

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0666-01
Bill No.: HB 255
Subject: Attorneys; Fees
Type: Original
Date: March 1, 2011

Bill Summary: This proposal establishes the Private Attorney Retention Act which specifies the procedures state agencies or agents must follow when retaining a lawyer or law firm to perform legal services under certain conditions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Conservation (MDC)** state the proposal will likely result in a significant impact to their agency as the Attorney General's Office does not represent the agency. MDC is represented by in-house counsel and outside counsel. The MDC state the fiscal impact is unknown, but could be significant.

Officials from the **Missouri Veterans' Commission** state the fiscal impact is unknown.

Officials from the **Office of the Governor** state no added costs are anticipated for their office as a result of the bill. However, if additional duties are placed on the office related to appointments in other TAFP legislation, there may be the need for additional staff resources in future years.

Officials from the **Department of Social Services (DOS)** state it is anticipated that this bill will have a vast impact upon their agency in that it would cause significant delays in retaining private counsel. Delays of this nature in the setting of complex litigation may carry with it significant negative consequences to the State in the form of increased litigation costs, penalties, etc. Furthermore, it is possible that in some situations there may be only one attorney or law firm that specializes in the type of legal work required by the state agency, and thus, the added steps required to retain their services may unnecessarily drive up the time and costs required to do so.

DOS' Division of Legal Services (DLS) expects an unknown fiscal impact associated with this bill because it is impossible to forecast what legal challenges the department may face in the future. Typically, DLS does not pay for outside counsel; however costs could be incurred by the department or the division that is being sued.

The bill also states that in no case shall the state incur fees and expenses for legal services in excess of \$250 per hour. State contracts generally fall within that limit; however, there have been some instances where a court ordered DOS to pay more than that. Therefore, there could be a savings for the department if courts could no longer order payment beyond \$250 per hour for legal services as required by this bill.

Officials from the **Department of Transportation (MoDOT)** state specialized legal services don't lend themselves easily to lowest and best bid. If a state agency wishes to enter into a contract for legal services exceeding \$1 million, the contract will be referred to the appropriate legislative committee for its review. Thus requiring legislative approval of any agreement a state agency enters into with private counsel. MoDOT assumes this could create an unknown fiscal impact to the Road Fund.

ASSUMPTION (continued)

Officials from the **Department of Mental Health (DMH)** state requiring legal services contracts to go through the bid process will generally add at least 120 days to the time required to establish a contract for contracts over \$100,000 and potentially an additional 45 days for legislative review of contracts for more than \$1,000,000. The Department of Mental Health (DMH) assumes that Section 484.500.6(2) prohibits paying more than \$250 an hour for legal services regardless of whether the contract was competitively bid. Therefore, this legislation may create an inability to effectively contract with attorneys with highly specialized legal and policy expertise in issues such as federal Medicaid funding, which may result in an unknown loss in Federal funds.

DMH states attorney services are currently exempted from the competitive bidding process. The bill's proposed restrictions of competitive bidding and limiting the hourly rate paid for legal services could prevent the DMH from timely and effectively obtaining the services of attorneys. The inability to effectively and timely obtain the services of specialized legal and policy experts may create increased risks, including the loss of federal revenue to the state. For example, DMH currently obtains the services of an out-of-state legal firm which have resulted in hundreds of millions of dollars in federal revenue to the state. The cost per hour for these services was in excess of \$250 per hour, and the annual cost could rise above \$100,000 in the future. The restrictions imposed by the bill would prevent the department from obtaining services from this firm and would result in an unknown loss in federal revenue to the state in the future.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration, State Auditor's Office, Department of Agriculture, Missouri Ethics Commission, Joint Committee on Administrative Rules, Department of Economic Development, Joint Committee on Public Employee Retirement, Missouri Lottery, Missouri Gaming Commission, Administrative Hearing Commission, Missouri Consolidated Health Care Plan, Office of the Secretary of State, Office of the State Public Defender, Missouri House of Representatives, Missouri Senate, Office of Administration - Risk Management, State Tax Commission, Department of Corrections, Office of the State Courts Administrator, Office of the State Treasurer, Department of Revenue, Department of Elementary and Secondary Education, Office of Prosecution Services, Department of Health and Senior Services, and the Department of Public Safety** each either assume the proposal would not fiscally impact their respective agencies or could be absorbed within existing appropriations.

In response to a similar proposal from 2010 (HB 2236), officials from the **Department of Higher Education** assumed the proposal would not have a fiscal impact.

ASSUMPTION (continued)

Officials from the **Office of the Attorney General** did not respond to our request for fiscal impact.

Oversight assumes the various state agencies will be able to absorb the cost of conducting a competitive bidding process for the retention of a lawyer or law firm to perform legal services where fees and expenses will exceed \$100,000. Oversight also assumes that the number of contracts for legal services that exceed \$1,000,000 will be negligible; therefore Oversight also assumes agencies will be able to absorb any additional cost associated with subjecting the proposed contract to legislative review. Therefore, Oversight assumes the proposal will not create a fiscal impact to the state.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill establishes the Private Attorney Retention Act which specifies the procedures a state agency or agent must follow when retaining a lawyer or law firm to perform legal services on behalf of the state if the anticipated fees and expenses for the services will exceed or can be

FISCAL DESCRIPTION (continued)

reasonably expected to exceed \$100,000. In its main provisions, the bill:

- (1) Prohibits any state agency or agent from retaining a lawyer or law firm until an open and competitive bidding process has been undertaken;
- (2) Prohibits a state agency or agent from entering into a contract for legal services exceeding \$1 million without the opportunity for legislative review of the terms of the contract;
- (3) Requires a state agency or agent to file a copy of a proposed contract for legal services exceeding \$1 million with the Chief Clerk of the House of Representatives and provide a written statement that identifies:
 - A. The reasons for retaining private counsel and the consideration of alternatives;
 - B. The open and competitive bidding process undertaken for the proposed legal services;
 - C. The reasons for the selection of the lawyer or law firm that is the proposed contracting party;
 - D. The past or present relationship, if any, between the lawyer, law firm, or any partner or other principal in the law firm and the state agency or agent of the proposed contract; and
 - E. The reasons a contingent fee arrangement is believed to be in the state's interest if the proposed contract includes a provision for fees contingent on the outcome of the legal proceeding and any efforts made to obtain private counsel on a noncontingent fee basis;
- (4) Requires the chief clerk, with the approval of the President of the Senate and Speaker of the House of Representatives, to promptly refer any proposed contract and written statement to the appropriate committee for review;
- (5) Specifies that within 45 days after the filing of the proposed contract the reviewing committee may hold a public hearing on the contract and must issue a report with any recommended changes to the referring state agency or agent whether or not a public hearing is held;
- (6) Allows the state agency or agent to enter into a proposed contract if the reviewing committee recommends no changes to the contract within 45 days of the initial filing with the chief clerk;

FISCAL DESCRIPTION (continued)

(7) Specifies that, if the reviewing committee's report recommends changes to the proposed contract, the state agency or agent is required to review the report, prepare a revised proposed contract as deemed appropriate, and file a copy of the revised contract with the chief clerk;

(8) Specifies that, if the revised proposed contract does not contain all the changes recommended by the reviewing committee, the state agency or agent is required to include with the revised contract a letter stating why the recommended changes were not adopted and requires the chief clerk to refer the letter and revised contract to the committee;

(9) Allows the reviewing committee to hold additional hearings and issue additional reports if a revised proposed contract does not contain all the changes recommended by the committee and allows the state agency or agent to enter into the revised contract not earlier than 45 days after the filing of the letter and revised contract with the chief clerk;

(10) Requires the proposed contract and written statement to be filed with the Governor and the chief clerk if the legislature is not in session. The Governor must establish an interim committee to act as the reviewing committee consisting of five legislators, one appointed by the Governor, Speaker of the House of Representatives, President Pro Tem of the Senate, Minority Leader of the House of Representatives, and Minority Leader of the Senate;

(11) Specifies that the Governor must establish a committee consisting of the same five legislator appointments as the interim committee to consult with the state agency or agent to establish an expedited schedule for review if the state agency or agent states that time exigencies require counsel retention prior to the time periods specified for review;

(12) Requires outside counsel retained by the state on a contingent fee basis to provide to the state, at the conclusion of any legal proceeding, a statement of the hours worked on the case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate based on the hours worked divided into the fee recovered, less expenses; and

(13) Prohibits the state from incurring fees and expenses in excess of \$250 per hour for legal services and requires any proposed contract with an hourly rate of more than \$250 per hour to be reduced to \$250 per hour.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Conservation
Missouri Veterans' Commission
Office of the Governor
Department of Mental Health
State Auditor's Office
Department of Agriculture
Missouri Ethics Commission
Joint Committee on Administrative Rules
Department of Economic Development
Joint Committee on Public Employee Retirement
Missouri Lottery
Missouri Gaming Commission
Administrative Hearing Commission
Missouri Consolidated Health Care Plan
Office of the Secretary of State
Office of the State Public Defender
Missouri House of Representatives
Missouri Senate
Office of Administration - Risk Management
State Tax Commission
Department of Corrections
Office of the State Courts Administrator
Office of the State Treasurer
Department of Revenue
Department of Elementary and Secondary Education
Office of Prosecution Services
Department of Health and Senior Services
Department of Public Safety
Department of Higher Education
Department of Mental Health
Department of Insurance, Financial Institutions and Professional Registration
Department of Transportation
Department of Social Services
Department of Conservation

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SOURCES OF INFORMATION (continued)

NOT RESPONDING:
Office of the Attorney General

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive style with a large, prominent 'M' and 'W'.

Mickey Wilson, CPA
Director
March 1, 2011