

Senate File 2101 - Introduced

SENATE FILE 2101
BY MCKINLEY

A BILL FOR

1 An Act creating the private attorney retention sunshine Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13.7, Code 2009, is amended to read as
2 follows:

3 **13.7 Special counsel.**

4 1. Compensation shall not be allowed to any person for
5 services as an attorney or counselor to an executive department
6 of the state government, or the head thereof, or to a state
7 board or commission. However, the executive council may employ
8 legal assistance, at a reasonable compensation, in a pending
9 action or proceeding to protect the interests of the state,
10 but only upon a sufficient showing, in writing, made by the
11 attorney general, that the department of justice cannot for
12 reasons stated by the attorney general perform the service,
13 which reasons and action of the council shall be entered
14 upon its records. When the attorney general determines that
15 the department of justice cannot perform legal service in an
16 action or proceeding, the executive council shall request the
17 department involved in the action or proceeding to recommend
18 legal counsel to represent the department. If the attorney
19 general concurs with the department that the person recommended
20 is qualified and suitable to represent the department, the
21 person recommended shall be employed. If the attorney general
22 does not concur in the recommendation, the department shall
23 submit a new recommendation. This ~~section~~ subsection does
24 not affect the general counsel for the utilities board of the
25 department of commerce, the legal counsel of the department of
26 workforce development, or the general counsel for the property
27 assessment appeal board.

28 2. The executive branch and the attorney general shall also
29 comply with chapter 23B when retaining legal counsel under this
30 section, as appropriate.

31 **Sec. 2. NEW SECTION. 23B.1 Citation.**

32 This chapter shall be known and may be cited as the "*Private*
33 *Attorney Retention Sunshine Act*".

34 **Sec. 3. NEW SECTION. 23B.2 Definitions.**

35 For purposes of this chapter:

1 1. *"Contract for legal services in excess of one million*
2 *dollars"* means an agreement under which the fee paid to one or
3 more attorneys or law firms legally authorized to practice law
4 in the relevant jurisdiction, for services to be rendered in
5 connection with a single civil case, civil transaction or other
6 legal matter, or series of connected cases, transactions, or
7 other legal matters, exceeds or can be reasonably expected to
8 exceed one million dollars. This definition applies whether
9 the agreement provides for the fee to be calculated in the form
10 of a flat, hourly, or contingent fee, and the fee includes
11 expenses associated with the handling of the legal matter.

12 2. *"State agency"* includes any agency, executive board,
13 commission, bureau, division, office, department, or authorized
14 agent of the state of Iowa.

15 Sec. 4. NEW SECTION. **23B.3 Contracts for legal services.**

16 1. A state agency shall not contract for legal services in
17 excess of one million dollars unless the procedures outlined in
18 this chapter have been complied with.

19 2. At the conclusion of any legal proceeding for which the
20 contract for legal services in excess of one million dollars
21 provides for recovery of a contingent fee, the contractor shall
22 provide the state agency with a statement of the hours worked
23 on the case, expenses incurred, the aggregate fee amount, and a
24 breakdown of the hourly fee rate based on hours worked divided
25 into the contingent fee less expenses.

26 3. A state agency shall not pay any hourly fee pursuant to
27 a contingent fee contract subject to this chapter that would
28 result in a fee payment in excess of one thousand dollars per
29 hour. The fee amount for such a contract shall be reduced to an
30 amount equivalent to one thousand dollars per hour worked.

31 Sec. 5. NEW SECTION. **23B.4 Legislative oversight — public**
32 **hearing.**

33 1. Except as otherwise provided in subsections 3 and 4,
34 if the general assembly is in session, a state agency which
35 seeks to enter into a contract for legal services in excess of

1 one million dollars shall file the proposed contract with the
2 secretary of the senate and the chief clerk of the house of
3 representatives and shall include a written statement with the
4 proposed contract that identifies all of the following:

5 *a.* The reasons the state should retain private counsel and
6 the consideration of alternatives.

7 *b.* The open and competitive bidding process that has been
8 undertaken with respect to the proposed legal services.

9 *c.* The reasons for the selection of the attorney or law firm
10 that is the proposed contracting party.

11 *d.* The past or present relationship, if any, between such
12 attorney or law firm, and the state agency proposing to enter
13 into the contract.

14 *e.* If the contract contemplates that all or part of the
15 fee is contingent on the outcome of the legal proceeding,
16 the reasons the contingent fee arrangement is in the state's
17 interest and any efforts undertaken to obtain private counsel
18 on a noncontingent fee basis.

19 2. *a.* The secretary of the senate and the chief clerk
20 of the house of representatives, with the approval of the
21 president of the senate and the speaker of the house of
22 representatives, shall promptly refer such proposed contract
23 and written statement to the appropriate committee for review.

24 *b.* Within forty-five days after the filing of the proposed
25 contract and written statement with the secretary of the senate
26 and the chief clerk of the house of representatives, the
27 reviewing committee may hold a public hearing on the proposed
28 contract and, whether or not a public hearing is held, shall
29 issue a report to the referring state agency. The report
30 shall include any recommended changes to the proposed contract
31 approved by the committee. If the reviewing committee fails
32 to recommend any changes to the proposed contract within
33 forty-five days of the initial filing of the proposed contract,
34 the referring state agency may enter into the proposed
35 contract. If the reviewing committee recommends changes to the

1 proposed contract within forty-five days of the initial filing
2 of the proposed contract, the state agency shall review the
3 committee's report recommending the changes, prepare a revised
4 contract, and file a copy of the revised contract with the
5 secretary of the senate and the chief clerk of the house of
6 representatives.

7 c. If the revised contract does not contain all of the
8 changes recommended by the reviewing committee, the referring
9 state agency shall send a letter to the secretary of the
10 senate and the chief clerk of the house of representatives
11 accompanying the proposed contract stating the reasons why the
12 recommended changes were not adopted. The secretary of the
13 senate and the chief clerk of the house of representatives
14 shall promptly transmit the letter and revised contract to the
15 appropriate committee, which may hold additional hearings and
16 issue additional reports in its discretion. Not earlier than
17 forty-five days after the filing of such letter and revised
18 contract with the secretary and the clerk, the referring state
19 agency may enter into the revised contract. Notwithstanding
20 any provision of this subsection to the contrary, a revised
21 contract containing terms not previously reviewed or
22 recommended by the appropriate reviewing committee that can
23 reasonably be expected to increase the fees and expenses to be
24 paid shall be treated as a new proposed contract and shall be
25 filed and reviewed in accordance with this subsection.

26 3. If the general assembly is not in session and a state
27 agency desires to enter into a contract for legal services
28 in excess of one million dollars, the proposed contract and
29 written statement described in subsection 1 shall be filed
30 with the office of the governor, the secretary of the senate,
31 and the chief clerk of the house of representatives. Except
32 as otherwise provided in subsection 4, the governor shall
33 establish a five-member interim committee consisting of five
34 members of the general assembly, with one committee member
35 to be appointed by the governor, the majority leader of the

1 senate, the minority leader of the senate, the speaker of the
 2 house of representatives, and the minority leader of the house
 3 of representatives to execute the oversight duties relating
 4 to review and recommendations set forth in subsection 2. The
 5 same deadlines and reporting responsibilities shall apply to
 6 the interim committee that apply to a standing committee of the
 7 general assembly executing its powers and obligations under
 8 this section.

9 4. If the state agency files a statement with the office of
 10 the governor that time exigencies require that the state retain
 11 counsel before the expiration of the time periods provided in
 12 subsection 2 and provides the reasons therefor, the governor
 13 shall establish a five-member committee, with members appointed
 14 as provided in subsection 3, to which the proposed contract and
 15 written statement described in subsection 1 shall be referred.
 16 Such committee shall consult with the state agency to establish
 17 an expedited schedule for review and recommendations on the
 18 proposed contract.

19 Sec. 6. NEW SECTION. 23B.5 Other existing law.

20 If the state agency is the department of justice headed
 21 by the attorney general, the state agency shall also comply
 22 with the provisions of section 13.7 in the retention of legal
 23 services. However, the provisions of this chapter shall
 24 prevail, to the extent that there are any conflicts between the
 25 requirements of this chapter and other law.

26 Sec. 7. NEW SECTION. 23B.6 No expansion of authority to
 27 contract.

28 This chapter shall not be construed to expand the authority
 29 of a state agency to enter into contracts where no other
 30 authority exists.

31 Sec. 8. NEW SECTION. 23B.7 Chapter inapplicable.

32 This chapter shall not apply to legal services contracts
 33 under chapter 13B.

34 EXPLANATION

35 This bill creates new Code chapter 23B, to address the

1 procedure for retention of private counsel in high attorney fee
2 cases by any state agency, which according to the definition
3 section of the bill includes any agency, executive board,
4 commission, bureau, division, office, department, or authorized
5 agent of the state.

6 New Code section 23B.3 contains a special limitation on
7 contracts for legal services. The bill provides that at the
8 conclusion of any legal proceeding for which the contract
9 provides for recovery of a contingent fee, the state agency
10 shall receive from counsel a statement of the hours worked on
11 the case, expenses incurred, the aggregate fee amount, and a
12 breakdown as to the hourly rate, based on hours worked divided
13 into the contingent fee to be recovered, less expenses. The
14 bill further provides that the state shall not pay any hourly
15 fee under any contingent fee contract that would result in
16 payment in excess of \$1,000 per hour.

17 The bill establishes in new Code section 23B.4 legislative
18 oversight of the contract award process when the contract for
19 legal services exceeds \$1 million, depending on whether the
20 general assembly is in or out of session.

21 If the general assembly is in session, a state agency which
22 seeks to enter into a contract for legal services in excess
23 of \$1 million is required to file the proposed contract with
24 the secretary of the senate and the chief clerk of the house
25 of representatives and shall include a written statement
26 with the proposed contract that identifies the reasons the
27 state should retain private counsel and the consideration of
28 alternatives, the open and competitive bidding process that has
29 been undertaken with respect to the proposed legal services,
30 the reasons for the selection of the attorney or law firm
31 that is the proposed contracting party, the past or present
32 relationship, if any, between such attorney, law firm, or any
33 partner or other principal in such law firm and the state
34 agency proposing to enter into the contract and, if applicable,
35 the reasons the contingent fee arrangement is in the state's

1 interest and any efforts undertaken to obtain private counsel
2 on a noncontingent fee basis. The procedure authorizes
3 transmittal of the filed contract to a legislative committee
4 for further action.

5 The bill provides that within 45 days after the filing of
6 the proposed contract and written statement, the reviewing
7 committee may hold a public hearing on the proposed contract
8 and, whether or not a public hearing is held, shall issue a
9 report to the referring state agency. The report shall include
10 any recommended changes to the proposed contract approved by
11 the committee. If the reviewing committee fails to recommend
12 any changes to the proposed contract, the referring agency may
13 enter into the proposed contract. If the reviewing committee
14 recommends changes to the proposed contract, the state agency
15 is required to review the committee's report recommending the
16 changes, prepare a revised contract, and file a copy of the
17 revised contract with the secretary of the senate and the
18 chief clerk of the house of representatives. If the revised
19 contract does not contain all of the changes recommended by the
20 reviewing committee, the referring state agency is required
21 to send a letter to the secretary of the senate and the chief
22 clerk of the house of representatives accompanying the proposed
23 contract stating the reasons why the recommended changes were
24 not adopted. The secretary of the senate and the chief clerk
25 of the house of representatives shall promptly transmit the
26 letter and revised contract to the appropriate committee, which
27 may hold additional hearings and issue additional reports in
28 its discretion. Not earlier than 45 days after the filing of
29 such letter and revised contract, the referring state agency
30 may enter into the revised contract. A revised contract
31 containing terms not previously reviewed or recommended by the
32 appropriate reviewing committee that can reasonably be expected
33 to increase the fees and expenses to be paid shall be treated
34 as a new proposed contract and shall be filed and reviewed in
35 accordance with the oversight procedures established in the

1 bill.

2 If the general assembly is not in session and the state
3 agency desires to enter into a contract for legal services
4 in excess of \$1 million, the proposed contract and written
5 statement are required to be filed with the office of the
6 governor, the secretary of the senate, and the chief clerk of
7 the house of representatives. In such a case, the governor
8 shall establish a five-member interim committee consisting
9 of five legislators, to be appointed by the governor, the
10 majority leader of the senate, the speaker of the house of
11 representatives, and the minority leader in each house to
12 execute the oversight duties set forth in the bill. The
13 same deadlines and reporting responsibilities apply to the
14 interim committee that apply to a standing committee of the
15 general assembly executing its powers and obligations under
16 the bill. If time exigencies require that the state retain
17 counsel before the expiration of the time periods provided in
18 the bill, the governor shall establish a five-member committee,
19 with members appointed as provided in the bill, to which the
20 proposed contract and written statement shall be referred.
21 Such committee shall consult with the state agency to establish
22 an expedited schedule for review and recommendations on the
23 proposed contract.

24 The bill also provides that the new Code chapter does not
25 apply to legal services contracts under Code chapter 13B
26 relating to public defenders.

27 The bill also amends Code section 13.7, the current Code
28 section pertaining to the retention of private counsel by
29 executive branch departments and by the attorney general, to
30 specify that the procedures of new Code chapter 23B apply.