

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2549

By: McCullough

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5
6 AS INTRODUCED

7 An Act relating to state government; enacting the
8 Legal Services Reform Act; amending 74 O.S. 2011,
9 Section 18c, which relates to employment of
10 attorneys; prohibiting entities from hiring private
11 attorneys unless certain procedures are met; removing
12 excepted agencies; allowing entities to employ
13 general counsels and attorneys as provided by
14 statute; amending 74 O.S. 2011, Section 20i, which
15 relates to legal representation for agency or
16 official; allowing Attorney General to use good cause
17 to determine when private attorneys shall be
18 retained; requiring certain statement from retained
19 outside counsel at conclusion of legal proceeding;
20 providing maximum amount of fees and expenses to be
21 incurred; providing for reduction in fee; providing
22 that act does not expand authority of state agency or
23 state officer; providing for discretion in the
24 request for proposal process; amending 74 O.S. 2011,
Section 85.3A, which relates to The Oklahoma Central
Purchasing Act; providing for exemption; providing
for codification; and providing an effective date.

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

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

1 This act shall be known and may be cited as the "Legal Services
2 Reform Act".

3 SECTION 2. AMENDATORY 74 O.S. 2011, Section 18c, is
4 amended to read as follows:

5 Section 18c. A. 1. Except as otherwise provided by this
6 subsection, no state officer, board or commission shall have
7 authority to ~~employ or appoint attorneys~~ retain a private attorney
8 or law firm to advise or represent said officer, board or commission
9 in any matter, without following the procedures set forth in Section
10 20i of this title.

11 2. ~~The provisions of this subsection shall not apply to the~~
12 ~~Corporation Commission, the Council on Law Enforcement Education and~~
13 ~~Training, the Consumer Credit Commission, the Board of Managers of~~
14 ~~the State Insurance Fund, the Oklahoma Tax Commission, the~~
15 ~~Commissioners of the Land Office, the Oklahoma Public Welfare~~
16 ~~Commission also known as the Commission for Human Services, the~~
17 ~~State Board of Corrections, the Oklahoma Health Care Authority, the~~
18 ~~Department of Public Safety, the Oklahoma State Bureau of Narcotics~~
19 ~~and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement~~
20 ~~Commission, the Transportation Commission, the Oklahoma Energy~~
21 ~~Resources Board, the Department of Central Services, the Oklahoma~~
22 ~~Merit Protection Commission, the Office of Personnel Management, the~~
23 ~~Oklahoma Water Resources Board, the Department of Labor, the~~
24 ~~Department of Agriculture, Food, and Forestry, the Northeast~~

1 ~~Oklahoma Public Facilities Authority, the Oklahoma Firefighters~~
2 ~~Pension and Retirement System, the Oklahoma Public Employees~~
3 ~~Retirement System, the Uniform Retirement System for Justices and~~
4 ~~Judges, the Oklahoma Conservation Commission, the Office of Juvenile~~
5 ~~Affairs, and the State Board of Pharmacy.~~

6 ~~3. The provisions of paragraph 2 of this subsection shall not~~
7 ~~be construed to authorize the Office of Juvenile Affairs to employ~~
8 ~~any attorneys that are not specifically authorized by law.~~

9 ~~4. All the legal duties of such officer, board or commission~~
10 ~~shall devolve upon and are hereby vested in the Attorney General;~~
11 ~~provided that:~~

12 a. the Governor shall have authority to employ special
13 counsel to protect the rights or interest of the state
14 as provided in Section 6 of this title, and

15 b. liquidation agents of banks shall have the authority
16 to employ local counsel, with the consent of the Bank
17 Commissioner and the Attorney General and the approval
18 of the district court.

19 B. At the request of any state officer, board or commission,
20 ~~except the Corporation Commission, the Board of Managers of the~~
21 ~~CompSource Oklahoma, Oklahoma Tax Commission and the Commissioners~~
22 ~~of the Land Office, the Grand River Dam Authority, the Oklahoma~~
23 ~~State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic~~
24 ~~Beverage Laws Enforcement Commission, the Oklahoma Firefighters~~

1 ~~Pension and Retirement System, the Oklahoma Public Employees~~
2 ~~Retirement System, the Uniform Retirement System for Justices and~~
3 ~~Judges and the Interstate Oil and Gas Compact Commission, the~~
4 ~~Attorney General shall defend any action in which they may be sued~~
5 ~~in their official capacity. At the request of any such state~~
6 ~~officer, board or commission,~~ the Attorney General shall have
7 authority to institute suits in the name of the State of Oklahoma on
8 their relation, if after investigation the Attorney General is
9 convinced there is sufficient legal merit to justify the action.

10 C. Any officer, board, or commission which has the authority to
11 employ or appoint attorneys may request that the Attorney General
12 defend any action arising pursuant to the provisions of The
13 Governmental Tort Claims Act.

14 D. Nothing in this section shall be construed to repeal or
15 affect the provisions of the statutes of this state pertaining to
16 ~~attorneys and legal advisors of the several commissions and~~
17 ~~departments of state specified in subsection B of this section, and~~
18 ~~all acts and parts of acts pertaining thereto shall be and remain in~~
19 ~~full force and effect~~ general counsels and other attorneys
20 authorized to be employed by state agencies, officers, boards, and
21 commissions.

22 SECTION 3. AMENDATORY 74 O.S. 2011, Section 20i, is
23 amended to read as follows:
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1 Section 20i. A. An agency or official of the executive branch
2 may obtain legal representation by one or more attorneys by means of
3 one of the following:

4 1. Employing an attorney as such if otherwise authorized by
5 law;

6 2. Contracting with the Office of the Attorney General; or

7 3. If the Attorney General is unable to represent the agency,

8 ~~or official due to a conflict of interest, or the Office of the~~

9 ~~Attorney General is unable or lacks the personnel or expertise to~~

10 ~~provide the specific representation required by such agency or~~

11 ~~official~~ for good cause to be determined solely at the discretion of

12 the Attorney General, contracting with a private attorney or

13 attorneys pursuant to this section.

14 B. When entering into a contract for legal representation by

15 one or more private attorneys, an agency or official of the

16 executive branch shall select an attorney or attorneys from a list

17 of attorneys maintained by the Attorney General. An agency may

18 contract for legal representation with one or more attorneys who are

19 not on the list only when there is no attorney on the list capable

20 of providing the specific representation and only with the approval

21 of the Attorney General. The list shall include any attorney who

22 desires to furnish services to an agency or official of the

23 executive branch and who has filed a schedule of fees for services

24 with and on a form approved by the Attorney General. An agency or

1 official may agree to deviate from the schedule of fees only with
2 the approval of the Attorney General.

3 C. Before entering into a contract for legal representation by
4 one or more private attorneys, an agency or official of the
5 executive branch shall furnish a copy of the proposed contract to
6 the Attorney General and, if not fully described in the contract,
7 notify the Attorney General of the following:

8 1. The nature and scope of the representation including, but
9 not limited to, a description of any pending or anticipated
10 litigation or of the transaction requiring representation;

11 2. The reason or reasons for not obtaining the representation
12 from an attorney employed by the agency or official, if an attorney
13 is employed by the agency or official;

14 3. The reason or reasons for not obtaining the representation
15 from the Attorney General by contract;

16 4. The anticipated cost of the representation including the
17 following:

18 a. the basis for or method of calculation of the fee
19 including, when applicable, the hourly rate for each
20 attorney, paralegal, legal assistant, or other person
21 who will perform services under the contract, and

22 b. the basis for and method of calculation of any
23 expenses which will be reimbursed by the agency or
24 official under the contract; and

1 5. An estimate of the anticipated duration of the contract.

2 D. Before entering into a contract for legal representation by
3 one or more private attorneys ~~where the agency has reason to believe~~
4 ~~that the case, transaction or matter will equal or exceed Twenty~~
5 ~~Thousand Dollars (\$20,000.00) or after employment when it becomes~~
6 ~~apparent that the case, transaction or matter will equal or exceeds~~
7 ~~Twenty Thousand Dollars (\$20,000.00), an agency or official of the~~
8 executive branch shall obtain the approval of the Attorney General
9 ~~when the total cost, including fees and expenses, of all contracts~~
10 ~~relating to the same case, transaction, or matter will equal or~~
11 ~~exceed Twenty Thousand Dollars (\$20,000.00). Any amendment,~~
12 modification, or extension of a contract which, had it been a part
13 of the original contract would have required approval by the
14 Attorney General, shall also require approval by the Attorney
15 General.

16 E. When an agency or official of the executive branch enters
17 into a contract for professional legal services pursuant to this
18 section, the agency shall also comply with the applicable provisions
19 of Section 85.41 of ~~Title 74 of the Oklahoma Statutes~~ this title.

20 F. The provisions of this section shall not apply to the
21 Oklahoma Indigent Defense System created pursuant to Section 1355 et
22 seq. of Title 22 of the Oklahoma Statutes.

23 G. The Attorney General shall, on or before February 1 of each
24 year, make a written report on legal representation obtained

1 pursuant to paragraphs 2 and 3 of subsection A of this section. The
2 report shall include a brief description of each contract, the
3 circumstances necessitating each contract, and the amount paid or to
4 be paid under each contract. The report shall be filed with the
5 Governor, the President Pro Tempore of the Senate, the Speaker of
6 the House of Representatives, the Chair of the Appropriations and
7 Budget Committee of the House of Representatives, and the Chair of
8 the Appropriations Committee of the Senate.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 20.2 of Title 74, unless there
11 is created a duplication in numbering, reads as follows:

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

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

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 20.3 of Title 74, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Nothing in the Legal Services Reform Act shall be construed
5 to expand the authority of any state agency or state officer to
6 enter into contracts where no such authority previously existed.

7 B. Contracts entered into pursuant to the Legal Services Reform
8 Act shall not be subject to The Oklahoma Central Purchasing Act, and
9 the request for proposal process shall be subject to the discretion
10 of the chief executive officer of the agency or a designee.

11 SECTION 6. AMENDATORY 74 O.S. 2011, Section 85.3A, is
12 amended to read as follows:

13 Section 85.3A Compliance with the provisions of The Oklahoma
14 Central Purchasing Act shall not be required of:

- 15 1. County government;
- 16 2. The Oklahoma State Regents for Higher Education, the
17 institutions, centers, or other constituent agencies of The Oklahoma
18 State System of Higher Education;
- 19 3. The telecommunications network known as OneNet;
- 20 4. The Department of Public Safety gun range;
- 21 5. The State Treasurer for the following purchases:
 - 22 a. services, including, but not limited to, legal
23 services to assist in the administration of the
24

1 Uniform Unclaimed Property Act, as provided in Section
2 668 of Title 60 of the Oklahoma Statutes, and

3 b. software, hardware and associated services to assist
4 in the administration of funds and securities held by
5 the state, as provided in Section 71.2 of Title 62 of
6 the Oklahoma Statutes;

7 6. CompSource Oklahoma if CompSource Oklahoma is operating
8 pursuant to a pilot program authorized by Sections 3316 and 3317 of
9 this title; ~~or~~

10 7. Contracts entered into pursuant to the Legal Services Reform
11 Act; or

12 8. The Oklahoma Wheat Commission.

13 SECTION 7. This act shall become effective November 1, 2012.

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