

CS/HB 437 — Contingency Fee Agreements/Department of Legal Affairs

by Criminal and Civil Justice Policy Council and Rep. Eisnaugle and others (CS/SB 712 by Judiciary Committee and Senators Thrasher, Gaetz, and Haridopolos)

This bill (Chapter 2010-7, L.O.F.) provides that, before the Department of Legal Affairs (department) can enter into a contingency fee contract with a private attorney, the Attorney General must make a written determination that contingency fee representation is both cost effective and in the public interest.

After the determination to enter into a contingency fee contract is made, the bill requires the Attorney General to request proposals from private attorneys to represent the department on a contingency fee basis, unless the Attorney General determines that requesting proposals is not feasible.

This bill requires private attorneys entering into contingency fee contracts with the department to keep contemporaneous time records in increments of no greater than one-tenth of an hour, and requires copies of executed contingency fee agreements, as well as payment of contingency fees, to be posted on the department's website for specified periods of time.

The bill also provides contingency fee caps on the amount that a private attorney may be awarded. Specifically, under the bill the department may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee in excess of:

- 25 percent of any recovery up to \$10 million; plus
- 20 percent of any portion of such recovery between \$10 million and \$15 million; plus
- 15 percent of any portion of such recovery between \$15 million and \$20 million; plus
- 10 percent of any portion of such recovery between \$20 million and \$25 million; plus
- 5 percent of any portion of such recovery exceeding \$25 million.

Additionally, the bill prohibits an aggregate contingency fee in excess of \$50 million, exclusive of reasonable costs and expenses, irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

Lastly, the bill requires the Attorney General to submit a report annually to the President of the Senate and to the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year.

These provisions were approved by the Governor and take effect July 1, 2010.

Vote: Senate 27-11; House 71-40