

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1946 Session of
2007

INTRODUCED BY DALLY, BASTIAN, BEYER, CALTAGIRONE, CARROLL,
DENLINGER, GEIST, GRELL, HARRIS, W. KELLER, McILHATTAN,
MELIO, MILLARD, REICHLEY, RUBLEY, SCAVELLO, SWANGER AND
WALKO, OCTOBER 23, 2007

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 23, 2007

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

1 authorized agent of any of them. The term includes the Office of
2 Attorney General, the Department of the Auditor General and the
3 Treasury Department.

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

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

12 "Reviewing committee." The standing committee of the House
13 of Representatives that reviews the private attorney contract or
14 the interim committee established under section 5 that reviews
15 the private attorney 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
25 of the President pro tempore of the Senate and Speaker of the
26 House of Representatives, shall refer the contract to the
27 appropriate 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.