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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES -- PRIVATE  
ATTORNEY RETENTION SUNSHINE ACT

Introduced By: Senators Walaska, and Bates

Date Introduced: February 03, 2011

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-2-70 of the General Laws in Chapter 37-2 entitled "State  
2 Purchases" is hereby amended to read as follows:

3 **37-2-70. Professional services -- Legal.** -- (a) Subject to the provisions of chapter 37-  
4 2.4, before ~~Before~~ a state governmental entity ~~procures the~~ contracts for or enters into an  
5 agreement for the services of an attorney or a group of attorneys, a state agency shall demonstrate  
6 to the satisfaction of the chief purchasing officer or a public agency shall demonstrate to the  
7 satisfaction of the directors of the public agency the following:

8 (1) The need for the services, including the scope of the services to be performed;

9 (2) That no legal personnel employed by the state on a full-time basis is available to  
10 perform those services;

11 (3) That funding is available, indicating from which sources the funding is to be  
12 provided;

13 (4) That attorneys to be engaged meet the following minimum requirements:

14 (i) Appropriate professional licensing;

15 (ii) Competence to perform those services as reflected by formal training and education,  
16 general experience, experience in providing the required services, and the qualifications and  
17 competence of persons who would be assigned to perform the services; and

18 (iii) Ability to perform the services as reflected by workload and availability of adequate

1 personnel, equipment, and facilities to perform the services expeditiously.

2 (b) The attorney shall enter into a letter of engagement with the state. The letter of  
3 engagement shall state the rate of compensation, the scope of the services to be performed for the  
4 compensation, and provision for the payment of expenses incurred in connection with legal  
5 services. The letter of engagement shall certify that the rate of compensation does not exceed the  
6 rate of compensation charged by counsel to his or her preferred public or private clients. A letter  
7 of engagement shall not be for more than one year.

8 (c) Nothing herein shall prevent the issuance of a public solicitation of requests for  
9 qualifications or the conduct of pricing negotiations prior to contract award. All requests for  
10 qualifications shall be solicited through utilization of the Rhode Island vendor information  
11 program (RIVIP) as set forth in section 37-2-17.1.

12 (d) Each state department and each state government entity which procures the services  
13 of an attorney who is not an employee of that department or body shall, on or before March 1 of  
14 each year, prepare and submit to the director of the department of administration an annual report  
15 of outside legal services, which report shall identify and set forth:

16 (i) The name, firm, affiliation, and address of each attorney or law firm retained by the  
17 department or entity during the previous calendar year and/or of each attorney or law firm to  
18 whom the department or entity paid any fees or other payments during the previous calendar year;

19 (ii) The amount of all fees or other payments from public funds made by the department  
20 or entity to any such attorney or law firm during the previous calendar year.

21 (e) The director of the department of administration shall annually compile all annual  
22 reports of outside legal services and present them, together with an executive summary thereof, to  
23 the governor, the speaker of the house of representatives, the president of the senate, and the  
24 chairpersons of the senate and house committees on finance, not later than May 1 of each year.

25 SECTION 2. Title 37 of the General Laws entitled "PUBLIC PROPERTY AND  
26 WORKS" is hereby amended by adding thereto the following chapter:

27 CHAPTER 2.4

28 PRIVATE ATTORNEY RETENTION SUNSHINE ACT

29 **37-2.4-1. Title.** – This act shall be known and may be cited as the “Private Attorney  
30 Retention Sunshine Act.”

31 **37-2.4-2. Definitions.** – (a) For the purposes of this chapter, a “contract” means one in  
32 excess of five hundred thousand dollars (\$500,000) in which the fee paid to an attorney or group  
33 of attorneys, either in the form of a flat, hourly, or contingent fee, and their expenses, exceeds or  
34 can be reasonably expected to exceed five hundred thousand dollars (\$500,000).

1           **(b) For the purposes of this chapter, “fees” means any compensation for legal services**  
2 **however measured, including but not limited to, flat, hourly, and contingent fees.**

3           **37-2.4-3. Procurement.** – **Any state governmental entity or state agency that wishes to**  
4 **retain a lawyer or law firm to perform legal services on behalf of this state, where the fees and**  
5 **expenses for such services will exceed or can be reasonably expected to exceed one hundred**  
6 **thousand dollars (\$100,000), shall not do so until an open and competitive bidding process has**  
7 **been undertaken, pursuant to section 37-2-18.**

8           **37-2.4-4. Oversight.** – **No state governmental entity or state agency shall enter into a**  
9 **contract for legal services exceeding five hundred thousand dollars (\$500,000) without the**  
10 **opportunity for legislative review of the terms of the contract in accordance with section 37-2.4-5.**

11           **37-2.4-5. Implementation.** – **(a) Except as provided in subsection (e), any state**  
12 **governmental entity or state agency proposing to enter into a contract for legal services exceeding**  
13 **five hundred thousand dollars (\$500,000) shall file a copy of the proposed contract with the clerk**  
14 **of the house of representatives and shall also accompany such proposed contract with a written**  
15 **statement that identifies:**

16           **(1) The reasons the state should retain private counsel and the consideration of**  
17 **alternatives;**

18           **(2) The open and competitive bidding process that has been undertaken with respect to**  
19 **the proposed legal services;**

20           **(3) The reasons for the selection of the lawyer or law firm that is the proposed contracting**  
21 **party;**

22           **(4) The past or present relationship, if any, between such lawyer, law firm, or any partner**  
23 **or other principal in such law firm and the state governmental entity or state agency proposing to**  
24 **enter into the contract; and**

25           **(5) If the contract contemplates that all or part of the fee is contingent on the outcome of**  
26 **the legal proceeding, the reasons the contingent fee arrangement is believed to be in the state’s**  
27 **interest and any efforts undertaken to obtain private counsel on a non-contingent fee basis.**

28           **(b) Except as provided in subsection (f), the clerk of the house of representatives, with**  
29 **the approval of the president of the senate and the speaker of the house of representatives, shall**  
30 **promptly refer such proposed contract and written statement to the appropriate committee for**  
31 **review.**

32           **(c) Within forty-five (45) days after the filing of said proposed contract and statement**  
33 **with the clerk, the reviewing committee may hold a public hearing on the proposed contract and,**  
34 **whether or not a public hearing is held, shall issue a report to the referring state governmental**

1 entity or state agency. The report shall include any recommended changes to the proposed  
2 contract approved by the committee. If the reviewing committee recommends no changes to the  
3 proposed contract within forty-five (45) days of the initial filing of the proposed contract with the  
4 clerk of the house of representatives, the referring state governmental entity or state agency may  
5 enter into the proposed contract. If the report of the reviewing committee recommends changes to  
6 the proposed contract in accordance with this subsection, the state governmental entity or state  
7 agency shall review the report and prepare a revised contract as deemed appropriate in view of  
8 the report and shall file with the clerk of the house of representatives a copy of the revised  
9 contract.

10 (d) If the revised contract does not contain all changes recommended by the reviewing  
11 committee, the referring state governmental entity or state agency shall include with the revised  
12 contract filed with the clerk a letter stating the reasons why the recommended changes were not  
13 adopted. The clerk shall promptly refer such letter and revised contract to the reviewing  
14 committee, which may hold additional hearings and issue additional reports in its discretion. Not  
15 earlier than forty-five (45) days after the filing of such letter and revised contract with the clerk,  
16 the referring state governmental entity or state agency may enter into the revised contract.  
17 Notwithstanding anything in this section, any revised contract containing terms not previously  
18 reviewed or recommended by the reviewing committee that can reasonably be expected to  
19 increase the fees and expenses to be paid shall be treated as a new proposed contract and shall be  
20 filed and reviewed in accordance with this section.

21 (e) In the event that the legislature is not in session and the state governmental entity or  
22 state agency wishes to enter into a contract for legal services exceeding five hundred thousand  
23 dollars (\$500,000), the proposed contract and written statement described in subdivisions (a)(1)  
24 and (a)(2) shall be filed with the governor in addition to the clerk of the house of representatives.  
25 Except as provided in subsection (f), the governor shall establish a five (5) member interim  
26 committee consisting of five (5) state legislators, one each to be appointed by the governor, the  
27 speaker of the house, the president of the senate, and the minority leader in each house of the  
28 legislature, to execute the legislative oversight duties set forth in subsections (b) and (c) of this  
29 section. All deadlines and responsibilities set forth in those subsections shall apply as though the  
30 interim committee were a committee of the legislature.

31 (f) In the event the state governmental entity or state agency, in a writing filed with the  
32 governor and the clerk of the house of representatives, states that time exigencies require that the  
33 state retain counsel before the periods provided in subsections (a) through (d) have elapsed, and  
34 provides the reasons therefor, the governor shall establish a five (5) member committee, with

1 members appointed as provided in subsection (e) to which the proposed contract and written  
2 statement described in subdivisions (a)(1) and (a)(2) shall be referred. The committee shall  
3 consult with the state governmental entity or state agency to establish and expedited schedule for  
4 review and recommendations on the proposed contract.

5 **37-2.4-6. Contingent fees – Maximum hourly charges.** – (a) At the conclusion of any  
6 legal proceeding for which a state governmental entity or state agency retained outside counsel on  
7 a contingent fee basis, the state shall receive from counsel a statement of the hours worked on the  
8 case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate, based  
9 on hours worked divided into fee recovered, less expenses.

10 (b) In no case shall the state incur fees and expenses in excess of one thousand dollars  
11 (\$1,000) per hour for legal services. In cases where a disclosure submitted in accordance with  
12 subsection (a) of this section indicates an hourly rate in excess of one thousand dollars (\$1,000)  
13 per hour, the fee amount shall be reduced to an amount equivalent to one thousand dollars  
14 (\$1,000) per hour.

15 **37-2.4-7. No expansion of authority.** – Nothing in this chapter shall be construed to  
16 expand the authority of any state governmental entity or state agency to enter into contracts where  
17 no such authority previously existed.

18 **37-2.4-8. Severability.** – Is any provision of this chapter or its application to any person  
19 or circumstance is held invalid, the invalidity does not affect other provisions or applications of  
20 this chapter which can be given effect without the invalid process or application, and to this end  
21 the provisions of this chapter are severable.

22 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES -- PRIVATE  
ATTORNEY RETENTION SUNSHINE ACT

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- 1           This act would adopt a uniform law governing contracts or agreements by the state with
- 2 attorneys for contracts in excess of five hundred thousand dollars (\$500,000).
- 3           This act would take effect upon passage.

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