

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1820

By: David

AS INTRODUCED

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; 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:

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

1 attorneys and firms desiring to furnish services and a schedule of
2 fees for each attorney and firm shall be maintained and made
3 available to the public.

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

8 ~~E.~~ D. A private attorney or firm retained by an agency or
9 official of the executive branch shall not be entitled to a fee,
10 exclusive of any costs and expenses, that:

11 1. Is the equivalent to not more than One Thousand Dollars
12 (\$1,000.00) per hour; or

13 2. Comports with the schedule set forth in subsection E of this
14 section, whichever is less.

15 E. 1. Fifteen percent (15%) of that portion of any amount
16 recovered that is Ten Million Dollars (\$10,000,000.00) or less.

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

20 3. Five percent (5%) of that portion of any amount recovered
21 that is more than Fifteen Million Dollars (\$15,000,000.00) but less
22 than or equal to Twenty Million Dollars (\$20,000,000.00).

23 4. Two percent (2%) of that portion of any amount recovered
24 that is more than Twenty Million Dollars (\$20,000,000.00).

1 F. Notwithstanding subsections D and E of this section, the
2 total fee payable to all retained private attorneys in any matter
3 shall not exceed Ten Million Dollars (\$10,000,000.00), exclusive of
4 any costs and expenses provided by the contract and actually
5 incurred by the retained private attorneys, regardless of the number
6 of actions or proceedings or the number of retained private
7 attorneys involved in the matter.

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

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

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

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

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

- 23 a. the basis for or method of calculation of the fee
24 including, when applicable, the hourly rate for each
25

1 attorney, paralegal, legal assistant, or other person
2 who will perform services under the contract, and
3 b. the basis for and method of calculation of any
4 expenses which will be reimbursed by the agency or
5 official under the contract; ~~and~~

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

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

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

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

21 H. A contract for legal representation by one or more private
22 attorneys or firms by an agency or official of the executive branch
23 must be approved by the state agency or official of the executive
24 branch in a public meeting. The proposed rate shall be clearly and

1 separately identified in the agenda of the state agency or official
2 of the executive branch for the hearing and shall be openly and
3 separately discussed during such meeting. The state agency or
4 official of the executive branch shall notify the Contingency Review
5 Board of its pending consideration of the proposed rate at least
6 thirty (30) days before the state agency or official of the
7 executive branch is to meet on the proposed rate.

8 ~~D. Before~~ I. 1. In addition to the requirements of
9 subsections G through H, before entering into a contract for legal
10 representation by one or more private attorneys or firms where the
11 agency has reason to believe that the case, transaction or matter
12 will equal or exceed Twenty Thousand Dollars (\$20,000.00) or after
13 employment when it becomes apparent that the case, transaction or
14 matter will equal or exceeds Twenty Thousand Dollars (\$20,000.00),
15 an agency or official of the executive branch shall obtain the
16 approval of the Attorney General when the total cost, including fees
17 and expenses, of all contracts relating to the same case,
18 transaction, or matter will equal or exceed Twenty Thousand Dollars
19 (\$20,000.00).

20 2. Before entering into a contract for legal representation by
21 one or more private attorneys or firms, an agency or official of the
22 executive branch must receive proposals from at least three
23 qualified private attorneys engaged in providing such services. The
24 selection of a contract for legal representation by one or more

1 private attorneys or firms must be made on the basis of the response
2 to the request which is the most economical and provides the most
3 competent service which furthers the best interests of the state.

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

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

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

20 2. The reason or reasons for not obtaining the representation
21 from an attorney employed by the agency or official, if an attorney
22 is employed by the agency or official;

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

1 4. The anticipated cost of the representation including the
2 following:

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

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

11 K. Within forty-five (45) days after the filing of a proposed
12 contract and other required information to the Legislative Oversight
13 Committee, the Committee shall issue a report to the Contingency
14 Review Board and the referring state agency or official of the
15 executive branch. The report shall include any recommended changes
16 to the proposed contract approved by the Committee. If there are no
17 changes to the proposed contract, the referring state agency or
18 official of the executive branch may enter into the proposed
19 contract. If the Legislative Oversight Committee recommends changes
20 to the proposed contract, the state agency or official of the
21 executive branch shall prepare a revised contract and file the
22 revised contract with the Legislative Oversight Committee and the
23 Contingency Review Board. If the revised contract does not contain
24 all changes recommended by the Legislative Oversight Committee, the

1 revised contract must also contain a letter stating the reasons why
2 the recommended changes were not adopted. The Legislative Oversight
3 Committee shall have forty-five (45) days to issue a report
4 approving or denying the revised contract terms.

5 L. Before entering into a settlement agreement that will equal
6 or exceed One Million Dollars (\$1,000,000.00), an agency or official
7 of the executive branch shall submit a copy of the proposed
8 settlement agreement to the Legislative Oversight Committee
9 overseeing the operations of the Legislative Office of Fiscal
10 Transparency (LOFT) according to the following:

11 1. The Legislative Oversight Committee shall have ten (10) days
12 to issue a report approving or denying the settlement agreement;

13 2. The report shall include any recommended changes to the
14 proposed settlement agreement;

15 3. If there are no changes to the proposed settlement agreement,
16 the referring state agency or official of the executive branch may
17 enter into the proposed settlement agreement;

18 4. If the Legislative Oversight Committee recommends changes to
19 the proposed settlement agreement, the state agency or official of
20 the executive branch shall prepare a revised settlement agreement
21 and file the revised settlement agreement with the Legislative
22 Oversight Committee. If the revised settlement agreement does not
23 contain all changes recommended by the Legislative Oversight
24 Committee, the revised settlement agreement must also contain a

1 letter stating the reasons why the recommended changes were not
2 adopted; and

3 5. The Legislative Oversight Committee shall have ten (10) days
4 to issue a report approving or denying the revised settlement
5 agreement.

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

10 ~~F. N.~~ The provisions of this section shall not apply to the
11 Oklahoma Indigent Defense System created pursuant to Section 1355 et
12 seq. of Title 22 of the Oklahoma Statutes.

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

23 O. Within thirty (30) days of the conclusion of any legal
24 proceeding that equals or exceeds One Million Dollars

1 (\$1,000,000.00) for which an agency or official of the executive
2 branch retained outside counsel, the private attorney or firm
3 retained by the state must provide the Attorney General a statement
4 of the hours worked on the cases including detailed records of all
5 timekeeping, expenses incurred, the aggregate fee amount, and a
6 breakdown as to the hourly rate, based on hours worked divided into
7 fee recovered, less expenses. The Attorney General shall then
8 submit the statement to the Legislative Oversight Committee of the
9 Legislative Office of Fiscal Transparency (LOFT) and the Contingency
10 Review Board.

11 P. 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, describing the use of contracts with private attorneys in
17 the preceding calendar year. At a minimum, the report shall:

18 1. Identify all new contracts entered into during the calendar
19 year and all previously executed contracts that remain current
20 during any part of the calendar year. For each contract, describe:

21 a. the name of the private attorney with whom the agency
22 has contracted including the name of the attorney's
23 law firm,

24 b. the nature and status of the legal matter,

- 1 c. the name of the parties to the legal matter,
2 d. the amount of any recovery, and
3 e. the amount of any contingency fee paid, if applicable;
4 and

5 2. Include copies of any reports made or documents or other
6 information provided under subsections J and O of this section.

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

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