

2013 Assembly Bill 27 (LRB -0592)

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

2013

02-18.	A.	Introduced by Representatives Kuglitsch, August, A. Ott, Craig, Stone, Schraa, Jacque, Spiros, Stroebel and Thiesfeldt ; cosponsored by Senators Grothman, Vukmir and Farrow	43
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10-08.	S.	Senate Amendment 2 offered by Senators Vinehout, Harris, Lehman, T. Cullen, C. Larson, Lassa, Hansen, Carpenter, Risser and L. Taylor (LRB a0921)	
10-08.	S.	Senate Amendment 3 offered by Senators Vinehout, Harris, Lehman, T. Cullen, C. Larson, Lassa, Hansen, Carpenter, Risser and L. Taylor (LRB a0923)	
10-08.	S.	Senate Amendment 4 offered by Senators Vinehout, Harris, Lehman, T. Cullen, C. Larson, Lassa, Hansen, Carpenter, Risser and L. Taylor (LRB a0924)	
10-08.	S.	Read a second time	
10-08.	S.	Senate Amendment 1 laid on table, Ayes 18, Noes 15	
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10-08.	S.	Senate Amendment 3 laid on table	
10-08.	S.	Senate Amendment 4 laid on table	
10-08.	S.	Ordered to a third reading	
10-08.	S.	Rules suspended	
10-08.	S.	Read a third time	
10-08.	S.	Refused to refer to committee on Judiciary and Labor, Ayes 15, Noes 18	
10-08.	S.	Concurred in , Ayes 23, Noes 10	
10-08.	S.	Ordered immediately messaged	
10-08.	A.	Received from Senate concurred in	

MB

2013

ENROLLED BILL

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ADOPTED DOCUMENTS:

Orig Engr SubAmdt

13-0592/1

Amendments to above (if none, write "NONE"): AA4 - a0258/1

Corrections - show date (if none, write "NONE"): NONE

Topic Rel as amended

10-9-13
Date

JR Miller
Enrolling Drafter



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:** ^{INS AA4-1} state agencies entering into contracts for legal
3 services on a contingent fee basis.

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.

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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.** 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:

AA4-2

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.

INS. AA4-3

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

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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. *INS AA4-5*
INS AA4-6

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. *INS AA4-7*

8 3. The geographic area where the legal services are to be provided. *INS AA4-8*

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. *INS AA4-9*
INS AA4-10 *INS AA4-11*

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: *INS AA4-13*

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. *INS AA4-14*

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SECTION 3

INS, AA4-15

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.

INS AA4-17

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

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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**SECTION 3**

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)



**ASSEMBLY AMENDMENT 4,
TO ASSEMBLY BILL 27**

April 3, 2013 – Offered by Representative KUGLITSCH.

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 1, line 2: delete “state” and substitute “executive”.
- 3 **2.** Page 2, line 9: delete lines 9 to 14.
- 4 **3.** Page 2, line 17: delete “a state agency” and substitute “an agency in the
5 executive branch”.
- 6 **4.** Page 3, line 3: delete the material beginning with “there are” and ending
7 with “resources in” on line 4.
- 8 **5.** Page 3, line 4: after “office” insert “lacks sufficient and appropriate legal and
9 financial resources, which necessitates the need”.
- 10 **6.** Page 3, line 4: after “services.” insert “The governor shall consult with the
11 attorney general in making this finding”.
- 12 **7.** Page 3, line 5: before “amount” insert “estimated”.

AA 4-1

AA 4-3

AA 4-5

AA 4-6

AA 4-7

1 **8.** Page 3, line 8: delete that line and substitute:

2 "3. The venue in which the litigation would likely occur".

3 **9.** Page 3, line 12: delete "invite proposals to be submitted unless the governor
4 determines" and substitute "request the department of administration to invite bids
5 to be submitted. The department of administration shall invite bids and shall ensure
6 that the notice of the bidding process contains any pertinent requirements in this
7 section. Following the bidding process, the secretary of administration shall
8 recommend a responsible bidder to the governor, who shall make the final
9 determination. The governor may determine".

10 **10.** Page 3, line 13: delete "proposals" and substitute "bids".

11 **11.** Page 3, line 13: delete "sets" and substitute "the governor shall set".

12 **12.** Page 3, line 14: delete that line.

13 **13.** Page 3, line 16: after "fee" insert "excluding reasonable costs and
14 expenses, as determined by the court with jurisdiction over the action".

15 **14.** Page 3, line 18: delete lines 18 to 24 and substitute:

16 "b. If the recovery is at least \$10 million but less than \$15 million, the sum of
17 \$2,500,000 and 20 percent of the amount by which the recovery exceeds \$10 million.

18 c. If the recovery is at least \$15 million but less than \$20 million, the sum of
19 \$3,500,000 and 15 percent of the amount by which the recovery exceeds \$15 million.

20 d. If the recovery is at least \$20 million but less than \$25 million, the sum of
21 \$4,250,000 and 10 percent of the amount by which the recovery exceeds \$20 million.

22 e. If the recovery is at least \$25 million, the sum of \$4,750,000 and 5 percent
23 of the amount by which the recovery exceeds \$25 million".

AA4-8

AA6-9

AA4-10

AA4-11

AA4-13

AA4-14

AA4-15

1 **15.** Page 4, line 2: after “expenses” insert “as determined by the court with
2 jurisdiction over the action”.

3 **16.** Page 4, line 5: delete lines 5 to 20.

4 **17.** Page 4, line 21: delete the material beginning with “ensure that” and
5 ending with “the governor” on line 22 and substitute “post on the Internet site
6 maintained by the government accountability board under s. 16.753 all of the
7 following”.

8 (END)

AA4-17