

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 11, 2023

TO: Honorable Todd Hunter, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1610 by Leach (Relating to the defense of this state or a state agency in actions challenging the constitutionality of a state statute.), **As Introduced**

The bill would create an indeterminate cost to the state due to the number of legal cases subject to the bill's provisions being unknown. Costs involved with these cases would include staff man-hours, attorney's fees for the plaintiffs, and outside legal counsel fees.

The bill provides that the Office of the Attorney General (OAG) may not settle or compromise any claim in an action against this state or a state agency if the settlement or compromise has the effect of holding that a state statute is unconstitutional.

Additionally, the bill provides that if a state agency in the executive or legislative branch of state government is a defendant in an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a state statute and OAG elects not to defend the agency, the OAG shall pay or reimburse the reasonable expenses incurred by the agency in defending the action, including court costs, investigative costs, deposition expenses, witness fees, and attorney's fees.

The bill would generate costs to the OAG related to staff man-hours, attorney's fees for the plaintiffs, and outside legal counsel fees for cases in which the OAG would have previously settled or compromised. The total cost to the bill is indeterminate since it is unknown how many cases in any given fiscal year would be subject to the provisions of the bill.

In addition, the Texas Ethics Commission indicates that they have expended an average of \$107,647 per fiscal year over the last five years on outside legal services for cases described by the bill. The bill would require the OAG to cover these costs.

Local Government Impact

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

Source Agencies: 300 Trusteed Programs Within the Office of the Governor, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 307 Secretary of State, 308 State Auditor's Office, 356 Texas Ethics Commission

LBB Staff: JMc, SMAT, LCO, HGR, NV