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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/15/01 HB 775/aHJC/aHAFC/aSJC
 SHORT TITLE: Patent & Copyright Act SB _____
 ANALYST: Moran

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY01 | FY02 | FY01 | FY02 | | |
| No Fiscal Impact | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

| Estimated Revenue | | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected |
|-------------------|--------|-------------------------|----------------------|----------------------------|
| FY01 | FY02 | | | |
| | \$ 0.0 | | Recurring | Patent and Copy-right Fund |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files
 Attorney General's Office
 Economic Development Department

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment changes the revenue sharing formula between the state and the inventor to a fifty-fifty arrangement.

Synopsis of HAFC Amendment

The House Appropriations and Finance amendment strikes the appropriation of \$ 60,000.00 dollars that the bill originally sought. It does not, however, remove the newly created fund.

Synopsis of HJC Amendment

The House Judiciary Committee amendment allows for an exception to the bill's scope: it exempts employees from losing ownership to inventions (and the like) who are working in state education institutions, as defined in Article 12, Section 11 of the state constitution.

Synopsis of Original Bill

HB 775 appropriates \$ 60,000 from the general fund to the Economic Development Department (EDD) for the purpose of creating a new fund, the patent and copyright fund. Yet, much of this bill pertains to allowing the state ownership of "inventions, innovations or works of authorship" created by state employees who have used state facilities or equipment in the creation process; or have accomplished this creation within the scope of their employment. The EDD would be responsible for determining if current patents and copyrights are worth retaining, and the department would be accountable for applying and registering with the pertinent federal agencies for ownership of these copyrights and patents. The royalties derived from any of these patents or copyrights would be placed in the newly created fund. Also, these royalties would be shared with the original creator of the work, who would receive twenty five percent of the income collected, after expenses. This appropriation is to be used by the EDD from FY02 through FY04 to administer compliance with the provisions of this bill, to create rules and policies adhering to these provisions, and to train state agencies on the impact of this bill.

FISCAL IMPLICATIONS

The appropriation of \$ 60.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund. The EDD claims that this appropriation is a non-recurring cost to the general fund, for they are confident that the costs could be absorbed by their agency. Yet, it is foreseeable that this fund will require additional FTE's, and this bill does not state whether the EDD can use these funds to pay for the costs associated for copyrights or patents. Furthering this, if the state were to be granted a patent, besides the application fee, there are maintenance fees that run the lifespan of the patent. In essence, there are several imbedded recurring costs to this bill.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

According to EDD, the appropriation of \$60,000 will be required for the formation of rules and training of state agencies, yet there should be no recurring cost to the state or EDD.

TECHNICAL ISSUES

According to the Attorney General's office, if HB 775 is enacted, there may be conflicts with the existing policy or programs of state agencies who currently oversee and manage their own intellectual property rights in copyright and patent. Some state agencies have their own regulations or policy governing work-for-hire situations. Also, the Attorney General's Office suggests that Section 57-3C-4(C) is unclear regarding to whom the economic development department is applying, and whether the department pays the fee for registration from the fund created in Section 57-3C-5. Finally, they argue that sharing a portion of proceeds from income derived from state property with a non-state

entity or a private individual violates Section 14 of the state constitution (anti-donation clause).

RJM/njw:ar