

## Fiscal Estimate - 2009 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>09-3274/3</b>	<b>Introduction Number</b> <b>SB-447</b>
<b>Description</b> State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties	
<b>Fiscal Effect</b>	
<b>State:</b>	
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues
<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
<b>Local:</b>	
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate	
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b>	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
<b>Affected Ch. 20 Appropriations</b>	
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>
DOJ/ Mark Rinehart (608) 264-9463	Mark Rinehart (608) 264-9463
<b>Date</b>	
3/9/2010	

**Fiscal Estimate Narratives**  
**DOJ 3/9/2010**

LRB Number	<b>09-3274/3</b>	Introduction Number	<b>SB-447</b>	Estimate Type	<b>Original</b>
<b>Description</b> State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties					

**Assumptions Used in Arriving at Fiscal Estimate**

Under s. 16.42 (1) (a)-(g), state agencies must submit certain biennial budget request information to the Department of Administration. Senate Bill 447 creates s. 16.42 (1) (h), which requires agencies to also prepare and forward to DOA the following: 1) the total amount of contracted positions, including the number of service hours and recurring service rate payments, providing services for the agency that are paid from the agency's base level funding and an identification of the appropriations used to fund the expenditures; 2) the total amount of agency base level funding used to pay for the contracted positions; and 3) the amount of funding requested for contracted positions and an identification of the appropriations used to fund the positions.

Under 16.705, DOA has promulgated rules directing state agencies to conduct cost-benefit analyses on new contracts and continued appropriateness reviews on contract renewals. SB 447 amends s. 16.705 to do the following: 1) statutorily require new components of any cost-benefit analysis or continued appropriateness review performed by an agency; 2) require agencies to perform periodic audits on cost-benefit analyses or continued appropriateness reviews and contracts that require a cost-benefit analysis or continued appropriateness review; and 3) prohibit any contract from being automatically renewed.

SB 447 creates s. 16.771 and s. 16.871, relating to false claims. Generally, under s. 16.771 and s. 16.871, whoever presents a false claim for payment, work, or services under any contract with an agency shall forfeit \$5,000-\$10,000 and three times the amount of damages to the state. The attorney general may bring an action on behalf of the state to recover any such forfeiture.

SB 447 also creates s. 20.932, relating to false claims. Generally, under s. 20.932 whoever presents a false claim for money, property, or services to any officer, employee, or agent of this state, or other recipient of state resources shall forfeit \$5,000-\$10,000 and three times the amount of damages to the state. The attorney general may bring an action on behalf of the state to recover any such forfeiture. However, the court may assess a violator not less than two nor more than three times the amount of the damages, and may not assess any forfeiture, if the violator did not know of any investigation into his/her actions, no criminal or civil actions had been commenced due to his/her actions, the violator furnished the attorney general with all information known about his/her actions within 30 days of obtaining the information, and the violator fully cooperated with any investigation.

In addition, under SB 447, s. 20.932 is created so that any person may bring a civil action as a qui tam plaintiff against a false claims violator. The plaintiff shall serve upon the attorney general a copy of the complaint and documents disclosing the plaintiff's evidence. Unless an extension is granted by the court, within 60 days the attorney general shall notify the court that he/she: 1) declines to proceed with the action; 2) will proceed with the action; or 3) will proceed with an alternative remedy, including an administrative proceeding to assess a civil forfeiture.

Senate Bill 447 confers considerable new responsibilities and authority on the attorney general which have the potential for a substantial fiscal impact on the Department of Justice. It is difficult to accurately estimate the number of false claims cases that would be handled by the department's Division of Legal Services and the level of division resources that would be necessary to process these kinds of cases. Typically, cases of this nature involve time-consuming, complex litigation. It is also not well known how developed cases will be before referrals are made to the Department, which may require the need for additional investigation.

One possible parallel in the Department of Justice that could be used to estimate costs is the Medicaid Fraud Control and Elder Abuse Unit, which currently investigates and prosecutes cases with a nexus to the state's Medicaid program. Currently, that unit employs 13 FTE positions (3 attorneys, 3 investigators, 5 auditors, 1 legal secretary, and 1 support staff) at an annual cost of \$1,456,000.

It is possible that the number of cases initially evaluated and the need for further investigation in false claims cases will be smaller than the Medicaid Fraud Control and Elder Abuse Unit. However, the total salary, fringe, equipment, and supplies costs for 3 FTE attorneys alone at the minimum salary level is \$273,117 the first year and \$248,217 in subsequent years. In addition, the total salary, fringe, equipment, and supplies costs for 1 FTE legal secretary is \$64,430 the first year and \$56,130 in subsequent years.

### **Long-Range Fiscal Implications**