

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 1264, Page 1, Section A, Line 2, by
2 inserting after all of said section and line the following:

3
4 "34.378. 1. The state shall not enter into a contingency fee contract with a private attorney
5 unless the attorney general makes a written determination prior to entering into such a contract that
6 contingency fee representation is both cost effective and in the public interest. Any written
7 determination shall include specific findings for each of the following factors:

8 (1) Whether there exists sufficient and appropriate legal and financial resources within the
9 attorney general's office to handle the matter;

10 (2) The time and labor required; the novelty, complexity, and difficulty of the questions
11 involved; and the skill requisite to perform the attorney services properly;

12 (3) The geographic area where the attorney services are to be provided; and

13 (4) The amount of experience desired for the particular kind of attorney services to be
14 provided and the nature of the private attorney's experience with similar issues or cases.

15 2. If the attorney general makes the determination described in subsection 1 of this section,
16 the attorney general shall request written proposals from private attorneys to represent the state,
17 unless the attorney general determines that requesting proposals is not feasible under the
18 circumstances and sets forth the basis for this determination in writing. If a request for proposals is
19 issued, the attorney general shall choose the lowest and best bid or request that the office of
20 administration establish an independent panel to evaluate the proposals and choose the lowest and
21 best bid.

22 3. The state shall not enter into a contract for contingency fee attorney services unless the
23 following requirements are met throughout the contract period and any extensions to the contract:

24 (1) The government attorneys shall retain complete control over the course and conduct of
25 the case;

26 (2) A government attorney with supervisory authority shall oversee the litigation;

27 (3) The government attorneys shall retain veto power over any decisions made by outside
28 counsel;

29 (4) A government attorney with supervisory authority for the case shall attend all settlement
30 conferences; and

31 (5) Decisions regarding settlement of the case shall be reserved exclusively to the discretion
32 of the attorney general.

33 4. The attorney general shall develop a standard addendum to every contract for contingent
34 fee attorney services that shall be used in all cases, describing in detail what is expected of both the
35 contracted private attorney and the state, including, without limitation, the requirements listed in
36 subsection 3 of this section.

Action Taken _____ Date _____

1 5. Copies of any executed contingency fee contract and the attorney general's written
2 determination to enter into a contingency fee contract with the private attorney shall be posted on
3 the attorney general's website for public inspection within five business days after the date the
4 contract is executed and shall remain posted on the website for the duration of the contingency fee
5 contract, including any extensions or amendments to the contract. Any payment of contingency fees
6 shall be posted on the attorney general's website within fifteen days after the payment of such
7 contingency fees to the private attorney and shall remain posted on the website for at least three
8 hundred sixty-five days.

9 6. Any private attorney under contract to provide services to the state on a contingency fee
10 basis shall, from the inception of the contract until at least four years after the contract expires or is
11 terminated, maintain detailed current records, including documentation of all expenses,
12 disbursements, charges, credits, underlying receipts and invoices, and other financial transactions
13 that concern the provision of such attorney services. The private attorney shall maintain detailed
14 contemporaneous time records for the attorneys and paralegals working on the matter in increments
15 of no greater than one-tenth of an hour and shall promptly provide these records to the attorney
16 general, upon request. Any request under chapter 610 for inspection and copying of such records
17 shall be served upon and responded to by the attorney general's office.

18 7. Except as otherwise provided in subsection 8 of this section, a retained private attorney is
19 not entitled to a contingency fee, exclusive of any costs and expenses described in subsection 8 of
20 this section, of more than:

21 (1) Fifteen percent of that portion of any amount recovered that is ten million dollars or
22 less;

23 (2) Ten percent of that portion of any amount recovered that is more than ten million dollars
24 but less than or equal to fifteen million dollars;

25 (3) Five percent of that portion of any amount recovered that is more than fifteen million
26 dollars but less than or equal to twenty million dollars; and

27 (4) Two percent of that portion of any amount recovered that is more than twenty million
28 dollars.

29 8. The total fee payable to all retained private attorneys in any matter that is the subject of a
30 contingency fee contract shall not exceed ten million dollars, exclusive of any costs and expenses
31 provided by the contract and actually incurred by the retained private attorneys, regardless of the
32 number of actions or proceedings or the number of retained private attorneys involved in the matter.

33 9. A contingency fee:

34 (1) Is payable only from moneys that are actually received under a judgment or settlement
35 agreement; and

36 (2) Shall not be based on any amount attributable to a fine or civil penalty.

37 10. As used in this section, "amount recovered" does not include any moneys paid as costs.

38 11. By February first of each year, the attorney general shall submit a report to the president
39 pro tem of the senate and the speaker of the house of representatives describing the use of
40 contingency fee contracts with private attorneys in the preceding calendar year. At a minimum, the
41 report shall:

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

45 (a) The name of the private attorney with whom the department has contracted, including
46 the name of the attorney's law firm;

47 (b) The nature and status of the legal matter;

48 (c) The name of the parties to the legal matter;

- 1 (d) The amount of any recovery; and
- 2 (e) The amount of any contingency fee paid;
- 3 (2) Include copies of any written determinations made under subsections 1 and 2 of this
- 4 section."; and
- 5
- 6 Further amend said bill by amending the title, enacting clause, and intersectional references
- 7 accordingly.