

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1644

By: Jordan of the House

and

Johnson (Rob) of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

20 SECTION 2. AMENDATORY 74 O.S. 2011, Section 20i, is
21 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 determined by the Attorney General,

12 contracting with a private attorney or attorneys pursuant to this

13 section and the procedures set forth in this act.

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

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1 with and on a form approved by the Attorney General. An agency or
2 official may agree to deviate from the schedule of fees only with
3 the approval of the Attorney General.

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

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

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

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

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

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

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1 b. the basis for and method of calculation of any
2 expenses which will be reimbursed by the agency or
3 official under the contract, and

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

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

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

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

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

6 G. The Attorney General shall, on or before February 1 of each
7 year, make a written report on legal representation obtained
8 pursuant to paragraphs 2 and 3 of subsection A of this section. The
9 report shall include a brief description of each contract, the
10 circumstances necessitating each contract, and the amount paid or to
11 be paid under each contract. The report shall be filed with the
12 Governor, the President Pro Tempore of the Senate, the Speaker of
13 the House of Representatives, the Chair of the Appropriations and
14 Budget Committee of the House of Representatives, and the Chair of
15 the Appropriations Committee of the Senate.

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

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

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

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1 A. The state shall not enter into a contingency-fee contract
2 with a private attorney unless the Attorney General makes a written
3 determination prior to entering into such a contract that
4 contingency fee representation is both cost effective and in the
5 public interest. Any written determination may include, but not be
6 limited to, the following factors:

7 1. Whether there exist sufficient and appropriate legal and
8 financial resources within the Attorney General's office to handle
9 the matter;

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

13 3. The geographic area where the attorney services are to be
14 provided; and

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

18 B. If the Attorney General makes the determination described in
19 subsection A of this section, the Attorney General shall request
20 proposals from private attorneys to represent the agency on a
21 contingency-fee basis, unless the Attorney General determines that
22 requesting proposals is not feasible under the circumstances and
23 sets forth the basis for this determination in writing.

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

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

9 2. Twenty percent (20%) of any portion of such recovery between
10 Ten Million Dollars (\$10,000,000.00) and Fifteen Million Dollars
11 (\$15,000,000.00); plus

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

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

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

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

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

1 C. For purposes of calculating the contingency fees described
2 in subsection A of this section, the term "recovery" shall mean
3 awards of money damages, settlement amount agreed upon and any
4 penalties awarded. Reasonable costs and expenses shall be
5 determined by the court and may be paid outside of any contingency-
6 fee limitation.

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

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

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

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

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

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

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

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

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

11 C. Once the case is resolved, copies of any executed
12 contingency-fee contract and the Attorney General's written
13 determination to enter into a contingency fee contract with the
14 private attorney shall be posted on the Attorney General's website
15 for public inspection. Any payment of contingency fees shall be
16 posted on the Attorney General's website.

17 D. Any private attorney under contract to provide services to
18 the state on a contingency-fee basis shall, from the inception of
19 the contract until at least four (4) years after the contract
20 expires or is terminated, maintain detailed current records,
21 including documentation of all expenses, disbursements, charges,
22 credits, underlying receipts and invoices, and other financial
23 transactions that concern the provision of such attorney services
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1 and shall make such records available for the Attorney General upon
2 request.

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

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

10 1. A list of private attorneys available to provide legal
11 representation for the state who have agreed to follow any billing
12 guidelines approved by the Attorney General and who have filed a
13 schedule of fees;

14 2. Copies of the contracts for legal representation approved by
15 the Attorney General unless determined to not be in the best
16 interests of the law of the state by the Attorney General or
17 disclosure is prohibited by law; and

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

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

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

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

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

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6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2013 - DO
7 PASS, As Amended and Coauthored.

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