

# House Bill 2790

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 arrangement; creating new  
3 provisions; amending ORS 291.045; and prescribing an effective date.

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

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

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

8 (a) **“Contingency fee arrangement” means a method of compensation for private legal**  
9 **counsel in which the private legal counsel receives attorney fees, in whole or in part, calcu-**  
10 **lated as a percentage of the recovery that a client of the private legal counsel receives in a**  
11 **legal action.**

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

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

15 (2)(a) **A public body, before entering into or amending a legal services agreement that**  
16 **includes a proposed contingency fee arrangement, shall:**

17 (A) **Determine the fiscal impact of the legal services agreement, including:**

18 (i) **The estimated total amount that the public body would be obligated under the legal**  
19 **services agreement to pay private legal counsel from any recovery;**

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

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

25 (B) **Estimate or determine the amount of the insurance and bond the public body should**  
26 **require the private legal counsel to obtain in order to account for potential liabilities and the**  
27 **costs of legal fees necessary to defend the public body if the private legal counsel breaches**  
28 **the terms of the legal services agreement; and**

29 (C) **Examine any other matters that are relevant to any potential costs and liabilities the**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 public body might face under the legal services agreement.

2 (b) A public body shall compile a report that summarizes the public body’s determination  
 3 as to the fiscal impact of a legal services agreement with the information specified in para-  
 4 graph (a) of this subsection. The public body shall make the report available to the public  
 5 not later than 30 days before the public body enters into the legal services agreement.

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

9 (a) The private legal counsel shall defend the public body against any cross-claims,  
 10 counterclaims, third party claims or other assertions of the public body’s liability, at no ex-  
 11 pense to the public body;

12 (b) The private legal counsel shall maintain professional liability insurance and post a  
 13 bond in an amount and of a type that the public body determines is sufficient to protect the  
 14 public body from any potential liability that might result from the legal services agreement;

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

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

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

24 291.045. As used in [this section and ORS 291.047] **ORS 291.045 to 291.049:**

25 (1) “Information technology” [includes] **means technology for processing information, in-**  
 26 **cluding**, but [is] not limited to, all present and future forms of hardware, software and services for  
 27 data processing, office automation and telecommunications.

28 [(2) “State agency” includes every state officer, board, commission, department, institution, branch  
 29 or agency of the state government, whose costs are paid wholly or in part from funds held in the State  
 30 Treasury, except:]

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

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

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

34 (3) “Public contract” means any acquisition, disposition, purchase, lease, sale or transfer of  
 35 rights by a state agency of real or personal property, public improvements or services.

36 (4) “Public improvement” means projects for construction, reconstruction or renovation on real  
 37 property by or for a state agency.

38 **(5) “State agency” means every state officer, board, commission, department, institution,**  
 39 **branch or agency of the state government, the costs of which are paid wholly or in part from**  
 40 **funds held in the State Treasury, except:**

41 **(a) The Legislative Assembly, the courts and the officers and committees of the Legisla-**  
 42 **tive Assembly and the courts; and**

43 **(b) The Public Defense Services Commission.**

44 **SECTION 4.** Section 2 of this 2017 Act and the amendments to ORS 291.045 by section 3  
 45 of this 2017 Act apply to procurements for legal services that a public body advertises or

1 otherwise solicits or, if the public body does not advertise or otherwise solicit the procure-  
2 ment, to legal services agreements into which a public body enters on or after the operative  
3 date specified in section 5 of this 2017 Act.

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

6 (2) The Attorney General and a public body that adopts rules under ORS 279A.065 may  
7 adopt rules and take any other action before the operative date specified in subsection (1)  
8 of this section that is necessary to enable the Attorney General or the public body to exer-  
9 cise, on and after the operative date specified in subsection (1) of this section, all of the du-  
10 ties, functions and powers conferred on the Attorney General or the public body by section  
11 2 of this 2017 Act and the amendments to ORS 291.045 by section 3 of this 2017 Act.

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

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