

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0073.01 Bob Lackner

SENATE BILL 10-136

SENATE SPONSORSHIP

Harvey,

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING A REQUIREMENT OF WRITTEN COMMUNICATION TO THE
102 ATTORNEY GENERAL WHEN THE HEAD OF A NONLEGISLATIVE
103 BRANCH OF STATE GOVERNMENT SEEKS TO EMPLOY OUTSIDE
104 LEGAL COUNSEL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

If the governor or chief justice makes a determination on behalf of a state agency in the executive or judicial branch of state government, as

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

applicable, to employ legal counsel of the agency's choice and the employment is not otherwise authorized by law, the governor or chief justice, as applicable, must send written communication apprising the attorney general of the agency's intention to employ outside counsel and the basis for the determination by the governor or chief justice that outside counsel may be employed consistent with existing legal requirements. The communication is a public record and is not to be protected against disclosure on the grounds of any legal or other privilege. The bill further requires that, if the employment of outside counsel results in any form of contingency fee or other arrangement by which the counsel's remuneration or compensation is tied to the counsel's performance in connection with the matter, employment of such counsel requires the approval of the attorney general, and any contract or other agreement entered into with such counsel must be approved by the attorney general.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-31-101 (1) (e), Colorado Revised Statutes, is
3 amended to read:

4 **24-31-101. Powers and duties of attorney general.**

5 (1) (e) (I) Whenever the attorney general is unable or has failed or
6 refused to provide legal services to an agency of state government, as
7 determined by the governor if the agency is in the executive branch or by
8 the chief justice if the agency is in the judicial branch, such agency may
9 employ counsel of its own choosing to provide such legal services. Any
10 expense incurred by reason of the employment of counsel pursuant to this
11 paragraph (e) shall be a lawful charge against appropriations for this
12 purpose made by the general assembly to the department of law.

13 (II) IF THE GOVERNOR OR CHIEF JUSTICE MAKES A DETERMINATION
14 ON BEHALF OF A STATE AGENCY IN THE EXECUTIVE OR JUDICIAL BRANCH
15 OF STATE GOVERNMENT, AS APPLICABLE, TO EMPLOY LEGAL COUNSEL OF
16 THE AGENCY'S CHOICE AND THE EMPLOYMENT IS NOT OTHERWISE
17 AUTHORIZED BY LAW, THE GOVERNOR OR CHIEF JUSTICE, AS APPLICABLE,

1 SHALL SEND WRITTEN COMMUNICATION APPRISING THE ATTORNEY
2 GENERAL OF THE AGENCY'S INTENTION TO EMPLOY OUTSIDE COUNSEL AND
3 THE BASIS FOR THE DETERMINATION BY THE GOVERNOR OR CHIEF JUSTICE
4 THAT OUTSIDE COUNSEL MAY BE EMPLOYED CONSISTENT WITH THE
5 REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (e).
6 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY SUCH
7 COMMUNICATION SHALL BE A PUBLIC RECORD OPEN TO INSPECTION IN
8 ACCORDANCE WITH THE PROVISIONS OF PART 2 OF ARTICLE 72 OF THIS
9 TITLE, AND SUCH COMMUNICATION SHALL NOT BE PROTECTED AGAINST
10 DISCLOSURE ON THE GROUNDS OF ANY LEGAL OR OTHER PRIVILEGE. IN
11 ADDITION TO ANY REQUIREMENT SPECIFIED IN SUBPARAGRAPH (I) OF THIS
12 PARAGRAPH (e), IF THE EMPLOYMENT OF OUTSIDE COUNSEL RESULTS IN
13 ANY FORM OF CONTINGENCY FEE OR OTHER ARRANGEMENT BY WHICH THE
14 COUNSEL'S REMUNERATION OR COMPENSATION IS TIED TO THE COUNSEL'S
15 PERFORMANCE IN CONNECTION WITH THE MATTER, EMPLOYMENT OF SUCH
16 COUNSEL SHALL REQUIRE THE APPROVAL OF THE ATTORNEY GENERAL,
17 AND ANY CONTRACT OR OTHER AGREEMENT ENTERED INTO WITH SUCH
18 COUNSEL SHALL BE APPROVED BY THE ATTORNEY GENERAL.

19 **SECTION 2. Act subject to petition - effective date.** This act
20 shall take effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part shall not take effect
26 unless approved by the people at the general election to be held in

1 November 2010 and shall take effect on the date of the official
2 declaration of the vote thereon by the governor.