

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1574

By: Downing and Echols

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8 COMMITTEE SUBSTITUTE

9 An Act relating to state government; amending 74 O.S.
10 2011, Section 20i, which relates to state contracts
11 for legal representation by private attorneys;
12 requiring that list of attorneys and certain
13 information be made available to the public;
14 prohibiting contingency-fee contract without prior
15 approval by the Attorney General; providing
16 requirements for approval; listing possible factors
17 for consideration by the Attorney General; requiring
18 written statement by the Attorney General if contract
19 is approved; requiring private attorney to retain
20 certain documents for specified time; authorizing the
21 Attorney General to request documents; providing
22 requirements that apply to the contracts; providing
23 fee schedule; defining term; providing that certain
24 records are subject to the Oklahoma Open Records Act;
 and providing an effective date.

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

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

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, contracting with a private attorney or attorneys pursuant
12 to this section.

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

1 attorney shall be maintained and available to the public. An agency
2 or 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
23
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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 5. An estimate of the anticipated duration of the contract.

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

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

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

4 G. No agency or official of the executive branch shall enter
5 into a contingency-fee contract with a private attorney unless and
6 until the Attorney General approves the contract, and in so doing
7 makes a determination that contingency-fee representation is both
8 cost-effective and in the public interest. The determination may
9 include, but not be limited to, consideration of the following
10 factors:

11 1. Whether there exists sufficient and appropriate legal and
12 financial resources within the Office of the Attorney General to
13 handle the matter;

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

17 3. The geographic area where the attorney services are to be
18 provided; and

19 4. The amount of experience desired for the particular kind of
20 attorney services to be provided and the nature of the experience of
21 the private attorney with similar issues or cases.

22 H. If the contract is approved, the Attorney General shall make
23 a written statement, excluding any information that is privileged or
24 part of the deliberative process, stating that contingency-fee

1 representation is both cost-effective and in the public interest,
2 and include a brief description of the contract and the
3 circumstances necessitating the contract.

4 I. Any private attorney under contract to provide services to
5 the agency or official of the executive branch on a contingency-fee
6 basis described in subsection G of this section shall, from the
7 inception of the contract until at least five (5) years after the
8 contract expires or is terminated, maintain detailed records
9 including documentation of all expenses, disbursements, charges,
10 credits, underlying receipts and invoices and other financial
11 transactions that concern the provision of the attorney services and
12 shall make the records available for the Attorney General upon
13 request.

14 J. The following requirements shall be met for contingency-fee
15 attorney services described in subsection G of this section entered
16 into by the agency or official of the executive branch and overseen
17 by the Attorney General:

18 1. Pursuant to Section 18 of this title, the Attorney General
19 or designated government attorney shall retain the right to appear
20 in any action and when so appearing in any such cause or proceeding
21 the Attorney General may, if the Attorney General deems it advisable
22 and in the best interest of the state, take and assume control of
23 the prosecution or defense of the state's interest therein and thus
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1 shall retain complete control over the course and conduct of the
2 case;

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

5 3. Any defendant that is the subject of the litigation shall
6 retain the right to contact the designated government attorney
7 directly, without having to confer with contingency-fee counsel;

8 4. A government attorney with supervisory authority for the
9 case, as designated by the Attorney General, shall retain the right
10 to participate in all settlement conferences; and

11 5. Decisions regarding settlement of the case shall be reserved
12 exclusively to the discretion of the Attorney General.

13 K. Any contingency-fee contract described in subsection G of
14 this section entered into by an agency or official of the executive
15 branch shall contain a contingency-fee schedule that shall not
16 exceed the following maximum payment to the contracting private
17 attorney:

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

20 2. Twenty percent (20%) of any portion of the net recovery
21 between Ten Million Dollars (\$10,000,000.00) and Fifteen Million
22 Dollars (\$15,000,000.00);

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

4 4. Ten percent (10%) of any portion of the net recovery between
5 Twenty Million Dollars (\$20,000,000.00) and Twenty-five Million
6 Dollars (\$25,000,000.00); and

7 5. Five percent (5%) of any portion of the net recovery
8 exceeding Twenty-five Million Dollars (\$25,000,000.00).

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

13 As used in this subsection, "net recovery" means the amount
14 remaining after the total amount received has been reduced by the
15 reasonable cost and expenses advanced. It shall include all damage
16 awards, or settlement amounts agreed upon, but shall not include any
17 penalties or fines awarded or included as part of the settlement.

18 L. Records regarding contingency-fee contracts described in
19 subsection H of this section shall be available to the public
20 pursuant to the Oklahoma Open Records Act.

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

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

7 SECTION 2. This act shall become effective November 1, 2017.

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9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
10 ENVIRONMENTAL, dated 02/09/2017 - DO PASS, As Amended and
Coauthored.