

HOUSE BILL 392

By Reedy

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 4, relative to procurement of public contracts for professional services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, is amended by adding the following as a new part:

12-4-1101. This part is known and may be cited as the "Public Contracts for Legal Services Act."

12-4-1102. As used in this part:

(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;

(3) "Issue of statewide concern" means conduct or harm that is more likely than not to adversely affect the interests of citizens of at least five (5) counties of this state; and

(4) "Political subdivision" means a municipal corporation, county, city, metropolitan government, town, or other political subdivision of this state.

12-4-1103.

(a) Political subdivisions shall not enter into contingent fee contracts, except as provided by § 12-4-1104.

(b) A political subdivision shall not select or award a contract to which this part applies on the basis of competitive bids submitted for the contract or for the services, but must make the selection and award on the basis of demonstrated competence, qualifications, and experience to perform the services sought and for a fair and reasonable price.

12-4-1104.

(a) A political subdivision may enter into a contingent fee contract for legal services only if the governing body of the political subdivision:

(1) Before or along with giving the written notice of a meeting required by title 8, chapter 44, part 1, makes available to the public a statement setting forth:

(A) The reasons for pursuing the matter the attorney or law firm may be retained to pursue and the result that is hoped to be achieved by pursuing the matter;

(B) The competence, qualifications, and experience demonstrated by any attorney or law firm the political subdivision may retain;

(C) The nature of any relationship, including the genesis of the relationship, between the political subdivision, the governing body, or any member of the governing body and any attorney or law firm the political subdivision may retain;

(D) The reasons why the political subdivision cannot pursue the matter using its resources without retaining an outside attorney or law firm on a contingent fee basis;

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

(F) An explanation of why entering into a contingent fee contract for legal services is in the best interest of the people who are served by the political subdivision; and

(2) 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 with the attorney or law firm; the competence, qualifications, and experience of the attorney or law firm; and the reasons why the contract is in the best interest of the people who are served by the political subdivision.

(b) The contract is a public record, as that term is defined in § 10-7-503, and the contract must not be withheld from a requestor under § 10-7-504 or any other exception from required disclosure.

12-4-1105.

(a) Before a political subdivision may finally execute a contract to which this part applies, it must submit the contract to the attorney general and reporter, along with:

(1) A description of the matter to be pursued by the political subdivision;

(2) A description of the interest this state or any other governmental entity may have in the matter; and

(3) A copy of the notice required by § 12-4-1104(a)(1) and a statement of how and when the notice was provided to the public.

(b) The attorney general may refuse to approve the political subdivision's request for approval of the contract if the attorney general finds:

(1) Pursuit of the action by the political subdivision usurps or interferes with the attorney general's statutory or constitutional obligations, including:

(A) The trial and direction of all civil litigated matters and administrative proceedings in which this state or any officer, department, agency, board, commission, or instrumentality of this state may be interested, as described in § 8-6-109(b)(1); and

(B) The duty to exercise discretion to defend the constitutionality and validity of all private acts and general laws of local application enacted by the general assembly and of administrative rules or regulations of this state;

(2) The attorney general has the authority to pursue the matter the political subdivision is considering pursuing;

(3) The matter relates to an issue of statewide concern and the attorney general's pursuit of the matter in lieu of the political subdivision's pursuit of the matter is in the state's best interest; or

(4) The political subdivision failed to comply with § 12-4-1104, or that the findings made by the political subdivision to justify pursuing the matter are not supported by the documents provided by the political subdivision.

(c) Unless the political subdivision has requested expedited consideration for reasons provided at the time it submits the contract to the attorney general for review, the attorney general may take up to ninety (90) days to approve or disapprove the contract.

(d) Upon disapproval of a political subdivision's request for approval of a contract, the attorney general shall submit a report to the speaker of the house of representatives and the speaker of the senate, stating:

(1) The contract was disapproved and the reason for its disapproval; and

(2) The manner in which the attorney general plans to address the issue of statewide concern identified in the contract.

(e) Reports submitted by the attorney general pursuant to subsection (d) are subject to executive review. Prior to disapproving a contingent fee contract, the attorney general must receive the consent of the governor, or an appropriately designated member of the governor's cabinet.

12-4-1106. A contract entered into or an arrangement made in violation of this part is void as against public policy.

12-4-1107. This part does not prohibit a district attorney from pursuing civil action or a remedy authorized under title 29, chapter 38, or affect or abrogate an existing power of a district attorney working with or on behalf of a political subdivision of this state.

SECTION 2. The change in law made by this act applies only to a contract for legal services executed by a political subdivision on or after the effective date of this act. A contract for legal services executed by a political subdivision before the effective date of this act is governed by the law applicable before the effective date of this act, and that law continues in effect for that purpose.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.