

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 HOUSE BILL 1685

By: Worthen

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6 AS INTRODUCED

7 An Act relating to the Attorney General; amending 74
8 O.S. 2021, Section 20i, as last amended by Section 1,
9 Chapter 212, O.S.L. 2024 (74 O.S. Supp. 2024, Section
10 20i), which relates to contracting for legal
11 representation by private attorneys; prohibiting the
12 Attorney General from cancelling certain contracts;
13 providing for exceptions; and providing an effective
14 date.

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

15 SECTION 1. AMENDATORY 74 O.S. 2021, Section 20i,
16 as last amended by Section 1, Chapter 212, O.S.L. 2024 (74
17 O.S. Supp. 2024, Section 20i), is amended to read as follows:

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

- 21 1. Employing an attorney as such if otherwise authorized by
22 law;
- 23 2. Contracting with the Office of the Attorney General; or
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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 firms maintained by
11 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 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 firm
16 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 firms desiring to furnish services and a schedule of
20 fees for each attorney and firm shall be maintained and made
21 available to the public.

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

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

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

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

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

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

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

20 E. Notwithstanding subsection D of this section, the total fee
21 payable to all retained private attorneys in any contingency fee
22 contract shall not exceed Fifty Million Dollars (\$50,000,000.00),
23 exclusive of any costs and expenses provided by the contract and
24 actually incurred by the retained private attorneys, regardless of

1 the number of actions or proceedings or the number of retained
2 private attorneys involved in the matter.

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

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

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

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

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

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

21 6. Decisions regarding settlement of the case shall be reserved
22 exclusively to the discretion of the government attorneys and the
23 state.

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1 G. Copies of any executed contingency fee contract with the
2 private attorney shall be posted on the Attorney General's website
3 for public inspection within five (5) business days after the date
4 the contract is executed and shall remain posted on the website for
5 the duration of the contingency fee contract including any
6 extensions or amendments to the contract. Any payment of
7 contingency fees shall be posted on the Attorney General's website
8 within fifteen (15) days after the payment of the contingency fees
9 to the private attorney or law firm and shall remain posted on the
10 website for at least three hundred sixty-five (365) days after the
11 payment is made.

12 H. Any private attorney or law firm under contract to provide
13 services to the state on a contingency fee basis shall from the
14 inception of the contract until at least four (4) years after the
15 contract expires or is terminated, maintain detailed current records
16 including documentation of all expenses, disbursements, charges,
17 credits, underlying receipts and invoices and other financial
18 transactions related to the attorney services. The private attorney
19 or law firm shall make all such records available for inspection and
20 copying upon request of the Attorney General. In addition, the
21 private attorney or law firm shall maintain detailed contemporaneous
22 time records for the attorneys and paralegals working on the matter
23 in increments of no greater than one-tenth (1/10) of an hour and
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1 shall promptly provide such records to the Attorney General upon
2 request.

3 I. Before entering into a contract for legal representation by
4 one or more private attorneys, an agency or official of the
5 executive branch shall furnish a copy of the proposed contract to
6 the Attorney General and notify the Attorney General of the
7 following:

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

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

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

16 4. The anticipated cost of the representation including the
17 following:

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

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

1 5. An estimate of the anticipated duration of the contract;

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

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

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

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

21 K. 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 not cancel an approved contract or
24 remove one or more private attorneys or law firms from the

1 representation covered by the approved contract except for the
2 following reasons:

- 3 1. Breach of contract;
- 4 2. Gross negligence; and
- 5 3. Any other reason provided for in the approved contract.

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

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

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

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

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

23 1. A description of the litigation or of the transaction
24 requiring representation;

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

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

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

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

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

17 ~~O.~~ P. When an agency or official of the executive branch enters
18 into a contract for professional legal services pursuant to this
19 section, the agency shall also comply with the applicable provisions
20 of Section 85.41 of this title.

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

1 ~~Q.~~ R. Upon request of an agency or official of the executive
2 branch, the Governor, the President Pro Tempore of the Oklahoma
3 State Senate and the Speaker of the Oklahoma House of
4 Representatives may exempt a legal matter from the requirements of
5 this section if an exemption is deemed to be in the best interest of
6 the state. Such exemption shall be issued at their discretion, in
7 writing and by unanimous consent, and shall be submitted to LOFT.

8 ~~R.~~ S. By February 1 of each year, the Attorney General shall
9 submit a report to the Governor, the President Pro Tempore of the
10 Senate, the Speaker of the House of Representatives, the Chair of
11 the Appropriations and Budget Committee of the House of
12 Representatives and the Chair of the Appropriations Committee of the
13 Senate, that describes the use of contracts with private attorneys
14 or law firms in the preceding fiscal year. At a minimum, the report
15 shall identify all new contracts entered into during the fiscal year
16 being reported and all previously executed contracts that remain
17 current during any part of the fiscal year. For each contract, the
18 report shall contain:

- 19 1. The name of the private attorney with whom the agency has
20 contracted including the name of the attorney's law firm;
- 21 2. The nature and status of the legal matter;
- 22 3. The name of the parties to the legal matter;
- 23 4. The amount of any recovery;
- 24 5. The amount of any hourly rate;

1 6. The amount of any contingency fee paid, if applicable; and

2 7. The amount paid under the contract for the fiscal year.

3 ~~S.~~ T. The provisions of subsections B through R of this section
4 shall not apply to any agency that invests funds on behalf of its
5 beneficiaries and, as part of its fiduciary duty, retains one or
6 more private attorneys or law firms to pursue individual, derivative
7 or class litigation concerning its investments or assets.

8 ~~F.~~ U. The provisions of this section shall not apply to any
9 entity exempted from Article I of the Administrative Procedures Act
10 pursuant to paragraphs 6 and 7 of subsection A of Section 250.4 of
11 Title 75 of the Oklahoma Statutes.

12 SECTION 2. This act shall become effective November 1, 2025.

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14 60-1-10673 AQH 12/19/24
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