

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1379

By: Sykes and Jolley of the
Senate

3
4 and

5 McCullough of the House

6
7
8 (state government - enacting the Private Attorney
9 Retention Sunshine Act - codification -
10 effective date)

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13 AUTHOR: Add the following House Coauthor: Murphey

14 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

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16 "(state government - enacting the Private Attorney
17 Retention Sunshine Act - codification -
18 effective date)

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 20.1 of Title 74, unless there
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Private
2 Attorney Retention Sunshine Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 20.2 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any state agency or state agent that wishes to retain a
7 lawyer or law firm to perform legal services on behalf of this
8 state, where the fees and expenses for the services will exceed or
9 can be reasonably expected to exceed Five Thousand Dollars
10 (\$5,000.00), shall not do so until a request for proposal process
11 has been undertaken.

12 B. The contracting agency shall cause an Internet website
13 controlled by or on behalf of the agency to contain a conspicuous
14 statement, visible from the main webpage or equivalent segment of
15 the website, that after one hundred twenty (120) days after the
16 contract for which the request for proposals has been awarded, any
17 person may obtain a copy of the request for proposal from the agency
18 which prepared it and the identity of all persons or entities to
19 whom the request for proposal was transmitted.

20 C. Each agency subject to the provisions of this section shall
21 maintain a list of the persons and entities to whom a request for
22 proposal has been transmitted, including the mailing address to
23 which the proposal was mailed, and shall make such information
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1 available for inspection within one hundred twenty (120) days after
2 the contract has been awarded.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 20.3 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The request for proposal required by Section 2 of this act
7 and all responses submitted to the request for proposals shall be
8 made accessible through an Internet website maintained by or on
9 behalf of the state agency.

10 B. When the request for proposal has been made accessible on
11 the Internet website, the information shall remain accessible
12 through the website for a period of three (3) years after the
13 request is transmitted by the agency to potentially interested
14 persons.

15 C. The identity of a vendor to whom or to which an agency has
16 awarded a contract in response to a request for proposals, a brief
17 description of the services to be performed under the contract, the
18 projected total payments to be made under the contract, the actual
19 payments made under the contract, once made, and the date the
20 contract was awarded shall be accessible on the Internet website for
21 a period of three (3) years from the date the contract is awarded.

22 D. All information required to be accessible by the provisions
23 of this section or any document that the agency makes accessible
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1 pursuant to Section 2 of this act shall be presented in a format
2 which allows complete review of the content of such documents.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 20.4 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 No state agency or state agent shall enter into a contract for
7 legal services exceeding Five Hundred Thousand Dollars (\$500,000.00)
8 without the opportunity for an executive review of the terms of the
9 contract in accordance with Section 5 of this act.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 20.5 of Title 74, unless there
12 is created a duplication in numbering, reads as follows:

13 A. For purposes of this section, a contract in excess of Five
14 Hundred Thousand Dollars (\$500,000.00) is one in which the fee paid
15 to an attorney or group of attorneys, either in the form of a flat,
16 hourly, or contingent fee, and expenses of the attorney or group of
17 attorneys exceeds or can be reasonably expected to exceed Five
18 Hundred Thousand Dollars (\$500,000.00).

19 B. As used in this section, "fees" shall include, but not be
20 limited to, any compensation for legal services however measured,
21 including but not limited to flat, hourly, and contingent fees.

22 C. Any state agency or state agent proposing to enter into a
23 contract for legal services exceeding Five Hundred Thousand Dollars
24 (\$500,000.00) shall file a copy of the proposed contract with the

1 Governor and shall also accompany the proposed contract with a
2 written statement that identifies the following:

3 1. The reasons the state should retain private counsel and the
4 consideration of alternatives;

5 2. The request for proposal process that has been undertaken
6 with respect to the proposed legal services;

7 3. The reasons for the selection of the lawyer or law firm that
8 is the proposed contracting party;

9 4. The past or present relationship, if any, between the
10 lawyer, law firm, or any partner or other principal in the law firm
11 and the state agency or state agent proposing to enter into the
12 contract; and

13 5. If the contract contemplates that all or part of the fee is
14 contingent on the outcome of the legal proceeding, the reasons the
15 contingent fee arrangement is believed to be in the interest of the
16 state and any efforts undertaken to obtain private counsel on a
17 noncontingent-fee basis.

18 D. Except as provided in subsection G of this section, the
19 Governor shall review the proposed contract and written statement
20 within thirty (30) days of receipt.

21 E. The Governor may hold a public hearing on the proposed
22 contract and, whether or not a public hearing is held, shall issue a
23 report to the referring state agency or state agent. The report
24 shall include any recommended changes to the proposed contract

1 approved by the Governor. If the Governor recommends no changes to
2 the proposed contract within thirty (30) days of the receipt, the
3 referring state agency or state agent may enter into the proposed
4 contract. If the report of the Governor recommends changes to the
5 proposed contract in accordance with this subsection, the state
6 agency or state agent shall review the report and prepare a revised
7 contract as deemed appropriate in view of the report and shall file
8 with the Governor a copy of the revised contract.

9 F. If the revised contract does not contain all changes
10 recommended by the Governor, the referring state agency or state
11 agent shall include with the revised contract filed with the
12 Governor a letter stating the reasons why the recommended changes
13 were not adopted. The Governor may hold additional hearings and
14 issue additional reports in the discretion of the Governor. Not
15 earlier than thirty (30) days after receipt of the letter and
16 revised contract from the Governor, the referring state agency or
17 state agent may enter into the revised contract. Any revised
18 contract containing terms not previously reviewed or recommended by
19 the Governor that can reasonably be expected to increase the fees
20 and expenses to be paid shall be treated as a new proposed contract
21 and shall be filed and reviewed in accordance with the provisions of
22 this section.

23 G. In the event the state agency or state agent in a writing
24 filed with the Governor states that time exigencies require that the

1 state retain counsel before the periods provided in subsections C,
2 D, E and F of this section have elapsed, and provides the reasons
3 therefor, the Governor shall consult with the state agency or state
4 agent to establish an expedited schedule for review and
5 recommendations on the proposed contract.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 20.6 of Title 74, unless there
8 is created a duplication in numbering, reads as follows:

9 A. At the conclusion of any legal proceeding for which a state
10 agency or agent retained outside counsel on a contingency-fee basis,
11 the state shall receive from counsel a statement of the hours worked
12 on the case, expenses incurred, the aggregate fee amount, and a
13 breakdown as to the hourly rate based on hours worked divided into
14 fee recovered, less expenses.

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

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 20.7 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. Nothing in the Private Attorney Retention Sunshine Act shall
2 be construed to expand the authority of any state agency or state
3 agent to enter into contracts where no such authority previously
4 existed.

5 B. Contracts entered into pursuant to the Private Attorney
6 Retention Sunshine Act shall not be subject to The Oklahoma Central
7 Purchasing Act, and the request for proposal process shall be
8 subject to the discretion of the agency head or his or her designee.

9 C. Except for the provisions in subsections B and C of Section
10 2 and Section 3 of this act, nothing in the Private Attorney
11 Retention Sunshine Act shall apply to the Oklahoma Department of
12 Transportation or the Oklahoma Turnpike Authority.

13 D. Except for the provisions in subsections B and C of Section
14 2 and Section 3 of this act, nothing in the Private Attorney
15 Retention Sunshine Act shall apply to the Oklahoma Turnpike
16 Authority as it relates to the hiring of private attorneys for bond
17 issuance by the Authority.

18 SECTION 8. This act shall become effective November 1, 2010.”
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1 Passed the House of Representatives the 20th day of April, 2010.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2010.

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9 Presiding Officer of the Senate