

CHAPTER 2010-7

Council Substitute for House Bill No. 437

An act relating to contingency fee agreements between the Department of Legal Affairs and private attorneys; creating s. 16.0155, F.S.; providing definitions; prohibiting the Department of Legal Affairs of the Office of the Attorney General from entering into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest; requiring that such written determination include certain findings; requiring that the Attorney General, upon making his or her written determination, request proposals from private attorneys to represent the department on a contingency-fee basis unless the Attorney General determines in writing that requesting such proposals is not feasible under the circumstances; providing that the written determination does not constitute a final agency action that is subject to review; providing that the request for proposals and contract award are not subject to challenge under the Administrative Procedure Act; requiring that a private attorney maintain detailed contemporaneous time records with regard to work performed on the matter by any attorneys or paralegals assigned to the matter in specified increments; requiring that a private attorney provide such record to the department upon request; limiting the amount of a contingency fee that may be paid to a private attorney pursuant to a contract with the department; requiring that copies of any executed contingency fee contract and the Attorney General's written determination to enter into such contract be posted on the department's website within a specified period after the date on which the contract is executed; requiring that such information remain posted on the website for a specified duration; requiring that any payment of contingency fees be posted on the department's website within a specified period after the date on which payment of such contingency fees is made to the private attorney; requiring that such information remain posted on the website for a specified duration; requiring that the Attorney General report to the Legislature on the use of contingency fee contracts with private attorneys; providing an effective date.

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

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

16.0155 Contingency fee agreements.—

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

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

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

(2) The department may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

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

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

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

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

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

(4) In addition to the requirements set forth in s. 287.059(16), any private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than 1/10 of an hour and shall promptly provide these records to the department, upon request.

(5) Notwithstanding s. 287.059(7)(a), 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:

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

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

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

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

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

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

(6) Copies of any executed contingency fee contract and the Attorney General’s written determination to enter into a contingency fee contract with the private attorney shall be posted on the department’s website for public inspection within 5 business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments thereto. Any payment of contingency fees shall be posted on the department’s website within 15 days after the payment of such contingency fees to the private attorney and shall remain posted on the website for at least 365 days thereafter.

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

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

1. The name of the private attorney with whom the department has contracted, including the name of the attorney’s law firm;
2. The nature and status of the legal matter;
3. The name of the parties to the legal matter;
4. The amount of any recovery; and
5. The amount of any contingency fee paid.

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

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

Approved by the Governor April 14, 2010.

Filed in Office Secretary of State April 14, 2010.