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SENATE BILL 404

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO THE ATTORNEY GENERAL; AUTHORIZING THE ATTORNEY
GENERAL TO ENTER INTO CONTINGENT FEE CONTRACTS UNDER CERTAIN
CONDITIONS; CREATING A FUND; PROHIBITING CERTAIN CONTRIBUTIONS
BY CONTRACTORS OR POTENTIAL CONTRACTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new Section 8-5-2.2 NMSA 1978 is enacted to
read:

"8-5-2.2. [NEW MATERIAL] CONTINGENCY FEE CONTRACTS
AUTHORIZED--SUSPENSE FUND CREATED.--

A. If necessary to perform the duties of the
attorney general, the attorney general may, pursuant to the
provisions of this section, enter into contingency fee
contracts with private attorneys to recover, through litigation
or court-approved settlements, money due to the state or any of

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1 its departments, agencies, officers, instrumentalities,
2 institutions or political subdivisions.

3 B. The amount due to private attorneys under a
4 contingent fee contract shall be negotiated between the
5 parties; provided that, exclusive of reimbursement for
6 reasonable costs and expenses and irrespective of the number of
7 lawsuits filed or the number of private attorneys retained
8 under the contract, the total amount payable to private
9 attorneys shall not exceed the following amounts:

10 (1) if the total amount recovered is less than
11 ten million dollars (\$10,000,000), the fee shall not exceed
12 twenty-five percent of the amount recovered;

13 (2) if the total amount recovered is equal to
14 or greater than ten million dollars (\$10,000,000) but less than
15 fifteen million dollars (\$15,000,000), the fee shall not exceed
16 two million five hundred thousand dollars (\$2,500,000) plus
17 twenty percent of the amount recovered over ten million dollars
18 (\$10,000,000);

19 (3) if the total amount recovered is equal to
20 or greater than fifteen million dollars (\$15,000,000) but less
21 than twenty million dollars (\$20,000,000), the fee shall not
22 exceed three million five hundred thousand dollars (\$3,500,000)
23 plus fifteen percent of the amount recovered over fifteen
24 million dollars (\$15,000,000);

25 (4) if the total amount recovered is equal to

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1 or greater than twenty million dollars (\$20,000,000) but less
2 than twenty-five million dollars (\$25,000,000), the fee shall
3 not exceed four million two hundred fifty thousand dollars
4 (\$4,250,000) plus ten percent of the amount recovered over
5 twenty million dollars (\$20,000,000); and

6 (5) if the total amount recovered is equal to
7 or greater than twenty-five million dollars (\$25,000,000), the
8 fee shall not exceed four million seven hundred fifty thousand
9 dollars (\$4,750,000) plus five percent of the amount recovered
10 over twenty-five million dollars (\$25,000,000); except that,
11 regardless of the amount recovered, the total fee, exclusive of
12 reimbursement for costs and expenses, shall not exceed twenty
13 million dollars (\$20,000,000).

14 C. Each contingent fee contract shall include a
15 provision that mandates the termination of the contract with no
16 additional payments due to the contractor if the contractor or
17 any partner, associate or employee of the contractor is found
18 guilty of violating the provisions of Section 1-19-34.8 NMSA
19 1978 or has been assessed a civil penalty for violating the
20 provisions of that section.

21 D. The "attorney general suspense fund" is created
22 in the state treasury. Each contingent fee contract shall
23 provide that all amounts received by the contractor as
24 satisfaction of a claim shall be transferred to the attorney
25 general and deposited into the suspense fund. Upon the

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1 direction of the attorney general, the compensation due to the
2 contractor shall be disbursed from the suspense fund to the
3 contractor. After a disbursement to a contractor, the balance
4 of each deposit shall be distributed to the appropriate
5 permanent fund or other appropriate fund from which the loss
6 occurred that originated the claim pursued by the contractor."

7 SECTION 2. A new section of the Campaign Reporting Act,
8 Section 1-19-34.8 NMSA 1978, is enacted to read:

9 "1-19-34.8. [NEW MATERIAL] CERTAIN CONTRIBUTIONS TO
10 CANDIDATES FOR ATTORNEY GENERAL PROHIBITED--CERTAIN CONTRACTS
11 PROHIBITED.--

12 A. An attorney that has entered into a contingent
13 fee contract with the attorney general pursuant to Section
14 8-5-2.2 NMSA 1978 or who has responded or intends to respond to
15 a request for proposals for such a contract shall not make a
16 contribution to or solicit contributions on behalf of:

17 (1) a candidate for nomination or election to
18 the office of attorney general or a campaign committee
19 established by the candidate; or

20 (2) a political committee:

21 (a) established by the attorney general
22 or an agent of the attorney general or in consultation with or
23 at the request of the attorney general or an agent of the
24 attorney general; or

25 (b) controlled by the attorney general

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1 or an agent of the attorney general to aid or promote the
2 nomination or election of any candidate to a state office.

3 B. A candidate or political committee described in
4 Subsection A of this section shall not accept or solicit a
5 contribution prohibited by that subsection.

6 C. As used in this section, "attorney" includes a
7 private attorney; a private business entity, the primary
8 business of which is the practice of law; or any partner,
9 associate or employee of such an attorney or business entity."