



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0047/1
CMH:eev:ph

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 27**

May 8, 2013 – Offered by Representative GOYKE.

1 **AN ACT** *to amend* 14.11 (2) (b), 16.705 (1) and 108.14 (3m); and *to create* 20.9305
2 and 20.9306 of the statutes; **relating to:** state agencies entering into contracts
3 for legal services on a contingent fee basis and for legal services that expend
4 more than \$25,000.

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

5 **SECTION 1.** 14.11 (2) (b) of the statutes is amended to read:
6 14.11 (2) (b) When special counsel is employed, a contract in writing shall be
7 entered into between the state and such counsel, in which shall be fixed the
8 compensation to be paid such counsel by the state. If the compensation is being
9 determined on a contingent fee basis, the contract is subject to s. 20.9305. If the
10 estimated expenditure for the compensation is \$25,000 or more, the contract is
11 subject to s. 20.9306. The contract shall be executed in behalf of the state by the

1 governor, and shall be filed in the office of the secretary of state. Such compensation
2 shall be charged to the special counsel appropriation in s. 20.455 (1) (b).

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

4 16.705 (1) The department or its agents may contract for services which can
5 be performed more economically or efficiently by such contract. The department
6 shall, by rule, prescribe uniform procedures for determining whether services are
7 appropriate for contracting under this subsection. If the services are legal services
8 paid on a contingent fee basis, the contract is subject to s. 20.9305. If the estimated
9 expenditure for the compensation is \$25,000 or more, the contract is subject to s.
10 20.9306.

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

12 **20.9305 Contracting for legal services on a contingent fee basis. (1)**

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

15 (2) (a) The prohibition under sub. (1) does not apply if the governor makes a
16 written determination that contracting for legal services for the state on a contingent
17 fee basis is cost-effective and in the public interest. In the written determination,
18 the governor shall include all of the following:

19 1. A finding that there are sufficient and appropriate legal and financial
20 resources in the attorney general's office to contract for the legal services.

21 2. The amount of time and labor required to perform the legal services,
22 including the novelty, complexity, and difficulty of the legal issues involved and the
23 required skill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 6. An attorney employed by the state to have exclusive discretion regarding
12 settlement decisions.

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

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

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

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

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

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

6 3. Maintain current records detailing the time, in increments no greater than
7 one-tenth of an hour, that attorneys and paralegals spent working under the
8 contract and provide the record, as soon as practically possible, to the governor upon
9 request.

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

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

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

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

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

21 d. The amount of any recovery.

22 e. The amount of any contingency fee paid.

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

24 **SECTION 4.** 20.9306 of the statutes is created to read:

1 **20.9306 Contracting for legal services; expenditures for \$25,000 or**
2 **more.** (1) Unless s. 20.9305 applies to the contract, if the state contracts for legal
3 services and the estimated expenditure is \$25,000 or more in the current biennium,
4 the governor shall ensure that all of the following are available to the public on the
5 Internet site of the office of the governor:

6 (a) A copy of the contract entered into for the legal services during the period
7 beginning 5 days after the contract is entered into and ending when the contract and
8 all of its extensions expire or are terminated.

9 (b) A copy of the governor’s written determination stating that contracting for
10 legal services is cost-effective and in the public interest and including all of the
11 following:

12 1. A finding that the attorney general’s office lacks sufficient and appropriate
13 legal and financial resources, which necessitates the need to contract for the legal
14 services.

15 2. The amount of time and labor required to perform the legal services,
16 including the novelty, complexity, and difficulty of the legal issues involved and the
17 required skill.

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

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

21 (c) Notice of the amount of any amount paid under a contract entered into under
22 this section during the period beginning 15 days after payment is made and ending
23 365 days after the payment is made.

