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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2019	.	
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The Committee on Appropriations (Lee) recommended the following:

1           **Senate Amendment to Amendment (424768) (with title**  
2 **amendment)**

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4           Between lines 55 and 56

5 insert:

6           Section 4. Section 337.1101, Florida Statutes, is created  
7 to read:

8           337.1101 Contracting and procurement authority of the  
9 department; settlements; notification required.-

10           (1) When the department, or any entity or enterprise within  
11 the department, determines that it is in the best interest of



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12 the public to resolve a protest filed in accordance with s.  
13 120.57(3) of the award of a contract being procured pursuant to  
14 s. 337.11 or related to the purchase of personal property or  
15 contractual services being procured pursuant to s. 287.057,  
16 through a settlement that requires the department to pay a  
17 nonselected responsive bidder a total sum of \$1 million or more,  
18 including any amount paid pursuant to s. 334.049, s. 337.11(8),  
19 or any other law, the department must:

20 (a) Document in a written memorandum by the secretary,  
21 which shall be finalized not later than the date of notification  
22 of such settlement required pursuant to paragraph (b), the  
23 specific reasons that such settlement and payment to a  
24 nonselected responsive bidder is in the best interest of the  
25 state in lieu of resoliciting competitive sealed bids,  
26 proposals, or replies. The written memorandum must be included  
27 and maintained in the department's permanent files concerning  
28 the procurement and must include:

29 1. A detailed description of the property rights, patent  
30 rights, copyrights, or trademarks that the department will  
31 acquire as a result of such settlement;

32 2. A detailed description of the analysis undertaken by the  
33 department of the proposal development costs and the anticipated  
34 degree of engineering design or other design work undertaken by  
35 the responsive bidder to which the department will obtain and  
36 retain the right to use from the nonselected responsive bidder  
37 or design-build firm;

38 3. The department's cost-benefit analysis demonstrating  
39 that the payment provides value to the department and is in the  
40 best interests of the state;



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41 4. The specific appropriation in the existing General  
42 Appropriations Act which the department intends to use to  
43 provide such payment; and

44 5. The specific detailed reasons why the selected  
45 responsive bidder should not be responsible for the entire  
46 payment to the nonselected nonresponsive bidder or design-build  
47 firm.

48 (b) Provide prior written notification to the President of  
49 the Senate, the Speaker of the House of Representatives, the  
50 Senate and House of Representatives minority leaders, the chair  
51 and vice-chair of the Legislative Budget Commission, and the  
52 Attorney General at least 5 business days, or as soon thereafter  
53 as practicable, before the department makes the settlement  
54 agreement final. Such written notification must include the  
55 written memorandum required pursuant to paragraph (a).

56 (c) Provide, at the time settlement discussions regarding  
57 any such payment have begun in earnest, written notification of  
58 such discussions to the President of the Senate, the Speaker of  
59 the House of Representatives, the Senate and House of  
60 Representatives minority leaders, the chair and vice-chair of  
61 the Legislative Budget Commission, and the Attorney General. The  
62 written notification required pursuant to this paragraph must  
63 describe the procurement to which the proposed settlement  
64 payment relates, the range of the proposed payments involved,  
65 the specific appropriation in the General Appropriations Act  
66 which will be used to make the proposed payment, and a summary  
67 of the specific reasons the department has for considering such  
68 payment.

69 (2) The department may not pledge any current or future



70 action by another branch of state government as a condition of  
71 any procurement action. Any settlement that commits the state to  
72 spending any amount in excess of current appropriations, to the  
73 appropriation of funds in a subsequent fiscal year, or to policy  
74 changes inconsistent with current state law must be contingent  
75 upon and subject to legislative appropriation or statutory  
76 amendment. The department may agree to use its efforts to  
77 procure legislative funding or statutory amendments.

78  
79 ===== T I T L E   A M E N D M E N T =====

80 And the title is amended as follows:

81       Delete line 233

82 and insert:

83       increases; amending s. 337.1101, F.S.; specifying  
84       requirements for the department when the department or  
85       any entity or enterprise within the department  
86       determines that it is in the best interest of the  
87       public to resolve a certain protest of the award of a  
88       certain contract; providing requirements for a certain  
89       memorandum; providing requirements for certain  
90       notifications; prohibiting the department from  
91       pledging any current or future action by another  
92       branch of state government as a condition of any  
93       procurement action; requiring certain settlements to  
94       be contingent upon and subject to legislative  
95       appropriation or statutory amendment; authorizing the  
96       department to agree to use its efforts to procure  
97       legislative funding or statutory amendments; amending  
98       s. 337.14, F.S.; requiring that