

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 386

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

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] CONTINGENT 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 contingent fee contracts
with private attorneys to recover, through litigation or court-
approved settlements, money due to the state or any of its

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underscored material = new
~~[bracketed material] = delete~~

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

3 B. The amount due to private attorneys pursuant to
4 a 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 pursuant to 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 E. All contingent fee contracts shall be subject to
8 the provisions of the Procurement Code regarding competitive
9 sealed proposals. No contingent fee contract shall be procured
10 pursuant to the provisions of Section 13-1-126, 13-1-127 or
11 13-1-129 NMSA 1978.

12 F. Copies of any executed contingent fee contract
13 shall be posted on the web site maintained by the attorney
14 general for public inspection within five business days after
15 the date on which the contract is executed and shall remain
16 posted on the web site for the duration of the contingent fee
17 contract, including any extensions or amendments thereto. Any
18 payment of contingency fees shall be posted on the web site
19 within fifteen days after the payment of the contingency fees
20 to the private attorney and shall remain posted on the web site
21 for at least three hundred sixty-five days thereafter.

22 G. By the first day of February of each year, the
23 attorney general shall submit a report to the president pro
24 tempore of the senate and the speaker of the house of
25 representatives describing the use of contingent fee contracts

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1 with private attorneys in the preceding calendar year. At a
 2 minimum, such reports shall identify all new contingent fee
 3 contracts entered into during the preceding calendar year and
 4 all previously executed contingent fee contracts that remain
 5 current during any part of the year, and for each contract
 6 describe:

7 (1) the name of the private attorney with whom
 8 the attorney general has contracted, including the name of the
 9 attorney's law firm;

10 (2) the nature and status of the legal matter;

11 (3) the name of the parties to the action;

12 (4) the amount of any recovery; and

13 (5) the amount of any contingency fee paid."

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

16 "1-19-34.8. [NEW MATERIAL] CERTAIN CONTRIBUTIONS TO
 17 CANDIDATES FOR ATTORNEY GENERAL PROHIBITED--CERTAIN CONTRACTS
 18 PROHIBITED.--

19 A. An attorney that has entered into a contingent
 20 fee contract with the attorney general pursuant to Section
 21 8-5-2.2 NMSA 1978 or who has responded or intends to respond to
 22 a request for proposals for such a contract shall not make a
 23 contribution to or solicit contributions on behalf of:

24 (1) a candidate for nomination or election to
 25 the office of attorney general or a campaign committee

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1 established by the candidate; or

2 (2) a political committee:

3 (a) established by the attorney general
4 or an agent of the attorney general or in consultation with or
5 at the request of the attorney general or an agent of the
6 attorney general; or

7 (b) controlled by the attorney general
8 or an agent of the attorney general to aid or promote the
9 nomination or election of any candidate to a state office.

10 B. A candidate or political committee described in
11 Subsection A of this section shall not accept or solicit a
12 contribution prohibited by that subsection.

13 C. As used in this section, "attorney" includes a
14 private attorney; a private business entity, the primary
15 business of which is the practice of law; or any partner,
16 associate or employee of such an attorney or business entity."