

BILL ANALYSIS

C.S.H.B. 2826
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised that political subdivisions may be subject to overcharging by attorneys who provide legal services under a contingent fee contract. There have been calls to bring more transparency to the hiring of attorneys by political subdivisions and to make the contingent fee contracting process for political subdivisions more consistent with the process used by state governmental entities. C.S.H.B. 2826 addresses this issue by establishing requirements for the procurement of contingent fee contracts for legal services by political subdivisions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2826 repeals a Government Code provision prohibiting a public agency as defined by the Regional Waste Disposal Act from entering into a contingent fee contract without certain approval and amends the Government Code to expand the applicability of provisions relating to contingent fee contracts for legal services entered into by a state governmental entity to include a political subdivision, which is defined by reference as a district, authority, county, municipality, or other political subdivision of the state; a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or a publicly owned utility.

C.S.H.B. 2826 exempts a contract for legal services entered into under Tax Code provisions relating to suits to collect delinquent taxes or under Government Code provisions relating to the authority of an issuer of public securities to contract for services from the applicability of Government Code provisions relating to contingent fee contracts for legal services, except for specified provisions added by the bill.

C.S.H.B. 2826 authorizes a political subdivision to select an attorney or law firm to award a contingent fee contract only in accordance with certain statutory provisions relating to the selection of professional services providers and the bill's provisions. The bill sets out specified requirements relating to the procurement of legal services under a contingent fee contract and the selection of a provider of such services for a political subdivision.

C.S.H.B. 2826 authorizes a political subdivision to require an attorney or law firm selected under

the bill's provisions 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. The bill prohibits a political subdivision from requiring a selected attorney or law firm to indemnify, hold harmless, or defend the political subdivision for claims or liabilities resulting from negligent acts or omissions of the political subdivision or its employees. This prohibition expressly does not prevent the attorney or law firm 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.

C.S.H.B. 2826 authorizes a political subdivision to enter into a contingent fee contract for legal services only if the governing body of the political subdivision:

- approves the contract in an open meeting called for the purpose of considering:
 - the need for obtaining the legal services;
 - the terms of the contract;
 - the competence, qualifications, and experience of the attorney or law firm; and
 - the reasons the contract is in the best interest of the residents of the political subdivision; and
- before or at the time of giving the required written notice for a meeting, also provides written notice to the public stating certain specified information.

The bill requires the governing body of a political subdivision to state in writing certain findings on the governing body's approval of a contingent fee contract under these provisions. The bill establishes that a contingent fee contract approved by such a governing body is subject to disclosure for purposes of state public information law and prohibits the contract from being withheld from a requestor under provisions of that law providing for any other exception from required disclosure.

C.S.H.B. 2826 requires a political subdivision to receive attorney general approval of such a contract before the contract is effective and enforceable and to file the contract and certain documents with the attorney general. The bill authorizes the attorney general to refuse to approve the contract if the attorney general finds that:

- 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 pursuit of the matter by the political subdivision will not promote the just and efficient resolution of the matter; or
- the political subdivision failed to comply with notice and hearing requirements under the bill's provisions or the findings made by the political subdivision under those provisions are not supported by the documents provided by the political subdivision.

The bill establishes that a contract submitted to the attorney general by a political subdivision 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. The bill authorizes a political subdivision to request expedited review of a contract.

C.S.H.B. 2826 establishes that a contract entered into or an arrangement made in violation of Government Code provisions relating to contingent fee contracts for legal services is void as against public policy and no fees may be paid to any person under the contract or under any theory of recovery for work performed in connection with a void contract. The bill makes other conforming changes.

C.S.H.B. 2826 repeals Section 403.0305, Government Code.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2826 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the caption to include a reference to legal services by "certain governmental entities" rather than to legal services by "a state agency or political subdivision" as in the introduced version of the bill.

The substitute expands the entities that are considered political subdivisions for purpose of the bill's provisions.

The substitute includes an exemption from Government Code provisions relating to contingent fee contracts for legal services for certain contracts entered into by an issuer of public securities and includes an exception making specified provisions added by the bill applicable to such a contract and to a contract entered into under Tax Code provisions relating to suits to collect delinquent taxes.

The substitute makes revisions to the procedures for the selection of a provider by a political subdivision in procuring legal services under a contingent fee contract that relate to the provider's qualifications, including changing the requirement that a political subdivision select the most highly qualified attorney to selecting a well-qualified attorney.

The substitute changes the time at which a political subdivision is required to receive attorney general approval of such a contract from before the political subdivision enters into the contract to before the contract is effective and enforceable. The substitute changes the grounds on which the attorney general may refuse to approve a contract.

The substitute changes the requirement for the attorney general to approve or deny a contract by a certain date to a specification that a contract is considered approved unless the attorney general notifies the political subdivision by that date that the attorney general is refusing to approve the contract.