

**STORAGE NAME:** h0505s1.cjcl  
**DATE:** March 24, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CIVIL JUSTICE AND CLAIMS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 505  
**RELATING TO:** Private attorney services  
**SPONSOR(S):** Representative Bainter  
**STATUTE(S) AFFECTED:** s. 287.059, F.S.  
**COMPANION BILL(S):** SB 0922

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 8 NAYS 0
- (2)
- (3)
- (4)
- (5)

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**I. SUMMARY:**

CS/HB 505 requires a contracting private attorney to disclose to the contracting agency any representation by the private attorney or the attorney's firm of a client with proceedings against a state entity. Upon such disclosure, the contracting attorney shall obtain from the contracting agency, by the agency head, a written waiver of any potential conflict of interest. The contracting attorney shall obtain the written waiver prior to undertaking the agency's representation.

The Comptroller shall refuse payment to any contracting private attorney who fails to obtain a written waiver.

This bill does not appear to have a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

HB 505 provides additional regulations for state agencies contracting the services of private attorneys. It amends section 287.059, Florida Statutes, relating to private attorney services. The following paragraphs summarize those current statutes.

The Attorney General provides written approval to state agencies requesting to contract for private attorney services. However, written approval is not required for private attorney services (a) procured by the Executive Office of the Governor or any department under the exclusive jurisdiction of a single Cabinet Officer; (b) provided by legal services organizations to indigent clients; (c) necessary to represent the state in litigation involving the Florida Casualty Insurance Risk Management Trust Fund; (d) procured by the Board of Regents and the universities of the State University System; (e) procured by community and junior colleges and multi-county special districts.

Agencies requesting approval of private attorney services must submit an initial offer to contract with the Department of Legal Affairs (DLA). If the DLA is unable to provide the requested attorney services, the Attorney General will provide a letter to such effect. At this step in the process, agencies are given written approval to contract the services of a private attorney services.

In addition, the Attorney General adopts a standard fee schedule for private attorney services using an hourly rate or alternative billing methodology. All agencies utilize the fee schedule unless an agency head or his designee waives the use of the schedule. The Attorney General also develops agency guidelines used to determine the necessity and appropriateness for contracting private attorney services. Services are contracted on a yearly basis, but multi-year contracts are allowed, if annual appropriations are secured and the Attorney General provides written approval.

Every attorney practicing in the State of Florida is governed by the Florida Rules of Court, a document which guides the professional, ethical and practical conduct of lawyers. The rules address a conflict of interest with respect to client representation by directing a lawyer in the following manner:

“ (a) . . . A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the lawyer’s responsibilities to and the relationship with the other client; and (2) each client consents after consultation.”<sup>1</sup>

The Florida Rules of Court have determined that “client loyalty” is an essential element in a lawyer’s relationship to a client. To accept any representation which would impair the ability of a lawyer to represent his client is not advised. In general, an attorney’s loyalty to a client prevents undertaking representation directly adverse to that client’s or another client’s interests without the affected client’s consent; moreover, client loyalty prevents

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<sup>1</sup> FLORIDA RULES OF COURT, (West Publishing Company 1996) (1968).

undertaking representation which would impair a lawyers ability to consider, recommend or carry out an appropriate course of action for the client because of the lawyer's responsibilities or interests. <sup>2</sup>

**B. EFFECT OF PROPOSED CHANGES:**

HB 505 would require the Attorney General to include an addendum in every contract for private attorney services. The addendum shall state that neither the attorney nor any member of the attorney's law firm shall represent other clients in proceedings against a agency during the term of the contract, without prior disclosure to the contracting agency.

Where the contracting attorney discloses such representation, he shall obtain from the contracting agency, by the agency head, a written waiver of any potential conflict of interest prior to undertaking the agency's representation. The Comptroller shall refuse payment to any contracting attorney failing to obtain a waiver of potential conflict of interest. This bill wpuld codify the Florida Rules of Court's professional standards of conduct for lawyers with respect to client representation.

HB 505 also exempts the Florida School for the Deaf and Blind from subsection 287.059 (2), Florida Statutes. The school shall not be required to obtain written approval from the Attorney General before contracting for private attorney services.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No. However, the bill would codify the existing Florida Rules of Court position relating to client representation.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. HB 505 expands or creates responsibilities for the Attorney General, agencies contracting for private attorney services, and contracting private attorneys. The Attorney General shall develop a standard addendum to every contract for private attorney services describing in detail the expectations of the private attorney and the contracting agency. Those private attorneys and their firms shall be required to disclose representation

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<sup>2</sup> See id.

of any client suing or being sued by the state. Private attorneys shall also be required to obtain a waiver signed by the agency contracting legal services where a conflict of interest exists. The Comptroller shall not release payments to any private attorney failing to obtain a written waiver.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

NA.

b. Does the bill require or authorize an increase in any fees?

NA.

c. Does the bill reduce total taxes, both rates and revenues?

NA.

d. Does the bill reduce total fees, both rates and revenues?

NA.

e. Does the bill authorize any fee or tax increase by any local government?

NA.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

NA.

- (2) Who makes the decisions?

NA.

- (3) Are private alternatives permitted?

NA.

- (4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the state constitution.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute requires a contracting private attorney to disclose to the contracting agency any representation by the private attorney, or the attorney's firm, of a client who is suing or being sued by a state entity; and where the contracting attorney discloses such representation, he shall obtain from the contracting agency, by the agency head, a written waiver of any potential conflict of interest. This waiver shall be obtained prior to undertaking the agency's representation. The Comptroller shall refuse payment to any contracting private attorney failing to obtain a waiver.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

Legislative Research Director:

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Bridget Edmond