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HOUSE BILL NO. 309

Offered January 9, 2002

Prefiled January 7, 2002

A BILL to amend the Code of Virginia by adding a section numbered 2.2-510.1, relating to employment of special counsel.

Patron—Howell

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.2-510.1, as follows:

§ 2.2-510.1. Open negotiation for employment of special counsel.

A. No state agency or state agent shall enter into a contract for legal services in which fees and expenses are reasonably anticipated to exceed \$100,000 until an open and competitive bidding process has been undertaken in accordance with the provisions of the Public Procurement Act (§ 2.2-4300 et seq.), applied mutatis mutandis. The contract shall be awarded to the attorney or firm that submits the most competitive proposal to provide such services considering the cost of the services, the qualifications of the attorney or firm to provide the services, the experience of the attorney or firm with similar legal matters, legal expertise generally, the number of qualified attorneys in the firm, if relevant with respect to the proposed legal services, and such other relevant factors as may be identified by the Attorney General.

B. Prior to entering into a contract for legal services where the amount of the fees and expenses paid to an attorney or firm of attorneys may exceed \$500,000, the state agency or agent that proposes to enter into the contract shall submit the proposed contract to the Joint Legislative Audit and Review Commission (JLARC) for review and recommendations. Within forty-five days after submission of the proposed contract, JLARC shall issue a report to the referring state agency or agent containing any recommended changes to the proposed contract and reasons therefor. JLARC may hold a public hearing to receive public comment prior to issuing the report. The referring state agency or agent shall consider the JLARC report and adopt a proposed final contract it deems appropriate to view of the report.

If the proposed final contract as prepared by the referring state agency or agent contains all of the changes recommended by JLARC, the referring agency or agent may enter into a final contract. If the proposed final contract does not contain all of the changes initially recommended by JLARC, the referring agency or agent shall submit the final proposed contract to JLARC with a letter stating the reasons why the recommended changes were not adopted. JLARC may comment on and make further recommendations to the proposed final contract during the forty-five-day period following resubmission by the referring agency or agent. The state agency or agent that proposes to enter into the contract shall not be bound by the recommendations of JLARC but shall not enter into the final contract until comment is received from JLARC or at least forty-five days have expired after the date of submission of the proposed final contract to JLARC, whichever occurs first.

C. At the conclusion of any legal proceeding for which a state agency or state agent retained outside counsel, the state shall receive from counsel a statement disclosing the hours worked on the case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate, based on hours worked divided into fee recovered, less expenses.

D. In no case shall the state incur fees in excess of \$500 per hour for legal services. In cases where a disclosure statement indicates an hourly rate in excess of \$500 per hour, including any legal proceeding in which outside counsel was retained on a contingency fee basis, the fee amount shall be reduced to an amount equivalent to \$500 per hour.

E. For the purposes of this section "contract for legal services" means a contract in which a fee is paid to an attorney or firm of attorneys, in the form of a flat, hourly, or contingent fee, and any expenses of such attorney or such firm of attorneys.

F. Nothing in this section shall be construed to grant or to expand the authority of any state agency or agent to enter into contracts where no such authority previously existed.

2. That the provisions of this act shall not apply to any contracts for legal services entered into prior to the effective date of this act, nor shall the provisions of this act affect renewals of any such contracts.

INTRODUCED

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