

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1606

By: Calvey

AS INTRODUCED

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; providing for legislative oversight and power to change contract; providing procedure for legislative process; providing procedure if Legislature is not in session; requiring outside counsel retained on contingent fee basis to provide statement; providing contents of statement; limiting maximum hourly rate for legal services; amending 74 O.S. 1991, Section 18b, as last amended by Section 4, Chapter 344, O.S.L. 1999 and Section 1, Chapter 180, O.S.L. 1995 (74 O.S. Supp. 2000, Sections 18b and 20i), which relate to the Attorney General; requiring legislative approval prior to the filing of amicus curiae briefs by the Office of 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 6 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:

No state agency or state agent shall enter into a contract for legal services exceeding One Million Dollars (\$1,000,000.00) without the opportunity for at least one hearing in the Legislature on the terms of the legal contract in accordance with Section 5 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20n of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Per the requirement of Section 4 of this act, any state agency or state agent entering into a contract for legal services in excess of One Million Dollars (\$1,000,000.00) shall file a copy of said proposed contract with the clerk of the House of Representatives, who, with the approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives, shall refer such contract to the appropriate committee.

B. Within thirty (30) days after such referral, the committee may hold a public hearing on the proposed contract and shall issue a report to the referring state agency or agent. The report shall

include any proposed changes to the proposed contract voted upon by the committee. The state agency or state agent shall review the report and adopt a final contract as deemed appropriate in view of the report and shall file with the clerk of the House of Representatives its final contract.

C. If the proposed contract does not contain the changes proposed by the committee, the referring state agency or agent shall send a letter to the Chief Clerk accompanying the final contract stating the reasons why such proposed changes were not adopted. The clerk shall refer such letter and final contract to the appropriate committee. Not earlier than forty-five (45) days after the filing of such letter and final contract with said committee, the state agency or agent shall enter into the final contract.

D. If no proposed changes to the proposed contract are made to the state agency or agent within sixty (60) days of the initial filing of the proposed contract with the Chief Clerk of the House of Representatives, the state agency or agent may enter into the contract.

E. Nothing in the Private Attorney Retention Sunshine Act shall be construed to expand the authority of any state agency or agent to enter into contracts if no such authority previously existed.

F. In the event that the Legislature is not in session and the Attorney General wishes to execute a contract for legal services, the Governor with the unanimous consent of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, may establish a five-member interim committee consisting of five state legislators, one each to be appointed by the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the minority leader in each house of the Legislature to execute the oversight duties set forth in subsections B through E of this section. Identical deadlines and reporting responsibilities shall apply to the Attorney General and this interim committee as

would apply to a standing committee of the Legislature executing its duties set forth in subsections B through E of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20o 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 or 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 fee recovered, less expenses.

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 7. AMENDATORY 74 O.S. 1991, Section 18b, as last amended by Section 4, Chapter 344, O.S.L. 1999 (74 O.S. Supp. 2000, Section 18b), is amended to read as follows:

Section 18b. A. The duties of the Attorney General as the chief law officer of the state shall be:

1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party;

2. To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party;

3. To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any

commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein;

4. To consult with and advise district attorneys, when requested by them, in all matters pertaining to the duties of their offices, when said district attorneys shall furnish the Attorney General with a written opinion supported by citation of authorities upon the matter submitted;

5. To give an opinion in writing upon all questions of law submitted to the Attorney General by the Legislature or either branch thereof, or by any state officer, board, commission or department, provided, that the Attorney General shall not furnish opinions to any but district attorneys, the Legislature or either branch thereof, or any other state official, board, commission or department, and to them only upon matters in which they are officially interested;

6. At the request of the Governor, State Auditor and Inspector, State Treasurer, or either branch of the Legislature, to prosecute any official bond or any contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their Departments;

7. Whenever requested by any state officer, board or commission, to prepare proper drafts for contracts, forms and other writing which may be wanted for the use of the state;

8. To prepare drafts of bills and resolutions for individual members of the Legislature upon their written request stating the gist of the bill or resolution desired;

9. To enforce the proper application of monies appropriated by the Legislature and to prosecute breaches of trust in the administration of such funds;

10. To institute actions to recover state monies illegally expended, to recover state property and to prevent the illegal use of any state property, upon the request of the Governor or the Legislature;

11. To pay into the State Treasury, immediately upon its receipt, all monies received by the Attorney General belonging to the state;

12. To keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts and forms according to subject and section of the law construed or applied;

13. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General in behalf of the state. Said register or docket shall give the style of the case or investigation, where pending, court number, office number, the gist of the matter, result and the names of the assistants who handled the matter;

14. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the state;

15. To report to the Legislature or either branch thereof whenever requested upon any business relating to the duties of the Attorney General's office;

16. To institute civil actions against members of any state board or commission for failure of such members to perform their duties as prescribed by the statutes and the Constitution and to prosecute members of any state board or commission for violation of the criminal laws of this state where such violations have occurred in connection with the performance of such members' official duties;

17. To respond to any request for an opinion of the Attorney General's office, submitted by a member of the Legislature, regardless of subject matter, by written opinion determinative of the law regarding such subject matter;

18. To convene multicounty grand juries in such manner and for such purposes as provided by law; provided, such grand juries are composed of citizens from each of the counties on a pro rata basis by county;

19. To investigate any report by the State Auditor and Inspector filed with the Attorney General pursuant to Section 223 of this title and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of this state;

20. To represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding;

21. To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Property and Casualty Rate Board or in any other state or federal judicial or administrative proceeding;

22. To certify local crimestoppers programs qualified to receive repayments of rewards pursuant to Section 991a of Title 22 of the Oklahoma Statutes; and

23. To investigate and prosecute any criminal action relating to insurance fraud, if in the opinion of the Attorney General a criminal prosecution is warranted, or to refer such matters to the appropriate district attorney.

B. Nothing in this section shall be construed as requiring the Attorney General to appear and defend or prosecute in any court any cause or proceeding for or on behalf of the Oklahoma Tax Commission,

the Board of Managers of the State Insurance Fund, or the Commissioners of the Land Office.

C. In all appeals from the Corporation Commission to the Supreme Court of Oklahoma in which the state is a party, the Attorney General shall have the right to designate counsel of the Corporation Commission as the Attorney General's legally appointed representative in such appeals, and it shall be the duty of the said Corporation Commission counsel to act when so designated and to consult and advise with the Attorney General regarding such appeals prior to taking action therein.

D. The Attorney General shall obtain the approval of the Legislature before the Office of Attorney General files any amicus curiae brief on behalf of the state in any lawsuit. Approval shall be in the form of a concurrent resolution.

SECTION 8. 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 9. This act shall become effective July 1, 2001.

SECTION 10. 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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