

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 984

By: David

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6 AS INTRODUCED

7 An Act relating to legal representation; amending 74
8 O.S. 2011, Section 20i, which relates to contracting
9 for legal representation; clarifying types of
10 entities authorized for contracting; requiring
11 certain identification and fee schedule; allowing
12 certain fee exception; specifying certain fee
13 limitations; requiring Attorney General to develop
14 standard clause including specific requirements for
15 certain contracts; requiring publication of certain
16 contracts and payments on Attorney General website
17 within specific time period; requiring maintenance of
18 certain records by private counsel for specified time
19 period; adding certain requirements for certain
20 Attorney General notification; specifying
21 requirements for certain contracts exceeding certain
22 cost; establishing procedures and requirements for
23 certain requests for proposal; requiring submission
24 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.

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

23 SECTION 1. AMENDATORY 74 O.S. 2011, Section 20i, is
24 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 a 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 who are not on the list
19 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 if the
6 new schedule of fees would not violate the fee schedules set forth
7 in subsections D and E of this section.

8 ~~C.~~ D. An agency or official of the executive branch shall not
9 enter into a contingency fee contract that provides for the private
10 attorney or firm to receive an aggregate contingency fee that
11 exceeds:

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

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

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

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

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

1 E. Notwithstanding subsection D of this section, the total fee
2 payable to all retained private attorneys in any contingency fee
3 contract shall not exceed Fifty Million Dollars (\$50,000,000.00),
4 exclusive of any costs and expenses provided by the contract and
5 actually incurred by the retained private attorneys, regardless of
6 the number of actions or proceedings or the number of retained
7 private attorneys involved in the matter.

8 F. The Attorney General shall develop a standard clause for
9 inclusion in every contract for contingent fee attorney services
10 that shall be used in all cases, describing in detail what is
11 expected of both the contracted private attorney and the state
12 including, but not limited to, the requirements as provided in this
13 subsection. The state shall not enter into a contract for
14 contingency fee attorney services that does not incorporate such
15 requirements:

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

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

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

22 4. Any defendant in the case may contact the lead government
23 attorneys directly, without having to confer with outside counsel;
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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 or law firm and shall remain posted on the
15 website for at least three hundred sixty-five (365) days after the
16 payment is made.

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

1 copying upon request. In addition, the private attorney or law firm
2 shall maintain detailed contemporaneous time records for the
3 attorneys and paralegals working on the matter in increments of no
4 greater than one-tenth (1/10) of an hour and shall promptly provide
5 such records to the 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 or law
21 firms, the Attorney General shall make available to the public on
22 the Attorney General's website the information required pursuant to
23 paragraphs 1 through 8 of subsection I of this section.

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

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

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

12 ~~E. O.~~ O. When an agency or official of the executive branch enters
13 into a contract for professional legal services pursuant to this
14 section, the agency shall also comply with the applicable provisions
15 of Section 85.41 of ~~Title 74 of the Oklahoma Statutes~~ this title.

16 ~~F. P.~~ P. The provisions of this section shall not apply to the
17 Oklahoma Indigent Defense System created pursuant to Section 1355 et
18 seq. of Title 22 of the Oklahoma Statutes. An agency or official of
19 the executive branch shall be exempt from the provisions of this
20 section for a specific case or series of cases upon approval by the
21 Governor, President Pro Tempore of the Senate and the Speaker of the
22 House of Representatives.

23 ~~G. The Attorney General shall, on or before February 1 of each~~
24 ~~year, make a written report on legal representation obtained~~

~~pursuant to paragraphs 2 and 3 of subsection A of this section. The report shall include a brief description of each contract, the circumstances necessitating each contract, and the amount paid or to be paid under each contract. The report shall be filed with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Appropriations and Budget Committee of the House of Representatives, and the Chair of the Appropriations Committee of the Senate.~~

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

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;

1 5. The amount of any hourly rate; and

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

3 SECTION 2. This act shall become effective November 1, 2021.

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