

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

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

42 |
 43 | Be It Enacted by the Legislature of the State of Florida:

44 |
 45 | Section 1. Section 16.0155, Florida Statutes, is created
 46 | to read:

47 | 16.0155 Contingency fee agreements.--

48 | (1) For the purpose of this section, the following
 49 | definitions shall apply:

50 | (a) "Department" means the Department of Legal Affairs.

51 | (b) "Private attorney" means any private attorney or law
 52 | firm.

53 | (2) The department shall not enter into a contingency fee
 54 | contract with a private attorney unless the Attorney General
 55 | makes a written determination prior to entering into such a
 56 | contract that contingency fee representation is both cost-

HB 215

2009

57 effective and in the public interest. Any written determination
58 shall include specific findings for each of the following
59 factors:

60 (a) Whether there exist sufficient and appropriate legal
61 and financial resources within the department to handle the
62 matter.

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

66 (c) The geographic area where the attorney services are to
67 be provided.

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

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

83 (4) In addition to the requirements set forth in s.
84 287.059(16), any private attorney shall maintain detailed

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

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

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

95 (b) Twenty percent of any portion of such recovery between
96 \$10 million and \$15 million; plus

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

99 (d) Ten percent of any portion of such recovery between
100 \$20 million and \$25 million; plus

101 (e) Five percent of any portion of such recovery exceeding
102 \$25 million.

103
104 In no event shall the aggregate contingency fee exceed \$50
105 million, exclusive of reasonable costs and expenses, and
106 irrespective of the number of lawsuits filed or the number of
107 private attorneys retained to achieve the recovery.

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

HB 215

2009

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

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