

D R A F T

SUMMARY

Requires public body, before entering into legal services agreement that includes contingency fee arrangement with private legal counsel, to estimate fiscal impact of legal services agreement.

Specifies provisions that legal services agreement must have to protect public body before public body may enter into legal services agreement.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to legal service agreements that include a contingency fee ar-
3 rangement; creating new provisions; amending ORS 291.045; and prescrib-
4 ing an effective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Section 2 of this 2017 Act and ORS 291.049 are added to**
7 **and made a part of ORS 291.045 to 291.049.**

8 **SECTION 2. (1) As used in this section:**

9 (a) **“Contingency fee arrangement” means a method of compen-**
10 **sation for private legal counsel in which the private legal counsel re-**
11 **ceives attorney fees, in whole or in part, calculated as a percentage**
12 **of the recovery that a client of the private legal counsel receives in a**
13 **legal action.**

14 (b) **“Legal services agreement” means a contract for legal services**
15 **between a public body and private legal counsel.**

16 (c) **“Private legal counsel” means an attorney in private practice**
17 **or a private law firm.**

18 **(2)(a) A public body, before entering into or amending a legal ser-**

1 vices agreement that includes a proposed contingency fee arrange-
2 ment, shall:

3 (A) Determine the fiscal impact of the legal services agreement,
4 including:

5 (i) The estimated total amount that the public body would be obli-
6 gated under the legal services agreement to pay private legal counsel
7 from any recovery;

8 (ii) The estimated cost of the legal services agreement if the public
9 body instead paid the private legal counsel ordinary and reasonable
10 fees and costs; and

11 (iii) The estimated costs of any potential liabilities the public body
12 would face as a result of bringing the legal action for which the public
13 body proposes to enter into a legal services agreement;

14 (B) Estimate or determine the amount of the insurance and bond
15 the public body should require the private legal counsel to obtain in
16 order to account for potential liabilities and the costs of legal fees
17 necessary to defend the public body if the private legal counsel
18 breaches the terms of the legal services agreement; and

19 (C) Examine any other matters that are relevant to any potential
20 costs and liabilities the public body might face under the legal services
21 agreement.

22 (b) A public body shall compile a report that summarizes the public
23 body's determination as to the fiscal impact of a legal services agree-
24 ment with the information specified in paragraph (a) of this sub-
25 section. The public body shall make the report available to the public
26 not later than 30 days before the public body enters into the legal
27 services agreement.

28 (3) A public body may not enter into a legal services agreement that
29 includes a proposed contingency fee arrangement with private legal
30 counsel unless the legal services agreement provides that:

31 (a) The private legal counsel shall defend the public body against

1 **any cross-claims, counterclaims, third party claims or other assertions**
2 **of the public body’s liability, at no expense to the public body;**

3 **(b) The private legal counsel shall maintain professional liability**
4 **insurance and post a bond in an amount and of a type that the public**
5 **body determines is sufficient to protect the public body from any po-**
6 **tential liability that might result from the legal services agreement;**

7 **(c) Payment due to the private legal counsel in a contingency fee**
8 **arrangement must be based on the public body’s net recovery, and any**
9 **costs or liabilities that result from the action or from cross-claims,**
10 **counterclaims or third party claims must be deducted from the**
11 **amount of the recovery before the contingency fee is calculated; and**

12 **(d) The private legal counsel, to the fullest extent permitted by law,**
13 **shall defend and indemnify the public body and the officers, agents and**
14 **employees of the public body against all liabilities, regardless of the**
15 **nature and type of the liability, that arise out of, or pertain or relate**
16 **to, the legal services agreement.**

17 **SECTION 3.** ORS 291.045 is amended to read:

18 291.045. As used in [*this section and ORS 291.047*] **ORS 291.045 to**
19 **291.049:**

20 (1) “Information technology” [*includes*] **means technology for process-**
21 **ing information, including,** but [*is*] not limited to, all present and future
22 forms of hardware, software and services for data processing, office auto-
23 mation and telecommunications.

24 [(2) “State agency” includes every state officer, board, commission, depart-
25 ment, institution, branch or agency of the state government, whose costs are
26 paid wholly or in part from funds held in the State Treasury, except:]

27 [(a) The Legislative Assembly, the courts and their officers and committees;
28 and]

29 [(b) The Public Defense Services Commission.]

30 (2) **“Public body” has the meaning given that term in ORS 174.109.**

31 (3) **“Public contract” means any acquisition, disposition, purchase, lease,**

1 sale or transfer of rights by a state agency of real or personal property,
2 public improvements or services.

3 (4) "Public improvement" means projects for construction, reconstruction
4 or renovation on real property by or for a state agency.

5 (5) "State agency" means every state officer, board, commission,
6 department, institution, branch or agency of the state government,
7 the costs of which are paid wholly or in part from funds held in the
8 State Treasury, except:

9 (a) The Legislative Assembly, the courts and the officers and com-
10 mittees of the Legislative Assembly and the courts; and

11 (b) The Public Defense Services Commission.

12 **SECTION 4.** Section 2 of this 2017 Act and the amendments to ORS
13 291.045 by section 3 of this 2017 Act apply to procurements for legal
14 services that a public body advertises or otherwise solicits or, if the
15 public body does not advertise or otherwise solicit the procurement,
16 to legal services agreements into which a public body enters on or af-
17 ter the operative date specified in section 5 of this 2017 Act.

18 **SECTION 5.** (1) Section 2 of this 2017 Act and the amendments to
19 ORS 291.045 by section 3 of this 2017 Act become operative January 1,
20 2018.

21 (2) The Attorney General and a public body that adopts rules under
22 ORS 279A.065 may adopt rules and take any other action before the
23 operative date specified in subsection (1) of this section that is neces-
24 sary to enable the Attorney General or the public body to exercise, on
25 and after the operative date specified in subsection (1) of this section,
26 all of the duties, functions and powers conferred on the Attorney
27 General or the public body by section 2 of this 2017 Act and the
28 amendments to ORS 291.045 by section 3 of this 2017 Act.

29 **SECTION 6.** This 2017 Act takes effect on the 91st day after the date
30 on which the 2017 regular session of the Seventy-ninth Legislative
31 Assembly adjourns sine die.

