

By: Bonnen of Galveston, Leach, Goldman,
Gervin-Hawkins, Longoria, et al.

H.B. No. 2826

Substitute the following for H.B. No. 2826:

By: Meyer

C.S.H.B. No. 2826

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) and (b) 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.

(e) This subchapter does not apply to a contract for legal services entered into under Section 33.41, Tax Code, or Section 1201.027 of this code except that Sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract.

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

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

5 SECTION 4. Subchapter C, Chapter 2254, Government Code, is
6 amended by adding Sections 2254.1032, 2254.1034, 2254.1036,
7 2254.1037, and 2254.1038 to read as follows:

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

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

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

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

19 Sec. 2254.1034. POLITICAL SUBDIVISION: INDEMNIFICATION.

20 (a) A political subdivision may require an attorney or law firm
21 selected under Section 2254.1032 to indemnify or hold harmless the
22 political subdivision from claims and liabilities resulting from
23 negligent acts or omissions of the attorney or law firm or persons
24 employed by the attorney or law firm.

25 (b) A political subdivision may not require an attorney or
26 law firm selected under Section 2254.1032 to indemnify, hold
27 harmless, or, subject to Subsection (c), defend the political

1 subdivision for claims or liabilities resulting from negligent acts
2 or omissions of the political subdivision or its employees.

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

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

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

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

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

21 (C) the nature of any relationship, including the
22 beginning of the relationship, between the political subdivision or
23 governing body and the attorney or law firm selected under Section
24 2254.1032;

25 (D) the reasons the political subdivision is not
26 able to pursue the matter using its own resources and without
27 retaining an outside attorney or law firm on a contingent fee basis;

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

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

8 (2) approves the contract in an open meeting called
9 for the purpose of considering:

10 (A) the need for obtaining the legal services;

11 (B) the terms of the contract;

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

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

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

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

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

24 (3) the legal services cannot reasonably be obtained
25 from attorneys in private practice under a contract providing only
26 for the payment of hourly fees, without regard to the outcome of the
27 matter, because of the nature of the matter for which the services

1 will be obtained or because the political subdivision does not have
2 funds to pay the estimated amounts required under a contract
3 providing only for the payment of hourly fees; and

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

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

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

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

21 (2) a description of the interest that the state or any
22 other governmental entity may have in the matter;

23 (3) a copy of the notice required by Section
24 2254.1036(a) and a statement of the method and date of the provision
25 of the notice;

26 (4) a copy of the statement required by Section
27 2254.1036(b); and

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

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

5 (1) the legal matter that is the subject of the
6 contract presents one or more questions of law or fact that are in
7 common with a matter the state has already addressed or is pursuing
8 and pursuit of the matter by the political subdivision will not
9 promote the just and efficient resolution of the matter; or

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

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

20 (d) A political subdivision may request expedited review of
21 a contract under Subsection (a).

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

24 (b) The contracting attorney or law firm shall permit the
25 governing body or governing officer of the state governmental
26 entity or political subdivision, the attorney general, and the
27 state auditor or the political subdivision's auditor, as

1 applicable, each to inspect or obtain copies of the time and expense
2 records at any time on request.

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

14 (d) This subsection does not apply to the complete written
15 statement required by Subsection (c). All time and expense records
16 required under this section are public information subject to
17 required public disclosure under Chapter 552. Information in the
18 records may be withheld from a member of the public under Section
19 552.103 only if, in addition to meeting the requirements of Section
20 552.103, the chief legal officer or employee of the state
21 governmental entity or political subdivision determines that
22 withholding the information is necessary to protect the entity's
23 strategy or position in pending or reasonably anticipated
24 litigation. Information withheld from public disclosure under this
25 subsection shall be segregated from information that is subject to
26 required public disclosure.

27 SECTION 6. Section 2254.108(d), Government Code, is amended

1 to read as follows:

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

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

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

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

1 political subdivision [~~state~~] under this subchapter. This
2 subchapter does not waive the state's sovereign immunity or a
3 political subdivision's governmental immunity from suit or the
4 state's [~~its~~] immunity from suit in federal court under the
5 Eleventh Amendment to the federal constitution.

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

8 Sec. 2254.110. VOID CONTRACT. A contract entered into or an
9 arrangement made in violation of this subchapter is void as against
10 public policy, and no fees may be paid to any person under the
11 contract or under any theory of recovery for work performed in
12 connection with a void contract.

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

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

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