

SUBJECT: Requiring attorney general review of outside counsel invoices for a fee

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Menendez, Craddick, Geren, Harless, Hilderbran,
Huberty, Smithee, Turner

0 nays

4 absent — Frullo, Gallego, Oliveira, Solomons

SENATE VOTE: On final passage, March 16 — 30-0

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Katherine Cary, Office of Attorney General)

BACKGROUND: Government Code, sec. 402.0212 provides that a contract for legal services between an attorney and a state agency must be approved by the attorney general to be valid. If the attorney general denies approval for a legal services contract, the attorney general must provide those legal services.

State agencies established by the Texas Constitution and the Texas Turnpike Authority division of the Texas Department of Transportation are exempt from this requirement.

DIGEST: SB 367 would require that invoices submitted to state agencies under valid contracts for legal services be reviewed by the attorney general to determine whether the invoices were eligible for payment.

When entering into a contract for legal services with a state entity, the attorney or law firm would be required to pay an administrative fee to the attorney general for the invoice review. The attorney general could adopt rules to implement this provision.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011, and would apply only to a contract for legal services entered into on or after the effective date.

**SUPPORTERS
SAY:**

Requiring the attorney general to review outside counsel invoices would be an appropriate continuing oversight function related to the attorney general's approval of overall legal services contracts. The deposit would be a good way to ensure the outside legal firm was paid promptly upon submission of an invoice and would ensure that the state agency received the legal services it needed without delay.

The attorney general would require a deposit of the estimated invoice review fee at the same time the contract between the state agency and outside counsel was executed. The attorney general would set the fee by rule to ensure that those affected could provide input on what was fair. Subject to any changes from the rulemaking process, the invoices could be reviewed and the review fee drawn down against the deposit, with the attorney general and outside counsel settling up at the end of the contract term.

About 350 contracts for legal services are outstanding at any one time, and monthly invoicing would be expected to result in about 4,200 invoices to be reviewed a year. The attorney general now reviews about one-third of all state agency legal invoices, or about 1,260, on a voluntary basis. The University of Texas and Texas A&M do not voluntarily submit their invoices for review. Under SB 367, the legal invoices related to those universities and all other state agencies would be required to be reviewed.

On the invoice reviews the attorney general does now, inaccurate billings sometimes are discovered and corrected, resulting in savings to the state. The attorney general reviews a number of factors on an invoice, depending on the terms of the legal services contract, including whether the services invoiced were within the scope of the contract and whether the billable hourly rates and travel expenses reflected overall contract terms. SB 367 would allow the state to identify inaccurate billings and save money on all state agency legal services contracts, which would be worth the administrative expense. The attorney general's rules could include a provision prohibiting outside counsel from passing the cost of the fees back to its state agency clients as an expense.

The current method of attorney general invoice review is all paper-based and rather informal, but the new method determined by rule would be expected to include efficiencies, such as required standard invoice forms submitted electronically and a tiered system of review based on the risk or potential upside of the contract. Invoices related to a \$50 million intellectual property contract with a university likely would get more scrutiny than a small employment law contract. The rulemaking process would be used to make the system as efficient as possible. It would ensure that the attorney general could review the invoices in a timely manner and not slow down the provision of legal services to state agencies.

OPPONENTS
SAY:

The expense of the invoice reviews required under SB 367 ultimately could get passed back to the state agencies, so the question would be whether the attorney general reviews saved enough money by catching enough mistakes to make up for the added cost of the reviews. Estimates are that the administrative fee charged and the savings gained would be a wash, so the bureaucracy created might not be justified.

Although the Attorney General's Office reviews about one-third of all invoices now, a requirement that all invoices to be reviewed could slow down the process and delay timely payment of invoices, which could have a negative effect on the provision of legal services to state agencies.

NOTES:

According to the LBB's fiscal note, the fee from the review of legal services invoices would generate \$224,532 in general revenue each fiscal year.

HB 3665 by Otto/SB 1579 by Ogden, the fiscal matters bill related to general government, would authorize the same attorney general review of outside counsel invoices for a fee.