

ARKANSAS SENATE
89th General Assembly - Regular Session, 2013
Amendment Form

Subtitle of Senate Bill No. 1066

TO PROVIDE TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTING; TO CREATE THE
TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTING ACT; AND TO REGULATE THE
PROCUREMENT OF CONTRACTS WITH PRIVATE ATTORNEYS BY THE STATE.

Amendment No. 1 to Senate Bill No. 1066

Amend Senate Bill No. 1066 as originally introduced:

Delete everything after the enacting clause, and substitute the following:

"SECTION 1. Arkansas Code Title 19, Chapter 11, is amended to add an additional subchapter to read as follows:

Subchapter 14 – Transparency in Private Attorney Contracting Act

19-11-1401. Title.

This subchapter shall be known and may be cited as the “Transparency in Private Attorney Contracting Act”.

19-11-1402. Definitions.

As used in this subchapter:

(1) “Government attorney” means an attorney for the state who serves as a staff attorney in the Attorney General’s office;

(2) “Out-of-state attorney” means an attorney who is not a private Arkansas attorney;

(3) “Private Arkansas attorney” means a private attorney who is licensed in Arkansas and whose primary office and practice is in Arkansas;

(4) “Private attorney” means a private attorney licensed in any state or law firm doing business in any state; and

(5) “State” means the State of Arkansas and state officers, departments, boards, commissions, divisions, bureaus, councils, other units of organization of the executive branch of state government, and any agents thereof.

19-11-1403. Procurement.

(a)(1) Subject to § 25-16-702, the state may enter into a contingency fee contract with a private attorney only after the Attorney General makes a written determination before the state enters into the contract that contingency-fee representation is both cost effective and in the public interest.

(2) A written determination by the Attorney General under



subdivision (a)(1) of this section shall include specific findings for each of the following factors:

(A) Whether there exists sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter;

(B) The time and labor required;

(C) The novelty, complexity, and difficulty of the questions involved;

(D) The skill requisite to perform the attorney services properly;

(E) The geographic area in which the attorney services are to be provided; and

(F) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

(b) If the Attorney General makes a written determination under subsection (a) of this section, the Attorney General shall request proposals from private attorneys to represent the state on a contingency-fee basis unless the Attorney General determines that requesting proposals is not feasible under the circumstances and states the basis for his or her determination in writing.

(c) If one (1) or more proposals are submitted by private Arkansas attorneys and one (1) or more proposals are submitted by out-of-state attorneys, the state shall give preference to the proposals from private Arkansas attorneys.

(d)(1) The state shall not enter into a contingency-fee contract that provides for a private attorney to receive an aggregate contingency fee that exceeds the sum of the following:

(A) Twenty-five percent (25%) of any damages up to ten million dollars (\$10,000,000);

(B) Twenty percent (20%) of any damages between ten million dollars (\$10,000,000) and fifteen million dollars (\$15,000,000);

(C) Fifteen percent (15%) of any damages between fifteen million dollars (\$15,000,000) and twenty million dollars (\$20,000,000);

(D) Ten percent (10%) of any damages between twenty million dollars (\$20,000,000) and twenty-five million dollars (\$25,000,000); and

(E) Five percent (5%) of any damages exceeding twenty-five million dollars (\$25,000,000).

(2) The aggregate contingency fee allowed under subdivision (d)(1) of this section shall not exceed fifty million dollars (\$50,000,000), exclusive of reasonable costs and expenses, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(e) A contingency fee under this section shall not be based on penalties or fines awarded or any amounts attributable to penalties or fines.

(f) The state shall not enter into a contract for attorney services on a contingency-fee basis unless the following provisions are included in the contingency-fee contract and apply through the contract period and any extensions of the contract period:

(1) The relevant government attorneys shall retain complete control over the course and conduct of the case;

(2) A government attorney with supervisory authority shall be personally involved in overseeing the litigation;

(3) The relevant government attorneys shall retain veto power over any decisions made by contingency-fee counsel;

(4) Any defendant that is the subject of the litigation may contact the lead government attorneys directly without having to confer with contingency-fee counsel;

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

(6) Decisions regarding settlement of the case are exclusively in the discretion of the relevant government attorneys and the state.

(g) The Attorney General shall develop a standard addendum to each contract for attorney services on a contingency-fee basis that shall be used in all cases and shall describe in detail the responsibilities of the contracted private attorney and the state, including without limitation the provisions required under subsection (f) of this section.

(h)(1) A copy of each executed contingency-fee contract and the Attorney General's written determination to enter into the contingency-fee contract with the private attorney shall be posted on the Attorney General's website for public inspection within five (5) business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency-fee contract, including any extensions of or amendments to the contingency-fee contract.

(2) Each payment of a contingency fee shall be posted on the Attorney General's website within fifteen (15) days after the payment of the contingency fee to the private attorney and shall remain posted on the website for at least one (1) year.

19-11-1404. Recordkeeping and reporting.

(a)(1) A private attorney under contract to provide services to the state on a contingency-fee basis shall maintain, from the inception of the contract until at least four (4) years after the contract expires or is terminated, detailed current records, including without limitation documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of attorney services under the contingency-fee contract.

(2) The private attorney shall make the records maintained under subdivision (a)(1) of this section available for inspection and copying upon request in accordance with the Freedom of Information Act of 1967, § 25-19-101 et seq.

(3) A private attorney under contract to provide services to the state on a contingency-fee basis and any attorneys engaged to consult or assist the private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter and shall promptly provide these records to the Attorney General upon request.

(b)(1) By February 1 of each year, the Attorney General shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives describing the use of contingency-fee contracts with private attorneys in the preceding calendar year.

(2) At a minimum, the report required under subdivision (b)(1) of this section shall:

(A) Identify all new contingency-fee contracts entered

into during the year and all previously executed contingency-fee contracts that remain current during any part of the year, including the following information for each contingency-fee contract:

(i) The name of the private attorney with whom the state has contracted, including the name of the attorney's law firm;

(ii) The name of any private attorney, including the name of the attorney's law firm, who:

(a) Has associated with the private attorney with whom the state has contracted; and

(b) Has been engaged to consult or assist on the case for which the private attorney entered into a contingency-fee contract with the state;

(iii) The nature and status of the legal matter;

(iv) The name of the parties to the legal matter;

(v) The amount of any recovery; and

(vi) The amount of any contingency fee paid; and

(B) Include copies of any written determinations made under subsections (a) and (b) of this section during the year.

19-11-1405. Association with other counsel.

(a) With the written consent of the Attorney General, a private attorney entering into a contingency-fee contract may associate other counsel, including an out-of-state attorney, to consult or assist on the case for which the state contracted with the private attorney.

(b) An association under subsection (a) of this section is governed by the fee schedule and the aggregate fee limits stated in § 19-11-1403(d).

(c) A private attorney associated with a private attorney who has entered a contingency-fee contract with the state shall be subject to the recordkeeping requirements of § 19-11-1404(a).

19-11-1406. Construction.

This subchapter does not expand the authority of the state to enter into a contract that the state does not otherwise have the authority to execute.

SECTION 2. Arkansas Code § 25-16-702(b)(2), concerning the duties of the Attorney General, is amended to read as follows:

(2)(A) If, in the opinion of the Attorney General, it ~~shall at any time be~~ is necessary to employ special counsel to prosecute ~~any~~ a suit brought on behalf of the state or to defend a suit brought against ~~any~~ an official, board, commission, or agency of the state, the Attorney General, with the approval of the Governor, may employ special counsel.

(B) The compensation for the special counsel ~~employed~~ under subdivision (b)(2)(A) of this section shall be fixed by the court where the litigation is pending, with the written approval of the Governor and the Attorney General.

(C) The Attorney General shall not enter into ~~any~~ a contract for the employment of outside legal counsel without first seeking prior review by the Legislative Council.

(D) A contingency-fee contract with outside legal counsel is subject to the Transparency in Private Attorney Contracting Act, § 19-11-1401 et seq."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. English

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Secretary