

THE HOUSE OF REPRESENTATIVES  
Wednesday, February 11, 2009

House Bill No. 2167

HOUSE BILL NO. 2167 - By: MCCULLOUGH of the House.

An Act relating to state government; creating the Private Attorney Retention Sunshine Act; providing short title; defining term; requiring open and competitive bidding process for retention of lawyer or law firm on behalf of state; requiring executive review of certain contracts; requiring filing of proposed contract and written statement with Governor; providing requirements of written statement; providing time period for review; providing time period for which the Governor may hold a public hearing; requiring report from the Governor; allowing state agency or state agent to enter into certain proposed contract if the Governor makes no changes; requiring revised contract in certain circumstances; requiring letter to accompany revised contract if all recommended changes are not made; providing for additional hearings and additional reports; requiring certain revised contract terms to be treated as a new proposed contract; providing for expedited review of proposed contract; requiring certain statement from retained outside counsel at conclusion of legal proceeding; providing maximum amount of fees and expenses to be incurred; providing for reduction in fee; prohibiting expansion of authority of state agency or state agent; providing for codification; and providing an effective date.

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

- 1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
- 2 Statutes as Section 20.1 of Title 74, unless there is created a duplication in numbering,
- 3 reads as follows:
- 4 This act shall be known and may be cited as the “Private Attorney Retention
- 5 Sunshine Act”.

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

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

9 B. For purposes of the Private Attorney Retention Sunshine Act, “fees” shall  
10 include, but not be limited to, any compensation for legal services however measured,  
11 including but not limited to flat, hourly, and contingent fees.

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

15 Any state agency or state agent that wishes to retain a lawyer or law firm to  
16 perform legal services on behalf of this state, where the fees and expenses for the services  
17 will exceed or can be reasonably expected to exceed Five Thousand Dollars (\$5,000.00),  
18 shall not do so until an open and competitive bidding process has been undertaken  
19 pursuant to Sections 85.1 through 85.44C of Title 74 of the Oklahoma Statutes.

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

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

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

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

11 1. The reasons the state should retain private counsel and the consideration of  
12 alternatives;

13 2. The open and competitive bidding process that has been undertaken with respect  
14 to the proposed legal services;

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

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

20 5. If the contract contemplates that all or part of the fee is contingent on the  
21 outcome of the legal proceeding, the reasons the contingent fee arrangement is believed

1 to be in the interest of the state and any efforts undertaken to obtain private counsel on a  
2 noncontingent-fee basis.

3 B. Except as provided in subsection E of this section, the Governor shall review the  
4 proposed contract and written statement within thirty (30) days of receipt.

5 C. The Governor may hold a public hearing on the proposed contract and, whether  
6 or not a public hearing is held, shall issue a report to the referring state agency or state  
7 agent. The report shall include any recommended changes to the proposed contract  
8 approved by the Governor. If the Governor recommends no changes to the proposed  
9 contract within thirty (30) days of the receipt, the referring state agency or state agent  
10 may enter into the proposed contract. If the report of the Governor recommends changes  
11 to the proposed contract in accordance with this subsection, the state agency or state  
12 agent shall review the report and prepare a revised contract as deemed appropriate in  
13 view of the report and shall file with the Governor a copy of the revised contract.

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

1 new proposed contract and shall be filed and reviewed in accordance with the provisions  
2 of this section.

3 E. In the event the state agency or state agent in a writing filed with the Governor  
4 states that time exigencies require that the state retain counsel before the periods  
5 provided in subsections A, B, C and D of this section have elapsed, and provides the  
6 reasons therefor, the Governor shall consult with the state agency or state agent to  
7 establish an expedited schedule for review and recommendations on the proposed  
8 contract.

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

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

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

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

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

7           SECTION 8. This act shall become effective November 1, 2009.

8           COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION,  
9 dated 02-10-09 - DO PASS.