

ENROLLED
CS/HB 437

2010 Legislature

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 that is subject to review; providing that the
20 request for proposals and contract award are not subject
21 to challenge under the Administrative Procedure Act;
22 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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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; requiring that the
 41 | Attorney General report to the Legislature on the use of
 42 | contingency fee contracts with private attorneys;
 43 | providing an effective date.

44 |
 45 | Be It Enacted by the Legislature of the State of Florida:

46 |
 47 | Section 1. Section 16.0155, Florida Statutes, is created
 48 | to read:

49 | 16.0155 Contingency fee agreements.—

50 | (1) As used in this section, the term:

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

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

54 | (2) The department may not enter into a contingency fee
 55 | contract with a private attorney unless the Attorney General
 56 | makes a written determination prior to entering into such a

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

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

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

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

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

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

84 (4) In addition to the requirements set forth in s.

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85 287.059(16), any private attorney shall maintain detailed
 86 contemporaneous time records for the attorneys and paralegals
 87 working on the matter in increments of no greater than 1/10 of
 88 an hour and shall promptly provide these records to the
 89 department, upon request.

90 (5) Notwithstanding s. 287.059(7)(a), the department may
 91 not enter into a contingency fee contract that provides for the
 92 private attorney to receive an aggregate contingency fee in
 93 excess of:

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

96 (b) Twenty percent of any portion of such recovery between
 97 \$10 million and \$15 million; plus

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

100 (d) Ten percent of any portion of such recovery between
 101 \$20 million and \$25 million; plus

102 (e) Five percent of any portion of such recovery exceeding
 103 \$25 million.

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

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

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113 5 business days after the date the contract is executed and
114 shall remain posted on the website for the duration of the
115 contingency fee contract, including any extensions or amendments
116 thereto. Any payment of contingency fees shall be posted on the
117 department's website within 15 days after the payment of such
118 contingency fees to the private attorney and shall remain posted
119 on the website for at least 365 days thereafter.

120 (7) By February 1 of each year, the Attorney General shall
121 submit a report to the President of the Senate and the Speaker
122 of the House of Representatives describing the use of
123 contingency fee contracts with private attorneys in the
124 preceding calendar year. At a minimum, the report shall:

125 (a) Identify all new contingency fee contracts entered
126 into during the year and all previously executed contingency fee
127 contracts that remain current during any part of the year, and
128 for each contract describe:

129 1. The name of the private attorney with whom the
130 department has contracted, including the name of the attorney's
131 law firm;

132 2. The nature and status of the legal matter;

133 3. The name of the parties to the legal matter;

134 4. The amount of any recovery; and

135 5. The amount of any contingency fee paid.

136 (b) Include copies of any written determinations made
137 under subsection (2) during the year.

138 Section 2. This act shall take effect July 1, 2010.

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