

By Senator Dyer

14-416-01

1 A bill to be entitled
2 An act relating to government accountability
3 and legal proceedings; amending s. 11.066,
4 F.S.; providing that property of the state or a
5 monetary recovery made on behalf of the state
6 is not subject to a lien unless authorized by
7 law; amending s. 112.3175, F.S.; providing that
8 certain contracts executed in violation of part
9 III of ch. 112, F.S., are presumed void or
10 voidable; amending s. 112.3185, F.S.;
11 prohibiting a state employee from holding
12 certain employment or contractual relationships
13 following resignation of such employment;
14 amending s. 287.058, F.S.; requiring that
15 certain state contracts be subject to
16 cancellation upon refusal by the contractor to
17 allow access to public records; amending s.
18 287.059, F.S.; providing additional
19 requirements for contracts for private attorney
20 services; providing requirements for
21 contingency fee contracts; providing
22 requirements if multiple law firms are parties
23 to a contract; providing requirements for
24 private attorneys with respect to maintaining
25 documents and records and making such documents
26 and records available for inspection; creating
27 s. 60.08, F.S.; providing for injunctions
28 without bond when sought by the state or its
29 agencies; providing for severability; amending
30 s. 45.062, F.S.; providing additional
31 requirements with respect to notification of

1 certain settlements or orders; providing that
2 certain settlements or orders shall be
3 contingent upon and subject to legislative
4 appropriation or statutory amendment; providing
5 for the disposition of funds; providing
6 legislative intent; amending s. 216.023, F.S.;
7 providing for an inventory of all litigation in
8 which an agency is involved which may require
9 additional appropriations to the agency or
10 amendments to the law under which the agency
11 operates as a part of legislative budget
12 requests; amending s. 284.385, F.S.; revising
13 provisions relating to the reporting and
14 handling of claims by the Department of
15 Insurance covered by the State Risk Management
16 Trust Fund; providing an effective date.

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

19

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

22 11.066 Suits seeking monetary damages against the
23 state or its agencies; payment of judgments; appropriations
24 required.--

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

30 Section 2. Section 112.3175, Florida Statutes, is
31 amended to read:

1 112.3175 Remedies; contracts voidable.--
2 (1) Any contract ~~that~~ which has been executed in
3 violation of this part is voidable:
4 ~~(a)(1)~~ By any party to the contract.
5 ~~(b)(2)~~ In any circuit court, by any appropriate
6 action, by:
7 1.(a) The commission.
8 2.(b) The Attorney General.
9 3.(c) Any citizen materially affected by the contract
10 and residing in the jurisdiction represented by the officer or
11 agency entering into such contract.
12 (2) Any contract that has been executed in violation
13 of this part is presumed void with respect to any former
14 employee of a state agency and is voidable with respect to any
15 private-sector third party who employs or retains in any
16 capacity such former agency employee.
17 Section 3. Subsection (3) of section 112.3185, Florida
18 Statutes, is amended to read:
19 112.3185 Contractual services.--
20 (3) No agency employee shall, after retirement, or
21 termination, or resignation, have or hold any employment or
22 contractual relationship with any business entity other than
23 an agency in connection with any contract in which the agency
24 employee participated personally and substantially through
25 decision, approval, disapproval, recommendation, rendering of
26 advice, or investigation while an officer or employee.
27 Section 4. Subsection (1) of section 287.058, Florida
28 Statutes, is amended to read:
29 287.058 Contract document.--
30 (1) Every procurement of contractual services in
31 excess of the threshold amount provided in s. 287.017 for

1 CATEGORY TWO, except for the providing of health and mental
2 health services or drugs in the examination, diagnosis, or
3 treatment of sick or injured state employees or the providing
4 of other benefits as required by the provisions of chapter
5 440, shall be evidenced by a written agreement embodying all
6 provisions and conditions of the procurement of such services,
7 which provisions and conditions shall, where applicable,
8 include, but shall not be limited to:

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

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

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

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

25 (e) A provision specifying the criteria and the final
26 date by which such criteria must be met for completion of the
27 contract.

28 (f) A provision specifying that the contract may be
29 renewed on a yearly basis for a period of up to 2 years after
30 the initial contract or for a period no longer than the term
31 of the original contract, whichever period is longer,

1 specifying the terms under which the cost may change as
2 determined in the invitation to bid or request for proposals,
3 and specifying that renewals shall be contingent upon
4 satisfactory performance evaluations by the agency and subject
5 to the availability of funds.

6
7 In lieu of a written agreement, the department may authorize
8 the use of a purchase order for classes of contractual
9 services, provided the provisions of paragraphs (a)-(f) are
10 included in the purchase order, invitation to bid, or request
11 for proposals. The purchase order shall include an adequate
12 description of the services, the contract period, and the
13 method of payment. In lieu of printing the provisions of
14 paragraphs (a)-(f) in the contract document or purchase order,
15 agencies may incorporate the requirements of paragraphs
16 (a)-(f) by reference.

17 Section 5. Section 287.059, Florida Statutes, is
18 amended to read:

19 287.059 Private attorney services.--

20 (1) For purposes of this section, the term "agency" or
21 "state agency" includes state officers, departments, boards,
22 commissions, divisions, bureaus, councils, and units of
23 organization, however designated, of the executive branch of
24 state government, community and junior colleges, and
25 multicounty special districts exclusive of those created by
26 interlocal agreement or which have elected governing boards.

27 (2) No agency shall contract for private attorney
28 services without the prior written approval of the Attorney
29 General, except that such written approval is not required for
30 private attorney services:

31

1 (a) Procured by the Executive Office of the Governor
2 or any department under the exclusive jurisdiction of a single
3 Cabinet officer.

4 (b) Provided by legal services organizations to
5 indigent clients.

6 (c) Necessary to represent the state in litigation
7 involving the State Risk Management Trust Fund pursuant to
8 part II of chapter 284.

9 (d) Procured by the Board of Regents and the
10 universities of the State University System.

11 (e) Procured by community and junior colleges and
12 multicounty special districts.

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

15 (3) An agency requesting approval for the use of
16 private attorney services shall first offer to contract with
17 the Department of Legal Affairs for such attorney services at
18 a cost pursuant to mutual agreement. The Attorney General
19 shall decide on a case-by-case basis to accept or decline to
20 provide such attorney services as staffing, expertise, or
21 other legal or economic considerations warrant. If the
22 Attorney General declines to provide the requested attorney
23 services, the Attorney General's written approval shall
24 include a statement that the private attorney services
25 requested cannot be provided by the office of the Attorney
26 General or that such private attorney services are
27 cost-effective in the opinion of the Attorney General. The
28 Attorney General shall not consider political affiliation in
29 making such decision. The office of the Attorney General
30 shall respond to the request of an agency for prior written
31 approval within 10 working days after receiving such request.

1 The Attorney General may request additional information
2 necessary for evaluation of a request. The Attorney General
3 shall respond to the request within 10 working days after
4 receipt of the requested information. Those agencies exempt
5 from written approval from the Attorney General, as described
6 in paragraphs (2)(a)-(f), may contract with the Department of
7 Legal Affairs for attorney services. The Attorney General
8 shall determine on a case-by-case basis whether to provide
9 such attorney services as staffing, expertise, or other legal
10 considerations warrant. The Attorney General may adopt, by
11 rule, a form on which agencies requesting written approval for
12 private attorney services shall provide information
13 concerning:

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

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

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

22 (d) Competitive fees for similar attorney services.

23 (e) The agency's analysis estimating the number of
24 hours for attorney services, the costs, the total contract
25 amount, and, when appropriate, a risk or cost-benefit
26 analysis.

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

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1 (g) Any other information which the Attorney General
2 deems appropriate for the proper evaluation of the need for
3 such private attorney services.

4 (4) When written approval has been received from the
5 Attorney General, the general counsel for the agency shall
6 review the form and legality of the contract for private
7 attorney services and shall indicate his or her approval by
8 signing the contract ~~written final approval must be obtained~~
9 ~~from the agency head, or designee of the agency head, prior to~~
10 ~~the contracting for private attorney services.~~ After a
11 contract is approved by the general counsel, the agency head
12 shall sign and maintain custody of the contract.

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

17 (6) The Attorney General shall, by rule, adopt a
18 standard fee schedule for private attorney services using
19 hourly rates or an alternative billing methodology. The
20 Attorney General shall take into consideration the following
21 factors:

22 (a) Type of controversy involved and complexity of the
23 legal services needed.

24 (b) Geographic area where the attorney services are to
25 be provided.

26 (c) Novelty of the legal questions involved.

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

29 (e) Other factors deemed appropriate by the Attorney
30 General.

31

1 (f) The most cost-effective or appropriate billing
2 methodology.

3 (7)(a) A contingency fee contract must be commercially
4 reasonable. As used in this subsection, the term "commercially
5 reasonable" means the amount permissible pursuant to Rule
6 4-1.5 of the Rules Regulating The Florida Bar and case law
7 interpreting that rule.

8 (b) If the amount of the fee is in dispute, the
9 counsel retained by the state shall participate in mandatory,
10 binding arbitration. Payment of all attorney's fees is subject
11 to appropriation. Attorney's fees shall be forfeited if,
12 during the pendency of the case, the counsel retained by the
13 state takes a public position that is adverse to the state's
14 litigation or settlement posture.

15 (8)(7) All agencies, when contracting for private
16 attorney services, must use the standard fee schedule for
17 private attorney services as established pursuant to this
18 section unless the head of the agency, or his or her designee,
19 waives use of the schedule and sets forth the reasons for
20 deviating from the schedule in writing to the Attorney
21 General. Such waiver must demonstrate necessity based upon
22 criteria for deviation from the schedule which the Attorney
23 General shall establish by rule.

24 (9)(8) The Attorney General shall develop guidelines
25 that may be used by agencies to determine when it is necessary
26 and appropriate to seek private attorney services in lieu of
27 staff attorney services.

28 (10)(9) Agencies are encouraged to use the following
29 criteria when selecting outside firms for attorney services:

30 (a) The magnitude or complexity of the case.

31 (b) The firm's ratings and certifications.

- 1 (c) The firm's minority status.
- 2 (d) The firm's physical proximity to the case and the
3 agency.
- 4 (e) The firm's prior experience with the agency.
- 5 (f) The firm's prior experience with similar cases or
6 issues.
- 7 (g) The firm's billing methodology and proposed rate.
- 8 (h) The firm's current or past adversarial position,
9 or conflict of interest, with the agency.
- 10 (i) The firm's willingness to use resources of the
11 agency to minimize costs.
- 12 (11)~~(10)~~ The Attorney General shall develop a standard
13 addendum to every contract for attorney services that must be
14 used by all agencies, unless waived by the Attorney General,
15 describing in detail what is expected of both the contracted
16 private attorney and the contracting agency. The addendum must
17 address the internal system of governance if multiple law
18 firms are parties to the contract and must, at a minimum,
19 require that each firm identify one member who is authorized
20 to legally bind the firm.
- 21 (12)~~(11)~~ Contracts for attorney services shall be
22 originally executed for 1 year only, except that multiyear
23 contracts may be entered into provided they are subject to
24 annual appropriations and annual written approval from the
25 Attorney General as described in subsection (3). Any
26 amendments to extend the contract period or increase the
27 billing rate or overall contract amount shall be considered
28 new contracts for purposes of the written approval process
29 described in subsection (3).
- 30 (13)~~(12)~~ The office of the Attorney General shall
31 periodically prepare and distribute to agencies a roster by

1 geographic location of private attorneys under contract with
2 agencies, their fees, and primary area of legal
3 specialization.

4 (14)~~(13)~~ The office of the Attorney General is
5 authorized to competitively bid and contract with one or more
6 court reporting services, on a circuitwide basis, on behalf of
7 all state agencies in accordance with s. 287.057(2). The
8 office of the Attorney General shall develop requests for
9 proposal for court reporter services in consultation with the
10 Florida Court Reporters Association. All agencies shall
11 utilize the contracts for court reporting services entered
12 into by the Office of the Attorney General where in force,
13 unless otherwise ordered by a court or unless an agency has a
14 contract for court reporting services executed prior to May 5,
15 1993.

16 (15)~~(14)~~ The Attorney General's office may, by rule,
17 adopt standard fee schedules for court reporting services for
18 each judicial circuit in consultation with the Florida Court
19 Reporters Association. Agencies, when contracting for court
20 reporting services, must use the standard fee schedule for
21 court reporting services established pursuant to this section,
22 provided no state contract is applicable or unless the head of
23 the agency or his or her designee waives use of the schedule
24 and sets forth the reasons for deviating from the schedule in
25 writing to the Attorney General. Such waiver must demonstrate
26 necessity based upon criteria for deviation from the schedule
27 which the Attorney General shall establish by rule. Any
28 proposed fee schedule under this section shall be submitted to
29 the Governor, the Speaker of the House of Representatives, the
30 President of the Senate, and the Chief Justice of the Florida
31

1 Supreme Court at least 60 days prior to publication of the
2 notice to adopt the rule.

3 (16) Each private attorney who is under contract to
4 provide attorney services for the state or a state agency
5 shall, from the inception of the contractual relationship
6 until at least 4 years after the contract expires or
7 terminates, maintain detailed current records, including
8 documentation of all expenses, disbursements, charges,
9 credits, underlying receipts and invoices, and other financial
10 transactions that concern the provision of such attorney
11 services. The private attorney shall make all such records
12 available for inspection and copying upon request in
13 accordance with chapter 119.

14 Section 6. Section 60.08, Florida Statutes, is created
15 to read:

16 60.08 Injunctions sought by the state pursuant to
17 statute shall issue without bond.--In any action for
18 injunctive relief sought by the state or one of its agencies
19 as provided in ss. 501.207(1)(b), 542.23, and 895.05(5), any
20 injunction sought shall issue without bond or surety and no
21 bond or surety shall be required during the term of the
22 injunction.

23 Section 7. If any provision of this act or the
24 application thereof to any person or circumstance is held
25 invalid, the invalidity does not affect other provisions or
26 applications of the act which can be given effect without the
27 invalid provision or application, and to this end the
28 provisions of this act are declared severable.

29 Section 8. Section 45.062, Florida Statutes, is
30 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

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

3 (5) When a state agency or officer settles an action
4 in which the state will receive moneys, the funds will be
5 placed unobligated in the General Revenue Fund or in the trust
6 fund that is associated with the agency's or official's
7 authority to pursue the legal action.

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

12 (a) Spend in excess of current appropriations, or

13 (b) Policy changes inconsistent with current state
14 law.

15
16 The state agency or officer shall provide periodic updates to
17 the appropriate legislative committees on these issues during
18 the settlement process.

19 Section 9. Subsection (13) is added to section
20 216.023, Florida Statutes, to read:

21 216.023 Legislative budget requests to be furnished by
22 agencies.--

23 (13) As a part of the legislative budget request, the
24 head of each state agency shall include an inventory of all
25 litigation in which the agency is involved which may require
26 additional appropriations to the agency or amendments to the
27 law under which the agency operates. No later than March 1
28 following the submission of the legislative budget request,
29 the head of the state agency shall provide an update of any
30 additions or changes to the inventory. Such inventory shall
31 include:

- 1 (a) The names of the parties.
- 2 (b) The court with jurisdiction.
- 3 (c) A summary of the complaint.
- 4 (d) The amount of the claim.
- 5 (e) The specific laws challenged.
- 6 (f) The status of the case.

7 Section 10. Section 284.385, Florida Statutes, is
8 amended to read:

9 284.385 Reporting and handling of claims.--All
10 departments covered by the State Risk Management Trust Fund
11 under this part shall immediately report all known or
12 potential claims to the Department of Insurance for handling,
13 except employment complaints which have not been filed with
14 the Florida Human Relations Commission, Equal Employment
15 Opportunity Commission, or any similar agency. When deemed
16 necessary, the Department of Insurance shall assign or
17 reassign the claim to counsel. The assigned counsel shall
18 report regularly to the Department of Insurance and to the
19 covered department on the status of any such claims or
20 litigation as required by the Department of Insurance. No
21 such claim shall be compromised or settled for monetary
22 compensation without the prior approval of the Department of
23 Insurance and prior notification to the covered department.
24 All departments shall cooperate with the Department of
25 Insurance in its handling of claims. The Department of
26 Insurance, the Department of Management Services, and the
27 Department of Banking and Finance, with the cooperation of the
28 state attorneys and the clerks of the courts, shall develop a
29 system to coordinate the exchange of information concerning
30 claims for and against the state, its agencies, and its
31 subdivisions, to assist in collection of amounts due to them.

1 The covered department shall have the responsibility for the
2 settlement of any claim for injunctive or affirmative relief
3 under 42 U.S.C. s. 1983 or similar federal or state statutes.
4 The payment of a settlement or judgment for any claim covered
5 and reported under this part shall be made only from the State
6 Risk Management Trust Fund.

7 Section 11. This act shall take effect July 1, 2001.

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10 SENATE SUMMARY

11 Prohibits the placement of a lien upon state property or
12 a monetary recovery made on the state's behalf unless
13 authorized by law. Provides that a contract executed in
14 violation of part III of ch. 112, F.S., is presumed void.
15 Prohibits a state employee from entering into certain
16 employment or contractual relationships following the
17 resignation of state employment. Provides that certain
18 state contracts are subject to cancellation upon refusal
19 by the contractor to allow access to public records.
20 Provides limitations on contingency fee contracts for
21 private attorney services. Requires that a private
22 attorney who contracts with the state maintain documents
23 and records and make such documents and records available
24 for inspection. Provides that certain statutory
25 injunctions sought by the state be issued without bond.
26 Requires additional information to be furnished with
27 respect to settlements, conditions, or orders when an
28 executive agency is a party. Requires additional
29 information to be furnished in legislative budget
30 requests. Requires additional notice to be given with
31 respect to claims under the State Risk Management Trust
Fund. (See bill for details.)