

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 891

By Senator Azinger

[Introduced February 9, 2026; 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. and may not be
53 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;

(B) Deny the contingency fee legal arrangement or contract and provide the political subdivision with one of the following reasons for the refusal to approve:

(i) Because the requirements of this subchapter were not fulfilled;

(ii) Because the legal matter that is the subject of the contingency fee legal arrangement or contract presents one or more questions of law or fact that are in common with a matter the state has already addressed or anticipates pursuing; or

(iii) Because pursuit of the legal matter by the political subdivision will not promote the just and efficient resolution of the matter.

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

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

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

(h) Expedited review.

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

(i) Requirements for contracted attorneys.

(1) The contingency fee legal arrangement or 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 contingency fee legal arrangement or 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

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

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

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

(k) Payment.

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 political subdivision and, if applicable, the subdivision's auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the political subdivision, and paid for by the contracting attorney or law firm. The contingent fee may not be paid until the 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 political subdivision under the contract.

(l) Rights and obligations.

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

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

(3) An officer, employee, or governing body of a political subdivision, or the Attorney General, may not waive the requirements of this section. This section 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.

(m) *Contract in violation.*

A contract entered into or an arrangement made in violation of this section 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 subsection (g)(1) cannot later be declared void under this section.

(n) *Contract void.*

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

(o) *Effective dates.*

The changes in law made by this amendment apply only to a contract or contract 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.