

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 502 Session of 2017

INTRODUCED BY KAMPF, METCALFE, DUNBAR, IRVIN, TOPPER, COX,  
KAUFFMAN, GABLER, CUTLER, MARSICO, LAWRENCE AND WARD,  
FEBRUARY 14, 2017

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 14, 2017

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, in source selection and contract formation,  
3 providing for legal services contracts.

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

6 Section 1. Title 62 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 544. Legal services contracts.

9 (a) General rule.--A purchasing agency shall determine the  
10 payment method to be used pursuant to a legal services contract  
11 entered into under section 512.1 (relating to competitive  
12 electronic auction bidding), 515 (relating to sole source  
13 procurement) or 518 (relating to competitive selection  
14 procedures for certain services).

15 (b) Contract.--The method of compensation determined under  
16 subsection (a) shall be part of the contract for legal services.

17 (c) Contingent fee contracts.--The following shall apply:

18 (1) In order to enter into a legal services contract

1 paid on a contingent fee basis, the purchasing agency shall  
2 make a written determination that payment on a contingent fee  
3 basis is all of the following:

4 (i) Feasible and efficient.

5 (ii) In the best interest of the Commonwealth.

6 (2) Contingent fee contracts under this subsection shall  
7 comply with all of the following:

8 (i) Compensation shall not exceed the lesser of the  
9 following:

10 (A) fifty million dollars, which shall be  
11 adjusted annually for inflation beginning January 1,  
12 2018, and each January 1 thereafter, to reflect the  
13 percentage change in the Consumer Price Index for All  
14 Urban Consumers for the Pennsylvania, New Jersey,  
15 Delaware and Maryland area for the most recent 12-  
16 month period for which figures have been officially  
17 reported by the United States Department of Labor,  
18 Bureau of Labor Statistics; or

19 (B) twenty-five percent in the aggregate of an  
20 award or settlement in favor of the Commonwealth.

21 (ii) A contingent fee shall not be based on a  
22 penalty or civil fine awarded or an amount attributable  
23 to a penalty or civil fine.

24 (iii) The following provisions shall be included in  
25 the contract:

26 (A) Commonwealth attorneys designated by the  
27 head of the purchasing agency or, in the case of a  
28 legal services contract entered into by an executive  
29 agency as defined in section 102 of the act of  
30 October 15, 1980 (P.L.950, No.164), known as the

1 Commonwealth Attorneys Act, designated by the General  
2 Counsel, shall retain final authority over the course  
3 and conduct of the legal action, including authority  
4 to:

5 (I) Review and approve all court filings,  
6 including briefs, pleadings, motions and other  
7 materials.

8 (II) Veto any decision of outside counsel.

9 (III) Directly contact a party to the  
10 action.

11 (IV) Participate in any conference call,  
12 hearing, trial or Commonwealth settlement.

13 (B) The Commonwealth shall maintain the  
14 exclusive authority to accept a settlement.

15 (C) A detailed description of the expectations  
16 for both the contractor and the Commonwealth.

17 (3) This subsection shall not apply to contracts in  
18 which the gross amount of the award or settlement is less  
19 than \$100,000.

20 (d) Applicability.--This section shall not apply to legal  
21 services contracts entered into by the Public School Employees'  
22 Retirement System or the State Employees' Retirement System.

23 (e) Definitions.--As used in this section, the following  
24 words and phrases shall have the meanings given to them in this  
25 subsection unless the context clearly indicates otherwise:

26 "Commonwealth attorney." An attorney at law employed by the  
27 purchasing agency who is eligible to participate in the  
28 retirement system under 71 Pa.C.S. Pt. XXV (relating to  
29 retirement for State employees and officers).

30 "Outside counsel." A private attorney at law, law firm,

1 partnership, association or professional corporation.

2 Section 2. This act shall take effect in 60 days.