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FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 02/16/01 HB 409
 SHORT TITLE: Chief Public Defender Duties SB _____
 ANALYST: Belmares

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Senate Bill 198
 Relates to House Bill 230 and Senate Bill 166

SOURCES OF INFORMATION

Public Defender Department
 Administrative Office of the Courts
 Legislative Finance Committee files

SUMMARY

Synopsis of Bill

House Bill 409 exempts the Chief Public Defender from the procurement code when she contracts and expenditures for litigation expenses, including contracts and expenditures for professional and nonprofessional experts, investigators and witness fees, are certified. Attorney contracts are not included. The bill also authorizes the district public defender or the Chief Public Defender to represent indigent persons when they are under investigation for allegedly committing murder or any other felony criminal offense.

Significant Issues

- Procurement Code: The Public Defender Department is actively engaged in litigation at the trial, appellate, and post-conviction levels. The bill allows the Chief Public Defender to certify non-attorney litigation contracts and expenditures as litigation exemptions for purposes of filing contract briefs with the Department of Finance and Administration. Presently, the Department of Finance and Administration must approve all professional and non-professional expert witness contracts. The Public Defender Department asserts

the proposed language in the bill would assist in criminal litigation by not seeking lengthy Department of Finance approval or agreement on a “sole source” exception from the Procurement Code.

- Pre-prosecution Counsel: The bill recognizes the Public Defender Department is frequently called upon to provide counsel for “pre-prosecution” persons under the Prosecution Diversion Act (31-16A-1 through 8) and for grand jury “targets” who require representational tasks related to the grand jury appearance. The Public Defender Department asserts indigent persons who are uncharged but who face serious murder or felony charges need the representation of an attorney who should assist the client and not merely “confer” with an individual. Frequently an attorney must deal with client health issues, language/interpreter courses, immigration, and other issues for the uncharged. Without the statutory authority to represent, an attorney does not have sufficient standing to adequately assist the client as well as the police, sheriff, and the courts. The bill brings the Public Defender Act into conformity with representation tasks already undertaken by the Public Defender Department.

FISCAL IMPLICATIONS

No significant fiscal implications have been identified. The Public Defender Department is already called upon by the courts and prosecutors to fulfill functions proposed under 31-15-10B.

DUPLICATION/RELATION

The bill duplicates Senate Bill 198. Additionally, the bill relates to House Bill 230 and its duplicate Senate Bill 166. HB230 and SB166 add a new section of law to require the Department of Finance and Administration to implement a comprehensive system of managing the development and oversight of professional services contracts that are entered into by state agencies. It requires agencies enter into professional services contracts to improve the decision making process they use when determining whether to contract out government services and to prepare cost-benefit analyses.

EB/ar/njw