

SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

Sec. 2254.101. DEFINITIONS. In this subchapter:

(1) "Contingent fee" means that part of a fee for legal services, under a contingent fee contract, the amount or payment of which is contingent on the outcome of the matter for which the services were obtained.

(2) "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term includes an amendment to a contract for legal services described by this subdivision if the amendment:

(A) changes the scope of representation; or

(B) may result in:

(i) the filing of an action; or

(ii) the amending of a petition in an existing action.

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

(3) "State governmental entity":

(A) means the state or a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section [61.003](#), Education Code;

(B) includes the state when a state officer is bringing a *parens patriae* proceeding in the name of the state; and

(C) does not include a state agency or state officer acting as a receiver, special deputy receiver, liquidator, or liquidating agent in connection with the administration of the assets of an insolvent entity under Article 21.28, Insurance Code, or Chapter [36](#), [66](#), [96](#), or [126](#), Finance Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 412 (S.B. [1821](#)), Sec. 1, eff. June 7, 2021.

Sec. 2254.102. APPLICABILITY. (a) This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity or political subdivision.

(b) 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 or political subdivision may compensate a public contractor under a contingent fee contract for legal services.

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

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

(2) for legal services entered into by an institution of higher education under Section [153.006](#), Education Code; or

(3) for legal services provided to a school district under Subchapter [M](#), Chapter [403](#).

(d) This subchapter does not apply to a contract for legal services entered into by the Teacher Retirement System of Texas if the services are paid for from money that is not appropriated from the general revenue fund, including funds of a trust administered by the retirement system.

(e) This subchapter does not apply to a contract for legal services entered into by a political subdivision for the collection of an obligation, as defined by Section [2107.001](#), that is delinquent or for services under Section [1201.027](#), except that Sections [2254.1032](#), [2254.1034](#), [2254.1036](#), and [2254.1037](#) do apply to the contract. For purposes of this subsection, an obligation does not include a fine or penalty that results from an action by a political subdivision under Chapter [7](#), Water Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 1.13, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. [1691](#)), Sec. 31, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1386 (S.B. [1615](#)), Sec. 3, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 20 (H.B. [1428](#)), Sec. 1, eff. September 1, 2021.

Sec. 2254.103. STATE GOVERNMENTAL ENTITY: CONTRACT APPROVAL; SIGNATURE. (a) A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:

(1) the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.

(b) The attorney general may enter into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to the attorney general under law by another state governmental entity only if the other state governmental entity approves and signs the contract in accordance with Subsection (a).

(c) A state governmental entity, including the state, may enter into a contingent fee contract for legal services that is not described by Subsection (a) or (b) only if the governor approves and signs the contract.

(d) Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find 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 state governmental entity or by the attorneys and supporting personnel of another state governmental entity; 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 state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

(e) Before entering into a contingent fee contract for legal services in which the estimated amount that may be recovered exceeds \$100,000, a state governmental entity that proposes to enter into the contract in its own name or in the name of the state must also notify the Legislative Budget Board that the entity proposes to enter into the contract, send the board copies of

the proposed contract, and send the board information demonstrating that the conditions required by Subsection (d) (3) exist. If the state governmental entity finds under Subsection (d) (3) that the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract for the legal services providing only for the payment of hourly fees, the state governmental entity may not enter into the proposed contract in its own name or in the name of the state unless the Legislative Budget Board finds that the state governmental entity's finding with regard to available appropriated funds is correct.

(f) A contingent fee contract for legal services that is subject to Subsection (e) and requires a finding by the Legislative Budget Board is void unless the board has made the finding required by Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 3, eff. September 1, 2019.

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

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

(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.

Added by Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 4, eff. September 1, 2019.

Sec. 2254.1034. POLITICAL SUBDIVISION: INDEMNIFICATION. (a) A political subdivision may 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) A political subdivision may not require 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) 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.

Added by Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 4, eff. September 1, 2019.

Sec. 2254.1036. POLITICAL SUBDIVISION: CONTRACT NOTICE; APPROVAL BY GOVERNING BODY. (a) A political subdivision may 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](#) 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) On approval of a contingent fee contract, the governing body of a political subdivision shall 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.

Added by Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 4, eff. September 1, 2019.

Sec. 2254.1037. POLITICAL SUBDIVISION: CONTRACT AS PUBLIC INFORMATION. A contingent fee contract approved under Section [2254.1036](#) is public information under Chapter [552](#) and may not be withheld from a requestor under Section [552.103](#) or any other exception from required disclosure.

Added by Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 4, eff. September 1, 2019.

Sec. 2254.1038. POLITICAL SUBDIVISION: ATTORNEY GENERAL REVIEW OF CONTRACT. (a) Before a contingent fee contract for legal services approved under Section [2254.1036](#) is effective and enforceable, the political subdivision must receive attorney general approval of the contract. The political subdivision shall 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) Within 90 days after receiving a contract from a political subdivision, the attorney general may:

(1) approve the contract;

(2) refuse to approve the contract because the requirements of this subchapter 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) 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) If the attorney general refuses to approve a contract under Subsection (b)(2), the attorney general shall specifically identify the provisions of this subchapter with which the contract fails to comply or the political subdivision failed to comply. Nothing in this section prohibits a political subdivision from correcting a failure to comply with this subchapter.

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

(f) A political subdivision may contest the attorney general's refusal to approve the contract under Subsection (b)(3) in the manner provided for contested cases under Chapter [2001](#).

(g) The State Office of Administrative Hearings shall 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) The refusal to approve a contract under Subsection (b)(3) is subject to substantial evidence judicial review as provided in Subchapter [G](#), Chapter [2001](#).

(i) A political subdivision may request expedited review of a contract under Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 4, eff. September 1, 2019.

Sec. 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT.

(a) The contract must require that the contracting attorney or law firm keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract.

(b) The contracting attorney or law firm shall 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.

(c) On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity or political subdivision with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Subsection (a). The complete written statement required by this subsection is public information under Chapter [552](#) and may not be withheld from a requestor under that chapter under Section [552.103](#) or any other exception from required disclosure.

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

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 5, eff. September 1, 2019.



Sec. 2254.105. CERTAIN GENERAL CONTRACT REQUIREMENTS. The contract must:

(1) provide for the method by which the contingent fee is computed;

(2) state the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed;

(3) state how litigation and other expenses will be paid and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, state whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted;

(4) state that any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with this subchapter; and

(5) state that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with this subchapter.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES. (a) The contract must establish the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work. The contract may establish the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons. The highest hourly rate for a named person or under a rate schedule may not exceed \$1,000 an hour. This subsection applies to subcontracted work performed by an attorney, law clerk, or paralegal who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm as well as to work performed by a contracting attorney or by a partner, shareholder, or employee of a contracting attorney or law firm.

(b) The contract must establish a base fee to be computed as follows. For each attorney, law clerk, or paralegal who is a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal.

Add the resulting amounts to obtain the base fee. The computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(c) Subject to Subsection (d), the contingent fee is computed by multiplying the base fee by a multiplier. The contract must establish a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery. The multiplier may not exceed four without prior approval by the legislature.

(d) In addition to establishing the method of computing the fee under Subsections (a), (b), and (c), the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered. The contract may state different percentage limitations for different ranges of possible recoveries and different percentage limitations in the event the matter is settled, tried, or tried and appealed. The percentage limitation may not exceed 35 percent without prior approval by the legislature. The contract must state that the amount of the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under Subsections (a), (b), and (c).

(e) The contract also may:

(1) limit the amount of expenses that may be reimbursed; and

(2) provide that the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter.

(f) Except as provided by Section [2254.107](#), this section does not apply to a contingent fee contract for legal services:

(1) in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or

(2) under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed \$100,000.

(g) This section applies to a contract described by Subsection (f) for each individual recovery under the contract that actually exceeds \$100,000, and the contract must provide for computing the fee in accordance with this section for each individual recovery that actually exceeds \$100,000.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS;  
REIMBURSEMENT FOR SUBCONTRACTED WORK. (a) This section applies only to a  
contingent fee contract:

(1) under which the amount or payment of only part of the fee  
is contingent on the outcome of the matter for which the services were  
obtained, with the amount and payment of the remainder of the fee payable on  
a regular hourly rate basis without regard to the outcome of the matter; or

(2) under which reimbursable expenses are incurred for  
subcontracted legal or support services performed by a person who is not a  
contracting attorney or a partner, shareholder, or employee of a contracting  
attorney or law firm.

(b) Sections [2254.106](#)(a) and (e) apply to the contract without regard  
to the expected or actual amount of recovery under the contract.

(c) The limitations prescribed by Section [2254.106](#) on the amount of  
the contingent fee apply to the entire amount of the fee under the contingent  
fee contract, including the part of the fee the amount and payment of which  
is not contingent on the outcome of the matter.

(d) The limitations prescribed by Section [2254.108](#) on payment of the  
fee apply only to payment of the contingent portion of the fee.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT. (a) Except as  
provided by Subsection (b), a contingent fee and a reimbursement of an  
expense under a contract with a state governmental entity is payable only  
from funds the legislature specifically appropriates to pay the fee or  
reimburse the expense. An appropriation to pay the fee or reimburse the  
expense must specifically describe the individual contract, or the class of  
contracts classified by subject matter, on account of which the fee is  
payable or expense is reimbursable. A general reference to contingent fee  
contracts for legal services or to contracts subject to this subchapter or a  
similar general description is not a sufficient description for purposes of  
this subsection.

(b) If the legislature has not specifically appropriated funds for  
paying the fee or reimbursing the expense, a state governmental entity may  
pay the fee or reimburse the expense from other available funds only if:

(1) the legislature is not in session; and

(2) the Legislative Budget Board gives its prior approval for  
that payment or reimbursement under Section [69](#), Article XVI, Texas  
Constitution, after examining the statement required under Section

[2254.104](#)(c) and determining that the requested payment and the contract under which payment is requested meet all the requirements of this subchapter.

(c) A payment or reimbursement under the contract may not be made until:

(1) final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury; and

(2) the state governmental entity and the state auditor have received from the contracting attorney or law firm the statement required under Section [2254.104](#)(c).

(d) Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity or political subdivision and, if applicable, the entity's or subdivision's auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity or political subdivision, and paid for by the contracting attorney or law firm. The contingent fee may not be 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.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 6, eff. September 1, 2019.

Sec. 2254.109. EFFECT ON OTHER LAW. (a) This subchapter does not limit the right of a state governmental entity or political subdivision to recover fees and expenses from opposing parties under other law.

(b) Compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law, including under the Texas Disciplinary Rules of Professional Conduct.

(c) An officer, employee, or governing body of a state governmental entity or political subdivision, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state governmental entity or political subdivision under this subchapter.

This subchapter does not waive the state's sovereign immunity or a political subdivision's governmental immunity from suit or the state's immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 7, eff. September 1, 2019.

Sec. 2254.110. VOID CONTRACT. A contract entered into or an arrangement made in violation of this subchapter 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. A contract that is submitted to and approved by the attorney general under Section [2254.1038](#) cannot later be declared void under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 857 (H.B. [2826](#)), Sec. 8, eff. September 1, 2019.