

By Senator Simpson

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.0701, F.S.; defining the term "acting on behalf of
4 a public agency"; revising the definition of the term
5 "contractor"; requiring that a public agency contract
6 for services include a statement providing the name
7 and telephone number of the public agency's custodian
8 of records; prescribing the form of the statement;
9 revising contractual provisions in a public agency
10 contract for services regarding a contractor's
11 compliance with public records laws; specifying
12 circumstances under which a court may assess and award
13 reasonable costs of enforcement against a public
14 agency or contractor; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 119.0701, Florida Statutes, is amended
19 to read:

20 119.0701 Contracts; public records.—

21 (1) For purposes of this section, the term:

22 (a) "Acting on behalf of a public agency" means the
23 performance of a delegated function that is the responsibility
24 of the public agency.

25 (b) ~~(a)~~ "Contractor" means an individual, partnership,
26 corporation, or business entity that enters into a contract for
27 services with a public agency and is acting on behalf of the
28 public agency as provided under s. 119.011(2) or is performing a
29 governmental function or a function that the public agency would

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30 otherwise perform.

31 (c)~~(b)~~ "Public agency" means a state, county, district,
32 authority, or municipal officer, or department, division, board,
33 bureau, commission, or other separate unit of government created
34 or established by law.

35 (2) In addition to other contract requirements provided by
36 law, each public agency contract for services must include:

37 (a) The following statement identifying the name and
38 telephone number of the public agency's custodian of public
39 records in at least 14-point, boldface type:

40
41 THE REQUIREMENTS OF SECTION 119.0701, FLORIDA STATUTES, MAY
42 APPLY TO THIS CONTRACT. IF YOU HAVE QUESTIONS REGARDING THE
43 APPLICATION OF SECTION 119.0701, FLORIDA STATUTES, TO YOUR DUTY
44 TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT
45 ...(name of custodian of public records)... AT ...(telephone
46 number)....

47
48 (b) A provision that requires the contractor to comply with
49 public records laws, specifically to:

50 1.~~(a)~~ Keep and maintain public records that ordinarily and
51 necessarily would be required by the public agency in order to
52 perform the service.

53 2.~~(b)~~ Provide the public with access to public records on
54 the same terms and conditions that the public agency would
55 provide the records and at a cost that does not exceed the cost
56 provided in this chapter or as otherwise provided by law.

57 3.~~(c)~~ Ensure that public records that are exempt or
58 confidential and exempt from public records disclosure

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59 requirements are not disclosed except as authorized by law.

60 4.-(d) Keep and maintain public records, upon completion of
61 the contract, which ordinarily would be required by the public
62 agency in order to perform the service, or ~~Meet all requirements~~
63 ~~for retaining public records and~~ transfer, at no cost, to the
64 public agency all public records in possession of the contractor
65 ~~upon termination of the contract~~ and destroy any duplicate
66 public records that are exempt or confidential and exempt from
67 public records disclosure requirements. Upon request from the
68 public agency's custodian of public records, all records stored
69 electronically must be provided to the public agency in a format
70 that is compatible with the information technology systems of
71 the public agency.

72 (3) If a contractor does not comply with a public records
73 request, the public agency shall enforce the contract provisions
74 in accordance with the contract.

75 (4) If a civil action is filed to compel production of
76 public records relating to a public agency's contract for
77 services against a public agency or a contractor that continues
78 to possess such records, the court shall assess and award
79 against the responsible public agency or contractor the
80 reasonable costs of enforcement, including reasonable attorney
81 fees, if:

82 (a) The party filing the action provided written notice of
83 the public records request, including a statement that the
84 contractor has not complied with the request, by certified mail
85 to the public agency's custodian of public records at least 5
86 business days before filing the action, and provided such notice
87 to the contractor if the contractor is a named party in the

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88 action.

89 (b) The court makes specific, written factual findings that
90 the contractor acted in bad faith or willfully disregarded
91 applicable law in refusing to allow a public record to be
92 inspected or copied.

93 Section 2. This act shall take effect upon becoming a law.