



## 2007 ASSEMBLY BILL 916

March 5, 2008 - Introduced by Representatives WIECKERT, SUDER, ZEPNICK, BERCEAU, MUSSER, HAHN, BALLWEG and MOLEPSKE, cosponsored by Senators RISSER, DARLING, ROESSLER, SCHULTZ and COWLES. Referred to Committee on Judiciary and Ethics.

1     **AN ACT to amend** 5.05 (2m) (c) 6. b., 14.11 (2) (b) and 108.14 (3m); and **to create**  
2             20.9305 of the statutes; **relating to:** attorneys retained by state agencies on a  
3             contingent fee contract.

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### *Analysis by the Legislative Reference Bureau*

This bill makes certain requirements on any state agency that is retaining an attorney for legal services on a contingent fee basis if the fees and expenses are expected to exceed \$1,000,000. The contingent fee contracts must be awarded to the lowest responsible bidder in an open bidding process, the contracts must be reviewed by the legislature, and the attorney must agree to provide the state at the end of the legal proceeding a breakdown of the hourly rate, which may not exceed \$1,000 per hour.

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:*

4             **SECTION 1.** 5.05 (2m) (c) 6. b. of the statutes is amended to read:  
5             5.05 (**2m**) (c) 6. b. The board shall enter into a written contract with any  
6             individual who is retained as special counsel setting forth the terms of the

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1 engagement. The contract shall set forth the compensation to be paid such counsel  
2 by the state. If the compensation is being determined on a contingent fee basis, the  
3 contract is subject to s. 20.9305. The contract shall be executed on behalf of the state  
4 by the board's legal counsel, who shall file the contract in the office of the secretary  
5 of state. The compensation shall be charged to the appropriation under s. 20.455 (1)  
6 (b).

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

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

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

16 **20.9305 Attorney services on a contingent fee basis.** (1) Except as  
17 provided in sub. (2), a state agency may not retain an attorney to provide legal  
18 services for the state on a contingent fee basis if the fees and expenses are expected  
19 to be more than \$1,000,000 unless all of the following apply:

20 (a) The contract is awarded to the lowest responsible bidder in an open bidding  
21 process.

22 (b) The following legislative review process occurs:

23 1. The state agency files with the chief clerk of the assembly, who shall, with  
24 the approval of the president of the senate and the speaker of the assembly, refer to

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1 the appropriate committee, a copy of the proposed contract with a written statement  
2 detailing all of the following:

3 a. The reasons the contingent fee basis is preferable and in the state's interests  
4 and the consideration of the alternatives and any efforts undertaken to obtain  
5 private counsel on a noncontingent fee basis.

6 b. The open bidding process that was undertaken to comply with sub. (1).

7 c. The reasons why the particular attorney was chosen.

8 d. Any past or present relationship between the state agency and the attorney,  
9 his or her law firm, or a partner or employee in the attorney's law firm.

10 2. Within 30 days of the state agency's filing under subd. 1., or within 30 days  
11 of holding a public hearing if the committee decides to hold one, the appropriate  
12 committee issues a report to the state agency including any recommended changes.

13 3. If the committee does not recommend changes in the time period permitted  
14 under subd. 2., the state agency may enter into the contract.

15 4. a. If the committee recommends changes, the state agency shall file a revised  
16 contract under subd. 1. and, if any recommended changes are not in the contract, a  
17 statement addressing the reasons why the changes are not included.

18 b. The appropriate committee may hold a public hearing and issue an  
19 additional report on the revised contract.

20 c. No sooner than 30 days after the required filings under subd. 4. a., or 30 days  
21 after any public hearing if the committee holds one, the state agency may enter into  
22 the revised contract.

23 (c) The contract provides that the contingent fee attorney must provide the  
24 state, at the conclusion of any legal proceeding, a statement of the hours worked,  
25 expenses incurred, the aggregate fee, and a breakdown as to the hourly rate, based

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1 on the fee divided by the number of hours worked, reduced by expenses. The state  
2 agency shall provide this statement and the contingent fee contract to the governor,  
3 the president of the senate, and the speaker of the assembly and to the government  
4 accountability board for posting on the Internet for a period of one year. If the hourly  
5 rate determined under this paragraph is more than \$1,000 per hour, the hourly rate  
6 shall be reduced to \$1,000 per hour.

7       **(2)** A state agency that must, on an expedited basis, retain an attorney under  
8 a contingent fee contract shall provide to the governor in writing the reasons for the  
9 expedited process. The governor shall establish a committee consisting of 5  
10 legislators to be appointed as follows: one by the governor, one by the speaker of the  
11 assembly, one by the president of the senate, one by the minority leader in the senate,  
12 and one by the minority leader in the assembly. The state agency shall submit the  
13 materials described in sub. (1) (b) 1. to the committee. The committee shall, in  
14 conjunction with the state agency, establish a schedule for review and  
15 recommendations based on the need for the expedited process.

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

17       **108.14 (3m)** In any court action to enforce this chapter the department, the  
18 commission and the state may be represented by any licensed attorney who is an  
19 employee of the department or the commission and is designated by either of them  
20 for this purpose or at the request of either of them by the department of justice. If  
21 the governor designates special counsel to defend, in behalf of the state, the validity  
22 of this chapter or of any provision of Title IX of the social security act, the expenses  
23 and compensation of the special counsel and of any experts employed by the  
24 department in connection with that proceeding may be charged to the administrative

