

Department of Planning and Budget 2005 Fiscal Impact Statement

1. Bill Number HB 2383

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron Barlow

3. Committee H. Courts of Justice

4. Title Defense of electoral board members and general registrar staff; costs.

5. Summary/Purpose:

Provides that if legal defense is not provided under applicable insurance coverage, such persons may apply to Treasury's Division of Risk Management to assign defense counsel and the costs of defense, including attorneys' fees, shall be paid by the Commonwealth.

6. Fiscal Impact Estimates are: Indeterminate. See item 8, below.

7. Budget amendment necessary: No.

8. Fiscal implications:

The Department of Treasury's Division of Risk Management currently provides liability insurance for electoral board members, general registrars, and general registrar staff. The annual premiums for this insurance are paid by the Board of Elections. This bill provides that if the Division of Risk Management hires a private attorney to represent an electoral board member or general registrar staff person who is a defendant in a civil matter arising out of the performance of his official duties, the Division of Risk Management will pay that attorney's legal fees. Risk Management pays these fees from nongeneral funds in the State Insurance Reserve Trust Fund.

According to the Department of Treasury, such defendants may also be represented by an attorney on staff with their local Commonwealth's Attorney or the Office of the Attorney General, or the Attorney General or Commonwealth's Attorney could hire a private attorney to represent the defendant. If an entity other than the Division of Risk Management selects and hires a private attorney for such a defendant, the Division of Risk Management does not pay that attorney's fees currently. If the Office of the Attorney General or the local Commonwealth's Attorney provides representation to the electoral board member, general registrar, or general registrar staff, or selects a private attorney to represent the individual, this bill provides that the legal fees are paid by the state.

Language in the bill will require the Commonwealth to pay all attorney's fees and expenses in such cases. If the intent of the bill is for the Division of Risk Management to pay all attorneys' fees, including those incurred by the Attorney General, or Commonwealth's Attorneys, this would be a change from current practice and would have a fiscal impact. However, any fiscal impact is indeterminate.

9. Specific agency or political subdivisions affected: Department of the Treasury's Division of Risk Management, general registrars and their staff, Board of Elections, Commonwealth's Attorneys, and the Office of the Attorney General.

10. Technical amendment necessary: Yes. Line 17. Strike "Virginia", and insert "Department of the Treasury's". Also it is unclear whether the fund source referenced in line 26 is the state's general fund or the State Insurance Reserve Trust Fund.

11. Other comments: This bill does not give the Division of Risk Management authority to select the Attorney General or the Commonwealth's Attorney to defend, but does allow the Division to select a private defense attorney. The Division has no statutory authority to direct the activities of the Office of the Attorney General or the Commonwealth's Attorney.

SB 898 is identical to this bill.

Date: 01/25/05/tmw

Document: G:\2005 Session\Legislation\HB2383.Doc

cc: Secretary of Finance
Secretary of Administration