

FISCAL IMPACT OF PROPOSED LEGISLATION

81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office

Measure: HB 2788 - A

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Libby Chamberlin
Reviewed by: John Borden, Paul Siebert
Date: March 25, 2021

Measure Description:

Prohibits Department of Justice from charging officers and agencies of state government for assistance rendered.

Government Unit(s) Affected:

Department of Administrative Services (DAS), Department of Justice (DOJ), Statewide

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Summary of Expenditure Impact:

See analysis

Analysis:

ORS 180.160 and 180.170 provide the statutory authority for DOJ to charge and bill public agencies for legal services. Although the agency has the statutory authority to determine the various hourly rates, they have historically been reviewed through the legislative budget review process.

Under this measure, beginning with the 2023-25 biennium, DOJ may no longer charge state government for the cost of providing legal assistance. Such charges may only be paid from funds appropriated to DOJ by the Legislature. The measure also prohibits DOJ from charging state government for special legal assistants or private counsel, which are otherwise known as "Special Assistant Attorneys General." By statute, "state government" is defined as state agencies with the executive, judicial and the legislative departments or branches of government. As amended, the measure also prohibits DOJ from entering into or renewing a collective bargaining agreement that permits attorney performance from being based on the hours billed by an attorney. Lastly, the measure allows DOJ to track billable hours only as required to obtain reimbursement by the federal government or other sources.

DOJ may, however, continue to charge public bodies other than state government for their cost of legal services (e.g., semi-independent agencies). The measure removes the working capital requirement from being an allowable billing charge for public bodies other than state government.

The measure repeals ORS 283.425 related to "...costs of asbestos property damage recovery litigation incurred by the Department of Justice shall be charged to the Oregon Department of Administrative Services."

Under the 2021-23 current service level for state government, DOJ's hourly billing model, which is based \$258 per hour, generates \$113.1 million General Fund, \$572,623 Lottery Funds, \$88.8 million Other Funds, and \$53.1 million Federal Funds for a \$255.5 million in total funds revenue. These funds are received and expended by DOJ as Other Funds.

Since DOJ could only pay for legal costs of state government from appropriated funds, the fiscal impact of this measure equates to an estimated \$142.4 million General Fund for the 2023-2025 biennium (i.e., \$572,623 Lottery Funds, \$88.8 million Other Funds, and \$53.1 million Federal Funds). There would be a reduction commensurate

to state government agency line-item budgets related to Attorney General charges as well as related reductions to the DOJ budget. The measure would make Lottery Fund savings available for alternative use for either constitutional and/or statutory dedications. The measure may produce an indeterminate amount of savings across state government agencies as agencies, including DOJ, would no longer be invoiced and required to reconcile and pay DOJ.

While the measure allows DOJ to track billable hours only as required to obtain reimbursement by the federal government or other sources, the measure may not provide a mechanism by which DOJ has the authority to charge or collect federal reimbursement from agencies or other sources.

Under the current hourly billing model, when large legal expenses are incurred by an agency the agency typically will have a corresponding budget request. Under this measure, DOJ would become responsible for requesting supplemental funding from either the Legislature or the Emergency Board. In absence of an hourly billing model, which serves as a mechanism for rationing legal services, state government demand for legal services is anticipated to increase by an indeterminate amount.