

EHB 2167

THE STATE SENATE
Monday, April 6, 2009

ENGROSSED

House Bill No. 2167

As Amended

ENGROSSED HOUSE BILL NO. 2167 - By: McCullough, Wright (John),
Sullivan and Tibbs of the House and Sykes of the Senate.

[state government - Private Attorney Retention Sunshine Act
- maximum amount of fees - 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.

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

9 C. Each agency subject to the provisions of this section shall
10 maintain a list of the persons and entities to whom a request for
11 proposal has been transmitted, including the mailing address to
12 which the proposal was mailed, and shall make such information
13 available for inspection within a reasonable period of time after
14 the contract has been awarded.

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

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

22 B. If the request for proposal has been made accessible on the
23 Internet website, the information shall remain accessible through

1 the website for a period of three (3) years after the request is
2 transmitted by the agency to potentially interested persons.

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

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

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

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

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

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

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

10 C. Any state agency or state agent proposing to enter into a
11 contract for legal services exceeding Five Hundred Thousand Dollars
12 (\$500,000.00) shall file a copy of the proposed contract with the
13 Governor and shall also accompany the proposed contract with a
14 written statement that identifies the following:

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

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

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

21 4. The past or present relationship, if any, between the
22 lawyer, law firm, or any partner or other principal in the law firm

1 and the state agency or state agent proposing to enter into the
2 contract; and

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

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

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

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

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

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

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

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

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

23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-1-09 - DO
24 PASS, As Amended.