

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 20-02 Contingency Fees

SPONSOR(S): Judiciary Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Jones	Luczynski

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 total contingency fee may not exceed \$50 million, excluding costs and expenses.

PCB JDC 20-02 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 a contingency fee exceeding \$20 million, excluding costs and expenses.

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

The PCB 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.¹ 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.² Rule 4-1.5(f) prohibits contingency fees in criminal defense and certain family law proceedings.³ 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.⁴

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.⁵

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 4-1.5.⁶

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.⁷

In addition, the total contingency fee may not exceed \$50 million, excluding costs and expenses.⁸

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.

¹ See Black's Law Dictionary 338 (8th ed. 2004).

² R. Regulating Fla. Bar 4-1.5(f).

³ R. Regulating Fla. Bar 4-1.5(f)(3).

⁴ R. Regulating Fla. Bar 4-1.5(f)(1) and (4).

⁵ R. Regulation Fla. Bar 4-1.5(f)(1).

⁶ S. 287.059(7)(a), F.S.

⁷ S. 16.0155(5), F.S.

⁸ *Id.*

Effect of Proposed Changes

PCB 20-02 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 PCB, a local or regional government entity includes a:

- 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 PCB limits contingency fee contracts entered into by a local or regional government 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 PCB 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 PCB 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.

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 PCB 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 PCB 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