**South Carolina General Assembly**

118th Session, 2009-2010

**S. 989**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Rose

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Introduced in the Senate on January 12, 2010

Currently residing in the Senate Committee on **Finance**

Summary: Private Attorney Retention Committee

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2009 Senate Prefiled

12/9/2009 Senate Referred to Committee on **Finance**

1/12/2010 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2010\01-12-10.docx)‑48

1/12/2010 Senate Referred to Committee on **Finance** [SJ](file:///h:\SJ%20Archive\2010\01-12-10.docx)‑48

**VERSIONS OF THIS BILL**

[12/9/2009](file:///p:\pprever\2009-10\989_20091209.docx)

**A** **BILL**

TO AMEND CHAPTER 35, TITLE 11 OF THE 1976 CODE, BY ADDING SECTION 11‑35‑1600, TO PROVIDE THAT ANY STATE AGENCY ENTERING INTO A CONTRACT FOR LEGAL SERVICES IN EXCESS OF ONE MILLION DOLLARS MUST AWARD THE CONTRACT BY COMPETITIVE SEALED BIDDING, TO CREATE THE PRIVATE ATTORNEY RETENTION COMMITTEE AND TO PROVIDE FOR THE COMMITTEE’S DUTIES AND POWERS, TO PROVIDE THE CONTRACT REVIEW PROCESS FOR LEGAL SERVICE CONTRACTS IN EXCESS OF ONE MILLION DOLLARS, AND TO PROVIDE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑1600. (A) Any state agency or state agent desiring to enter into a contract in excess of one million dollars for the retention of legal services must award the contract by competitive sealed bidding, pursuant to Section 11‑35‑1520. For the purposes of this section, a contract in excess of one million dollars is one in which the fee paid to an attorney or group of attorneys and their expenses exceeds or can be reasonably expected to exceed one million dollars. ‘Fees’ shall include any compensation for legal services however measured including, but not limited to, flat, hourly, and contingent fees. ‘State agency’ means all officers, departments, boards, commissions, institutions, universities, colleges, and all persons and administrative units of state government except the Attorney General and members of the judiciary.

(B) There is hereby created a six member joint committee of the General Assembly to be known as the Private Attorney Retention Committee to review contracts for legal services in excess of one million dollars. The committee shall consist of the following members:

(1) one member appointed by the President Pro Tempore of the Senate;

(2) one member appointed by the Speaker of the House of Representatives;

(3) one member appointed by the Chairman of the Senate Judiciary Committee;

(4) one member appointed by the Chairman of the House Judiciary Committee;

(5) one member appointed by the Chairman of the Senate Finance Committee;

(6) one member appointed by the Chairman of the House Ways and Means Committee.

Terms of members of the committee are coterminous with the term of the appointing authority. The review committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and other officers as the review committee may consider necessary.

The expenses of the committee must be paid from approved accounts of both houses. The review committee must use clerical and professional employees of the General Assembly for its staff, who must be made available to the review committee.

(C) No state agency or state agent may enter into a contract for legal services exceeding one million dollars without the opportunity for review of the terms of the contract by the committee.

(D) Except as provided in subsection (F), any state agency or state agent proposing to enter into a contract for legal services exceeding one million dollars shall file a copy of the proposed contract with the committee and shall also accompany the proposed contract with a written statement that identifies:

(1) the reasons the State should retain private counsel and the consideration of alternatives;

(2) the bidding process that has been undertaken with respect to the proposed legal services;

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

(4) the past or present relationship, if any, between the lawyer, law firm, or any partner or other principal in the law firm and the state agency or state agent proposing to enter into the contract; and

(5) if the contract contemplates that all or part of the fee is contingent on the outcome of the legal proceeding, the reasons the contingent fee arrangement is believed to be in the State’s interest and any efforts undertaken to obtain private counsel on a non‑contingent fee basis.

(E) Within forty‑five days after the filing of the proposed contract and statement with the committee, the committee may hold a public hearing on the proposed contract and, whether or not a public hearing is held, shall issue a report to the referring state agency or state agent. The report shall include any recommended changes to the proposed contract approved by the committee.

(1) If the reviewing committee recommends no changes to the proposed contract within forty‑five days of the initial filing of the proposed contract with the committee, the referring state agency or state agent may enter into the proposed contract.

(2) If the report of the reviewing committee recommends changes to the proposed contract, the state agency shall review the report and may prepare a revised contract deemed appropriate by the state agency and file with the committee a copy of the revised contract.

(3) If the revised contract does not contain any or all of the changes recommended by the committee, the referring state agency or state agent shall include with the revised contract correspondence stating the reasons why the recommended changes were not adopted. The committee may hold additional hearings and issue additional reports in its discretion. Not earlier than forty‑five days after the filing of any correspondence and revised contract with the committee, the referring state agency or state agent may enter into the revised contract. Notwithstanding any provision of this section, any revised contract containing terms not previously reviewed or recommended by the committee that can reasonably be expected to increase the fees and expenses to be paid shall be treated as a new proposed contract and shall be filed and reviewed in accordance with this section.

(F) In the event that a state agency determines that the bidding or review process required by this section would result in substantial prejudice to the state’s position in any legal proceeding, the state agency may immediately retain counsel. Any contract entered into by a state agency pursuant to this subsection must contain a provision that the contract is subject to review by the committee, and the terms and conditions of the agreement are subject to change based on any recommendations made by the committee.

(G)(1) At the conclusion of any legal proceeding for which a state agency retained outside counsel on a contingent fee basis, the State shall receive from counsel a statement of 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 fees recovered, less expenses to the state agency.

(2) In no case shall the State incur fees and expenses in excess of one thousand dollars per hour for legal services. In cases where a disclosure submitted in accordance with subsection (A) of this section indicates an hourly rate in excess of one thousand dollars per hour, the fee amount must be reduced to an amount equivalent to one thousand dollars per hour.

(H) Nothing in this act shall be construed to expand the authority of any state agency to enter into contracts where no authority previously existed.”

SECTION 2. This act takes effect upon approval by the Governor.

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