

**LEGISLATIVE FISCAL OFFICE**  
**Fiscal Note**



Fiscal Note On: **HB 293** HLS 17RS 1106  
 Bill Text Version: **REENGROSSED**  
 Opp. Chamb. Action: **w/ SEN COMM AMD**  
 Proposed Amd.:  
 Sub. Bill For.:

<b>Date:</b> May 31, 2017 7:17 PM	<b>Author:</b> AMEDEE
<b>Dept./Agy.:</b> Attorney General/District Attorneys	<b>Analyst:</b> Willis Brewer
<b>Subject:</b> Pertains to liability for damage caused by a district attorney	

DISTRICT ATTORNEYS/ATT.GENERAL RE1 INCREASE GF EX See Note Page 1 of 1  
 Provides relative to the limitation of liability of the state.

Present law prevents the state from having any liability for damage caused by a district attorney. Proposed law creates an exception to present law and requires the state to indemnify the district attorney's office against claims or suits in federal court based on the constitutional validity of a statute when the district attorney's office has not initiated any prosecution based upon that statute. Proposed law permits the attorney general's office to defend the district attorney's office and provides for the means of reaching a settlement. Proposed law allows AG to authorize and approve special counsel for the DA in the event AG chooses not to represent the DA. Proposed law requires compensation for legal services provided by the district attorney, attorney general, or special counsel to be set in accordance with the attorney general's fee schedule and such attorney fees and costs shall be paid by the state. Proposed law requires the payment of legal services to defend the claim, demand, suit, complaint, or petition by legislative appropriation for claims against the district attorney. Proposed law requires submission and approval of any payment of five hundred thousand dollars or more for legal services to defend the claim, demand, suit, or petition or payment of a final judgment or consent judgment that is five hundred thousand dollars or more the Joint Legislative Committee on the Budget. Proposed law requires the payment of final judgments or consent judgments by legislative appropriation for claims against the district attorney. Proposed law requires the attorney defending the claim, demand, suit, complaint, or petition to submit to the subcommittee a concise abstract of the facts and principles of law on which the claim is based. The abstract shall also include a detailed analysis of the calculation of damages, attorneys fees, costs, and interest thereon. Proposed law is retroactive for all claims, demands, suits, complaints, or petitions seeking damages filed in court on or after November 1, 2015.

<b>EXPENDITURES</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b><u>\$0</u></b>
<b>Annual Total</b>						

<b>REVENUES</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b><u>\$0</u></b>
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**EXPENDITURE EXPLANATION**

The proposed law is anticipated to have a significant but indeterminable impact on state expenditures. The proposed law will require the state to indemnify the district attorney's office against claims or lawsuits in federal court based on any allegations of the constitutional validity of a statute where the DA has not taken any action to prosecute individuals pertaining to the statute. Therefore, in any case where the DA has not taken action to prosecute individuals pertaining to the statute but is named in a lawsuit alleging the statute is unconstitutional and a judgment or consent judgment is made, the state will be obligated to pay the judgment including the plaintiff's attorney fees owed by the District Attorneys.

According to the DA's Association, in a recent case the negotiated settlement (plaintiff's attorneys fees) is anticipated to be at least \$125,000. The 42 DAs will be responsible for \$122,093 or 97.7% (42/43) of the settlement and the AG will be responsible for the remaining \$2,907 (1/43). To the extent the proposed legislation becomes law, the state would now be responsible for the payment of the \$122,093. However, payment will require a separate appropriation approved by the legislative subcommittee. To provide some context, currently the state has a backlog of approximately seventy judgments for a total cost of \$22 M.

The proposed law provides for the Attorney General to defend the district attorney in any of these cases at his discretion. In the past, the Attorney General has defended the District Attorney in cases that question the constitutional validity of a statute. In the event the number of these cases increases, the Office of Attorney General (AG) anticipates the additional workload will require the office to hire an additional full time attorney position (\$80,000, salaries and benefits) along with \$25,000 in associated costs including travel (\$5,000), operating services (\$9,000), supplies (\$4,000), and one-time acquisitions (\$7,000). However, this legislation does not mandate the AG to defend the DA. To the extent the anticipated increase in workload is less than expected, the AG may not require this additional position. Furthermore, proposed law allows the AG to authorize the DA to employ special counsel and requires the AG to approve the DA's choice of counsel. The special counsel's fee and attorney costs are required to be set in accordance with the AG's fee schedule. This legislation will require the state to cover the cost of these legal services provided by the district attorney, attorney general, or special counsel. To the extent this occurs, state general fund expenditures will increase by an indeterminable amount. It cannot be estimated at this time the number of hours that will be required by the AG, DA, or special counsel.

**REVENUE EXPLANATION**

There is no anticipated direct material effect on governmental revenues as a result of this measure.

Senate Dual Referral Rules  
 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}  
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}

House  
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}  
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

*Evan Brasseaux*  
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