



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 105
[2013 Assembly Bill 27]

**Contracts for Legal Services on
Contingent Fee Basis**

2013 Wisconsin Act 105 provides that an executive branch agency may not contract for legal services on a contingent fee basis, unless 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 and the other requirements in the Act, described below, are satisfied.

Written Determination

Under the Act, the prohibition on contracting for legal services for the state on a contingent fee basis does not apply if the Governor makes a written determination that such contracting is cost-effective and in the public interest. In the written determination, the Governor must include all of the following: (1) a finding that the Attorney General's office lacks sufficient and appropriate legal and financial resources, which necessitates the need to contract for the legal services; (2) the estimated 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 venue in which the litigation would likely occur; and (4) the amount of experience with similar legal issues or cases needed for the particular type of legal services to be provided.

Submission of Bids

The Act provides that 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, the Governor must request the Department of Administration (DOA) to invite bids to be submitted. DOA must invite bids and ensure that the notice of the bidding process contains any pertinent requirements in the Act. Following the bidding process, the DOA Secretary must recommend a responsible bidder to the Governor, who must make the final determination. The Governor may determine that inviting bids is not feasible and the Governor must set forth the basis for this determination in writing.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

Limits on Contingency Fees

The Act places limits on contingency fees that can be provided under a contingency fee contract. Specifically, no contract may provide an aggregate contingency fee excluding reasonable costs and expenses, as determined by the court with jurisdiction over the action, that is more than any of the following:

- If the recovery is less than \$10 million, 25% of the recovery.
- If the recovery is at least \$10 million but less than \$15 million, the sum of \$2,500,000 and 20% of the amount by which the recovery exceeds \$10 million.
- If the recovery is at least \$15 million but less than \$20 million, the sum of \$3,500,000 and 15% of the amount by which the recovery exceeds \$15 million.
- If the recovery is at least \$20 million but less than \$25 million, the sum of \$4,250,000 and 10% of the amount by which the recovery exceeds \$20 million.
- If the recovery is at least \$25 million, the sum of \$4,750,000 and 5% of the amount by which the recovery exceeds \$25 million.

Further, the aggregate contingency fee for one action may not exceed \$30 million, excluding reasonable costs and expenses as determined by the court with jurisdiction over the action, without regard to the 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.

Information Posted on the Internet

The Act requires the Governor to post, on the Internet site maintained by the Government Accountability Board under s. 16.753, Stats., the following information: (1) a copy of any contingency fee contract and the corresponding written determination, described above, during the period beginning five days after the contract is entered into and ending when the contract and all of its extensions expire or are terminated; and (2) notice of the amount of any contingency fees paid under the contract during the period beginning 15 days after payment is made and ending 365 days after the payment is made.

Attorney Records

Under the Act, an attorney who is party to a contingency fee contract must, during the period beginning from the date the contract is entered into until four 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 legal services under the contract; (2) make all records available, upon request, for inspection and copying as provided under the state Open Records Law; and (3) maintain current records detailing the time, in increments no greater than 1/10th 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.

Governor's Report to Legislature

The Act requires the Governor to annually, no later than February 1, submit a report to the Legislature that describes the use of contingency fee contracts. The report must include all contracts for contingency fees entered into, and all contracts that were active, in the year prior to the submittal of the

report. For each contract, the report must include the name of the attorney and the attorney's law firm with which the agency has contracted; the nature and status of the legal matter under contract; the name of the parties to the legal matter; the amount of any recovery; and the amount of any contingency fee paid. Lastly, the report must include copies of the Governor's written determinations, described above.

Effective date: December 15, 2013. The Act first applied to contracts entered into, renewed, or extended on December 15, 2013.

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