

BILL ANALYSIS

Senate Research Center
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S.B. 113
By: Fraser
Finance
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DIGEST

Currently, under Texas law, state and local governments may enter into contingent fee agreements with outside counsel without first receiving the express permission of the legislature. This bill would clarify the process which state and local governments must use if they seek to enter into contingency fee contracts with outside counsel.

PURPOSE

As proposed, S.B. 113 clarifies the process by which state and local governments must use if they seek to enter into contingency fee contracts with outside counsel.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. LEGISLATIVE FINDINGS AND POLICY. Sets forth the findings of the legislature.

SECTION 2. Amends Chapter 140, Local Government Code, by adding Section 140.008, as follows:

Sec. 140.008. DEPOSIT OF FUNDS RECOVERED BY LITIGATION OR SETTLEMENT.

Defines “contingent fee contract” and “local governmental entity.” Establishes that all funds recovered by or for a local governmental entity in litigation or in settlement are local government public funds and shall be deposited in a depository of the local governmental entity. Authorizes the payment of legal fees and expenses under a contingent fee contract from the recovered funds only under certain conditions.

SECTION 3. Amends Chapter 404F, Government Code, by adding Section 404.097, as follows:

Sec. 404.097. DEPOSIT OF FUNDS RECOVERED BY LITIGATION OR SETTLEMENT. Establishes that this section applies to each governmental entity, notwithstanding Section 404.093. Defines “contingent fee contract” and “state governmental entity.” Establishes that all funds recovered by or for a state governmental entity in litigation or in settlement are state government public funds and shall be deposited in a depository of the state treasury for the credit of the appropriate fund or account. Authorizes the payment of legal fees and expenses under a contingent fee contract from the recovered funds only under certain conditions.

SECTION 4. Amends Chapter 2254, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

Sec. 2254.101. DEFINITIONS. Defines “contingent fee,” “contingent fee contract,” “local governmental entity,” and “state governmental entity.”

Sec. 2254.102. APPLICABILITY. Establishes that this subchapter applies only to a contingent fee contract for legal services rendered to a state or local governmental entity. Authorizes in this subchapter the manner of compensation to a public contractor under a contingency fee contract for legal services by a state or local governmental entity.

Sec. 2254.103. CONTRACT APPROVAL; SIGNATURE. Authorizes a local governmental entity with authority to enter into a legal services contract to enter into a contingent fee contract only if the local governmental entity's governing body approves the contract and the approved contract is signed by the governing body's presiding officer. Authorizes a state governmental entity to enter into a contingent fee contract for legal services only if certain conditions have been met. Authorizes the attorney general to enter into a contingent fee contract for legal services only if the other referring governmental entity approves and signs the contract as stated in Subsection (b). Authorizes a state governmental entity, including the state, to enter into a contingent fee contract for legal services not covered by Subsection (b) or (c) only if the governor approves and signs the contract. Requires the governing body, elected or appointed officer, or governor, as appropriate, to make certain findings about the contract and the services provided before approving the contract. Requires a state governmental entity, before entering into a contingent fee contract for legal services in which the estimated amount of recovery exceeds \$100,000, to notify, the governor, the lieutenant governor, and the Legislative Budget Board that the entity proposes to enter into the contract, to provide them copies of the proposed contract, and send them information demonstrating the conditions of Subsection (e) exist. Prohibits a state governmental entity from entering into the proposed contract unless the governor and the lieutenant governor, after consultation with the Legislative Budget Board, make certain findings about the contract. Establishes that a contract that does not meet the requirements set out in Subsection (f) is void.

Sec. 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT. Requires the contract to require the contracting attorney or law firm keep current and complete time and expense records. Requires the contracted attorney or law firm to allow an authorized state governmental agent to inspect or obtain copies of the time and expense records at any time, under a contract with a state governmental entity. Requires the contracted attorney or law firm to allow an authorized local governmental agent to inspect or obtain copies of the time and expense records at any time, under a contract with a local governmental entity. Requires the contracted attorney or law firm to supply a final statement describing the final outcome of the matter, any recovery amount, the computation of the contingent fee, and the complete time and expense records required in Subsection (a). Establishes that all time and expense records required under this section are public information subject to public disclosure. Authorizes information in the records to be withheld from the public under Section 552.103, if the chief legal officer or employee of the state or local governmental entity determines the withholding is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation.

Sec. 2254.105. CERTAIN GENERAL CONTRACT REQUIREMENTS. Requires the contingent fee contract for legal services to contain certain requirements.

Sec. 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES. Requires the contract to establish the hourly rate for any attorney, law clerk, or paralegal who will perform legal services under the contract based upon the reasonable and customary rate for those services in that locality and for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate of the person performing the work. Establishes certain other guidelines for establishing rates for legal services to be performed. Requires the contract to establish a base fee with certain guidelines for its computation. Requires the contingent fee to be established by multiplying the base fee by a multiplier. Provides certain guidelines for establishing the multiplier, which may not exceed four, without prior legislative approval. Requires the contract to limit the contingent fee to a stated percentage of the recovery amount. Establishes certain guidelines for establishing the percentage, which may not exceed 35 percent, without prior legislative approval. Requires the contract to state that the contingent fee will not exceed the lesser of the stated percentage or the amount computed under Subsections (a), (b), and (c). Authorizes the contract to provide certain other guidelines for the contingent fee contract. Establishes that this section does not apply to a contingent fee contract for legal services for certain expected small recovery amounts, except as provided under Section 2254.107. Establishes that this section does apply to any contingent fee contract for legal services where the actual recovery amount does exceed the limit established in Subsection (f). Establishes that this section does not apply to a contingent fee contract for legal services authorized under Section 6.30, Tax Code, for the recovery of delinquent taxes owed by persons to a local governmental entity.

Sec. 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS; REIMBURSEMENT FOR SUBCONTRACTED WORK. Establishes that this section only applies to certain contingent fee contracts. Establishes that Sections 2254.106(a) and 2254.106(e) apply to the contract without regard to whether the contract is authorized under Section 6.30, Tax Code, and without regard to the expected or actual recovery amount. Establishes that the limits prescribed in Section 2254.106 apply to the entire fee under the contingent fee contract, including the part of the fee which is not contingent upon the outcome of the matter. Establishes that the limitations prescribed in Sections 2254.108 and 2254.109 apply only to the payment of the contingent portion of the fee.

Sec. 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT UNDER CONTRACT WITH LOCAL GOVERNMENTAL ENTITY. Requires the governing body of a local governmental entity to specifically approve the payment of a contingent fee and the reimbursement of expenses under the contract. Prohibits the governing body from approving a fee payment or expense reimbursement until certain conditions have been met. Authorizes reimbursement of certain expenses submitted by the contracting attorney or law firm for certain people not employed by the contracting attorney or law firm only upon the determination by the governing body that the expenses were reasonable, necessary, actually were incurred on behalf of the local governmental entity, and were paid for by the contracting attorney or law firm.

Sec. 2254.109. FEE PAYMENT AND EXPENSE REIMBURSEMENT UNDER CONTRACT WITH STATE GOVERNMENTAL ENTITY. Requires a contingent fee and expense reimbursements under a contract with a state governmental entity to be paid from specifically appropriated funds by the legislature. Requires the appropriation to specifically describe the contract. Authorizes a state governmental entity to pay a contingent fee or reimburse expenses from other available funds under certain conditions if the legislature has not specifically appropriated funds for the payments or reimbursements. Prohibits payments or reimbursements under the contract until certain conditions are met. Authorizes reimbursement of certain expenses submitted by the contracting attorney or law firm for certain people not employed by the contracting attorney or law firm only upon the determination by the governing body and the state auditor that the expenses were reasonable, necessary, actually were incurred on behalf of the state governmental entity, and were paid for by the contracting attorney or law firm. Prohibits the payment of the contingent fee until the state auditor has reviewed the time and expense records and verified the hours of work were actually worked and were reasonable and necessary for the state governmental entity.

Sec. 2254.110. EFFECT ON OTHER LAW. Establishes that this subchapter does not limit the right of a governmental entity to recover fees and expenses from opposing parties under other law. Provides that compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law. Prohibits a state or local officer, employee, or governing body, including the attorney general, from waiving any requirements of this subchapter or from prejudicing the state's interest under this subchapter. Establishes that this subchapter does not waive the state's sovereign immunity from suit or its immunity from suit in federal court under the Eleventh Amendment of the U.S. Constitution.

SECTION 5. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 6. Emergency clause.