

By the Committee on Judiciary; and Senators Thrasher and Gaetz

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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 that is subject to review;
21 providing that the request for proposals and contract
22 award are not subject to challenge under the
23 Administrative Procedure Act; requiring that a private
24 attorney maintain detailed contemporaneous time
25 records with regard to work performed on the matter by
26 any attorneys or paralegals assigned to the matter in
27 specified increments; requiring that a private
28 attorney provide such record to the department upon
29 request; limiting the amount of a contingency fee that

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30 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; requiring that the
44 Attorney General report to the Legislature on the use
45 of contingency fee contracts with private attorneys;
46 providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 16.0155, Florida Statutes, is created to
51 read:

52 16.0155 Contingency fee agreements.—

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

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

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

57 (2) The department may not enter into a contingency fee
58 contract with a private attorney unless the Attorney General

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

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

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

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

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

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

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

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

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

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

99 (b) Twenty percent of any portion of such recovery between
100 \$10 million and \$15 million; plus

101 (c) Fifteen percent of any portion of such recovery between
102 \$15 million and \$20 million; plus

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

105 (e) Five percent of any portion of such recovery exceeding
106 \$25 million.

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

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

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117 shall remain posted on the website for the duration of the
118 contingency fee contract, including any extensions or amendments
119 thereto. Any payment of contingency fees shall be posted on the
120 department's website within 15 days after the payment of such
121 contingency fees to the private attorney and shall remain posted
122 on the website for at least 365 days thereafter.

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

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

132 1. The name of the private attorney, including the
133 attorney's law firm name, with whom the department has
134 contracted;

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

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

137 4. The amount of any recovery; and

138 5. The amount of any contingency fee paid.

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

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