

1 **SENATE FLOOR VERSION**

2 February 23, 2021

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 984

By: David of the Senate

and

O'Donnell of the House

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

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

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

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

7 1. Employing an attorney as such if otherwise authorized by
8 law;

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

10 3. If the Attorney General is unable to represent the agency,
11 or official due to a conflict of interest, or the Office of the
12 Attorney General is unable or lacks the personnel or expertise to
13 provide the specific representation required by such agency or
14 official, contracting with a private attorney or attorneys pursuant
15 to this section.

16 B. When entering into a contract for legal representation by
17 one or more private attorneys or law firms, an agency or official of
18 the executive branch shall select an attorney or attorneys or a law
19 firm or law firms from a list of attorneys and firms maintained by
20 the Attorney General. An agency may contract for legal
21 representation with one or more attorneys who are not on the list
22 only when there is no attorney or firm on the list capable of
23 providing the specific representation and only with the approval of
24 the Attorney General. The list shall include any attorney or firm

1 who desires to furnish services to an agency or official of the
2 executive branch and who has filed a schedule of fees for services
3 with and on a form approved by the Attorney General. The list of
4 attorneys and firms desiring to furnish services and a schedule of
5 fees for each attorney and firm shall be maintained and made
6 available to the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 6. Decisions regarding settlement of the case shall be reserved
8 exclusively to the discretion of the government attorneys and the
9 state.

10 G. Copies of any executed contingency fee contract with the
11 private attorney shall be posted on the Attorney General's website
12 for public inspection within five (5) business days after the date
13 the contract is executed and shall remain posted on the website for
14 the duration of the contingency fee contract including any
15 extensions or amendments to the contract. Any payment of
16 contingency fees shall be posted on the Attorney General's website
17 within fifteen (15) days after the payment of the contingency fees
18 to the private attorney or law firm and shall remain posted on the
19 website for at least three hundred sixty-five (365) days after the
20 payment is made.

21 H. Any private attorney or law firm under contract to provide
22 services to the state on a contingency fee basis shall from the
23 inception of the contract until at least four (4) years after the
24 contract expires or is terminated, maintain detailed current records

1 including documentation of all expenses, disbursements, charges,
2 credits, underlying receipts and invoices and other financial
3 transactions related to the attorney services. The private attorney
4 or law firm shall make all such records available for inspection and
5 copying upon request of the Attorney General. In addition, the
6 private attorney or law firm shall maintain detailed contemporaneous
7 time records for the attorneys and paralegals working on the matter
8 in increments of no greater than one-tenth (1/10) of an hour and
9 shall promptly provide such records to the Attorney General upon
10 request.

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

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

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

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

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

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

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

1 J. After the approval of the contract by the Attorney General
2 for legal representation by one or more private attorneys or law
3 firms, the Attorney General shall make available to the public on
4 the Attorney General's website the information required pursuant to
5 paragraphs 1 through 8 of subsection I of this section.

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

17 2. Before entering into a contract for legal representation by
18 one or more private attorneys or firms to initiate a legal action on
19 behalf of the state where the agency has reason to believe that the
20 total cost of the case, transaction or matter including fees and
21 expenses will equal or exceed One Million Dollars (\$1,000,000.00),
22 an agency or official of the executive branch shall initiate a
23 request for proposal from at least three qualified private attorneys
24 or firms, when possible, engaged in providing such services. Notice

1 of the request for proposal shall be published on the Attorney
2 General's website. The request for proposal shall solicit a
3 billable hourly rate, regardless of whether a contingency fee is
4 ultimately agreed upon, and shall specify the importance of price,
5 quality, ability and experience. The selection of a contract for
6 legal representation by one or more private attorneys or firms shall
7 be made using the criteria established in the request for proposal
8 and shall be based on the response to the request which is the most
9 economical and provides the most competent service which furthers
10 the best interests of the state. Most economical and most competent
11 shall not be construed to mean the least expensive proposal.

12 3. 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 L. After entering into a contract for legal representation by
17 one or more private attorneys or firms where the agency has reason
18 to believe that the case, transaction or matter will equal or exceed
19 One Million Dollars (\$1,000,000.00), an agency or official of the
20 executive branch shall submit a copy of the contract to the
21 Legislative Oversight Committee overseeing the operations of the
22 Legislative Office of Fiscal Transparency (LOFT) along with the
23 following:
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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 an attorney or firm
6 contracted to represent the state; and

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

8 M. A settlement agreement shall not contemplate the ultimate
9 use and destination of recovered funds unless done in accordance
10 with 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 where 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), the agency or official of the executive branch
16 shall present the settlement agreement to the Legislative Oversight
17 Committee with oversight of the operations of the Legislative Office
18 of Fiscal Transparency (LOFT), unless otherwise postponed by LOFT.

19 ~~E.~~ 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. Upon request of an agency or official of the executive
15 branch, the Governor, the President Pro Tempore of the Senate and
16 the Speaker of the House of Representatives may exempt a legal
17 matter from the requirements of this section if an exemption is
18 deemed to be in the best interest of the state. Such exemption
19 shall be issued at their discretion, in writing and by unanimous
20 consent, and shall be submitted to LOFT.

21 R. By February 1 of each year, the Attorney General shall
22 submit a report to the Governor, the President Pro Tempore of the
23 Senate, the Speaker of the House of Representatives, the Chair of
24 the Appropriations and Budget Committee of the House of

1 Representatives and the Chair of the Appropriations Committee of the
2 Senate, that describes the use of contracts with private attorneys
3 or law firms in the preceding calendar year. At a minimum, the
4 report shall identify all new contracts entered into during the
5 calendar year being reported and all previously executed contracts
6 that remain current during any part of the calendar year. For each
7 contract, the report shall contain:

8 1. The name of the private attorney with whom the agency has
9 contracted including the name of the attorney's law firm;

10 2. The nature and status of the legal matter;

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

12 4. The amount of any recovery;

13 5. The amount of any hourly rate; and

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
17 February 23, 2021 - DO PASS AS AMENDED

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