

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

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) (a) 1. No contingency fee contract entered into by the  
90 department shall provide for the private attorney to receive an  
91 aggregate contingency fee in excess of:

92 a. Twenty-five percent of any recovery of up to \$10  
93 million; plus

94 b. Twenty percent of any portion of such recovery between  
95 \$10 million and \$15 million; plus

96 c. Fifteen percent of any portion of such recovery between  
97 \$15 million and \$20 million; plus

98 d. Ten percent of any portion of such recovery between \$20  
99 million and \$25 million; plus

100 e. Five percent of any portion of such recovery exceeding  
101 \$25 million.

102 2. An aggregate contingency fee under subparagraph 1.  
103 shall not exceed \$50 million, exclusive of reasonable costs and  
104 expenses, and irrespective of the number of lawsuits filed or  
105 the number of private attorneys retained to achieve the  
106 recovery.

107 (b) The provisions of paragraph (a) shall not apply if,  
108 upon consultation with the Cabinet, the Attorney General  
109 determines that exigent or unusual circumstances or a need or  
110 requirement for specialized legal knowledge or experience  
111 justifies an exception to the requirements of paragraph (a) and  
112 provides written evidence to support the determination.

CS/HB 215

2009

113        (6) Copies of any executed contingency fee contract and  
114 the Attorney General's written determination to enter into a  
115 contingency fee contract with the private attorney shall be  
116 posted on the department's website for public inspection within  
117 5 business days after the date the contract is executed and  
118 shall remain posted on the website for the duration of the  
119 contingency fee contract, including any extensions or amendments  
120 thereto. Any payment of contingency fees shall be posted on the  
121 department's website within 15 days after the payment of such  
122 contingency fees to the private attorney and shall remain posted  
123 on the website for at least 180 days thereafter.

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