

1 ENGROSSED HOUSE
2 BILL NO. 3390

By: O'Donnell of the House

3 and

4 David of the Senate

5
6 [legal representation - types of entities authorized
7 for contracting - requiring standard contract
8 clause and specifying contents - requiring
9 presentment of proposed contract and certain
10 information to the Legislative Oversight Committee
11 under certain circumstances - requiring the
12 Attorney General to submit certain report annually
13 - effective date]
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16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

1 3. If the Attorney General is unable to represent the agency,
2 or official due to a conflict of interest, or the Office of the
3 Attorney General is unable or lacks the personnel or expertise to
4 provide the specific representation required by such agency or
5 official, contracting with a private attorney or attorneys pursuant
6 to this section.

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

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

3 D. An agency or official of the executive branch may not enter
4 into a contingency fee contract that provides for the private
5 attorney or firm to receive an aggregate contingency fee in excess
6 of:

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

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

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

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

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

20 E. Notwithstanding subsection D of this section, the total fee
21 payable to all retained private attorneys in any contingency fee
22 contract shall not exceed Fifty Million Dollars (\$50,000,000.00),
23 exclusive of any costs and expenses provided by the contract and
24 actually incurred by the retained private attorneys, regardless of

1 the number of actions or proceedings or the number of retained
2 private attorneys involved in the matter.

3 F. The Attorney General shall develop a standard clause for
4 inclusion in every contract for contingency fee attorney services
5 that shall be used in all cases, describing in detail what is
6 expected of both the contracted private attorney and the state,
7 including, without limitation, the following requirements and the
8 state shall not enter into a contract for contingency fee attorney
9 services that does not incorporate these requirements:

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

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

14 3. The government attorneys shall retain veto power over any
15 decisions made by outside counsel;

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

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

21 6. Decisions regarding settlement of the case shall be reserved
22 exclusively to the discretion of the government attorneys and the
23 state.

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

12 H. Any private attorney under contract to provide services to
13 the state on a contingency fee basis shall, from the inception of
14 the contract until at least four (4) years after the contract
15 expires or is terminated, maintain detailed current records,
16 including documentation of all expenses, disbursements, charges,
17 credits, underlying receipts and invoices, and other financial
18 transactions that concern the providing of attorney services. The
19 private attorney shall make all such records available for
20 inspection and copying upon request. In addition, the private
21 attorney shall maintain detailed contemporaneous time records for
22 the attorneys and paralegals working on the matter in increments of
23 no greater than one-tenth (1/10) of an hour and shall promptly
24 provide these records to the Attorney General upon request.

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

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

9 2. The reason or reasons for not obtaining the representation
10 from an attorney employed by the agency or official, if an attorney
11 is employed by the agency or official;

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

14 4. The anticipated cost of the representation including the
15 following:

- 16 a. the basis for or method of calculation of the fee
17 including, when applicable, the hourly rate for each
18 attorney, paralegal, legal assistant, or other person
19 who will perform services under the contract, and
20 b. the basis for and method of calculation of any
21 expenses which will be reimbursed by the agency or
22 official under the contract; ~~and~~

23 5. An estimate of the anticipated duration of the contract;
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1 6. The past or present relationship, if any, between such
2 attorney, law firm or any partner or other principal in such law
3 firm and the state agency or state agent proposing to enter into the
4 contract;

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

10 8. The justification for the determination that the selection
11 of a contract for legal representation by one or more private
12 attorneys or firms was made based on the ability of the private
13 attorney or firm to provide the most economical and most competent
14 service which furthers the best interest of the state. The most
15 economical and most competent service does not necessarily mean the
16 least expensive proposal.

17 J. After the approval of the contract by the Attorney General
18 for legal representation by one or more private attorneys, the
19 Attorney General must make available to the public via the Attorney
20 General's website the items required in paragraphs 1 through 8 of
21 subsection I of this section.

22 ~~D. Before~~ K. 1. Before entering into a contingency fee
23 contract for legal representation by one or more private attorneys
24 or firms where the agency has reason to believe that the case,

1 transaction or matter will equal or exceed Twenty Thousand Dollars
2 (\$20,000.00) or after employment when it becomes apparent that the
3 case, transaction or matter will equal or exceeds Twenty Thousand
4 Dollars (\$20,000.00), an agency or official of the executive branch
5 shall obtain the approval of the Attorney General when the total
6 cost, including fees and expenses, of all contracts relating to the
7 same case, transaction, or matter will equal or exceed Twenty
8 Thousand Dollars (\$20,000.00).

9 2. Before entering into a contingency fee contract for legal
10 representation by one or more private attorneys or firms, if the
11 agency has reason to believe that the total cost for the case,
12 transaction or matter, including fees and expenses, will equal or
13 exceed One Million Dollars (\$1,000,000.00) or after employment it
14 becomes apparent that the costs in the case, transaction or matter,
15 including fees and expenses, will equal or exceed One Million
16 Dollars (\$1,000,000.00), an agency or official of the executive
17 branch shall obtain the approval of the Governor's General Counsel.

18 3. 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. The most economical and most competent
11 service does not necessarily mean the least expensive proposal.

12 4. 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 ~~E.~~ L. 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 of the litigation or of the transaction
2 requiring 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 the attorney or firm
6 contracted to represent the state; and

7 4. An estimate of the anticipated duration of the contract.

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

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

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

14 Q. By February 1 of each year, the Attorney General shall
15 submit a report to the Governor, the President Pro Tempore of the
16 Senate, the Speaker of the House of Representatives, the Chair of
17 the Appropriations and Budget Committee of the House of
18 Representatives and the Chair of the Appropriations Committee of the
19 Senate describing the use of contracts with private attorneys in the
20 preceding calendar year. At a minimum, the report shall identify
21 all new contracts entered into during the calendar year and all
22 previously executed contracts that remain current during any part of
23 the calendar year. For each contract, describe:
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1. The name of the private attorney with whom the agency has
contracted including the name of the attorney's law firm;

2. The nature and status of the legal matter;

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

4. The amount of any recovery;

5. The amount of any hourly rate; and

6. The amount of any contingency fee paid.

R. In any court-ordered mediation or arbitration in which an agency or official of the executive branch is a party, the Attorney General shall nominate the arbitrator or mediator, with final selection to be made by the Contingency Review Board.

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

Passed the House of Representatives the 9th day of March, 2020.

Presiding Officer of the House
of Representatives

Passed the Senate the _____ day of _____, 2020.

Presiding Officer of the Senate