

Fiscal Estimate - 2011 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 11-1062/2	Introduction Number AB-0223
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Description
 Awarding costs in administrative agency actions

Fiscal Effect

State:

No State Fiscal Effect
 Indeterminate

<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local:

No Local Government Costs
 Indeterminate

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	

Agency/Prepared By DNR/ Joe Polasek (608) 266-2794	Authorized Signature Joe Polasek (608) 266-2794	Date 9/27/2011
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Fiscal Estimate Narratives

DNR 9/27/2011

LRB Number 11-1062/2	Introduction Number AB-0223	Estimate Type Original
Description Awarding costs in administrative agency actions		

Assumptions Used in Arriving at Fiscal Estimate

The bill expands parties that are eligible to recover legal fees for cases they win against the State. Currently, small businesses, small non-profit organizations, and those with incomes under \$150,000 per year are eligible to recover legal fees when they prevail in administrative contested case hearings or in court cases against the State. This bill proposes expanding eligibility to all parties, including large businesses, large organizations and those with more resources for challenging State actions. They cannot recover costs if the Court finds the State is substantially justified in its position, or special circumstances would make the awarding of legal fees unjust. However, if the Court has ruled against the State, the Court may have done so because it felt the State was not substantially justified in its position and thus this standard may not offer much protection to the State upon losing a case.

The Department had 58 lawsuits filed and 40 contested case hearings filed against it in the last 12 months. Moreover, the Department has over 200 pending cases that are currently being adjudicated or resolved. Under this bill, given the uncertainty of litigation, for many of these cases the Department will be at risk for paying significant legal fees ranging from \$2,000 per case to over \$1 million per case for large, complex cases that span several years.

The bill does not appropriate new funds to pay for legal costs in the event that a Court rules against the Department in a case; therefore, it is assumed that legal costs would need to be paid from the Department's existing budget. The State has established a sum sufficient appropriation to pay for legal expenses and costs associated with certain judgements, orders, settlements of actions, appeals and complaints, and the State is covered under a liability insurance policy for coverage of claims filed against State officers, employees or agents. However, both of these resources have very limited applicability to cases that the Department is typically involved with, and neither provides coverage for the Department for contested case hearings.

Long-Range Fiscal Implications

Although, it is not possible to provide an estimate, given the uncertainty of litigation, this bill will result in substantial increased liability and costs to the Department over the long term.