

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

19 attorneys within the office of the attorney general should

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

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2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

3 NEW SECTION. Section 1. Intent. It is the intent of

4 the legislature to:

5 (1) insure appropriate, economical, and efficient use

6 of attorneys by the executive branch of state government;

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8 attorneys available to state executive agencies within the

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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16 (2) "Special legal counsel" means an attorney licensed

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18 agency on a full-time basis.

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22 similar instrumentality in the executive branch of state

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 4 on August 4, 1978, without the express consent of the
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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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 15 necessary. (1) Notwithstanding 2-15-501, a full-time staff
 16 attorney or a special legal counsel authorized by the state
 17 legal services review board may represent a state executive
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 15 An attorney employed by the attorney general and assigned to
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 20 There is a legal services review board, which shall review
 21 and approve or disapprove each written request from a state
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24 NEW SECTION. Section 10. Composition of board. The
 25 board consists of three members. The members are:

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2 representative, who shall act as chairman of the board;

3 (2) the attorney general or his designated
4 representative; and

5 (3) the chief legal counsel to the governor.

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13 public funds to temporarily retain or employ special legal
14 counsel for the purpose of rendering legal services of any
15 type to the agency without:

16 (1) making a prior written request for legal
17 assistance to the legal assistance program and receiving
18 written notification that the available legal resources
19 within the office of the attorney general are being used to
20 the limits of their capacity or ability; and

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22 services review board.

23 NEW SECTION. Section 13. Criteria for approval. The
24 board may not approve a state executive agency's request to
25 use a special legal counsel unless the board determines

1 that:

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3 legal staff is being used efficiently to the limits of its
4 capacity or ability;

5 (2) the available legal resources within the office of
6 the attorney general are being used efficiently to the
7 limits of their capacity or ability and, therefore, cannot
8 respond to the agency's request; and

9 (3) at least one of the following conditions exist to
10 justify the need for a special legal counsel:

11 (a) a temporary need exists for expertise in a
12 specialized area of law;

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22 strict accountability. The board shall:

23 (1) review the terms of employment prior to granting
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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;

6 (3) require each state executive agency to strictly
 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

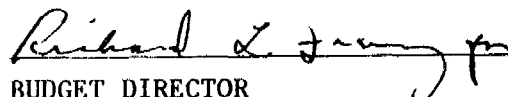
1. Assume 5,300 hours attorney time in FY 1980; 7,800 hours in FY 1981.
2. Assume the staff for the first year would be acquired at different intervals, resulting in 2 FTE @ 1 full year, 4 FTE @ 10 months and 1 FTE @ 6 months. Staffing will consist of 5 attorneys and 2 clerical employees.
3. Assume \$25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


 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 1/31/79

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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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 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
 14 agency -- special assistant attorney general designation not
 15 necessary. (1) Notwithstanding 2-15-501, a full-time staff
 16 attorney or a special legal counsel authorized by the state
 17 legal services review board may represent a state executive
 18 agency in any court or judicial proceeding.

19 (2) A full-time staff attorney or a special legal
 20 counsel authorized by the state legal services review board
 21 need not be designated a special assistant attorney general
 22 in order to represent a state executive agency in any legal
 23 proceeding.

24 **NEW SECTION.** Section 6. Legal assistance program --
 25 subject to classification and pay plan. (1) There is a legal

1 assistance program within the office of the attorney general
 2 composed of a pool of full-time staff attorneys and related
 3 supportive staff hired by the attorney general.

4 (2) An individual hired to work for the legal
 5 assistance program is not a member of the attorney general's
 6 personal staff and is subject to the state classification
 7 and pay plan.

8 **NEW SECTION.** Section 7. Legal assistance program --
 9 function. The legal assistance program shall, if staff is
 10 available, render legal assistance, upon request, to any
 11 state executive agency with legal services needs that exceed
 12 the capacity or ability of that agency's existing legal
 13 staff.

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 15 An attorney employed by the attorney general and assigned to
 16 the legal assistance program shall maintain a strict
 17 attorney-client relationship with any state executive agency
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19 **NEW SECTION.** Section 9. Legal services review board.
 20 There is a legal services review board, which shall review
 21 and approve or disapprove each written request from a state
 22 executive agency to retain, contract with, or otherwise
 23 employ a special legal counsel.

24 **NEW SECTION.** Section 10. Composition of board.
 25 board consists of three members. The members are:

1 (1) the budget director or his designated
2 representative, who shall act as chairman of the board;

3 (2) the attorney general or his designated
4 representative; and

5 (3) the chief legal counsel to the governor.

6 NEW SECTION. Section 11. Review and written approval
7 required. The legal services review board shall review and
8 approve or disapprove in writing each request by a state
9 executive agency to use a special legal counsel to meet its
10 legal services needs.

11 NEW SECTION. Section 12. Expenditure of funds without
12 approval prohibited. No state executive agency may expend
13 public funds to temporarily retain or employ special legal
14 counsel for the purpose of rendering legal services of any
15 type to the agency without:

16 (1) making a prior written request for legal
17 assistance to the legal assistance program and receiving a
18 written notification--that--the--available ASSESSMENT OF THE
19 AVAILABILITY OF legal resources within the office of the
20 attorney general ~~are--being--used--to--the--limits--of--their~~
21 ~~capacity--or--ability;~~ and

22 (2) receiving the prior written approval of the legal
23 services review board.

24 NEW SECTION. Section 13. Criteria for approval. The
25 board may not approve a state executive agency's request to

1 use a special legal counsel unless the board determines
2 that:

3 (1) the state executive agency's existing full-time
4 legal staff is being used efficiently to the limits of its
5 capacity or ability;

6 (2) the available legal resources within the office of
7 the attorney general are being used efficiently to the
8 limits of their capacity or ability and, therefore, cannot
9 respond to the agency's request; and

10 (3) at least one of the following conditions exist to
11 justify the need for a special legal counsel:

12 (a) a temporary need exists for expertise in a
13 specialized area of law;

14 (b) an unusual and temporary increase exists in the
15 state executive agency's legal services workload;

16 (c) a substantial conflict of interest exists
17 affecting all of the full-time staff attorneys or all but a
18 number insufficient to handle the matter; or

19 (d) a temporary need for extensive legal work exists
20 in a geographic area remote from the state executive office
21 or offices.

22 NEW SECTION. Section 14. Monitoring of employment --
23 strict accountability. The board shall:

24 (1) review the terms of employment prior to granting
25 approval to a state executive agency's request for the use

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

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

7 (3) require each state executive agency to strictly
8 account for all fees, expenses, or other costs associated
9 with the use of a special legal counsel; and

10 (4) require each state executive agency to maintain a
11 public record of the terms of employment, the total amount
12 of compensation, and a full and itemized statement showing
13 hours worked and expenses incurred for all special legal
14 counsel employed by the state executive agency.

15 NEW SECTION. Section 15. Board not to stipulate
16 particular attorney. The board may not stipulate, as a
17 condition of approval, the individual special legal counsel
18 to be employed by the state executive agency. The right to
19 hire the individual attorney who will serve as special legal
20 counsel rests solely with the state executive agency or the
21 appropriate elected official.

22 Section 16. Severability. If a part of this act is
23 invalid, all valid parts that are severable from the invalid
24 part remain in effect. If a part of this act is invalid in
25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

-End-

HOUSE BILL NO. 12

INTRODUCED BY SCULLY

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON STATE LEGAL SERVICES AND ELECTION LAWS

A BILL FOR AN ACT ENTITLED: "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."

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

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

WHEREAS, a pool of highly competent full-time staff attorneys within the office of the attorney general should be the "law firm" of first resort for any legal services needs beyond the capacity or ability of state executive agencies; and

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

legal services needs; AND

~~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.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION.~~ Section 1. Intent. It is the intent of the legislature to:

- (1) insure appropriate, economical, and efficient use of attorneys by the executive branch of state government;
- (2) provide a pool of highly competent full-time staff attorneys available to state executive agencies within the office of the attorney general; and
- (3) create a mechanism for review and approval of a state executive agency request to seek legal services outside of government.

~~NEW SECTION.~~ Section 2. Definitions. As used in [this act], the following definitions apply:

- (1) "Board" means the legal services review board.
- (2) "Special legal counsel" means an attorney licensed to practice law who is not employed by a state executive agency on a full-time basis.

1 (3) "State executive agency" means an elective
2 official in the executive branch of state government or an
3 office, department, board, bureau, commission, or other
4 similar instrumentality in the executive branch of state
5 government.

6 **NEW SECTION.** Section 3. Staff attorneys authorized.
7 A state executive agency may hire an attorney on a full-time
8 basis, within the limits of its appropriation; however, this
9 does not authorize a state executive agency to hire
10 full-time staff attorneys in excess of the number employed
11 on August 4, 1978, without the express consent of the
12 legislature.

13 **NEW SECTION.** Section 4. Special legal counsel
14 authorized. A state executive agency may, within the limits
15 of its appropriation, hire, retain, or otherwise contract
16 with additional special legal counsel to meet its legal
17 services needs if, and only if, granted written approval
18 from the legal services review board as provided in
19 [sections 9 through 15].

20 **NEW SECTION.** Section 5. Representing state executive
21 agency -- special assistant attorney general designation not
22 necessary. (1) Notwithstanding 2-15-501, a full-time staff
23 attorney or a special legal counsel authorized by the state
24 legal services review board may represent a state executive
25 agency in any court or judicial proceeding.

1 (2) A full-time staff attorney or a special legal
2 counsel authorized by the state legal services review board
3 need not be designated a special assistant attorney general
4 in order to represent a state executive agency in any legal
5 proceeding.

6 **NEW SECTION.** Section 6. Legal assistance program --
7 subject to classification and pay plan. (1) There is a legal
8 assistance program within the office of the attorney general
9 composed of a pool of full-time staff attorneys and related
10 supportive staff hired by the attorney general.

11 (2) An individual hired to work for the legal
12 assistance program is not a member of the attorney general's
13 personal staff and is subject to the state classification
14 and pay plan.

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16 function. The legal assistance program shall, if staff is
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18 state executive agency with legal services needs that exceed
19 the capacity or ability of that agency's existing legal
20 staff.

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22 An attorney employed by the attorney general and assigned to
23 the legal assistance program shall maintain a strict
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 3 and approve or disapprove each written request from a state
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 7 board consists of three members. The members are:

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- 15 limits of their capacity or ability and, therefore, cannot
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- 20 specialized area of law;

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- 23 (c) a substantial conflict of interest exists
- 24 affecting all of the full-time staff attorneys or all but a
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 2 in a geographic area remote from the state executive office
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 5 strict accountability. The board shall:

6 (1) review the terms of employment prior to granting
 7 approval to a state executive agency's request for the use
 8 of a special legal counsel to meet its legal services needs;

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

14 (3) require each state executive agency to strictly
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 16 with the use of a special legal counsel; and

17 (4) require each state executive agency to maintain a
 18 public record of the terms of employment, the total amount
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 6 part remain in effect. If a part of this act is invalid in
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 8 in all valid applications that are severable from the
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-End-

1 HOUSE BILL NO. 12
 2 INTRODUCED BY SCULLY
 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,
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 12 WHEREAS, the employment of experienced, full-time staff
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 16 WHEREAS, the use of contract or retained special legal
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 2 ~~WHEREAS, AFTER AN INITIAL COMMENCEMENT PERIOD TO BE~~
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8 in all valid applications that are severable from the
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.

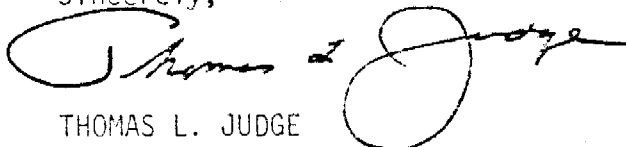
In an effort to get better control of private retained counsel on November 6, 1978 I issued Executive Order No. 15-78 which requires all executive branch agencies to submit requests to engage private legal counsel to the Legal Service Review Committee. The committee is composed of the Governor's legal 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,

A handwritten signature in black ink, appearing to read "Thomas L. Judge". The signature is fluid and cursive, with a large loop at the end.

THOMAS L. JUDGE
Governor

cc: Honorable Frank Murray