

By the Committee on Judiciary; and 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.; 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; providing penalties;
16 specifying circumstances under which a court must
17 assess the reasonable costs of enforcement against a
18 contractor; specifying what constitutes sufficient
19 notice; providing that a contractor who takes certain
20 action is not liable for the reasonable costs of
21 enforcement; specifying applicable law for determining
22 the reasonable costs of enforcement assessed against a
23 public agency; requiring a public agency to amend a
24 contract for services by a time certain to comply with
25 the act; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 119.0701, Florida Statutes, is amended

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30 to read:

31 119.0701 Contracts; public records.—

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

33 (a) “Contractor” means an individual, partnership,
34 corporation, or business entity that enters into a contract for
35 services with a public agency and is acting on behalf of the
36 public agency as provided under s. 119.011(2).

37 (b) “Public agency” means a state, county, district,
38 authority, or municipal officer, or department, division, board,
39 bureau, commission, or other separate unit of government created
40 or established by law.

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

44 (a) The following statement, in substantially the following
45 form, identifying the contact information of the public agency’s
46 custodian of public records in at least 14-point boldfaced type:

47
48 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
49 SECTION 119.0701, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO
50 PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT
51 ...(custodian of public records)... AT ...(telephone number, e-
52 mail address, and mailing address)....

53
54 (b) A provision that requires the contractor to comply with
55 public records laws, specifically to:

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

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59 2.(b) Upon request from the public agency's custodian of
60 public records, provide the public agency with a copy of the
61 requested records or allow the access to public records to be
62 inspected or copied within a reasonable time ~~on the same terms~~
63 ~~and conditions that the public agency would provide the records~~
64 ~~and~~ at a cost that does not exceed the cost provided in this
65 chapter or as otherwise provided by law.

66 3.(e) Ensure that public records that are exempt or
67 confidential and exempt from public records disclosure
68 requirements are not disclosed except as authorized by law for
69 the duration of the contract term and following completion of
70 the contract if the contractor does not transfer the records to
71 the public agency.

72 4.(d) Upon completion of the contract, Meet all
73 ~~requirements for retaining public records and transfer, at no~~
74 ~~cost, to the public agency all public records in possession of~~
75 ~~the contractor or keep and maintain public records required by~~
76 the public agency to perform the service. If the contractor
77 transfers all public records to the public agency upon
78 completion of the contract, the contractor shall ~~upon~~
79 ~~termination of the contract and~~ destroy any duplicate public
80 records that are exempt or confidential and exempt from public
81 records disclosure requirements. If the contractor keeps and
82 maintains public records upon completion of the contract, the
83 contractor shall meet all applicable requirements for retaining
84 public records and provide requested records to a public agency
85 pursuant to the requirements of this section. All records stored
86 electronically must be provided to the public agency, upon
87 request from the public agency's custodian of public records, in

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88 a format that is compatible with the information technology
89 systems of the public agency.

90 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.—

91 (a) A request to inspect or copy public records relating to
92 a public agency's contract for services must be made directly to
93 the public agency. If the public agency does not possess the
94 requested records, the public agency shall immediately notify
95 the contractor of the request, and the contractor must provide
96 the records to the public agency or allow the records to be
97 inspected or copied within a reasonable time.

98 (b) If a contractor does not comply with the public
99 agency's ~~a public records~~ request for records, the public agency
100 shall enforce the contract provisions in accordance with the
101 contract.

102 (c) A contractor who fails to provide the public records to
103 the public agency within a reasonable time commits a noncriminal
104 infraction, punishable by a fine not to exceed \$500. A
105 contractor who willfully and knowingly fails to provide the
106 public records to the public agency within a reasonable time
107 commits a misdemeanor of the first degree, punishable as
108 provided in s. 775.082 or s. 775.083.

109 (4) CIVIL ACTION.—

110 (a) If a civil action is filed to compel production of
111 public records relating to the public agency's contract for
112 services, the court shall assess and award against the
113 contractor the reasonable costs of enforcement, including
114 reasonable attorney fees, if:

115 1. The court determines that a contractor unlawfully
116 refused to comply with the public records request within a

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117 reasonable time; and

118 2. At least 8 business days before filing the action, the
119 plaintiff provided written notice of the public records request,
120 including a statement that the contractor has not complied with
121 the request, to the public agency and to the contractor.

122 (b) A notice complies with subparagraph (a)2. if it is sent
123 to the public agency's records custodian and to the contractor
124 at the contractor's address listed on its contract with the
125 public agency or to the contractor's registered agent. Such
126 notices must also be sent by common carrier delivery service or
127 by registered, Global Express Guaranteed, or certified mail,
128 with postage or shipping paid by the sender and with evidence of
129 delivery, which may be in an electronic format.

130 (c) A contractor who complies with a public records request
131 within 8 business days after the notice is sent is not liable
132 for the reasonable costs of enforcement.

133 (d) An award of the reasonable costs of enforcement against
134 a public agency must be in accordance with s. 119.12.

135 Section 2. A public agency has until October 1, 2016, to
136 amend a public agency contract for services, if needed, in order
137 to comply with the amendment made by this act to section
138 119.0701, Florida Statutes.

139 Section 3. This act shall take effect upon becoming a law.