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FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 02/25/11 HB 489
LAST UPDATED _____
SHORT TITLE Unfair Practices Act AG Attorney Fees SB _____
ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)*

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Court-ordered payment of fees from defendants		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

***See fiscal impact.**

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Attorney General (OAG)

Administrative Office of the Courts (OAC)

SUMMARY

Synopsis of Bill

House Bill 489 allows the court to award reasonable attorney fees and costs to the Attorney General in actions where the state prevails in claims involving the Unfair Practices Act (UPA). HB 489 allows the OAG to contract with outside counsel to pursue enforcement of the Act and extends the recovery of attorney fees and costs to the outside counsel contracted by the Attorney General for enforcement on behalf of the state.

The effective date is July 1, 2011.

FISCAL IMPLICATIONS

HB 489 has two fiscal implications for the OAG. First, the bill has the potential to lower the operating costs to the OAG by having the defendants reimburse the OAG reasonable attorney fees in cases where the AG prevails. The amount, dependent on the number of cases brought under the Act, the number of cases where the AG is successful, and the amount the court determines is "reasonable", would be recurring but is indeterminate. If enacted, once a history of

the caseload, success rate, and typical attorney fees have been determined, it is possible the bill could result in a reduction of the general fund to the OAG.

Second, the bill gives the ability of the OAG to contract with outside counsel for this type of case as well as assign the AG's right to an award of attorney fees and costs to the outside counsel. In cases where the outside counsel won, the effect would be cost-neutral. However, it is unclear whether the OAG would still need to pay hourly rates up-front, in which case the operating costs for the OAG could be impacted, particularly where the outside attorney did not prevail.

The AOC suggests that "Enactment of this bill could provide an incentive for the attorney general to pursue more actions under the Unfair Practices Act, resulting in an increase in cases filed in the district courts. The AOC is currently working on possible parameters to measure resulting case increase. In addition, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes."

SIGNIFICANT ISSUES

The AOC provides the following background information:

The Unfair Practices Act, §§57-12-1 through -24, prohibits unfair or deceptive trade practices, as well as unconscionable trade practices or acts in connection with the sale, lease, rental or loan of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts.

The OAG explains the impetus for the bill:

The UPA already provides for attorney fees and costs to private attorneys seeking enforcement of the UPA on behalf of private individuals. The purpose of awarding attorney fees and costs is to encourage private enforcement of the Act by making it more economically feasible to bring UPA causes of action. However, the decision of whether to accept a case or not is at the sole discretion of the private attorney. Factors that may deter private attorneys from accepting cases involving UPA violations include cases that require: (1) maintaining a large support staff, (2) sustaining high costs of protracted litigation (3) addressing legal issues that are not economically feasible when handled individually by a private attorney, i.e. declaratory judgment actions or (4) addressing legal issues that can be more effectively handled by the state, i.e. injunctive relief.

HB 489 provides the financial resources allowing the AG to hire and compensate contract attorneys through the assignment of court awarded attorney fees and costs. By having a source of revenue to compensate contract attorneys, the AG has the flexibility to enter into agreements with attorneys with expertise in a particular type of case while providing a mechanism to provide for compensation through the litigation. HB 489 provides the financial resources and flexibility to allow the AG to more effectively enforce the Act against violators and to respond to the changing currents and fluctuations in unfair and deceptive business activity in order to better protect the public.

PERFORMANCE IMPLICATIONS

The bill might improve enforcement of the Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Enforcement of the Act would remain as currently authorized.

POSSIBLE QUESTIONS

1. Would the contract work like a contingency fee contract?
2. Would the OAG have to pay up-front hourly fees to outside attorneys?
3. Do other states handle these types of cases this way?

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