

BILL ANALYSIS

Senate Research Center

H.B. 2826
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2826 establishes requirements for the procurement of contingent fee contracts for legal services by political subdivisions, to make hiring and contracting transparency more consistent with the process used by state government entities.

H.B. 2826 amends current law relating to procurement of a contingent fee contract for legal services by certain governmental entities.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2254.101, Government Code, by adding Subdivision (2-a) to define "political subdivision."

SECTION 2. Amends Section 2254.102, Government Code, by amending Subsections (a), (b), and (c) and adding Subsection (e), as follows:

(a) Provides that this subchapter (Professional Services) applies only to a contingent fee contract for legal services entered into by a state governmental entity or political subdivision.

(b) Sets forth that the legislature by this subchapter (Contingent Fee Contract for Legal Services) is providing, in accordance with Sections 44 (Criminal Districts Attorneys) and 53 (Bailiffs), Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity or political subdivision may compensate a public contractor under a contingent fee contract for legal services, rather than setting forth that the legislature by this subchapter is providing, in accordance with Sections 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) Provides that this subchapter does not apply to a contract:

(1)–(2) makes nonsubstantive changes to these subdivisions; or

(3) for legal services provided to a school district under Subchapter M (Study of School District Property Values), Chapter 403.

(e) Provides that this subchapter does not apply to a contract for legal services entered into under Section 6.30 (Attorneys Representing Taxing Units), Tax Code, Article 103.0031 (Collection Contracts), Code of Criminal Procedure, or Section 1201.027 (Authority of Issuer to Contract For Services) of this code except that Sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract.

SECTION 3. Amends the heading to Section 2254.103, Government Code, to read as follows:

Sec. 2254.103. STATE GOVERNMENT ENTITY: CONTRACT APPROVAL; SIGNATURE.

SECTION 4. Amends Subchapter C, Chapter 2254, Government Code, by adding Sections 2254.1032, 2254.1034, 2254.1036, 2254.1037, and 2254.1038, as follows:

Sec. 2254.1032. POLITICAL SUBDIVISION: SELECTION OF PROVIDER. (a) Authorizes a political subdivision to select an attorney or law firm to award a contingent fee contract only in accordance with Section 2254.003(a) (relating to providing that a governmental entity is prohibited from selecting a provider of professional services or a group or association of providers or awarding a contract for the services on the basis of competitive bids submitted for the contract or for the services, but is required to make the selection and award on the basis of certain factors) and this section.

(b) Requires a political subdivision, in procuring legal services under a contingent fee contract, to:

(1) select a well-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.

Sec. 2254.1034. POLITICAL SUBDIVISION: INDEMNIFICATION. (a) Authorizes a political subdivision to require an attorney or law firm selected under Section 2254.1032 to indemnify or hold harmless the political subdivision from claims and liabilities resulting from negligent acts or omissions of the attorney or law firm or persons employed by the attorney or law firm.

(b) Prohibits a political subdivision from requiring an attorney or law firm selected under Section 2254.1032 to indemnify, hold harmless, or, subject to Subsection (c), defend the political subdivision for claims or liabilities resulting from negligent acts or omissions of the political subdivision or its employees.

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

Sec. 2254.1036. POLITICAL SUBDIVISION: CONTRACT NOTICE; APPROVAL BY GOVERNING BODY. (a) Authorizes a political subdivision to enter into a contingent fee contract for legal services only if the political subdivision:

(1) before or at the time of giving the written notice required by Section 551.041 (Notice of Meetings Required) 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 legal services cannot be adequately performed by the attorneys and supporting personnel of the political subdivision;

(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 the matters listed in Subsection (a)(1).

(b) Requires the governing body of a political subdivision, on approval of a contingent fee contract, to state in writing that the political subdivision finds that:

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

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

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

Sec. 2254.1037. POLITICAL SUBDIVISION: CONTRACT AS PUBLIC INFORMATION. Provides that a contingent fee contract approved under Section 2254.1036 is public information under Chapter 552 (Public Information) and is prohibited from being withheld from a requestor under Section 552.103 (Exception: Litigation or Settlement Negotiations Involving the State of a Political Subdivision) or any other exception from required disclosure.

Sec. 2254.1038. POLITICAL SUBDIVISION: ATTORNEY REVIEW OF CONTRACT.

(a) Requires the political subdivision, before a contingent fee contract for legal services approved under Section 2254.1036 is effective and enforceable, to receive Texas attorney general (attorney general) approval of the contract. Requires the political subdivision to file the contract with the attorney general along with:

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

(2) a copy of the notice required by Section 2254.1036(a) and a statement of the method and date of the provision of the notice; and

(3) a copy of the statement required by Section 2254.1036(b).

(b) Authorizes the attorney general, within 90 days after receiving a contract from a political subdivision, to:

(1) approve the contract;

(2) refuse to approve the contract because the requirements of this subchapter (State and Local Contracts and Fund Management) were not fulfilled; or

(3) refuse to approve the contract because:

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

(B) pursuit of the matter by the political subdivision will not promote the just and efficient resolution of the matter.

(c) Provides that a contract submitted to the attorney general by a political subdivision under Subsection (a) is considered approved by the attorney general unless, not later than the 90th day after the date the attorney general receives the request to approve the contract, the attorney general notifies the political subdivision that the attorney general is refusing to approve the contract.

(d) Requires the attorney general, if the attorney general refuses to approve a contract under Subsection (b)(2), to specifically identify the provisions of this subchapter with which the contract fails to comply or the political subdivision failed to comply. Provides that nothing in this section prohibits a political subdivision from correcting a failure to comply with this subchapter.

(e) Requires the attorney general, if the attorney general refuses to approve a contract under Subsection (b)(3), to inform the political subdivision of the factual and legal basis for the decision.

(f) Authorizes a political subdivision to contest the attorney general's refusal to approve the contract under Subsection (b)(3) in the manner provided for contested cases under Chapter 2001 (Administrative Procedure).

(g) Requires the State Office of Administrative Hearings to establish procedures to govern a contest to the attorney general's refusal to approve a contract under Subsection (b)(3) and for in camera review and protection from disclosure of information excepted from disclosure under Chapter 552 in a contested case under this subsection.

(h) Provides that the refusal to approve a contract under Subsection (b)(3) is subject to substantial evidence judicial review as provided in Subchapter G (Contested Cases: Judicial Review), Chapter 2001.

(i) Authorizes a political subdivision to request expedited review of a contract under Subsection (a).

SECTION 5. Amends Sections 2254.104(b), (c), and (d), Government Code, as follows:

(b) Requires the contracting attorney or law firm to permit the governing body or governing officer of the state governmental entity or political subdivision, the attorney general, and the state auditor or the political subdivision's auditor, as applicable, each to inspect or obtain copies of the time and expense records at any time on request, rather than requiring the contracting attorney or law firm to permit the governing body or governing officer of the state governmental entity, the attorney general, and the state auditor, each to inspect or obtain copies of the time and expense records at anytime on request.

(c) Makes a conforming change.

(d) Makes a conforming change.

SECTION 6. Amends Section 2254.108 (d), Government Code, as follows:

(d) Makes conforming changes. Prohibits the contingent fee from being paid until the entity's or subdivision's auditor or the governing body of a political subdivision without an auditor, as applicable, has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity or political subdivision under the contract, rather than prohibiting the contingent fee from being paid until the state auditor has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity under the contract.

SECTION 7. Amends Sections 2254.109(a) and (c), Government Code, as follows:

(a) Provides that this subchapter (Commitment Fee Contract For Legal Services) does not limit the right of a state governmental entity or political subdivision to recover fees and expenses from opposing parties under other law.

(c) Prohibits an officer, employee, or governing body of a state governmental entity or political subdivision, including the attorney general, from waiving the requirements of this subchapter or prejudice the interests of the state governmental entity or political subdivision under this subchapter, rather than prohibiting a state officer, employee, or governing body, including the attorney general, from waiving the requirements of this subchapter or prejudice the interests of the state under this subchapter. Makes conforming changes.

SECTION 8. Amends Subchapter C, Chapter 2254, Government Code, by adding Section 2254.110, as follows:

Sec. 2254.110. VOID CONTRACT. Provides that a contract entered into or an arrangement made in violation of this subchapter is void as against public policy, and no fees are authorized to be paid to any person under the contract or under any theory of recovery for work performed in connection with a void contract. Provides that a contract that is submitted to and approved by the attorney general under Section 2254.1038 cannot later be declared void under this section.

SECTION 9. Repealer: Section 403.0305 (Approval by Comptroller), Government Code.

SECTION 10. Makes application of Subchapter C, Chapter 2254, Government Code, as amended by this Act, prospective.

SECTION 11. Effective date: September 1, 2019.