



## 2013 ASSEMBLY BILL 27

February 18, 2013 - Introduced by Representatives KUGLITSCH, AUGUST, A. OTT, CRAIG, STONE, SCHRAA, JACQUE, SPIROS, STROEBEL and THIESFELDT, cosponsored by Senators GROTHMAN, VUKMIR and FARROW. Referred to Committee on Judiciary.

1     **AN ACT to amend** 14.11 (2) (b), 16.705 (1) and 108.14 (3m); and **to create** 20.9305  
2             of the statutes; **relating to:** state agencies entering into contracts for legal  
3             services on a contingent fee basis.

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### *Analysis by the Legislative Reference Bureau*

This bill generally prohibits a state agency from contracting to provide legal services for the state on a contingent fee basis unless the governor makes a written determination that entering into such a contract is cost-effective and in the public interest. If the governor makes such a determination, this bill imposes limits on aggregate contingency fees based on the amount of the recovery as follows: if the recovery is less than \$10 million, the contingency fee limit is 25 percent of that recovery; if the recovery is between \$10 million and \$15 million, the limit is 20 percent of that recovery; if the recovery is between \$15 million and \$20 million, the limit is 15 percent of that recovery; if the recovery is between \$20 million and \$25 million, the limit is 10 percent of that recovery; and if the recovery is \$25 million or more, the limit is 5 percent of that recovery. In addition, this bill requires that attorneys employed by the state retain certain powers in the contract. For instance, the state attorneys must retain control over the course and conduct of the case, may reject decisions made by any attorney retained under the contract, and have exclusive discretion regarding settlement decisions. This bill also requires that copies of such contingency fee contracts and notice of the amount of any contingency fees paid be posted on the Internet site of the office of the governor. Finally, this bill requires any attorney who is party to a contingency fee contract with the state to maintain financial records related to the legal services provided.

**ASSEMBLY BILL 27**

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 14.11 (2) (b) of the statutes is amended to read:

2           14.11 (2) (b) When special counsel is employed, a contract in writing shall be  
3 entered into between the state and such counsel, in which shall be fixed the  
4 compensation to be paid such counsel by the state. If the compensation is being  
5 determined on a contingent fee basis, the contract is subject to s. 20.9305. The  
6 contract shall be executed in behalf of the state by the governor, and shall be filed in  
7 the office of the secretary of state. Such compensation shall be charged to the special  
8 counsel appropriation in s. 20.455 (1) (b).

9           **SECTION 2.** 16.705 (1) of the statutes is amended to read:

10           16.705 (1) The department or its agents may contract for services which can  
11 be performed more economically or efficiently by such contract. The department  
12 shall, by rule, prescribe uniform procedures for determining whether services are  
13 appropriate for contracting under this subsection. If the services are legal services  
14 paid on a contingent fee basis, the contract is subject to s. 20.9305.

15           **SECTION 3.** 20.9305 of the statutes is created to read:

16           **20.9305 Contracting for legal services on a contingent fee basis. (1)**  
17 Except as provided in sub. (2), a state agency may not contract for legal services on  
18 a contingent fee basis.

19           **(2) (a)** The prohibition under sub. (1) does not apply if the governor makes a  
20 written determination that contracting for legal services for the state on a contingent

**ASSEMBLY BILL 27**

1 fee basis is cost-effective and in the public interest. In the written determination,  
2 the governor shall include all of the following:

3 1. A finding that there are sufficient and appropriate legal and financial  
4 resources in the attorney general's office to contract for the legal services.

5 2. The amount of time and labor required to perform the legal services,  
6 including the novelty, complexity, and difficulty of the legal issues involved and the  
7 required skill.

8 3. The geographic area where the legal services are to be provided.

9 4. The amount of experience with similar legal issues or cases needed for the  
10 particular type of legal services to be provided.

11 (b) If the governor makes a determination under par. (a), the governor shall  
12 invite proposals to be submitted unless the governor determines that inviting  
13 proposals is not feasible and sets forth the basis for this determination in writing.  
14 Section 16.75 (1) does not apply to this subsection.

15 (c) 1. No contract entered into under this subsection may provide an aggregate  
16 contingency fee that is more than any of the following:

17 a. If the recovery is less than \$10 million, 25 percent of the recovery.

18 b. If the recovery is at least \$10 million but less than \$15 million, 20 percent  
19 of the recovery.

20 c. If the recovery is at least \$15 million but less than \$20 million, 15 percent  
21 of the recovery.

22 d. If the recovery is at least \$20 million but less than \$25 million, 10 percent  
23 of the recovery.

24 e. If the recovery is at least \$25 million, 5 percent of the recovery.

**ASSEMBLY BILL 27****SECTION 3**

1           2. The aggregate contingency fee for one action under this subsection may not  
2 exceed \$30 million, excluding reasonable costs and expenses, without regard to the  
3 number of attorneys retained or the number of lawsuits filed. A contingency fee may  
4 not be based on penalties or fines or any amounts attributable to penalties or fines.

5           (d) Every contract entered into under this subsection shall contain standard  
6 language, developed by the governor, that outlines all of the requirements under par.  
7 (f) and that provides for all of the following, during the period of the contract and  
8 during any extension of the contract:

9           1. The attorneys for the governor and the attorney general to retain control over  
10 the course and conduct of the case.

11           2. An attorney employed by the state who has supervisory authority to be  
12 personally involved in overseeing the case.

13           3. The attorneys employed by the state to have the power to reject any decisions  
14 made by any attorney retained under the contract.

15           4. Any defendant in the case to be able to contact the lead attorney employed  
16 by the state without having to confer with an attorney retained under the contract.

17           5. An attorney employed by the state with supervisory authority to attend all  
18 settlement conferences.

19           6. An attorney employed by the state to have exclusive discretion regarding  
20 settlement decisions.

21           (e) The governor shall ensure that all of the following are available to the public  
22 on the Internet site of the office of the governor:

23           1. A copy of any contingency fee contract entered into under this subsection and  
24 of the corresponding determination under par. (a) during the period beginning 5 days

**ASSEMBLY BILL 27**

1 after the contract is entered into and ending when the contract and all of its  
2 extensions expire or are terminated.

3 2. Notice of the amount of any contingency fees paid under a contract entered  
4 into under this subsection during the period beginning 15 days after payment is  
5 made and ending 365 days after the payment is made.

6 (f) An attorney who is party to a contract entered into under this subsection  
7 shall, during the period beginning from the date the contract is entered into until 4  
8 years after the contract and all of its extensions expire or are terminated, do all of  
9 the following:

10 1. Maintain records, including documentation of all expenses, disbursements,  
11 charges, credits, receipts and invoices, and other financial transactions, that relate  
12 to the provision of the legal services under this subsection.

13 2. Make all records maintained under subd. 1. available, upon request, for  
14 inspection and copying as provided under s. 19.35 (1).

15 3. Maintain current records detailing the time, in increments no greater than  
16 one-tenth of an hour, that attorneys and paralegals spent working under the  
17 contract and provide the record, as soon as practically possible, to the governor upon  
18 request.

19 (g) Annually, no later than February 1, the governor shall submit a report to  
20 the chief clerk of each house of the legislature for distribution to the legislature under  
21 s. 13.172 (2) that describes the use of contingency fee contracts under this subsection.

22 The report shall include all of the following:

23 1. All contracts entered into under this subsection in the year prior to the  
24 submittal of the report and all contracts that were active in the year prior to the  
25 submittal of the report. The report shall include for each contract all of the following:

**ASSEMBLY BILL 27**

1 a. The name of the attorney and the attorney's law firm with which the agency  
2 has contracted.

3 b. The nature and status of the legal matter under contract.

4 c. The name of the parties to the legal matter.

5 d. The amount of any recovery.

6 e. The amount of any contingency fee paid.

7 2. Copies of written determinations made under par. (a).

8 **SECTION 4.** 108.14 (3m) of the statutes is amended to read:

9 108.14 **(3m)** In any court action to enforce this chapter the department, the  
10 commission, and the state may be represented by any licensed attorney who is an  
11 employee of the department or the commission and is designated by either of them  
12 for this purpose or at the request of either of them by the department of justice. If  
13 the governor designates special counsel to defend, in behalf of the state, the validity  
14 of this chapter or of any provision of Title IX of the social security act, the expenses  
15 and compensation of the special counsel and of any experts employed by the  
16 department in connection with that proceeding may be charged to the administrative  
17 account. If the compensation is being determined on a contingent fee basis, the  
18 contract is subject to s. 20.9305.

19 **SECTION 5. Initial applicability.**

20 (1) This act first applies to contracts entered into, renewed, or extended on the  
21 effective date of this subsection.

22 (END)