



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 19

Senate Amendment 1

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Senate Bill 19

Senate Bill 19 provides that a state agency may not contract for legal services on a contingent fee basis, unless the Governor makes a written determination that contracting for legal services for the state on a contingent fee basis is cost-effective and in the public interest and the other requirements in the bill, described below, are satisfied.

Written Determination

Under the bill, the prohibition on contracting for legal services for the state on a contingent fee basis does not apply if the Governor makes a written determination that such contracting is cost-effective and in the public interest. In the written determination, the Governor must include all of the following: (1) a finding that there are sufficient and appropriate legal and financial resources in the Attorney General's office to contract for the legal services; (2) the amount of time and labor required to perform the legal services, including the novelty, complexity, and difficulty of the legal issues involved and the required skill; (3) the geographic area where the legal services are to be provided; and (4) the amount of experience with similar legal issues or cases needed for the particular type of legal services to be provided.

Submission of Proposals

Under the bill, if the Governor makes a written determination that contracting for legal services for the state on a contingent fee basis is cost-effective and in the public interest, the Governor must invite proposals to be submitted, unless the Governor determines that inviting proposals is not feasible and the Governor sets forth the basis for this determination in writing.

Limits on Contingency Fees

The bill places limits on contingency fees that can be provided under a contingency fee contract. Specifically, no contract may provide an aggregate contingency fee that is more than any of the following:

- If the recovery is less than \$10 million, 25% of the recovery.
- If the recovery is at least \$10 million but less than \$15 million, 20% of the recovery.
- If the recovery is at least \$15 million but less than \$20 million, 15% of the recovery.
- If the recovery is at least \$20 million but less than \$25 million, 10% of the recovery.
- If the recovery is at least \$25 million, 5% of the recovery.

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

Standard Contract Language

Under the bill, every contingency fee contract must contain standard language that is developed by the Governor. The standard language must outline all the requirements related to attorney records, described below, and must include various provisions listed in the bill during the period of the contract and during any extension of the contract, including that the attorneys for the Governor and the Attorney General retain control over the course and conduct of the case and that an attorney employed by the state who has supervisory authority must be personally involved in overseeing the case.

Information Posted on the Internet

The bill requires that the following items be available to the public on the Internet site of the Office of the Governor: (1) a copy of any contingency fee contract and the corresponding written determination; and (2) notice of the amount of any contingency fees paid under the contract during the period beginning 15 days after payment is made and ending 365 days after the payment is made.

Attorney Records

Under the bill, an attorney who is party to a contingency fee contract must, during the period beginning from the date the contract is entered into until four years after the contract and all of its extensions expire or are terminated, maintain and required under the bill and records make all records available, upon request, for inspection and copying as provided under the state Open Records Law.

Governor's Report to Legislature

The bill requires the Governor to annually, no later than February 1, submit a report to the Legislature that describes the use of contingency fee contracts.

Senate Amendment 1

Senate Amendment 1 provides that the bill only applies to executive branch agencies, and not to the Legislature or judiciary, and the amendment also makes changes regarding the Governor's written determination, submission of proposals, limits on contingency fees, standard contract language, and information posted on the Internet.

Written Determination

The amendment modifies the required contents of the Governor's written determination that contracting for legal services for the state on a contingent fee basis is cost-effective and in the public interest. As a result, under the amendment, the Governor must include all of the following in the written determination: (1) a finding that the Attorney General's office lacks sufficient and appropriate legal and financial resources, which necessitates the need to contract for the legal services; (2) the estimated amount of time and labor required to perform the legal services, including the novelty, complexity, and difficulty of the legal issues involved and the required skill; (3) the venue in which the litigation would likely occur; and (4) the amount of experience with similar legal issues or cases needed for the particular type of legal services to be provided.

Submission of Proposals

The amendment involves the Department of Administration (DOA) and its bidding process. Specifically, if the Governor makes a written determination that contracting for legal services for the state on a contingent fee basis is cost-effective and in the public interest, the amendment requires the Governor to request DOA to invite bids to be submitted. DOA must invite bids and ensure that the notice of the bidding process contains any pertinent requirements in the bill. Following the bidding process, the DOA Secretary must recommend a responsible bidder to the Governor, who must make the final determination. The Governor may determine that inviting bids is not feasible, and, if the Governor makes such determination, the Governor must set forth the basis for this determination in writing.

Limits on Contingency Fees

The amendment changes the limits on contingency fees that can be provided under a contingency fee contract. Under the amendment, no contract may provide an aggregate contingency fee that is more than any of the following:

- If the recovery is less than \$10 million, 25% of the recovery.
- If the recovery is at least \$10 million but less than \$15 million, the sum of \$2,500,000 and 20% of the amount by which the recovery exceeds \$10 million.
- If the recovery is at least \$15 million but less than \$20 million, the sum of \$3,500,000 and 15% of the amount by which the recovery exceeds \$15 million.
- If the recovery is at least \$20 million but less than \$25 million, the sum of \$4,250,000 and 10% of the amount by which the recovery exceeds \$20 million.

- If the recovery is at least \$25 million, the sum of \$4,750,000 and 5% of the amount by which the recovery exceeds \$25 million.

The amendment also provides that the limits on contingency fees exclude reasonable costs and expenses, as determined by the court with jurisdiction over the action.

Standard Contract Language

The amendment deletes the provisions relating to the standard contract language.

Information Posted on the Internet

Under the amendment, the Governor must post the required information on the Internet site maintained by the Government Accountability Board under s. 16.753, Stats., rather than on the Internet site of the Office of the Governor.

Bill History

Senate Amendment 1 was introduced by Senator Grothman. On October 1, 2013, the Senate Committee on Judiciary and Labor recommended adoption of the amendment on a vote of Ayes, 4; Noes, 0. On that same date, the committee recommended passage of Senate Bill 19, as amended, on a vote of Ayes, 4; Noes, 0.

AS:ksm