

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 543**

By Senator Tarr

[Introduced February 19, 2025; referred  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,  
2 designated §5-3-3b, relating to oversight by the Attorney General of a political  
3 subdivision's hiring of a private attorney under a contingency fee legal arrangement or  
4 contract to sue; providing definitions; providing procedures; clarifying the requirements for  
5 pre-formation and post-approval; clarifying the requirements to enter into a legal  
6 arrangement or contract; establishing what is public information; providing indemnification;  
7 providing expedited review; establishing requirements for contract attorneys; clarifying the  
8 process for payment; providing rights and obligations; clarifying when contracts are in  
9 violation or void; and providing an effective date.

*Be it enacted by the Legislature of West Virginia:*

### **ARTICLE 3. ATTORNEY GENERAL.**

#### **§5-3-3b. Oversight of political subdivision hiring of private attorneys under contingency fee legal arrangements.**

##### (a) Definitions.

The following terms as used in this section have the following meanings:

(1) "Contingency fee legal arrangement or contract" shall have the same meaning as is  
provided in §5-3-3a(a)(1).

(2) "Political subdivision" shall have the same meaning as is provided in §29-12A-3(c).

(3) "Private attorney" shall have the same meaning as is provided in §5-3-3a(a)(3).

(4) "State" shall have the same meaning as is provided in §5-3-3a(a)(5).

##### (b) Procedure generally.

In procuring legal services under a contingency fee legal arrangement or contract, a  
political subdivision shall follow the procedures identified in §5-3-3a(e)(1)-(10) and 5-3-3a(h)  
except that the political subdivision, rather than the Attorney General, shall consider factors (e)(1)-  
(10), subject to review by the Attorney General, as specified in subdivision (g) of this section.

##### (c) Indemnity.

14       (1) A political subdivision may require an attorney or law firm selected under this section to  
15 indemnify or hold harmless the political subdivision from claims and liabilities resulting from  
16 negligent acts or omissions of the attorney or law firm or persons employed by the attorney or law  
17 firm.

18       (2) A political subdivision may not require an attorney or law firm selected under this  
19 section to indemnify, hold harmless, or subject to subsection (c)(1), defend the political subdivision  
20 for claims or liabilities resulting from negligent acts or omissions of the political subdivision or its  
21 employees.

22       (3) Subdivision (2) does not prevent an attorney or law firm selected under this section  
23 from defending the political subdivision or its employees in accordance with a contract for the  
24 defense of negligent acts or omissions of the political subdivision or its employees.

25       (d) Requirements Pre-Formation.

26       A political subdivision may enter into a contingency fee legal arrangement or contract for  
27 legal services, subject to review by the Attorney General, only if the political subdivision:

28       (1) Before or at the time of giving the written notice required by §6-9A-3 for a meeting  
29 described by subsection (d)(2), also provides written notice to the public stating:

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

32       (B) The competence, qualifications, and experience demonstrated by the attorney or law  
33 firm selected under subsection (b);

34       (C) The nature of any preexisting relationship between the political subdivision or  
35 governing body and the attorney or law firm selected under subsection (b);

36       (D) Whether sufficient and appropriate legal and financial resources exist within the  
37 political subdivision to handle the matter;

38       (E) The reasons the legal services cannot be adequately performed by the attorneys and  
39 supporting personnel of the political subdivision;

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

42 (G) The reasons entering into a contingency fee legal arrangement or contract is in the  
43 best interest of the residents of the political subdivision; and

44 (2) Approves the contingency fee legal arrangement or contract in an open meeting called  
45 for the purpose of considering the matters listed in subsection (d)(1).

46 (e) Requirements post-approval.

47 On approval of a contingency fee legal arrangement or contract, the governing body of a  
48 political subdivision shall make available to the public specific findings that each of the factors as  
49 detailed in §5-3-3a(b)(1-4) are met.

50 (f) Public information.

51 The specific findings published following approval of a contingency fee legal arrangement  
52 or contract under subsection (e) is public information under §29B-1-1 et seq. of this code and may  
53 not be withheld from a requestor under §29B-1-4 or any other exception from required disclosure.

54 (g) Attorney General approval.

55 (1) Before a contingency fee legal arrangement or contract is effective and enforceable,  
56 the political subdivision must receive Attorney General approval of the contingency fee legal  
57 arrangement or contract. The political subdivision shall file a full, unredacted copy of the  
58 contingency fee legal arrangement or contract with the Attorney General along with:

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

60 (B) The specific findings pursuant to subsection (f); and

61 (C) A copy of the notice required by subsection (d)(1) and a statement of the method and  
62 date of the provision of the notice.

63 (2) Within 90 days after receiving a contract from a political subdivision, the Attorney  
64 General may:

65 (A) Approve the contingency fee legal arrangement or contract;

66 (B) Deny the contingency fee legal arrangement or contract because the requirements of  
67 this subchapter were not fulfilled; or

68 (C) Deny the contingency fee legal arrangement or contract because the legal matter that  
69 is the subject of the contingency fee legal arrangement or contract presents one or more questions  
70 of law or fact that are in common with a matter the state has already addressed or anticipates  
71 pursuing.

72 (3) A contract submitted to the Attorney General by a political subdivision under subsection  
73 (1) is considered approved by the Attorney General either upon receipt of express permission by  
74 the Attorney General or upon passage of the 91st day following the Attorney General's receipt of  
75 the request to approve the contingency fee legal arrangement without action taken pursuant to  
76 subsection (g)(2).

77 (4) If the Attorney General denies a contingency fee legal arrangement or contract under  
78 subdivision (2)(B), the Attorney General shall specifically identify the provisions of this subchapter  
79 with which the contingency fee legal arrangement or contract fails to comply or the political  
80 subdivision failed to comply.

81 (5) If the Attorney General denies a contract under subdivision (2)(C), the Attorney General  
82 shall inform the political subdivision of the factual and legal basis for the decision.

83 (6) The refusal to approve a contract under subdivision (2)(C) is subject to substantial  
84 evidence judicial review as provided in §29A-5-4(g)(5).

85 (h) Expedited review.

86 A political subdivision may request expedited review of a contract under subsection (g)(1).

87 (i) Requirements for contracted attorneys.

88 (1) The contingency fee legal arrangement or contract must require that the contracting  
89 attorney or law firm keep current and complete written time and expense records that describe in  
90 detail the time and money spent each day in performing the contingency fee legal arrangement or  
91 contract.

92           (2) The contracting attorney or law firm shall permit the governing body or governing officer  
93 of the political subdivision and the Attorney General each to inspect or obtain copies of the time  
94 and expense records at any time on request.

95           (3) On conclusion of the matter for which legal services were obtained, the contracting  
96 attorney or law firm shall provide the political subdivision with a complete written statement that  
97 describes the outcome of the matter, states the amount of any recovery, shows the contracting  
98 attorney's or law firm's computation of the amount of the contingent fee, and contains the final  
99 complete time and expense records required by subdivision (1). The complete written statement  
100 required by this subsection is public information under §29B-1-1 et seq. and may not be withheld  
101 from a requestor under §29B-1-4 or any other exception from required disclosure.

102           (4) This subsection does not apply to the complete written statement required by  
103 subdivision (3). All time and expense records required under this section are public information  
104 subject to required public disclosure under §29B-1-1 et seq. Information in the records may be  
105 withheld from a member of the public under §29B-1-4 only if, in addition to meeting the  
106 requirements of §29B-1-4, the chief legal officer or employee of the political subdivision  
107 determines that withholding the information is necessary to protect the entity's strategy or position  
108 in pending or reasonably anticipated litigation. Information withheld from public disclosure under  
109 this subsection shall be segregated from information that is subject to required public disclosure.

110           (j) Supervision.

111           To ensure supervision of the attorney or law firm, or those who may be contracted by the  
112 attorney or law firm, a political subdivision may not enter into a contingency fee legal arrangement  
113 or contract unless the following requirements are met throughout the contract period and any  
114 extension thereof:

115           (1) The political subdivision, or its designated employee(s) involved in the case, shall retain  
116 control over the course and conduct of the case;

117           (2) The political subdivision, or its designated employee(s) with supervisory authority, shall

118 be personally involved in overseeing any litigation and shall attend settlement conferences  
119 whenever possible;

120 (3) The political subdivision, or its designated employee(s) involved in the case, shall retain  
121 veto power over any decisions made by outside counsel; and

122 (4) Decisions regarding settlement of the case are reserved exclusively to the discretion of  
123 the political subdivision.

124 (k) *Payment.*

125 Litigation and other expenses payable under the contract, including expenses attributable  
126 to attorney, paralegal, accountant, expert, or other professional work performed by a person who  
127 is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law  
128 firm, may be reimbursed only if the political subdivision and, if applicable, the subdivision's auditor  
129 determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of  
130 the political subdivision, and paid for by the contracting attorney or law firm. The contingent fee  
131 may not be paid until the subdivision's auditor or the governing body of a political subdivision  
132 without an auditor, as applicable, has reviewed the relevant time and expense records and verified  
133 that the hours of work on which the fee computation is based were actually worked in performing  
134 reasonable and necessary services for the political subdivision under the contract.

135 (l) *Rights and obligations.*

136 (1) This section does not limit the right of a political subdivision to recover fees and  
137 expenses from opposing parties under other law.

138 (2) Compliance with this section does not relieve a contracting attorney or law firm of an  
139 obligation or responsibility under other law, including under the West Virginia Rules of Professional  
140 Conduct.

141 (3) An officer, employee, or governing body of a political subdivision, or the Attorney  
142 General, may not waive the requirements of this section. This section does not waive the state's  
143 sovereign immunity or a political subdivision's governmental immunity from suit or the state's

144 immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

145 (m) *Contract in violation.*

146 A contract entered into or an arrangement made in violation of this section is void as  
147 against public policy, and no fees may be paid to any person under the contract or under any  
148 theory of recovery for work performed in connection with a void contract. A contract that is  
149 submitted to and approved by the Attorney General under subsection (g)(1) cannot later be  
150 declared void under this section.

151 (n) *Contract void.*

152 A contract entered into or an arrangement formed on the basis that 91 days have passed  
153 since the Attorney General's receipt of the request to approve the contingency fee legal  
154 arrangement under subsection (g)(3) is only presumptively valid. Any such agreement which fails  
155 to follow the procedures and requirements of this section is void.

156 (o) *Effective dates.*

157 The changes in law made by this amendment apply only to a contract or contract  
158 amendment entered into on or after the effective date of this amended section.

NOTE: The purpose of this bill is to clarify the oversight by the Attorney General of a political subdivision's hiring of a private attorney under a contingency fee legal arrangement or contract to sue.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.