

House Bill 1546

By: Representative Carpenter of the 4th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to
2 general provisions applicable to counties, municipal corporations, and other governmental
3 entities, so as to provide for requirements for local authorities retaining legal services on a
4 contingent fee basis; to provide for review and approval of contracts by the Attorney
5 General; to provide for restrictions on such contracts; to provide for definitions; to provide
6 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general
11 provisions applicable to counties, municipal corporations, and other governmental entities,
12 is amended by adding a new Code section to read as follows:

13 "36-80-32.

14 (a) As used in this Code section, the term 'local authority' means a county, municipal
15 corporation, local political subdivision, or other local governmental entity; provided,
16 however, that such term does not include a state authority.

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17 (b) The governing body of any local authority which is authorized to file and pursue civil
18 actions may enter into an agreement with a private attorney or law firm to represent the
19 local authority on a contingent fee basis only if the governing body:

20 (1) Determines that the litigation to be pursued on a contingent fee basis is in the best
21 interest of the local authority and alternatives to a contingency fee are not efficient or
22 feasible. Such determination shall be documented in writing after considering the
23 following factors:

24 (A) Whether there is a substantial need for the legal services that are the subject of the
25 contingent fee contract;

26 (B) Whether there exists sufficient legal and financial resources within the local
27 authority to handle the matter;

28 (C) The time and labor required, the novelty and complexity of the questions involved,
29 and the skill required to perform the legal services properly; and

30 (D) Whether the legal services can be reasonably obtained from attorneys under a
31 contract providing for an hourly rate or flat fee payment structure;

32 (2) Requests proposals for retaining outside counsel, unless the local authority makes a
33 written finding indicating that the circumstances do not allow for a request for proposals
34 and that such a request would prejudice the local authority; and

35 (3) After complying with the provisions of paragraphs (1) and (2) of this subsection,
36 approves the contract after considering:

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

40 (B) The qualifications, experience, and competence of the attorney or law firm selected
41 by the governing body of the local authority;

42 (C) The nature of any relationship between the local authority, governing body or
43 members of the governing body, and the attorney or law firm that is a party to the
44 contract; and

45 (D) Whether the percentage contingent fee in the contract could result in the attorney
46 or law firm that is a party to the contract collecting a fee that is not justified by the
47 amount of work or risk involved or otherwise excessive and thereby reduce the public's
48 recovery.

49 (c) A contingent fee contract for legal services between a local authority and an attorney
50 or law firm shall provide that decisions regarding the resolution of the case shall be
51 reserved exclusively to the local authority and shall not be delegated to outside counsel.

52 (d) Before a contingent fee contract for legal services approved by a local authority
53 pursuant to paragraph (3) of subsection (b) of this Code section shall be effective and
54 enforceable, the local authority shall obtain approval of the contract by the Attorney
55 General. The local authority shall provide to the Attorney General:

56 (1) A description of the legal matter that is the subject of the proposed contract;

57 (2) A copy of the findings made pursuant to paragraph (1) of subsection (b) of this Code
58 section;

59 (3) A copy of the request for proposals for outside counsel or finding that circumstances
60 do not allow such a request as provided by paragraph (2) of subsection (b) of this Code
61 section;

62 (4) A copy of the proposed contract; and

63 (5) The agenda, minutes, or other documentation of the open public meeting at which the
64 local authority approved the contract.

65 (e) Within 45 days after the Attorney General's receipt of the information described in
66 subsection (d) of this Code section, the Attorney General shall:

67 (1) Approve the contract;

- 68 (2) Decline to approve the contract because one or more requirements of this Code
69 section were not fulfilled; or
- 70 (3) Decline to approve the contract for one or more of the following reasons:
- 71 (A) The legal matter that is the subject of the contract presents one or more questions
72 of law or fact that are in common with a matter the state has already addressed or is
73 pursuing; or
- 74 (B) The legal matter involves claims or issues that are more appropriately within the
75 scope of state enforcement and the pursuit of the matter independently by the local
76 authority could lead to inconsistent legal outcomes or undermine the state's unified
77 position.
- 78 (f) If the Attorney General declines to approve the contract pursuant to subsection (e) of
79 this Code section, the Attorney General shall provide notice to the local authority in writing
80 with a detailed explanation of the reason or reasons for refusing to approve the contract.
81 If the Attorney General fails to do so within 45 days after receipt of the information
82 described in subsection (d) of this Code section, such contract shall be deemed approved.
- 83 (g) The provisions of this Code section shall not apply to:
- 84 (1) Legal services involving collection of unpaid debts, sale of property, services related
85 to bonds, recoupment of costs, or deductibles from an at-fault party's insurance policy;
86 or
- 87 (2) Any matter in which the amount in controversy is less than \$100,000.00.
- 88 (h) Nothing in this Code section shall be construed to provide a local authority with
89 authority to bring actions to file and prosecute civil recoveries where not authorized by law
90 or to permit retention of outside counsel on a contingent fee basis when prohibited by
91 public policy."

92 **SECTION 2.**

93 This Act shall become effective upon its approval by the Governor or upon its becoming law
94 without such approval, and shall apply to contracts entered into on or after that date.

95 **SECTION 3.**

96 All laws and parts of laws in conflict with this Act are repealed.