

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.

1 SECTION 4. Subchapter C, Chapter 2254, Government Code, is
2 amended by adding Sections 2254.1032, 2254.1034, 2254.1036,
3 2254.1037, and 2254.1038 to read as follows:

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

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

10 (1) select the most highly qualified attorney or law
11 firm on the basis of demonstrated competence, qualifications, and
12 experience in the requested services; and

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

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

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

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

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

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

1 procurement process.

2 Sec. 2254.1034. POLITICAL SUBDIVISION: INDEMNIFICATION.

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

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

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

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

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

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

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

4 (C) the nature of any relationship, including the
5 beginning of the relationship, between the political subdivision or
6 governing body and the attorney or law firm selected under Section
7 2254.1032;

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

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

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

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

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

21 (B) the terms of the contract;

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

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

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

1 political subdivision finds that:

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

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

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

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

18 Sec. 2254.1037. POLITICAL SUBDIVISION: CONTRACT AS PUBLIC
19 INFORMATION. A contingent fee contract approved under Section
20 2254.1036 is public information under Chapter 552 and may not be
21 withheld from a requestor under Section 552.103 or any other
22 exception from required disclosure.

23 Sec. 2254.1038. POLITICAL SUBDIVISION: ATTORNEY GENERAL
24 REVIEW OF CONTRACT. (a) Before a political subdivision may enter
25 into a contingent fee contract for legal services, the political
26 subdivision must receive attorney general approval of the contract.
27 The political subdivision shall file the contract with the attorney

1 general along with:

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

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

6 (3) a copy of the notice required by Section
7 2254.1036(a) and a statement of the method and date of the provision
8 of the notice;

9 (4) a copy of the statement required by Section
10 2254.1036(b); and

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

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

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

19 (B) pursuit of the matter by the political
20 subdivision will not promote the just and efficient resolution of
21 the matter; or

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

26 (c) Unless the political subdivision requests expedited
27 review when requesting review under Subsection (a), the attorney

1 general shall approve or deny a contract not later than the 90th day
2 after the date the attorney general receives the request.

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

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

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

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

24 (d) This subsection does not apply to the complete written
25 statement required by Subsection (c). All time and expense records
26 required under this section are public information subject to
27 required public disclosure under Chapter 552. Information in the

1 records may be withheld from a member of the public under Section
2 552.103 only if, in addition to meeting the requirements of Section
3 552.103, the chief legal officer or employee of the [~~state~~]
4 governmental entity determines that withholding the information is
5 necessary to protect the entity's strategy or position in pending
6 or reasonably anticipated litigation. Information withheld from
7 public disclosure under this subsection shall be segregated from
8 information that is subject to required public disclosure.

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

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

27 SECTION 7. Sections 2254.109(a) and (c), Government Code,

1 are amended to read as follows:

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

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

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

15 Sec. 2254.110. VOID CONTRACT. A contract entered into or an
16 arrangement made in violation of this subchapter is void as against
17 public policy.

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

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

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