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FISCAL IMPACT REPORT



SPONSOR: Hobbs DATE TYPED: 2/5/02 HB 251

SHORT TITLE: Legal Representation of State SB _____

ANALYST: J. Sandoval

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|-------------------------|------------------|
| FY02 | FY03 | FY02 | FY03 | | |
| | | NFI | | | |
| | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC files

Responses Received From
Office of the Attorney General
State Land Office

No Response
The Department of Finance and Administration
The Office of the Governor

SUMMARY

House Bill 251 amends current language and enacts new language that establishes a much more defined role that the Attorney General is to have part in, when representing a governmental entity or an employee of that entity acting within the scope of his employment. This bill mandates stronger communication between the Attorney General, entities represented by the Attorney General and the Governor. When it appears that the Attorney General's interest in a matter conflicts with the interests of an officer or employee that is being represented by the Attorney General, the officer or employee may employ independent legal counsel.

This bill also amends section 36-1-22 NMSA 1978 by taking the Attorney General out of this statute that authorizes the State's district attorneys to compromise or settle a suit or proceeding, or grant a release or enter satisfaction in whole or in part, of a claim or judgment in the name of the county or take other appropriate action.

Significant Issues

The governmental entities that this bill refers to are the Governor, Lieutenant Governor, Secretary of State, State Auditor, Commissioner of Public Lands and a governmental entity subject to the executive direction of one of the foregoing officers.

ADMINISTRATIVE IMPLICATIONS

This bill does not define how independent legal counsel is to be paid for.

TECHNICAL ISSUES

It would be advisable for the term "matter" (as used, for example, in the provision requiring the attorney general to keep the client agency "reasonably informed about the status of a matter") to be defined in section 1 of this bill.

According to the State Land Office there appears to be a conflict between Section 1 (conferring ultimate case management and settlement authority on the client agency) and Section 2(A)(1) (confering power on the attorney general "to take any action on behalf of the state"). A court would harmonize the two sections, but inserting "subject to Section 1" at the beginning of Section 2(A)(1) would eliminate any apparent conflict or source of dispute.

OTHER SUBSTANTIVE ISSUES

According to the State Land Office this bill would, "...transform the sometimes adversarial relationship between the attorney general and client agencies into a normal attorney-client relationship, giving the client express statutory authority to manage and compromise their own lawsuits. This would be consistent with the commissioner's constitutional jurisdiction over state public lands, also known as state trust lands, and his responsibility to optimize revenues from these lands in accordance with the New Mexico enabling act and state constitution."

JFS/njw