

Department of Planning and Budget

2018 Fiscal Impact Statement

1. Bill Number: SB926

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: Mark D. Obenshain

3. Committee: 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 a number of unknown factors.

The bill establishes a requirement for a “written determination” prior to employing special counsel. This determination must show that such representation is both cost-effective and in the public interest. The impact of this determination process on the amount of legal services contracted with special counsel is unknown.

Once contracts have been established, 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 \$1 million and \$2 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.

Given the posting requirements for contracts, changes, the OAG estimates a range of two to four information technology and two Finance or Administrative Staff to handle these requirements, which could cost upwards of \$350,000-\$450,000 depending upon number and level of employees. The OAG would need to build a searchable platform with secure access to comply with the requirements that could be consistently updated and maintained once functional. Lastly, to handle all the administrative functions (reports, Freedom of Information Act requirements, collection and storage of information) the OAG would need to hire several staff to create a special counsel division responsible for handling these functions. Based on the current volume of contracts that the Office maintains and monitors, they expect costs associated with those functions to be around \$200,000-\$250,000.

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

10. Technical Amendment Necessary: No.

11. Other Comments: