

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 17, 2005

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1026 by Nixon (Relating to the resolution of certain contract claims against the state.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1026, As Introduced: a negative impact of (\$1,105,207) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$574,423)
2007	(\$530,784)
2008	(\$530,784)
2009	(\$530,784)
2010	(\$530,784)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	(\$574,423)	7.0
2007	(\$530,784)	7.0
2008	(\$530,784)	7.0
2009	(\$530,784)	7.0
2010	(\$530,784)	7.0

Fiscal Analysis

The bill would amend the Government Code, regarding procedures for the resolution of contract claims against the state. The provisions would amend §2260.104(e) to provide that the decision of the Administrative Law Judge (ALJ) may be appealed for abuse of discretion. Section 2260.104(e) currently provides that the ALJ's decision may not be appealed. The bill would amend §2260.105(a) to provide that a contractor may recover reasonable attorney's fees if the ALJ finds, by a preponderance of the evidence, that the contractor's claim or any part of the claim is valid. The bill deletes from §2260.105 the current provision that the ALJ's decision is a final decision only if the total amount of damages awarded is less than \$250,000.

In addition, the bill would amend §2260.1055(a) to provide that if the ALJ determines that a claim involves damages and attorney's fees, the total amount of which is more than the unit of state

government has available from money appropriated to it for the payment of contract claims and for payment of the contract that is the subject of the claim, the ALJ shall issue a report containing findings and recommendations to the legislature. Currently, the ALJ issues such a report to the legislature if the ALJ awards the contractor \$250,000 or more.

According to the Office of the Attorney General (OAG), the provisions of the bill allows for appeals of SOAH decisions to district court where the law currently does not provide for appeals to district court. A plaintiff need only allege an abuse of discretion to allow an appeal to survive a plea to the jurisdiction. The number of cases that go to SOAH and that are appealed would determine the impact on the OAG, but it is anticipated that most decisions will be appealed.

The bill would take effect September 1, 2005.

Methodology

According to the State Office of Administrative Hearings (SOAH), it would continue to be entitled to recover its costs in cases brought under Government Code Chapter 2260. However, SOAH does not know the number of cases it might receive under Chapter 2260. Therefore, SOAH cannot predict the impact on FTEs or its other workload. As long as SOAH can recover its costs in Chapter 2260 cases, the provisions would have no significant negative fiscal impact.

SOAH indicates that it is unclear how the presiding ALJ in a case under Government Code Chapter 2260 will make the determination required by §2260.1055(a) of whether the unit of state government has available funds to pay the claim. The requirement may have implications for its handling of these cases that SOAH cannot foresee. For the purposes of this analysis, no costs are reflected in the table above regarding this issue.

According to the Comptroller's Office, the removal of the \$250,000 cap and the inclusion of attorney's fees could increase the amount of claims paid by the state. However, the fiscal impact of the potential increase in claims and the effects of the increased number of judicial reviews subsequent to the repeal of Section 2260.104(f) cannot be estimated. Therefore, the table above does not reflect any fiscal impact related to implementing this provision of the bill.

Based on the analysis of the Office of the Attorney General (OAG), it is anticipated that most decisions would be appealed. Therefore, the OAG would require the following additional staff to handle the additional legal workload: 1 FTE Assistant Attorney General III, 2 FTEs Assistant Attorney General V, 1 FTE Assistant Attorney General VI, 1 FTE Legal Secretary I, 0.5 FTE Legal Secretary II, 0.5 FTE Legal Assistant II, and 1 FTE Legal Assistant III. Annual salaries total \$372,225 and benefits total \$110,700. The OAG anticipates \$91,498 in overhead costs the fiscal year, which includes technology costs and \$47,859 in subsequent years.

Technology

According to the OAG, it would require a one-time cost of \$14,259 in fiscal year 2006 for technology needs (network stations) for the additional FTEs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 362 Texas Lottery Commission, 529 Health and Human Services Commission, 592 Soil and Water Conservation Board, 601 Department of Transportation, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: JOB, SR, MW, DE