

1 Office.

2 (2) "Private attorney" means any attorney who is neither a
3 full-time Assistant Attorney General on the Attorney General's
4 staff nor a full-time employee of another state agency.

5 (3) "State" means the State of West Virginia, including state
6 officers, departments, boards, commissions, divisions, bureaus,
7 councils, and units of organization, however designated, of the
8 executive branch of state government, and any of its agents.

9 (b) The Attorney General may appoint such deputy or assistant
10 attorneys general as may be necessary to properly perform the
11 duties of ~~his~~ the office. The total compensation of all such
12 assistants shall be within the limits of the amounts appropriated
13 by the Legislature for personal services. All deputies or assistant
14 attorneys general so appointed shall serve at the pleasure of the
15 Attorney General and shall perform such duties as ~~he may require~~
16 required of them.

17 All laws or parts of laws inconsistent with the provisions
18 hereof are hereby amended to be in harmony with the provisions of
19 this section.

20 (c) The state may not enter into a contingency fee contract,
21 or any other legal arrangement, with a private attorney unless the
22 Attorney General makes a written determination prior to entering
23 into such a contract that the legal representation is both
24 cost-effective and in the best interest of the public. Any written

1 determination shall include specific findings for each of the
2 following factors:

3 (1) Whether sufficient and appropriate legal and financial
4 resources exist within the Attorney General's office to handle the
5 matter.

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

9 (3) The geographic area where the attorney services are to be
10 provided.

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

14 (d) If the Attorney General makes the determination described
15 in subsection (c), the Attorney General shall request proposals
16 from private attorneys to represent the state on a contingency fee
17 basis, or any other basis, unless the Attorney General makes a
18 written determination that one of the following factors applies:

19 (1) An emergency situation exists that requires time-sensitive
20 legal services that cannot be adequately provided by the Office of
21 Attorney General, and for which insufficient time exists to
22 complete the customary competitive bidding process.

23 (2) An appointment, or the continuation of an appointment, is
24 necessary to avoid disruption in pending legal matters by allowing

1 previously appointed outside counsel to continue providing legal
2 representation.

3 (3) The legal services will be most effectively handled by
4 preapproved attorneys who have already completed the bidding
5 process referenced in subsection (h).

6 (e) Any Requests for Proposal shall be posted to the website
7 of the Office of Attorney General, and the time period under which
8 the proposal is open should be clearly stated.

9 (f) When soliciting proposals from private attorneys to
10 represent the state on a contingency-fee basis, or any other basis,
11 the Attorney General shall consider the following factors when
12 determining the most competitive proposal for legal services, and
13 make a written determination as to the application of these
14 factors, prior to entering into any contract for outside legal
15 services:

16 (1) Whether the private attorneys possess the requisite skills
17 and expertise needed to handle the legal matters in question;

18 (2) Whether the private attorneys possess requisite staffing
19 and support to handle the scope of the litigation or matter;

20 (3) Whether the private attorneys, or any members of the
21 private attorneys' law firm, have been subject to reprimand by the
22 West Virginia State Bar, or other entities, for unethical conduct;

23 (4) Whether the private attorneys have been peer rated, and if
24 so, what peer ratings they have received, along with any other

1 recognitions or awards for legal services;

2 (5) The estimated fees, costs and expenses of the private
3 attorneys to perform the legal services requested;

4 (6) The willingness of the private attorneys to enter into
5 alternative billing arrangements;

6 (7) Whether the private attorneys are in compliance with all
7 applicable laws of the State of West Virginia; and

8 (8) Any such other relevant factors as may be identified by
9 the Attorney General.

10 (g) If, after soliciting proposals for legal services, the
11 Attorney General determines that proposals received are
12 insufficient based on an application of the factors set forth in
13 subsection (f), the Attorney General may solicit additional
14 proposals pursuant to subsections (c), (d) and (f).

15 (h) In order to address time sensitive or emergency legal
16 matters that require the use of outside counsel, but do not allow
17 sufficient time for completion of the competitive bidding process
18 set forth in subsections (c), (d) and (f), the Office of Attorney
19 General may institute a prebidding process for approving lawyers or
20 law firms to perform legal work on behalf of the state in
21 accordance with the following factors:

22 (1) Private attorneys may be preapproved to perform outside
23 counsel work in specific areas of law provided that they have gone
24 through a request for proposal and competitive bidding process as

1 set forth in subsections (d) and (f).

2 (2) In instances in which more than one lawyer or law firm has
3 been preapproved for the provision of outside counsel legal
4 services in an area of law, the Office of Attorney General shall
5 perform an expedited, case-specific analysis using the factors set
6 forth in subsection (f) to determine which lawyer or law firm would
7 be better suited to represent the state on a particular legal
8 matter.

9 (3) The office shall list any preapproved attorneys by
10 practice area on the Attorney General's website.

11 (i) The state may not enter into a contract for private legal
12 services unless the following requirements are met throughout the
13 contract period and any extensions thereof:

14 (1) The Attorney General, or his or her designated employee(s)
15 involved in the case, retain control over the course and conduct
16 of the case.

17 (2) The Attorney General, or his or her designated employee(s)
18 with supervisory authority, is personally involved in overseeing
19 the litigation.

20 (3) The Attorney General, or his or her designated employee(s)
21 involved in the case, retains veto power over any decisions made
22 by outside counsel.

23 (4) Decisions regarding settlement of the case are reserved
24 exclusively to the discretion of the Attorney General, his or her

1 designated employee(s) and the state or other client entity.

2 (j) The state may not enter into a contingency fee contract
3 that provides for the private attorney to receive an aggregate
4 contingency fee in excess of:

5 (1) Twenty-five percent of the first \$10 million recovered;
6 plus

7 (2) Twenty percent of any portion of the recovery between \$10
8 million and \$15 million; plus

9 (3) Fifteen percent of any portion of the recovery between \$15
10 million and \$20 million; plus

11 (4) Ten percent of any portion of the recovery between \$20
12 million and \$25 million; plus

13 (5) Five percent of any portion of the recovery exceeding \$25
14 million.

15 In no event may the aggregate contingency fee for any legal
16 matter exceed \$50 million, exclusive of reasonable costs and
17 expenses, and irrespective of the number of lawsuits filed or the
18 number of private attorneys retained to achieve the recovery. A
19 contingency fee may not be based on penalties or fines awarded or
20 any amounts attributable to penalties or fines.

21 (k) The Attorney General shall develop a standard addendum to
22 every contract for outside counsel attorney services that shall be
23 used in all cases, describing in detail what is expected of both
24 the contracted private attorney and the Attorney General's Office,

1 including, without limitation, the requirements listed in
2 (i)(1)-(4), inclusive.

3 (l) Subject to the provisions of subsection (n), the Attorney
4 General's written determination to enter into a contingency fee
5 contract, or any other legal contract, with a private attorney
6 shall be posted on the Attorney General's website for public
7 inspection within fifteen business days after the date the contract
8 is executed and shall remain posted on the website for the duration
9 of the contract, including any extensions or amendments thereto.
10 Any payment of contingency fees shall be posted on the Attorney
11 General's website within thirty days after the payment of such fees
12 to the private attorney and shall remain posted on the website for
13 at least three hundred sixty-five days thereafter.

14 (m) Any private attorney under contract to provide services to
15 the state shall, from the inception of the contract until at least
16 four years after the contract expires or is terminated, maintain
17 detailed current records, including documentation of all expenses,
18 disbursements, charges, credits, underlying receipts and invoices,
19 and other financial transactions that concern the provision of such
20 legal services. In conjunction with the Attorney General's Office,
21 the private attorney shall make all such records that are not
22 covered by the attorney-client privilege or otherwise confidential
23 in nature available for inspection and copying upon request in
24 accordance with the West Virginia Freedom of Information Act, WV

1 Code §29B-1-1, et seq. In addition, the private attorney shall
2 maintain detailed contemporaneous time records for the attorneys
3 and paralegals working on the matter for a period of at least four
4 years, and shall promptly provide these records to the Attorney
5 General upon request.

6 (n) The Attorney General retains the right to temporarily
7 waive the disclosure requirements set forth in subsection (l) upon
8 making a written determination that:

9 (1) A waiver is necessary to protect attorney-client or
10 privileged information; or

11 (2) Immediate disclosure of the existence of outside counsel,
12 or any other sensitive information, could compromise the
13 initiation, handling, or conclusion of any investigation or case
14 matter handled by the Office of Attorney General.

15 Once any risks to the attorney-client privilege or
16 confidential work product are no longer present, the Office of
17 Attorney General shall make any and all suspended disclosures as
18 soon as possible, and all subsequent disclosures in accordance with
19 the time frame and manner set forth by subsection (l).

20 (o) Nothing in this section expands the authority of any
21 state agency or state agent to enter into contracts where no such
22 authority previously existed.

23 **§5-3-4. Annual report to Governor, President of the Senate and**
24 **Speaker of the House.**

1 (a) The Attorney General shall annually, on or before November
2 1, deliver to the Governor, President of the Senate and Speaker of
3 the House a report of detailing:

4 (1) The state and condition of the several causes, in which
5 the state is a party, pending in courts mentioned in section two of
6 this article.

7 (2) The use of any contingency fee contracts with private
8 attorneys in the preceding year. At a minimum, the report shall:

9 (A) Identify all new contingency fee contracts entered into
10 during the year and all previously executed contingency fee
11 contracts that remain current during any part of the year, and for
12 each contract describe:

13 (i) The name of the private attorney with whom the state has
14 contracted, including the name of the attorney's law firm;

15 (ii) The nature and status of the legal matter;

16 (iii) The name of the parties to the legal matter;

17 (iv) The amount of the recovery; and

18 (v) The amount of any contingency fee paid.

19 (B) Include copies of any written determinations made under
20 subsections (c) and (d) of section three of this article during the
21 year.

22 (b) The Attorney General's annual report shall also be posted
23 on the Attorney General's website within thirty days of submitting
24 the report to the Governor, President of the Senate, Speaker of the

1 House, and shall remain posted on the website for at least two
2 years thereafter.

NOTE: The purpose of this bill is to clarify the powers of the Attorney General to enter into contracts for legal services with attorneys outside the Attorney General's office.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.