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FISCAL IMPACT REPORT

SPONSOR Adair **ORIGINAL DATE** 01/30/10
LAST UPDATED 02/05/10 **HB** _____

SHORT TITLE Developmental Disabilities Supplemental Funds **SB** 174

ANALYST Chabot

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|------------|------------|-------------------------|------------------|
| FY10 | FY11 | FY12 | | |
| | \$20,600.0 | \$12,500.0 | Recurring | Federal Funds |

(Parenthesis () Indicate Revenue Decreases)

Relates to HB2, SB173 and SB 175

SOURCES OF INFORMATION

LFC Files

Responses Received From

Developmental Disabilities Planning Council (DDPC)
Department of Health (DOH)

Responses Not Received From

Attorney General

SUMMARY

Synopsis of Bill

Senate Bill 174 would prohibit the DOH from using any funds to pay plaintiffs' attorneys or their expert witnesses or any other expense claimed for fiscal year 2010 beyond what has been spent in the *Jackson v. Ft. Stanton* lawsuit. Any funds designated for this purpose will be used to enroll additional clients from the waiting list for the development disabilities Medicaid waiver.

FISCAL IMPLICATIONS

DOH is paying approximately \$5 million in court related costs, including plaintiff attorney feeds, expert witnesses, court directed funding for a 706 expert, and other court related costs. According to DOH, it has paid \$162.7 thousand in fees to plaintiffs' attorneys through November, 2009. If these funds were applied to client services and matched at the federal medical assistance percentage (FMAP) estimated for FY11 under the American Recovery and Reinvestment Act of 2009 enhanced rates of 80.49 percent federal to 10.51 percent general fund,

an additional \$20.6 million would be available from federal sources. In FY12, the FMAP will revert to the base rate of 71.35 federal and 28.65 state and \$12.5 million in federal funds would be available.

SIGNIFICANT ISSUES

The LFC does not have legal staff to assess the impact of this bill. The Attorney General stated it did not do analysis of appropriation bills even though there maybe significant legal issues.

DOH provides the following: “*Jackson v. Ft. Stanton Hospital and Training School, et al.*, is a class action lawsuit originally filed in 1987. There are numerous parties to the lawsuit. The Plaintiff class members are former residents of the Los Lunas Hospital and Training School (LLHTS) and Fort Stanton Hospital and Training School (FSHTS) who sought community placement and closure of LLHTS and FSHTS. Interveners are those who opposed the closure of the institutions and sought to upgrade those institutions. Defendant agencies are the Department of Health (DOH), Human Services Department (HSD), and the Division of Vocational Rehabilitation (DVR). In 1990, the Court found constitutional and statutory violations in the defendants’ operation of LLHTS, FSHTS and their community system for persons with developmental disabilities in New Mexico. The Court ordered that defendants correct the violations.

A Joint Stipulation on Disengagement (JSD) was agreed to by the parties in 1997, which called for the closure of both training schools, transition of residents to the community, strengthening the community service system infrastructure, and the development of additional services and supports for class members. A Plan of Action (POA) was also agreed to, which was designed to achieve the desired outcomes and implement the activities required by the JSD. The POA required defendants to comply with 53 Desired Outcomes. To date, 38 Desired Outcomes have been disengaged.

In 1998, the former Community Monitor issued recommendations following her annual audit of class member services which are also ordered to be implemented by the court.

In 2004, plaintiffs and interveners filed contempt motions and plaintiffs filed a motion to re-engage case management. In response to those motions, the parties negotiated an agreement to resolve the issues known as *Appendix A* for the JSD. All actions contained within *Appendix A* were to have been completed within 18 months. The list of agreed actions in *Appendix A* address the following areas: Case Management, Incident Management, Crisis Services, Supported Employment, Day Services, Quality Enhancement, Behavior Services, Sexuality Services, Division of Vocational Rehabilitations. At this point in time, the parties have not reached agreement as to whether the state has sufficiently completed all actions in *Appendix A*.

In 2007, the Court appointed an expert to assist the court in determination of compliance with orders of the court including the JSD, POA, 1998 audit recommendations and *Appendix A*.

Secretary Vigil has identified compliance with the JSD, including the POA, 1998 audit recommendations and *Appendix A* as a high priority of this administration. Accordingly, high ranking staff members have been directed to aggressively and collaboratively address compliance with all requirements. The fundamental principle for DOH is to provide quality services to class members in accordance with these established requirements.”

DOH concludes that while the bill would prohibit DOH from paying attorneys' and expert witness fees, "it does not prohibit the Federal court from ordering the state to pay these fees since the case is in the federal courts nor does it limit the ability of a Federal court to impose a judgment, monetary or otherwise."

While providing no substantiating evidence, DDPC questions the legality of the bill.

From information provided to LFC by DOH from FY2003 through FY2009, DOH expended \$23.6 million in legal and related costs.

TECHNICAL ISSUES

DOH states the citation for the case is incorrect. The case number is USDC NO. CIV 87-0839.

ALTERNATIVES

DOH and the Attorney General should take all steps necessary to resolve the lawsuit.

GAC/svb