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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

**H.B. 85**  
**133rd General Assembly**

## Bill Analysis

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**Version:** As Reported by House Criminal Justice

**Primary Sponsors:** Reps. Wilkin and Rogers

Megan Cummiskey, Attorney

### Summary

- Permits a county to request funding from the Attorney General (AG) or State Public Defender (SPD) for costs associated with prosecuting or defending an eligible capital case.
- Provides that the type of capital case eligible for extraordinary funding must involve multiple defendants or multiple victims.
- Requires the AG and SPD, after receiving a request for extraordinary funding, to submit qualified requests to the Controlling Board.
- Requires the Controlling Board to review requests from the AG or SPD and, if approved, transfer the requested funds to newly created funds managed by the AG and SPD, respectively.
- Establishes procedures to be followed for the use of extraordinary capital case funding by counties or the SPD.
- Requires the Director of Budget and Management to transfer \$4 million to the Controlling Board Emergency Purposes/Contingencies Fund.
- Declares an emergency.

### Detailed Analysis

Under the bill, counties may request that the Attorney General (AG) or the State Public Defender (SPD) seek funding from the Controlling Board for county costs related to the prosecution or defense of capital cases involving multiple defendants or multiple victims. These requests are presented to the Board for approval and, if approved, the funding must be transferred from the Board's Emergency Purposes/Contingencies Fund to either (or both) of the new funds administered by the AG and SPD respectively. The AG and SPD then distribute the funds to the requesting county for capital case prosecution or defense costs.

## Requesting extraordinary funding for complex capital cases

The bill permits counties to seek additional funding for the prosecution or defense of capital cases involving multiple defendants or multiple victims. For prosecution funds, the county must make a request to the AG. For defense funds, the county works with the SPD.

### County request to AG or SPD

A board of county commissioners seeking extraordinary funding for a capital case must provide the following information in its request to either the AG (for prosecution costs) or SPD (for defense costs):<sup>1</sup>

1. The facts of the case involving multiple defendants or multiple victims for which the county is seeking funding (also, for defense costs, that at least one of the defendants is indigent);
2. The county's general fund appropriations for the calendar year in which the defendant or defendants are arrested;
3. A detailed explanation of the county's need for extraordinary funding, including the county's financial hardship in funding the prosecution or defense of the case.

### AG or SPD request to Controlling Board

After receiving a county request for extraordinary capital case funding, the amount of funding needed must be estimated. For cases involving indigent defendants, the AG and SPD must work together to estimate costs. For cases without indigent defendants, the AG must estimate the costs alone.<sup>2</sup>

If the AG (or the AG together with the SPD) determines that the county's estimated prosecution and defense costs exceed 5% of the county's general fund appropriations, the AG (or the AG/SPD jointly) must submit a request for extraordinary funding to the Controlling Board. The 5% general fund calculation is based on the year in which the defendant or defendants were arrested.<sup>3</sup>

A request for extraordinary funding must include the following information:

1. An aggregate estimate of prosecution and defense costs;
2. The amount of money either the AG or SPD is requesting to fund case costs;
3. The county's general fund appropriations for the year in which the defendant or defendants are arrested;
4. The need for extraordinary funding; and

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<sup>1</sup> R.C. 307.451(A) and 307.452(A).

<sup>2</sup> R.C. 127.20(A)(1).

<sup>3</sup> R.C. 127.20(A)(2) and (A)(3).

5. Facts of the case, including that the case involves more than one victim or defendant, and for defense funding, that one or more of the defendants is determined to be indigent.<sup>4</sup>

## **Controlling Board review of funding request**

The Controlling Board, on receiving a request for extraordinary capital case funding, is required to add the request to the agenda for the next scheduled Board meeting.<sup>5</sup> The Board may release funds from the Emergency Purposes/Contingencies Fund to defray county prosecution or defense costs in extraordinary cases if:<sup>6</sup>

1. The county's estimated prosecution and defense costs exceed 5% of the county's general fund appropriations for the calendar year in which the defendant or defendants were arrested; and
2. The case is a capital case involving multiple defendants or multiple victims.

In addition to the requirements above, the Board may release funds to the SPD for defense costs only if at least one of the defendants is determined to be indigent under SPD procedures.

## **Distribution of funds for extraordinary costs**

Following Controlling Board approval of a request for extraordinary capital case funding, the approved funds are transferred to the newly created Capital Case Extraordinary Prosecution Cost Fund or the Capital Case Extraordinary Defense Cost Fund, or both, depending on the joint request. For prosecution costs, the AG must distribute money to the county on request for its prosecution costs. For the defense, the SPD must distribute money in the Fund to pay bills submitted by the county for defense costs, after approval by the court hearing the case.<sup>7</sup>

## **County responsibilities after receiving funds**

After receiving money from the Attorney General to help fund prosecution-related costs of a capital case, a board of county commissioners must:

1. Establish a capital case extraordinary cost special fund in the county treasury to receive the funds; and
2. Adopt a resolution authorizing use of the funds to defray specified prosecution costs for the underlying capital case.<sup>8</sup>

## **SPD responsibility to fund defense costs**

If the Board approves funding for defense costs, the SPD is responsible for all costs related to defendants determined to be indigent and the county in which the case is being

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<sup>4</sup> R.C. 127.20(B) and (C).

<sup>5</sup> R.C. 127.20(D).

<sup>6</sup> R.C. 127.19(B)(2) and (3).

<sup>7</sup> R.C. 109.47(B) and 120.56(B).

<sup>8</sup> R.C. 307.453.

prosecuted is no longer responsible for any defense costs related to those defendants. This deviates from the standard maximum 50% reimbursement the SPD is required to reimburse counties under current law.<sup>9</sup>

## Seeking additional funding

If the prosecuting attorney or the SPD determine the original amount of funding was insufficient for the prosecution or defense, respectively, either may seek additional funding from the Controlling Board. The SPD may seek additional funding directly, but a prosecuting attorney must work through the AG. A request for additional funding must include the following:

1. The facts demonstrating the need for additional funds;
2. A statement explaining why the original funds were insufficient; and
3. The amount of additional funds being requested.

Before seeking additional funding, the party seeking the funding (prosecuting attorney or SPD) must notify the board of county commissioners of the additional funding request.

The Controlling Board, on receiving a request for additional funds, is required to add the request to the agenda for the next scheduled Board meeting.<sup>10</sup>

## Denial of additional funding

If the Board does not approve additional funding for the prosecution, the county is responsible for remaining prosecution costs. Similarly, if additional defense funding is denied, the SPD must notify the county of the denial and the county will be reimbursed for defense costs under the mechanisms provided in existing law.<sup>11</sup>

## Return of unused funds

The bill requires a county that receives funding from the AG for prosecution costs to return any unused money at the end of the capital case to the Director of Budget and Management. The SPD, similarly, must return unused money to the OBM Director. The Director must deposit the returned money in the Controlling Board Emergency Purposes/Contingencies Fund.<sup>12</sup>

## Transfer to the Emergency Purposes/Contingencies Fund

The bill requires the Director of Budget and Management to transfer \$4 million from the GRF to the Controlling Board's Emergency Purposes/Contingencies Fund.<sup>13</sup>

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<sup>9</sup> R.C. 120.56(B); See R.C. 120.05 and 120.35, not in the bill.

<sup>10</sup> R.C. 109.47(C) and 120.56(C).

<sup>11</sup> See R.C. 120.35 and 2941.51, not in the bill.

<sup>12</sup> R.C. 120.56(E) and 307.453(C).

<sup>13</sup> Section 3.

## Emergency clause

The bill provides that the act is an emergency measure to support the effective prosecution and defense of capital cases. As a result, the bill's provisions will take effect immediately and are not subject to the referendum.<sup>14</sup>

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## History

Action	Date
Introduced	02-19-19
Reported, H. Criminal Justice	03-29-19

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<sup>14</sup> Section 4.