

Fiscal Estimate Narratives

DOA 9/16/2011

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

Assembly Bill (AB) 223 would change current law by eliminating financial and entity size limitations for prevailing parties to be eligible to receive costs in administrative agency actions; and by allowing the awarding of costs to any trust or person that is a prevailing party unless the court finds that the agency was substantially justified in taking its position. Finally, the bill eliminates the requirement that hearing examiners and judges rely on federal case law as it was as of November 20, 1985.

The Department of Administration's (DOA) Division of Hearings and Appeals (DHA) hears administrative cases involving the Department of Administration, Department of Health Services, Department of Workforce Development, Department of Children and Families, Department of Transportation, Department of Public Instruction, Department of Agriculture, Trade and Consumer Protection, and the Department of Safety and Professional Services. A review of DHA records beginning in 2002 indicates that approximately 70 petitions for costs were filed in a ten year period, and about 30 of the petitions were granted. Most of the petitions arose from cases involving DHS or DCF. Because of the income limitations of the programs DHA does not anticipate a large increase in the number of petitions for costs.

DHA anticipates that it will receive more petitions for costs under AB 223, but the increase can be absorbed by current staff. However, it should be noted that the largest potential fiscal impact is on the agencies who are parties and may have to pay attorney fees or costs.

DOA's Division of Energy Services (DES) is a party in contested hearings involving the LIHEAP program. The proposed changes in AB 223 are not anticipated to have a fiscal impact on Energy Services because the program requires that participants must have income no greater than 60% of the state's median income. Therefore, eliminating financial criteria for prevailing parties would not impact the number of eligible parties. DES has never been ordered to pay attorney fees or costs.

Long-Range Fiscal Implications

Indeterminate.