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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/09

SPONSOR Kintigh LAST UPDATED HB 858

SHORT TITLE Disbursement of Class Action Suit Funds SB

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate See Below	Indeterminate See Below			General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 858 eliminates the application of leftover class action funds to a cy pres* fund which could support legal services programs in New Mexico. The bill provides that in any class action litigation settlement or judgment, all funds recovered by the plaintiff class that are not properly applied to attorney fees and costs of litigation shall be paid to class members of the litigation. If any class members cannot be located after a settlement or judgment, and surplus funds remain after disbursements for attorney fees, costs and payment to class members are made, remaining funds shall be distributed pro-rata among class members who were located. Remaining funds shall not be distributed according to the common law cy pres doctrine.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Residual, unclaimed balances may remain from class action settlements and other court-administered funds. Courts have applied the equitable doctrine of cy pres to award such balances to charitable organizations provided there is a sufficient connection between the purposes of the award and the underlying litigation. Working with the State Bar Legal Services and Programs Committee, the Access to Justice Commission, a commission created by the Supreme Court is developing a proposed amendment to Rule 1-023 NMRA, class actions modeled on rules adopted in Washington, Illinois, and Massachusetts that will direct residuary funds remaining from class action settlements to support legal services programs in New Mexico. Once formally approved by the Commission, the amendment will go to the Supreme Court.

Civil legal aid helps low-income New Mexicans with civil legal problems, such as: domestic violence, family law, child support, child custody, landlord/tenant disputes, foreclosures, unsafe housing, TANF, social security, healthcare, Medicare, Medicaid, and predatory lending. Funds from this bill will not be used to represent people in criminal matters. All legal services programs have financial eligibility criteria for clients. Generally families must earn under 125% of the federal poverty level that is about \$25,000 for a family of four. One person in five in New Mexico, 411,000 people, meets this criterion. Approximately 25% of civil legal aid clients are Native American and 50% are Hispanic. Many clients are single mothers. This cy pres funds will probably go to the Civil Legal Services Commission, established by the Legislature, to distribute funds to non-profit civil legal service providers. The Commission grants funds, oversees their use, and operates with strict accountability.

HB858 will operate to eliminate a potential source of funding for civil legal aid for low-income New Mexicans. Providing greater assistance to low-income persons with civil legal disputes may help the courts function more efficiently and hasten the resolution of cases. Currently, many low-income New Mexicans with civil legal matters try to navigate the legal system by representing themselves. Self-represented litigants commonly slow the legal process, system by representing themselves. Self-represented litigants commonly slow the legal process, file the wrong documents, do not provide the correct supporting material, and do not understand the legal process. Court hearings with self-represented litigants take longer and additional hearings are commonly needed. In Albuquerque, over half of all persons in family law matters represent themselves. That is consistent throughout the state.

The AGO states that this bill may result in a reduction in attorneys' willingness to pursue class actions in cases where the class has a large number of members who are not likely to be located or who are not likely to participate in the action. Attorneys filing class actions sometimes rely upon the return of non-deliverable funds as profit for pursuing the action.

ADMINISTRATIVE IMPLICATIONS

The courts should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB is related to SB 663, Class Action Lawsuit Reform Act that limits attorney fees in class action cases to an amount not to exceed one thousand times the value of the average amount received by the class members. Both bills seek to reduce windfall profits to attorneys that file class action suits.

Once formally approved by the Access to Justice Commission, the amendment to Rule 1-023 NMRA will go to the Supreme Court. If adopted by the Supreme Court, the court rule will directly conflict with HB 858.

OTHER SUBSTANTIVE ISSUES

*The cy près doctrine is a legal doctrine that first arose in common law courts of equity. The term can be translated from old Norman French to English as "as near as possible" or "as near as may be". The doctrine originated in the law of charitable trusts, but has been applied in the context of class action settlements in the United States.

When the original objective of the settlor or the testator became impossible, impracticable, or illegal to perform, the cy près doctrine allows the court to amend the terms of the charitable trust as closely as possible to the original intention of the testator or settlor, to prevent the trust from failing.

DW/svb