

## **BILL ANALYSIS**

Senate Research Center  
76R10909 JRD-D

C.S.S.B. 113  
By: Fraser  
Finance  
4/16/1999  
Committee Report (Substituted)

### **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 governments must use if they seek to enter into contingency fee contracts with outside counsel.

### **PURPOSE**

As proposed, C.S.S.B. 113 clarifies the process by which state 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 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 3. 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," 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 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 governmental entity.

Sec. 2254.103. CONTRACT APPROVAL; SIGNATURE. 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 (a) or (b) 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 (d) 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 (e) 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 contracting 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. Requires the contracting 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).

Provides that the complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure. Provides that Subsection (d) does not apply to the complete written statement required by Subsection (c). 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 governmental entity determines the withholding is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Requires information withheld from public disclosure under this subsection to be segregated from information that is subject to required public disclosure.

**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).

**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 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. 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. 2254.109. EFFECT ON OTHER LAW. Establishes that this subchapter does not limit the right of a state 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 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 4. Effective date: September 1, 1999.  
Makes application of this Act prospective.

SECTION 5. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

Relating clause.

Amends the relating clause to provide that this bill relates only to state governmental entities, rather than state and local governmental entities.

SECTION 1.

Amends SECTION 1 to delete the legislative finding concerning funds recovered by a local governmental entity in certain situations. Makes conforming changes.

SECTION 2.

Amends SECTION 2 to delete the proposed SECTION 2 regarding the deposit of funds recovered by litigation or settlement by a local government entity. Redesignates proposed SECTIONS 3-6 as SECTIONS 2-5.

SECTION 3.

Amends Section 2254.101, Government Code, to delete the definition of "local governmental entity."

Amends Section 2254.102, Government Code, to make a conforming change.

Amends Section 2254.103, Government Code, to delete proposed Subsection (a) regarding local entities. Redesignates proposed Subsections (b)-(g) as Subsections (a)-(f). Makes conforming

and nonsubstantive changes.

Amends Section 2254.104, Government Code, to provide that the complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure. Provides that Subsection (d) does not apply to the complete written statement required by Subsection (c). Requires information withheld from public disclosure under this subsection to be segregated from information that is subject to required public disclosure. Makes conforming and nonsubstantive changes.

Amends Section 2254.106, Government Code, to delete proposed Subsection (h) regarding local governmental entities.

Amends Section 2254.107, Government Code, to delete proposed text providing 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. Deletes proposed text regarding any conflict between Section 2254.106(a) or 2254.106(e) and Section 6.30, Tax Code.

Amends Section 2254.108, Government Code, to delete proposed Section 2254.108 regarding local entities, and redesignates proposed Section 2254.109 as Section 2254.108. Provides a new heading for Section 2254.108. Redesignates proposed Section 2254.110 as Section 2254.109.

Amends Section 2254.109, Government Code, to make conforming changes.