

House Study Bill 562

Bill Text

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1 1 Section 1. Section [13.7](#), Code 1999, is amended to read as
1 2 follows:

1 3 13.7 SPECIAL COUNSEL.

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

~~section~~

- subsection does not affect the

1 25 general counsel for the utilities board of the department of
1 26 commerce, or the legal counsel of the department of workforce
1 27 development.

1 28 2. The attorney general shall also comply with the
1 29 provisions of chapter 23B in accordance with retention of
1 30 counsel under this section, as appropriate.

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

1 32 For the purposes of this chapter:

1 33 1. "Contract for legal services in excess of one million
1 34 dollars" means an agreement under which the fee paid to one or
1 35 more attorneys, law firms, or other entities legally
2 1 authorized to practice law in the relevant jurisdiction, for
2 2 services to be rendered in connection with a single civil or
2 3 criminal case, civil transaction or other legal matter, or
2 4 series of connected cases, transactions, or other legal
2 5 matters, exceeds or can be reasonably expected to exceed one
2 6 million dollars. This definition applies whether the
2 7 agreement provides for the fee to be calculated in the form of
2 8 a flat, hourly, or contingent fee, and the fee includes
2 9 expenses associated with the handling of the legal matter.

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

2 15 3. "State" includes any agency, executive board,
2 16 commission, bureau, division, office, department, or
2 17 authorized agent of the state of Iowa.

2 18 Sec. 3. NEW SECTION. 23B.2 COMPETITIVE BIDDING

2 19 PREFERENCES.

2 20 1. The state shall not seek to retain any attorney, law
2 21 firm, or other entity legally authorized to practice law in
2 22 the relevant jurisdiction, to perform legal services on behalf
2 23 of this state until an open and competitive bidding process
2 24 has been undertaken pursuant to the provisions of this
2 25 chapter.

2 26 2. The attorney general shall solicit bids for the
2 27 proposed contract by publishing an advertisement in a print
2 28 format. The advertisement shall appear in at least one
2 29 newspaper with a circulation relevant to the jurisdiction in
2 30 which the services are to be performed, and at least one
2 31 publication circulated primarily to attorneys licensed to
2 32 practice within the state of Iowa. The first advertisement
2 33 for bids shall be not less than fifteen days prior to the date
2 34 set for receiving bids. The attorney general may publish an
2 35 advertisement in an electronic format or via direct facsimile
3 1 or mail to qualified individuals or entities as an additional
3 2 method of soliciting bids under this subsection.

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

3 9 4. The bidding process required by this section may
3 10 include a transaction accomplished in an electronic format.

3 11 5. Contracts shall be awarded on the basis of bidder
3 12 competence, qualifications, and reasonable price, subject to
3 13 the legislative oversight provisions of this chapter.

3 14 6. The attorney general may refuse all bids on any
3 15 contract and institute a new bidding procedure.

3 16 7. The attorney general shall adopt rules according to
3 17 chapter 17A related to procedures for the open and competitive
3 18 bidding process in this chapter, including the amount of
3 19 security, if any, to accompany a bid or as a condition
3 20 precedent to the awarding of any contract and the
3 21 circumstances under which a security will be returned to the
3 22 bidder or forfeited to the state.

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

3 25 1. The state shall not enter into a contract for legal
3 26 services exceeding one million dollars without the opportunity
3 27 for at least one public hearing, scheduled by the general
3 28 assembly in accordance with this section, on the terms of the
3 29 contract for legal services.

3 30 2. a. The attorney general shall file any proposed
3 31 contract for legal services in excess of one million dollars
3 32 with the secretary of the senate and the chief clerk of the
3 33 house of representatives, who, with the approval of the
3 34 president of the senate and the speaker of the house of
3 35 representatives, shall transmit such contract to the
4 1 appropriate committees.

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

4 16 3. a. Within thirty days after transmittal, the
4 17 legislative committee may hold a public hearing on the
4 18 proposed contract and shall issue a report to the attorney
4 19 general. The report shall include any proposed changes to the
4 20 proposed contract recommended by vote of the committee.

4 21 b. If the committee does not recommend any changes to the
4 22 proposed contract within sixty days of the initial filing of
4 23 the proposed contract with the secretary of the senate and the
4 24 chief clerk of the house of representatives, the attorney
4 25 general may enter into the contract.

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

4 31 5. a. If the proposed contract contains all changes
4 32 recommended by the committee, the attorney general shall file
4 33 the proposed contract with the secretary of the senate and the
4 34 chief clerk of the house of representatives, accompanied by a
4 35 letter stating that the recommended changes have been
5 1 accepted. The secretary of the senate and the chief clerk of
5 2 the house of representatives shall transmit the letter and
5 3 proposed contract to the appropriate committees.

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

5 12 6. If the proposed contract does not contain the changes
5 13 recommended by the committee, the attorney general shall send
5 14 a letter to the secretary of the senate and the chief clerk of
5 15 the house of representatives accompanying the proposed
5 16 contract stating the reasons why such proposed changes were
5 17 not adopted.

5 18 7. a. The committee shall have forty-five days to take
5 19 action on the proposed contract.

5 20 b. If the committee and the attorney general cannot reach
5 21 agreement on the terms of the contract during the forty-five-
5 22 day period described in this subsection, the committee may
5 23 renew the forty-five-day period by a majority vote of the
5 24 committee. There is no limit on the number of forty-five-day
5 25 period renewals that may be imposed by the committee.

5 26 c. The attorney general shall not enter into a final
5 27 contract during any forty-five-day period allowed under
5 28 paragraph "a" or "b", without a written release signed by a
5 29 majority of the committee waiving the imposition of the last
5 30 forty-five-day period.

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

5 33 1. At the conclusion of any legal proceeding for which the
5 34 contract provides for recovery of a contingent fee or fees,
5 35 the state shall receive from counsel a statement of the hours
6 1 worked on the case, expenses incurred, the aggregate fee
6 2 amount, and a breakdown as to the hourly rate, based on hours
6 3 worked divided into the contingent fee to be recovered, less
6 4 expenses.

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

6 10 a. The state shall not pay any contingent fee pursuant to
6 11 any contract executed in accordance with this chapter that
6 12 would result in a payment in excess of thirty percent of the

6 13 total amount recovered by verdict or settlement, or of one
6 14 thousand dollars per hour worked, whichever amount is less.
6 15 b. The fee amount for such contract shall be reduced to an
6 16 amount equivalent to thirty percent of the total amount
6 17 recovered by verdict or settlement, or one thousand dollars
6 18 per hour worked, whichever amount is less.

6 19 3. Disputes regarding appropriate fees and expenses shall
6 20 be resolved through mediation.

6 21 4. All contracts executed pursuant to this chapter shall
6 22 expressly contain the limitation imposed by this section as
6 23 part of the terms of the contract, and shall also otherwise
6 24 contain fee provisions and disclosures in accordance with the
6 25 Iowa code of professional responsibility for lawyers,
6 26 including payment of expenses by the client.

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

6 28 The attorney general shall also comply with the provisions
6 29 of section 13.7 in the retention of legal services. However,
6 30 the provisions of this chapter shall prevail, to the extent
6 31 that there are any conflicts between the requirements of this
6 32 chapter and other law.

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

6 35 This chapter shall not be construed to expand the authority
7 1 of the state to enter into contracts where no other authority
7 2 exists.

7 3 EXPLANATION

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

7 9 The bill establishes in new Code section 23B.2 a
7 10 competitive bidding process for the retention of private
7 11 counsel, supervised by the attorney general, and requiring
7 12 advertisement and establishing a standard for the award of
7 13 contracts. The attorney general is authorized to adopt rules
7 14 related to the procedures for competitive bidding.

7 15 The bill establishes in new Code section 23B.3 legislative
7 16 oversight of the contract award process when the contract for
7 17 legal services exceeds \$1 million. Such contracts must be
7 18 filed by the attorney general with the general assembly. The
7 19 procedure authorizes transmittal of the filed contract to a
7 20 legislative committee for further action, including the option
7 21 for at least one public hearing on the terms of the contract
7 22 within 30 days.

7 23 If the committee recommends no changes, the attorney
7 24 general may enter into the contract after 60 days after the
7 25 initial filing of the proposed contract. If the committee
7 26 recommends changes, the attorney general must revise the
7 27 proposed contract and resubmit it to the general assembly. If
7 28 the revised proposed contract substantially contains all
7 29 recommended changes, the attorney general can enter into the
7 30 contract after 30 days, unless there is determination by the
7 31 committee that the contract does not substantially contain all
7 32 recommended changes. In that event, or in the event the
7 33 attorney general files a revised proposed contract along with
7 34 a letter explaining why recommended changes have not been
7 35 adopted, the committee shall have 45 days to take action on
8 1 the proposed contract. If the committee and the attorney
8 2 general cannot agree on the terms of the contract during the
8 3 45-day period, the committee may extend the consideration for
8 4 an additional 45 days. There is no limit on the number of
8 5 extensions that may be approved by the committee. The
8 6 attorney general is prohibited from entering into a final
8 7 contract during any such 45-day period, unless a waiver is
8 8 signed by a majority of the committee.

8 9 New Code section 23B.4 contains a special limitation on

8 10 contingent fee agreements. Counsel which are party to such
8 11 agreements are required to submit a disclosure to the state at
8 12 the conclusion of such proceedings which analyzes the hourly
8 13 rate for the work performed. Disclosures which reveal an
8 14 hourly rate in excess of the lesser of 30 percent of the
8 15 amount of the verdict or settlement, or \$1,000 per hour, shall
8 16 be reduced to the lesser of 30 percent of the amount of the
8 17 verdict or settlement, or \$1,000 per hour, a limitation which
8 18 shall be included in the terms of any contract based on a
8 19 contingent fee. Disputes regarding such fees are to be
8 20 resolved by mediation.

8 21 The bill also amends Code section 13.7, the current Code
8 22 section pertaining to the retention of private counsel by the
8 23 attorney general, to specify that the procedures of new Code
8 24 chapter 23B apply.

8 25 LSB 5179YC 78

8 26 jj/cf/24.1