

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2167

By: McCullough

4  
5 AS INTRODUCED

6 An Act relating to state government; creating the  
7 Private Attorney Retention Sunshine Act; providing  
8 short title; defining term; requiring open and  
9 competitive bidding process for retention of lawyer  
10 or law firm on behalf of state; requiring executive  
11 review of certain contracts; requiring filing of  
12 proposed contract and written statement with  
13 Governor; providing requirements of written  
14 statement; providing time period for review;  
15 providing time period for which the Governor may hold  
16 a public hearing; requiring report from the Governor;  
17 allowing state agency or state agent to enter into  
18 certain proposed contract if the Governor makes no  
19 changes; requiring revised contract in certain  
20 circumstances; requiring letter to accompany revised  
21 contract if all recommended changes are not made;  
22 providing for additional hearings and additional  
23 reports; requiring certain revised contract terms to  
24 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  
2 in the Oklahoma Statutes as Section 20.1 of Title 74, unless there  
3 is created a duplication in numbering, reads as follows:

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

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

9 A. For purposes of the Private Attorney Retention Sunshine Act,  
10 a contract in excess of Five Hundred Thousand Dollars (\$500,000.00)  
11 is one in which the fee paid to an attorney or group of attorneys,  
12 either in the form of a flat, hourly, or contingent fee, and  
13 expenses of the attorney or group of attorneys exceeds or can be  
14 reasonably expected to exceed Five Hundred Thousand Dollars  
15 (\$500,000.00).

16 B. For purposes of the Private Attorney Retention Sunshine Act,  
17 "fees" shall include, but not be limited to, any compensation for  
18 legal services however measured, including but not limited to flat,  
19 hourly, and contingent fees.

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

23 Any state agency or state agent that wishes to retain a lawyer  
24 or law firm to perform legal services on behalf of this state, where

1 the fees and expenses for the services will exceed or can be  
2 reasonably expected to exceed Five Thousand Dollars (\$5,000.00),  
3 shall not do so until an open and competitive bidding process has  
4 been undertaken pursuant to Sections 85.1 through 85.44C of Title 74  
5 of the Oklahoma Statutes.

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

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

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

16 A. Any state agency or state agent proposing to enter into a  
17 contract for legal services exceeding Five Hundred Thousand Dollars  
18 (\$500,000.00) shall file a copy of the proposed contract with the  
19 Governor and shall also accompany the proposed contract with a  
20 written statement that identifies the following:

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

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

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

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

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

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

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

1 contract as deemed appropriate in view of the report and shall file  
2 with the Governor a copy of the revised contract.

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

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

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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.

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24           52-1-5772           MMP           01/12/09