By:  Bonnen of Galveston, et al. H.B. No. 2826

     (Senate Sponsor - Huffman)

(In the Senate - Received from the House May 2, 2019; May 7, 2019, read first time and referred to Committee on State Affairs; May 14, 2019, reported favorably by the following vote: Yeas 9, Nays 0; May 14, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Huffman         X

Hughes          X

Birdwell        X

Creighton       X

Fallon          X

Hall            X

Lucio           X

Nelson          X

Zaffirini       X

A BILL TO BE ENTITLED

AN ACT

relating to procurement of a contingent fee contract for legal services by certain governmental entities.

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

SECTION 1.  Section 2254.101, Government Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a)  "Political subdivision" means an entity described by Section 2254.002(1)(B), (C), or (D).

SECTION 2.  Section 2254.102, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(a)  This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity or political subdivision.

(b)  The legislature by this subchapter is providing, in accordance with Sections [~~Section~~] 44 and 53, Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity or political subdivision may compensate a public contractor under a contingent fee contract for legal services.

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

(1)  with a state agency to collect an obligation under Section 2107.003(b), (c), or (c-1); [~~or~~]

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

(3)  for legal services provided to a school district under Subchapter M, Chapter 403.

(e)  This subchapter does not apply to a contract for legal services entered into under Section 6.30, Tax Code, Article 103.0031, Code of Criminal Procedure, or Section 1201.027 of this code except that Sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract.

SECTION 3.  The heading to Section 2254.103, Government Code, is amended to read as follows:

Sec. 2254.103.  STATE GOVERNMENTAL ENTITY: CONTRACT APPROVAL; SIGNATURE.

SECTION 4.  Subchapter C, Chapter 2254, Government Code, is amended by adding Sections 2254.1032, 2254.1034, 2254.1036, 2254.1037, and 2254.1038 to read as follows:

Sec. 2254.1032.  POLITICAL SUBDIVISION: SELECTION OF PROVIDER. (a) A political subdivision may select an attorney or law firm to award a contingent fee contract only in accordance with Section 2254.003(a) and this section.

(b)  In procuring legal services under a contingent fee contract, a political subdivision shall:

(1)  select a well-qualified attorney or law firm on the basis of demonstrated competence, qualifications, and experience in the requested services; and

(2)  attempt to negotiate a contract with that attorney or law firm for a fair and reasonable price.

Sec. 2254.1034.  POLITICAL SUBDIVISION: INDEMNIFICATION. (a) A political subdivision may require an attorney or law firm selected under Section 2254.1032 to indemnify or hold harmless the political subdivision from claims and liabilities resulting from negligent acts or omissions of the attorney or law firm or persons employed by the attorney or law firm.

(b)  A political subdivision may not require an attorney or law firm selected under Section 2254.1032 to indemnify, hold harmless, or, subject to Subsection (c), defend the political subdivision for claims or liabilities resulting from negligent acts or omissions of the political subdivision or its employees.

(c)  Subsection (b) does not prevent an attorney or law firm selected under Section 2254.1032 from defending the political subdivision or its employees in accordance with a contract for the defense of negligent acts or omissions of the political subdivision or its employees.

Sec. 2254.1036.  POLITICAL SUBDIVISION: CONTRACT NOTICE; APPROVAL BY GOVERNING BODY. (a) A political subdivision may enter into a contingent fee contract for legal services only if the political subdivision:

(1)  before or at the time of giving the written notice required by Section 551.041 for a meeting described by Subdivision (2), also provides written notice to the public stating:

(A)  the reasons for pursuing the matter that is the subject of the legal services for which the attorney or law firm would be retained and the desired outcome of pursuing the matter;

(B)  the competence, qualifications, and experience demonstrated by the attorney or law firm selected under Section 2254.1032;

(C)  the nature of any relationship, including the beginning of the relationship, between the political subdivision or governing body and the attorney or law firm selected under Section 2254.1032;

(D)  the reasons the legal services cannot be adequately performed by the attorneys and supporting personnel of the political subdivision;

(E)  the reasons the legal services cannot be reasonably obtained from attorneys in private practice under a contract providing for the payment of hourly fees without contingency; and

(F)  the reasons entering into a contingent fee contract for legal services is in the best interest of the residents of the political subdivision; and

(2)  approves the contract in an open meeting called for the purpose of considering the matters listed in Subsection (a)(1).

(b)  On approval of a contingent fee contract, the governing body of a political subdivision shall state in writing that the political subdivision finds that:

(1)  there is a substantial need for the legal services;

(2)  the legal services cannot be adequately performed by the attorneys and supporting personnel of the political subdivision; and

(3)  the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the political subdivision does not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

Sec. 2254.1037.  POLITICAL SUBDIVISION: CONTRACT AS PUBLIC INFORMATION. A contingent fee contract approved under Section 2254.1036 is public information under Chapter 552 and may not be withheld from a requestor under Section 552.103 or any other exception from required disclosure.

Sec. 2254.1038.  POLITICAL SUBDIVISION: ATTORNEY GENERAL REVIEW OF CONTRACT. (a) Before a contingent fee contract for legal services approved under Section 2254.1036 is effective and enforceable, the political subdivision must receive attorney general approval of the contract. The political subdivision shall file the contract with the attorney general along with:

(1)  a description of the matter to be pursued by the political subdivision;

(2)  a copy of the notice required by Section 2254.1036(a) and a statement of the method and date of the provision of the notice; and

(3)  a copy of the statement required by Section 2254.1036(b).

(b)  Within 90 days after receiving a contract from a political subdivision, the attorney general may:

(1)  approve the contract;

(2)  refuse to approve the contract because the requirements of this subchapter were not fulfilled; or

(3)  refuse to approve the contract because:

(A)  the legal matter that is the subject of the contract presents one or more questions of law or fact that are in common with a matter the state has already addressed or is pursuing; and

(B)  pursuit of the matter by the political subdivision will not promote the just and efficient resolution of the matter.

(c)  A contract submitted to the attorney general by a political subdivision under Subsection (a) is considered approved by the attorney general unless, not later than the 90th day after the date the attorney general receives the request to approve the contract, the attorney general notifies the political subdivision that the attorney general is refusing to approve the contract.

(d)  If the attorney general refuses to approve a contract under Subsection (b)(2), the attorney general shall specifically identify the provisions of this subchapter with which the contract fails to comply or the political subdivision failed to comply. Nothing in this section prohibits a political subdivision from correcting a failure to comply with this subchapter.

(e)  If the attorney general refuses to approve a contract under Subsection (b)(3), the attorney general shall inform the political subdivision of the factual and legal basis for the decision.

(f)  A political subdivision may contest the attorney general's refusal to approve the contract under Subsection (b)(3) in the manner provided for contested cases under Chapter 2001.

(g)  The State Office of Administrative Hearings shall establish procedures to govern a contest to the attorney general's refusal to approve a contract under Subsection (b)(3) and for in camera review and protection from disclosure of information excepted from disclosure under Chapter 552 in a contested case under this subsection.

(h)  The refusal to approve a contract under Subsection (b)(3) is subject to substantial evidence judicial review as provided in Subchapter G, Chapter 2001.

(i)  A political subdivision may request expedited review of a contract under Subsection (a).

SECTION 5.  Sections 2254.104(b), (c), and (d), Government Code, are amended to read as follows:

(b)  The contracting attorney or law firm shall permit the governing body or governing officer of the state governmental entity or political subdivision, the attorney general, and the state auditor or the political subdivision's auditor, as applicable, each to inspect or obtain copies of the time and expense records at any time on request.

(c)  On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity or political subdivision with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Subsection (a). The complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure.

(d)  This subsection does not apply to the complete written statement required by Subsection (c). All time and expense records required under this section are public information subject to required public disclosure under Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of the state governmental entity or political subdivision determines that withholding the information is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure under this subsection shall be segregated from information that is subject to required public disclosure.

SECTION 6.  Section 2254.108(d), Government Code, is amended to read as follows:

(d)  Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity or political subdivision and, if applicable, the entity's or subdivision's [~~state~~] auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity or political subdivision, and paid for by the contracting attorney or law firm. The contingent fee may not be paid until the entity's or subdivision's [~~state~~] auditor or the governing body of a political subdivision without an auditor, as applicable, has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity or political subdivision under the contract.

SECTION 7.  Sections 2254.109(a) and (c), Government Code, are amended to read as follows:

(a)  This subchapter does not limit the right of a state governmental entity or political subdivision to recover fees and expenses from opposing parties under other law.

(c)  An [~~A state~~] officer, employee, or governing body of a state governmental entity or political subdivision, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state governmental entity or political subdivision [~~state~~] under this subchapter. This subchapter does not waive the state's sovereign immunity or a political subdivision's governmental immunity from suit or the state's [~~its~~] immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

SECTION 8.  Subchapter C, Chapter 2254, Government Code, is amended by adding Section 2254.110 to read as follows:

Sec. 2254.110.  VOID CONTRACT. A contract entered into or an arrangement made in violation of this subchapter is void as against public policy, and no fees may be paid to any person under the contract or under any theory of recovery for work performed in connection with a void contract. A contract that is submitted to and approved by the attorney general under Section 2254.1038 cannot later be declared void under this section.

SECTION 9.  Section 403.0305, Government Code, is repealed.

SECTION 10.  Subchapter C, Chapter 2254, Government Code, as amended by this Act, applies only to a contract entered into on or after the effective date of this Act.

SECTION 11.  This Act takes effect September 1, 2019.

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