

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3390 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____
Amendment submitted by: Terry ODonnell _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 3390

By: O'Donnell

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to legal representation; amending 74 O.S. 2011, Section 20i, which relates to contracting for legal representation; clarifying types of entities authorized for contracting; requiring certain identification and fee schedule; specifying certain fee limitations; requiring standard contract clause and specifying contents; requiring posting of contract; requiring maintenance of records; adding certain requirements for certain Attorney General notification; specifying requirements for contracts of legal representation by an agency or official of executive branch; specifying requirements for certain contracts exceeding certain cost; requiring submission of certain proposed contract to the Legislative Oversight Committee under certain circumstances; specifying informational requirements of proposal; requiring certain report be issued within certain time frame; authorizing recommended changes to proposed contract; requiring an agency or official to submit certain information for settlement agreements; authorizing certain Committee to approve or deny; authorizing certain recommendations; requiring certain work expense statement be provided to Attorney General; requiring the Attorney General to submit certain report annually; providing contents of report; 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:

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

B. When entering into a contract for legal representation by one or more private attorneys or law firms, an agency or official of the executive branch shall select an attorney or attorneys or a law firm or law firms from a list of attorneys and firms maintained by the Attorney General. An agency may contract for legal representation with one or more attorneys who are not on the list only when there is no attorney or firm on the list capable of providing the specific representation and only with the approval of the Attorney General. The list shall include any attorney or firm who desires to furnish services to an agency or official of the

1 executive branch and who has filed a schedule of fees for services
2 with and on a form approved by the Attorney General. The list of
3 attorneys and firms desiring to furnish services and a schedule of
4 fees for each attorney and firm shall be maintained and made
5 available to the public.

6 C. An agency or official may agree to deviate from the schedule
7 of fees only with the approval of the Attorney General and as long
8 as the new schedule of fees would not violate the fee schedules set
9 forth in subsections D and E of this section.

10 ~~C.~~ D. An agency or official of the executive branch may not
11 enter into a contingency fee contract that provides for the private
12 attorney or firm to receive an aggregate contingency fee in excess
13 of:

14 1. Twenty-five percent (25%) of that portion of any amount
15 recovered that is Ten Million Dollars (\$10,000,000.00) or less;

16 2. Twenty percent (20%) of that portion of any amount recovered
17 that is more than Ten Million Dollars (\$10,000,000.00) but less than
18 or equal to Fifteen Million Dollars (\$15,000,000.00);

19 3. Fifteen percent (15%) of that portion of any amount
20 recovered that is more than Fifteen Million Dollars (\$15,000,000.00)
21 but less than or equal to Twenty Million Dollars (\$20,000,000.00);

22 4. Ten percent (10%) of that portion of any amount recovered
23 that is more than Twenty Million Dollars (\$20,000,000.00) but less
24 than or equal to Twenty-five Million Dollars (\$25,000,000.00); and

1 5. Five percent (5%) of that portion of any amount recovered
2 that is more than Twenty-five Million Dollars (\$25,000,000.00).

3 E. Notwithstanding subsection D of this section, the total fee
4 payable to all retained private attorneys in any contingency fee
5 contract shall not exceed Fifty Million Dollars (\$50,000,000.00),
6 exclusive of any costs and expenses provided by the contract and
7 actually incurred by the retained private attorneys, regardless of
8 the number of actions or proceedings or the number of retained
9 private attorneys involved in the matter.

10 F. The Attorney General shall develop a standard clause for
11 inclusion in every contract for contingent fee attorney services
12 that shall be used in all cases, describing in detail what is
13 expected of both the contracted private attorney and the state,
14 including, without limitation, the following requirements and the
15 state shall not enter into a contract for contingency fee attorney
16 services that does not incorporate these requirements:

17 1. The government attorneys shall retain complete control over
18 the course and conduct of the case;

19 2. A government attorney with supervisory authority shall be
20 personally involved in overseeing the litigation;

21 3. The government attorneys shall retain veto power over any
22 decisions made by outside counsel;
23
24

1 4. Any defendant that is the subject of litigation may contact
2 the lead government attorneys directly, without having to confer
3 with contingency fee counsel;

4 5. A government attorney with supervisory authority for the
5 case shall attend all settlement conferences; and

6 6. Decisions regarding settlement of the case shall be reserved
7 exclusively to the discretion of the government attorneys and the
8 state.

9 G. Copies of any executed contingency fee contract and
10 contingency fee contract with the private attorney shall be posted
11 on the Attorney General's website for public inspection within five
12 (5) business days after the date the contract is executed and shall
13 remain posted on the website for the duration of the contingency fee
14 contract, including any extensions or amendments to the contract.
15 Any payment of contingency fees shall be posted on the Attorney
16 General's website within fifteen (15) days after the payment of the
17 contingency fees to the private attorney and shall remain posted on
18 the website for at least three hundred sixty-five (365) days after
19 the payment is made.

20 H. Any private attorney under contract to provide services to
21 the state on a contingency fee basis shall, from the inception of
22 the contract until at least four (4) years after the contract
23 expires or is terminated, maintain detailed current records,
24 including documentation of all expenses, disbursements, charges,

1 credits, underlying receipts and invoices, and other financial
2 transactions that concern the providing of attorney services. The
3 private attorney shall make all such records available for
4 inspection and copying upon request. In addition, the private
5 attorney shall maintain detailed contemporaneous time records for
6 the attorneys and paralegals working on the matter in increments of
7 no greater than one-tenth (1/10) of an hour and shall promptly
8 provide these records to the Attorney General upon request.

9 I. Before entering into a contract for legal representation by
10 one or more private attorneys, an agency or official of the
11 executive branch shall furnish a copy of the proposed contract to
12 the Attorney General and, ~~if not fully described in the contract,~~
13 notify the Attorney General of the following:

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

17 2. The reason or reasons for not obtaining the representation
18 from an attorney employed by the agency or official, if an attorney
19 is employed by the agency or official;

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

22 4. The anticipated cost of the representation including the
23 following:
24

- 1 a. the basis for or method of calculation of the fee
2 including, when applicable, the hourly rate for each
3 attorney, paralegal, legal assistant, or other person
4 who will perform services under the contract, and
5 b. the basis for and method of calculation of any
6 expenses which will be reimbursed by the agency or
7 official under the contract; ~~and~~

8 5. An estimate of the anticipated duration of the contract;

9 6. The past or present relationship, if any, between such
10 attorney, law firm or any partner or other principal in such law
11 firm and the state agency or state agent proposing to enter into the
12 contract;

13 7. If the contract contemplates that all or part of the fee is
14 contingent on the outcome of the legal proceeding, the reasons the
15 contingent fee arrangement is believed to be in the state's interest
16 and any efforts undertaken to obtain private counsel on a
17 noncontingent fee basis; and

18 8. The justification for the determination that the selection
19 of a contract for legal representation by one or more private
20 attorneys or firms was made based on the ability of the private
21 attorney or firm to provide the most economical and most competent
22 service which furthers the best interest of the state. The most
23 economical and most competent services does not necessarily mean the
24 least expensive proposal.

1 K. After the approval of the contract by the Attorney General
2 for legal representation by one or more private attorneys, the
3 Attorney General must make available to the public via the Attorney
4 General's website the items required in paragraphs 1 through 8 of
5 subsection J of this section.

6 ~~D. Before~~ L. 1. In addition to the requirements of
7 subsections I and J of this section, before entering into a
8 contingency fee contract for legal representation by one or more
9 private attorneys or firms where the agency has reason to believe
10 that the case, transaction or matter will equal or exceed Twenty
11 Thousand Dollars (\$20,000.00) or after employment when it becomes
12 apparent that the case, transaction or matter will equal or exceeds
13 Twenty Thousand Dollars (\$20,000.00), an agency or official of the
14 executive branch shall obtain the approval of the Attorney General
15 when the total cost, including fees and expenses, of all contracts
16 relating to the same case, transaction, or matter will equal or
17 exceed Twenty Thousand Dollars (\$20,000.00).

18 2. Before entering into a contract for legal representation by
19 one or more private attorneys or firms to initiate a legal action on
20 behalf of the state, an agency or official of the executive branch
21 shall initiate a request proposal from at least three qualified
22 private attorneys or firms, when possible, engaged in providing such
23 services. Notice of the request for proposal shall be published on
24 the Attorney General's website. The request for proposal must

1 solicit a billable hourly rate, regardless of whether a contingency
2 fee is ultimately agreed upon, and must specify the importance of
3 price, quality, ability and experience. The selection of a contract
4 for legal representation by one or more private attorneys or firms
5 must be made using the criteria established in the request for
6 proposal. The selection of a contract for legal representation by
7 one or more private attorneys or firms must be made on the basis of
8 the response to the request which is the most economical and
9 provides the most competent service which furthers the best
10 interests of the state. Most economical and most competent services
11 does not necessarily mean the least expensive proposal.

12 3. Any amendment, modification, or extension of a contract
13 which, had it been a part of the original contract would have
14 required approval by the Attorney General, shall also require
15 approval by the Attorney General.

16 M. After entering into a contingency fee contract for legal
17 representation by one or more private attorneys or firms if the
18 agency has reason to believe that the case, transaction or matter
19 will equal or exceed One Million Dollars (\$1,000,000.00), an agency
20 or official of the executive branch shall submit a copy of the
21 proposed contract to the Legislative Oversight Committee overseeing
22 the operations of the Legislative Office of Fiscal Transparency
23 (LOFT) along with the following:
24

1 1. A description the litigation or of the transaction requiring
2 representation;

3 2. The reason or reasons for not obtaining the representation
4 from an attorney employed by the agency or official;

5 3. The justification for selecting he attorney or firm
6 contracted to represent the state;

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

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

10 M. Settlement agreements shall not contemplate the ultimate use
11 and destination of recovered funds unless done in accordance with
12 paragraphs 11 and 12 of Section 18b of this title.

13 N. Within ten (10) days of an agency or official of the
14 executive branch entering into a settlement agreement when a private
15 attorney or firm was hired on a contingency fee contract and the
16 settlement was equal or greater than One Million Dollars
17 (\$1,000,000.00), an agency or official of the executive branch shall
18 submit a copy of the settlement agreement to the Legislative
19 Oversight Committee overseeing the operations of the Legislative
20 Office of Fiscal Transparency (LOFT) unless otherwise postponed by
21 LOFT.

22 ~~E.~~ O. When an agency or official of the executive branch enters
23 into a contract for professional legal services pursuant to this
24

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. P.~~ 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 Q. By February 1 of each year, the Attorney General shall
17 submit a report to the Governor, the President Pro Tempore of the
18 Senate, the Speaker of the House of Representatives, the Chair of
19 the Appropriations and Budget Committee of the House of
20 Representatives and the Chair of the Appropriations Committee of the
21 Senate, describing the use of contracts with private attorneys in
22 the preceding calendar year. At a minimum, the report shall
23 identify all new contracts entered into during the calendar year and
24

1 all previously executed contracts that remain current during any
2 part of the calendar year. For each contract, describe:

3 1. The name of the private attorney with whom the agency has
4 contracted including the name of the attorney's law firm;

5 2. The nature and status of the legal matter;

6 3. The name of the parties to the legal matter;

7 4. The amount of any recovery;

8 5. The amount of any hourly rate; and

9 6. The amount of any contingency fee paid.

10 SECTION 2. This act shall become effective November 1, 2020.

11
12 57-2-11338 SD 02/24/20
13
14
15
16
17
18
19
20
21
22
23
24