

Fiscal Estimate - 2011 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 11-0066/2	Introduction Number AB-0452
Description Resolution of claims against the state for wrongful imprisonment of innocent persons, exempting from taxation certain amounts an individual receives from the claims board or legislature, and making appropriations	
Fiscal Effect	
State:	
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input checked="" 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
Local:	
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <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
Fund Sources Affected	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGs s. 20.505(4)(d); 20.505(4)(f) or (kp)	
Affected Ch. 20 Appropriations	
Agency/Prepared By DOA/ Cathleen Connolly (608) 261-2292	Authorized Signature Jana Steinmetz (608) 266-1359
Date 1/11/2012	

Fiscal Estimate Narratives

DOA 1/11/2012

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Description Resolution of claims against the state for wrongful imprisonment of innocent persons, exempting from taxation certain amounts an individual receives from the claims board or legislature, and making appropriations					

Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill (AB) 542 changes the process, standards and award levels for persons making claims against the state for wrongful imprisonment. Under current law the State Claims Board is directed to hear petitions for compensation by individuals who are released from imprisonment for crimes of which they claim to be innocent. The standard of proof is clear and convincing evidence. The maximum award is \$25,000 total for the claim and not more than \$5000 per year of imprisonment. The award amount must include any expenses for attorney fees, costs, and disbursements incurred by the claimant. The State Claims Board is supported by the Department of Administration (DOA).

Under AB 542 when the Claims Board receives a wrongful imprisonment claim filed by a claimant who has been released from prison, and who claims to be innocent of the crime the Board must refer the petition to the Department of Administration's Division of Hearings and Appeals (DHA). The bill allows either DOA or the prosecuting attorney's office that prosecuted the claimant to file a request for a hearing. If a hearing request is filed or DHA determines that it cannot make a finding without a hearing, it must schedule a hearing within 60 days after the petition is filed. In addition, DHA cannot deny the petition without holding a hearing. DHA appoints a hearing examiner who will hear the evidence, make findings and enter a ruling on whether the claimant is entitled to compensation. The evidentiary standard is changed to a preponderance of the evidence. DOA represents the state in the hearing process. If the hearing examiner finds the person was wrongfully imprisoned then the examiner must determine the compensation at the fixed rate of \$50,000 per year of imprisonment and there is no maximum limit for the award. The bill includes an annual cost of living adjustment for the annual award amount. In addition, the hearing examiner must also award attorney fees and costs to the claimant that were incurred in the claimant's defense, post-conviction, and compensation proceedings; and all fees, surcharges or restitution paid by the claimant as a result of his or her arrest or wrongful imprisonment. The State Claims Board would make the award.

The bill provides insurance coverage, temporary financial support, and specific relief from taxation to successful claimants. Finally, the bill makes the findings and award subject to judicial review under Chapter 227.

The bill would apply to people who are released from incarceration on or after January 1, 2006. If the person has already received a compensation award from the State Claims Board, the person may make a claim for additional compensation under the higher limits of AB 452.

DHA Staffing

The Department estimates that it would have to add one administrative law judge and one half-time support staff position to the Division of Hearings and Appeals to address the new workload created by the bill.

The Department anticipates that because the standard of evidence is less; the potential awards are higher; and the claimants could request attorney fees and costs above the award for wrongful imprisonment there will be an increase in the number of claims for wrongful imprisonment filed. The bill creates short deadlines which will exacerbate the need for more staff. In addition, there is a potential backlog of claimants that will file shortly after the change in law because the bill allows individuals released five to six years earlier to file, and allows individuals who have already received an award to file a claim to be awarded additional funds.

The requirement that a hearing must be held before a claim is dismissed means that even if a claim with little chance of success is filed with DHA, the costs of going to hearing must be incurred before the case can be dismissed. Because of the possibility of a judicial review both parties will need to develop a complete record, and in the event the decision is appealed the costs of a transcript and additional attorney fees would be additional costs to the state.

The Division of Hearings and Appeals believes that the proposed bill will generate a workload that could not be absorbed by current staff.

OLC Staffing

Currently the State Claims Board is supported by staff in DOA's Office of Legal Counsel. The Department's obligation to support the Board continues and the workload may increase if the number of claims rises as a result of the changes in the bill noted above.

In addition, the bill requires DOA to represent the interests of the state in any hearing before DHA. The Office of Legal Counsel would experience a workload increase for its attorneys as a result of the new responsibility. It is difficult to anticipate the workload changes or estimate the cost of those changes for DOA's Office of Legal Counsel, but the Department anticipates there would be an increase in costs.

Claims Payments

It is difficult to estimate the impact on the number and level of claims that would occur under AB 452. The Department estimates that the payments for closed claims that would be eligible for additional awards under the bill would total, \$1,930,000. These would be one-time payments.

The ongoing impact of the bill on the number of wrongful imprisonment claims filed and the size of the awards is not possible to estimate either in the short-term or long-term. However, the Department anticipates that because the standard of evidence is less; the potential awards are higher; and the claimants could request attorney fees and costs be awarded on top of the award for wrongful imprisonment there will be an increase in the level of payments awarded to claimants.

Local Fiscal Costs

The bill provides that the district attorney's office that was responsible for prosecuting the claimant may file a request for an evidentiary hearing with DHA. The district attorney's office would incur costs associated with its participation in the hearing process. It is not possible to estimate the costs associated with the change in the bill since it is unknown how many hearings would be requested.

Long-Range Fiscal Implications

Indeterminate.

Fiscal Estimate Worksheet - 2011 Session

Detailed Estimate of Annual Fiscal Effect

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Description Resolution of claims against the state for wrongful imprisonment of innocent persons, exempting from taxation certain amounts an individual receives from the claims board or legislature, and making appropriations			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): \$1,930,000 potential payments to individuals with closed claims who could be eligible for additional payments under AB 452.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes	\$138,000		\$
(FTE Position Changes)	(1.5 FTE)		
State Operations - Other Costs	23,000		
Local Assistance	0		
Aids to Individuals or Organizations	0		
TOTAL State Costs by Category	\$161,000		\$
B. State Costs by Source of Funds			
GPR			
FED			
PRO/PRS (20.505(4))	161,000		
SEG/SEG-S			
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
	Increased Rev		Decreased Rev
GPR Taxes	\$		\$
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues	\$		\$
NET ANNUALIZED FISCAL IMPACT			
	<u>State</u>		<u>Local</u>
NET CHANGE IN COSTS	\$161,000		\$
NET CHANGE IN REVENUE	\$		\$
Agency/Prepared By		Authorized Signature	Date
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