

BILL ANALYSIS

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S.B. 1370
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

State agencies in the executive branch typically receive legal representation from the Office of the Attorney General (OAG). If an agency wishes to be represented by outside counsel instead, that agency must submit its proposed outside-counsel contract to OAG for approval before the representation begins. See Section 402.0212, Government Code. In addition to requiring OAG approval of outside-counsel contracts for other state agencies, Section 402.0212, Government Code, also requires OAG review and approval of all invoices under the outside-counsel contract to ensure that they are within the scope of the contract and supported by proper documentation.

Current law contains no corresponding approval or review requirement when OAG wishes to hire outside counsel. S.B. 1370 holds OAG to the same standard as other state agencies by requiring the Comptroller of Public Accounts of the State of Texas to perform the same review of OAG's outside-counsel contracts and invoices that OAG performs for other state agencies under Section 402.0212, Government Code. This includes reviewing the outside-counsel contract before the representation begins and reviewing invoices that outside counsel sends to OAG.

As proposed, S.B. 1370 amends current law relating to the approval by the comptroller of certain contracts for legal services between an attorney and the attorney general.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Section 402.0211, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.0211, as follows:

Sec. 402.0211. CONTRACTS FOR OUTSIDE COUNSEL RETAINED BY ATTORNEY GENERAL. (a) Provides that this section applies only to a contract between an attorney, other than an attorney who is a full-time employee of the office of attorney general, and the attorney general for the performance of legal services authorized or required to be performed by the attorney general under Chapter 402 (Attorney General) or other law.

(b) Requires that a contract to which this section applies be approved by the Comptroller of Public Accounts of the State of Texas (comptroller) to be valid. Requires the attorney general, if the comptroller denies approval of a contract under this section, to provide the legal services that are the subject of the contract in the manner required under Chapter 402.

(c) Requires that an invoice from an attorney submitted to the attorney general under a contract for legal services as described by Subsection (a) be:

(1) except as provided by Subsection (e), submitted to the comptroller by the attorney general not later than the 25th day after the date the attorney general receives the invoice; and

(2) reviewed by the comptroller only to determine whether the legal services for which the attorney general is billed were performed within the term of the contract and are within the scope of the legal services authorized by the contract and are therefore eligible for payment.

(d) Requires the attorney general to include with an invoice submitted under Subsection (c)(1) a written certification that the legal services for which the attorney general is billed were performed 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 purpose of the contract. Requires the attorney general, 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 attorney general 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.

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

(f) Requires the comptroller, if the comptroller rejects or disputes an invoice and certification submitted by the attorney general under this section, to notify the attorney general that the invoice is not eligible for payment. Authorizes the attorney general to submit a corrected invoice and certification, and provides that the requirements of Subsections (c), (d), and (e) apply to the corrected invoice and certification.

(g) Requires an attorney or law firm to pay an administrative fee to the comptroller for the review described in Subsection (c) when entering into a contract to provide legal services to the attorney general.

(h) Authorizes the comptroller to adopt rules as necessary to implement and administer this section.

SECTION 2. Amends the heading to Section 402.0212, Government Code, to read as follows:

Sec. 402.0212. PROVISION OF LEGAL SERVICES TO STATE AGENCIES--OUTSIDE COUNSEL.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2021.