



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 828 and 829 (as introduced 3-11-20)
Sponsor: Senator Jim Runestad (S.B. 828)
Senator Tom Barrett (S.B. 829)
Committee: Oversight

Date Completed: 9-21-20

CONTENT

Senate Bill 828 would enact the "Transparency in Private Attorney Contracts Act" to do the following:

- **Prohibit the Department of Attorney General from entering into a contingency fee contract with a private attorney unless certain conditions were met, including that the Department determined that contingency fee-based representation was cost-effective and in the public interest.**
- **Require a contingency fee contract to meet certain requirements.**
- **Require the Department to request proposals from private attorneys to provide representation on a contingency-fee basis, if it determined that that contingency fee-based representation was cost-effective and in the public interest.**
- **Require the Department to post on its website an executed contract and associated determination within five days after entering into the contract.**
- **Require the Department to post on its website the payment information within 15 days after it paid a contingency fee to a private attorney.**
- **Require the Department to submit to the Legislature, by February 1 each year, a report regarding contingency fee contracts entered into with private attorneys.**

Senate Bill 829 would add Section 28a to the Revised Statutes of 1846 to prohibit the Department from providing legal services unless the services were provided by specified individuals.

The bills are tie-barred.

Senate Bill 828

The bill would prohibit the Department of Attorney General from entering into a contingency fee contract with a private attorney unless the following conditions were met. The Department would have to a determination before entering into the contingency fee contract that contingency fee-based representation was cost-effective and in the public interest. The determination would have to be in writing and include specific finding of each of the following:

- Whether the Department had sufficient appropriate legal and financial resources to handle the matter.
- The time, labor, skill, and experience required to properly perform the attorney services that were necessary to handle the matter.
- The novelty, complexity, and difficulty of the legal questions involved in the matter.

-- The geographic area where the attorney's services were to be provided.

Additionally, in order for the Department to enter into a contingency fee contract with a private attorney, the contract would have to provide for all of the following:

- The private attorney would have to receive a contingency fee rate that was less than or equal to the following: 25% of the portion of the amount recovered that was less than \$10.0 million; 20% of the portion of the amount recovered that was \$10.0 million or more but less than \$15.0 million; 15% of the portion of the amount recovered that was \$15.0 million or more but less than \$20.0 million; 10% of the portion of the amount recovered that was \$20.0 million or more but less than \$25.0 million; or 5% of the portion of the amount recovered that was \$25.0 million or more.
- The private attorney could not receive an aggregate contingency fee of more than \$50.0 million, not including reasonable costs and expenses, and a contingency fee could not be based on the awarding of a penalty or fine or amount attributable to a penalty or fine.
- A government attorney would have to retain complete control over the matter.
- The government attorney with supervisory authority would have to be personally involved in overseeing any litigation and would have to attend all settlement conferences.
- The private attorney would have to maintain detailed time records (recorded in increments of 1/10 of an hour or less) for each individual private attorney and each private attorney's paralegal who worked on the matter, and would have to make the records available for inspection upon the request of the Department.
- The private attorney would have to maintain records regarding the performance of the contract for the duration of the contract and until four years after the contract expired or was terminated, and would have to make the records available for inspection upon the request of the Department.

Records required to be maintained regarding the performance of the contract would have to include expenses, disbursements, charges, credits, underlying receipts and invoices, any other financial transaction regarding the provision of attorney services under the contract.

If the Department determined that contingency fee-based representation were cost-effective and in the public interest, it would have to request proposals from private attorneys to provide representation on a contingency-fee basis. The Department would not have to request proposals from private attorneys if it determined that doing so was not feasible under the circumstances. A determination would have to be made in writing.

The Department would have to develop a standard addendum to be used in contingency fee contracts with private attorneys that met the Act's requirements.

Within five days after entering into a contingency fee contract with a private attorney, the Department would have to post on its public website the executed contract and the associated determination that contingency fee-based representation was cost-effective and in the public interest. The contract and determination would have to remain posted on the website for the duration of the contract, including any renewals or extensions of the contract.

Within 15 days after the Department paid a contingency fee to a private attorney, it would have to post on the Department's public website the payment information, including the payment amount and the private attorney to whom the payment was made. The payment information would have to remain posted on the website for one year after the date it was first posted.

By February 1 of each year, the Department would have to submit a report regarding contingency fee contracts entered into with private attorneys to the Majority Leader of the

Michigan Senate and the Speaker of the Michigan House of Representatives. The report would have to cover the immediately preceding calendar year and include all of the following:

- The name of each private attorney who was a party to the contract, including the private attorney's law firm, if applicable.
- The nature and status of the matter.
- The name of the parties to the matter.
- The amount of contingency fee paid.
- All determinations made regarding whether contingency fee-based representation was cost-effective and in the public interest.

Senate Bill 829

Under the bill, except as otherwise provided in the Transparency in Private Attorney Contracts Act, the Department of Attorney General could not provide legal service unless each individual who provided the legal service was one of the following:

- The Attorney General or an employee of the Department.
- An employee of the State or a political subdivision of the State, as provided by law.
- An employee of the Federal government pursuant to an agreement between the State and the Federal government.

An individual described above could not be compensated for providing legal services unless the compensation was pursuant to an appropriation made by the Legislature.

Proposed MCL 14.28a (S.B. 829)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 828

The bill likely would not have a significant fiscal impact on State or local government. To the extent that any contingency fees were paid, they would be paid from money damages awarded in a settlement or trial. There could be additional costs for the Department to comply with the provisions relating to requests for proposals and compliance with the proposed transparency and reporting requirements; however, those costs likely would be absorbed within the Department's annual appropriations.

Senate Bill 829

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.