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## FISCAL IMPACT REPORT

SPONSOR Silva DATE TYPED 03/08/05 HB 469

SHORT TITLE Maximum Amount for Supersedeas Bonds SB \_\_\_\_\_

ANALYST McSherry

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	Indeterminate	Indeterminate	Recurring	Indeterminate

(Parenthesis ( ) Indicate Revenue Decreases)

House Bill 469 duplicates SB 306

### SOURCES OF INFORMATION

LFC Files  
Administrative Office of the Courts (AOC)  
Corrections Department (CD)  
Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 469 does not appropriate funds.

The proposed law would limit superdedeas bonds to an amount of \$50 million in civil actions. Should the bill pass, amendments would be made to Section 39-3-22, Supersedeas and Stay in Civil Actions, A and B. The current law allows a supersedeas or stay of execution only if, within 60 days, the appellant or plaintiff executes a bond to the adverse party in double the amount of judgment. The proposed amendment limits the doubled amount to \$50 million. The current law also allows for amount of bond to be set by a district court for an appealed decision or writ of error which does not have a fixed amount of money. The proposed amendment limits this amount to be set by the district courts to \$50 million.

Additional language in the bill allows that if an appellee can prove by a preponderance of the evidence that an appellant is dissipating assets, the appellee may seek a court order to protect the appellee and require the appellant to post a bond that is equal to the total amount of judgment.

### Significant Issues

According to the Administrative Office of the Courts (AOC), SCRA 1986, 1-062 (D) provides that the bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal. Further, AOC cites, “the stay is effective when the supersedeas bond is approved by the district court, and that the bond shall be conditioned on the satisfaction of and compliance with the judgment in full together with costs, interest and damages for delay if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award. The surety, sureties or collateral securing such bond, and the terms thereof, must be approved by and the amount fixed by the district court. Each personal surety shall be required to show a net worth at least double the amount of the bond. When the judgment is for the recovery of money, the amount of the bond shall be such sum as will cover the whole amount of the judgment remaining unsatisfied, plus costs, interest and damages for delay.”

AOC asserts that although judgments that would be affected by this proposed law are extremely rare, in those cases the victorious party (either plaintiff or defendant) would not adequately be protected during the appellate process.

AGO points out that Section (A) of HB 469 places a cap on the bond amount for civil actions in which an appeal has been taken and appeal by a writ of error. The intent of HB 469 Section (B) may be to place a cap on the amount of supersedeas bond in appeals from the district court in addition to appeals through writ of error. However, AGO contends, the language in Section (B) could be read to place a cap only on the appeals from the district court excluding appeals through the writ of error.

This bill may raises a constitutional question concerning separation of powers between the Legislative and Judicial branches of government.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. It is unknown, according to AOC, if enactment of this bill would impact performance measures as they relate to judicial budgeting.

### **FISCAL IMPLICATIONS**

There is no appropriation made in this bill.

### **OTHER SUBSTANTIAL ISSUES**

The Attorney General’s Office raises the question as to once a notice of appeal is filed, who would have jurisdiction over a hearing on the supersedeas bond?

### **ALTERNATIVES**

AGO suggests determining bond amount as a percentage or multiple of the judgment or using other criteria that would relate to specifics of a case rather than a blanket rule.

**ADMINISTRATIVE IMPLICATIONS**

No administrative implications resulting from the enactment of this bill are known at this time.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 306, Maximum Amount for Supersedeas Bonds, duplicates HB469.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

There would not be a maximum statutorily-established amount for supersedeas bonds.

**EM/lg**