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FISCAL IMPACT REPORT

SPONSOR: Komadina DATE TYPED: 02/22/01 HB _____
 SHORT TITLE: Endangered Species Damages SB 538
 ANALYST: Dotson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Fiscal Implications		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 764

SOURCES OF INFORMATION

Office of the State Engineer
 Department of Game and Fish
 Administrative Office of the Courts

SUMMARY

Synopsis of Bill

SB 538 grants authority to counties and to the state to pursue damage claims on behalf of their residents against a United States agency if the agency lists, declares habitat or issues a management plan in connection with an endangered species and the action is based on insufficient scientific data or credible studies and the action results in economic damage to a resident.

Significant Issues

Protecting the citizens of the State from economic harm relating to recovery actions under the Endangered Species Act is a reasonable goal. However, SB 538 does not serve this purpose. The bill ignores the existing sovereign immunity protections of the United States. Moreover, the bill is ambiguous and vague as to how to measure or evaluate economic (or monetary) damage incurred by individuals resulting from federal action and fails to describe the standards to be used to determine if scientific data is not credible or is insufficient.

PERFORMANCE IMPLICATIONS

According to the State Engineer, litigation involving the Endangered Species Act is a major cornerstone of the State Engineer's program for interstate stream compliance. To do this, the State Engineer and the Interstate Stream Commission are challenging federal government implementation of that Act in litigation for failure to follow applicable statutes such as NEPA and are providing habitat alternatives that properly balance state, local and federal interests (such as off-stream refugia in aquariums) which serve to counter unilateral actions taken by the United States to drastically modify the historic operations of our river systems. Thus, the State's efforts are to prevent economic damage to the State and its residents. Providing a questionable cause of action for damages which have resulted after federal action has been taken is not inconsistent with the agency's current focus but does not support or promote the agency's desire to remove, or greatly lessen the State's exposure, or those of its residents, in the first instance.

FISCAL IMPLICATIONS

SB 538 contains no appropriations. However litigation generated under SB 538 would end up before the Supreme Court, and appropriations to pursue these actions would be substantial.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

SB 538 conflicts with Federal sovereign immunity and the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq. SB 538 conflicts with the United States Constitution, which gives the Federal government authority to regulate endangered species, Article I, Section 8, clause 3 ("Commerce Clause"). SB 538 conflicts with the Endangered Species Act of 1973 which detail the processes and requirements for Federal agency decision making regarding endangered species, 16 U.S.C. §§ 1531-1544.

TECHNICAL ISSUES

The district courts referred to in the bill will have to be federal district court.

OTHER SUBSTANTIVE ISSUES

According to the State Engineer, the State Engineer and the Interstate Stream Commission will continue to focus efforts on ensuring federal actions comply with federal law and that balanced alternatives are made available to oppose and respond to unilateral federal actions taken involving the Endangered Species Act. If the Legislature believes that federal agency decisions are unsupported by sufficient scientific evidence, the State could take steps to appeal or otherwise challenge such decisions under existing federal law.

PD/ar/njw