

By Senator Webster

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1                   A bill to be entitled  
2           An act relating to contingency fee agreements between  
3           state entities and private attorneys; amending s.  
4           287.059, F.S.; prohibiting the Department of Legal  
5           Affairs of the Office of the Attorney General from  
6           entering into a contingency fee contract with a private  
7           attorney unless the Attorney General makes a written  
8           determination before entering into such a contract that  
9           contingency fee representation is both cost-effective  
10          and in the public interest; requiring that such written  
11          determination include certain findings; requiring that  
12          the Attorney General, upon making his or her written  
13          determination, request proposals from private attorneys  
14          to represent the department on a contingency fee basis  
15          unless the Attorney General determines in writing that  
16          requesting such proposals is not appropriate under the  
17          circumstances; providing that the written determination  
18          does not constitute a final agency action subject to  
19          review pursuant to state law; providing that the  
20          request for proposals and contract award are not  
21          subject to challenge under the Administrative Procedure  
22          Act; requiring that a private attorney maintain  
23          detailed contemporaneous time records with regard to  
24          work performed on the matter by any attorneys or  
25          paralegals assigned to the matter in specified  
26          increments; requiring that a private attorney provide  
27          such record to the department upon request; limiting  
28          the amount of a contingency fee that may be paid to a  
29          private attorney pursuant to a contract with the

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30 department; requiring that copies of any executed  
31 contingency fee contract and the Attorney General's  
32 written determination to enter into such contract be  
33 posted on the department's website within a specified  
34 period after the date on which such contract is  
35 executed; requiring that such information remain posted  
36 on the website for a specified duration; requiring that  
37 the amount of any payment of contingency fees be posted  
38 on the department's website within a specified period  
39 after the date on which payment of such contingency  
40 fees is made to the private attorney; requiring that  
41 such information remain posted on the website for a  
42 specified duration; providing an effective date.

43  
44 Be It Enacted by the Legislature of the State of Florida:

45  
46 Section 1. Paragraph (c) is added to subsection (7) of  
47 section 287.059, Florida Statutes, to read:

48 287.059 Private attorney services.--

49 (7)

50 (c)1. The Department of Legal Affairs may not enter into a  
51 contingency fee contract with a private attorney unless the  
52 Attorney General makes a written determination before entering  
53 into such a contract that contingency fee representation is both  
54 cost-effective and in the public interest. A written  
55 determination must include specific findings with regard to each  
56 of the following factors:

57 a. Whether sufficient and appropriate legal and financial  
58 resources exist within the department to handle the matter.

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59        b. The amount of time and labor required to handle the  
60 matter; the novelty, complexity, and difficulty of the questions  
61 involved; and the skills required to perform the necessary  
62 attorney services adequately.

63        c. The geographic area in which the attorney services are  
64 to be provided.

65        d. The amount of experience desired for the particular kind  
66 of attorney services to be provided and the nature of the private  
67 attorney's experience with regard to similar issues or cases.

68        2. Upon making his or her written determination,  
69 notwithstanding the exemption for legal services provided in s.  
70 287.057(5)(f), the Attorney General shall request proposals from  
71 private attorneys to represent the department on a contingency  
72 fee basis unless the Attorney General determines in writing that  
73 requesting such proposals is not appropriate under the  
74 circumstances. The written determination does not constitute a  
75 final agency action subject to review pursuant to ss. 120.569 and  
76 120.57. For purposes of this subparagraph, the department is  
77 exempt from the requirements of s. 120.57(3), and the request for  
78 proposals and contract award are not subject to challenge  
79 pursuant to ss. 120.569 and 120.57.

80        3. In addition to the requirements set forth in s.  
81 287.059(16), any private attorney shall maintain detailed  
82 contemporaneous time records with regard to work performed on the  
83 matter by any attorneys or paralegals assigned to the matter in  
84 increments of no greater than one-tenth of an hour. A private  
85 attorney shall provide these records to the department promptly  
86 upon request by the department.

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87 4. Notwithstanding the provisions of s. 287.059(7) (a), a  
88 contingency fee contract entered into by the department may not  
89 provide for the private attorney to receive an aggregate  
90 contingency fee in excess of:

91 a. Twenty-five percent if the recovery is up to \$10  
92 million;

93 b. Twenty percent if the recovery is at least \$10 million  
94 but less than \$15 million;

95 c. Fifteen percent if the recovery is at least \$15 million  
96 but less than \$20 million;

97 d. Ten percent if the recovery is at least \$20 million but  
98 less than \$25 million; or

99 e. Five percent if the recovery is \$25 million or greater.

100 5. The aggregate contingency fee received by a private  
101 attorney may not exceed \$50 million, exclusive of reasonable  
102 costs and expenses, irrespective of the number of lawsuits filed  
103 or the number of private attorneys retained to achieve the  
104 recovery.

105 6. Copies of any executed contingency fee contract and the  
106 Attorney General's written determination to enter into such  
107 contract with a private attorney shall be posted on the  
108 department's website for public inspection within 5 business days  
109 after the date on which the contract is executed and shall remain  
110 posted on the website for the duration of the contingency fee  
111 contract, including any extensions or amendments thereto. The  
112 amount of any payment of contingency fees shall be posted on the  
113 department's website within 15 days after the date on which  
114 payment of such contingency fees is made to the private attorney

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115 and shall remain posted on the website for at least 180 days  
116 after that date.

117 Section 2. This act shall take effect July 1, 2008.