

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3941

6 By: Culver

7 COMMITTEE SUBSTITUTE

8 An Act relating to state government; amending 74 O.S.
9 2021, Section 20i, which relates to legal
10 representation of agencies or officials of the
11 executive branch; allowing contracts with law firms;
12 requiring certain list be maintained and available to
13 the public; allowing certain fee agreements; creating
14 fee schedule; requiring clause in certain contracts;
15 requiring certain attorneys and law firms to maintain
16 certain records; requiring certain information be
17 submitted to the Attorney General; updating
18 references; and providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. AMENDATORY 74 O.S. 2021, Section 20i, is
21 amended to read as follows:

22 Section 20i. A. An agency or official of the executive branch
23 may obtain legal representation by one or more attorneys by means of
24 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

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 law firms maintained
11 by 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 law 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 law
16 firm 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 law firms desiring to furnish services shall be
20 maintained and made available to the public.

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

1 D. An agency or official of the executive branch shall not
2 enter into a contingency fee contract that provides for the private
3 attorney or law firm to receive an aggregate contingency fee that
4 exceeds:

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

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

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

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

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

18 E. The Attorney General shall develop a standard clause for
19 inclusion in every contract for contingency fee attorney services
20 that shall be used in all cases, describing in detail what is
21 expected of both the contracted private attorney and the state
22 including, but not limited to, the requirements provided in this
23 subsection. The state shall not enter into a contract for
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1 contingency fee attorney services that does not incorporate the
2 following requirements:

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

5 2. A government attorney with supervisory authority shall be
6 personally involved in oversight of the case;

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

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

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

13 6. Decisions regarding settlement of the case shall be reserved
14 exclusively to the discretion of the government attorneys and the
15 state.

16 F. Any private attorney or law firm under contract to provide
17 services to the state on a contingency fee basis shall, from the
18 inception of the contract until at least five (5) years after the
19 contract expires or is terminated, maintain detailed current records
20 including documentation of all expenses, disbursements, charges,
21 credits, underlying receipts and invoices, and other financial
22 transactions related to the attorney services. The private attorney
23 or law firm shall make all such records available for inspection and
24 copying upon request of the Attorney General. In addition, the

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

6 ~~C.~~ G. Before entering into a contract for legal representation
7 by 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; and

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

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

21 2. Any amendment, modification, or extension of a contract
22 which, had it been a part of the original contract would have
23 required approval by the Attorney General, shall also require
24 approval by the Attorney General.

1 ~~E.~~ I. When an agency or official of the executive branch enters
2 into a contract for professional legal services pursuant to this
3 section, the agency shall also comply with the applicable provisions
4 of Section 85.41 of ~~Title 74 of the Oklahoma Statutes~~ this title.

5 ~~F.~~ J. The provisions of this section shall not apply to the
6 Oklahoma Indigent Defense System created pursuant to Section 1355 et
7 seq. of Title 22 of the Oklahoma Statutes.

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

18 SECTION 2. This act shall become effective November 1, 2022.

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