



391488

LEGISLATIVE ACTION

Senate

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House

Senator Lee moved the following:

Senate Amendment (with title amendment)

Between lines 693 and 694

insert:

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

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

(1) When the department, or any entity or enterprise within
the department, determines that it is in the best interest of
the public to resolve a protest filed in accordance with s.



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

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

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

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

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

40 4. The specific appropriation in the existing General



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41 Appropriations Act which the department intends to use to
42 provide such payment; and

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

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

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

68 (2) The department may not pledge any current or future
69 action by another branch of state government as a condition of



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

77
78 ===== T I T L E A M E N D M E N T =====

79 And the title is amended as follows:

80 Between lines 98 and 99

81 insert:

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