

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 8, 2003

TO: Honorable Robert Duncan, Chair, Senate Committee on Jurisprudence

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1478 by West (Relating to protecting certain public employees who report violations of law.), Committee Report 1st House, As Amended

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code to extend to whom protection is afforded when a state or local government employee reports a violation of law by the governmental entity and to adjust the applicable caps for damage awards. Award caps currently range from \$50,000 to \$250,000 depending on the number of persons employed by the government entity; the bill would limit the cap to no more than 10 times the public employee's annual salary, exclusive of overtime compensation.

The bill would also reduce the level of burden an employee must show regarding adverse personnel actions taken against them as those actions relate to a report made by the employee of a law violation. The bill would take effect September 1, 2003 and would apply only to lawsuits filed on or after that date.

The Office of Attorney General (OAG) estimates there would likely be an increase in the number of lawsuits filed by government employees as a result of implementation of the provisions of the bill. The OAG estimates that if the number of cases were to increase significantly, two additional assistant attorneys general would be needed to handle the caseload. If, however, the number of cases does not increase significantly, the primary fiscal impact would be only if the complainants were to win their lawsuits and be awarded damages of up to 10 times their annual salary. For example, the average salary of a full-time classified state employee is \$32,238, according to the State Auditor's Office; the maximum damages that could be awarded to an employee making the average salary would be \$322,380, which is \$72,380 higher per case than the current highest potential damage award allowed. Only if a complainant were to have an annual salary of \$5,000 would the impact remain at the current lowest level of potential loss to a government entity.

In calendar year 2001, the state paid out damages of \$712,000 in Whistle Blower lawsuits for 10 cases (average of \$71,200 per award), and paid out \$344,000 in damages in calendar year 2002 for 11 cases (average \$31,273 per award). If the state had been required to pay the maximum in 2002 for the 11 cases, the state would have paid approximately \$2.7 million. If the state were to be required to pay out the maximum under the proposed bill for 11 cases, assuming each complainant earned the state employee average of \$32,238, the state would pay out approximately \$3.5 million in damages, an increase of \$800,000.

The increase in cost to the state would vary depending on the number of cases lost, the salary of the complainant, and at what level the damages are awarded, up to 10 times the complainant's annual salary.

Local Government Impact

The fiscal impact to units of local government would depend on the number of lawsuits lost and the level of damages awarded to the complainant, which could be significant.

Source Agencies: 302 Office of the Attorney General, 356 Texas Ethics Commission

LBB Staff: JK, GO, DLBa, BL, WP