

Senate Study Bill 3078 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOGG)

A BILL FOR

1 An Act relating to the employment of legal counsel in a pending
2 action or proceeding to protect the interests of the state.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13.7, subsection 1, Code 2014, is amended
2 to read as follows:

3 1. a. Compensation shall not be allowed to any person for
4 services as an attorney or counselor to an executive department
5 of the state government, or the head of an executive department
6 of state government, or to a state board or commission.
7 However, the executive council may authorize employment of
8 legal assistance, at a reasonable compensation, in a pending
9 action or proceeding to protect the interests of the state,
10 but only upon a sufficient showing, in writing, made by the
11 attorney general, that the department of justice cannot for
12 reasons stated by the attorney general perform the service.
13 The reasons and action of the council shall be entered upon its
14 records.

15 b. If the attorney general determines that the department
16 of justice cannot perform legal service in an action or
17 proceeding, the executive council shall request the department
18 involved in the action or proceeding to recommend legal counsel
19 to represent the department and shall require the department
20 to submit a statement from legal counsel concerning the legal
21 counsel's estimated legal fees.

22 (1) If the attorney general concurs with the department
23 that the ~~person~~ legal counsel recommended is qualified and
24 suitable to represent the department, the ~~person~~ legal counsel
25 recommended shall be employed. Once employment has begun, the
26 legal counsel's legal fees shall not exceed the estimated legal
27 fees without prior approval of the executive council.

28 (2) If the attorney general does not concur in
29 the recommendation, the department shall submit a new
30 recommendation.

31 c. This subsection does not affect the general counsel for
32 the utilities board of the department of commerce, the legal
33 counsel of the department of workforce development, or the
34 general counsel for the property assessment appeal board.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 Code section 13.7 provides the executive council (comprised
4 of the governor, secretary of state, auditor, treasurer, and
5 secretary of agriculture) with the authority to authorize
6 employment of certain outside legal assistance, at a reasonable
7 compensation in a pending action or proceeding to protect
8 the interests of the state, upon a sufficient showing by the
9 attorney general that the department of justice cannot perform
10 the service. If the attorney general determines that the
11 department of justice cannot perform legal service in an action
12 or proceeding, the executive council requires the department
13 involved in the action or proceeding to recommend legal counsel
14 to represent the department. This bill requires the department
15 to submit a statement from legal counsel concerning the legal
16 counsel's estimated legal fees in this situation. If legal
17 counsel is employed, the legal counsel's legal fees shall not
18 exceed the estimated legal fees without prior approval of the
19 executive council.

20 The bill does not apply to the general counsel for the
21 utilities board of the department of commerce, the legal
22 counsel of the department of workforce development, or the
23 general counsel for the property assessment appeal board (Code
24 section 13.7(1)), and the executive branch and the attorney
25 general are required to comply with the procedural requirements
26 of Code chapter 23B (transparency in private attorney
27 contracts) when retaining legal counsel on a contingency fee
28 basis.