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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 356 Session of  
2005

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INTRODUCED BY DALLY, ARMSTRONG, BROWNE, CALTAGIRONE, GRUCELA,  
HARRIS, REICHLEY, RUBLEY, SCAVELLO, THOMAS, TIGUE, TURZAI,  
WALKO AND WILT, FEBRUARY 8, 2005

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REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 8, 2005

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AN ACT

1 Establishing a procurement procedure for certain contracts for  
2 legal services entered into between Commonwealth agencies and  
3 private attorneys.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Private  
8 Attorney Retention Sunshine Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Chief Clerk." The Chief Clerk of the House of  
14 Representatives.

15 "Commonwealth agency." An administrative department, board  
16 or commission, an independent department, board or commission or  
17 an instrumentality thereof of the executive branch, including an  
18 authorized agent of any of them. The term includes the Office of

1 Attorney General, the Department of the Auditor General and the  
2 Treasury Department.

3 "Private attorney." A person who is licensed to practice law  
4 in this Commonwealth or another jurisdiction and who is not an  
5 employee of a Commonwealth agency.

6 "Private attorney contract" or "contract." An agreement for  
7 legal services in which the fee paid to a private attorney or  
8 group of private attorneys, either in the form of a flat or  
9 hourly fee and related expenses, exceeds or can be reasonably  
10 expected to exceed \$500,000.

11 "Reviewing committee." The standing committee of the House  
12 of Representatives that reviews the private attorney contract or  
13 the interim committee established under section 5 (relating to  
14 nonsession procedure) that reviews the private attorney  
15 contract.

16 Section 3. Competitive process required.

17 A Commonwealth agency that intends to enter into a private  
18 attorney contract on behalf of the Commonwealth agency shall use  
19 an open and competitive process to select the private attorney  
20 and shall comply with this act.

21 Section 4. Legislative oversight during session.

22 (a) Copy to be filed.--A Commonwealth agency that intends to  
23 enter into a private attorney contract shall file a copy of the  
24 proposed contract with the Chief Clerk who, with the approval of  
25 the President pro tempore of the Senate and Speaker of the House  
26 of Representatives, shall refer the contract to the appropriate  
27 standing committee of the House of Representatives.

28 (b) Legislative hearing.--Within 30 days after the referral,  
29 the committee may convene a public hearing on the proposed  
30 contract and shall issue a report to the referring Commonwealth

1 agency. The report shall include any recommended changes to the  
2 proposed contract that are agreed upon by a majority vote of the  
3 committee.

4 (c) Commonwealth agency review of report.--The referring  
5 Commonwealth agency shall review the report received under this  
6 act and, following review of the report, shall revise the  
7 private attorney contract as it deems appropriate in view of the  
8 report and shall file a copy of the revised contract and any  
9 notification required by subsection (d) with the Chief Clerk.

10 (d) Notification of revised contract and execution.--

11 (1) If the revised contract does not contain all of the  
12 changes recommended by the reviewing committee, the referring  
13 Commonwealth agency shall notify the Chief Clerk in writing  
14 that the revised contract does not include all of the  
15 recommended changes and shall provide a detailed explanation  
16 with the reasons why each of the recommended changes was not  
17 incorporated into the revised contract.

18 (2) The Chief Clerk shall, upon receipt, transmit the  
19 notification to the chairman of the reviewing committee who  
20 shall, upon receipt, transmit the notification to each member  
21 of the reviewing committee. Upon transmission the chairman  
22 shall advise the members of the reviewing committee and the  
23 Commonwealth agency whether he intends to convene a reviewing  
24 committee meeting to comment on the contents of the  
25 notification.

26 (3) Not sooner than 45 days after the filing of the  
27 notification with the Chief Clerk, the Commonwealth agency  
28 shall be authorized to execute the private attorney contract.

29 (e) Execution of approved contract.--If the reviewing  
30 committee makes no recommended changes to the proposed contract

1 within the time period specified in subsection (b), the proposed  
2 contract shall be deemed approved and the Commonwealth agency  
3 may execute the private attorney contract.

4 Section 5. Nonsession procedure.

5 If at the time a Commonwealth agency files a private attorney  
6 contract with the Chief Clerk as required by this act, the Chief  
7 Clerk determines that the House of Representatives is not  
8 scheduled to be in voting session at any time during the 30-day  
9 period immediately following the filing of the private attorney  
10 contract, the Chief Clerk shall notify the Governor who, with  
11 the consent of the President pro tempore of the Senate and the  
12 Speaker of the House of Representatives, may establish an  
13 interim committee consisting of five members of the General  
14 Assembly, one each to be appointed by the Governor, the  
15 President pro tempore of the Senate, the Minority Leader of the  
16 Senate, the Speaker of the House of Representatives and the  
17 Minority Leader of the House of Representatives. The member  
18 appointed by the Speaker of the House of Representatives shall  
19 serve as chairman. Within 30 days of the establishment of the  
20 interim committee, the chairman may convene a public hearing on  
21 the proposed contract, and the interim committee shall issue a  
22 report to the referring Commonwealth agency. The report shall  
23 include any recommended changes to the proposed contract that  
24 are agreed upon by a majority vote of the committee.

25 Section 6. Disclosure involving contingent fees.

26 (a) Contents of disclosure.--At the conclusion of any legal  
27 proceeding in which a Commonwealth agency is represented by a  
28 private attorney under a private attorney contract, the  
29 Commonwealth agency shall demand the following information to be  
30 disclosed in writing from the private attorney:

1 (1) A statement of the hours worked on the matter.

2 (2) The expenses incurred on the matter.

3 (3) The aggregate fee paid or to be paid to the private  
4 attorney.

5 (4) A breakdown as to the hourly rate, based on hours  
6 worked divided into fee recovered, less expenses.

7 (b) Limitation on fees.--

8 (1) Notwithstanding any other provision of this act or  
9 law to the contrary, no Commonwealth agency shall enter into  
10 a contract the terms of which require the Commonwealth or a  
11 Commonwealth agency to compensate or incur an obligation to  
12 compensate any private attorney or group of private  
13 attorneys, to engage in legal representation for compensation  
14 contingent in whole or in part upon the outcome of the legal  
15 representation, including the amount of any settlement,  
16 recovery or award. Any such private attorney contract shall  
17 be void and unenforceable.

18 (2) In the event that a disclosure submitted under  
19 subsection (a), indicates that a private attorney or group of  
20 private attorneys received an hourly rate in excess of \$1,000  
21 per hour for legal services, the fee amount shall be reduced  
22 to an amount equivalent to \$1,000 per hour.

23 (c) Contract provision.--No private attorney contract shall  
24 be valid and enforceable unless it contains a provision  
25 requiring compliance with this section.

26 Section 7. Construction.

27 Nothing in this act shall be construed as expanding the  
28 authority of any Commonwealth agency to enter into contracts  
29 where no such authority previously existed.

30 Section 8. Severability.

1       The provisions of this act are severable. If any provision of  
2 this act or its application to any person or circumstance is  
3 held invalid, the invalidity shall not affect other provisions  
4 or applications of this act which can be given effect without  
5 the invalid provision or application.

6 Section 9. Repeals.

7       All acts and parts of acts are repealed insofar as they are  
8 inconsistent with this act.

9 Section 10. Effective date.

10       This act shall take effect in 60 days.