CS for ESB 1379

THE HOUSE OF REPRESENTATIVES
Wednesday, April 7, 2010

Committee Substitute for

ENGROSSED

Senate Bill No. 1379

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1379 - By: SYKES AND JOLLEY of the Senate and MCCULLOUGH of the House.

[state government - enacting the Private Attorney Retention Sunshine Act - codification -
effective date]

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 20.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

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 20.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any state agency or state agent that wishes to retain a lawyer or law firm to perform legal services on behalf of this state, where the fees and expenses for the services

will exceed or can be reasonably expected to exceed Five Thousand Dollars ($5,000.00), shall not do so until a request for proposal process has been undertaken.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.4 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 Five Hundred Thousand Dollars ($500,000.00) without the opportunity for an executive review of the terms of the 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 20.5 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section, a contract in excess of Five Hundred Thousand Dollars ($500,000.00) 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 expenses of the attorney or

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group of attorneys exceeds or can be reasonably expected to exceed Five Hundred Thousand Dollars ($500,000.00).

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.6 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 contingency-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 where 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.7 of Title 74, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION, dated 04-06-10 - DO PASS, As Amended.

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