

By: Averitt

S.B. No. 1615

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the collection of delinquent obligations owed to the
3 state.

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

5 SECTION 1. Section 403.019(c), Government Code, is amended
6 to read as follows:

7 (c) A contract under this section is not valid unless
8 approved by the attorney general. The attorney general shall
9 approve a contract if the attorney general determines that the
10 contract complies with the requirements of this section, that the
11 contract does not conflict with any contract formed under Section
12 2107.003(b), and that the contract [and] is in the best interest of
13 the state. No judicial action by any person on behalf of the state
14 under a contract authorized and approved by this section may be
15 brought unless approved by the attorney general.

16 SECTION 2. Section 2107.003, Government Code, is amended to
17 read as follows:

18 Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL,
19 COMPTROLLER, OR OUTSIDE AGENT. (a) Except as provided by
20 Subsection (c), a state agency shall report an uncollected and
21 delinquent obligation to [request] the attorney general for
22 collection. The state agency must report the obligation on or
23 before the 90th day after the date the obligation becomes past due
24 or delinquent [to collect an obligation before the agency may

1 ~~employ, retain, or contract with a person other than a full-time~~
2 ~~employee of the state agency to collect the obligation].~~

3 (b) The attorney general:

4 (1) shall provide legal services for collection of the
5 obligation;

6 (2) may authorize the requesting state agency to
7 employ, retain, or contract, subject to approval by the attorney
8 general, with a person to collect the obligation; or

9 (3) if the attorney general determines it to be
10 economical and in the best interest of the state, may contract with
11 one or more persons ~~[a person other than a full-time employee of the~~
12 ~~agency]~~ to collect the ~~[an]~~ obligation ~~[that the attorney general~~
13 ~~cannot collect].~~

14 (c) The comptroller may employ, retain, or contract with a
15 person other than a full-time state employee to collect delinquent
16 obligations that are owed the comptroller in the comptroller's
17 official capacity, are not collected through normal collection
18 procedures, and do not meet the guidelines adopted for collection
19 by the attorney general. A proposed contract under this subsection
20 shall be reviewed by the attorney general and may include a
21 collection fee computed on the amounts collected under the
22 contract.

23 (d) The agency contracting under Subsection (b) is entitled
24 to recover from the obligor, in addition to the amount of the
25 obligation, the costs incurred in undertaking the collection,
26 including the costs of a contract under this section. The obligor
27 is liable for costs of recovery under this section in an amount not

1 to exceed 30 percent of the sum of the amount of the obligation and
2 any interest due on the obligation.

3 (e) A contract formed under Subsection (b) must provide for
4 the compensation due to the contractor. The amount of the
5 compensation may not exceed 30 percent of the sum of the collected
6 amount of:

- 7 (1) the obligation;
- 8 (2) any penalty; and
- 9 (3) any interest.

10 (f) A contract formed under Subsection (b) or (c) may permit
11 or require the contractor to pursue in the name of this state a
12 judicial action to collect the amount of the obligation in a proper
13 court in or outside of this state.

14 (g) In a suit in a Texas state court to collect an obligation
15 under this section, the state is not:

- 16 (1) required to post security for costs;
- 17 (2) liable for costs; or
- 18 (3) liable for fees for:
 - 19 (A) service of process;
 - 20 (B) attorneys ad litem;
 - 21 (C) arbitration; or
 - 22 (D) mediation.

23 (h) An amount collected under a contract formed under
24 Subsection (b), including the costs of recovery and court costs or
25 other costs, shall be deposited in the fund or account to which the
26 obligation was required to be deposited. The contracting agency
27 shall pay the compensation due under the contract to the contractor

1 and shall pay to the applicable court any court costs collected.

2 (i) The contracting agency shall require a person
3 contracting under Subsection (b) to post a bond or other security in
4 an amount the contracting agency determines is sufficient to cover
5 all revenue or other property of the state that is expected to come
6 into the possession or control of the contractor in the course of
7 providing contract services.

8 (j) A person who contracts under Subsection (b) is an agent
9 of this state for purposes of determining priority of a claim to be
10 collected under the contract with respect to claims of other
11 creditors. The contractor does not exercise any sovereign power of
12 the state.

13 (k) The contracting state agency may provide a person
14 contracting under Subsection (b) any information, including
15 confidential information, that the agency is not prohibited from
16 sharing under an agreement with another state or with the United
17 States and that is:

18 (1) in the custody of the agency holding the claim; and

19 (2) necessary to the collection of the obligation.

20 (l) A person acting under a contract formed under Subsection
21 (b) or (c) and each employee or agent of that person is subject to
22 all prohibitions against the disclosure of confidential
23 information obtained from the contracting agency, the reporting
24 state agency, or their employees. A contractor or the contractor's
25 employee or agent who discloses confidential information in
26 violation of the prohibition is subject to the same penalties for
27 that disclosure as would apply to the contracting agency or its

1 employees.

2 (m) The contracting agency shall require a person who
3 contracts under Subsection (b) to obtain and maintain insurance
4 adequate to provide reasonable coverage for damages negligently,
5 recklessly, or intentionally caused by the contractor or the
6 contractor's employee or agent in the course of collecting an
7 obligation under the contract and to protect this state from
8 liability for those damages. The state is not liable for and may
9 not indemnify a person acting under a contract under Subsection (b)
10 for damages negligently, recklessly, or intentionally caused by the
11 contractor or the contractor's employee or agent in the course of
12 collecting an obligation under the contract.

13 (n) In addition to grounds for termination provided by the
14 contract terms, the attorney general or the contracting agency, as
15 applicable, may terminate a contract formed under Subsection (b) if
16 the contractor or the contractor's employee or agent:

17 (1) violates the federal Fair Debt Collection
18 Practices Act (15 U.S.C. Section 1692 et seq.);

19 (2) discloses confidential information to a person not
20 authorized to receive the information; or

21 (3) performs any act that results in a final judgment
22 for damages against this state.

23 SECTION 3. Section 2254.102(c), Government Code, is amended
24 to read as follows:

25 (c) This subchapter does not apply to a contract:

26 (1) with an agency to collect an obligation under
27 Section 2107.003(b); or

1 (2) for legal services entered into by an institution
2 of higher education under Section 153.006, Education Code.

3 SECTION 4. Section 2107.004, Government Code, is repealed.

4 SECTION 5. The changes in law made by this Act to Sections
5 2107.003 and 2254.102, Government Code, apply only in relation to a
6 contract for the collection of delinquent taxes or obligations that
7 is entered into on or after the effective date of this Act. A
8 contract for the collection of delinquent taxes or obligations
9 entered into before the effective date of this Act is governed by
10 the law in effect on the date the contract was entered into, and the
11 former law is continued in effect for that purpose.

12 SECTION 6. This Act takes effect September 1, 2007.