

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 2815

By: Downing

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5  
6 AS INTRODUCED

7 An Act relating to state government; amending 74 O.S.  
8 2011, Section 20i, which relates to state contracts  
9 for legal representation by private attorneys;  
10 requiring that list of attorneys and certain  
11 information be made available to the public;  
12 prohibiting contingency-fee contract without prior  
13 approval by the Attorney General; providing  
14 requirements for approval; listing possible factors  
15 for consideration by the Attorney General; requiring  
16 written statement by the Attorney General if contract  
17 is approved; requiring private attorney to retain  
18 certain documents for specified time; authorizing the  
19 Attorney General to request documents; providing  
20 requirements that apply to the contracts; providing  
21 fee schedule; defining term; providing that certain  
22 records are subject to the Oklahoma Open Records Act;  
23 and providing an effective date.  
24

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

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

21 Section 20i. A. An agency or official of the executive branch  
22 may obtain legal representation by one or more attorneys by means of  
23 one of the following:  
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1 1. Employing an attorney as such if otherwise authorized by  
2 law;

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

4 3. If the Attorney General is unable to represent the agency,  
5 or official due to a conflict of interest, or the Office of the  
6 Attorney General is unable or lacks the personnel or expertise to  
7 provide the specific representation required by such agency or  
8 official, contracting with a private attorney or attorneys pursuant  
9 to this section.

10 B. When entering into a contract for legal representation by  
11 one or more private attorneys, an agency or official of the  
12 executive branch shall select an attorney or attorneys from a list  
13 of attorneys maintained by the Attorney General. An agency may  
14 contract for legal representation with one or more attorneys who are  
15 not on the list only when there is no attorney on the list capable  
16 of providing the specific representation and only with the approval  
17 of the Attorney General. The list shall include any attorney who  
18 desires to furnish services to an agency or official of the  
19 executive branch and who has filed a schedule of fees for services  
20 with and on a form approved by the Attorney General. The list of  
21 attorneys desiring to furnish services and schedule of fees for each  
22 attorney shall be maintained and available to the public. An agency  
23 or official may agree to deviate from the schedule of fees only with  
24 the approval of the Attorney General.

1 C. Before entering into a contract for legal representation by  
2 one or more private attorneys, an agency or official of the  
3 executive branch shall furnish a copy of the proposed contract to  
4 the Attorney General and, if not fully described in the contract,  
5 notify the Attorney General of the following:

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

9 2. The reason or reasons for not obtaining the representation  
10 from an attorney employed by the agency or official, if an attorney  
11 is employed by the agency or official;

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

14 4. The anticipated cost of the representation including the  
15 following:

16 a. the basis for or method of calculation of the fee  
17 including, when applicable, the hourly rate for each  
18 attorney, paralegal, legal assistant, or other person  
19 who will perform services under the contract, and

20 b. the basis for and method of calculation of any  
21 expenses which will be reimbursed by the agency or  
22 official under the contract; and

23 5. An estimate of the anticipated duration of the contract.  
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1 D. Before entering into a contract for legal representation by  
2 one or more private attorneys where the agency has reason to believe  
3 that the case, transaction or matter will equal or exceed Twenty  
4 Thousand Dollars (\$20,000.00) or after employment when it becomes  
5 apparent that the case, transaction or matter will equal or exceeds  
6 Twenty Thousand Dollars (\$20,000.00), an agency or official of the  
7 executive branch shall obtain the approval of the Attorney General  
8 when the total cost, including fees and expenses, of all contracts  
9 relating to the same case, transaction, or matter will equal or  
10 exceed Twenty Thousand Dollars (\$20,000.00). Any amendment,  
11 modification, or extension of a contract which, had it been a part  
12 of the original contract would have required approval by the  
13 Attorney General, shall also require approval by the Attorney  
14 General.

15 E. 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. 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. No agency or official of the executive branch shall enter  
23 into a contingency-fee contract with a private attorney unless and  
24 until the Attorney General approves the contract, and in so doing

1 makes a determination that contingency-fee representation is both  
2 cost-effective and in the public interest. The determination may  
3 include, but not be limited to, consideration of the following  
4 factors:

5 1. Whether there exists sufficient and appropriate legal and  
6 financial resources within the Office of the Attorney General to  
7 handle the matter;

8 2. The time and labor required; the novelty, complexity and  
9 difficulty of the questions involved; and the skill requisite to  
10 perform the attorney services properly;

11 3. The geographic area where the attorney services are to be  
12 provided; and

13 4. The amount of experience desired for the particular kind of  
14 attorney services to be provided and the nature of the experience of  
15 the private attorney with similar issues or cases.

16 H. If the contract is approved, the Attorney General shall make  
17 a written statement, excluding any information that is privileged or  
18 part of the deliberative process, stating that contingency-fee  
19 representation is both cost-effective and in the public interest,  
20 and include a brief description of the contract and the  
21 circumstances necessitating the contract.

22 I. Any private attorney under contract to provide services to  
23 the agency or official of the executive branch on a contingency-fee  
24 basis described in subsection G of this section shall, from the

1 inception of the contract until at least five (5) years after the  
2 contract expires or is terminated, maintain detailed records  
3 including documentation of all expenses, disbursements, charges,  
4 credits, underlying receipts and invoices and other financial  
5 transactions that concern the provision of the attorney services and  
6 shall make the records available for the Attorney General upon  
7 request.

8 J. The following requirements shall be met for contingency-fee  
9 attorney services described in subsection G of this section entered  
10 into by the agency or official of the executive branch and overseen  
11 by the Attorney General:

12 1. Pursuant to Section 18 of this title, the Attorney General  
13 or designated government attorney shall retain the right to appear  
14 in any action and when so appearing in any such cause or proceeding  
15 the Attorney General may, if the Attorney General deems it advisable  
16 and in the best interest of the state, take and assume control of  
17 the prosecution or defense of the state's interest therein and thus  
18 shall retain complete control over the course and conduct of the  
19 case;

20 2. The Attorney General shall retain veto power over any  
21 decisions made by outside counsel;

22 3. Any defendant that is the subject of the litigation shall  
23 retain the right to contact the designated government attorney  
24 directly, without having to confer with contingency-fee counsel;

1       4. A government attorney with supervisory authority for the  
2 case, as designated by the Attorney General, shall retain the right  
3 to participate in all settlement conferences; and

4       5. Decisions regarding settlement of the case shall be reserved  
5 exclusively to the discretion of the Attorney General.

6       K. Any contingency-fee contract described in subsection G of  
7 this section entered into by an agency or official of the executive  
8 branch shall contain a contingency-fee schedule that shall not  
9 exceed the following maximum payment to the contracting private  
10 attorney:

11       1. Twenty-five percent (25%) of any net recovery of up to Ten  
12 Million Dollars (\$10,000,000.00);

13       2. Twenty percent (20%) of any portion of the net recovery  
14 between Ten Million Dollars (\$10,000,000.00) and Fifteen Million  
15 Dollars (\$15,000,000.00);

16       3. Fifteen percent (15%) of any portion of the net recovery  
17 between Fifteen Million Dollars (\$15,000,000.00) and Twenty Million  
18 Dollars (\$20,000,000.00);

19       4. Ten percent (10%) of any portion of the net recovery between  
20 Twenty Million Dollars (\$20,000,000.00) and Twenty-five Million  
21 Dollars (\$25,000,000.00); and

22       5. Five percent (5%) of any portion of the net recovery  
23 exceeding Twenty-five Million Dollars (\$25,000,000.00).  
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1 In no event shall the aggregate contingency fee exceed Fifty Million  
2 Dollars (\$50,000,000.00), exclusive of reasonable costs and expenses  
3 advanced and irrespective of the number of lawsuits filed or the  
4 number of private attorneys retained to achieve the recovery.

5 As used in this subsection, "net recovery" means the amount  
6 remaining after the total amount received has been reduced by the  
7 reasonable cost and expenses advanced. It shall include all damage  
8 awards, or settlement amounts agreed upon, but shall not include any  
9 penalties or fines awarded or included as part of the settlement.

10 L. Records regarding contingency-fee contracts described in  
11 subsection H of this section shall be available to the public  
12 pursuant to the Oklahoma Open Records Act.

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

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SECTION 2. This act shall become effective November 1, 2018.

56-2-9031 SD 01/02/18