

Millage, Chair
Larson
Kreiman

HSB 562

JUDICIARY By
SF 11 2023

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LARSON)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the retention of private attorneys by the
2 state.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 13.7, Code 1999, 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
6 department of the state government, or the head thereof, or to
7 a state board or commission. However, the executive council
8 may employ legal assistance, at a reasonable compensation, in
9 a pending action or proceeding to protect the interests of the
10 state, but only upon a sufficient showing, in writing, made by
11 the attorney general, that the department of justice cannot
12 for reasons stated by the attorney general perform the
13 service, which reasons and action of the council shall be
14 entered upon its records. When the attorney general
15 determines that the department of justice cannot perform legal
16 service in an action or proceeding, the executive council
17 shall request the department involved in the action or
18 proceeding to recommend legal counsel to represent the
19 department. If the attorney general concurs with the
20 department that the person recommended is qualified and
21 suitable to represent the department, the person recommended
22 shall be employed. If the attorney general does not concur in
23 the recommendation, the department shall submit a new
24 recommendation. This ~~section~~ subsection does not affect the
25 general counsel for the utilities board of the department of
26 commerce, or the legal counsel of the department of workforce
27 development.

28 2. The attorney general shall also comply with the
29 provisions of chapter 23B in accordance with retention of
30 counsel under this section, as appropriate.

31 Sec. 2. NEW SECTION. 23B.1 DEFINITIONS.

32 For the purposes of this chapter:

33 1. "Contract for legal services in excess of one million
34 dollars" means an agreement under which the fee paid to one or
35 more attorneys, law firms, or other entities legally

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

10 2. "Open and competitive bidding process" means the
11 process which includes advertisement for, solicitation of, and
12 the procurement of bids; the manner and condition in which
13 bids are received; and the procedure by which bids are opened,
14 accessed, accepted, rejected, or awarded.

15 3. "State" includes any agency, executive board,
16 commission, bureau, division, office, department, or
17 authorized agent of the state of Iowa.

18 Sec. 3. NEW SECTION. 23B.2 COMPETITIVE BIDDING --
19 PREFERENCES.

20 1. The state shall not seek to retain any attorney, law
21 firm, or other entity legally authorized to practice law in
22 the relevant jurisdiction, to perform legal services on behalf
23 of this state until an open and competitive bidding process
24 has been undertaken pursuant to the provisions of this
25 chapter.

26 2. The attorney general shall solicit bids for the
27 proposed contract by publishing an advertisement in a print
28 format. The advertisement shall appear in at least one
29 newspaper with a circulation relevant to the jurisdiction in
30 which the services are to be performed, and at least one
31 publication circulated primarily to attorneys licensed to
32 practice within the state of Iowa. The first advertisement
33 for bids shall be not less than fifteen days prior to the date
34 set for receiving bids. The attorney general may publish an
35 advertisement in an electronic format or via direct facsimile

1 or mail to qualified individuals or entities as an additional
2 method of soliciting bids under this subsection.

3 3. The state shall give preference to purchasing Iowa
4 services from Iowa-based attorneys, law firms, and other
5 entities legally authorized to practice law in the relevant
6 jurisdiction, if the bids submitted are comparable in price
7 and quality to those submitted by other bidders, and meet the
8 required specifications.

9 4. The bidding process required by this section may
10 include a transaction accomplished in an electronic format.

11 5. Contracts shall be awarded on the basis of bidder
12 competence, qualifications, and reasonable price, subject to
13 the legislative oversight provisions of this chapter.

14 6. The attorney general may refuse all bids on any
15 contract and institute a new bidding procedure.

16 7. The attorney general shall adopt rules according to
17 chapter 17A related to procedures for the open and competitive
18 bidding process in this chapter, including the amount of
19 security, if any, to accompany a bid or as a condition
20 precedent to the awarding of any contract and the
21 circumstances under which a security will be returned to the
22 bidder or forfeited to the state.

23 Sec. 4. NEW SECTION. 23B.3 LEGISLATIVE OVERSIGHT --
24 PUBLIC HEARING.

25 1. The state shall not enter into a contract for legal
26 services exceeding one million dollars without the opportunity
27 for at least one public hearing, scheduled by the general
28 assembly in accordance with this section, on the terms of the
29 contract for legal services.

30 2. a. The attorney general shall file any proposed
31 contract for legal services in excess of one million dollars
32 with the secretary of the senate and the chief clerk of the
33 house of representatives, who, with the approval of the
34 president of the senate and the speaker of the house of
35 representatives, shall transmit such contract to the

1 appropriate committees.

2 b. If the general assembly is not in session and the
3 attorney general wishes to execute a contract for legal
4 services in excess of one million dollars, the governor, with
5 the unanimous consent of the president of the senate and
6 speaker of the house of representatives may, establish a five-
7 member interim committee consisting of five state legislators,
8 one each to be appointed by the governor, the president of the
9 senate, the speaker of the house of representatives, and the
10 minority leader in each house of the general assembly, to
11 execute the oversight duties as set forth in this section.
12 The same deadlines and reporting responsibilities shall apply
13 to the attorney general and this interim committee that apply
14 to a standing committee of the general assembly executing its
15 powers and obligations under this section.

16 3. a. Within thirty days after transmittal, the
17 legislative committee may hold a public hearing on the
18 proposed contract and shall issue a report to the attorney
19 general. The report shall include any proposed changes to the
20 proposed contract recommended by vote of the committee.

21 b. If the committee does not recommend any changes to the
22 proposed contract within sixty days of the initial filing of
23 the proposed contract with the secretary of the senate and the
24 chief clerk of the house of representatives, the attorney
25 general may enter into the contract.

26 4. The attorney general shall review the report of the
27 committee and draft a revised proposed contract according to
28 any recommended changes contained in the report and shall file
29 the proposed contract with the secretary of the senate and the
30 chief clerk of the house of representatives.

31 5. a. If the proposed contract contains all changes
32 recommended by the committee, the attorney general shall file
33 the proposed contract with the secretary of the senate and the
34 chief clerk of the house of representatives, accompanied by a
35 letter stating that the recommended changes have been

1 accepted. The secretary of the senate and the chief clerk of
2 the house of representatives shall transmit the letter and
3 proposed contract to the appropriate committees.

4 b. The attorney general may enter into the contract no
5 earlier than thirty days following submission of the contract
6 and letter to the general assembly, unless the committee
7 determines during the thirty-day period that the proposed
8 contract does not substantially comply with the recommended
9 changes of the committee. In the event the committee makes
10 such a determination, the procedures in subsection 7 shall
11 apply.

12 6. If the proposed contract does not contain the changes
13 recommended by the committee, the attorney general shall send
14 a letter to the secretary of the senate and the chief clerk of
15 the house of representatives accompanying the proposed
16 contract stating the reasons why such proposed changes were
17 not adopted.

18 7. a. The committee shall have forty-five days to take
19 action on the proposed contract.

20 b. If the committee and the attorney general cannot reach
21 agreement on the terms of the contract during the forty-five-
22 day period described in this subsection, the committee may
23 renew the forty-five-day period by a majority vote of the
24 committee. There is no limit on the number of forty-five-day
25 period renewals that may be imposed by the committee.

26 c. The attorney general shall not enter into a final
27 contract during any forty-five-day period allowed under
28 paragraph "a" or "b", without a written release signed by a
29 majority of the committee waiving the imposition of the last
30 forty-five-day period.

31 Sec. 5. NEW SECTION. 23B.4 LIMITATION ON CONTINGENT
32 FEES.

33 1. At the conclusion of any legal proceeding for which the
34 contract provides for recovery of a contingent fee or fees,
35 the state shall receive from counsel a statement of the hours

1 worked on the case, expenses incurred, the aggregate fee
2 amount, and a breakdown as to the hourly rate, based on hours
3 worked divided into the contingent fee to be recovered, less
4 expenses.

5 2. In cases where the disclosure submitted in accordance
6 with subsection 1 indicates an hourly rate in excess of thirty
7 percent of the total amount recovered by verdict or
8 settlement, or one thousand dollars per hour worked, the
9 following shall apply:

10 a. The state shall not pay any contingent fee pursuant to
11 any contract executed in accordance with this chapter that
12 would result in a payment in excess of thirty percent of the
13 total amount recovered by verdict or settlement, or of one
14 thousand dollars per hour worked, whichever amount is less.

15 b. The fee amount for such contract shall be reduced to an
16 amount equivalent to thirty percent of the total amount
17 recovered by verdict or settlement, or one thousand dollars
18 per hour worked, whichever amount is less.

19 3. Disputes regarding appropriate fees and expenses shall
20 be resolved through mediation.

21 4. All contracts executed pursuant to this chapter shall
22 expressly contain the limitation imposed by this section as
23 part of the terms of the contract, and shall also otherwise
24 contain fee provisions and disclosures in accordance with the
25 Iowa code of professional responsibility for lawyers,
26 including payment of expenses by the client.

27 Sec. 6. NEW SECTION. 23B.5 OTHER EXISTING LAW.

28 The attorney general shall also comply with the provisions
29 of section 13.7 in the retention of legal services. However,
30 the provisions of this chapter shall prevail, to the extent
31 that there are any conflicts between the requirements of this
32 chapter and other law.

33 Sec. 7. NEW SECTION. 23B.6 NO EXPANSION OF AUTHORITY TO
34 CONTRACT.

35 This chapter shall not be construed to expand the authority

1 of the state to enter into contracts where no other authority
2 exists.

3 EXPLANATION

4 This bill creates new Code chapter 23B, to address the
5 procedure for retention of private counsel by the state, which
6 according to the definitional section of the bill includes any
7 agency, executive board, commission, bureau, division, office,
8 department, or authorized agent of the state.

9 The bill establishes in new Code section 23B.2 a
10 competitive bidding process for the retention of private
11 counsel, supervised by the attorney general, and requiring
12 advertisement and establishing a standard for the award of
13 contracts. The attorney general is authorized to adopt rules
14 related to the procedures for competitive bidding.

15 The bill establishes in new Code section 23B.3 legislative
16 oversight of the contract award process when the contract for
17 legal services exceeds \$1 million. Such contracts must be
18 filed by the attorney general with the general assembly. The
19 procedure authorizes transmittal of the filed contract to a
20 legislative committee for further action, including the option
21 for at least one public hearing on the terms of the contract
22 within 30 days.

23 If the committee recommends no changes, the attorney
24 general may enter into the contract after 60 days after the
25 initial filing of the proposed contract. If the committee
26 recommends changes, the attorney general must revise the
27 proposed contract and resubmit it to the general assembly. If
28 the revised proposed contract substantially contains all
29 recommended changes, the attorney general can enter into the
30 contract after 30 days, unless there is determination by the
31 committee that the contract does not substantially contain all
32 recommended changes. In that event, or in the event the
33 attorney general files a revised proposed contract along with
34 a letter explaining why recommended changes have not been
35 adopted, the committee shall have 45 days to take action on

1 the proposed contract. If the committee and the attorney
2 general cannot agree on the terms of the contract during the
3 45-day period, the committee may extend the consideration for
4 an additional 45 days. There is no limit on the number of
5 extensions that may be approved by the committee. The
6 attorney general is prohibited from entering into a final
7 contract during any such 45-day period, unless a waiver is
8 signed by a majority of the committee.

9 New Code section 23B.4 contains a special limitation on
10 contingent fee agreements. Counsel which are party to such
11 agreements are required to submit a disclosure to the state at
12 the conclusion of such proceedings which analyzes the hourly
13 rate for the work performed. Disclosures which reveal an
14 hourly rate in excess of the lesser of 30 percent of the
15 amount of the verdict or settlement, or \$1,000 per hour, shall
16 be reduced to the lesser of 30 percent of the amount of the
17 verdict or settlement, or \$1,000 per hour, a limitation which
18 shall be included in the terms of any contract based on a
19 contingent fee. Disputes regarding such fees are to be
20 resolved by mediation.

21 The bill also amends Code section 13.7, the current Code
22 section pertaining to the retention of private counsel by the
23 attorney general, to specify that the procedures of new Code
24 chapter 23B apply.

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S-3/9/00 Judiciary

FEB 17 2000

Place On Calendar

HOUSE FILE 2323
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 562)

Passed House, ^(p.641) Date 3/8/00

Passed Senate, Date _____

Vote: Ayes 55 Nays 35

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the retention of private attorneys by the
2 state.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2323

1 Section 1. Section 13.7, Code 1999, 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
6 department of the state government, or the head thereof, or to
7 a state board or commission. However, the executive council
8 may employ legal assistance, at a reasonable compensation, in
9 a pending action or proceeding to protect the interests of the
10 state, but only upon a sufficient showing, in writing, made by
11 the attorney general, that the department of justice cannot
12 for reasons stated by the attorney general perform the
13 service, which reasons and action of the council shall be
14 entered upon its records. When the attorney general
15 determines that the department of justice cannot perform legal
16 service in an action or proceeding, the executive council
17 shall request the department involved in the action or
18 proceeding to recommend legal counsel to represent the
19 department. If the attorney general concurs with the
20 department that the person recommended is qualified and
21 suitable to represent the department, the person recommended
22 shall be employed. If the attorney general does not concur in
23 the recommendation, the department shall submit a new
24 recommendation. This ~~section~~ subsection does not affect the
25 general counsel for the utilities board of the department of
26 commerce, or the legal counsel of the department of workforce
27 development.

28 2. The attorney general shall also comply with the
29 provisions of chapter 23B in accordance with retention of
30 counsel under this section, as appropriate.

31 Sec. 2. NEW SECTION. 23B.1 DEFINITIONS.

32 For the purposes of this chapter:

33 1. "Contract for legal services in excess of one million
34 dollars" means an agreement under which the fee paid to one or
35 more attorneys, law firms, or other entities legally

1 representatives may send the matter to the fiscal committee of
2 the legislative council to execute the oversight duties as set
3 forth in this section. The same deadlines and reporting
4 responsibilities shall apply to the attorney general and the
5 fiscal committee that apply to a standing committee of the
6 general assembly executing its powers and obligations under
7 this section.

8 2. If the committee does not recommend any changes to the
9 proposed contract within sixty days of the initial filing of
10 the proposed contract with the secretary of the senate and the
11 chief clerk of the house of representatives, the attorney
12 general may enter into the contract.

13 3. The attorney general shall review the report of the
14 committee and draft a revised proposed contract according to
15 any recommended changes contained in the report and shall file
16 the proposed contract with the secretary of the senate and the
17 chief clerk of the house of representatives.

18 4. a. If the proposed contract contains all changes
19 recommended by the committee, the attorney general shall file
20 the proposed contract with the secretary of the senate and the
21 chief clerk of the house of representatives, accompanied by a
22 letter stating that the recommended changes have been
23 accepted. The secretary of the senate and the chief clerk of
24 the house of representatives shall transmit the letter and
25 proposed contract to the appropriate committees.

26 b. The attorney general may enter into the contract no
27 earlier than thirty days following submission of the contract
28 and letter to the general assembly, unless the committee
29 determines during the thirty-day period that the proposed
30 contract does not substantially comply with the recommended
31 changes of the committee. In the event the committee makes
32 such a determination, the procedures in subsection 6 shall
33 apply.

34 5. If the proposed contract does not contain the changes
35 recommended by the committee, the attorney general shall send

1 a letter to the secretary of the senate and the chief clerk of
2 the house of representatives accompanying the proposed
3 contract stating the reasons why such proposed changes were
4 not adopted.

5 6. The committee shall have forty-five days to take action
6 on the proposed contract. If the committee does not act
7 within forty-five days, then the proposed contract shall be
8 final.

9 Sec. 5. NEW SECTION. 23B.4 LIMITATION ON CONTINGENT
10 FEES.

11 1. At the conclusion of any legal proceeding for which the
12 contract provides for recovery of a contingent fee or fees,
13 the state shall receive from counsel a statement of the hours
14 worked on the case, expenses incurred, the aggregate fee
15 amount, and a breakdown as to the hourly rate, based on hours
16 worked divided into the contingent fee to be recovered, less
17 expenses.

18 2. In cases where the disclosure submitted in accordance
19 with subsection 1 indicates an hourly rate in excess of thirty
20 percent of the total amount recovered by verdict or
21 settlement, or one thousand dollars per hour worked, the
22 following shall apply:

23 a. The state shall not pay any contingent fee pursuant to
24 any contract executed in accordance with this chapter that
25 would result in a payment in excess of thirty percent of the
26 total amount recovered by verdict or settlement, or of one
27 thousand dollars per hour worked, whichever amount is less.

28 b. The fee amount for such contract shall be reduced to an
29 amount equivalent to thirty percent of the total amount
30 recovered by verdict or settlement, or one thousand dollars
31 per hour worked, whichever amount is less.

32 3. Notwithstanding subsection 2, the fee limitations
33 imposed by this section may be waived by a majority vote of
34 the executive council upon a determination that the fee
35 limitations would make it impossible to retain counsel in a

1 manner that would ensure successful litigation.

2 4. Disputes regarding appropriate fees and expenses shall
3 be resolved through mediation. If the dispute cannot be
4 resolved by mediation, the dispute shall be resolved by the
5 courts.

6 5. All contracts executed pursuant to this chapter shall
7 expressly contain the limitation imposed by this section as
8 part of the terms of the contract, and shall also otherwise
9 contain fee provisions and disclosures in accordance with the
10 Iowa code of professional responsibility for lawyers,
11 including payment of expenses by the client.

12 Sec. 6. NEW SECTION. 23B.5 OTHER EXISTING LAW.

13 The attorney general shall also comply with the provisions
14 of section 13.7 in the retention of legal services. However,
15 the provisions of this chapter shall prevail, to the extent
16 that there are any conflicts between the requirements of this
17 chapter and other law.

18 Sec. 7. NEW SECTION. 23B.6 NO EXPANSION OF AUTHORITY TO
19 CONTRACT.

20 This chapter shall not be construed to expand the authority
21 of the state to enter into contracts where no other authority
22 exists.

23 Sec. 8. NEW SECTION. 23B.7 CHAPTER INAPPLICABLE.

24 This chapter shall not apply to legal services contracts
25 under chapter 13B.

26 EXPLANATION

27 This bill creates new Code chapter 23B, to address the
28 procedure for retention of private counsel by the state, which
29 according to the definitional section of the bill includes any
30 agency, executive board, commission, bureau, division, office,
31 department, or authorized agent of the state.

32 The bill establishes in new Code section 23B.2 a
33 competitive bidding process for the retention of private
34 counsel, supervised by the attorney general, and requiring
35 advertisement and establishing a standard for the award of

1 contracts. The attorney general is authorized to adopt rules
2 related to the procedures for competitive bidding.

3 The bill establishes in new Code section 23B.3 legislative
4 oversight of the contract award process when the contract for
5 legal services exceeds \$1 million. Such contracts must be
6 filed by the attorney general with the general assembly. The
7 procedure authorizes transmittal of the filed contract to a
8 legislative committee for further action.

9 If the committee recommends no changes, the attorney
10 general may enter into the contract after 60 days after the
11 initial filing of the proposed contract. If the committee
12 recommends changes, the attorney general must revise the
13 proposed contract and resubmit it to the general assembly. If
14 the revised proposed contract substantially contains all
15 recommended changes, the attorney general can enter into the
16 contract after 30 days, unless there is determination by the
17 committee that the contract does not substantially contain all
18 recommended changes. In that event, or in the event the
19 attorney general files a revised proposed contract along with
20 a letter explaining why recommended changes have not been
21 adopted, the committee shall have 45 days to take action on
22 the proposed contract. If the committee does not act during
23 the 45-day period, the contract becomes final.

24 New Code section 23B.4 contains a special limitation on
25 contingent fee agreements. Counsel which are party to such
26 agreements are required to submit a disclosure to the state at
27 the conclusion of such proceedings which analyzes the hourly
28 rate for the work performed. Disclosures which reveal an
29 hourly rate in excess of the lesser of 30 percent of the
30 amount of the verdict or settlement, or \$1,000 per hour, shall
31 be reduced to the lesser of 30 percent of the amount of the
32 verdict or settlement, or \$1,000 per hour, a limitation which
33 shall be included in the terms of any contract based on a
34 contingent fee. Disputes regarding such fees are to be
35 resolved by mediation, or if mediation fails, then by the

1 courts. The fee limitation can be waived by a majority vote
2 of the executive council if it determines the fee limitations
3 would make it impossible to retain counsel in a manner that
4 would ensure successful litigation.

5 The bill also provides that the new Code chapter does not
6 apply to legal services contracts under Code chapter 13B
7 relating to public defenders.

8 The bill also amends Code section 13.7, the current Code
9 section pertaining to the retention of private counsel by the
10 attorney general, to specify that the procedures of new Code
11 chapter 23B apply.

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HOUSE FILE 2323

H-8125

- 1 Amend House File 2323 as follows:
- 2 1. Page 6, by striking lines 24 and 25 and
- 3 inserting the following:
- 4 "This chapter shall not apply to the following:
- 5 1. Legal services contracts under chapter 13B.
- 6 2. Retention of any attorney, law firm, or other
- 7 entity legally authorized to practice law for purposes
- 8 of assistance to the state as a defendant in pending
- 9 or proposed litigation."
- 10 2. By renumbering as necessary.

By KREIMAN of Davis

H-8125 FILED MARCH 1, 2000

W/D
3/8/00 (p. 639)

HOUSE FILE 2323

H-8126

- 1 Amend House File 2323 as follows:
- 2 1. Page 2, by inserting after line 9 the
- 3 following:
- 4 "The one million dollar threshold in this chapter
- 5 shall be adjusted annually according to the percentage
- 6 change in the consumer price index for all urban
- 7 consumers, United States city average, as published in
- 8 the federal register by the United States department
- 9 of labor, bureau of labor statistics."

By KREIMAN of Davis

H-8126 FILED MARCH 1, 2000

W/D *3/8/00*
(p. 639)

HOUSE FILE 2323

H-8127

- 1 Amend House File 2323 as follows:
- 2 1. Page 2, by inserting after line 17 the
- 3 following:
- 4 "Sec. ____ NEW SECTION. 23B.1A WAIVER.
- 5 Any requirement of this chapter may be waived by a
- 6 majority vote of the executive council upon a
- 7 determination by the council that the requirement
- 8 would jeopardize the state's ability to litigate in a
- 9 timely manner."
- 10 2. By renumbering as necessary.

By KREIMAN of Davis

H-8127 FILED MARCH 1, 2000

Lost
3/8/00 (p. 640)

HOUSE FILE 2323

H-8128

- 1 Amend House File 2323 as follows:
- 2 1. Page 3, line 31, by striking the word
- 3 "appropriate" and inserting the following:
- 4 "judiciary".

By KREIMAN of Davis

H-8128 FILED MARCH 1, 2000

W/D *3/8/00*

HOUSE FILE 2323

H-8082

- 1 Amend House File 2323 as follows:
- 2 1. Page 6, by striking lines 3 through 5 and
- 3 inserting the following: "be resolved through binding
- 4 arbitration that is subject to review by the district
- 5 court in the county where the suit is filed."

By KREIMAN of Davis

H-8082 FILED FEBRUARY 29, 2000

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W/D
3/8/00 (p. 639)

HOUSE FILE 2323

H-8132

- 1 Amend House File 2323 as follows:
- 2 1. By striking page 3, line 23, through page 5,
- 3 line 8.
- 4 2. By renumbering as necessary.

By PARMENTER of Story

H-8132 FILED MARCH 1, 2000

W/D
3/8/00

HOUSE FILE 2323

H-8133

- 1 Amend House File 2323 as follows:
- 2 1. Page 5, line 19, by striking the word "thirty"
- 3 and inserting the following: "forty".
- 4 2. Page 5, line 25, by striking the word "thirty"
- 5 and inserting the following: "forty".
- 6 3. Page 5, line 29, by striking the word "thirty"
- 7 and inserting the following: "forty".

By PARMENTER of Story

H-8133 FILED MARCH 1, 2000

W/D 3/8/00

HOUSE FILE 2323

H-8134

- 1 Amend House File 2323 as follows:
- 2 1. Page 6, by striking lines 2 through 5.
- 3 2. By renumbering as necessary.

By PARMENTER of Story

H-8134 FILED MARCH 1, 2000

W/D 3/8/00

HOUSE FILE 2323

H-8135

- 1 Amend House File 2323 as follows:
- 2 1. By striking page 5, line 9, through page 6,
- 3 line 11.
- 4 2. By renumbering as necessary.

By PARMENTER of Story

H-8135 FILED MARCH 1, 2000

W/D 3/8/00

**HOUSE FILE 2323
FISCAL NOTE**

A fiscal note for House File 2323 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2323 creates a new chapter within the Code of Iowa to address the procedure for retention of private counsel by the State. The Bill requires competitive bidding procedures for the retention of private counsel supervised by the Attorney General, advertisement for bids, and establishing a standard for the award of contracts. The Attorney General is authorized to adopt rules related to competitive bidding procedures. House File 2323 provides legislative oversight of the contract award process when the contract for legal services exceeds \$1.0 million. The Bill limits contingent fee arrangements. Contingent fees in excess of the lesser of 30.0% of the amount of the verdict or settlement, or \$1,000 per hour, shall be reduced to the lesser of 30.0% of the amount of the verdict or settlement, or \$1,000 per hour.

ASSUMPTIONS

1. Over the last 20 years, contingency fee arrangements have only been used twice by the State to retain outside counsel. The first case involved overcharges in the oil industry in the 1980s. Iowa received approximately \$77.0 million as a result of the litigation. Attorney fees paid by the State under the contingency fee were \$1.8 million, or 2.3% of the amount awarded to the State. The second case was the tobacco settlement in November 1998. Iowa will receive approximately \$1.9 billion over the next 25 years - about \$50 million to \$60 million annually. Law firms have agreed to the following payment schedule relating to the Iowa settlement: The national law firm (Ness, Motley) from South Carolina will receive \$21.0 million directly from the tobacco companies during the next 25 years. The four Iowa firms will receive \$44.0 million in periodic payments ending January 15, 2004, - \$16.0 million from arbitration payments by the tobacco industry, and \$28.0 million paid by the State of Iowa. The State will receive \$48.0 million from the tobacco industry starting in 2004, which is in addition to Iowa's \$1.9 billion settlement over 25 years. The additional \$48.0 million will be paid to the State in periodic payments over an approximate 20-year period. The \$48.0 million represents Iowa's share of the tobacco settlement targeted for legal fees. This is the arbitration amount remaining to be paid by the tobacco industry for Iowa attorney fees. Law firms will not have any additional claims under the contingency fee contract.
2. Competitive bidding procedures, including advertisement requirements, are included in House File 2323. Over the last six years, an average of six outside counsel contracts per year have been approved by the Executive Council. Advertising costs are estimated at \$200 per contract, or approximately \$1,200 annually (six contracts annually x \$200 per contract).

FISCAL IMPACT

The fiscal impact of House File 2323 to limit contingency fee arrangements cannot be determined.

SOURCE

Department of Justice

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BY DENNIS PROUTY, FISCAL DIRECTOR