

By Senator Fasano

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1                   A bill to be entitled  
2           An act relating to contingency fee agreements between  
3           the Department of Legal Affairs and private attorneys;  
4           creating s. 16.0155, F.S.; providing definitions;  
5           prohibiting the Department of Legal Affairs of the  
6           Office of the Attorney General from entering into a  
7           contingency fee contract with a private attorney  
8           unless the Attorney General makes a written  
9           determination prior to entering into such a contract  
10          that contingency fee representation is both cost-  
11          effective and in the public interest; requiring that  
12          such written determination include certain findings;  
13          requiring that the Attorney General, upon making his  
14          or her written determination, request proposals from  
15          private attorneys to represent the department on a  
16          contingency fee basis unless the Attorney General  
17          determines in writing that requesting such proposals  
18          is not feasible under the circumstances; providing  
19          that the written determination does not constitute a  
20          final agency action subject to review pursuant to  
21          state law; providing that the request for proposals  
22          and contract award are not subject to challenge under  
23          the Administrative Procedure Act; requiring that a  
24          private attorney maintain detailed contemporaneous  
25          time records with regard to work performed on the  
26          matter by any attorneys or paralegals assigned to the  
27          matter in specified increments; requiring that a  
28          private attorney provide such record to the department  
29          upon request; limiting the amount of a contingency fee

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

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. Section 16.0155, Florida Statutes, is created to  
49 read:

50 16.0155 Contingency fee agreements.-

51 (1) For the purpose of this section, the following  
52 definitions shall apply:

53 (a) "Department" means the Department of Legal Affairs.

54 (b) "Private attorney" means any private attorney or law  
55 firm.

56 (2) The department shall not enter into a contingency fee  
57 contract with a private attorney unless the Attorney General  
58 makes a written determination prior to entering into such a

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59 contract that contingency fee representation is both cost-  
60 effective and in the public interest. Any written determination  
61 shall include specific findings for each of the following  
62 factors:

63 (a) Whether there exist sufficient and appropriate legal  
64 and financial resources within the department to handle the  
65 matter.

66 (b) The time and labor required; the novelty, complexity,  
67 and difficulty of the questions involved; and the skill  
68 requisite to perform the attorney services properly.

69 (c) The geographic area where the attorney services are to  
70 be provided.

71 (d) The amount of experience desired for the particular  
72 kind of attorney services to be provided and the nature of the  
73 private attorney's experience with similar issues or cases.

74 (3) When the Attorney General makes the determination  
75 described in subsection (2), then, notwithstanding the exemption  
76 provided in s. 287.057(5)(f), the Attorney General shall request  
77 proposals from private attorneys to represent the department on  
78 a contingency fee basis, unless the Attorney General determines  
79 in writing that requesting proposals is not feasible under the  
80 circumstances. The written determination does not constitute a  
81 final agency action subject to review pursuant to ss. 120.569  
82 and 120.57. For purposes of this subsection only, the department  
83 is exempt from the requirements of s. 120.57(3), and neither the  
84 request for proposals nor the contract award shall be subject to  
85 challenge pursuant to ss. 120.569 and 120.57.

86 (4) In addition to the requirements set forth in s.  
87 287.059(16), any private attorney shall maintain detailed

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88 contemporaneous time records for the attorneys and paralegals  
89 working on the matter in increments of no greater than 1/10 of  
90 an hour and shall promptly provide these records to the  
91 department, upon request.

92 (5) Notwithstanding s. 287.059(7) (a), no contingency fee  
93 contract entered into by the department shall provide for the  
94 private attorney to receive an aggregate contingency fee in  
95 excess of:

96 (a) Twenty-five percent of any recovery of up to \$10  
97 million; plus

98 (b) Twenty percent of any portion of such recovery between  
99 \$10 million and \$15 million; plus

100 (c) Fifteen percent of any portion of such recovery between  
101 \$15 million and \$20 million; plus

102 (d) Ten percent of any portion of such recovery between \$20  
103 million and \$25 million; plus

104 (e) Five percent of any portion of such recovery exceeding  
105 \$25 million.

106  
107 In no event shall the aggregate contingency fee exceed \$50  
108 million, exclusive of reasonable costs and expenses, and  
109 irrespective of the number of lawsuits filed or the number of  
110 private attorneys retained to achieve the recovery.

111 (6) Copies of any executed contingency fee contract and the  
112 Attorney General's written determination to enter into a  
113 contingency fee contract with the private attorney shall be  
114 posted on the department's website for public inspection within  
115 5 business days after the date the contract is executed and  
116 shall remain posted on the website for the duration of the

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117 contingency fee contract, including any extensions or amendments  
118 thereto. Any payment of contingency fees shall be posted on the  
119 department's website within 15 days after the payment of such  
120 contingency fees to the private attorney and shall remain posted  
121 on the website for at least 180 days thereafter.

122 Section 2. This act shall take effect July 1, 2009.