

1-1 By: Bonnen of Galveston, et al. H.B. No. 2826
 1-2 (Senate Sponsor - Huffman)
 1-3 (In the Senate - Received from the House May 2, 2019;
 1-4 May 7, 2019, read first time and referred to Committee on State
 1-5 Affairs; May 14, 2019, reported favorably by the following vote:
 1-6 Yeas 9, Nays 0; May 14, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 A BILL TO BE ENTITLED
 1-19 AN ACT

1-20 relating to procurement of a contingent fee contract for legal
 1-21 services by certain governmental entities.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 2254.101, Government Code, is amended by
 1-24 adding Subdivision (2-a) to read as follows:

1-25 (2-a) "Political subdivision" means an entity
 1-26 described by Section 2254.002(1)(B), (C), or (D).

1-27 SECTION 2. Section 2254.102, Government Code, is amended by
 1-28 amending Subsections (a), (b), and (c) and adding Subsection (e) to
 1-29 read as follows:

1-30 (a) This subchapter applies only to a contingent fee
 1-31 contract for legal services entered into by a state governmental
 1-32 entity or political subdivision.

1-33 (b) The legislature by this subchapter is providing, in
 1-34 accordance with Sections ~~[Section]~~ 44 and 53, Article III, Texas
 1-35 Constitution, for the manner in which and the situations under
 1-36 which a state governmental entity or political subdivision may
 1-37 compensate a public contractor under a contingent fee contract for
 1-38 legal services.

1-39 (c) This subchapter does not apply to a contract:

1-40 (1) with a state agency to collect an obligation under
 1-41 Section 2107.003(b), (c), or (c-1); ~~[or]~~

1-42 (2) for legal services entered into by an institution
 1-43 of higher education under Section 153.006, Education Code; or

1-44 (3) for legal services provided to a school district
 1-45 under Subchapter M, Chapter 403.

1-46 (e) This subchapter does not apply to a contract for legal
 1-47 services entered into under Section 6.30, Tax Code, Article
 1-48 103.0031, Code of Criminal Procedure, or Section 1201.027 of this
 1-49 code except that Sections 2254.1032, 2254.1034, 2254.1036, and
 1-50 2254.1037 do apply to the contract.

1-51 SECTION 3. The heading to Section 2254.103, Government
 1-52 Code, is amended to read as follows:

1-53 Sec. 2254.103. STATE GOVERNMENTAL ENTITY: CONTRACT
 1-54 APPROVAL; SIGNATURE.

1-55 SECTION 4. Subchapter C, Chapter 2254, Government Code, is
 1-56 amended by adding Sections 2254.1032, 2254.1034, 2254.1036,
 1-57 2254.1037, and 2254.1038 to read as follows:

1-58 Sec. 2254.1032. POLITICAL SUBDIVISION: SELECTION OF
 1-59 PROVIDER. (a) A political subdivision may select an attorney or
 1-60 law firm to award a contingent fee contract only in accordance with
 1-61 Section 2254.003(a) and this section.

1-62 (b) In procuring legal services under a contingent fee
 1-63 contract, a political subdivision shall:

2-1 (1) select a well-qualified attorney or law firm on
 2-2 the basis of demonstrated competence, qualifications, and
 2-3 experience in the requested services; and

2-4 (2) attempt to negotiate a contract with that attorney
 2-5 or law firm for a fair and reasonable price.

2-6 Sec. 2254.1034. POLITICAL SUBDIVISION: INDEMNIFICATION.

2-7 (a) A political subdivision may require an attorney or law firm
 2-8 selected under Section 2254.1032 to indemnify or hold harmless the
 2-9 political subdivision from claims and liabilities resulting from
 2-10 negligent acts or omissions of the attorney or law firm or persons
 2-11 employed by the attorney or law firm.

2-12 (b) A political subdivision may not require an attorney or
 2-13 law firm selected under Section 2254.1032 to indemnify, hold
 2-14 harmless, or, subject to Subsection (c), defend the political
 2-15 subdivision for claims or liabilities resulting from negligent acts
 2-16 or omissions of the political subdivision or its employees.

2-17 (c) Subsection (b) does not prevent an attorney or law firm
 2-18 selected under Section 2254.1032 from defending the political
 2-19 subdivision or its employees in accordance with a contract for the
 2-20 defense of negligent acts or omissions of the political subdivision
 2-21 or its employees.

2-22 Sec. 2254.1036. POLITICAL SUBDIVISION: CONTRACT NOTICE;
 2-23 APPROVAL BY GOVERNING BODY. (a) A political subdivision may enter
 2-24 into a contingent fee contract for legal services only if the
 2-25 political subdivision:

2-26 (1) before or at the time of giving the written notice
 2-27 required by Section 551.041 for a meeting described by Subdivision
 2-28 (2), also provides written notice to the public stating:

2-29 (A) the reasons for pursuing the matter that is
 2-30 the subject of the legal services for which the attorney or law firm
 2-31 would be retained and the desired outcome of pursuing the matter;

2-32 (B) the competence, qualifications, and
 2-33 experience demonstrated by the attorney or law firm selected under
 2-34 Section 2254.1032;

2-35 (C) the nature of any relationship, including the
 2-36 beginning of the relationship, between the political subdivision or
 2-37 governing body and the attorney or law firm selected under Section
 2-38 2254.1032;

2-39 (D) the reasons the legal services cannot be
 2-40 adequately performed by the attorneys and supporting personnel of
 2-41 the political subdivision;

2-42 (E) the reasons the legal services cannot be
 2-43 reasonably obtained from attorneys in private practice under a
 2-44 contract providing for the payment of hourly fees without
 2-45 contingency; and

2-46 (F) the reasons entering into a contingent fee
 2-47 contract for legal services is in the best interest of the residents
 2-48 of the political subdivision; and

2-49 (2) approves the contract in an open meeting called
 2-50 for the purpose of considering the matters listed in Subsection
 2-51 (a)(1).

2-52 (b) On approval of a contingent fee contract, the governing
 2-53 body of a political subdivision shall state in writing that the
 2-54 political subdivision finds that:

2-55 (1) there is a substantial need for the legal
 2-56 services;

2-57 (2) the legal services cannot be adequately performed
 2-58 by the attorneys and supporting personnel of the political
 2-59 subdivision; and

2-60 (3) the legal services cannot reasonably be obtained
 2-61 from attorneys in private practice under a contract providing only
 2-62 for the payment of hourly fees, without regard to the outcome of the
 2-63 matter, because of the nature of the matter for which the services
 2-64 will be obtained or because the political subdivision does not have
 2-65 funds to pay the estimated amounts required under a contract
 2-66 providing only for the payment of hourly fees.

2-67 Sec. 2254.1037. POLITICAL SUBDIVISION: CONTRACT AS PUBLIC
 2-68 INFORMATION. A contingent fee contract approved under Section
 2-69 2254.1036 is public information under Chapter 552 and may not be
 2-70 withheld from a requestor under Section 552.103 or any other
 2-71 exception from required disclosure.

3-1 Sec. 2254.1038. POLITICAL SUBDIVISION: ATTORNEY GENERAL
3-2 REVIEW OF CONTRACT. (a) Before a contingent fee contract for legal
3-3 services approved under Section 2254.1036 is effective and
3-4 enforceable, the political subdivision must receive attorney
3-5 general approval of the contract. The political subdivision shall
3-6 file the contract with the attorney general along with:
3-7 (1) a description of the matter to be pursued by the
3-8 political subdivision;
3-9 (2) a copy of the notice required by Section
3-10 2254.1036(a) and a statement of the method and date of the provision
3-11 of the notice; and
3-12 (3) a copy of the statement required by Section
3-13 2254.1036(b).
3-14 (b) Within 90 days after receiving a contract from a
3-15 political subdivision, the attorney general may:
3-16 (1) approve the contract;
3-17 (2) refuse to approve the contract because the
3-18 requirements of this subchapter were not fulfilled; or
3-19 (3) refuse to approve the contract because:
3-20 (A) the legal matter that is the subject of the
3-21 contract presents one or more questions of law or fact that are in
3-22 common with a matter the state has already addressed or is pursuing;
3-23 and
3-24 (B) pursuit of the matter by the political
3-25 subdivision will not promote the just and efficient resolution of
3-26 the matter.
3-27 (c) A contract submitted to the attorney general by a
3-28 political subdivision under Subsection (a) is considered approved
3-29 by the attorney general unless, not later than the 90th day after
3-30 the date the attorney general receives the request to approve the
3-31 contract, the attorney general notifies the political subdivision
3-32 that the attorney general is refusing to approve the contract.
3-33 (d) If the attorney general refuses to approve a contract
3-34 under Subsection (b)(2), the attorney general shall specifically
3-35 identify the provisions of this subchapter with which the contract
3-36 fails to comply or the political subdivision failed to comply.
3-37 Nothing in this section prohibits a political subdivision from
3-38 correcting a failure to comply with this subchapter.
3-39 (e) If the attorney general refuses to approve a contract
3-40 under Subsection (b)(3), the attorney general shall inform the
3-41 political subdivision of the factual and legal basis for the
3-42 decision.
3-43 (f) A political subdivision may contest the attorney
3-44 general's refusal to approve the contract under Subsection (b)(3)
3-45 in the manner provided for contested cases under Chapter 2001.
3-46 (g) The State Office of Administrative Hearings shall
3-47 establish procedures to govern a contest to the attorney general's
3-48 refusal to approve a contract under Subsection (b)(3) and for in
3-49 camera review and protection from disclosure of information
3-50 excepted from disclosure under Chapter 552 in a contested case
3-51 under this subsection.
3-52 (h) The refusal to approve a contract under Subsection
3-53 (b)(3) is subject to substantial evidence judicial review as
3-54 provided in Subchapter G, Chapter 2001.
3-55 (i) A political subdivision may request expedited review of
3-56 a contract under Subsection (a).
3-57 SECTION 5. Sections 2254.104(b), (c), and (d), Government
3-58 Code, are amended to read as follows:
3-59 (b) The contracting attorney or law firm shall permit the
3-60 governing body or governing officer of the state governmental
3-61 entity or political subdivision, the attorney general, and the
3-62 state auditor or the political subdivision's auditor, as
3-63 applicable, each to inspect or obtain copies of the time and expense
3-64 records at any time on request.
3-65 (c) On conclusion of the matter for which legal services
3-66 were obtained, the contracting attorney or law firm shall provide
3-67 the contracting state governmental entity or political subdivision
3-68 with a complete written statement that describes the outcome of the
3-69 matter, states the amount of any recovery, shows the contracting
3-70 attorney's or law firm's computation of the amount of the contingent
3-71 fee, and contains the final complete time and expense records

4-1 required by Subsection (a). The complete written statement
 4-2 required by this subsection is public information under Chapter 552
 4-3 and may not be withheld from a requestor under that chapter under
 4-4 Section 552.103 or any other exception from required disclosure.

4-5 (d) This subsection does not apply to the complete written
 4-6 statement required by Subsection (c). All time and expense records
 4-7 required under this section are public information subject to
 4-8 required public disclosure under Chapter 552. Information in the
 4-9 records may be withheld from a member of the public under Section
 4-10 552.103 only if, in addition to meeting the requirements of Section
 4-11 552.103, the chief legal officer or employee of the state
 4-12 governmental entity or political subdivision determines that
 4-13 withholding the information is necessary to protect the entity's
 4-14 strategy or position in pending or reasonably anticipated
 4-15 litigation. Information withheld from public disclosure under this
 4-16 subsection shall be segregated from information that is subject to
 4-17 required public disclosure.

4-18 SECTION 6. Section 2254.108(d), Government Code, is amended
 4-19 to read as follows:

4-20 (d) Litigation and other expenses payable under the
 4-21 contract, including expenses attributable to attorney, paralegal,
 4-22 accountant, expert, or other professional work performed by a
 4-23 person who is not a contracting attorney or a partner, shareholder,
 4-24 or employee of a contracting attorney or law firm, may be reimbursed
 4-25 only if the state governmental entity or political subdivision and,
 4-26 if applicable, the entity's or subdivision's [state] auditor
 4-27 determine that the expenses were reasonable, proper, necessary,
 4-28 actually incurred on behalf of the state governmental entity or
 4-29 political subdivision, and paid for by the contracting attorney or
 4-30 law firm. The contingent fee may not be paid until the entity's or
 4-31 subdivision's [state] auditor or the governing body of a political
 4-32 subdivision without an auditor, as applicable, has reviewed the
 4-33 relevant time and expense records and verified that the hours of
 4-34 work on which the fee computation is based were actually worked in
 4-35 performing reasonable and necessary services for the state
 4-36 governmental entity or political subdivision under the contract.

4-37 SECTION 7. Sections 2254.109(a) and (c), Government Code,
 4-38 are amended to read as follows:

4-39 (a) This subchapter does not limit the right of a state
 4-40 governmental entity or political subdivision to recover fees and
 4-41 expenses from opposing parties under other law.

4-42 (c) An [A state] officer, employee, or governing body of a
 4-43 state governmental entity or political subdivision, including the
 4-44 attorney general, may not waive the requirements of this subchapter
 4-45 or prejudice the interests of the state governmental entity or
 4-46 political subdivision [state] under this subchapter. This
 4-47 subchapter does not waive the state's sovereign immunity or a
 4-48 political subdivision's governmental immunity from suit or the
 4-49 state's [its] immunity from suit in federal court under the
 4-50 Eleventh Amendment to the federal constitution.

4-51 SECTION 8. Subchapter C, Chapter 2254, Government Code, is
 4-52 amended by adding Section 2254.110 to read as follows:

4-53 Sec. 2254.110. VOID CONTRACT. A contract entered into or an
 4-54 arrangement made in violation of this subchapter is void as against
 4-55 public policy, and no fees may be paid to any person under the
 4-56 contract or under any theory of recovery for work performed in
 4-57 connection with a void contract. A contract that is submitted to
 4-58 and approved by the attorney general under Section 2254.1038 cannot
 4-59 later be declared void under this section.

4-60 SECTION 9. Section 403.0305, Government Code, is repealed.

4-61 SECTION 10. Subchapter C, Chapter 2254, Government Code, as
 4-62 amended by this Act, applies only to a contract entered into on or
 4-63 after the effective date of this Act.

4-64 SECTION 11. This Act takes effect September 1, 2019.

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