

By: Bonnen of Galveston

H.B. No. 2826

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. Section 2254.102, Government Code, is 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.

(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) entered into by a political subdivision under  
Subchapter C, Chapter 33, Texas Tax Code.

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

1 law firm; and

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

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

9 Sec. 2254.1034. POLITICAL SUBDIVISION: INDEMNIFICATION.

10 (a) A political subdivision may require an attorney or law firm  
11 selected under Section 2254.1032 to indemnify or hold harmless the  
12 political subdivision from claims and liabilities resulting from  
13 negligent acts or omissions of the attorney or law firm or persons  
14 employed by the attorney or law firm.

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

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

25 Sec. 2254.1036. POLITICAL SUBDIVISION: CONTRACT NOTICE;  
26 APPROVAL BY GOVERNING BODY. (a) A political subdivision may enter  
27 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;

1                   (B) the terms of the contract;

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

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

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

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

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

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

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

25           Sec. 2254.1037. POLITICAL SUBDIVISION: CONTRACT AS PUBLIC  
26 INFORMATION. A contingent fee contract approved under Section  
27 2254.1036 is public information under Chapter 552 and may not be

1 withheld from a requestor under Section 552.103 or any other  
2 exception from required disclosure.

3 Sec. 2254.1038. POLITICAL SUBDIVISION: ATTORNEY GENERAL  
4 REVIEW OF CONTRACT. (a) Before a political subdivision may enter  
5 into a contingent fee contract for legal services, the political  
6 subdivision must receive attorney general approval of the contract.  
7 The political subdivision shall file the contract with the attorney  
8 general along with:

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

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

13 (3) a copy of the notice required by Section  
14 2254.1036(a) and a statement of the method and date of the provision  
15 of the notice;

16 (4) a copy of the statement required by Section  
17 2254.1036(b); and

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

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

22 (1) the political subdivision's pursuit of the legal  
23 matter that is the subject of the contract interferes with the  
24 attorney general's statutory or constitutional obligations;

25 (2) the attorney general has the authority to pursue  
26 the legal matter that is the subject of the contract and that it is  
27 in the state's best interest for the attorney general to pursue the

1 matter; or

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

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

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

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

19 (c) On conclusion of the matter for which legal services  
20 were obtained, the contracting attorney or law firm shall provide  
21 the contracting ~~[state]~~ governmental entity with a complete written  
22 statement that describes the outcome of the matter, states the  
23 amount of any recovery, shows the contracting attorney's or law  
24 firm's computation of the amount of the contingent fee, and  
25 contains the final complete time and expense records required by  
26 Subsection (a). The complete written statement required by this  
27 subsection is public information under Chapter 552 and may not be

1 withheld from a requestor under that chapter under Section 552.103  
2 or any other exception from required disclosure.

3 (d) This subsection does not apply to the complete written  
4 statement required by Subsection (c). All time and expense records  
5 required under this section are public information subject to  
6 required public disclosure under Chapter 552. Information in the  
7 records may be withheld from a member of the public under Section  
8 552.103 only if, in addition to meeting the requirements of Section  
9 552.103, the chief legal officer or employee of the ~~[state]~~  
10 governmental entity determines that withholding the information is  
11 necessary to protect the entity's strategy or position in pending  
12 or reasonably anticipated litigation. Information withheld from  
13 public disclosure under this subsection shall be segregated from  
14 information that is subject to required public disclosure.

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

17 (d) Litigation and other expenses payable under the  
18 contract, including expenses attributable to attorney, paralegal,  
19 accountant, expert, or other professional work performed by a  
20 person who is not a contracting attorney or a partner, shareholder,  
21 or employee of a contracting attorney or law firm, may be reimbursed  
22 only if the ~~[state]~~ governmental entity and, if applicable, the  
23 entity's ~~[state]~~ auditor determine that the expenses were  
24 reasonable, proper, necessary, actually incurred on behalf of the  
25 ~~[state]~~ governmental entity, and paid for by the contracting  
26 attorney or law firm. The contingent fee may not be paid until the  
27 entity's ~~[state]~~ auditor, or the governing body of a political



1 subdivision without an auditor, as applicable, has reviewed the  
2 relevant time and expense records and verified that the hours of  
3 work on which the fee computation is based were actually worked in  
4 performing reasonable and necessary services for the [~~state~~]  
5 governmental entity under the contract.

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

8 (a) This subchapter does not limit the right of a [~~state~~]  
9 governmental entity to recover fees and expenses from opposing  
10 parties under other law.

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

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

21 Sec. 2254.110. VOID CONTRACT. A contract entered into or an  
22 arrangement made in violation of this subchapter is void as against  
23 public policy and no fees may be paid to any person under the  
24 contract or under any theory of recovery for work performed in  
25 connection with a void contract.

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

27 SECTION 10. Subchapter C, Chapter 2254, Government Code, as

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1 amended by this Act, applies only to a contract entered into on or  
2 after the effective date of this Act.

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