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1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.0701, F.S.; requiring that a public agency
4 contract for services include a statement providing
5 the contact information of the public agency's
6 custodian of records; prescribing the form of the
7 statement; revising required provisions in a public
8 agency contract for services regarding a contractor's
9 compliance with public records laws; requiring that a
10 public records request relating to records for a
11 public agency's contract for services be made directly
12 to the public agency; requiring a contractor to
13 provide requested records to the public agency or
14 allow inspection or copying of requested records under
15 specified circumstances; specifying applicable
16 penalties for a contractor who fails to provide
17 requested records; specifying circumstances under
18 which a court must assess reasonable costs of
19 enforcement against a contractor; specifying
20 applicable law for reasonable costs of enforcement
21 assessed against a public agency; providing for
22 applicability; creating s. 119.0702, F.S.; requiring
23 each agency to provide training and information on the
24 requirements of ch. 119, F.S., to agency employees;
25 requiring each agency to publicly post contact
26 information for the custodian of public records;
27 specifying that a violation may not be used as a basis
28 for an independent cause of action or recovering
29 attorney fees; specifying that an agency is in

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30 compliance if certain conditions are met; amending s.
31 119.12, F.S.; requiring a court to determine if a
32 complainant provided certain written notice to an
33 agency's custodian of public records in order to
34 assess and award attorney fees in a civil action to
35 enforce ch. 119, F.S.; providing an exception;
36 providing an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 119.0701, Florida Statutes, is amended
41 to read:

42 119.0701 Contracts; public records.—

43 (1) DEFINITIONS.—For purposes of this section, the term:

44 (a) "Contractor" means an individual, partnership,
45 corporation, or business entity that enters into a contract for
46 services with a public agency and is acting on behalf of the
47 public agency as provided under s. 119.011(2).

48 (b) "Public agency" means a state, county, district,
49 authority, or municipal officer, or department, division, board,
50 bureau, commission, or other separate unit of government created
51 or established by law.

52 (2) CONTRACT REQUIREMENTS.—In addition to other contract
53 requirements provided by law, each public agency contract for
54 services must include:

55 (a) The following statement, in substantially the following
56 form, identifying the contact information of the public agency's
57 custodian of public records in at least 14-point boldfaced type:

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59 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
60 SECTION 119.0701, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO
61 PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT
62 ...(custodian of public records)... AT ...(telephone number, e-
63 mail address, and mailing address)....

64
65 (b) A provision that requires the contractor to comply with
66 public records laws, specifically to:

67 1.(a) Keep and maintain public records that ordinarily and
68 necessarily would be required by the public agency in order to
69 perform the service.

70 2.(b) Upon request from the public agency's custodian of
71 public records, provide the public agency with a copy of the
72 requested records or allow the access to public records to be
73 inspected or copied within a reasonable time on the same terms
74 and conditions that the public agency would provide the records
75 and at a cost that does not exceed the cost provided in this
76 chapter or as otherwise provided by law.

77 3.(c) Ensure that public records that are exempt or
78 confidential and exempt from public records disclosure
79 requirements are not disclosed except as authorized by law for
80 the duration of the contract term and following completion of
81 the contract if the contractor does not transfer the records to
82 the public agency.

83 4.(d) Upon completion of the contract, Meet all
84 requirements for retaining public records and transfer, at no
85 cost, to the public agency all public records in possession of
86 the contractor or keep and maintain public records required by
87 the public agency to perform the service. If the contractor

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88 transfers all public records to the public agency upon
89 completion of the contract, the contractor shall ~~upon~~
90 ~~termination of the contract and~~ destroy any duplicate public
91 records that are exempt or confidential and exempt from public
92 records disclosure requirements. If the contractor keeps and
93 maintains public records upon completion of the contract, the
94 contractor shall meet all applicable requirements for retaining
95 public records and provide requested records to a public agency
96 pursuant to the requirements of this section. All records stored
97 electronically must be provided to the public agency, upon
98 request from the public agency's custodian of public records, in
99 a format that is compatible with the information technology
100 systems of the public agency.

101 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.—

102 (a) A request to inspect or copy public records relating to
103 a public agency's contract for services must be made directly to
104 the public agency. If the public agency does not possess the
105 requested records, the public agency shall immediately notify
106 the contractor of the request, and the contractor must provide
107 the records to the public agency or allow the records to be
108 inspected or copied within a reasonable time.

109 (b) If a contractor does not comply with the public
110 agency's ~~a public records~~ request for records, the public agency
111 shall enforce the contract provisions in accordance with the
112 contract.

113 (c) A contractor who fails to provide the public records to
114 the public agency within a reasonable time may be subject to
115 penalties under s. 119.10.

116 (4) CIVIL ACTION.—

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117 (a) If a civil action is filed to compel production of
118 public records relating to the public agency's contract for
119 services, the court shall assess and award against the
120 contractor the reasonable costs of enforcement, including
121 reasonable attorney fees, if the party filing the action
122 provides written notice of the public records request, including
123 a statement that the contractor has not complied with the
124 request. The notice must be sent by common carrier delivery
125 service or by registered, Global Express Guaranteed, or
126 certified mail, with postage or shipping paid by the sender and
127 with evidence of delivery, which may be in an electronic format.
128 The notice must be sent by the plaintiff at least 8 business
129 days before the plaintiff files the civil action.

130 (b) An award of the reasonable costs of enforcement against
131 a public agency must be in accordance with s. 119.12.

132 Section 2. A public agency has until October 1, 2015, to
133 amend a public agency contract for services, if needed, in order
134 to comply with the amendment made by this act to section
135 119.0701, Florida Statutes.

136 Section 3. Section 119.0702, Florida Statutes, is created
137 to read:

138 119.0702 Agency requirements for staff training and public
139 postings.—

140 (1) Each agency shall determine and provide the appropriate
141 amount of information or training on the requirements of this
142 chapter for each agency employee, taking into consideration
143 whether the employee's duties are performed in any office where
144 public records are routinely created, sent, received,
145 maintained, and requested.

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146 (2) Each agency shall post the contact information for the
147 agency's custodian of public records in any office to which the
148 public has access in which public records are routinely created,
149 sent, received, maintained, and requested, and shall post the
150 contact information for the custodian of public records on the
151 agency's website if the agency has a website.

152 (3) A violation of this section does not form the basis of
153 an independent cause of action and may not be used to recover
154 attorney fees under s. 119.12.

155 (4) If an agency provides information or training to agency
156 staff and publicly posts contact information in accordance with
157 the requirements of subsections (1) and (2), the agency is
158 deemed to be in compliance with this section.

159 Section 4. Section 119.12, Florida Statutes, is amended to
160 read:

161 119.12 Attorney ~~Attorney's~~ fees.—

162 (1) When ~~If~~ a civil action is filed against an agency to
163 enforce the provisions of this chapter, and if the court
164 determines that the agency was provided written notice of the
165 public records request to the agency's custodian of public
166 records, using contact information provided by the agency, at
167 least 2 business days before filing the action and that the
168 court determines that such agency unlawfully refused to permit a
169 public record to be inspected or copied, the court shall assess
170 and award, against the responsible agency ~~responsible~~, the
171 reasonable costs of enforcement. The complainant is not required
172 to provide written notice to the agency's custodian of public
173 records if the agency failed to post contact information for its
174 custodian of public records in accordance with s. 119.0702.

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175 (2) The reasonable costs of enforcement include, but are
176 not limited to, including reasonable attorney ~~attorneys'~~ fees.
177 Section 5. This act shall take effect upon becoming a law.