

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1606

By: Calvey

COMMITTEE SUBSTITUTE

An Act relating to state government; creating the Private Attorney Retention Sunshine Act; providing short title; specifying components of certain contracts; requiring that certain contracts be competitively bid; requiring outside counsel retained on contingent fee basis to provide statement; providing contents of statement; requiring approval of statement; limiting maximum hourly rate for legal services; amending Section 1, Chapter 180, O.S.L. 1995 (74 O.S. Supp. 2000, Section 20i), which relates to the Attorney General; modifying contracting procedures for retention of services of private attorneys for contracts exceeding a certain amount; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20j of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 4 of this act shall be known and may be cited as the "Private Attorney Retention Sunshine Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20k of Title 74, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Private Attorney Retention Sunshine Act, a contract in excess of One Million Dollars (\$1,000,000.00) is one in which the fee paid to an attorney or group of attorneys, either in the form of a flat, hourly, or contingent fee, and their expenses, exceeds or can be reasonably expected to exceed One Million Dollars (\$1,000,000.00).

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20l of Title 74, unless there is created a duplication in numbering, reads as follows:

Any state agency or state agent that wishes to retain a lawyer or law firm to perform legal services on behalf of this state shall not do so until an open and competitive bidding process has been undertaken if the contract for legal services shall exceed, or can be reasonably expected to exceed, One Million Dollars (\$1,000,000.00).

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20m of Title 74, unless there is created a duplication in numbering, reads as follows:

A. At the conclusion of any legal proceeding for which a state agency or agent retained outside counsel on a contingent fee basis, a panel made up of one designee of the Speaker of the House, one designee of the President Pro Tempore of the Senate, and one designee of the Governor 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 fee recovered, less expenses. The panel shall unanimously approve the reasonableness of the number of hours worked by the outside counsel pursuant to the contingency fee contract. Nothing in the Private Attorney Retention Sunshine Act shall grant any state agency the authority to hire outside counsel on a contingency fee basis if no such authority existed previously.

B. In no case shall the state incur fees and expenses in excess of One Thousand Dollars (\$1,000.00) per hour for legal services. In cases in which a disclosure submitted in accordance with subsection A of this section indicates an hourly rate in excess of One Thousand Dollars (\$1,000.00) per hour, the fee amount shall be reduced to an amount equivalent to One Thousand Dollars (\$1,000.00) per hour.

SECTION 5. AMENDATORY Section 1, Chapter 180, O.S.L.

1995 (74 O.S. Supp. 2000, Section 20i), is amended to read as follows:

Section 20i. A. An agency or official of the executive branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney as such if otherwise authorized by law;

2. Contracting with the Office of the Attorney General; or

3. If the Attorney General is unable to represent the agency, or official due to a conflict of interest, or the Office of the Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official, contracting with a private attorney or attorneys pursuant to this section if the contract for services does not exceed One Million Dollars (\$1,000,000.00) or pursuant to the Private Attorney Retention Sunshine Act if the contract for services exceeds One Million Dollars (\$1,000,000.00).

B. When entering into a contract for legal representation by one or more private attorneys, an agency or official of the executive branch shall select an attorney or attorneys from a list of attorneys maintained by the Attorney General. An agency may contract for legal representation with one or more attorneys who are not on the list only when there is no attorney on the list capable of providing the specific representation and only with the approval of the Attorney General. The list shall include any attorney who desires to furnish services to an agency or official of the executive branch and who has filed a schedule of fees for services with and on a form approved by the Attorney General. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General.

C. Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and, if not fully described in the contract, notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a description of any pending or anticipated litigation or of the transaction requiring representation;

2. The reason or reasons for not obtaining the representation from an attorney employed by the agency or official, if an attorney is employed by the agency or official;

3. The reason or reasons for not obtaining the representation from the Attorney General by contract;

4. The anticipated cost of the representation including the following:

a. the basis for or method of calculation of the fee including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and

b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract; and

5. An estimate of the anticipated duration of the contract.

D. Before entering into a contract for legal representation by one or more private attorneys where the agency has reason to believe that the case, transaction or matter will equal or exceed Twenty Thousand Dollars (\$20,000.00) or after employment when it becomes apparent that the case, transaction or matter will equal or exceeds Twenty Thousand Dollars (\$20,000.00), an agency or official of the executive branch shall obtain the approval of the Attorney General when the total cost, including fees and expenses, of all contracts relating to the same case, transaction, or matter will equal or

exceed Twenty Thousand Dollars (\$20,000.00). Any amendment, modification, or extension of a contract which, had it been a part of the original contract would have required approval by the Attorney General, shall also require approval by the Attorney General.

E. When an agency or official of the executive branch enters into a contract for professional legal services pursuant to this section, the agency shall also comply with the applicable provisions of Section 85.41 of ~~Title 74 of the Oklahoma Statutes~~ this title.

F. The provisions of this section shall not apply to the Oklahoma Indigent Defense System created pursuant to Section 1355 et seq. of Title 22 of the Oklahoma Statutes.

G. The Attorney General shall, on or before February 1 of each year, make a written report on legal representation obtained pursuant to paragraphs 2 and 3 of subsection A of this section. The report shall include a brief description of each contract, the circumstances necessitating each contract, and the amount paid or to be paid under each contract. The report shall be filed with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Appropriations and Budget Committee of the House of Representatives, and the Chair of the Appropriations Committee of the Senate.

SECTION 6. This act shall become effective July 1, 2001.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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