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HOUSE BILL 386

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

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO PROCUREMENT; ENACTING THE TRANSPARENCY IN PRIVATE
ATTORNEY CONTINGENCY CONTRACTS ACT.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Transparency in Private Attorney Contingency Contracts Act".

SECTION 2. DEFINITIONS.--As used in the Transparency in
Private Attorney Contingency Contracts Act:

A. "government attorney" means an attorney employed
as a staff attorney by the state or a political subdivision
thereof;

B. "political subdivision" means any political
subdivision within the state, including officers, departments,
boards, commissions, divisions, bureaus, councils and units of
organization, however designated, of the executive branch of

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1 the political subdivision, and any of its agents;

2 C. "private attorney" means any private attorney or
3 law firm; and

4 D. "state" means the state of New Mexico, including
5 officers, departments, boards, commissions, divisions, bureaus,
6 councils and units of organization, however designated, of the
7 executive branch of state government, and any of its agents.

8 SECTION 3. PROCUREMENT.--

9 A. The state or a political subdivision shall not
10 enter into a contingency fee contract with a private attorney
11 unless the attorney general or the chief legal officer for the
12 political subdivision makes a written determination prior to
13 entering into such a contract that contingency fee
14 representation is both cost-effective and in the public
15 interest. Any written determination shall include specific
16 findings regarding the following factors:

17 (1) whether there exist sufficient and
18 appropriate legal and financial resources within the office of
19 the attorney general or of the chief legal officer to handle
20 the matter;

21 (2) the time and labor required;

22 (3) the novelty, complexity and difficulty of
23 the questions involved;

24 (4) the skill requisite to perform the legal
25 services properly;

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1 (5) the geographic area where the legal
2 services are to be provided; and

3 (6) the amount of experience desired for the
4 particular kind of legal services to be provided and the nature
5 of the private attorney's experience with similar issues or
6 cases.

7 B. If the attorney general or chief legal officer
8 of a political subdivision makes the determination set forth in
9 Subsection A of this section, the attorney general or chief
10 legal officer shall request proposals from private attorneys to
11 represent the government on a contingency fee basis unless the
12 attorney general or chief legal officer determines that
13 requesting proposals is not feasible under the circumstances
14 and sets forth the basis for such determination in writing.

15 C. The state or a political subdivision shall not
16 enter into a contingency fee contract that provides for the
17 private attorney to receive an aggregate contingency fee in
18 excess of:

19 (1) twenty-five percent of any damages
20 recovered up to ten million dollars (\$10,000,000); plus

21 (2) twenty percent of any portion of any
22 damages recovered greater than ten million dollars
23 (\$10,000,000) up to fifteen million dollars (\$15,000,000); plus

24 (3) fifteen percent of any portion of any
25 damages recovered greater than fifteen million dollars

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1 (\$15,000,000) up to twenty million dollars (\$20,000,000); plus
2 (4) ten percent of any portion of any damages
3 recovered greater than twenty million dollars (\$20,000,000) up
4 to twenty-five million dollars (\$25,000,000); plus

5 (5) five percent of any portion of any damages
6 recovered greater than twenty-five million dollars
7 (\$25,000,000). In no event shall the aggregate contingency fee
8 exceed fifty million dollars (\$50,000,000) exclusive of
9 reasonable costs and expenses, irrespective of the number of
10 actions filed or the number of private attorneys retained to
11 achieve the recovery.

12 D. The state or a political subdivision and the
13 private attorney shall comply with the following requirements
14 throughout the course of the contract for contingency fee
15 representation:

16 (1) government attorneys shall retain complete
17 control over the course and conduct of the action;

18 (2) a government attorney with supervisory
19 authority shall be personally involved in overseeing the
20 action;

21 (3) government attorneys shall retain veto
22 power over any decisions made by contingency fee counsel;

23 (4) any defendant that is the subject of such
24 an action may contact the lead government attorneys directly,
25 without having to confer with contingency fee counsel;

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1 (5) a government attorney with supervisory
2 authority for the matter shall attend and participate in all
3 settlement conferences; and

4 (6) decisions regarding settlement of the
5 action shall be reserved exclusively to the discretion of
6 government attorneys and the state or political subdivision.

7 E. The attorney general or chief legal officer of a
8 political subdivision shall develop a standard addendum to
9 every contract for contingency fee attorney services that shall
10 be used in all actions, describing in detail what is expected
11 of both the contracted private attorney and the state or
12 political subdivision, including the requirements set forth in
13 Paragraphs (1) through (6) of Subsection D of this section.
14 Any contract that does not include such an addendum is against
15 public policy and is void and unenforceable.

16 F. Copies of any executed contingency fee contract
17 and the written determination to enter into a contingency fee
18 contract with the private attorney pursuant to Subsection A of
19 Section 3 of the Transparency in Private Attorney Contingency
20 Contracts Act shall be posted on the web site maintained by the
21 attorney general or the web site maintained by the executive
22 branch of the political subdivision for public inspection
23 within five business days after the date on which the contract
24 is executed and shall remain posted on the web site for the
25 duration of the contingency fee contract, including any

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1 extensions or amendments thereto. Any payment of contingency
2 fees shall be posted on the web site within fifteen days after
3 the payment of the contingency fees to the private attorney and
4 shall remain posted on the web site for at least three hundred
5 sixty-five days thereafter.

6 G. Any private attorney under contract to provide
7 services to the state or a political subdivision on a
8 contingency fee basis shall, from the inception of the contract
9 until at least four years after the contract expires or is
10 terminated, maintain detailed current records, including
11 documentation of all expenses, disbursements, charges, credits,
12 underlying receipts and invoices and other financial
13 transactions that concern the provision of such attorney
14 services. The private attorney shall make all such records
15 available for inspection and copying upon request in accordance
16 with Inspection of Public Records Act. In addition, the
17 private attorney shall maintain detailed contemporaneous time
18 records for the attorneys and legal assistants working on the
19 matter in increments of no greater than one-tenth of an hour
20 and shall promptly provide these records to the attorney
21 general or chief legal officer of the political subdivision
22 upon request.

23 H. By the first day of February of each year, the
24 attorney general shall submit a report to the president pro
25 tempore of the senate and the speaker of the house of

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1 representatives describing the use of contingency fee contracts
2 with private attorneys in the preceding calendar year. The
3 chief legal officers of any political subdivisions that entered
4 into such contracts shall submit a report to the head of the
5 political subdivision's legislative governing body. At a
6 minimum, such reports shall:

7 (1) identify all new contingency fee contracts
8 entered into during the preceding calendar year and all
9 previously executed contingency fee contracts that remain
10 current during any part of the year, and for each contract
11 describe:

12 (a) the name of the private attorney
13 with whom the state or political subdivision has contracted,
14 including the name of the attorney's law firm;

15 (b) the nature and status of the legal
16 matter;

17 (c) the name of the parties to the
18 action;

19 (d) the amount of any recovery; and

20 (e) the amount of any contingency fee
21 paid; and

22 (2) include copies of any written
23 determinations made pursuant to Subsection A of this section
24 during the preceding calendar year.

25 SECTION 4. STANDING.--Notwithstanding any other provision

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1 of law, persons who may file suit to enforce the provisions of
2 the Transparency in Private Attorney Contingency Contracts Act
3 include any party to a contract for contingency fee
4 representation pursuant to that act and any party to the action
5 for which the state or political subdivision has retained or is
6 seeking to retain contingency fee representation.

7 SECTION 5. NO EXPANSION OF AUTHORITY.--Nothing in the
8 Transparency in Private Attorney Contingency Contracts Act
9 shall be construed to expand the authority of any state agency
10 or state agent, or any political subdivision or its agent, to
11 enter into contracts where no such authority previously
12 existed.

13 SECTION 6. SEVERABILITY.--If any part of the Transparency
14 in Private Attorney Contingency Contracts Act is held invalid,
15 the remainder or its application to other situations or persons
16 shall not be affected.

17 SECTION 7. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2011.