

1 ENGROSSED SENATE  
2 BILL NO. 1379

By: Sykes and Jolley of the  
Senate

3 and

4 McCullough of the House

5  
6  
7 [ state government - enacting the Private Attorney

8 Retention Sunshine Act - codification -

9 effective date ]

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

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

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

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

21 A. Any state agency or state agent that wishes to retain a  
22 lawyer or law firm to perform legal services on behalf of this  
23 state, where the fees and expenses for the services will exceed or  
24 can be reasonably expected to exceed Five Thousand Dollars

1 (\$5,000.00), shall not do so until a request for proposal process  
2 has been undertaken.

3 B. The contracting agency shall cause an Internet website  
4 controlled by or on behalf of the agency to contain a conspicuous  
5 statement, visible from the main webpage or equivalent segment of  
6 the website, that after one hundred twenty (120) days after the  
7 contract for which the request for proposals has been awarded, any  
8 person may obtain a copy of the request for proposal from the agency  
9 which prepared it and the identity of all persons or entities to  
10 whom the request for proposal was transmitted.

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

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

20 A. The request for proposal required by Section 2 of this act  
21 and all responses submitted to the request for proposals may be made  
22 accessible through an Internet website maintained by or on behalf of  
23 the state agency.

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1 B. If the request for proposal has been made accessible on the  
2 Internet website, the information shall remain accessible through  
3 the website for a period of three (3) years after the request is  
4 transmitted by the agency to potentially interested persons.

5 C. The identity of a vendor to whom or to which an agency has  
6 awarded a contract in response to a request for proposals, a brief  
7 description of the services to be performed under the contract, the  
8 projected total payments to be made under the contract, the actual  
9 payments made under the contract, once made, and the date the  
10 contract was awarded shall be accessible on the Internet website for  
11 a period of three (3) years from the date the contract is awarded.

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

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

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

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

4           A. For purposes of this section, a contract in excess of Five  
5 Hundred Thousand Dollars (\$500,000.00) is one in which the fee paid  
6 to an attorney or group of attorneys, either in the form of a flat,  
7 hourly, or contingent fee, and expenses of the attorney or group of  
8 attorneys exceeds or can be reasonably expected to exceed Five  
9 Hundred Thousand Dollars (\$500,000.00).

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

13          C. Any state agency or state agent proposing to enter into a  
14 contract for legal services exceeding Five Hundred Thousand Dollars  
15 (\$500,000.00) shall file a copy of the proposed contract with the  
16 Governor and shall also accompany the proposed contract with a  
17 written statement that identifies the following:

18           1. The reasons the state should retain private counsel and the  
19 consideration of alternatives;

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

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

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

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

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

13 E. The Governor may hold a public hearing on the proposed  
14 contract and, whether or not a public hearing is held, shall issue a  
15 report to the referring state agency or state agent. The report  
16 shall include any recommended changes to the proposed contract  
17 approved by the Governor. If the Governor recommends no changes to  
18 the proposed contract within thirty (30) days of the receipt, the  
19 referring state agency or state agent may enter into the proposed  
20 contract. If the report of the Governor recommends changes to the  
21 proposed contract in accordance with this subsection, the state  
22 agency or state agent shall review the report and prepare a revised  
23 contract as deemed appropriate in view of the report and shall file  
24 with the Governor a copy of the revised contract.

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

15 G. In the event the state agency or state agent in a writing  
16 filed with the Governor states that time exigencies require that the  
17 state retain counsel before the periods provided in subsections C,  
18 D, E and F of this section have elapsed, and provides the reasons  
19 therefor, the Governor shall consult with the state agency or state  
20 agent to establish an expedited schedule for review and  
21 recommendations on the proposed contract.

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

1       A. At the conclusion of any legal proceeding for which a state  
2 agency or agent retained outside counsel on a contingency-fee basis,  
3 the state shall receive from counsel a statement of the hours worked  
4 on the case, expenses incurred, the aggregate fee amount, and a  
5 breakdown as to the hourly rate based on hours worked divided into  
6 fee recovered, less expenses.

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

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

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

19       Contracts entered into pursuant to the Private Attorney  
20 Retention Sunshine Act shall not be subject to the Oklahoma Central  
21 Purchasing Act, and the request for proposal process shall be  
22 subject to the discretion of the agency head or his or her designee.

23       SECTION 8. This act shall become effective November 1, 2010.

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