

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7043 PCB JDC 20-02 Contingency Fees

**SPONSOR(S):** Judiciary Committee, Gregory

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1574

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	9 Y, 8 N	Jones	Luczynski
1) Oversight, Transparency & Public Management Subcommittee		Darden	Smith
2) State Affairs Committee			

### SUMMARY ANALYSIS

A contingency fee is a fee for an attorney's services that is received only if the lawsuit is successful or favorably settled out of court.

Both the Legislature and the Florida Supreme Court have placed restrictions on certain contingency fee contracts. Section 16.0155, F.S., prohibits the Department of Legal Affairs (DLA) from entering into a contingency fee contract that allows the attorney to receive an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery of up to \$10 million; plus
- Twenty percent of any portion of such recovery between \$10 million and \$15 million; plus
- Fifteen percent of any portion of such recovery between \$15 million and \$20 million; plus
- Ten percent of any portion of such recovery between \$20 million and \$25 million; plus
- Five percent of any portion of such recovery exceeding \$25 million.

In addition, the aggregate contingency fee may not exceed \$50 million, excluding costs and expenses.

The bill limits contingency fee contracts entered into by a local government in a similar manner as s. 16.0155, F.S., limits DLA. The PCB prohibits an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery up to \$10 million; plus
- Twenty percent of any portion of recovery between \$10 million and \$15 million; plus
- Fifteen percent of any portion of recovery between \$15 million and \$20 million; plus
- Ten percent of any portion of recovery between \$20 million and \$25 million; plus
- Five percent of any portion of recovery exceeding \$25 million.

However, a local government attorney services contract may not provide for an aggregate contingency fee exceeding \$20 million, excluding costs and expenses.

The bill appears to have no fiscal impact on state government and appears to have an indeterminate positive fiscal impact on local governments.

The bill has an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Contingency Fee Contracts

A contingency fee is an attorney fee that is charged only if the lawsuit is successful or favorably settled out of court.<sup>1</sup> In turn, a contingency fee contract between a client and an attorney provides that the attorney will receive a fee only if he or she successfully recovers for the client.

The Florida Supreme Court, through its Rules Regulating the Florida Bar, allows contingency fee contracts but restricts their use.<sup>2</sup> Rule 4-1.5(f) prohibits contingency fees in criminal defense and certain family law proceedings.<sup>3</sup> The rule also requires a contingency fee agreement to:

- Be in writing.
- State the method by which the fee is to be determined.
- State whether expenses are to be deducted before or after the contingency fee is calculated.
- In certain types of cases, include other provisions ensuring the client is aware of the agreement's terms.<sup>4</sup>

The rate for contingent fees may be set by the contract for representation, but is limited without prior court approval to the following rates, based on the status of the litigation:<sup>5</sup>

	Portion of Recovery		
	Up to \$1,000,000	\$1,000,000-\$2,000,000	Exceeding \$2,000,000
Before the filing of an answer or demand for appointment of arbitrators, or the expiration of the period for such action	33 1/3%	30%	20%
After the filing of an answer or demand for appointment of arbitrators, or through entry of judgment	40%	30%	20%
All defendants admit liability at the time of filing their answers and request a trial only on damages	33 1/3%	20%	15%

If the case involves any appellate proceeding or post-judgment relief or action, the fee may be increased by an additional five percent of any recovery.

Upon conclusion of a contingency fee case, the attorney must provide the client with a written statement stating the outcome of the case, the amount remitted to the client, and how the attorney calculated the amount.<sup>6</sup>

##### Statutory Limits on Contingency Fee Contracts

Current law requires that if a state agency enters into a contingency fee contract with an attorney, the contract must be "commercially reasonable" and comply with Rule Regulating the Florida Bar 4-1.5.<sup>7</sup>

<sup>1</sup> See Black's Law Dictionary 338 (8th ed. 2004).

<sup>2</sup> R. Regulating Fla. Bar 4-1.5(f).

<sup>3</sup> R. Regulating Fla. Bar 4-1.5(f)(3).

<sup>4</sup> R. Regulating Fla. Bar 4-1.5(f)(1) and (4).

<sup>5</sup> R. Regulating Fla. Bar 4-1.5(f)(4)(B).

<sup>6</sup> R. Regulation Fla. Bar 4-1.5(f)(1).

<sup>7</sup> S. 287.059(7)(a), F.S.

Moreover, s. 16.0155, F.S., prohibits the Department of Legal Affairs (DLA) within the Attorney General's office from entering into a contingency fee contract that allows for excessive attorney fees. Specifically, DLA may not contract with a private attorney or law firm in a manner that allows the attorney to receive an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery of up to \$10 million; plus
- Twenty percent of any portion of such recovery between \$10 million and \$15 million; plus
- Fifteen percent of any portion of such recovery between \$15 million and \$20 million; plus
- Ten percent of any portion of such recovery between \$20 million and \$25 million; plus
- Five percent of any portion of such recovery exceeding \$25 million.<sup>8</sup>

In addition, the total contingency fee may not exceed \$50 million, excluding costs and expenses.<sup>9</sup>

Although s. 16.0155, F.S., caps the attorney fees in a contingency fee contract entered into by DLA, there is no similar restriction on a local government contingency fee contract.

### **Effect of Proposed Changes**

The bill limits the amount of contingency fees that a "local or regional government entity" may agree to pay a private attorney or law firm. For purposes of the bill, a local or regional government entity includes each:

- Municipality;
- County;
- School board;
- Special district;
- Other local entity within the jurisdiction of a single county;
- Regional planning council;
- Metropolitan planning organization;
- Water supply authority including more than one county;
- Local health council;
- Water management district; and
- Any other regional entity authorized and created by general or special law, which has duties extending beyond a single county's jurisdiction.

The bill limits contingency fee contracts entered into by a local or regional government entity in a similar manner as s. 16.0155, F.S., limits DLA. The contract cannot include an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery up to \$10 million; plus
- Twenty percent of any portion of recovery between \$10 million and \$15 million; plus
- Fifteen percent of any portion of recovery between \$15 million and \$20 million; plus
- Ten percent of any portion of recovery between \$20 million and \$25 million; plus
- Five percent of any portion of recovery exceeding \$25 million.

However, the bill also provides that the total contingency fee may not exceed \$20 million, excluding costs and expenses, which is less than the \$50 million cap for DLA.

The bill has an effective date of July 1, 2020.

### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 287.05905, F.S., relating to private attorney or law firm services for local or regional governmental entities.

**Section 2:** Provides an effective date of July 1, 2020.

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<sup>8</sup> S. 16.0155(5), F.S.

<sup>9</sup> *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive fiscal impact on local governments by limiting the amount of attorney fees that local governments may pay in certain cases.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill limits the amount of attorney fees that may be paid by a local government, which may reduce the amount of contingency fees attorneys are able to recover.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.