

By: Nixon

H.B. No. 2550

Substitute the following for H.B. No. 2550:

By: Marchant

C.S.H.B. No. 2550

A BILL TO BE ENTITLED

AN ACT

relating to governmental contingent fee contracts for legal services entered into by a local governmental entity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 271, Local Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

Sec. 271.131. DEFINITIONS. In this subchapter:

(1) "Contingent fee" has the meaning assigned by Section 2254.101, Government Code.

(2) "Contingent fee contract" has the meaning assigned by Section 2254.101, Government Code.

(3) "Local governmental entity" means:

(A) a municipality;

(B) a county;

(C) a school district, including a junior college district;

(D) a levee improvement district;

(E) a drainage district;

(F) an irrigation district;

(G) a water improvement district;

(H) a water control and improvement district;

(I) a water control and preservation district;

(J) a freshwater supply district;

1 (K) a navigation district;

2 (L) a conservation and reclamation district;

3 (M) a soil conservation district;

4 (N) an emergency services or communications
5 district;

6 (O) a public health or hospital authority
7 district;

8 (P) a river authority;

9 (Q) an emergency service organization; or

10 (R) any other political subdivision of this
11 state.

12 Sec. 271.132. TIME AND EXPENSE RECORDS REQUIRED; FINAL
13 STATEMENT. (a) A contingency fee contract entered into by a local
14 governmental entity must require that the contracting attorney or
15 law firm keep current and complete written time and expense records
16 that describe in detail the time and money spent each day in
17 performing the contract.

18 (b) The contracting attorney or law firm shall permit the
19 governing body or governing officer of the local governmental
20 entity or a person designated by that entity to inspect or obtain
21 copies of the time and expense records at any time on request.

22 (c) On conclusion of the matter for which legal services
23 were obtained, the contracting attorney or law firm shall provide
24 the contracting local governmental entity with a complete written
25 statement that describes the outcome of the matter, states the
26 amount of any recovery, shows the contracting attorney's or law
27 firm's computation of the amount of the contingent fee, and

1 contains the final complete time and expense records required by
2 Subsection (a). The complete written statement required by this
3 subsection is public information under Chapter 552, Government
4 Code, and may not be withheld from a requestor under Section
5 552.103, Government Code, or any other exception from required
6 disclosure.

7 (d) All time and expense records required under this section
8 are public information subject to required public disclosure under
9 Chapter 552, Government Code. Information in the records may be
10 withheld from a member of the public under Section 552.103,
11 Government Code, only if, in addition to meeting the requirements
12 of Section 552.103, the chief legal officer or employee of the local
13 governmental entity determines that withholding the information is
14 necessary to protect the entity's strategy or position in pending
15 or reasonably anticipated litigation. Information withheld from
16 public disclosure under this subsection shall be segregated from
17 information that is subject to required public disclosure.

18 Sec. 271.133. CERTAIN GENERAL CONTRACT REQUIREMENTS. The
19 contract must:

20 (1) provide for the method by which the contingent fee
21 is computed;

22 (2) state the differences, if any, in the method by
23 which the contingent fee is computed if the matter is settled,
24 tried, or tried and appealed;

25 (3) state how litigation and other expenses will be
26 paid and, if reimbursement of any expense is contingent on the
27 outcome of the matter or reimbursable from the amount recovered in

1 the matter, state whether the amount recovered for purposes of the
2 contingent fee computation is considered to be the amount obtained
3 before or after expenses are deducted;

4 (4) state that any subcontracted legal or support
5 services performed by a person who is not a contracting attorney or
6 a partner, shareholder, or employee of a contracting attorney or
7 law firm is an expense subject to reimbursement only in accordance
8 with this subchapter; and

9 (5) state that the amount of the contingent fee and
10 reimbursement of expenses under the contract will be limited in
11 accordance with this subchapter.

12 Sec. 271.134. CONTRACT REQUIREMENTS: COMPUTATION OF
13 CONTINGENT FEE; REIMBURSEMENT OF EXPENSES. (a) The contract must
14 establish the reasonable hourly rate for work performed by an
15 attorney, law clerk, or paralegal who will perform legal or support
16 services under the contract based on the reasonable and customary
17 rate in the relevant locality for the type of work performed and on
18 the relevant experience, demonstrated ability, and standard hourly
19 billing rate, if any, of the person performing the work. The
20 contract may establish the reasonable hourly rate for one or more
21 persons by name and may establish a rate schedule for work performed
22 by unnamed persons. The highest hourly rate for a named person or
23 under a rate schedule may not exceed \$1,000 an hour. This
24 subsection applies to subcontracted work performed by an attorney,
25 law clerk, or paralegal who is not a contracting attorney or a
26 partner, shareholder, or employee of a contracting attorney or law
27 firm as well as to work performed by a contracting attorney or by a

1 partner, shareholder, or employee of a contracting attorney or law
2 firm.

3 (b) The contract must establish a base fee to be computed as
4 follows. For each attorney, law clerk, or paralegal who is a
5 contracting attorney or a partner, shareholder, or employee of a
6 contracting attorney or law firm, multiply the number of hours the
7 attorney, law clerk, or paralegal works in providing legal or
8 support services under the contract by the reasonable hourly rate
9 for the work performed by that attorney, law clerk, or paralegal.
10 Add the resulting amounts to obtain the base fee. The computation
11 of the base fee may not include hours or costs attributable to work
12 performed by a person who is not a contracting attorney or a
13 partner, shareholder, or employee of a contracting attorney or law
14 firm.

15 (c) The contract must provide that the contingent fee is
16 computed by multiplying the base fee by a multiplier. The contract
17 must establish a reasonable multiplier based on any expected
18 difficulties in performing the contract, the amount of expenses
19 expected to be risked by the contractor, the expected risk of no
20 recovery, and any expected long delay in recovery. The multiplier
21 may not exceed four.

22 (d) In addition to establishing the method of computing the
23 fee under Subsections (a), (b), and (c), the contract must limit the
24 amount of the contingent fee to a stated percentage of the amount
25 recovered. The contract may state different percentage limitations
26 for different ranges of possible recoveries and different
27 percentage limitations in the event the matter is settled, tried,

1 or tried and appealed. The contract must state that the amount of
2 the contingent fee will not exceed the lesser of the stated
3 percentage of the amount recovered or the amount computed under
4 Subsections (a), (b), and (c).

5 (e) The contract also may:

6 (1) limit the amount of expenses that may be
7 reimbursed; and

8 (2) provide that the amount or payment of only part of
9 the fee is contingent on the outcome of the matter for which the
10 services were obtained, with the amount and payment of the
11 remainder of the fee payable on a regular hourly rate basis without
12 regard to the outcome of the matter.

13 SECTION 2. This Act takes effect September 1, 2003, and
14 applies only to a contingent fee contract entered into by a local
15 governmental entity on or after that date.