

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: S3/20/13*

# A Bill

SENATE BILL 1066

5 By: Senator J. English  
6

## For An Act To Be Entitled

8 AN ACT TO PROVIDE TRANSPARENCY IN PRIVATE ATTORNEY  
9 CONTRACTING WITH RESPECT TO THE STATE; TO CREATE THE  
10 TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTING ACT; TO  
11 REGULATE THE PROCUREMENT OF CONTRACTS WITH PRIVATE  
12 ATTORNEYS BY THE STATE; AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO PROVIDE TRANSPARENCY IN PRIVATE  
16 ATTORNEY CONTRACTING; TO CREATE THE  
17 TRANSPARENCY IN PRIVATE ATTORNEY  
18 CONTRACTING ACT; AND TO REGULATE THE  
19 PROCUREMENT OF CONTRACTS WITH PRIVATE  
20 ATTORNEYS BY THE STATE.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 *SECTION 1. Arkansas Code Title 19, Chapter 11, is amended to add an*  
27 *additional subchapter to read as follows:*

28 *Subchapter 14 – Transparency in Private Attorney Contracting Act*  
29

30 *19-11-1401. Title.*

31 *This subchapter shall be known and may be cited as the “Transparency in*  
32 *Private Attorney Contracting Act”.*  
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34 *19-11-1402. Definitions.*

35 *As used in this subchapter:*

36 *(1) “Government attorney” means an attorney for the state who*



1 serves as a staff attorney in the Attorney General's office;

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

4 (3) "Private Arkansas attorney" means a private attorney who is  
5 licensed in Arkansas and whose primary office and practice is in Arkansas;

6 (4) "Private attorney" means a private attorney licensed in any  
7 state or law firm doing business in any state; and

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

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13 19-11-1403. Procurement.

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

19 (2) A written determination by the Attorney General under  
20 subdivision (a)(1) of this section shall include specific findings for each  
21 of the following factors:

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

25 (B) The time and labor required;

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

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

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

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

35 (b) If the Attorney General makes a written determination under  
36 subsection (a) of this section, the Attorney General shall request proposals

1 from private attorneys to represent the state on a contingency-fee basis  
2 unless the Attorney General determines that requesting proposals is not  
3 feasible under the circumstances and states the basis for his or her  
4 determination in writing.

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

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

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

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

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

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

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

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

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

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

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

36 (2) A government attorney with supervisory authority shall be

1 personally involved in overseeing the litigation;

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

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

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

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

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

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

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

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28 19-11-1404. Recordkeeping and reporting.

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

36 (2) The private attorney shall make the records maintained under

1 subdivision (a)(1) of this section available for inspection and copying upon  
2 request in accordance with the Freedom of Information Act of 1967, § 25-19-  
3 101 et seq.

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

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

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

15 (A) Identify all new contingency-fee contracts entered  
16 into during the year and all previously executed contingency-fee contracts  
17 that remain current during any part of the year, including the following  
18 information for each contingency-fee contract:

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

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

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

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

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

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

30 (v) The amount of any recovery; and

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

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

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35 19-11-1405. Association with other counsel.

36 (a) With the written consent of the Attorney General, a private

1 attorney entering into a contingency-fee contract may associate other  
2 counsel, including an out-of-state attorney, to consult or assist on the case  
3 for which the state contracted with the private attorney.

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

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

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10 19-11-1406. Construction.

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

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

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

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

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

29 (D) A contingency-fee contract with outside legal counsel  
30 is subject to the Transparency in Private Attorney Contracting Act, § 19-11-  
31 1401 et seq.

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33 /s/J. English  
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