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H.B. 488
(1_134_1399-2)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 488's Bill Analysis](#)

Version: In House Civil Justice

Primary Sponsors: Reps. Grendell and Galonski

Local Impact Statement Procedure Required: Yes

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Highlights

- The changes to the Guardianship Law are not expected to create significant expenses, revenues, or savings for the probate divisions of the courts of common pleas.
- Costs paid by a county general revenue fund may increase as a result of the bill's provision allowing a court of common pleas or a county court to retain legal counsel under certain circumstances and the requirement that those expenses be paid or reimbursed from that fund.

Detailed Analysis

The bill (1) makes changes to the Guardianship Law, and (2) allows a court of common pleas or a county court to employ legal counsel to provide legal services, advice, or representation in certain matters.

Guardianship Law changes

Judges and the Ohio Judicial Conference expect the changes made to the laws governing guardianships to be fiscally neutral for the courts: causing neither significant expenses, revenues, nor savings for the probate courts. The changes include definitions, guardianship of a minor or incompetent, petitions for conservatorship, notice of hearing on an application for guardianship in general, guardianship of wards in general, transactions dealing with a ward's property, termination of a guardianship, and guardians for nonresidents.

Court authority to employ legal counsel

The bill allows the court of common pleas or the county court to employ legal counsel at its choosing without competitive bidding to do any of the following:

- Represent the court in any matter the prosecuting attorney, the board of county commissioners, or both, (1) have a conflict of interest, and (2) fail within a reasonable time, or refuse, to make application to the court for the employment of legal counsel despite having been requested to do so;
- Represent the court in the prosecution of any action or proceeding against any county public officer or board or tax-supported public library included in continuing law as being statutorily represented by the county prosecuting attorney;
- Seek legal advice or legal representation concerning writ of mandamus or writ of prohibitions actions.

The bill requires (1) the appropriate judge to enter an order upon the court's journal to fix the compensation to be paid, and (2) the compensation to be paid from the county general fund or another lawful court fund at the discretion of the judge.

The bill prohibits the hourly compensation from exceeding the highest hourly compensation paid by the board of county commissioners for an attorney other than the county prosecuting attorney to represent the board or other county officials. The total compensation paid for legal services cannot exceed the total annual compensation of the county prosecuting attorney.

The bill (1) permits a court of common pleas to charge a fee for the employment of legal counsel, (2) permits both a court special projects fund¹ and a Probate Court Conduct of Business Fund² to be used to employ legal counsel, and (3) requires any money so used to be reimbursed by the county general fund.

Because of the bill's employment of legal counsel provision, expenses paid through a county general fund may increase at the discretion of a judge of the court of common pleas or county court. Any change in expenses as compared to current law and practice will depend on the situation and compensation of the hired legal counsel.

Synopsis of Fiscal Effect Changes

The substitute bill (I_134_1399-2) makes changes to the bill's provisions generally related to a court's appointment of legal counsel. Specifically, the bill:

- Authorizes the county court to employ legal counsel at its choosing and without competitive bidding pursuant to the exception from competitive bidding for the services of an attorney, in the same manner allowed for courts of common pleas in the As Introduced version of the bill;
- Authorizes a court of common pleas or county court to employ legal counsel to represent it in the prosecution of an action against any county public officer or board or tax-supported

¹ The court special projects fund consists of certain special fees charged on the filing of each criminal cause, civil action or proceeding, or judgment by confession and fees for special programs or additional services.

² The Probate Court Conduct of Business Fund consists of all moneys obtained from the sale of merchandise to be used in connection with any license, order, or document issued by a probate court.

public library included in continuing law as being statutorily represented by the county prosecuting attorney; and

- Provides that the total compensation paid, in any calendar year, by the court of common pleas, including all of its divisions, and by the county court for legal services authorized by the bill must not exceed the total annual compensation of the prosecuting attorney for that county.

The resulting fiscal effect of these court employment of legal counsel provisions may be to increase the total expenditures authorized by a county's general fund as compared to those originally outlined in the As Introduced version of the bill. As stated in the prior version of the fiscal note, expenses paid through a county general fund may increase at the discretion of a judge of the court of common pleas or county court. Any change in expenses as compared to current law and practice will depend on the situation and compensation of the hired legal counsel.