

**ATTORNEY GENERAL CONTINGENT FEE CONTRACTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill enacts provisions relating to contingent fee contracts between the attorney general and private attorneys.

**Highlighted Provisions:**

This bill:

- ▶ imposes requirements on the attorney general related to entering into contingent fee contracts with private attorneys;
- ▶ places limits on the amount of contingent fees that can be paid under a contingent fee contract;
- ▶ imposes other requirements on contingent fee contracts between the attorney general and private attorneys; and
- ▶ makes conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-6a-106**, as last amended by Laws of Utah 2014, Chapter 196

ENACTS:



28 [67-5-33](#), Utah Code Annotated 1953

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30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **63G-6a-106** is amended to read:

32 **63G-6a-106. Procurement units with specific statutory procurement authority --**  
33 **Independent procurement authority.**

34 (1) A procurement unit with procurement authority under the following provisions has  
35 independent procurement authority to the extent of the applicable provisions and for the  
36 procurement items specified in the applicable provisions:

- 37 (a) Title 53B, State System of Higher Education;
- 38 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction  
39 and Management;
- 40 (c) Title 67, Chapter 5, Attorney General;
- 41 (d) Title 72, Transportation Code; and
- 42 (e) Title 78A, Chapter 5, District Court.

43 (2) Except as otherwise provided in Sections [63G-6a-105](#) and [63G-6a-107](#), a  
44 procurement unit shall conduct a procurement in accordance with this chapter.

45 (3) (a) The Department of Transportation may make rules governing the procurement  
46 of highway construction or improvement.

47 (b) The applicable rulemaking authority for a public transit district may make rules  
48 governing the procurement of a transit construction project or a transit improvement project.

49 (c) This Subsection (3) supersedes Subsections (1) and (2).

50 (4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision,  
51 interference, oversight, control, or involvement of the division or the chief procurement officer,  
52 but in accordance with the requirements of this chapter:

- 53 (i) engage in a standard procurement process;
- 54 (ii) procure an item under an exception, as provided in this chapter, to the requirement  
55 to use a standard procurement process; or
- 56 (iii) otherwise engage in an act authorized or required by this chapter.

57 (b) The procurement units to which Subsection (4)(a) applies are:

- 58 (i) a legislative procurement unit;

- 59 (ii) a judicial procurement unit;
- 60 (iii) an educational procurement unit;
- 61 (iv) a local government procurement unit;
- 62 (v) a conservation district;
- 63 (vi) a local building authority;
- 64 (vii) a local district;
- 65 (viii) a public corporation;
- 66 (ix) a special service district;
- 67 (x) a public transit district; and
- 68 (xi) a procurement unit referred to in Subsection (1), to the extent authorized in
- 69 Subsection (1).

70 (c) A procurement unit with independent procurement authority shall comply with the

71 requirements of this chapter.

72 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent

73 procurement authority may agree in writing with the division to extend the authority of the

74 division or the chief procurement officer to the procurement unit, as provided in the agreement.

75 (5) (a) The attorney general may, in accordance with the provisions of this chapter, but

76 without involvement by the division or the chief procurement officer:

77 (i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains

78 outside counsel under a contingent fee contract, as defined in that section; or

79 (ii) procure litigation support services, including retaining an expert witness.

80 (b) A procurement unit with independent procurement authority that is not represented

81 by the attorney general's office may, in accordance with the provisions of this chapter, but

82 without involvement by the division or the chief procurement officer:

83 (i) retain outside counsel; or

84 (ii) procure litigation support services, including retaining an expert witness.

85 (6) The state auditor's office may, in accordance with the provisions of this chapter, but

86 without involvement by the division or the chief procurement officer, procure audit services.

87 (7) The state treasurer may, in accordance with the provisions of this chapter, but

88 without involvement by the division or the chief procurement officer, procure:

89 (a) deposit and investment services; and

90 (b) services related to issuing bonds.

91 Section 2. Section **67-5-33** is enacted to read:

92 **67-5-33. Contingent fee contracts.**

93 (1) As used in this section:

94 (a) "Contingent fee case" means a legal matter for which legal services are provided  
95 under a contingent fee contract.

96 (b) "Contingent fee contract" means a contract for legal services under which the  
97 compensation for legal services is a percentage of the amount recovered in the legal matter for  
98 which the legal services are provided.

99 (c) "Government attorney" means the attorney general or an assistant attorney general.

100 (d) "Legal matter" means a legal issue or administrative or judicial proceeding within  
101 the scope of the attorney general's authority.

102 (e) "Private attorney" means an attorney or law firm in the private sector.

103 (f) "Securities class action" means an action brought as a class action alleging a  
104 violation of federal securities law, including a violation of the Securities Act of 1933, 15  
105 U.S.C. Sec. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.

106 (2) Subsections (3) through (10):

107 (a) do not apply to a contingent fee contract in existence before May 12, 2015, or to  
108 any renewal of a contingent fee contract in existence before that date;

109 (b) do not apply to a contingent fee contract with a private attorney that the attorney  
110 general hires to collect a debt that the attorney general is authorized by law to collect; and

111 (c) with respect to a contingent fee contract with a private attorney in a securities class  
112 action in which the state is appointed as lead plaintiff under Section 27(a)(3)(B)(i) of the  
113 Securities Act of 1933 or Section 21D(a)(3)(B)(i) of the Securities Exchange Act of 1934 or in  
114 which any state is a class representative:

115 (i) apply only with respect to the state's share of any judgment, settlement amount, or  
116 common fund; and

117 (ii) do not apply to attorney fees awarded to a private attorney for representing other  
118 members of a class certified under Rule 23 of the Federal Rules of Civil Procedure or  
119 applicable state class action procedural rules.

120 (3) (a) The attorney general may not enter into a contingent fee contract with a private

121 attorney unless the attorney general or the attorney general's designee makes a written  
122 determination that the contingent fee contract is cost-effective and in the public interest.

123 (b) A written determination under Subsection (3)(a) shall:

124 (i) be made before or within a reasonable time after the attorney general enters into a  
125 contingent fee contract; and

126 (ii) include specific findings regarding:

127 (A) whether sufficient and appropriate legal and financial resources exist in the  
128 attorney general's office to handle the legal matter that is the subject of the contingent fee  
129 contract; and

130 (B) the nature of the legal matter, unless information conveyed in the findings would  
131 violate an ethical responsibility of the attorney general or a privilege held by the state.

132 (4) The attorney general or attorney general's designee shall request qualifications from  
133 a private attorney being considered to provide services under a contingent fee contract unless  
134 the attorney general or attorney general's designee:

135 (a) determines that requesting qualifications is not feasible under the circumstances;  
136 and

137 (b) sets forth the basis for the determination under Subsection (4)(a) in writing.

138 (5) (a) The attorney general may not enter into a contingent fee contract with a private  
139 attorney that provides for the private attorney to receive a contingent fee, exclusive of  
140 reasonable costs and expenses, that exceeds:

141 (i) (A) 25% of the amount recovered, if the amount recovered is no more than  
142 \$10,000,000;

143 (B) 25% of the first \$10,000,000 recovered, plus 20% of the amount recovered that  
144 exceeds \$10,000,000, if the amount recovered is over \$10,000,000 but no more than  
145 \$15,000,000;

146 (C) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000  
147 recovered, plus 15% of the amount recovered that exceeds \$15,000,000, if the amount  
148 recovered is over \$15,000,000 but no more than \$20,000,000; and

149 (D) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000  
150 recovered, plus 15% of the next \$5,000,000 recovered, plus 10% of the amount recovered that  
151 exceeds \$20,000,000, if the amount recovered is over \$20,000,000; or

152 (ii) \$50,000,000.

153 (b) The amount of a contingent fee provided for in a contingent fee contract may  
154 exceed the limit described in Subsection (5)(a) only with the written consent of a majority of  
155 the governor, lieutenant governor, and state auditor.

156 (c) A contingent fee under a contingent fee contract may not be based on the  
157 imposition or amount of a penalty or civil fine.

158 (d) A contingent fee under a contingent fee contract may be paid only on amounts  
159 actually recovered by the state.

160 (6) (a) Throughout the period covered by a contingent fee contract, including any  
161 extension of the contingent fee contract:

162 (i) the private attorney that is a party to the contingent fee contract shall acknowledge  
163 that the government attorney retains complete control over the course and conduct of the  
164 contingent fee case for which the private attorney provides legal services under the contingent  
165 fee contract;

166 (ii) a government attorney with supervisory authority shall oversee any litigation  
167 involved in the contingent fee case;

168 (iii) a government attorney shall retain the authority to reject any decision made by the  
169 private attorney;

170 (iv) an opposing party in a contingent fee case may contact the lead government  
171 attorney directly, without having to confer with the private attorney;

172 (v) a government attorney with supervisory authority over the contingent fee case may  
173 attend all settlement conferences; and

174 (vi) the private attorney shall acknowledge that final approval regarding settlement of  
175 the contingent fee case is reserved exclusively to the discretion of the attorney general.

176 (b) Nothing in Subsection (6)(a) may be construed to limit the authority of the client  
177 regarding the course, conduct, or settlement of the contingent fee case.

178 (7) The attorney general may not enter into a contingent fee contract with a private  
179 attorney located outside the state unless the attorney general determines that:

180 (a) there is no private attorney in the state willing to provide legal services with respect  
181 to the legal matter;

182 (b) all private attorneys in the state with the necessary expertise or capability to provide

183 legal services with respect to the legal matter are prevented from providing legal services  
184 because of a professional ethical conflict;

185 (c) the attorney general is prevented from engaging a private attorney located in the  
186 state under rules of the controlling board regarding waiver of competitive selection; or

187 (d) there is no private attorney with an office in the state with the necessary experience,  
188 capability, or capacity required by the contemplated engagement.

189 (8) (a) Within five business days after entering into a contingent fee contract, the  
190 attorney general shall post on the attorney general's website:

191 (i) the contingent fee contract;

192 (ii) the written determination under Subsection (3) relating to that contingent fee  
193 contract; and

194 (iii) if applicable, any written determination made under Subsection (4)(b) relating to  
195 that contingent fee contract.

196 (b) The attorney general shall keep the contingent fee contract and written  
197 determination posted on the attorney general's website throughout the term of the contingent  
198 fee contract.

199 (9) A private attorney that enters into a contingent fee contract with the attorney  
200 general shall:

201 (a) from the time the contingent fee contract is entered into until three years after the  
202 contract expires, maintain detailed records relating to the legal services provided by the private  
203 attorney under the contingent fee contract, including documentation of all expenses,  
204 disbursements, charges, credits, underlying receipts and invoices, and other financial  
205 transactions that relate to the legal services provided by the private attorney; and

206 (b) maintain detailed contemporaneous time records for the attorneys and paralegals  
207 working on the contingent fee case and promptly provide the records to the attorney general  
208 upon request.

209 (10) (a) After June 30 but on or before September 1 of each year, the attorney general  
210 shall submit a written report to the president of the Senate and the speaker of the House of  
211 Representatives describing the attorney general's use of contingent fee contracts with private  
212 attorneys during the fiscal year that ends the immediately preceding June 30.

213 (b) A report under Subsection (10)(a) shall:

- 214 (i) identify:
- 215 (A) each contingent fee contract the attorney general entered into during the fiscal year
- 216 that ends the immediately preceding June 30; and
- 217 (B) each contingent fee contract the attorney general entered into during any earlier
- 218 fiscal year if the contract remained in effect for any part of the fiscal year that ends the
- 219 immediately preceding June 30;
- 220 (ii) for each contingent fee contract identified under Subsection (10)(b)(i):
- 221 (A) state the name of the private attorney that is a party to the contingent fee contract,
- 222 including the name of the private attorney's law firm if the private attorney is an individual;
- 223 (B) describe the nature of the legal matter that is the subject of the contingent fee
- 224 contract, unless describing the nature of the legal matter would violate an ethical responsibility
- 225 of the attorney general or a privilege held by the state;
- 226 (C) identify the state agency which the private attorney was engaged to represent or
- 227 counsel; and
- 228 (D) state the total amount of attorney fees approved by the attorney general for
- 229 payment to a private attorney for legal services under a contingent fee contract during the fiscal
- 230 year that ends the immediately preceding June 30; and
- 231 (iii) be accompanied by each written determination under Subsection (3) or (4)(b)
- 232 made during the fiscal year that ends the immediately preceding June 30.
- 233 (11) Nothing in this section may be construed to expand the authority of a state
- 234 department, division, or other agency to enter into a contract if that authority does not
- 235 otherwise exist.

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**Legislative Review Note**  
as of 2-12-15 11:12 AM

**Office of Legislative Research and General Counsel**