

## 2013 DRAFTING REQUEST

**Bill**

Received: 11/20/2012 Received By: chanaman  
Wanted: As time permits Same as LRB: -1182  
For: Mike Kuglitsch (608) 267-5158 By/Representing: Matthew Spencer  
May Contact: Drafter: chanaman  
Subject: State Govt - procurement Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: rep.kuglitsch@legis.wisconsin.gov  
Carbon copy (CC) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Contingency fee attorneys

---

**Instructions:**

See attached

---

**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>
/?	chanaman 12/6/2012	evinz 12/11/2012		_____			
/P1		evinz 12/26/2012	jmurphy 12/11/2012	_____	lparisi 12/11/2012	chanaman 12/21/2012	State
/1			jmurphy 1/2/2013	_____	sbasford 1/2/2013	lparisi 1/16/2013	State

FE Sent For:

At Intro.  
2-18-13

<END>

Withdrawn 2-19-13

**2013 DRAFTING REQUEST**

**Bill**

Received: 11/20/2012 Received By: chanaman  
Wanted: As time permits Same as LRB:  
For: Mike Kuglitsch (608) 267-5158 By/Representing: Matthew Spencer  
May Contact: Drafter: chanaman  
Subject: State Govt - procurement Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Rep.Kuglitsch@legis.wi.gov  
Carbon copy (CC) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Contingency fee attorneys

---

**Instructions:**

See attached

---

**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>
/?	chanaman 12/6/2012	evinz 12/11/2012		_____			
/P1		evinz 12/26/2012	jmurphy 12/11/2012	_____	lparisi 12/11/2012	chanaman 12/21/2012	State
/1			jmurphy 1/2/2013	_____	sbasford 1/2/2013		State

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 11/20/2012 Received By: chanaman  
 Wanted: As time permits Same as LRB:  
 For: Mike Kuglitsch (608) 267-5158 By/Representing: Matthew Spencer  
 May Contact: Drafter: chanaman  
 Subject: State Govt - procurement Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Rep.Kuglitsch@legis.wi.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Contingency fee attorneys

Instructions:

See attached

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>
/?	chanaman 12/6/2012	evinz 12/11/2012		_____			
/P1			jmurphy 12/11/2012	_____	lparisi 12/11/2012		State

FE Sent For:

1 rev 12/26/12 1 rev 12/26/12 [Signature] 12/27

<END>

2013 DRAFTING REQUEST

Bill

Received: 11/20/2012 Received By: chanaman  
 Wanted: As time permits Same as LRB:  
 For: Mike Kuglitsch (608) 267-5158 By/Representing: Matthew Spencer  
 May Contact: Drafter: chanaman  
 Subject: State Govt - procurement Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Rep.Kuglitsch@legis.wi.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Contingency fee attorneys

Instructions:

See attached

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>
/?	chanaman	pl eev 12/11/12	pl eev 12/11/12	Ju E JB 12/11/12			

FE Sent For:

<END>

## Hanaman, Cathlene

---

**From:** Hurley, Peggy  
**Sent:** Tuesday, November 20, 2012 11:54 AM  
**To:** Hanaman, Cathlene  
**Subject:** FW: Drafting Request

I think you drafted something like this before. I don't think I'm the right drafter for it, but if you think I am, let me know. I guess it's courts-y, but I also think it's government contract-y.

---

**From:** Rep.Kuglitsch  
**Sent:** Tuesday, November 20, 2012 11:49 AM  
**To:** Hurley, Peggy  
**Subject:** Drafting Request

Good Morning Peggy,

Attached is a drafting requesting from Representative Kuglitsch relating to contingency fees for private attorneys.

I understand there will be a few drafting changes, but if we could this put into a bill as verbatim as possible that would be fantastic.

Thanks,

Matthew Spencer  
Office of Rep. Mike Kuglitsch  
608-267-5158



**14.11 (2)(b): is amended to read:**

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

**20.9305 of the statutes is created to read:**

**20.9305 Attorney services on a contingent fee basis:** (1) A state agency may not retain an attorney to provide legal services for the state on a contingent fee basis unless the office of governor makes a written determination that the contingency fee representation is cost-effective and in the public interest. Any written determination shall include specific findings of each of the following factors:

- (a) There are sufficient and appropriate legal and financial resources within the office of the governor to handle the legal matter.
- (b) The amount of time and labor required, including the novelty, complexity, and difficulty of the legal issues involved and the skill requisite to perform the attorney services properly.
- (c) The geographic area where the attorney services are to be provided.
- (d) The amount of experience needed for the particular type of attorney services to be provided and the nature of the private attorney's experience with similar legal issues or cases.

(2) If the governor makes a determination based on the factors in sub. (1), the governor shall request proposals from private attorneys to present the agency on a contingency fee basis, unless the governor determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing.

(3) The agency may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee in excess of:

- (a) 25 percent of any recovery of up to \$10 million;
- (b) 20 percent of any portion of such recovery between \$10 million and \$15 million;
- (c) 15 percent of any portion of such recovery between \$15 and \$20 million;
- (d) 10 percent of any portion of such recovery between \$20 and \$25 million;
- (e) 5 percent of any portion of such recovery exceeding \$25 million.

In no event shall the aggregate contingency fee exceed \$30 million, exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(4) No state agency shall enter into a contract for contingency fee attorney services unless the following requirements are met throughout the contract period and any extension thereof:

- (a) The attorneys for the governor and the state attorney general shall retain complete control over the course and conduct of the case.
- (b) A state attorney with supervisory authority shall be personally involved in overseeing the litigation.
- (c) The state attorneys shall retain veto power over any decisions made by outside counsel.
- (d) Any defendant that is subject of such litigation may contact the lead state attorneys directly, without having to confer with contingency fee counsel.
- (e) A state attorney with supervisory authority for the case shall attend all settlement conferences.
- (f) Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the state attorneys and the State.
- (g) Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the government attorneys and the State.

(5) The governor shall develop a standard addendum to every contract for contingent fee attorney services that shall be used in all cases, describing in detail what is expected of both the contract private attorney and the State, including, without limitation, the requirements listed in sub.

(4)(a)-(g).

(6) Copies of any executed contingency fee contract and the governor's written determination to enter into a contingency fee contract with the private attorney shall be posted on the governor's website for public inspection within 5 business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments thereto. Any payment of contingency fees shall be posted on the governor's general website within 15 days after the payment of such contingency fees to the private attorney and shall remain posted on the website for at least 365 days thereafter.

(7) Any private attorney under contract to provide services to the State on a contingency fee basis shall, from the inception of the contract until at least 4 years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. The private attorney shall make all such records available for inspection and copying upon request in accordance with ss. 19.31-19.39. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the legal proceedings in increments no greater than 1/10 of an hour and shall promptly provide these records to the governor, upon request.

(8) By February 1 of each year, the governor shall submit a report to the President of the Senate and the Speaker of the Assembly describing the use of contingency fee contracts with private attorneys in the preceding calendar year. At a minimum, the report shall:

- (a) Identify all new contingency fee contracts entered into during the year and all previously executed contingency fee contracts that remain current during any part of the year, and for each contract describe:

1. The name of the private attorney with whom the agency has contracted, including the name of the attorney's law firm;
2. The nature and status of the legal matter;
3. The name of the parties to the legal matter;
4. The amount of any recovery, and
5. The amount of any contingency fee paid.

(b) Include copies of any written determinations made under subs. (1) and (2) during the year.

(9) Nothing in this section shall be construed to expand the authority of any state agency or state agent to enter into contracts where no such authority previously existed.

**108.14(3m) of the statutes is amended to read:**

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





Wed per requester please

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

d-note

SAJ ref  
PNF  
12/11/12 Jm

gen cat

- 1 AN ACT <sup>gen cat</sup>; relating to: state agencies entering into contracts for legal services
- 2 with the compensation being determined 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 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 <sup>requires</sup> that copies of such contingency fee contracts and contingency fees paid be posted on the Web 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.

notice of the amount of any

requires

Internet

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<sup>✓</sup> (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).

History: 1971 c. 164; 1981 c. 20 s. 2202 (17) (a); 1985 a. 332 s. 253; 1991 a. 316.

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.

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33  
ss. 201, 9160; 2005 a. 89, 142, 431; 2009 a. 28, 136; 2011 a. 10, 32, 266.

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

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

3 1. A finding that there are not sufficient and appropriate legal and financial  
4 resources in the governor's office to provide the legal services without contracting on  
5 a contingent fee basis.

\*\*\*\*NOTE: Please review this subdivision. The instructions had a finding that there  
\* were sufficient and appropriate resources <sup>in the</sup> office. I changed it to a finding that there were  
not sufficient and appropriate resources in the office. If there were sufficient and  
appropriate resources, there would be no reason to contract out for the services. Please  
let me know if I am misinterpreting the request. If you mean that there are sufficient and  
appropriate legal and financial resources in the governor's office to handle the matter  
once the state contracts out, please let me know.

6 2. The amount of time and labor required, including the novelty, complexity,  
7 and difficulty of the legal issues involved and the <sup>required</sup> skill ~~required~~ to perform the legal  
8 services.

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

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

\*\*\*\*NOTE: I changed the suggested language here. Since the governor has yet to  
request proposals and enter into the contract, the individual attorney is still prospective.  
Thus I didn't think the written determination could include "the nature of the attorney's  
experience with similar legal issues or cases." Please let me know if I am misinterpreting.

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

\*\*\*\*NOTE: Should the governor or agency choose the most favorable proposal that  
complies with par. (c)?

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

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

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

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

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

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

8 2. The aggregate contingency fee for one action under this subsection may not  
9 exceed \$30 million, excluding reasonable costs and expenses, without regard to the  
10 number of attorneys retained or the number of lawsuits filed.

11 (d) Every contract entered into under this subsection shall contain a <sup>Standard language</sup> ~~standard~~  
12 ~~addendum or standard clauses~~, developed by the governor, that outlines all of the  
13 requirements under par. (f) and that provides for all of the following, during the  
14 period of the contract and during any extension of the contract:

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

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

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

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

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

1           6. An attorney employed by the state to have exclusive discretion regarding  
2 settlement decisions.

      \*\*\*\*NOTE: Please review this list. The last two items on the list provided as drafting instructions were identical so I am not sure if another item was omitted inadvertently.

3           (e) The governor shall ensure that all of the following are available to the public  
4 on the <sup>Internet</sup> Web site of the office of the governor:

5           1. A copy of any contingency fee contract entered into under this subsection and  
6 of the corresponding determination under par. (a) during the period beginning 5 days  
7 after the contract is entered into and ending when the contract and all of its  
8 extensions expire or are terminated.

9           2. <sup>None of</sup> The amount of any contingency fees paid under a contract entered into under  
10 this subsection during the period beginning 15 days after payment is made and  
11 ending 365 days after the payment is made.

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

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

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

21           3. Maintain current records detailing the time, in increments no greater than  
22 one-tenth of an hour, that attorneys and paralegals spent working under the

1 contract and provide the record, as soon as practically possible, to the governor upon  
2 request.

3 (g) Annually, no later than February 1, the governor shall submit a report to  
4 the chief clerk of each house of the legislature for distribution to the legislature under  
5 s. 13.172 (2) that describes the use of contingency fee contracts under this subsection.  
6 The report shall include all of the following:

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

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

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

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

14 d. The amount of any recovery.

15 e. The amount of any contingency fee paid.

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

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

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

1 account. If the compensation is being determined on a contingent fee basis, the  
2 contract is subject to s. 20.9305.

**History:** 1971 c. 53; 1973 c. 90 s. 559; 1973 c. 247; 1975 c. 343; 1977 c. 29, 133; 1977 c. 196 s. 131; 1977 c. 272 s. 98; 1979 c. 34 s. 2102 (25) (a); 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 36 ss. 18, 45; 1983 a. 8 s. 54; 1983 a. 189 s. 329 (28); 1983 a. 388; 1985 a. 17; 1985 a. 29 ss. 1664 to 1668, 3202 (29); 1985 a. 332; 1987 a. 38, 255; 1989 a. 77, 139, 303, 359; 1991 a. 89; 1993 a. 373, 490, 492; 1995 a. 27, 118, 225; 1997 a. 39; 1999 a. 83; 2001 a. 35, 105; 2003 a. 197; 2009 a. 11; 2011 a. 234.

3 **SECTION 5. Initial applicability.**

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

6 (END)

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

LRB-05927/dn

CMH:/::....

P1  
eev

date

Matthew Spencer:

I retained a great deal of the language you provided, but I did make some changes to conform to Wisconsin statutes and our drafting style. I have included some notes embedded in the draft for your review. Most notes simply explain some of my changes. I can remove the notes and this draft can be turned into an introducible draft at your request.

Cathlene Hanaman  
Deputy Chief  
Phone: (608) 267-9810  
E-mail: [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov)



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

LRB-0592/P1dn  
CMH:eev:jm

December 11, 2012

Matthew Spencer:

I retained a great deal of the language you provided, but I did make some changes to conform to Wisconsin statutes and our drafting style. I have included some notes embedded in the draft for your review. Most notes simply explain some of my changes. I can remove the notes and this draft can be turned into an introducible draft at your request.

Cathlene Hanaman  
Deputy Chief  
Phone: (608) 267-9810  
E-mail: [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov)

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

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

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

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

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

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

**20.9305 Contracting for legal services on a contingent fee basis. (1)**

Except as provided in sub. (2), a state agency may not contract for legal services on a contingent fee basis.

(2) (a) The prohibition under sub. (1) does not apply 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. In the written determination, the governor shall include all of the following:

1. A finding that there are not sufficient and appropriate legal and financial resources in the ~~governor's attorney general's~~ office to provide the legal services without contracting on a contingent fee basis.

\*\*\*\*NOTE: Please review this subdivision. The instructions had a finding that there were sufficient and appropriate resources in the office. I changed it to a finding that there were not sufficient and appropriate resources in the office. If there were sufficient and appropriate resources, there would be no reason to contract out for the services. Please let me know if I am misinterpreting the request. If you mean that there are sufficient and appropriate legal and financial resources in the governor's office to handle the matter once the state contracts out, please let me know. [Please see the change (above) striking "governor's office" and inserting "attorney general's" (above). Please also change the language back to the way it was in the drafting instructions. There may be instances when the governor's office hires a private plaintiff attorney on a contingent fee basis even though there are sufficient legal and financial resources within the attorney general's office.]

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

\*\*\*\*NOTE: I changed the suggested language here. Since the governor has yet to request proposals and enter into the contract, the individual attorney is still prospective. Thus I didn't think the written determination could include "the nature of the attorney's experience with similar legal issues or cases." Please let me know if I am misinterpreting. [This is fine]

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

\*\*\*\*NOTE: Should the governor or agency choose the most favorable proposal that complies with par. (c)? [Answer – No, a proposal should not be selected simply because it is the lowest bid. We would like the Governor's office to have some discretion here.]

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

- a. If the recovery is less than \$10 million, 25 percent of the recovery.
- b. If the recovery is at least \$10 million but less than \$15 million, 20 percent of the recovery.
- c. If the recovery is at least \$15 million but less than \$20 million, 15 percent of the recovery.
- d. If the recovery is at least \$20 million but less than \$25 million, 10 percent of the recovery.
- e. If the recovery is at least \$25 million, 5 percent of the recovery.

2. The aggregate contingency fee for one action under this subsection 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 shall not be based on penalties or fines awarded or any amounts attributable to penalties or fines.**

(d) Every contract entered into under this subsection shall contain standard language, developed by the governor, that outlines all of the requirements under par.

(f) and that provides for all of the following, during the period of the contract and during any extension of the contract:

1. The attorneys for the governor and the attorney general to retain control over the course and conduct of the case.
2. An attorney employed by the state who has supervisory authority to be personally involved in overseeing the case.

3. The attorneys employed by the state to have the power to reject any decisions made by any attorney retained under the contract.
4. Any defendant in the case to be able to contact the lead attorney employed by the state without having to confer with an attorney retained under the contract.
5. An attorney employed by the state with supervisory authority to attend all settlement conferences.
6. An attorney employed by the state to have exclusive discretion regarding settlement decisions.

\*\*\*\*NOTE: Please review this list. The last two items on the list provided as drafting instructions were identical so I am not sure if another item was omitted inadvertently. [The way it is drafted here is correct]

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

1. A copy of any contingency fee contract entered into under this subsection and of the corresponding determination under par. (a) during the period beginning 5 days after the contract is entered into and ending when the contract and all of its extensions expire or are terminated.
2. Notice of the amount of any contingency fees paid under a contract entered into under this subsection during the period beginning 15 days after payment is made and ending 365 days after the payment is made.

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

1. Maintain records, including documentation of all expenses, disbursements, charges, credits, receipts and invoices, and other financial transactions, that relate to the provision of the legal services under this subsection.
2. Make all records maintained under subd. 1. available, upon request, for inspection and copying as provided under s. 19.35 (1).
3. Maintain current records detailing the time, in increments no greater than one-tenth of an hour, that attorneys and paralegals spent working under the contract and provide the record, as soon as practically possible, to the governor upon request.

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

The report shall include all of the following:

1. All contracts entered into under this subsection in the year prior to the submittal of the report and all contracts that were active in the year prior to the submittal of the report. The report shall include for each contract all of the following:
  - a. The name of the attorney and the attorney's law firm with which the agency has contracted.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0592/PY 1  
CMH:eev:jm

Soon please in 12/21

stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

PWF  
Om 12/27

repeal

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.

***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.

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:

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

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 ~~not~~<sup>e</sup> sufficient and appropriate legal and financial  
4 resources in the ~~governor's~~<sup>attorney general's</sup> office to ~~provide~~<sup>provide</sup> the legal services ~~without contracting on~~  
5 ~~a contingent fee basis.~~<sup>contract for</sup>

\*\*\*\*NOTE: Please review this subdivision. The instructions had a finding that there were sufficient and appropriate resources in the office. I changed it to a finding that there were ~~not~~ sufficient and appropriate resources in the office. If there were sufficient and appropriate resources, there would be no reason to contract out for the services. Please let me know if I am misinterpreting the request. If you mean that there are sufficient and appropriate legal and financial resources in the governor's office to handle the matter once the state contracts out, please let me know.

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

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

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

\*\*\*\*NOTE: I changed the suggested language here. Since the governor has yet to request proposals and enter into the contract, the individual attorney is still prospective. Thus I didn't think the written determination could include "the nature of the attorney's experience with similar legal issues or cases." Please let me know if I am misinterpreting.

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

\*\*\*\*NOTE: Should the governor or agency choose the most favorable proposal that complies with par. (c)?

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

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

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

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

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

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

8           2. The aggregate contingency fee for one action under this subsection may not  
9 exceed \$30 million, excluding reasonable costs and expenses, without regard to the  
10 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.*

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

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

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

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

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

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



1           6. An attorney employed by the state to have exclusive discretion regarding  
2 settlement decisions.

\*\*\*\*NOTE: Please review this list. The last two items on the list provided as drafting instructions were identical so I am not sure if another item was omitted inadvertently.

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

5           1. A copy of any contingency fee contract entered into under this subsection and  
6 of the corresponding determination under par. (a) during the period beginning 5 days  
7 after the contract is entered into and ending when the contract and all of its  
8 extensions expire or are terminated.

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

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

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

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

21           3. Maintain current records detailing the time, in increments no greater than  
22 one-tenth of an hour, that attorneys and paralegals spent working under the

1 contract and provide the record, as soon as practically possible, to the governor upon  
2 request.

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

6 The report shall include all of the following:

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

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

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

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

14 d. The amount of any recovery.

15 e. The amount of any contingency fee paid.

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

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

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



**Parisi, Lori**

---

**From:** Spencer, Matt  
**Sent:** Wednesday, January 16, 2013 9:55 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0592/1 Topic: Contingency fee attorneys

Please Jacket LRB -0592/1 for the ASSEMBLY.

## Rose, Stefanie

---

**From:** FES User Mary Hamele - FEC <DOAFiscalEstimates@wisconsin.gov>  
**Sent:** Tuesday, February 19, 2013 9:23 AM  
**To:** Polzin, Cindy M - GOV  
**Cc:** DOAFiscalEstimates@wisconsin.gov; Barman, Mike; Emery, Lynn; Basford, Sarah; Parisi, Lori; Christina.Duerst@legis.state.wi.us; Rose, Stefanie  
**Subject:** FISCAL ESTIMATE - ASSIGNMENT INACTIVATED - LRB # 13-0592/1, INTRO # AB-0027  
Estimate Type Original

The assignment for Fiscal Estimate (Estimate Type Original) for LRB# 13-0592/1 has been withdrawn. You are no longer required to complete a fiscal estimate and/or worksheet.

Submitted from the web 2/19/2013 9:23:12 AM

Fiscal Estimates URL = <http://fes.doa.state.wi.us/>