

1 **SENATE FLOOR VERSION**

2 April 11, 2017

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1574

By: Downing, Echols, Brumbaugh
and McDugle of the House

and

Dahm of the Senate

[state government - providing requirements for state
contracts with private attorneys - 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:

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

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

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

3. If the Attorney General is unable to represent the agency,
or official due to a conflict of interest, or the Office of the
Attorney General is unable or lacks the personnel or expertise to
provide the specific representation required by such agency or

1 official, contracting with a private attorney or attorneys pursuant
2 to this section.

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

18 C. Before entering into a contract for legal representation by
19 one or more private attorneys, an agency or official of the
20 executive branch shall furnish a copy of the proposed contract to
21 the Attorney General and, if not fully described in the contract,
22 notify the Attorney General of the following:
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24

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

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

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

9 4. The anticipated cost of the representation including the
10 following:

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

15 b. the basis for and method of calculation of any
16 expenses which will be reimbursed by the agency or
17 official under the contract; and

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

19 D. Before entering into a contract for legal representation by
20 one or more private attorneys where the agency has reason to believe
21 that the case, transaction or matter will equal or exceed Twenty
22 Thousand Dollars (\$20,000.00) or after employment when it becomes
23 apparent that the case, transaction or matter will equal or exceeds
24 Twenty Thousand Dollars (\$20,000.00), an agency or official of the

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

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

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

16 G. No agency or official of the executive branch shall enter
17 into a contingency-fee contract with a private attorney unless and
18 until the Attorney General approves the contract, and in so doing
19 makes a determination that contingency-fee representation is both
20 cost-effective and in the public interest. The determination may
21 include, but not be limited to, consideration of the following
22 factors:

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

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

7 3. The geographic area where the attorney services are to be
8 provided; and

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

12 H. If the contract is approved, the Attorney General shall make
13 a written statement, excluding any information that is privileged or
14 part of the deliberative process, stating that contingency-fee
15 representation is both cost-effective and in the public interest,
16 and include a brief description of the contract and the
17 circumstances necessitating the contract.

18 I. Any private attorney under contract to provide services to
19 the agency or official of the executive branch on a contingency-fee
20 basis described in subsection G of this section shall, from the
21 inception of the contract until at least five (5) years after the
22 contract expires or is terminated, maintain detailed records
23 including documentation of all expenses, disbursements, charges,
24 credits, underlying receipts and invoices and other financial

1 transactions that concern the provision of the attorney services and
2 shall make the records available for the Attorney General upon
3 request.

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

8 1. Pursuant to Section 18 of this title, the Attorney General
9 or designated government attorney shall retain the right to appear
10 in any action and when so appearing in any such cause or proceeding
11 the Attorney General may, if the Attorney General deems it advisable
12 and in the best interest of the state, take and assume control of
13 the prosecution or defense of the state's interest therein and thus
14 shall retain complete control over the course and conduct of the
15 case;

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

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

21 4. A government attorney with supervisory authority for the
22 case, as designated by the Attorney General, shall retain the right
23 to participate in all settlement conferences; and
24

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

3 K. Any contingency-fee contract described in subsection G of
4 this section entered into by an agency or official of the executive
5 branch shall contain a contingency-fee schedule that shall not
6 exceed the following maximum payment to the contracting private
7 attorney:

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

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

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

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

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

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

1 As used in this subsection, "net recovery" means the amount
2 remaining after the total amount received has been reduced by the
3 reasonable costs and expenses advanced. It shall include all damage
4 awards, or settlement amounts agreed upon, but shall not include any
5 penalties or fines awarded or included as part of the settlement.

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

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
21 April 11, 2017 - DO PASS AS AMENDED
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