

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 799** HLS 14RS 717
 Bill Text Version: **ENROLLED**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: June 5, 2014 11:46 AM	Author: BISHOP, STUART
Dept./Agy.: Attorney General	Analyst: Matthew LaBruyere
Subject: Special Attorneys or Counsel	

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 Provides relative to the employment of special attorneys or counsel

Proposed law requires express statutory authority for compensation to a special attorney or counsel representing the Attorney General (AG), or any state agency, board or commission on a contingency fee or percentage basis. Present law prohibits the AG and governor from approving any action of a board in employing any special attorney or paying any compensation for special services rendered unless all of the board or commission has complied with all of the formalities regarding the resolution. Proposed law adds the award of any attorney fees to the list of monies that can be deposited into the Department of Justice Legal Support Fund. Proposed law provides that no additional legal counsel shall be employed by the AG payable from the recovery or award of attorney fees until approved by the Joint Legislative Committee on the Budget.

EXPENDITURES	2014-15	2015-16	2016-17	2017-18	2018-19	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

REVENUES	2014-15	2015-16	2016-17	2017-18	2018-19	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

EXPENDITURE EXPLANATION

The proposed legislation would allow the Attorney General (AG) to use settlement monies deposited into the statutory dedicated Department of Justice Legal Support Fund to cover litigation expenses. However, the current fund balance is approximately \$250,000. To the extent the fund does not have sufficient resources to cover AG expenses for these certain cases, SGF resources may be needed. Currently, the AG uses private legal counsel in situations such as seeking recovery for violations regarding the Medical Assistance Programs Integrity Law, legacy lawsuits, unfair trade practice, and others. Once a contract is initiated, the contracted firm assumes all costs related to the case. Compensation for private counsel is determined after the case is settled and in a separate hearing. Thus, the amount received by private counsel would be separate and not part of the settlement the state received.

The proposed legislation provides that the AG would need approval to enter into a contract for legal counsel to be paid on a contingency fee basis by a legislative instrument or if during the interim between legislative sessions, the AG would seek approval from the Joint Legislative Committee on the Budget (JLCB). To the extent the request is not approved, it is possible the AG may need appropriate funding to pursue the case within the AG's Office. However, it is unknown where the potential funding would come from at this time.

The LFO cannot determine the exact number of positions and amount of resources that will be needed to seek recovery. However, any increase in cases by the AG's Office that is not currently handled by the department will require additional staff and resources.

Currently the AG's Office assigns 2 attorneys (1 from Public Protection and 1 from Medicaid Fraud) to oversee the contract attorneys and cases. The AG has indicated that the Public Protection Division would handle future cases pursuant to this legislation. The division currently has 2 managing attorneys and 12 assistant attorney generals. To the extent the current staff can handle the cases, no additional staff would be needed. However, in the event the litigation is complex or would significantly increases the workload of the current staff, the AG may need additional staff and/or funding. The AG's office would either have to hire additional attorneys to handle future cases or enter into a contract with private counsel based on an hourly rate plus expenses related to the case. **(CONTINUED ON PAGE 2)**

REVENUE EXPLANATION

There is no anticipated direct material effect on governmental revenues as a result of this measure. Currently, any settlement dollars received are held by the Treasury until appropriated by the Legislature. This will remain the same under the proposed legislation. **NOTE:** Upon the Treasurer's deposit of \$2.1 M above the FY 14 fund balance, the legislation becomes effective and the following occurs: 1) recovery or reward of attorney fees received from settlements will be deposited into the fund, 2) contract counsel will be considered a public servant.

Senate	<u>Dual Referral Rules</u>	House	<input checked="" type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}	 John D. Carpenter Legislative Fiscal Officer
<input checked="" type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}			<input type="checkbox"/> 6.8(F)(2) >= \$500,000 State Rev. Reduc. {H & S}	
<input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}			<input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}	

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CONTINUED EXPLANATION from page one:

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EXPENDITURE EXPLANATION CONTINUED FROM PAGE ONE:

Additional Staff Attorneys

The AG's Office has indicated that additional staff will be needed to handle cases that would have previously been handled by outside counsel. While the LFO does not know the exact number of cases that could potentially arise or the number of staff needed, an indeterminable cost will arise for handling litigation.

The AG indicated to the LFO that the legislation would result in the office needing 26 additional positions. To the extent the AG does need to hire additional staff, the average cost for each positions is listed below along with the number of positions requested:

- (1) Section Chief \$90,000 salary + \$53,465 related benefits = \$133,465
- (12) Staff Attorney \$75,000 salary + \$37,638 related benefits = \$112,638
- (3) Paralegal \$50,000 salary + \$27,925 related benefits = \$77,925
- (3) Admin. Asst. \$34,000 salary + \$21,709 related benefits = \$55,709
- (3) Investigator \$55,000 salary + \$29,868 related benefits = \$84,868
- (4) Programmer \$35,000 salary + \$22,098 related benefits = \$57,098

Additional average per employee costs include operating services (\$10,100) and supplies (\$5,800). The one-time cost of office equipment for each employee would be approximately \$5,500. The AG also estimates expenses associated with expert witnesses, court costs, and deposition costs would be approximately \$125,000 per case.

Contract Private Counsel

Potentially, the department could enter into a contract with private counsel based on an hourly rate plus expenses related to the case. The proposed legislation allows for a maximum hourly rate of \$500 per hour that the department may pay each attorney of private counsel working on the case. It is unknown what the potential impact to the department would be based on an hourly rate since it would vary from case to case. The department would also be responsible for travel, expert witness fees, and other litigation expenses associated with the case. It should be noted that at a rate of \$500 per hour, 225 hours of work would be the same amount (\$500/hour x 225 hours = \$112,500) as the salary and benefits (\$112,638) for 1 attorney working within the Attorney General's Office.

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John D. Carpenter
Legislative Fiscal Officer