

BILL ANALYSIS

C.S.H.B. 2550
By: Nixon
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 76th Texas Legislature passed Senate Bill 178, which added Subchapter C, Section 2254 of the Government Code concerning funds recovered by a state governmental entity in litigation or settlement. The bill was enacted in reaction to concerns about windfall attorneys fees of over \$3 billion for five law firms involved in the Texas settlement of tobacco litigation, and it put in place numerous safeguards and limits on such windfall fees. However, that portion of the Government Code does not address contingency fee contracts entered into by local governments. The purpose of C.S.H.B. 2550 is to extend similar safeguards, as appropriate, to legal contract arrangements entered into by local governmental entities.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2550 amends Chapter 271, Local Government Code, by adding Subchapter I, which applies to contingent fee contracts for legal services entered into by local governmental entities, broadly defined to include any political subdivision of this state.

The bill provides that a contingency fee contract entered into by a local governmental entity must require that the contracting attorney or law firm keep written time and expense records. The contracting attorney or law firm is required to allow the local governmental entity to inspect or obtain these records upon request. The attorney or law firm is also required to provide to the local governmental entity, upon conclusion of the matter in question, a complete written statement describing the outcome, the amount of any recovery, computation of the contingent fee, and final time and expense records. The complete written statement is public information. Time and expense records are public information unless a determination is made that disclosure would adversely affect the entity's strategy in pending or reasonably anticipated litigation.

The bill requires that a local government contingency fee contract for legal services must define the method and formula that will be used to determine the resulting fees, including differences based on whether the case is settled, tried, or tried and appealed, and the limitations on how litigation and other expenses will be paid.

The bill requires the contract to establish the reasonable hourly rate for work performed by each attorney, law clerk, or paralegal who performs services under the contract. This rate is capped at \$1,000 per hour. These provisions apply to subcontracted work. The bill also requires the contract to establish a base fee and sets forth the method for computation of that fee. The amount of the contingency fee is capped at four times the base fee. The contract must also limit the amount of the contingent fee to a stated percentage of the amount recovered, and must provide that the amount of the contingent fee will not exceed the lesser of the stated percentage or the amount computed under Subsections (a), (b), and (c) of Section 271.134.

The bill provides that the contract may limit the amount of expenses that may be reimbursed, and may

provide that only part of the fee is contingent upon the outcome of the matter, with the remainder payable on a regular hourly rate basis without regard to the outcome of the matter.

EFFECTIVE DATE

September 1, 2003. The Act applies only to contingency fee contracts entered into by local governmental entities on or after that date.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2550 is a Legislative Council draft, whereas the introduced version of the bill was not. The substitute makes several nonsubstantive technical corrections to put it into the proper format.

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