



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1236

PRINTERS NO. 1567

PRIME SPONSOR: Krieger

COST / (SAVINGS)

FUND	FY 2012/13	FY 2013/14
General Fund	\$0	\$0

SUMMARY: Amends Title 62 (Procurement) to establish various requirements and parameters applicable to state contingency fee contracts for legal services.

ANALYSIS: HB 1236 amends the Procurement Code to establish various requirements and parameters applicable to state contingency fee contracts for legal services. The bill requires any purchasing agency that intends to enter into a contingency fee contract for legal services to disclose its intent in the contract solicitation and include a written determination in its contract file that such a contract is in the best interests of the Commonwealth.

Prohibition/Limits:

The bill establishes limits on contingency fees that may be received by legal entities that enter into contingency fee contracts for legal services with the Commonwealth. No contingency fee, exclusive of reasonable costs and expenses, may exceed \$50 million. Additionally, the bill establishes a sliding scale of percentage limits applicable to portions of the total amount of recovery as follows:

Portion of Recovery	Percentage Limit
Up to \$10 million	25%
Between \$10-\$15 million	20%
Between \$15-\$20 million	15%
Between \$20-\$25 million	10%
Exceeding \$25 million	5%

HB 1236 establishes that a contingency fee may not be based on any penalty or civil fine. The bill also establishes contingency fee limits that are specifically applicable to securities class actions. The bill limits contingency fees in such actions to no more than 20% of recovery, if the Commonwealth is appointed as lead plaintiff or if the Commonwealth is a class representative. A "securities class action" is defined as a class action that includes a claim for a violation of the federal Securities Act of 1933 or the federal Securities Exchange Act of 1934.

Provisions of this bill will not apply to contingency fee contracts where the gross amount is less than \$100,000.

Control over Contracts:

Under the bill, a contingency fee contract for legal services must include provisions specifying that a Commonwealth attorney will retain control over the course and conduct of the case and veto power over any decision made by outside counsel. Additionally, the contract must specify that a Commonwealth attorney will attend all settlement conferences, be subject to the Rules of Professional Conduct and also that decisions regarding any settlement will be reserved exclusively to the Commonwealth.

Oversight:

A purchasing agency that enters into a contingency fee contract for legal services must post a copy of the executed contract on its website no less than five business days after the date the contract is executed and through the duration of the contract. The executed contract must also be posted on the State Treasurer's website, in accordance with the Right to Know Law. The agency must also post the cost of a paid contingency fee on its website. Any legal entity that has entered into a contingency fee legal contract must also provide records relating to the contract to the head of the purchasing agency, who must make the records available for inspection and copying under the Right-to-Know Law.

Each purchasing agency that has entered into a contingency fee legal services contract must submit an annual report regarding all such contracts to the Senate and the House. For each such contract, the report must include information regarding the nature of the legal matter, parties to the legal matter, amount of the recovery, amount of the contingency fee paid and the name of the legal entity with which the agency has contracted.

FISCAL IMPACT: Enactment of this legislation will have no adverse impact on Commonwealth funds.

PREPARED BY: Thomas Gwinn
House Appropriations Committee (R)

DATE: June 3, 2013

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.