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FISCAL IMPACT REPORT

ORIGINAL DATE 02/14/13
 LAST UPDATED 03/12/13 HB 531/aHAFC/aHFI#1

SPONSOR Chasey

SHORT TITLE Attorney General Legal Service Contracts SB _____

ANALYST Cerny

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
Indeterminate	Indeterminate	Indeterminate	Recurring	Attorney General Contingent Legal Services Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Attorney General's Office (AGO)

SUMMARY

Synopsis of HFI Amendment #1

House Floor Amendment #1 requires that funds remaining in the Attorney General Legal Services Fund after payment to the legal contractor for services and any other expenses associated with the claim shall be 1) disbursed according to the terms of the court order or settlement if the action was brought pursuant to the Unfair Practices Act; 2) transferred to the program or fund that suffered the loss if as a result of an action concerning an investment or other loss suffered by a program or fund of the state; 3) in all other cases, transferred to the General Fund.

Synopsis of HAFC Amendment

The House Appropriation and Finance Committee amendment to House Bill adds language that the Attorney General Contingent Legal Services Fund is appropriated by the legislature.

Synopsis of Original Bill

House Bill 531 (HB 531) authorizes the AGO to enter into contingency fee contracts with private sector attorneys to pursue claims on behalf of the State of New Mexico. The bill would require any contractor signing a contingency fee contract with the Attorney General to provide detailed disclosures of campaign contributions made to the Attorney General or governor or to any committee created by or operating on behalf of the Attorney General or governor, or to any agent of either. Finally, the bill provides that contingency fee contracts must be awarded in conformity with the provisions of the Procurement Code.

HB 531 also creates the "Attorney General Contingent Legal Services Fund" (AGCLSF) in the state treasury to make disbursements and transfers pursuant to this section. The fund will be administered by the AGO and money in the fund is appropriated to the office to pay legal fees of contingent fee contracts for legal services and reasonable costs and expenses associated with a claim. Money from the fund shall be disbursed on warrants signed by the Secretary of Finance and Administration pursuant to vouchers signed by the Attorney General or the Attorney General's authorized representative.

When pursuing a claim and using legal services on a contingent or partially contingent fee basis, all money received as satisfaction of the claim shall be deposited in the Attorney General contingent legal services fund. The AGO will disburse the amount that is due a legal contractor and any other costs and expenses associated with the claim.

The balance that remains in the AGCLSF shall be for:

- (1) an action brought pursuant to the Unfair Practices Act, transferred to the AGO's Consumer Protection Fund;
- (2) an action concerning an investment or other loss suffered by a program or fund of the state, transferred to the program or fund that suffered the loss; and
- (3) a case awarding restitution to New Mexico residents, disbursed according to the terms of the court order or settlement agreement.

HB 531 carries an emergency clause.

FISCAL IMPLICATIONS

HB 531 has an indeterminate fiscal impact as it is not possible to know how much in damages will be recovered by attorneys hired on a contingent basis.

Continuing Appropriations Language

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

SIGNIFICANT ISSUES

The provisions of the bill mirror NMSA 1978, §§ 6-8-7 and 6-8-23, which respectively give authority to the State Investment Council to hire outside counsel on a contingency fee basis and create a fund to facilitate the payment of such fees. The bill is also similar to NMSA 1978, § 22-

11-6, which gives the Educational Retirement Board the authority to hire outside counsel on a contingency fee basis.

At present, the State has more valid claims for money damages than the AGO has the resources to pursue. While there is no doubt that the AGO has the authority to hire outside counsel, with its limited budget the AGO cannot pay outside counsel to pursue all of those claims. The AGO needs a way to pay those attorneys or it cannot pursue valid claims on behalf of the State and its various instrumentalities.

The Legislature has given both the State Investment Council and the Educational Retirement Board contingency fee authority. If the Attorney General can hire outside counsel on a contingency fee basis, it will make it much easier to provide adequate representation to those agencies in the event they suffer losses in the funds they manage.

TECHNICAL ISSUES

To implement LFC guidance on page 2, line 15 add at the end of the line “appropriated by the legislature and”

CAC/svb:blm