

Department of Planning and Budget 2016 Fiscal Impact Statement

1. Bill Number: SB447

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

2. Patron: Mark D. Obenshain

3. Committee: Committee for Courts of Justice

4. Title: Office of the Attorney General; employment of special counsel.

5. Summary: Provides that when entering into a contract with special counsel, the Office of the Governor or Office of the Attorney General, as applicable, must make a copy of the contract available to the public on the website of the Governor or the Attorney General. However, the Attorney General may temporarily not disclose such information upon making a written determination that such action is necessary to protect attorney-client or otherwise privileged information or that immediate disclosure of the existence of special counsel, or any other sensitive information, could compromise the initiation, handling, or conclusion of any investigation or case matter handled by the Attorney General or special counsel and might put the Commonwealth and its citizens at a disadvantage. The bill also provides that prior to entering into a contract with special counsel, the Attorney General must make a written determination that the representation is both cost effective and in the public interest. In addition, the bill (i) requires the Governor and the Attorney General to submit an annual report to the General Assembly describing the use of contracts for special counsel; (ii) provides that the Attorney General, or counsel to the Governor in cases in which the Attorney General has a conflict, shall retain control over special counsel; and (iii) limits the contingency fee that may be charged by special counsel depending on the amount recovered.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Indeterminate, See Item 8

8. Fiscal Implications: The Office of the Attorney General and Department of Law (OAG) indicates that this bill proposes to have the OAG manage all contractual undertakings with regards to the employment of special counsel. Also, it requires that copies of applicable contracts be made available on the website of the Governor or the Attorney General, and annual reports be submitted to the General Assembly. The fiscal impact is indeterminate because of a number of unknown factors.

The OAG would administratively supervise (i.e. review, monitor, approve) all aspects of matter in the hands of special counsel. As an additional function for the OAG, attorneys and support staff would need to be hired to oversee/participate in the required aspects of

matters/cases. The OAG indicates that hiring needed legal staff could cost between \$2 million and \$5 million. The staff hired would need to be subject matter experts to be able to handle the referred matters to special counsel. Currently the OAG lacks subject matter attorneys within certain legal areas, thus the utilization of special counsel.

The agency indicates that it would have to consider the number of IT personnel and additions to the Outside Counsel section in order to comply with this legislation, IT personnel to be devoted to posting in real time the many changes and contractual amendments made to any of the approximately 400 contracts we have as well as personnel to my team for the additional administrative maintenance required by the legislation. OAG estimates at least 1-2 staff per Section for 2-4 people total or a cost from \$240,829 to \$481,658. Estimated costs of this bill are indeterminate as they are dependent on the number of staff needed to handle the volume of contracts and correspondence relating to those contracts.

9. Specific Agency or Political Subdivisions Affected: Attorney General and Department of Law

10. Technical Amendment Necessary: No.

11. Other Comments:

Date: 2/12/16

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