

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 4, 2015

TO: Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3176 by Smithee (Relating to claims of patent infringement; providing civil penalties; imposing fees.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3176, As Introduced: a negative impact of (\$2,338,838) through the biennium ending August 31, 2017.

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
2016	(\$1,995,631)
2017	(\$343,207)
2018	(\$1,468,207)
2019	(\$1,468,207)
2020	(\$1,468,207)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund	Change in Number of State Employees from FY 2015
	1	
2016	(\$1,995,631)	17.0
2017	(\$343,207)	17.0
2018	(\$1,468,207)	17.0
2019	(\$1,468,207)	17.0
2020	(\$1,468,207)	17.0

Fiscal Analysis

The bill would amend the Business and Commerce Code to require the Secretary of State (SOS) to establish a database and rules for certain claims of patent infringement, and require the Office of the Attorney General (OAG) to investigate certain patent infringement claims and adopt rules to establish the procedure for issuing Certificates of Authority to certain applicants. The bill would

also require the SOS and OAG to establish certain fees.

Under the provisions of the bill, the SOS indicates the fiscal impact to the agency would be \$1,583,157 in fiscal year 2016, and \$741,845 each fiscal year from 2017-2020. Costs include salaries for 11.0 FTEs, other operating, technology, and benefits. The SOS would establish a database and rules for certain claims of patent infringement.

The bill does not identify where the fee charged by SOS would be deposited. However, the SOS estimates a gain to General Revenue of \$1,125,000 in fiscal year 2016, and \$1,125,000 in fiscal year 2017 from collected fees as authorized by the bill. The agency does not anticipate further filings beyond fiscal year 2017 due to the finite number of eligible entities. Therefore, in fiscal years 2018 through 2020, the agency does not anticipate sufficient revenue to offset the on-going administration costs required by the bill and it is assumed that the costs would be supported by General Revenue.

The OAG indicates the fiscal impact to the agency would be \$1,537,474 in fiscal year 2016, and \$726,362 each fiscal year from 2017-2020. Costs include salaries for 6.0 FTEs, lease space, travel, and capital equipment. The bill would allow the OAG to collect a fee related to issuing Certificates of Authority to be deposited into General Revenue.

The OAG indicates the revenue collected from the fee related to issuing Certificates of Authority cannot be determined due to the unknown number of entities that would apply.

The bill would take effect on September 1, 2015.

Methodology

The SOS assumes that approximately 3,000 business entities would be required to register under the provisions of the bill. This registration would occur within the first two years (2016-2017). The current filing fee for a foreign filing entity to register to transact business in Texas is \$750. The agency anticipates that the fee for registration under the bill would be set at a comparable amount and deposited to the general revenue fund.

The SOS estimates the bill provisions would require one Attorney V (1.0 FTEs), six Administrative Assistants III (6.0 FTEs), and four Customer Service Representatives III (4.0 FTEs), with a combined fiscal year cost of \$522,132 for salaries (\$390,000) and related benefits (\$132,132).

The additional Administrative Assistants would process filings and perform data entry. The additional Customer Service Representatives would answer inquiries from the public. The additional Attorney would draft rules, coordinate with legal staff from the OAG, and respond to inquiries relating to registration requirements received from both patent targets and patent assertion entities.

In fiscal year 2014, 830 patent lawsuits were filed in the Eastern District of Texas, United States District Court. Not all of the cases filed would fall under the purview of the bill. It is assumed the OAG would be responsible for investigative and legal action in a significant number of cases under the bill provisions.

The OAG estimates the bill provisions would require one Assistant Attorney General V (1.0 FTEs), one Assistant Attorney General VII (1.0 FTEs), one Investigator IV (1.0 FTEs), one Investigator VI (1.0 FTEs), one Legal Assistant IV (1.0 FTEs), and one Administrative Assistants IV (1.0 FTEs), with a combined fiscal year cost of \$631,972 for salaries (\$472,043) and related benefits

(\$159,929).

The additional Assistant Attorneys General, one Investigator, and Legal Assistant would be responsible for investigations and legal action of certain bad faith claims of patent infringement. The additional Investigator and Administrative Assistant would investigate the qualifications of applicants for Certificates of Authority and maintain information related to the investigations.

Technology

There would be a technology impact for the SOS related to computer hardware, software, and creation of a new database to accommodate filings, and data center costs for servers, storage, maintenance, and security, estimated to be \$466,500 in fiscal year 2016, and \$210,000 in each subsequent fiscal year.

There would be a technology impact for the OAG related to computer hardware, software, telecommunications equipment, database creation, and network storage estimated to be \$715,250 in fiscal year 2016 and \$14,040 in subsequent fiscal years.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts,
307 Secretary of State

LBB Staff: UP, FR, EP, CM, AG, TBo