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H.B. 370
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 370's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Hillyer and Baldrige

Local Impact Statement Procedure Required: No

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Highlights

- The bill is silent as to which party would assume the costs of legal proceedings related to defending the political subdivision. If current practice were followed, the Office of the Attorney General would likely enter into a memorandum of understanding with the political subdivision in which cost sharing would be addressed. These potential costs would include attorney expenses (in-house or special counsel), witness fees, court costs, and possible attorney's fees if awarded to a prevailing plaintiff.

Detailed Analysis

The bill permits the Attorney General to defend any political subdivision, with the subdivision's consent, in any action brought against the political subdivision for maintaining a historical symbol or monument on public property as violating the U.S. or Ohio Constitution's guaranty of the free exercise of religion.

Background

The Establishment Clause of the U.S. Constitution prohibits government from establishing or endorsing, or appearing to establish or endorse, any religion. Conversely, government must take care not to prohibit free speech and exercise of religion, within reason. The Establishment Clause, made applicable to the states and their political subdivisions through the Due Process Clause of the Fourteenth Amendment, serves to keep government neutral, not favoring religion.

Attorney General defense of political subdivisions

The bill is silent as to which party would assume the costs of legal proceedings relating to defending a political subdivision. It is also unclear how a political subdivision would respond to such an action or the extent to which a civil action would be brought against a local entity as

a result. It appears that lawsuits on this basis occur relatively infrequently. An unknown number of cases are settled before the completion of the legal process. If current business practice were followed, the Office of the Attorney General would likely enter into a memorandum of understanding (MOU) with the political subdivision in which cost sharing would be addressed.

Assuming this avenue is taken in the event of an action brought against a political subdivision, any ongoing effects on state and local revenues and expenditures are uncertain until the involved parties enter the MOU. The bill does not state which party is to assume legal costs, including the award of legal fees to a prevailing plaintiff.

Other fiscal uncertainties include whether or not an insurance policy is in place that would cover these situations and, if not, if the Attorney General opts to contract with special counsel. Special counsel contracts are generally negotiated jointly between the Attorney General and the entity for which the legal services are being secured. The latter may be responsible for paying the special counsel's contract, and not the Attorney General.