

## **BILL ANALYSIS**

S.B. 367  
By: Ogden  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

All state agencies and institutions of higher education, except agencies established by the Texas Constitution, are required to obtain attorney general review and approval in order to contract for outside legal services. Under Section 402.0212, Government Code, the Office of the Attorney General (OAG) is required to either provide state agencies with legal representation or approve the use of outside counsel when such representation is in the best interest of the state. The OAG has statutory authority and a well-established process for reviewing and approving an agency's request to retain outside counsel and the contract with outside counsel.

In addition, although not statutorily required, the OAG currently reviews most invoices associated with the costs of providing those services. Pursuant to this process, the OAG certifies to the comptroller of public accounts that the expenses incurred are appropriate for payment.

The OAG's non-mandatory review of outside counsel invoices is a time-intensive process that requires both attorney and staff time at a cost to the agency. The OAG's review often identifies individual and systematic errors or overcharges by outside counsel.

This bill would ensure that a mandatory review of all invoices is conducted and that the state does not pay more for legal services than is justified or permitted by outside counsel contracts. It would also require the OAG to charge a fee to contracting attorneys to cover the time required to perform the relevant invoice review. The OAG expects the reviews to result in significant annual savings.

As proposed, S.B. 367 amends current law relating to the review by the attorney general of invoices related to legal services provided to state agencies by outside counsel.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the attorney general in SECTION 1 (Section 402.0212, Government Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Section 402.0212, Government Code, by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f), as follows:

(b) Requires that an invoice submitted to a state agency under a contract for legal services as described by Subsection (a) (relating to attorney general approval of contracts for legal services) be reviewed by the attorney general to determine whether the invoice is eligible for payment.

(c) Requires an attorney or law firm to pay an administrative fee to the attorney general for the review described in Subsection (b) when entering into a contract to provide legal services to a state agency.

(d) Redesignates existing Subsection (b) as Subsection (d). Makes no further changes to this subsection.

(e) Redesignates existing Subsection (c) as Subsection (e). Makes no further changes to this subsection.

(f) Authorizes the attorney general to adopt rules as necessary to implement and administer this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2011.

**EFFECTIVE DATE**

September 1, 2011.