

1 HOUSE BILL NO. 12

2 INTRODUCED BY _____
3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON STATE LEGAL
4 SERVICES AND ELECTION LAWS

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO INSURE APPROPRIATE,
7 ECONOMICAL, AND EFFICIENT USE OF ATTORNEYS BY THE EXECUTIVE
8 BRANCH; TO PROVIDE A LEGAL ASSISTANCE PROGRAM IN THE OFFICE
9 OF THE ATTORNEY GENERAL; AND TO CREATE A LEGAL SERVICES
10 REVIEW BOARD."

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12 WHEREAS, the employment of experienced, full-time staff
13 attorneys by the executive branch is an economical,
14 efficient, and effective means of meeting the state's legal
15 services needs; and

16 WHEREAS, the use of contract or retained special legal
17 counsel should be limited and closely scrutinized; and

18 WHEREAS, a pool of highly competent full-time staff
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20 be the "law firm" of first resort for any legal services
21 needs beyond the capacity or ability of state executive
22 agencies; and

23 WHEREAS, there are instances when it is necessary for
24 the executive branch to retain or otherwise hire special
25 legal counsel outside of government to meet the state's

1 legal services needs.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
3 NEW SECTION Section 1. Intent. It is the intent of
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5 (1) insure appropriate, economical, and efficient use
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7 (2) provide a pool of highly competent full-time staff
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9 office of the attorney general; and
10 (3) create a mechanism for review and approval of a
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13 NEW SECTION Section 2. Definitions. As used in [this
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15 (1) "Board" means the legal services review board.
16 (2) "Special legal counsel" means an attorney licensed
17 to practice law who is not employed by a state executive
18 agency on a full-time basis.

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20 official in the executive branch of state government or an
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22 similar instrumentality in the executive branch of state
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24 NEW SECTION Section 3. Staff attorneys authorized.
25 A state executive agency may hire an attorney on a full-time

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3 full-time staff attorneys in excess of the number employed
4 on August 4, 1978, without the express consent of the
5 legislature.

6 NEW SECTION. Section 4. Special legal counsel
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9 with additional special legal counsel to meet its legal
10 services needs if, and only if, granted written approval
11 from the legal services review board as provided in
12 [sections 9 through 15].

13 NEW SECTION. Section 5. Representing state executive
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17 legal services review board may represent a state executive
18 agency in any court or judicial proceeding.

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20 There is a legal services review board, which shall review
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22 executive agency to retain, contract with, or otherwise
23 employ a special legal counsel.

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25 board consists of three members. The members are:

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 18 written notification that the available legal resources
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23 ~~NEW SECTION~~ Section 13. Criteria for approval. The
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 25 use a special legal counsel unless the board determines

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 25 of a special legal counsel to meet its legal services needs;

1 (2) monitor all contracts resulting from the approval
2 of a request for the use of a special legal counsel,
3 periodically review the criteria under [section 13], and
4 terminate those contracts where such criteria have ceased to
5 exist;

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7 account for all fees, expenses, or other costs associated
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STATE OF MONTANA

Request No. 132-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 1979, there is hereby submitted a Fiscal Note for House Bill 12 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 12 is an act to provide a Legal Assistance Program in the Office of the Attorney General and to create a Legal Services Review Board.

ASSUMPTIONS:

Legal Assistance Program

1. Assume 5,300 hours attorney time in FY 1980; 7,800 hours in FY 1981.
2. Assume the staff for the first year would be acquired at different intervals, resulting in 2 FTE @ 1 full year, 4 FTE @ 10 months and 1 FTE @ 6 months. Staffing will consist of 5 attorneys and 2 clerical employees.
3. Assume \$25 per hour would be charged to the agencies requesting services.

Legal Services Review Board

1. The Board will require 1 FTE attorney to monitor contracts and assist the Board, and .5 FTE for clerical support. This is based upon the assumption that the monitoring of contracts will require constant examination and review of agency records, etc.
2. The attorney will be required to travel to monitor contracts.

FISCAL IMPACT:

	<u>FY 80</u>	<u>FY 81</u>
Legal Assistance Program		
Personal services	\$127,433	\$151,940
Operating expenses	24,647	25,899
Equipment	4,925	0
	<u>157,005</u>	<u>177,839</u>
Legal Services Review Board		
Personal services	24,672	26,154
Operating expenses	2,151	2,181
Equipment	500	0
	<u>27,323</u>	<u>28,335</u>
Total cost of establishing a legal assistance program and a Legal Services Review Board*	<u>\$184,328</u>	<u>\$206,174</u>

Richard L. Thompson
 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 1/31/79

(Continued on Page 2

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*The Subcommittee on State Legal Services and Election Laws report on State Legal Services indicates that "the legal assistance program in the Attorney General's office will be able to provide high quality legal services to state executive agencies at a reduced cost that should produce sizeable savings through increased efficiencies in operation and reduced reliance upon private sector attorneys."

A reliable estimate of the indicated savings cannot be determined with available data.

Approved by Committee
on Judiciary

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12 WHEREAS, the employment of experienced, full-time staff
13 attorneys by the executive branch is an economical,
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 9 invalid applications.

-End-

March 23, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 12, third reading bill, be amended as follows:

1. Page 2, line 1.

Following: "needs"

Strike: "."

Insert: ";" and"

2. Page 2, line 2.

Following: line 1

Insert: "WHEREAS, after an initial commencement period to be funded by \$50,000 to be appropriated from the general fund, the legal services assistance program will operate on funds to be appropriated from a revolving account of amounts paid by state agencies for legal services rendered by the respective agencies by the legal services assistance program."

HOUSE OF REPRESENTATIVES
April 11, 1979

Governor's Proposed Amendments to House Bill No. 12, reference
bill, second printing, as follows:

1. Page 3, line 8.

Following: "appropriation"

Strike: "; however, this does not authorize a state executive
agency to hire full-time staff attorneys in excess of the
number employed on August 4, 1978, without the express consent
of the legislature"

State of Montana
Office of the Governor
Helena 59601

THOMAS L. JUDGE
GOVERNOR

May 14, 1979

The Honorable William Mathers
President of the Senate
State Capitol
Helena, Montana 59601

The Honorable Harold Gerke
Speaker of the House
State Capitol
Helena, Montana 59601

Dear President Mathers and Speaker Gerke:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 12 "AN ACT TO INSURE APPROPRIATE, ECONOMICAL, AND EFFICIENT USE OF ATTORNEYS BY THE EXECUTIVE BRANCH; TO PROVIDE A LEGAL ASSISTANCE PROGRAM IN THE OFFICE OF THE ATTORNEY GENERAL; AND TO CREATE A LEGAL SERVICES REVIEW BOARD."

I am unable to approve House Bill No. 12 providing for a legal assistance program. The bill states that it is intended to "create a pool of highly competent full-time staff attorneys within the office of the Attorney General" to be the 'law firm' of first resort for any legal services needed beyond the capacity of the ability of state executive agencies." According to the fiscal note accompanying the bill it was contemplated that during the 1980-81 biennium the pool would consist of five attorneys and two clerical personnel at a total cost of \$334,844. The fiscal note assumed the pool would support itself by charging agencies using its services at \$25 per hour. Additionally, the Legal Services Review Board which was also created by House Bill No. 12, would cost an additional \$55,658 over the biennium for a total cost of \$446,160. The fiscal note indicated no reliable estimate could be made of any savings by enactment of this measure.

The attorneys in the pool are subject to the state's classification and pay plan, which thereby limits the state's capacity to pay the salaries necessary to attract attorneys with the experience and expertise required to adequately represent the State, particularly in major cases where the State's exposure is the greatest. These include personal injury and damage claims, water rights, taxation, Indian jurisdiction matters, protection of our natural resources, all of which involve millions of dollars of exposure to the State of Montana. Many of these suits are the result of the fact that by reason of the 1972 Constitution the state has lost its immunity to suit.

The Honorable William Mathers
The Honorable Harold Gerke
May 14, 1979
Page Two

Because of the limitation on the state's ability to pay full-time attorneys, in all likelihood the state will continue to be able to attract only recent graduates with limited experience in the practice of law and particularly in the trial of cases. It is quite possible, therefore that the state could end up paying out vast sums of money in judgments while these relatively inexperienced attorneys learn their craft.

Some of my department heads have expressed their deep concern about this legislation and have indicated their reluctance to utilize the services of pool attorneys in major cases.

In an effort to get better control of private retained counsel on November 6, 1978 I issued Executive Order No. 15-78 which requires all executive branch agencies to submit requests to engage private legal counsel to the Legal Service Review Committee. The committee is composed of the Governor's legal counsel, the Budget Director and the Attorney General's representative. The only requests for outside counsel that can be approved must meet strict criteria. All existing retainers of private legal counsel as well as new requests will periodically be reviewed by the Committee to insure that the State is adequately represented at the lowest possible cost. The Legal Services Review Committee's composition and functions are almost identical to those provided in House Bill 12.

Seeing no savings to be derived from the legal service provisions in this measure and not wishing to limit the State's capacity to be represented by attorneys having the experience and expertise equal to those practicing against the State I am unable to approve this measure.

I believe the Legal Services Review Committee will continue to carefully review agency requests for utilization of private counsel needed by the State on a case by case basis. At the same time agencies will be encouraged to utilize their own full-time staff counsel and the Attorney General's staff to the maximum extent.

For these reasons I veto House Bill No. 12.

Sincerely,



THOMAS L. JUDGE
Governor

cc: Honorable Frank Murray