

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1644

By: Jordan

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7 COMMITTEE SUBSTITUTE

8 An Act relating to state government; amending 74 O.S.  
9 2011, Sections 20h and 20i, which relate to legal  
10 representation of the executive branch; providing for  
11 reimbursement to the Attorney General for the costs  
12 of litigation; modifying legal representation by  
13 Attorney General; creating the Transparency in  
14 Private Attorney Contracts (TiPAC); prohibiting  
15 certain contingency-fee contracts; providing for  
16 written determination by Attorney General; providing  
17 exceptions; capping certain fees; defining term;  
18 providing requirements for duration of certain  
19 contracts; requiring addendum to certain contracts;  
20 requiring posting of certain contracts on website;  
21 requiring private attorney under contract to maintain  
22 certain records for time certain; providing for  
23 information contained on website; limiting expansion  
24 of authority; providing for codification; and  
providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2011, Section 20h, is  
amended to read as follows:

1 Section 20h. A. The cost of litigation in any case for which  
2 representation is provided pursuant to this act shall be paid out of  
3 the Attorney General's Evidence Fund.

4 B. The Attorney General may require a state officer, board,  
5 commission, or agency receiving representation to reimburse the  
6 Attorney General for the costs of litigation.

7 C. In the course of representing a state officer, board,  
8 commission, or agency, if the Attorney General determines it is  
9 necessary to contract with a private attorney to assist in  
10 litigation, the Attorney General may require reimbursement for such  
11 services from the state officer, board, commission, or agency  
12 receiving representation.

13 D. Cost of litigation shall include, but is not limited to,  
14 court costs, deposition expenses, travel and lodging, witness fees  
15 and other similar costs; except that this act shall not be construed  
16 as authorizing the payment by the State of Oklahoma or any agency  
17 thereof of any judgment making an award of monetary damages.

18 SECTION 2. AMENDATORY 74 O.S. 2011, Section 20i, is  
19 amended to read as follows:

20 Section 20i. A. An agency or official of the executive branch  
21 may obtain legal representation by one or more attorneys by means of  
22 one of the following:

23 1. Employing an attorney as such if otherwise authorized by  
24 law;

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

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

3 ~~or official due to a conflict of interest, or the Office of the~~  
4 ~~Attorney General is unable or lacks the personnel or expertise to~~  
5 ~~provide the specific representation required by such agency or~~  
6 ~~official,~~ for good cause determined by the Attorney General,

7 contracting with a private attorney or attorneys pursuant to this  
8 section and the procedures set forth in this act.

9           B. When entering into a contract for legal representation by  
10 one or more private attorneys, an agency or official of the  
11 executive branch shall select an attorney or attorneys from a list  
12 of attorneys maintained by the Attorney General. An agency may  
13 contract for legal representation with one or more attorneys who are  
14 not on the list only when there is no attorney on the list capable  
15 of providing the specific representation and only with the approval  
16 of the Attorney General. The list shall include any attorney who  
17 desires to furnish services to an agency or official of the  
18 executive branch and who has filed a schedule of fees for services  
19 with and on a form approved by the Attorney General. An agency or  
20 official may agree to deviate from the schedule of fees only with  
21 the approval of the Attorney General.

22           C. Before entering into a contract for legal representation by  
23 one or more private attorneys, an agency or official of the  
24 executive branch shall furnish a copy of the proposed contract to

1 the Attorney General and, if not fully described in the contract,  
2 notify the Attorney General of the following:

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

6 2. The reason or reasons for not obtaining the representation  
7 from an attorney employed by the agency or official, if an attorney  
8 is employed by the agency or official;

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

11 4. The anticipated cost of the representation including the  
12 following:

13 a. the basis for or method of calculation of the fee  
14 including, when applicable, the hourly rate for each  
15 attorney, paralegal, legal assistant, or other person  
16 who will perform services under the contract, ~~and~~

17 b. the basis for and method of calculation of any  
18 expenses which will be reimbursed by the agency or  
19 official under the contract, and

20 c. an agreement to follow any billing guidelines approved  
21 by the Attorney General; and

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

23 D. Before entering into a contract for legal representation by  
24 one or more private attorneys ~~where the agency has reason to believe~~

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

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

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

20 G. The Attorney General shall, on or before February 1 of each  
21 year, make a written report on legal representation obtained  
22 pursuant to paragraphs 2 and 3 of subsection A of this section. The  
23 report shall include a brief description of each contract, the  
24 circumstances necessitating each contract, and the amount paid or to

1 be paid under each contract. The report shall be filed with the  
2 Governor, the President Pro Tempore of the Senate, the Speaker of  
3 the House of Representatives, the Chair of the Appropriations and  
4 Budget Committee of the House of Representatives, and the Chair of  
5 the Appropriations Committee of the Senate.

6 SECTION 3. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 20.1 of Title 74, unless there  
8 is created a duplication in numbering, reads as follows:

9 This act shall be known and may be cited as the "Transparency in  
10 Private Attorney Contracts (TiPAC)".

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

14 A. The state shall not enter into a contingency-fee contract  
15 with a private attorney unless the Attorney General makes a written  
16 determination prior to entering into such a contract that  
17 contingency fee representation is both cost effective and in the  
18 public interest. Any written determination may include, but not be  
19 limited to, the following factors:

20 1. Whether there exist sufficient and appropriate legal and  
21 financial resources within the Attorney General's office to handle  
22 the matter;

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1           2. The time and labor required; the novelty, complexity, and  
2 difficulty of the questions involved; and the skill requisite to  
3 perform the attorney services properly;

4           3. The geographic area where the attorney services are to be  
5 provided; and

6           4. The amount of experience desired for the particular kind of  
7 attorney services to be provided and the nature of the private  
8 attorney's experience with similar issues or cases.

9           B. If the Attorney General makes the determination described in  
10 subsection A of this section, the Attorney General shall request  
11 proposals from private attorneys to represent the agency on a  
12 contingency-fee basis, unless the Attorney General determines that  
13 requesting proposals is not feasible under the circumstances and  
14 sets forth the basis for this determination in writing.

15           SECTION 5.           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 state shall not enter into a contingency-fee contract  
19 that provides for the private attorney to receive an aggregate  
20 contingency fee in excess of:

21           1. Twenty-five percent (25%) of any recovery of up to Ten  
22 Million Dollars (\$10,000,000.00); plus

1           2. Twenty percent (20%) of any portion of such recovery between  
2 Ten Million Dollars (\$10,000,000.00) and Fifteen Million Dollars  
3 (\$15,000,000.00); plus

4           3. Fifteen percent (15%) of any portion of such recovery  
5 between Fifteen Million Dollars (\$15,000,000.00) and Twenty Million  
6 Dollars (\$20,000,000.00); plus

7           4. Ten percent (10%) of any portion of such recovery between  
8 Twenty Million Dollars (\$20,000,000.00) and Twenty-five Million  
9 Dollars (\$25,000,000.00); plus

10          5. Five percent (5%) of any portion of such recovery exceeding  
11 Twenty-five Million Dollars (\$25,000,000.00).

12          B. In no event shall the aggregate contingency fee exceed Fifty  
13 Million Dollars (\$50,000,000.00), exclusive of reasonable costs and  
14 expenses, and irrespective of the number of lawsuits filed or the  
15 number of private attorneys retained to achieve the recovery.

16          C. For purposes of calculating the contingency fees described  
17 in subsection A of this section, the term "recovery" shall mean  
18 awards of money damages, settlement amount agreed upon and any  
19 penalties awarded. Reasonable costs and expenses shall be  
20 determined by the court and may be paid outside of any contingency-  
21 fee limitation.

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

1       A. The following requirements shall be met throughout the  
2 duration of any contract for contingency-fee attorney services  
3 entered into by the state:

4       1. The Attorney General or his designee shall retain complete  
5 control over the course and conduct of the case;

6       2. The Attorney General or his designee shall designate a  
7 government attorney with supervisory authority who shall be  
8 personally involved in overseeing the litigation;

9       3. The Attorney General shall retain veto power over any  
10 decisions made by outside counsel;

11       4. Any defendant that is the subject of such litigation may  
12 contact the lead government attorneys directly, without having to  
13 confer with contingency-fee counsel;

14       5. A government attorney with supervisory authority for the  
15 case, as designated by the Attorney General, shall participate in  
16 all settlement conferences; and

17       6. Decisions regarding settlement of the case shall be reserved  
18 exclusively to the discretion of the Attorney General and the state.

19       B. The Attorney General shall develop a standard addendum to  
20 every contract for contingency-fee attorney services that shall be  
21 used in all cases, describing in detail what is expected of both the  
22 contracted private attorney and the state, including, without  
23 limitation, the requirements listed in this act.

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1 C. Once the case is resolved, copies of any executed  
2 contingency-fee contract and the Attorney General's written  
3 determination to enter into a contingency fee contract with the  
4 private attorney shall be posted on the Attorney General's website  
5 for public inspection. Any payment of contingency fees shall be  
6 posted on the Attorney General's website.

7 D. Any private attorney under contract to provide services to  
8 the state on a contingency-fee basis shall, from the inception of  
9 the contract until at least four (4) years after the contract  
10 expires or is terminated, maintain detailed current records,  
11 including documentation of all expenses, disbursements, charges,  
12 credits, underlying receipts and invoices, and other financial  
13 transactions that concern the provision of such attorney services  
14 and shall make such records available for the Attorney General upon  
15 request.

16 SECTION 7. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 20.5 of Title 74, unless there  
18 is created a duplication in numbering, reads as follows:

19 The Attorney General shall maintain an Internet website  
20 containing information relevant to contracts for legal services on  
21 behalf of the state. Unless otherwise provided by law, the website  
22 shall contain information including, but not limited to:

23 1. A list of private attorneys available to provide legal  
24 representation for the state who have agreed to follow any billing

1 guidelines approved by the Attorney General and who have filed a  
2 schedule of fees;

3 2. Copies of the contracts for legal representation approved by  
4 the Attorney General unless determined to not be in the best  
5 interests of the law of the state by the Attorney General or  
6 disclosure is prohibited by law; and

7 3. A copy of the annual report produced by the Attorney General  
8 pursuant to subsection G of Section 20i of Title 74 of the Oklahoma  
9 Statutes.

10 SECTION 8. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 20.6 of Title 74, unless there  
12 is created a duplication in numbering, reads as follows:

13 Nothing in this act shall be construed to expand the authority  
14 of any state agency or state agent to enter into contracts where no  
15 such authority previously existed.

16 SECTION 9. This act shall become effective July 1, 2199.

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18 54-1-7390 EK 02/27/13  
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