

1 ENGROSSED SENATE
2 BILL NO. 984

By: David of the Senate

and

O'Donnell of the House

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

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

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

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

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

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

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

22 a. the basis for or method of calculation of the fee
23 including, when applicable, the hourly rate for each
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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 J. After the approval of the contract by the Attorney General
22 for legal representation by one or more private attorneys or law
23 firms, the Attorney General shall make available to the public on
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1 the Attorney General's website the information required pursuant to
2 paragraphs 1 through 8 of subsection I of this section.

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

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

1 ultimately agreed upon, and shall specify the importance of price,
2 quality, ability and experience. The selection of a contract for
3 legal representation by one or more private attorneys or firms shall
4 be made using the criteria established in the request for proposal
5 and shall be based on the response to the request which is the most
6 economical and provides the most competent service which furthers
7 the best interests of the state. Most economical and most competent
8 shall not be construed to mean the least expensive proposal.

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

13 L. After entering into a contract for legal representation by
14 one or more private attorneys or firms where the agency has reason
15 to believe that the case, transaction or matter will equal or exceed
16 One Million Dollars (\$1,000,000.00), an agency or official of the
17 executive branch shall submit a copy of the contract to the
18 Legislative Oversight Committee overseeing the operations of the
19 Legislative Office of Fiscal Transparency (LOFT) along with the
20 following:

21 1. A description of the litigation or of the transaction
22 requiring representation;

23 2. The reason or reasons for not obtaining the representation
24 from an attorney employed by the agency or official;

1 3. The justification for selecting an attorney or firm
2 contracted to represent the state; and

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

4 M. A settlement agreement shall not contemplate the ultimate
5 use and destination of recovered funds unless done in accordance
6 with paragraphs 11 and 12 of Section 18b of this title.

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

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

19 ~~F.~~ P. The provisions of this section shall not apply to the
20 Oklahoma Indigent Defense System created pursuant to Section 1355 et
21 seq. of Title 22 of the Oklahoma Statutes.

22 ~~G. The Attorney General shall, on or before February 1 of each~~
23 ~~year, make a written report on legal representation obtained~~
24 ~~pursuant to paragraphs 2 and 3 of subsection A of this section. The~~

1 ~~report shall include a brief description of each contract, the~~
2 ~~circumstances necessitating each contract, and the amount paid or to~~
3 ~~be paid under each contract. The report shall be filed with the~~
4 ~~Governor, the President Pro Tempore of the Senate, the Speaker of~~
5 ~~the House of Representatives, the Chair of the Appropriations and~~
6 ~~Budget Committee of the House of Representatives, and the Chair of~~
7 ~~the Appropriations Committee of the Senate.~~

8 Q. Upon request of an agency or official of the executive
9 branch, the Governor, the President Pro Tempore of the Senate and
10 the Speaker of the House of Representatives may exempt a legal
11 matter from the requirements of this section if an exemption is
12 deemed to be in the best interest of the state. Such exemption
13 shall be issued at their discretion, in writing and by unanimous
14 consent, and shall be submitted to LOFT.

15 R. By February 1 of each year, the Attorney General shall
16 submit a report to the Governor, the President Pro Tempore of the
17 Senate, the Speaker of the House of Representatives, the Chair of
18 the Appropriations and Budget Committee of the House of
19 Representatives and the Chair of the Appropriations Committee of the
20 Senate, that describes the use of contracts with private attorneys
21 or law firms in the preceding calendar year. At a minimum, the
22 report shall identify all new contracts entered into during the
23 calendar year being reported and all previously executed contracts

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1 that remain current during any part of the calendar year. For each
2 contract, the report shall contain:

- 3 1. The name of the private attorney with whom the agency has
4 contracted including the name of the attorney's law firm;
- 5 2. The nature and status of the legal matter;
- 6 3. The name of the parties to the legal matter;
- 7 4. The amount of any recovery;
- 8 5. The amount of any hourly rate; and
- 9 6. The amount of any contingency fee paid, if applicable.

10 SECTION 2. This act shall become effective November 1, 2021.
11 Passed the Senate the 9th day of March, 2021.

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13 _____
14 Presiding Officer of the Senate

15 Passed the House of Representatives the ____ day of _____,
16 2021.

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18 _____
19 Presiding Officer of the House
20 of Representatives
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