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By:  Huffman S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to procurement of a contingent fee contract for legal services by a state agency or political subdivision.

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

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

(2-a)  "Governmental entity" means a political subdivision and a state governmental entity.

(2-b)  "Political subdivision" has the meaning assigned by Section 2254.021.

SECTION 2.  Sections 2254.102(a) and (b), Government Code, are amended to read as follows:

(a)  This subchapter applies only to a contingent fee contract for legal services entered into by a [~~state~~] governmental entity.

(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 may compensate a public contractor under a contingent fee contract for legal services.

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 the most highly 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.

(c)  If a satisfactory contract cannot be negotiated with the most highly qualified attorney or law firm under Subsection (b), the political subdivision shall:

(1)  formally end negotiations with that attorney or law firm;

(2)  select the next most highly qualified attorney or law firm; and

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

(d)  A political subdivision described by Subsection (c) shall continue the process described by that subsection to select and negotiate with attorneys or law firms until a contract is entered into or the political subdivision terminates the procurement process.

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 governing body of 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 political subdivision is not able to pursue the matter using its own resources and without retaining an outside attorney or law firm on a contingent fee basis;

(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:

(A)  the need for obtaining the legal services;

(B)  the terms of the contract;

(C)  the competence, qualifications, and experience of the attorney or law firm; and

(D)  the reasons the contract is in the best interest of the residents of the political subdivision.

(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;

(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; and

(4)  the relationship between the political subdivision or the governing body and the attorney or law firm being retained is not improper and would not appear improper to a reasonable person.

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 political subdivision may enter into a contingent fee contract for legal services, 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 description of the interest that the state or any other governmental entity may have in the matter;

(3)  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;

(4)  a copy of the statement required by Section 2254.1036(b); and

(5)  any supporting documentation required by the attorney general.

(b)  The attorney general may refuse to approve a contract under Subsection (a) if the attorney general finds that:

(1)(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 already has 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; or

(2)  the political subdivision failed to comply with Section 2254.1036 or the findings made by the political subdivision under that section are not supported by the documents provided by the political subdivision.

(c)  Unless the political subdivision requests expedited review when requesting review under Subsection (a), the attorney general shall approve or deny a contract not later than the 90th day after the date the attorney general receives the request.

(d)  This section does not apply to a contract with total aggregated claims of less than $100,000.

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, 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 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 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 and, if applicable, the entity's [~~state~~] auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the [~~state~~] governmental entity, and paid for by the contracting attorney or law firm. The contingent fee may not be paid until the entity'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 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 to recover fees and expenses from opposing parties under other law.

(c)  An [~~A state~~] officer, employee, or governing body of a governmental entity, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the governmental entity [~~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.

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.