

Impacts on the Construction Industry from Texas' 86th Legislative Session (Part 2 of 3)

Contingent Fee Contracts, School Districts, Texas' 86th Legislative Session / February 15, 2020

Procurement of Contingent Fee Contracts for Legal Services by School Districts and Other Political Subdivisions

Subchapter C of the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) has been revised to establish requirements for the procurement of contingent fee contracts for legal services by political subdivisions, including school districts. The prior version only applied to state governmental entities. The new requirements for political subdivisions apply to contingent fee contracts entered into on or after September 1, 2019.

Political subdivisions seeking to enter into a contingent fee contract must notify the public in writing of (1) the reasons for pursuing the claim and the desired outcome, (2) the qualifications of the attorney to be hired, (3) the nature of any relationship with the attorney to be hire, including how the relationship was formed, (4) the reasons why an outside attorney is required to perform the legal services, (5) the reasons why an hourly fee contract cannot be reasonably obtained, and (6) the reasons why entering into a contingent fee contract is in the best interest of the residents of the political subdivision. After notification to the public, these issues must be discussed at a public meeting before a contingent fee contract can be approved. If approved, the political subdivision must file the contract with and receive approval from the Attorney General of Texas before it is effective and enforceable. The method of computing the contingent fee is governed by Section 2254.106 and the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered, which may not exceed 35% without prior approval by the legislature.

School Districts Required to Report to the Commissioner of Education

Effective September 1, 2019, Section 46.0111 of the Texas Education Code regarding actions brought for defective design, construction, renovation, or improvement of an instructional facility has been revised and transferred to the newly created Subchapter E to Chapter 41 of the Education Code. The definition of "instructional facility" includes real property and any improvement or necessary fixture of an improvement thereto that is used predominantly for teaching the curriculum required by the State Board of Education for school districts that offer kindergarten through twelfth grade.

For any action brought by a school district on or after September 1, 2019 for recovery of damages for the defective design, construction, renovation, or improvement of a district facility financed by bonds, the school district must provide the Texas Education Agency Commissioner with written notice of the action or the action will be dismissed without prejudice. The required notice must include a copy of the petition and an itemized list of the defects for which the district is seeking damages. If the involved facility is financed by bonds for which the school district receives state assistance, the Commissioner may join in the action on behalf of the state to protect the state's interest. Any amount recovered in the action after deducting legal fees and litigation costs must be used for repairs to the involved facility unless otherwise approved by the Commissioner. The state is entitled to a portion of the recovery if the involved facility was built with funds

the district received through the instructional facilities allotment and any amount remains after the cost of repairing the facility. A new statute gives the Commissioner enforcement authority to ensure that any recovery is actually being used for these intended purposes.

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