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COUNTY EXECUTIVE



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SUMMIT COUNTY PROSECUTOR

House Civil Justice Committee  
HB 488  
Opponent Testimony  
December 7, 2021

Chairman Hillyer, Vice Chairman Grendell, Ranking Member Galonski and members of the House Civil Justice Committee, we are elected officials representing the County of Summit. We appreciate the opportunity to submit written testimony opposing HB 488.

The sponsors of this bill recently spoke to the committee about the bill being a “Guardianship Modernization Bill”, but we are concerned with the portion that permits judges to employ outside legal counsel of their choosing without consultation with the County Prosecutor and the Board of County Commissioners, or in the case of Summit and Cuyahoga Counties, without consultation with the Executive and County Council, and to force a charge to the County general fund to pay for such representation.

These changes to the Revised Code circumvent a process that is intended to ensure that County agencies and officers, including judges, are provided with appropriate counsel within the bounds of the law and in a fiscally responsible manner.

First and foremost, the Prosecutor is the statutory legal counsel for all County elected officials including judges of the Common Pleas Court (all divisions). Therefore, the County Prosecutor has a duty to represent a judge in any matter that might impact the Court, a judge or other court official. The decision as to whether the Prosecutor has a conflict or any other reason why he or she cannot discharge that duty should be left to the Prosecutor to determine. Representative Grendell advised the committee that your bill does not take that away from the Prosecutor, however such language appears to be missing from your bill.

Additionally, the involvement of the Executive and County Council (or the Board of Commissioners in a traditional county) is for the purpose of ensuring that any decision to hire outside counsel is done in a fiscally responsible manner. These officials are entrusted to protect all funds that come into the county from whatever source, as those funds are entrusted to them by the taxpayers. They are entrusted with preparing and approving the County-wide budget, including the budget of the Court of Common Pleas. In doing so, these officials have to balance the interests of every County office and to distribute funds equitably between the offices in order to ensure that each official has funds available to perform the duties required of them by law. The primary source of funds to allocate to these purposes is the general fund.

Legal fees for outside counsel can be incredibly expensive and are not always covered by insurance policies that the County may maintain, and therefore these expenses fall to the general fund. Giving

Courts the unfettered discretion to force such an expense into a tight budget is unduly burdensome to other County departments and agencies that do not have the same unfettered discretion.

A further problem with this bill is that it permits the judge unfettered discretion to hire any attorney without regard to whether that attorney is really properly qualified to handle the matter for which the judge seeks council. Having the Prosecutor and Commissioners involved in analyzing the need for outside counsel and who that counsel should be ensures that the attorney hired to do the work, will be fully qualified to handle the matter.

Contrary to the comments by Representative Grendell, this bill does not adopt the cap or limitation of charges that currently applies to the county commissioners or executives. The bill stops at the point of limiting the hourly rate to the highest hourly rate paid by the commissioner or executive to outside counsel. It does not adopt the current restriction that caps fees at the prosecutor's salary. This could be catastrophic financially, especially when considering the number of Judges in any large county.

Over the years we have received many requests from our Summit County judges to hire outside counsel. Once the request is reviewed and discussed with the judge, most are handled by the county prosecutor with the court's agreement. There are also times when outside counsel has been hired utilizing the process set forth in the revised code. This bill, as written, eliminates the opportunity for those discussions to occur and discourages cooperation between the executive, legislative and judicial branches of local government. It will also likely result in unnecessary costs to our taxpayers.

We would appreciate the opportunity to further discuss these concerns with the committee.

Sincerely,



Ilene Shapiro, Executive  
County of Summit



Sherri Bevan Walsh, Prosecutor  
County of Summit



Elizabeth Walters, Council President  
County of Summit