

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

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:

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

47 | 16.0155 Contingency fee agreements.-  
 48 | (1) As used in this section, the term:  
 49 | (a) "Department" means the Department of Legal Affairs.  
 50 | (b) "Private attorney" means any private attorney or law  
 51 | firm.

52 | (2) The department may not enter into a contingency fee  
 53 | contract with a private attorney unless the Attorney General  
 54 | makes a written determination prior to entering into such a  
 55 | contract that contingency fee representation is both cost-  
 56 | effective and in the public interest. Any written determination

57 shall include specific findings for each of the following  
 58 factors:

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

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

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

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

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

82 (4) In addition to the requirements set forth in s.  
 83 287.059(16), any private attorney shall maintain detailed  
 84 contemporaneous time records for the attorneys and paralegals

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

88 (5) Notwithstanding s. 287.059(7) (a), the department may  
89 not enter into a contingency fee contract that provides for the  
90 private attorney to receive an aggregate contingency fee in  
91 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  
97 between \$15 million and \$20 million; plus

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

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

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

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

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

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