivisions and the executive
5 officers of their boards, commissions, and other agencies
6 aforesaid, are authorized to make and execute the bonds on
7 behalf of the parties.

8 (2) In connection with an appeal taken by a state
9 employee or official of a judgement against that employee or
10 official in an individual capacity, as part of the legal
11 defense being provided by the state risk management program,
12 the Division of Risk Management may enter into an
13 indemnification agreement for the purpose of securing an
14 appellate supersedeas bond, provided that, under any such
15 agreement, the liability of the State of Florida is limited to
16 the amount of the judgment being appealed and any costs
17 imposed by law or the appropriate court.

18 Section 8. Section 48.121, Florida Statutes, is
19 amended to read:

20 48.121 Service on the state.--When the state has
21 consented to be sued, process against the state shall be
22 served on the state attorney or an assistant state attorney
23 for the judicial circuit within which the action is brought
24 and by sending two copies of the process by registered or
25 certified mail to the Attorney General. The state may serve
26 motions or pleadings within 40 days after service is made.
27 This section is not intended to authorize the joinder of the
28 Attorney General or a state attorney as a party in such suit
29 or prosecution.

30 Section 9. Section 45.062, Florida Statutes, is
31 amended to read:

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1 45.062 Settlements, conditions, or orders when an
2 agency of the executive branch is a party.--

3 (1) In any civil action in which a state executive
4 branch agency or officer is a party in state or federal court,
5 the officer, agent, official, or attorney who represents or is
6 acting on behalf of such agency or officer may not settle such
7 action, consent to any condition, or agree to any order in
8 connection therewith, if the settlement, condition, or order
9 requires the expenditure of or the obligation to expend any
10 state funds or other state resources, or the establishment of
11 any new program, unless:

12 (a) The expenditure is provided for by an existing
13 appropriation or program established by law; and

14 (b) Prior written notification is given within 5
15 business days of the date the settlement or presettlement
16 agreement or order is to be made final to the President of the
17 Senate, the Speaker of the House of Representatives, the
18 Senate and House minority leaders, and the Attorney General.
19 Such notification shall specify how the agency involved will
20 address the costs in future years within the limits of current
21 appropriations.

22 (2) The state executive branch agency or officer shall
23 negotiate a closure date as soon as possible for the civil
24 action.

25 (3) The state executive branch agency or officer may
26 not pledge any current or future action of another branch of
27 state government as a condition for settling the civil action.

28 (4) Any settlement that commits the state to spending
29 in excess of current appropriations or to policy changes
30 inconsistent with current state law shall be contingent upon
31 and subject to legislative appropriation or statutory

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1 amendment. The state agency or officer may agree to use all
2 efforts to procure legislative funding or statutory amendment.

3 (5) State agencies and officers shall report to each
4 substantive and fiscal committee of the Legislature having
5 jurisdiction over the reporting agency on all potential
6 settlements that may commit the state to:

7 (a) Spend in excess of current appropriations; or

8 (b) Policy changes inconsistent with current state
9 law.

10
11 The state agency or officer shall provide periodic updates to
12 the appropriate legislative committees on these issues during
13 the settlement process.

14 Section 10. Subsection (13) is added to section
15 216.023, Florida Statutes, to read:

16 216.023 Legislative budget requests to be furnished to
17 Legislature by agencies.--

18 (13) As a part of the legislative budget request, the
19 head of each state agency shall include an inventory of all
20 litigation in which the agency is involved which may require
21 additional appropriations to the agency or amendments to the
22 law under which the agency operates. No later than March 1
23 following the submission of the legislative budget request,
24 the head of the state agency shall provide an update of any
25 additions or changes to the inventory. Such inventory shall
26 include those items specified annually in the legislative
27 budget instructions.

28 Section 11. Section 284.385, Florida Statutes, is
29 amended to read:

30 284.385 Reporting and handling of claims.--All
31 departments covered by the State Risk Management Trust Fund

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1 under this part shall immediately report all known or
2 potential claims to the Department of Insurance for handling,
3 except employment complaints which have not been filed with
4 the Florida Human Relations Commission, Equal Employment
5 Opportunity Commission, or any similar agency. When deemed
6 necessary, the Department of Insurance shall assign or
7 reassign the claim to counsel. The assigned counsel shall
8 report regularly to the Department of Insurance and to the
9 covered department on the status of any such claims or
10 litigation as required by the Department of Insurance. No
11 such claim shall be compromised or settled for monetary
12 compensation without the prior approval of the Department of
13 Insurance and prior notification to the covered department.
14 All departments shall cooperate with the Department of
15 Insurance in its handling of claims. The Department of
16 Insurance, the Department of Management Services, and the
17 Department of Banking and Finance, with the cooperation of the
18 state attorneys and the clerks of the courts, shall develop a
19 system to coordinate the exchange of information concerning
20 claims for and against the state, its agencies, and its
21 subdivisions, to assist in collection of amounts due to them.
22 The covered department shall have the responsibility for the
23 settlement of any claim for injunctive or affirmative relief
24 under 42 U.S.C. s. 1983 or similar federal or state statutes.
25 The payment of a settlement or judgment for any claim covered
26 and reported under this part shall be made only from the State
27 Risk Management Trust Fund.

28 Section 12. If any provision of this act or the
29 application thereof to any person or circumstance is held
30 invalid, the invalidity does not affect other provisions or
31 applications of the act which can be given effect without the

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1 invalid provision or application, and to this end the
2 provisions of this act are declared severable.
3 Section 13. This act shall take effect July 1, 2001.
4
5
6 ===== T I T L E A M E N D M E N T =====
7 And the title is amended as follows:
8 On page 1, line 25, after the semicolon, through line
9 29, before the semicolon,
10 remove from the title of the bill: all of said lines
11 and On page 2, line 5,
12 remove from the title of the bill: all of said line
13
14 and insert in lieu thereof:
15 party; amending s. 45.051, F.S.; authorizing
16 the Division of Risk Management to enter into
17 indemnification agreements for supersedeas
18 bonds; amending s. 45.062.; providing
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