

House File 563 - Introduced

HOUSE FILE 563
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 166)

A BILL FOR

1 An Act creating the transparency in private attorney contracts
2 Act.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13.7, Code 2011, 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
29 also comply with chapter 23B when retaining legal counsel on a
30 contingency fee basis under this section, as appropriate.

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

32 This chapter may be known and cited as the "*Transparency in*
33 *Private Attorney Contracts Act*".

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

35 For the purposes of this chapter:

1 1. "Government attorney" means an attorney employed by the
2 state as a staff attorney in the attorney general's office.

3 2. "Private attorney" means any private attorney or law
4 firm.

5 3. "State" means the state of Iowa and includes 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 Sec. 4. NEW SECTION. 23B.3 **Contracts for legal services.**

10 1. The state shall not enter into a contingency fee contract
11 with a private attorney unless the attorney general makes a
12 written determination prior to entering into such a contract
13 that contingency fee representation is both cost-effective
14 and in the public interest. Any written determination shall
15 include specific findings for each of the following factors:

16 a. Whether sufficient and appropriate legal and financial
17 resources exist within the attorney general's office to handle
18 the matter.

19 b. The time and labor required, the novelty, complexity, and
20 difficulty of the questions involved, and the skill required to
21 perform the attorney services properly.

22 c. The geographic area where the attorney services are to
23 be provided.

24 d. The amount of experience desired for the particular
25 kind of attorney services to be provided and the nature of the
26 private attorney's experience with similar issues or cases.

27 2. If the attorney general makes the determination
28 described in subsection 1, the attorney general shall
29 follow the procurement process used by the department of
30 administrative services in seeking private attorneys to
31 represent the department of justice on a contingency fee
32 basis, unless the attorney general determines that requesting
33 proposals is not feasible under the circumstances and sets
34 forth the basis for this determination in writing.

35 3. a. The state shall not enter into a contingency fee

1 contract that provides for a private attorney to receive
2 an aggregate contingency fee in excess of the sum of the
3 following:

4 (1) Twenty-five percent of any recovery up to and including
5 ten million dollars.

6 (2) Twenty percent of any portion of any recovery that
7 exceeds ten million dollars up to and including fifteen million
8 dollars.

9 (3) Fifteen percent of any portion of any recovery that
10 exceeds fifteen million dollars up to and including twenty
11 million dollars.

12 (4) Ten percent of any portion of any recovery that exceeds
13 twenty million dollars up to and including twenty-five million
14 dollars.

15 (5) Five percent of any portion of any recovery that exceeds
16 twenty-five million dollars.

17 *b.* Except as provided in paragraph "*c*", the aggregate
18 contingency fee of any recovery shall not exceed fifty million
19 dollars, exclusive of reasonable costs and expenses, and
20 regardless of the number of lawsuits filed or the number of
21 private attorneys retained to achieve the recovery.

22 *c.* The attorney general may request a waiver from the
23 executive council of the aggregate contingency fee limit in
24 paragraph "*b*" if the attorney general provides a thirty-day
25 notice of the attorney general's intent to request a waiver.
26 The executive council, upon unanimous consent, may grant such a
27 waiver.

28 4. The attorney general shall develop a standard addendum to
29 every contract for contingent fee attorney services that shall
30 be used in all cases, describing in detail what is expected of
31 both the contracted private attorney and the state, including,
32 without limitation, all of the following requirements:

33 *a.* A government attorney shall retain complete control over
34 the course and conduct of the case.

35 *b.* A government attorney with supervisory authority shall be

1 personally involved in overseeing the litigation.

2 *c.* A government attorney shall retain veto power over any
3 decisions made by the contracted private attorney.

4 *d.* A defendant that is the subject of such litigation may
5 contact the lead government attorney directly, without having
6 to confer with the contracted private attorney.

7 *e.* Decisions regarding settlement of the case shall be
8 reserved exclusively to the discretion of the government
9 attorney and the state.

10 *f.* A government attorney with supervisory authority for the
11 case shall attend all settlement conferences.

12 5. Copies of any executed contingency fee contract as
13 well as the attorney general's written determination to
14 enter into a contingency fee contract with a private attorney
15 shall be posted on the attorney general's website for public
16 inspection within five business days after the date the
17 contract is executed and shall remain posted on the website for
18 the duration of the contingency fee contract, including any
19 extensions or amendments thereto. Any payment of contingency
20 fees shall be posted on the attorney general's website within
21 fifteen days after the payment of such contingency fees to the
22 private attorney and shall remain posted on the website for at
23 least one year thereafter.

24 6. Any private attorney under contract to provide services
25 to the state on a contingency fee basis shall, from the
26 inception of the contract until at least four years after
27 the contract expires or is terminated, maintain detailed
28 current records, including documentation of all expenses,
29 disbursements, charges, credits, underlying receipts and
30 invoices, and other financial transactions that concern the
31 provision of such attorney services. The private attorney
32 shall make all such records available for inspection and
33 copying upon request in accordance with chapter 22. In
34 addition, the private attorney shall maintain detailed
35 contemporaneous time records for the attorneys and paralegals

1 working on the matter in increments of no greater than
2 one-tenth of an hour and shall promptly provide these records
3 to the attorney general, upon request.

4 7. The attorney general shall submit a report to the
5 secretary of the senate and the chief clerk of the house of
6 representatives describing the use of contingency fee contracts
7 with private attorneys in the preceding calendar year by
8 February 1 of each year. At a minimum, the report shall
9 include all of the following information:

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

14 (1) The name of the private attorney with whom the state has
15 contracted, including the name of the attorney's law firm.

16 (2) The nature and status of the legal matter.

17 (3) The name of the parties to the legal matter.

18 (4) The amount of any recovery.

19 (5) The amount of any contingency fee paid.

20 b. Copies of any written determinations made under
21 subsection 1 or 2 during the year.

22 Sec. 5. NEW SECTION. 23B.4 No expansion of authority to
23 contract.

24 This chapter shall not be construed to expand the authority
25 of a state agency or state agent to enter into contracts where
26 no such authority previously existed.

27 Sec. 6. NEW SECTION. 23B.5 Chapter inapplicable.

28 This chapter shall not apply to legal services contracts
29 under chapter 13B.

30 EXPLANATION

31 This bill creates the transparency in private attorney
32 contracts Act in new Code chapter 23B to address the procedure
33 for retention of a private attorney by this state defined to
34 include state officers, departments, boards, commissions,
35 divisions, bureaus, councils, and units of organization,

1 however designated, of the executive branch of state
2 government, and any of its agents.

3 The bill specifies a procedure for the state's retention of a
4 private attorney on a contingency fee basis. The bill requires
5 the attorney general to analyze certain factors and make a
6 written determination that the contingency fee representation
7 will be both cost-effective and in the public interest. The
8 bill requires the attorney general to follow the procurement
9 process used by the department of administrative services in
10 seeking private attorneys under the bill unless the attorney
11 general makes a written determination that such a request is
12 not feasible under the circumstances.

13 All contingency fees in the bill are subject to tiered
14 limits and an aggregate cap of \$50 million, exclusive of
15 reasonable costs and expenses (25 percent of any recovery up
16 to and including \$10 million; plus 20 percent of the next \$5
17 million in recoveries; plus 15 percent of the next \$5 million
18 in recoveries; plus 10 percent of the next \$5 million in
19 recoveries; plus 5 percent of any portion of the recovery that
20 exceeds \$25 million); provided, however, that the attorney
21 general may request a waiver from the executive council of the
22 aggregate contingency fee limit under certain circumstances.
23 All contingency fee contracts must include certain standard
24 provisions to help assure that government attorneys retain
25 absolute control over the litigation. The bill requires the
26 contingency fee contract, payments made under the contract, and
27 the attorney general's written determination about the need for
28 contingency fee representation to be posted on the attorney
29 general's website. Other records relating to the contract are
30 subject to Code chapter 22 (Iowa's open records law). The
31 contracted private attorneys and paralegals are required to
32 maintain detailed contemporaneous time records for presentation
33 to the attorney general upon request. The attorney general is
34 required to submit an annual report to the secretary of the
35 senate and the chief clerk of the house of representatives

1 that describes the state's retention of private attorneys on a
2 contingency fee basis in the preceding calendar year.

3 The bill does not expand the state's authority to enter into
4 contracts where no such authority previously existed.

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

8 The bill amends Code section 13.7, the current Code section
9 relating to the retention of private counsel by executive
10 branch departments and by the attorney general, to specify that
11 the executive branch and the attorney general shall comply with
12 this bill when retaining legal counsel on a contingency fee
13 basis.