

By: Nixon

H.B. No. 3356

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

19 Sec. 271.133. CERTAIN GENERAL CONTRACT REQUIREMENTS. A  
20 contingent fee contract entered into by a local governmental entity  
21 must:

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

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

27 (3) state how litigation and other expenses will be

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

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

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

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

1 paralegal who is not a contracting attorney or a partner,  
2 shareholder, or employee of a contracting attorney or law firm as  
3 well as to work performed by a contracting attorney or by a partner,  
4 shareholder, or employee of a contracting attorney or law firm.

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

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

24 (d) In addition to establishing the method of computing the  
25 fee under Subsections (a), (b), and (c), the contract must limit the  
26 amount of the contingent fee to a stated percentage of the amount  
27 recovered. The contract may state different percentage limitations

1 for different ranges of possible recoveries and different  
2 percentage limitations in the event the matter is settled, tried,  
3 or tried and appealed. The contract must state that the amount of  
4 the contingent fee will not exceed the lesser of the stated  
5 percentage of the amount recovered or the amount computed under  
6 Subsections (a), (b), and (c).

7 (e) The contract may also:

8 (1) limit the amount of expenses that may be  
9 reimbursed; and

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

15 SECTION 2. This Act takes effect September 1, 2005, and  
16 applies only to a contingent fee contract entered into by a local  
17 governmental entity on or after that date.

COMMITTEE AMENDMENT NO. 1

Amend H.B. 3356 as follows:

On page 1, line 12, insert the following after "2254.101" and before the period:

" , except that "contingent fee contract" shall not be construed to include contracts for:

(A) the collection of delinquent taxes under Section 6.30, Tax Code;

(B) the collection of debts, accounts receivable, and other items under Article 103.0031, Tex. Code of Crim. Proc.;

(C) the collection of other receivables owing to a local governmental entity, including utility bills, bills for medical services, and miscellaneous fees and penalties; and

(D) legal representation to a school district in an audit under Section 403.302, Government Code, a protest under Section 403,.303, Government Code, or an appeal under Section 403.303, Government Code."

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