

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend _____ SS/House _____ Bill No. 1531 , Page 1 , Section Title , Line 3 ,

2 by striking the words "interpleading in"; and

3 Further amend said bill and page, section A, line 3 of said
4 page, by inserting immediately after said line the following:

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

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

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

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

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

23 2. If the attorney general makes the determination

1 described in subsection 1 of this section, the attorney general
2 shall request written proposals from private attorneys to
3 represent the state, unless the attorney general determines that
4 requesting proposals is not feasible under the circumstances and
5 sets forth the basis for this determination in writing. If a
6 request for proposals is issued, the attorney general shall
7 choose the lowest and best bid or request that the office of
8 administration establish an independent panel to evaluate the
9 proposals and choose the lowest and best bid.

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

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

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

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

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

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

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

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

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

27 7. Except as otherwise provided in subsection 8 of this
28 section, a retained private attorney shall not be entitled to a
29 fee, exclusive of any costs and expenses described in subsection

1 8 of this section, of more than:

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

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

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

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

12 8. The total fee payable to all retained private attorneys
13 in any matter that is the subject of a contingency fee contract
14 shall not exceed ten million dollars, exclusive of any costs and
15 expenses provided by the contract and actually incurred by the
16 retained private attorneys, regardless of the number of actions
17 or proceedings or the number of retained private attorneys
18 involved in the matter.

19 9. A contingency fee:

20 (1) Shall be payable only from moneys that are actually
21 received under a judgment or settlement agreement; and

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

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

26 11. By February first of each year, the attorney general
27 shall submit a report to the president pro tem of the senate and
28 the speaker of the house of representatives describing the use of
29 contingency fee contracts with private attorneys in the preceding

1 calendar year. At a minimum, the report shall:

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

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

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

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

11 (d) The amount of any recovery; and

12 (e) The amount of any contingency fee paid;

13 (2) Include copies of any written determinations made under
14 subsections 1 and 2 of this section."; and

15 Further amend the title and enacting clause accordingly.
16