

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

1 of higher education under Section [153.006](#), Education Code; or
2 (3) for legal services provided to a school district
3 under Subchapter M, Chapter [403](#).

4 (e) This subchapter does not apply to a contract for legal
5 services entered into under Section [6.30](#), Tax Code, Article
6 [103.0031](#), Code of Criminal Procedure, or Section 1201.027 of this
7 code except that Sections [2254.1032](#), [2254.1034](#), [2254.1036](#), and
8 [2254.1037](#) do apply to the contract.

9 SECTION 3. The heading to Section [2254.103](#), Government
10 Code, is amended to read as follows:

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

13 SECTION 4. Subchapter C, Chapter [2254](#), Government Code, is
14 amended by adding Sections [2254.1032](#), [2254.1034](#), [2254.1036](#),
15 [2254.1037](#), and [2254.1038](#) to read as follows:

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

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

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

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

27 Sec. 2254.1034. POLITICAL SUBDIVISION: INDEMNIFICATION.

1 (a) A political subdivision may require an attorney or law firm
2 selected under Section 2254.1032 to indemnify or hold harmless the
3 political subdivision from claims and liabilities resulting from
4 negligent acts or omissions of the attorney or law firm or persons
5 employed by the attorney or law firm.

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

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

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

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

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

26 (B) the competence, qualifications, and
27 experience demonstrated by the attorney or law firm selected under

1 Section 2254.1032;

2 (C) the nature of any relationship, including the
3 beginning of the relationship, between the political subdivision or
4 governing body and the attorney or law firm selected under Section
5 2254.1032;

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

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

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

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

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

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

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

27 (3) the legal services cannot reasonably be obtained

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

7 Sec. 2254.1037. POLITICAL SUBDIVISION: CONTRACT AS PUBLIC
8 INFORMATION. A contingent fee contract approved under Section
9 2254.1036 is public information under Chapter 552 and may not be
10 withheld from a requestor under Section 552.103 or any other
11 exception from required disclosure.

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

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

20 (2) a copy of the notice required by Section
21 2254.1036(a) and a statement of the method and date of the provision
22 of the notice; and

23 (3) a copy of the statement required by Section
24 2254.1036(b).

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

27 (1) approve the contract;

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

3 (3) refuse to approve the contract because:

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

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

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

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

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

27 (f) A political subdivision may contest the attorney

1 general's refusal to approve the contract under Subsection (b)(3)
2 in the manner provided for contested cases under Chapter 2001.

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

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

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

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

16 (b) The contracting attorney or law firm shall permit the
17 governing body or governing officer of the state governmental
18 entity or political subdivision, the attorney general, and the
19 state auditor or the political subdivision's auditor, as
20 applicable, each to inspect or obtain copies of the time and expense
21 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 state governmental entity or political subdivision
25 with a complete written statement that describes the outcome of the
26 matter, states the amount of any recovery, shows the contracting
27 attorney's or law firm's computation of the amount of the contingent

1 fee, and contains the final complete time and expense records
2 required by Subsection (a). The complete written statement
3 required by this subsection is public information under Chapter 552
4 and may not be withheld from a requestor under that chapter under
5 Section 552.103 or any other exception from required disclosure.

6 (d) This subsection does not apply to the complete written
7 statement required by Subsection (c). All time and expense records
8 required under this section are public information subject to
9 required public disclosure under Chapter 552. Information in the
10 records may be withheld from a member of the public under Section
11 552.103 only if, in addition to meeting the requirements of Section
12 552.103, the chief legal officer or employee of the state
13 governmental entity or political subdivision 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 SECTION 6. Section 2254.108(d), Government Code, is amended
20 to read as follows:

21 (d) Litigation and other expenses payable under the
22 contract, including expenses attributable to attorney, paralegal,
23 accountant, expert, or other professional work performed by a
24 person who is not a contracting attorney or a partner, shareholder,
25 or employee of a contracting attorney or law firm, may be reimbursed
26 only if the state governmental entity or political subdivision and,
27 if applicable, the entity's or subdivision's [~~state~~] auditor

1 determine that the expenses were reasonable, proper, necessary,
2 actually incurred on behalf of the state governmental entity or
3 political subdivision, and paid for by the contracting attorney or
4 law firm. The contingent fee may not be paid until the entity's or
5 subdivision's [~~state~~] auditor or the governing body of a political
6 subdivision without an auditor, as applicable, has reviewed the
7 relevant time and expense records and verified that the hours of
8 work on which the fee computation is based were actually worked in
9 performing reasonable and necessary services for the state
10 governmental entity or political subdivision under the contract.

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

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

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

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

27 Sec. 2254.110. VOID CONTRACT. A contract entered into or an

1 arrangement made in violation of this subchapter is void as against
2 public policy, and no fees may be paid to any person under the
3 contract or under any theory of recovery for work performed in
4 connection with a void contract. A contract that is submitted to
5 and approved by the attorney general under Section 2254.1038 cannot
6 later be declared void under this section.

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

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 2826 was passed by the House on May 2, 2019, by the following vote: Yeas 103, Nays 39, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2826 was passed by the Senate on May 21, 2019, by the following vote: Yeas 27, Nays 4.

Secretary of the Senate

APPROVED: _____

Date

Governor