



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 238 of the 130th G.A.](#)

Date: October 16, 2013

Status: As Introduced

Sponsor: Rep. Butler

Local Impact Statement Procedure Required: No

Contents: Transparency in contracts between the state and private attorneys

State Fiscal Highlights

- The Office of the Attorney General anticipates that, in order to comply with the bill's requirements, at least four additional staff will be needed at an estimated total annual cost of \$325,000. There will also be some one-time information technology costs to comply with the bill's web site posting requirement.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Overview of the bill

The bill prescribes the requirements and procedures for the state to enter into a contract with a private attorney to represent the state in a legal matter. For the purposes of this fiscal analysis, the bill most notably:

- Prohibits the state from entering into a contract with a private attorney for a legal matter in which the budget for legal fees is estimated by the Attorney General to be \$100,000 or more unless the Attorney General makes a written determination that private representation is cost effective and in the public interest.
- Requires, if such a written determination is made, the Attorney General to make a request for qualifications (RFQ) from private attorneys to represent the state unless the Attorney General determines that making such request is not feasible, in which case the Attorney General must select a private attorney to represent the state from a list of qualified private attorneys that the Attorney General is required to compile and publish on its web site.
- Requires a contract with a private attorney to provide that an assistant attorney general must retain complete control over the conduct and course of the case.
- Requires the copy of the contract between the state and a private attorney to be posted on the Attorney General's web site.
- Requires the Attorney General to submit an annual report to the President of the Senate and the Speaker of the House of Representatives describing the use of private attorney contracts in the preceding fiscal year.

Contracting process

The Attorney General serves as legal counsel to all statewide elected officials, the Ohio General Assembly, and all state departments, agencies, boards, and commissions. As part of this duty, the Attorney General has the authority to contract with private attorneys, or special counsel, to provide this legal representation on behalf of the state.

According to staff of the Attorney General, if enacted, the bill will require substantial changes to the way in which it selects and manages current¹ and future contracts with special counsel (also known as outside counsel). Under the current system, special counsel contracts are negotiated jointly between the Attorney General

¹ The bill is silent in regards to the treatment of existing contracts which are currently in place. It is unclear if these contracts would need to be renegotiated or if legal work would be allowed to continue under the existing terms.

and the state entity for which the legal services are being secured. The latter is responsible for paying the special counsel's contract, and not the Attorney General.

Typically, the contracting state entity and the Attorney General work together in determining the parameters of a particular special counsel assignment, including the contracted assignment amount and scope of work. The agreed upon contract is then approved either administratively (because it is under the \$50,000 threshold amount triggering Controlling Board approval) or by the Controlling Board. Subsequent to that approval, the special counsel contractor is then expected to send invoices to the contracting entity for its billable hours. If it appears, for whatever reason, that the assignment amount will need to be increased, then the contracting state entity and the Attorney General work jointly to amend the assignment accordingly. It is not unusual for these amendments to require Controlling Board approval.

Fiscal effects

In a given year, the Attorney General typically makes over 600 assignments, representing over 8,000 individual legal matters, to special counsel and manages contract relationships with almost 200 law firms. Around 36,000 invoices are processed every year.

Under the current way that special counsel contracts are selected and managed, the Attorney General is typically able to make assignments within the first 24 to 48 hours for most matters. Under the bill's requirements and procedures, these timelines may no longer be tenable.

Once enacted, the Attorney General anticipates that the bill will increase professional and administrative staff costs for the section that handles special counsel matters. The Office of the Attorney General anticipates that, in order to comply with the bill's requirements and procedures, at least four additional staff will be needed at an estimated total annual cost of \$325,000. Some one-time information technology costs are also anticipated in order to comply with the bill's web site posting requirement. Specific cost points are discussed in more detail below.

Written determinations

The bill requires a written determination that a contract with special counsel is both cost effective and in the public interest. This would require over 600 determinations a year. In order to accomplish this duty, the Attorney General anticipates that an additional attorney would need to be hired in order to provide the necessary level of investigation into each legal assignment.

Request for qualifications

The bill requires the Attorney General to draft and publish a request for qualifications (RFQ) for each legal assignment determined in writing (as stated above) to retain the services of special counsel. Based on the volume of legal assignments managed by the Attorney General (600-plus assignments representing over 8,000

individual legal matters), the Attorney General anticipates needing additional professional and administrative staff.

Publishing of determinations

If the Attorney General determines that an RFQ is not feasible, the bill allows the Attorney General to select from a prequalified panel of attorneys/law firms that is posted online with detail on what type of legal matters the firm is qualified to handle. This duty would require additional professional and administrative staff time.

Posting of contracting documents

The bill requires that the Attorney General post all special counsel contracting documents online and post all corresponding requests and approvals by the Controlling Board to contract with these attorneys. There would be some information technology costs to accommodate the additional capacity needed to post this many documents, and additional administrative staff would be needed to comply with all of the web site posting requirements.

Annual report

The bill requires the Attorney General to submit, by September 1 of each year, a report to the President of the Senate and the Speaker of the House of Representatives describing the use of contracts with private attorneys in the preceding fiscal year. Production of this document would require a significant amount of staff resources at the end of every fiscal year (which is also the busiest part of the year for managing special counsel contracts) to prepare this report.