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SENATE BILL NO. 926**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Finance
on February 7, 2018)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact § 2.2-510.1 of the Code of Virginia, relating to contingency fees for special counsel employed by a state agency.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-510.1 of the Code of Virginia is amended and reenacted as follows:

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

A. No state agency or state agent shall enter into a contingency fee contract for legal services in which contingency fees and expenses are reasonably anticipated to exceed \$100,000 until an open and competitive negotiation 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, and such other relevant factors as may be identified by the Attorney General.

B. No state agency or state agent shall enter into a contingency fee contract that provides for special counsel to receive a contingency fee, exclusive of reasonable costs and expenses, in excess of:

1. Twenty-seven percent of any recovery that does not exceed \$10 million; plus

2. Twenty percent of any portion of such recovery that exceeds \$10 million but that does not exceed \$15 million; plus

3. Fifteen percent of any portion of such recovery that exceeds \$15 million but that does not exceed \$20 million; plus

4. Ten percent of any portion of such recovery that exceeds \$20 million but that does not exceed \$25 million; plus

5. Five percent of any portion of such recovery that exceeds \$25 million.

The dollar figures contained in subdivisions 1 through 5 refer to the Commonwealth's proportionate share of the recovery in any contingency fee case. In no event shall the Commonwealth's proportionate share of a contingency fee payable in such a case exceed \$50 million, exclusive of reasonable costs and expenses and irrespective of the number of lawsuits filed or the number of special counsel retained to achieve the recovery.

A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

C. The provisions of this section shall not apply to any contracts for legal fees entered into pursuant to § 2.2-507 for the purpose of implementing the Virginia Debt Collection Act (§ 2.2-4800 et seq.).