

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/26/2001

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus 6-1452**

By/Representing: **Raschka**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **State Government - miscellaneous**

Extra Copies: **RPN - 1**

Submit via email: **NO**

Requester's email:

Pre Topic:

ARC:.....Raschka - AM109,

Topic:

Employment of legal counsel to perform services for the state

Instructions:

Per LRB-3615/P1.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 06/26/2001	csicilia 06/27/2001		_____			
/1			rschluet 06/27/2001	_____	lrb_docadmin 06/27/2001		

FE Sent For:

Draft

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: **06/26/2001**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus 6-1452**

By/Representing: **Raschka**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **State Government - miscellaneous**

Extra Copies: **RPN - 1**

Submit via email: **NO**

Requester's email:

Pre Topic:

ARC:.....Raschka - AM109,


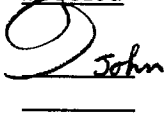
Topic:

Employment of legal counsel to perform services for the state

Instructions:

Per LRB-3615/P1.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/1	kuesejt 6/26/01	cjs 6/27/01		 John			
			627-1				

FE Sent For:

<END>

~~XXXXXXXXXX~~

Analyst =

RASCHKA

(7-0892)

FOR THE SUPER

ARC Amendment # 109

Senate Amendments Package

JK

GMM

PSR

PG

MGD
RLR

Senator	Staff POC	Agency	Topic	Description	Fiscal
Panzer	Tad Ottman	SEWRPC	Property Tax Exemption & Authority to Acquire	Restore Governor's language regarding the property tax exemption for regional planning commissions.	none
Roessler	Karen Asbjornson	DHFS	Definition of Relative	Add great-grandparent to the definition of relative as defined in the statutes with regard to the children's code, juvenile justice code and the child abuse reporting law.	none
Rosenzweig	Mark Grapentine	DWD	Study on Noncustodial Parents	Requires the department of workforce development (DWD) or legislative council to submit to the governor, the department of administration, the joint committee on finance, and the appropriate standing committees of the legislature a plan for providing employment and support services to low-income, noncustodial parents. (2001 SB 77)	none
Welch	Chris Newhouse	DPI	DPI Consultants	Mandate that DPI consultants must have taught in a classroom or have an educational component prior to being hired as a consultant (prospective).	none
Welch	Chris Newhouse	DOJ	ALEC Sunshine Bill	Mandate that DOJ receive executive permission before hiring independent council.	none

1999-3615

put

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to renumber** 20.930; **to amend** 16.75 (1) (a) 1., 46.27 (7g) (h), 49.496 (3)
2 (f) and 49.682 (6); and **to create** 13.107, 14.11 (2) (bd) to (bt) and 20.930 (2) to
3 (5) of the statutes; **relating to** employment of legal counsel to perform services
4 for the state.

Analysis by the Legislative Reference Bureau

Currently, the governor may appoint special counsel to assist or to act instead of the attorney general in certain actions or proceedings. Special counsel must be employed by contract, which must fix the compensation to be paid to the counsel. The contract must be signed by the governor and filed in the office of the secretary of state. With limited exceptions, no state agency in the executive branch may employ legal counsel without the approval of the governor. Under current law, with certain exceptions, contracts for contractual services entered into by the state must be awarded to the lowest responsible bidder, but the secretary of administration or the governor may waive this requirement under certain conditions.

This bill provides that every contract for employment of legal counsel entered into by the governor or any state agency in the executive branch must be preceded by public notice and solicitation of bids. The bill also requires all state agencies in the executive branch to employ legal counsel only by contract. Under the bill, every contract entered into by the governor or any state agency in the executive branch which provides for counsel to be retained on a contingent fee basis must contain a provision requiring the counsel to submit a statement of the number of hours worked under the contract, the expenses incurred in relation to the contract and the net

2001

Date (time) needed

(DNDP)
5:00 PM

LRB b 1841, 1

**ARC CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]**

Jlk: cjs:

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page *8*, line *24*: *after that line insert:*

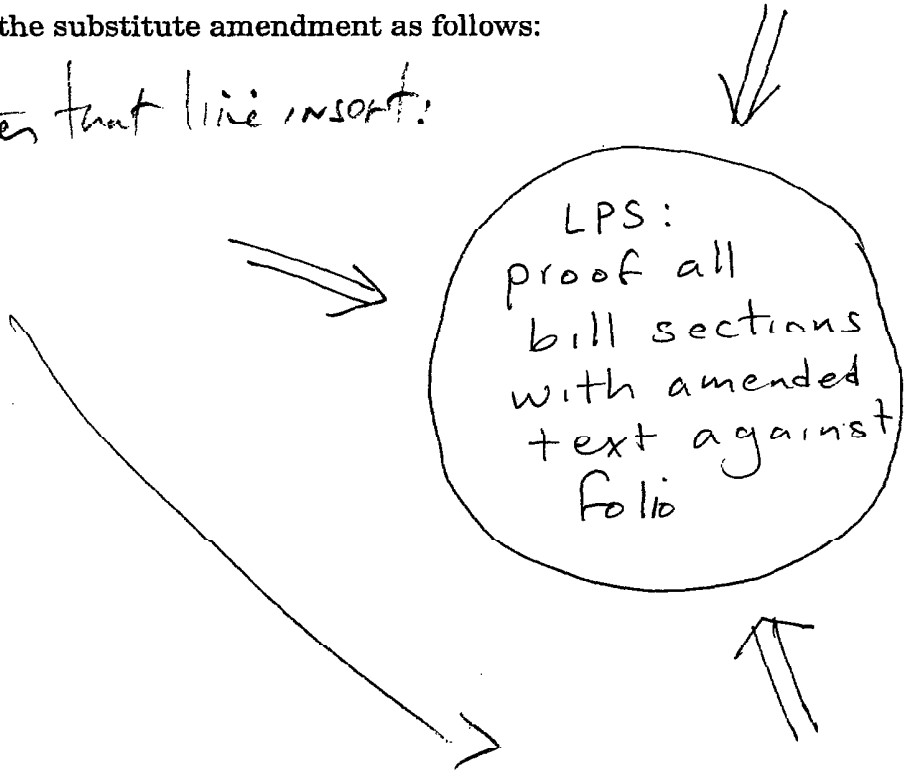
#. Page, line:

#. Page, line:

#. Page, line:

#. Page, line:

#. Page, line:



charge per hour under the contract. The bill provides that neither the governor nor any state agency in the executive branch may enter into a legal services contract providing for payment to be made at a rate exceeding \$1,000 per hour. The bill provides that if the legal services to be performed by any person for the governor or any state agency in the executive branch will or reasonably may be anticipated to exceed \$1,000,000, the governor must submit the proposed contract to the appropriate standing committees of the legislature for review. The committees may then hold a hearing and recommend changes to the proposed contract. The governor must then either submit a revised proposed contract to the committees incorporating each of the recommended changes or must submit a report to the committees containing the reasons why the recommended changes will not be made. The bill provides that the governor is prohibited from entering into a proposed contract for legal services during the period in which the contract is under review by the committees.

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

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

1 " SECTION 1. 10/M 13.107 of the statutes is created to read:

2 13.107 Review of certain proposed legal services contracts. (1) Upon
3 the filing of a proposed legal services contract under s. 14.11 (2) (bh) or 20.930 (5),
4 the chief clerk of the house to whom it is referred shall refer the proposed contract
5 to the presiding officer of that house.

6 (2) The presiding officer shall promptly refer any proposed contract under sub.
7 (1) to the appropriate standing committee of the house.

8 (3) Within 30 days after referral under sub. (2), a committee to which a
9 proposed legal services contract is referred may hold a public hearing concerning the
10 proposed contract and issue a report to the governor recommending changes to the
11 proposed contract.

page 22, line 18: after that line insert:

12 " SECTION 2. 118M 14.11 (2) (bd) (bt) of the statutes are created to read:

(bh), (bp) and NO COMMA

1 14.11 (2) (bd) Notwithstanding s. 16.75 (1) (c), (2m) and (6) (c) to (e), all
2 contracts for legal services under this subsection shall be awarded only by
3 solicitation of bids under s. 16.75.

4 (bh) 1. The governor shall not enter into a contract for the provision of legal
5 services under which the state is obligated or reasonably may be anticipated to be
6 obligated to pay more than \$1,000,000 unless the governor first files the proposed
7 contract with the chief clerk of each house of the legislature and complies with subds.
8 2. to 4. If the governor does not receive a report from a legislative committee under
9 subd. 2. recommending changes to a proposed contract within 60 days of the date on
10 which the proposed contract is filed, the governor may enter into the contract as
11 proposed.

12 2. If the governor receives a timely report from a legislative committee under
13 s. 13.107 concerning a proposed legal services contract, the governor shall review the
14 report and, if the governor determines to make any changes to the proposed contract
15 that is the subject of the report, the governor shall file a revised copy of the proposed
16 contract with the chief clerk of each house of the legislature.

17 3. If the governor does not make all of the changes to a proposed legal services
18 contract recommended by a legislative committee under s. 13.107 (3), the governor
19 shall submit a report to the chairperson or cochairpersons of the committee
20 recommending the changes containing an explanation of the reasons why all of the
21 proposed changes were not made.

22 4. If the governor submits a report under subd. 3. pertaining to a proposed legal
23 services contract, the governor shall not enter into that contract until at least 45 days
24 after submittal of the report.

1 5. If, within 60 days after referral under s. 13.107 (2), a committee to which a
 2 proposed legal services contract is referred has not transmitted a report to the
 3 governor concerning the proposed contract, the governor may enter into the proposed
 4 contract.

5 (bp) Every legal services contract entered into by the governor which provides
 6 for counsel to be retained on a contingent fee basis shall contain a provision requiring
 7 the counsel to submit a statement of the number of hours worked under the contract,
 8 the expenses incurred in relation to the contract and the net charge per hour under
 9 the contract, computed on the basis of the total charges, less expenses, divided by the
 10 number of hours worked. The governor shall not authorize payment to be made
 11 under the contract until the statement is submitted.

12 (bt) The governor shall not enter into any contract that requires the state to pay
 13 for legal services at a rate that exceeds \$1,000 per hour. If a contract provides for a
 14 contingent or fixed fee, the hourly charge shall be computed in the manner provided
 15 in par. (bp). The governor shall not authorize any payment to be made exceeding the
 16 amount specified in this paragraph.

Page 63, line 5: delete that line and substitute
 17 ~~Section 8. 16.75 (1) (a) 1. of the statutes, as affected by 1999 Wisconsin Act 9,~~

18 is amended to read:

19 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
 20 materials, supplies, equipment and contractual services to be provided to any
 21 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),

22 (6), (7), (8), and (9) and ss. 14.11 (2) (bd), 16.73 (4) (a), 16.751, 16.754, ^{16.964 (8)} 20.930 (2), 50.05

23 (7) (f), ~~and 301.205,~~ shall be awarded to the lowest responsible bidder,
 24 taking into consideration life cycle cost estimates under sub. (1m), when appropriate,
 25 the location of the agency, the quantities of the articles to be supplied, their

Page 428, line 20: after that line insert.

1 conformity with the specifications, and the purposes for which they are required and
2 the date of delivery.

3 → ^{995 m} SECTION 4. 20.930 of the statutes ~~as affected by 1999 Wisconsin Act 9,~~ is
4 renumbered 20.930 (1).

5 ^{995 n} SECTION 5. 20.930 (2) to (5) of the statutes are created to read:

6 20.930 (2) No state agency in the executive branch may employ legal counsel
7 except by contract. Notwithstanding s. 16.75 (1) (c), (2m) and (6) (c) to (e), all
8 contracts for the employment of counsel entered into by any state agency in the
9 executive branch shall be awarded only by solicitation of bids under s. 16.75.

10 (3) Every legal services contract entered into by a state agency in the executive
11 branch which provides for counsel to be retained on a contingent fee basis shall
12 contain a provision requiring the counsel to submit a statement of the number of
13 hours worked under the contract, the expenses incurred in relation to the contract
14 and the net charge per hour under the contract, computed on the basis of the total
15 charges, less expenses, divided by the number of hours worked. The head of the
16 agency shall not authorize payment to be made under the contract until the
17 statement is submitted.

18 (4) No state agency in the executive branch may enter into any contract that
19 requires the state to pay for legal services at a rate that exceeds \$1,000 per hour. If
20 a contract provides for a contingent or fixed fee, the hourly charge shall be computed
21 in the manner provided in s. 14.11 (2) (bp). The head of the agency shall not authorize
22 any payment to be made exceeding the amount specified in this subsection.

23 (5) If the legal services to be performed by any person for a state agency in the
24 executive branch will or reasonably may be anticipated to exceed \$1,000,000, the
25 employment shall be by contract, which shall be signed by the governor. Prior to

1 approving any contract for the provision of legal services under this section, the
2 governor shall file the proposed contract with the chief clerk of each house of the
3 legislature. Any proposed contract so filed is subject to the procedures and
4 limitations prescribed in ss. 13.107 and 14.11 (2).

5 → ((# Page 565, line 4: after that line insert:
SECTION 6. 46.27 (7g) (h) of the statutes, as created by 1999 Wisconsin Act 9,

6 is amended to read: 1502M

7 46.27 (7g) (h) The department may contract with or employ an attorney to
8 probate estates to recover under this subsection the costs of care. Any such contract
9 is subject to the requirements under s. 20.930 (2) to (5).

10 → ((# Page 642, line 20: after that line insert:
SECTION 7. 49.496 (3) (f) of the statutes, as created by 1999 Wisconsin Act 9,

11 is amended to read: 1835M

12 49.496 (3) (f) The department may contract with or employ an attorney to
13 probate estates to recover under this subsection the costs of care. Any such contract
14 is subject to the requirements of s. 20.930 (2) to (5).

15 → ((# Page 645, line 6: after that line insert:
SECTION 8. 49.682 (6) of the statutes, as created by 1999 Wisconsin Act 9, is

16 amended to read: 1837 pm

17 49.682 (6) The department may contract with or employ an attorney to probate
18 estates to recover under this section the costs of care. Any such contract is subject
19 to the requirements of s. 20.930 (2) to (5).

20 → ((# Page 1416, line 16: after that line insert:
SECTION 9. Initial applicability.

21 (1) ~~This act first applies~~ EMPLOYMENT OF LEGAL COUNSEL TO PERFORM SERVICES FOR THE STATE. (CS)

22 entered into on the effective date of this subsection. (CS)

23 (END)

NIT APP

no 9

no 9
13.107, 14.11 (2) (bd),
(with respect to employment of
legal counsel to perform services for
the state), 20.930, 46.27 (7g) (h),
49.496 (3) (f) and 49.682 (6) of the
statutes and the creation of section
apply first

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

61841/1
LRB-3615/P1da
JTK:wlj&kmg:jf

Adam Raschka:

date

The language of proposed s. 13.107 concerning referral of proposed legal services contracts and the period during which public hearings may be held creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1841/1dn
JTK:wlj&kmg:rs

June 27, 2001

Adam Raschka:

The language of proposed s. 13.107 concerning referral of proposed legal services contracts and the period during which public hearings may be held creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1841/1
JTK:cjs:rs

ARC:.....Raschka – AM109, Employment of legal counsel to perform services
for the state

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 8, line 24: after that line insert:

3 “**SECTION 101m.** 13.107 of the statutes is created to read:

4 **13.107 Review of certain proposed legal services contracts.** (1) Upon
5 the filing of a proposed legal services contract under s. 14.11 (2) (bh) or 20.930 (5),
6 the chief clerk of the house to whom it is referred shall refer the proposed contract
7 to the presiding officer of that house.

8 (2) The presiding officer shall promptly refer any proposed contract under sub.

9 (1) to the appropriate standing committee of the house.

1 **(3)** Within 30 days after referral under sub. (2), a committee to which a
2 proposed legal services contract is referred may hold a public hearing concerning the
3 proposed contract and issue a report to the governor recommending changes to the
4 proposed contract.”

5 **2.** Page 22, line 18: after that line insert:

6 **“SECTION 118m.** 14.11 (2) (bd), (bh), (bp) and (bt) of the statutes are created to
7 read:

8 14.11 **(2)** (bd) Notwithstanding s. 16.75 (1) (c), (2m) and (6) (c) to (e), all
9 contracts for legal services under this subsection shall be awarded only by
10 solicitation of bids under s. 16.75.

11 (bh) 1. The governor shall not enter into a contract for the provision of legal
12 services under which the state is obligated or reasonably may be anticipated to be
13 obligated to pay more than \$1,000,000 unless the governor first files the proposed
14 contract with the chief clerk of each house of the legislature and complies with subds.
15 2. to 4. If the governor does not receive a report from a legislative committee under
16 subd. 2. recommending changes to a proposed contract within 60 days of the date on
17 which the proposed contract is filed, the governor may enter into the contract as
18 proposed.

19 2. If the governor receives a timely report from a legislative committee under
20 s. 13.107 concerning a proposed legal services contract, the governor shall review the
21 report and, if the governor determines to make any changes to the proposed contract
22 that is the subject of the report, the governor shall file a revised copy of the proposed
23 contract with the chief clerk of each house of the legislature.

1 3. If the governor does not make all of the changes to a proposed legal services
2 contract recommended by a legislative committee under s. 13.107 (3), the governor
3 shall submit a report to the chairperson or cochairpersons of the committee
4 recommending the changes containing an explanation of the reasons why all of the
5 proposed changes were not made.

6 4. If the governor submits a report under subd. 3. pertaining to a proposed legal
7 services contract, the governor shall not enter into that contract until at least 45 days
8 after submittal of the report.

9 5. If, within 60 days after referral under s. 13.107 (2), a committee to which a
10 proposed legal services contract is referred has not transmitted a report to the
11 governor concerning the proposed contract, the governor may enter into the proposed
12 contract.

13 (bp) Every legal services contract entered into by the governor which provides
14 for counsel to be retained on a contingent fee basis shall contain a provision requiring
15 the counsel to submit a statement of the number of hours worked under the contract,
16 the expenses incurred in relation to the contract and the net charge per hour under
17 the contract, computed on the basis of the total charges, less expenses, divided by the
18 number of hours worked. The governor shall not authorize payment to be made
19 under the contract until the statement is submitted.

20 (bt) The governor shall not enter into any contract that requires the state to pay
21 for legal services at a rate that exceeds \$1,000 per hour. If a contract provides for a
22 contingent or fixed fee, the hourly charge shall be computed in the manner provided
23 in par. (bp). The governor shall not authorize any payment to be made exceeding the
24 amount specified in this paragraph.”.

1 **3.** Page 63, line 5: delete that line and substitute “(6), (7), (8), and (9) and ss.
2 14.11 (2) (bd), 16.73 (4) (a), 16.751, 16.754, 16.964 (8), 20.930 (2), 50.05 (7) (f), and”.

3 **4.** Page 428, line 20: after that line insert:

4 “**SECTION 995m.** 20.930 of the statutes is renumbered 20.930 (1).

5 **SECTION 995n.** 20.930 (2) to (5) of the statutes are created to read:

6 20.930 (2) No state agency in the executive branch may employ legal counsel
7 except by contract. Notwithstanding s. 16.75 (1) (c), (2m) and (6) (c) to (e), all
8 contracts for the employment of counsel entered into by any state agency in the
9 executive branch shall be awarded only by solicitation of bids under s. 16.75.

10 **(3)** Every legal services contract entered into by a state agency in the executive
11 branch which provides for counsel to be retained on a contingent fee basis shall
12 contain a provision requiring the counsel to submit a statement of the number of
13 hours worked under the contract, the expenses incurred in relation to the contract
14 and the net charge per hour under the contract, computed on the basis of the total
15 charges, less expenses, divided by the number of hours worked. The head of the
16 agency shall not authorize payment to be made under the contract until the
17 statement is submitted.

18 **(4)** No state agency in the executive branch may enter into any contract that
19 requires the state to pay for legal services at a rate that exceeds \$1,000 per hour. If
20 a contract provides for a contingent or fixed fee, the hourly charge shall be computed
21 in the manner provided in s. 14.11 (2) (bp). The head of the agency shall not authorize
22 any payment to be made exceeding the amount specified in this subsection.

23 **(5)** If the legal services to be performed by any person for a state agency in the
24 executive branch will or reasonably may be anticipated to exceed \$1,000,000, the

1 employment shall be by contract, which shall be signed by the governor. Prior to
2 approving any contract for the provision of legal services under this section, the
3 governor shall file the proposed contract with the chief clerk of each house of the
4 legislature. Any proposed contract so filed is subject to the procedures and
5 limitations prescribed in ss. 13.107 and 14.11 (2).”.

6 **5.** Page 565, line 4: after that line insert:

7 “**SECTION 1502m.** 46.27 (7g) (h) of the statutes is amended to read:

8 46.27 (7g) (h) The department may contract with or employ an attorney to
9 probate estates to recover under this subsection the costs of care. Any such contract
10 is subject to the requirements under s. 20.930 (2) to (5).”.

11 **6.** Page 642, line 20: after that line insert:

12 “**SECTION 1835h.** 49.496 (3) (f) of the statutes is amended to read:

13 49.496 (3) (f) The department may contract with or employ an attorney to
14 probate estates to recover under this subsection the costs of care. Any such contract
15 is subject to the requirements of s. 20.930 (2) to (5).”.

16 **7.** Page 645, line 6: after that line insert:

17 “**SECTION 1837pm.** 49.682 (6) of the statutes is amended to read:

18 49.682 (6) The department may contract with or employ an attorney to probate
19 estates to recover under this section the costs of care. Any such contract is subject
20 to the requirements of s. 20.930 (2) to (5).”.

21 **8.** Page 1416, line 16: after that line insert:

22 “(13s) EMPLOYMENT OF LEGAL COUNSEL TO PERFORM SERVICES FOR THE STATE. The
23 treatment of sections 13.107, 14.11 (2) (bd, (bh), (bp), and (bt), 16.75 (1) (a) 1. (with
24 respect to employment of legal counsel to perform services for the state), 20.930,

1 46.27 (7g) (h), 49.496 (3) (f), and 49.682 (6) of the statutes and the creation of section
2 20.930 (2) to (5) of the statutes first apply with respect to contracts for the
3 employment of counsel entered into on the effective date of this subsection.”.

4 (END)