

## **BILL ANALYSIS**

Senate Research Center

S.B. 1370  
By: Nichols  
State Affairs  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under the Prompt Pay Act, state agencies must pay for goods or services within thirty days of receiving the goods or services or the invoice for the goods or services, whichever occurs later. If a state agency does not pay an invoice within that thirty-day window, interest begins to accrue on the late payment. The Act creates a problem for agencies that must obtain the Office of the Attorney General's (OAG) approval of invoices for outside legal counsel, because the invoice must be reviewed by two separate state agencies (not just one, as contemplated by the Prompt Pay Act) within the same thirty-day period. Oftentimes, agencies do not submit invoices for OAG's approval within an appropriate amount of time. Other times, the invoices are sent to OAG with incomplete administrative and accounting work. For example, some invoices can reach up to one-hundred pages long with receipts left un-totaled, per diem amounts unverified, etc. OAG's role should be limited to legal substantive review.

We are proposing a change to Section 402.0212 that would expand the time frame for review for outside legal counsel contracts from 30 to 45 days; with 25 days for agency submittal, and 20 days for OAG review. For quality assurance purposes, we propose that the invoices be submitted by the state agency's office of the general counsel, certifying the performance of their review in the process. This bill also limits OAG's role to only reviewing invoices for compliance with legal scope of the contract. (Original Author's/Sponsor's Statement of Intent)

S.B. 1370 amends current law relating to invoices and payments under certain state contracts for outside legal services.

### **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 Sections 402.0212, Government Code, by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(b) Makes a nonsubstantive change and requires an invoice submitted to a state agency under a contract for legal services as described by Subsection (a) to be:

(1) submitted to the Texas attorney general (attorney general) by the agency's office of general counsel not later than the 25th day after the date the agency receives the invoice except as provided by Subsection (b-2); and

(2) reviewed by the attorney general only to determine whether the legal services for which the agency is billed were performed within the term of the contract and are within the scope of the legal services authorized by the contract and therefore eligible for payment, rather than reviewed by the attorney general to determine whether the invoice is eligible for payment. Creates this subdivision from existing text.

(b-1) Requires a state agency's office of general counsel to include with an invoice submitted under Subsection (b)(1) a written certification that the legal services for which the agency is billed were within the term of the contract, are within the scope of the legal services authorized by the contract, and are reasonably necessary to fulfill the contract. Requires a state agency, to certify an invoice under this subsection, to, at a minimum, determine that the following items are supported by proper documentation and submitted to the agency under the requirements of the contract:

- (1) the amount and types of expenses billed under the invoice;
- (2) the rates for legal services under the invoice; and
- (3) the number of hours billed for legal services under the invoice.

(b-2) Requires a state agency, if a state agency that receives an invoice under a contract for legal services as described by Subsection (a) rejects or disputes the invoice as not certifiable under Subsection (b-1), to, not later than the 21st day after the date the agency receives the invoice, notify the attorney or law firm providing the invoice and request a corrected invoice. Provides that the period under Subsection (b)(1) begins on the date the agency receives a corrected invoice that is certifiable under Subsection (b-1).

(b-3) Requires the attorney general, if the attorney general rejects or disputes an invoice and certification submitted by a state agency under this section, to notify the agency that the invoice is not eligible for payment. Authorizes a state agency to submit a corrected invoice and certification, and provides that the requirements of Subsections (b), (b-1), and (b-2) apply to the corrected invoice and certification.

SECTION 2. Amends Section 2251.021, Government Code, by amending Subsection (a) and adding Subsection (b-1), as follows:

(a) Provides that except as otherwise provided by this section, rather than except as provided by Subsection (b) (relating to providing that a payment executed under a contract executed on or after September 1, 1993, owed by a political subdivision fitting certain criteria is overdue on a certain date), a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of certain specified dates.

(b-1) Provides that a payment under a contract for legal services described by Section 402.0212 (Provision of Legal Services—Outside Counsel) owed by a state agency is overdue on the 46th day after the date the agency receives an invoice for the legal services.

SECTION 3. Effective date: September 1, 2019.