

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1820

By: David, Montgomery and
Bergstrom

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; allowing certain fee exception; specifying certain fee limitations; requiring Attorney General to develop standard clause including specific requirements for certain contracts; requiring publication of certain contracts and payments on Attorney General website within specific time period; requiring maintenance of certain records by private counsel for specified time period; adding certain requirements for certain Attorney General notification; specifying requirements for certain contracts exceeding certain cost; establishing procedures and requirements for certain requests for proposal; requiring submission of certain contract and related information to Legislative Oversight Committee under certain circumstances; clarifying requirement for settlement agreements; requiring submission of certain settlement agreement to the Legislative Oversight Committee; establishing exception to applicability of provisions; requiring the Attorney General to submit certain annual report; specifying required contents of certain 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 shall not
11 enter into a contingency fee contract that provides for the private
12 attorney or firm to receive an aggregate contingency fee that
13 exceeds:

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, but not limited to, the following requirements. The
15 state shall not enter into a contract for contingency fee attorney
16 services that does not incorporate such 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 oversight of the case;

21 3. The government attorneys shall retain veto power over any
22 decision made by outside counsel related to the case;

23 4. Any defendant in the case may contact the lead government
24 attorneys directly, without having to confer with outside counsel;

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

3 6. Decisions regarding settlement of the case shall be reserved
4 exclusively to the discretion of the government attorneys and the
5 state.

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

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

1 In addition, the private attorney shall maintain detailed
2 contemporaneous time records for the attorneys and paralegals
3 working on the matter in increments of no greater than one-tenth
4 (1/10) of an hour and shall promptly provide such records to the
5 Attorney General upon request.

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

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

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

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

19 4. The anticipated cost of the representation including the
20 following:

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

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

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

14 8. The justification for the determination that the selection
15 of a contract for legal representation by one or more private
16 attorneys or firms was made based on the ability of the private
17 attorney or firm to provide the most economical and most competent
18 service which furthers the best interest of the state.

19 J. After the approval of the contract by the Attorney General
20 for legal representation by one or more private attorneys, the
21 Attorney General shall make available to the public on the Attorney
22 General's website the information required pursuant to paragraphs 1
23 through 8 of subsection I of this section.

1 ~~D.~~ K. 1. Before entering into a contingency fee contract for
2 legal representation by one or more private attorneys or firms where
3 the agency has reason to believe that the case, transaction or
4 matter will equal or exceed Twenty Thousand Dollars (\$20,000.00) or
5 after employment when it becomes apparent that the case, transaction
6 or matter will equal or exceeds Twenty Thousand Dollars
7 (\$20,000.00), an agency or official of the executive branch shall
8 obtain the approval of the Attorney General when the total cost,
9 including fees and expenses, of all contracts relating to the same
10 case, transaction, or matter will equal or exceed Twenty Thousand
11 Dollars (\$20,000.00).

12 2. Before entering into a contract for legal representation by
13 one or more private attorneys or firms to initiate a legal action on
14 behalf of the state, an agency or official of the executive branch
15 shall initiate a request for proposal from at least three qualified
16 private attorneys or firms, when possible, engaged in providing such
17 services. Notice of the request for proposal shall be published on
18 the Attorney General's website. The request for proposal shall
19 solicit a billable hourly rate, regardless of whether a contingency
20 fee is ultimately agreed upon, and shall specify the importance of
21 price, quality, ability and experience. The selection of a contract
22 for legal representation by one or more private attorneys or firms
23 shall be made using the criteria established in the request for
24 proposal and shall be based on the response to the request which is

1 the most economical and provides the most competent service which
2 furtheres the best interests of the state. Most economical and most
3 competent shall not be construed to mean the least expensive
4 proposal.

5 3. Any amendment, modification, or extension of a contract
6 which, had it been a part of the original contract would have
7 required approval by the Attorney General, shall also require
8 approval by the Attorney General.

9 L. After entering into a contract for legal representation by
10 one or more private attorneys or firms where the agency has reason
11 to believe that the case, transaction or matter will equal or exceed
12 One Million Dollars (\$1.000.000.00), an agency or official of the
13 executive branch shall submit a copy of the contract to the
14 Legislative Oversight Committee overseeing the operations of the
15 Legislative Office of Fiscal Transparency (LOFT) along with the
16 following:

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

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

21 3. The justification for selecting an attorney or firm
22 contracted to represent the state;

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

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

2 M. A settlement agreement shall not contemplate the ultimate
3 use and destination of recovered funds unless done in accordance
4 with paragraphs 11 and 12 of Section 18b of this title.

5 N. Within ten (10) days of an agency or official of the
6 executive branch entering into a settlement agreement where a
7 private attorney or firm was hired on a contingency fee contract and
8 the settlement was equal to or greater than One Million Dollars
9 (\$1,000,000.00), the agency or official of the executive branch
10 shall present the settlement agreement to the Legislative Oversight
11 Committee with oversight of the operations of the Legislative Office
12 of Fiscal Transparency (LOFT), unless otherwise postponed by LOFT.

13 ~~E.~~ O. 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.~~ P. 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. The provisions of this
20 section shall not apply to any board of an institution of higher
21 education, except where such board initiates a legal action for
22 money damages in conjunction with any other agency or official of
23 the executive branch.

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

11 Q. By February 1 of each year, the Attorney General shall
12 submit a report to the Governor, the President Pro Tempore of the
13 Senate, the Speaker of the House of Representatives, the Chair of
14 the Appropriations and Budget Committee of the House of
15 Representatives and the Chair of the Appropriations Committee of the
16 Senate, that describes the use of contracts with private attorneys
17 in the preceding calendar year. At a minimum, the report shall
18 identify all new contracts entered into during the calendar year
19 being reported and all previously executed contracts that remain
20 current during any part of the calendar year. For each contract,
21 the report shall contain:

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

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

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

2 4. The amount of any recovery;

3 5. The amount of any hourly rate; and

4 6. The amount of any contingency fee paid, if applicable.

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

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