

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3390

By: O'Donnell

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5
6 AS INTRODUCED

7 An Act relating to legal representation for the
8 state; amending 74 O.S. 2011, Section 20i, which
9 relates to outside legal counsel for executive branch
10 agencies; expanding procedures and requirements to
11 include law firms; providing fee schedules and
12 limitations; modifying certain notification
13 requirements; requiring approval of contract in a
14 public meeting; requiring certain notification to the
15 Contingency Review Board; requiring agencies to
16 receive certain number of proposals before entering
17 into contract; requiring submission of certain
18 contracts and documentation to legislative oversight
19 committee; providing for certain reports; providing
20 procedure after issuance of report; providing
21 procedure for settlement agreements; requiring
22 private attorneys and private law firms to provide
23 certain information when legal proceeding is
24 concluded; modifying reporting requirements for
report to the Governor and legislative members;
increasing legislative members who receive the
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 law
16 firm or law firms, from a list of attorneys and firms maintained by
17 the Attorney General. An agency may contract for legal
18 representation with one or more attorneys or firms who are not on
19 the list only when there is no attorney or firm on the list capable
20 of providing the specific representation and only with the approval
21 of the Attorney General. The list shall include any attorney or
22 firm 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. An agency or

1 official may agree to deviate from the schedule of fees only with
2 the approval of the Attorney General. The list of attorneys and
3 firms desiring to furnish services and a schedule of fees for each
4 attorney and firm shall be maintained and made available to the
5 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 if the new
8 schedule of fees would not violate the fee schedules set forth in
9 subsections D, E and F of this section.

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

13 1. One Thousand Dollars (\$1,000.00) per hour; or

14 2. The amounts set forth in subsection E of this section.

15 E. A private attorney or firm retained by an agency or official
16 of the executive branch may receive:

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

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

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

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

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

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

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

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

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

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

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.

23 H. A contract for legal representation by one or more private
24 attorneys or firms by an agency or official of the executive branch

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

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

22 J. Before entering into a contract for legal representation by
23 one or more private attorneys or firms, an agency or official of the
24 executive branch shall receive proposals from at least three

1 qualified private attorneys or firms engaged in providing such
2 services. The selection of a contract for legal representation by
3 one or more private attorneys or firms shall be made on the basis of
4 the response to the request which is the most economical and
5 provides the most competent service which furthers the best
6 interests of the state.

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

11 ~~E.~~ L. In addition to the requirements of subsections G and I of
12 this section, before entering into a contract for legal
13 representation by one or more private attorneys or firms, if the
14 agency has reason to believe that the case, transaction or matter
15 will equal or exceed One Million Dollars (\$1,000,000.00), an agency
16 or official of the executive branch shall submit a copy of the
17 proposed contract to the legislative oversight committee overseeing
18 the operations of the Legislative Office of Fiscal Transparency
19 (LOFT), hereinafter referred to as the legislative oversight
20 committee, along with the following:

21 1. The nature and scope of the representation including, but
22 not limited to, a description of any pending or anticipated
23 litigation or of the transaction requiring representation;
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1 2. The reason or reasons for not obtaining the representation
2 from an attorney employed by the agency or official, if an attorney
3 is employed by the agency or official;

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

6 4. The anticipated cost of the representation including the
7 following:

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

12 b. the basis for and method of calculation of any
13 expenses which will be reimbursed by the agency or
14 official under the contract; and

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

16 M. Within forty-five (45) days after the filing of a proposed
17 contract and other required information to the legislative oversight
18 committee, the committee shall issue a report to the Contingency
19 Review Board and the referring state agency or official of the
20 executive branch. The report shall include any recommended changes
21 to the proposed contract approved by the committee. If there are no
22 changes to the proposed contract, the referring state agency or
23 official of the executive branch may enter into the proposed
24 contract. If the legislative oversight committee recommends changes

1 to the proposed contract, the state agency or official of the
2 executive branch shall prepare a revised contract and file the
3 revised contract with the legislative oversight committee and the
4 Contingency Review Board. If the revised contract does not contain
5 all changes recommended by the legislative oversight committee, the
6 revised contract shall also include a letter stating the reasons why
7 the recommended changes were not adopted. The legislative oversight
8 committee shall have forty-five (45) days to issue a report
9 approving or denying the revised contract terms.

10 N. Before entering into a settlement agreement that will equal
11 or exceed One Million Dollars (\$1,000,000.00), an agency or official
12 of the executive branch shall submit a copy of the proposed
13 settlement agreement to the legislative oversight committee
14 overseeing the operations of the Legislative Office of Fiscal
15 Transparency (LOFT), hereinafter referred to as the legislative
16 oversight committee, pursuant to the following procedures:

17 1. The legislative oversight committee shall have ten (10) days
18 to issue a report approving or denying the settlement agreement;

19 2. The report shall include any recommended changes to the
20 proposed settlement agreement;

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

24

1 4. If the legislative oversight committee recommends changes to
2 the proposed settlement agreement, the state agency or official of
3 the executive branch shall prepare a revised settlement agreement
4 and file the revised settlement agreement with the legislative
5 oversight committee. If the revised settlement agreement does not
6 contain all changes recommended by the legislative oversight
7 committee, the revised settlement agreement must also contain a
8 letter stating the reasons why the recommended changes were not
9 adopted; and

10 5. The legislative oversight committee shall have ten (10) days
11 to issue a report approving or denying the revised settlement
12 agreement.

13 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.

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.

20 ~~G.~~ ~~The Attorney General shall, on or before February 1 of each~~
21 ~~year, make a written report on legal representation obtained~~
22 ~~pursuant to paragraphs 2 and 3 of subsection A of this section. The~~
23 ~~report shall include a brief description of each contract, the~~
24 ~~circumstances necessitating each contract, and the amount paid or to~~

1 ~~be paid under each contract. The report shall be filed with the~~
2 ~~Governor, the President Pro Tempore of the Senate, the Speaker of~~
3 ~~the House of Representatives, the Chair of the Appropriations and~~
4 ~~Budget Committee of the House of Representatives, and the Chair of~~
5 ~~the Appropriations Committee of the Senate.~~

6 Q. Within thirty (30) days after the conclusion of any legal
7 proceeding that equals or exceeds One Million Dollars
8 (\$1,000,000.00) or more for which an agency or official of the
9 executive branch retained outside counsel, the private attorney or
10 firm retained by the state shall provide the Attorney General a
11 statement of the hours worked on the cases, including detailed
12 records of all timekeeping, expenses incurred, the aggregate fee
13 amount, and a breakdown as to the hourly rate, based on hours worked
14 divided into fee recovered, less expenses. The Attorney General
15 shall then submit the statement to the legislative oversight
16 committee overseeing the operations of the Legislative Office of
17 Fiscal Transparency (LOFT) and the Contingency Review Board.

18 R. By February 1 of each year, the Attorney General shall
19 submit a report to the Governor, the President Pro Tempore of the
20 Senate, the Speaker of the House of Representatives, the Chair of
21 the Appropriations and Budget Committee of the House of
22 Representatives, and the Chair of the Appropriations Committee of
23 the Senate, describing the use of contracts with private attorneys
24

1 and private law firms in the preceding calendar year. At a minimum,
2 the report shall:

3 1. Identify all new contracts entered into during the calendar
4 year and all previously executed contracts that remain current
5 during any part of the calendar year. For each contract describe:

6 a. the name of the agency or official that has contracted
7 with a private attorney or law firm,

8 b. the name of the private attorney or law firm with whom
9 the agency or official has contracted,

10 c. the nature and status of the legal matter,

11 d. the name of the parties to the legal matter,

12 e. the amount of any recovery, and

13 f. the amount of any contingency fee paid, if applicable;

14 and

15 2. Include copies of any reports made or documents or other
16 information provided under subsections L and Q of this section.

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

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