

By: Williams

S.B. No. 1721

A BILL TO BE ENTITLED

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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 communication
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 contingent 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 the information meets the requirements of
12 Section 552.103, Government Code, and the chief legal officer or
13 employee of the entity determines that withholding the information
14 is necessary to protect the entity's strategy or position in
15 pending or reasonably anticipated litigation. Information
16 withheld from public disclosure under this subsection shall be
17 segregated from information that is subject to required public
18 disclosure.

19 Sec. 271.133. CERTAIN GENERAL CONTRACT REQUIREMENTS. A
20 contingent fee contract must:

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

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

26 (3) state how litigation and other expenses will be
27 paid and, if reimbursement of any expense is contingent on the

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

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

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

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

1 contracting attorney or law firm as well as to work performed by a
2 contracting attorney or by a partner, shareholder, or employee of a
3 contracting attorney or law firm.

4 (b) The contract must establish a base fee to be computed by
5 multiplying the number of hours each attorney, law clerk, or
6 paralegal who is a contracting attorney or a partner, shareholder,
7 or employee of a contracting attorney or law firm works in providing
8 legal or support services under the contract times the reasonable
9 hourly rate for the work performed by that attorney, law clerk, or
10 paralegal and adding the resulting amounts. The computation of the
11 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 may also:

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.