

Fiscal Estimate - 2005 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 05-2762/1	Introduction Number SB-425	
Description The authority of the Department of Justice and public nuisance actions		
Fiscal Effect		
State: <input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local: <input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
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Fiscal Estimate Narratives

DOJ 2/1/2006

LRB Number	05-2762/1	Introduction Number	SB-425	Estimate Type	Original
Description The authority of the Department of Justice and public nuisance actions					

Assumptions Used in Arriving at Fiscal Estimate

Senate Bill 425 prohibits the Attorney General from bringing a public nuisance suit if the alleged activity is not in violation of a statute, rule, permit, or ordinance. Senate Bill 425 also prohibits the Attorney General from starting, joining, or intervening in most civil actions unless the Governor or both houses of the legislature makes such a request.

Under Section 165.253(1)(a) of the bill, the Attorney General is prohibited from independently commencing a civil action against a party regarding any issue that is the subject of another civil action against that party. This could require the Department of Justice to do a nationwide search for any and all civil actions brought against potential defendants in state and federal courts across the country. For example, assume state consumer investigators identify a national telemarketer as allegedly violating Wisconsin's no call law by continually calling Wisconsin consumers who have added their names to the state no call registry. Before pursuing an action against this telemarketer, the Attorney General would have to determine whether the telemarketer is being sued in any other state or federal court for violations related to unsolicited phone calls. The search would be labor intensive, result in unknown costs to DOJ, and could be a huge obstacle to pursuing an action.

Under Section 165.253(1)(b) of the bill, the Attorney General is prohibited from independently joining any action that has been commenced by another state or political subdivision of another state. This jeopardizes the millions of dollars the Attorney General is awarded each year in cases in which states share resources and collaborate on investigations, litigation, and settlements. In these matters, states with similar interests are able to target, investigate, litigate, and arrive at settlements with national and international companies that are violating consumer protection laws in multiple jurisdictions. If the Attorney General is prohibited from joining these actions, Wisconsin citizens could be deprived of restitution that citizens of other states receive. At a time when cutbacks in the state budget are enormous and all state agencies are asked to operate as frugally as possible, this legislation would limit the Attorney General's ability to share resources with other states in order to collectively investigate and litigate against large, wealthy national and international companies.

The power of united state Attorneys General, Democrat and Republican alike, often persuades defendants to settle cases out of court and thus saves both time and taxpayer dollars which are consumed in long drawn out lawsuits. Since the early 1990s, DOJ has recovered more than \$22 million through multi-state actions aimed at consumer fraud. Wisconsin taxpayers obtained over \$9 million in penalties and more than \$13 million in restitution to individual Wisconsin consumers since 1991. Senate Bill 425 would jeopardize the ability of the Attorney General to join multi-state lawsuits which have recouped tens of millions of dollars for Wisconsin consumers.

In 1980, the U.S. Congress created Medicaid Fraud Control Units (MFCUs) in the offices of Attorneys General in each of the 50 states. Wisconsin's MFCU has been a national leader in this effort, recovering more than \$11 million for Wisconsin taxpayers since 1994. These actions are often geared to protect our most frail and vulnerable citizens—older adults, the developmentally disabled, and those who require long-term specialized medical care. In some situations, the inability of the MFCU to act would result in continued suffering by, or loss of life of, patients in various residential care facilities. In one such case recently, the negligence in care delivery to patients at a nursing home in Chippewa Falls resulted in a \$2.1 million settlement. Other recent cases involved the illegal marketing of feeding pumps, allowing for a recovery of more than \$800,000, the short-filling of prescriptions for indigent customers by Wal-Mart, and the overcharging for prescription drugs by a number of pharmaceutical companies. Senate Bill 425 would jeopardize the work of Wisconsin's MFCU and ignore the needs of Wisconsin's health care consumers and taxpayers.

Senate Bill 425 would prohibit the Attorney General from filing public nuisance lawsuits to obtain the same relief for citizens that the Attorney General obtained in the following cases:

- A construction company conducting unregulated pumping of groundwater caused adjacent property owners' wells to dry up. The pumping caused the foundations of area homes to cave in. Property was rendered valueless. The Attorney General sued the company to abate this public nuisance. The construction company tried to persuade the court to do what this legislation is attempting – to declare that the Attorney General has no legal standing to bring a nuisance action on behalf of the community of property owners damaged by the company's actions. The landmark decision by the Wisconsin Supreme Court in 1974 established the "reasonable use" doctrine of groundwater law, agreeing that a public nuisance is presented whenever someone unreasonably causes substantial harm to their neighbors by pumping groundwater without limit.

- In 1993, before there were any rules governing erosion control and storm water discharged to navigable waters, huge amounts of sediment went into Lake Mendota from the Bishops Bay development. The Attorney General sued and successfully obtained injunctions to require corrective action, preventative action and damages to help restore the fishery in the lake.

If the Attorney General had been prohibited from acting in these two cases and the nuisances had remained unabated, the damages would have been exacerbated. It is difficult to determine actual costs, but there is no doubt a greater expenditure of resources would have been required to rectify the increased damages that would have resulted had the two nuisances described above been allowed to continue. Likewise, it is nearly impossible to place a fiscal estimate on the resources that will be required to cover the costs of future unabated nuisances resulting from the passage of SB 425.

Long-Range Fiscal Implications