

By the Committee on Governmental Oversight and Productivity;
and Senator Dyer

302-1750-01

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; amending s. 112.3175,
7 F.S.; providing that certain contracts executed
8 in violation of part III of ch. 112, F.S., are
9 presumed void or voidable; amending s. 287.058,
10 F.S.; clarifying current requirement that
11 contractor on certain state contracts must
12 allow access to public records unless the
13 records are exempt; amending s. 287.059, F.S.;
14 providing additional requirements for contracts
15 for private attorney services; providing
16 requirements for contingency fee contracts;
17 providing for binding arbitration in fee
18 disputes; providing requirements if multiple
19 law firms are parties to a contract; providing
20 requirements for private attorneys with respect
21 to maintaining documents and records and making
22 such documents and records available for
23 inspection; creating s. 60.08, F.S.; providing
24 for injunctions without bond when sought by the
25 state or its agencies; amending s. 86.091,
26 F.S.; providing that the State of Florida, the
27 Governor, any state department, agency,
28 officer, or employee shall not be made a party
29 in certain proceedings; amending s. 16.01,
30 F.S.; clarifying that certain provisions are
31 not intended to authorize the joinder of the

1 Attorney General as party; amending s. 48.121,
2 F.S.; clarifying that the section is not
3 intended to authorize the joinder of the
4 Attorney General or a state attorney as a
5 party; amending s. 45.062, F.S.; providing
6 additional requirements with respect to
7 notification of certain settlements or orders;
8 providing that certain settlements or orders
9 shall be contingent upon and subject to
10 legislative appropriation or statutory
11 amendment; providing for the disposition of
12 funds; providing legislative intent; amending
13 s. 216.023, F.S.; providing for an inventory of
14 all litigation in which an agency is involved
15 which may require additional appropriations to
16 the agency or amendments to the law under which
17 the agency operates as a part of legislative
18 budget requests; amending s. 284.385, F.S.;
19 revising provisions relating to the reporting
20 and handling of claims by the Department of
21 Insurance covered by the State Risk Management
22 Trust Fund; providing for severability;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (5) is added to section 11.066,
28 Florida Statutes, to read:

29 11.066 Suits seeking monetary damages against the
30 state or its agencies; payment of judgments; appropriations
31 required.--

1 (5) The property of the state, the property of any
2 state agency, or any monetary recovery made on behalf of the
3 state or any state agency is not subject to a lien of any
4 kind.

5 Section 2. Section 112.3175, Florida Statutes, is
6 amended to read:

7 112.3175 Remedies; contracts voidable.--

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

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

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

13 1.(a) The commission.

14 2.(b) The Attorney General.

15 3.(c) Any citizen materially affected by the contract
16 and residing in the jurisdiction represented by the officer or
17 agency entering into such contract.

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

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

26 287.058 Contract document.--

27 (1) Every procurement of contractual services in
28 excess of the threshold amount provided in s. 287.017 for
29 CATEGORY TWO, except for the providing of health and mental
30 health services or drugs in the examination, diagnosis, or
31 treatment of sick or injured state employees or the providing

1 of other benefits as required by the provisions of chapter
2 440, shall be evidenced by a written agreement embodying all
3 provisions and conditions of the procurement of such services,
4 which provisions and conditions shall, where applicable,
5 include, but shall not be limited to:

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

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

12 (c) A provision allowing unilateral cancellation by
13 the agency for refusal by the contractor to allow public
14 access to all documents, papers, letters, or other material
15 ~~subject to the provisions of chapter 119 and made or received~~
16 by the contractor in conjunction with the contract, unless the
17 records are exempt from s. 24(a) of Art. I of the State
18 Constitution and s. 119.07(1).

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

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

26 (f) A provision specifying that the contract may be
27 renewed on a yearly basis for a period of up to 2 years after
28 the initial contract or for a period no longer than the term
29 of the original contract, whichever period is longer,
30 specifying the terms under which the cost may change as
31 determined in the invitation to bid or request for proposals,

1 and specifying that renewals shall be contingent upon
2 satisfactory performance evaluations by the agency and subject
3 to the availability of funds.

4
5 In lieu of a written agreement, the department may authorize
6 the use of a purchase order for classes of contractual
7 services, provided the provisions of paragraphs (a)-(f) are
8 included in the purchase order, invitation to bid, or request
9 for proposals. The purchase order shall include an adequate
10 description of the services, the contract period, and the
11 method of payment. In lieu of printing the provisions of
12 paragraphs (a)-(f) in the contract document or purchase order,
13 agencies may incorporate the requirements of paragraphs
14 (a)-(f) by reference.

15 Section 4. Section 287.059, Florida Statutes, is
16 amended to read:

17 287.059 Private attorney services.--

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

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

29 (a) Procured by the Executive Office of the Governor
30 or any department under the exclusive jurisdiction of a single
31 Cabinet officer.

1 (b) Provided by legal services organizations to
2 indigent clients.

3 (c) Necessary to represent the state in litigation
4 involving the State Risk Management Trust Fund pursuant to
5 part II of chapter 284.

6 (d) Procured by the Board of Regents and the
7 universities of the State University System.

8 (e) Procured by community and junior colleges and
9 multicounty special districts.

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

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

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

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

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

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

19 (d) Competitive fees for similar attorney services.

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

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

27 (g) Any other information which the Attorney General
28 deems appropriate for the proper evaluation of the need for
29 such private attorney services.

30 (4) When written approval has been received from the
31 Attorney General, the general counsel for the agency shall

1 review the form and legality of the contract for private
2 attorney services and shall indicate his or her approval by
3 signing the contract ~~written final approval must be obtained~~
4 ~~from the agency head, or designee of the agency head, prior to~~
5 ~~the contracting for private attorney services.~~ After a
6 contract is approved and signed by the general counsel, in
7 order to effectuate that contract the agency head must sign
8 the contract. The agency head shall also maintain custody of
9 the contract.

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

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

19 (a) Type of controversy involved and complexity of the
20 legal services needed.

21 (b) Geographic area where the attorney services are to
22 be provided.

23 (c) Novelty of the legal questions involved.

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

26 (e) Other factors deemed appropriate by the Attorney
27 General.

28 (f) The most cost-effective or appropriate billing
29 methodology.

30 (7)(a) A contingency fee contract must be commercially
31 reasonable. As used in this subsection, the term "commercially

1 reasonable" means no more than the amount permissible pursuant
2 to rule 4-1.5 of the rules regulating The Florida Bar and case
3 law interpreting that rule.

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

11 (8)(7) All agencies, when contracting for private
12 attorney services, must use the standard fee schedule for
13 private attorney services as established pursuant to this
14 section unless the head of the agency, or his or her designee,
15 waives use of the schedule and sets forth the reasons for
16 deviating from the schedule in writing to the Attorney
17 General. Such waiver must demonstrate necessity based upon
18 criteria for deviation from the schedule which the Attorney
19 General shall establish by rule.

20 (9)(8) The Attorney General shall develop guidelines
21 that may be used by agencies to determine when it is necessary
22 and appropriate to seek private attorney services in lieu of
23 staff attorney services.

24 (10)(9) Agencies are encouraged to use the following
25 criteria when selecting outside firms for attorney services:

- 26 (a) The magnitude or complexity of the case.
27 (b) The firm's ratings and certifications.
28 (c) The firm's minority status.
29 (d) The firm's physical proximity to the case and the
30 agency.
31 (e) The firm's prior experience with the agency.

1 (f) The firm's prior experience with similar cases or
2 issues.

3 (g) The firm's billing methodology and proposed rate.

4 (h) The firm's current or past adversarial position,
5 or conflict of interest, with the agency.

6 (i) The firm's willingness to use resources of the
7 agency to minimize costs.

8 (11)~~(10)~~ The Attorney General shall develop a standard
9 addendum to every contract for attorney services that must be
10 used by all agencies, unless waived by the Attorney General,
11 describing in detail what is expected of both the contracted
12 private attorney and the contracting agency. The addendum must
13 address the internal system of governance if multiple law
14 firms are parties to the contract and must, at a minimum,
15 require that each firm identify one member who is authorized
16 to legally bind the firm.

17 (12)~~(11)~~ Contracts for attorney services shall be
18 originally executed for 1 year only, except that multiyear
19 contracts may be entered into provided they are subject to
20 annual appropriations and annual written approval from the
21 Attorney General as described in subsection (3). Any
22 amendments to extend the contract period or increase the
23 billing rate or overall contract amount shall be considered
24 new contracts for purposes of the written approval process
25 described in subsection (3).

26 (13)~~(12)~~ The office of the Attorney General shall
27 periodically prepare and distribute to agencies a roster by
28 geographic location of private attorneys under contract with
29 agencies, their fees, and primary area of legal
30 specialization.

31

1 (14)~~(13)~~ The office of the Attorney General is
2 authorized to competitively bid and contract with one or more
3 court reporting services, on a circuitwide basis, on behalf of
4 all state agencies in accordance with s. 287.057(2). The
5 office of the Attorney General shall develop requests for
6 proposal for court reporter services in consultation with the
7 Florida Court Reporters Association. All agencies shall
8 utilize the contracts for court reporting services entered
9 into by the Office of the Attorney General where in force,
10 unless otherwise ordered by a court or unless an agency has a
11 contract for court reporting services executed prior to May 5,
12 1993.

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

30 (16) Each private attorney who is under contract to
31 provide attorney services for the state or a state agency

1 shall, from the inception of the contractual relationship
2 until at least 4 years after the contract expires or
3 terminates, maintain detailed current records, including
4 documentation of all expenses, disbursements, charges,
5 credits, underlying receipts and invoices, and other financial
6 transactions that concern the provision of such attorney
7 services. The private attorney shall make all such records
8 available for inspection and copying upon request in
9 accordance with chapter 119.

10 Section 5. Section 60.08, Florida Statutes, is created
11 to read:

12 60.08 Injunctions sought by the state pursuant to
13 statute shall issue without bond.--In any action for
14 injunctive relief sought by the state or one of its agencies
15 as provided in ss. 501.207(1)(b), 542.23, and 895.05(5), any
16 injunction sought shall issue without bond or surety and no
17 bond or surety shall be required during the term of the
18 injunction.

19 Section 6. Section 86.091, Florida Statutes, is
20 amended to read:

21 86.091 Parties.--

22 (1) When declaratory relief is sought, all persons may
23 be made parties who have or claim any interest which would be
24 affected by the declaration. No declaration shall prejudice
25 the rights of persons not parties to the proceedings.

26 (2) In any proceeding concerning the validity of a
27 county or municipal charter, ordinance, or franchise, such
28 county or municipality shall be made a party and shall be
29 entitled to be heard. If the statute, charter, ordinance, or
30 franchise is alleged to be unconstitutional, the Attorney
31 General or the state attorney of the judicial circuit in which

1 the action is pending shall be served with a copy of the
2 complaint and be entitled to be heard.

3 (3) In any proceeding concerning the validity of a
4 state law or statute or a provision of the State Constitution,
5 the State of Florida shall not be made a party nor shall the
6 Governor or any state department, agency, officer, or employee
7 who is not by the constitution or statute specifically
8 responsible for the administration and enforcement of the
9 statute, law, or constitutional provision. If such law,
10 statute, or constitutional provision is alleged to be
11 unconstitutional, the Attorney General and the state attorney
12 of the judicial circuit in which the action is pending shall
13 be served with a copy of the complaint and be entitled to be
14 heard.

15 Section 7. Subsection (5) of section 16.01, Florida
16 Statutes, is amended to read:

17 16.01 Residence, office, and duties of Attorney
18 General.--The Attorney General:

19 (5) Shall appear in and attend to such suits or
20 prosecutions in any other of the courts of this state or in
21 any courts of any other state or of the United States. This
22 subsection is not intended to authorize the joinder of the
23 Attorney General as a party in such suits or prosecutions.

24 Section 8. Section 48.121, Florida Statutes, is
25 amended to read:

26 48.121 Service on the state.--When the state has
27 consented to be sued, process against the state shall be
28 served on the state attorney or an assistant state attorney
29 for the judicial circuit within which the action is brought
30 and by sending two copies of the process by registered or
31 certified mail to the Attorney General. The state may serve

1 motions or pleadings within 40 days after service is made.
2 This section is not intended to authorize the joinder of the
3 Attorney General or a state attorney as a party in such suit
4 or prosecution.

5 Section 9. Section 45.062, Florida Statutes, is
6 amended to read:

7 45.062 Settlements, conditions, or orders when an
8 agency of the executive branch is a party.--

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

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

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

28 (2) The state executive branch agency or officer shall
29 negotiate a closure date as soon as possible for the civil
30 action.

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

4 (4) Any settlement that commits the state to spending
5 in excess of current appropriations or to policy changes
6 inconsistent with current state law shall be contingent upon
7 and subject to legislative appropriation or statutory
8 amendment. The state agency or officer may agree to use all
9 efforts to procure legislative funding or statutory amendment.

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

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

15 (b) Policy changes inconsistent with current state
16 law.

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

21 Section 10. Subsection (13) is added to section
22 216.023, Florida Statutes, to read:

23 216.023 Legislative budget requests to be furnished to
24 Legislature by agencies.--

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

1 additions or changes to the inventory. Such inventory shall
2 include those items specified annually in the legislative
3 budget instructions.

4 Section 11. Section 284.385, Florida Statutes, is
5 amended to read:

6 284.385 Reporting and handling of claims.--All
7 departments covered by the State Risk Management Trust Fund
8 under this part shall immediately report all known or
9 potential claims to the Department of Insurance for handling,
10 except employment complaints which have not been filed with
11 the Florida Human Relations Commission, Equal Employment
12 Opportunity Commission, or any similar agency. When deemed
13 necessary, the Department of Insurance shall assign or
14 reassign the claim to counsel. The assigned counsel shall
15 report regularly to the Department of Insurance and to the
16 covered department on the status of any such claims or
17 litigation as required by the Department of Insurance. No
18 such claim shall be compromised or settled for monetary
19 compensation without the prior approval of the Department of
20 Insurance and prior notification to the covered department.
21 All departments shall cooperate with the Department of
22 Insurance in its handling of claims. The Department of
23 Insurance, the Department of Management Services, and the
24 Department of Banking and Finance, with the cooperation of the
25 state attorneys and the clerks of the courts, shall develop a
26 system to coordinate the exchange of information concerning
27 claims for and against the state, its agencies, and its
28 subdivisions, to assist in collection of amounts due to them.
29 The covered department shall have the responsibility for the
30 settlement of any claim for injunctive or affirmative relief
31 under 42 U.S.C. s. 1983 or similar federal or state statutes.

1 The payment of a settlement or judgment for any claim covered
2 and reported under this part shall be made only from the State
3 Risk Management Trust Fund.

4 Section 12. If any provision of this act or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the act which can be given effect without the
8 invalid provision or application, and to this end the
9 provisions of this act are declared severable.

10 Section 13. This act shall take effect July 1, 2001.

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 SB 822

15 Reorganizes sections of the bill.

16 Modifies the items required to be included in a litigation
17 inventory report.

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