

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **SB 182** SLS 19RS 360
 Bill Text Version: **RE-REENGROSSED**
 Opp. Chamb. Action: **w/ HSE FLOOR AMD**
 Proposed Amd.:
 Sub. Bill For.:

| | | |
|---|----------|-----------------------------------|
| Date: June 3, 2019 | 12:23 PM | Author: HEWITT |
| Dept./Agy.: Statewide | | Analyst: Alan M. Boxberger |
| Subject: Provides for reimbursement of sexual harassment judgments | | |

SUITS AGAINST STATE RRF SEE FISC NOTE OF EX See Note Page 1 of 2
 Provides for reimbursement of taxpayer dollars used to pay sexual harassment judgments or settlements. (8/1/19)

Proposed law declares the public policy of the state regarding the use of public funds for the payment of judgments or settlements of sexual harassment claims; provides when a determination that valid claim has been filed, the state should consider certain factors in determining whether the alleged harasser should be required to pay all or a portion of the settlement or judgment; provides for definitions; limits applications to certain claims; provides that when a sexual harassment claim is brought and found valid, the harasser shall be responsible for payment of all or a portion of the amount of the settlement or judgment after consideration of certain factors by the attorney general and Office of Risk Management, including but not limited to the circumstance and severity of the alleged harassing behavior, as well as ability of the harasser to pay; provides for disciplinary action against harassers; provides for annual notification by the commissioner of administration, the Legislative Budgetary Control Council and the chief justice of the supreme court regarding potential individual liability by public servants if determined to have committed sexual harassment; provides that any settlement executed in connection with a claim is a public record with exception of the victim's name; and provides for an effective date.

| EXPENDITURES | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 | 5 -YEAR TOTAL |
|---------------------|----------------|----------------|----------------|----------------|----------------|----------------------|
| State Gen. Fd. | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Agy. Self-Gen. | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Ded./Other | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Federal Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Annual Total | | | | | | |

| REVENUES | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 | 5 -YEAR TOTAL |
|---------------------|----------------|----------------|----------------|----------------|----------------|----------------------|
| State Gen. Fd. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Agy. Self-Gen. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Ded./Other | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Federal Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Annual Total | | | | | | |

EXPENDITURE EXPLANATION

This fiscal note reflects SB 182 with amendments adopted by the Senate Finance Committee at its meeting on May 9, 2019.

Proposed law may result in significant expenditure increases by the Attorney General's (AG) office and LSU (see NOTE page 2) associated with efforts to recoup expenses related to sexual harassment judgments or settlements. **Proposed law** may result in an expenditure decrease for the Office of Risk Management and LSU by assigning judgments or settlements, or a portion thereof, to alleged sexual harassers. The net expenditure impact is indeterminable.

The AG attributes its expenditure increase to increased litigation costs and collection activities for those payments eligible for recovery. These lawsuits would fall within the purview and authority of the Office of Risk Management (ORM). Typically, ORM is required to fund litigation instituted by the attorney general (AG) to recover sums as a result of such claims. Payments from ORM to the AG are completed by IAT. Given that **proposed law** allows the AG to retain 25% of all monies recovered to be deposited into the Department of Justice Debt Collection Fund, the LFO assumes collections efforts are to be funded directly by appropriation out of this fund to the AG.

Many claims of this nature are resolved through settlement when deemed in the best interest of the state and the accused public servant must consent to the settlement. Given that **proposed law** may require the accused to reimburse judgments or settlements, the incidence

EXPENDITURE EXPLANATION CONTINUED ON PAGE TWO

REVENUE EXPLANATION

Proposed law will likely result in an indeterminable increase (return of appropriation) associated with recoupment of certain expenses incurred by the state associated with sexual harassment lawsuits. Return of appropriation is not considered revenue in the state accounting system, but discussion is included in the revenue section of this fiscal note in an effort to delineate costs and recovered monies. From an accounting perspective, a return of appropriation would be viewed as a reduction in expenditures as the monies are returned to the expenditure account. **Proposed law** provides for reimbursement of taxpayer dollars used to pay sexual harassment judgments or settlements. These lawsuits would normally fall within the purview and authority of the Office of Risk Management (ORM). Litigation is typically instituted by the attorney general (AG) to recover sums as a result of such claims and would be funded by ORM. The AG would seek reimbursement on behalf of ORM for the amount of any judgment or settlement paid. The ability of the AG to successfully recoup a judgment or settlement is indeterminable but presumed to result in a net increase in state revenues.

To the extent **proposed law** results in a recoupment of monies paid by ORM, the state may realize a positive fiscal impact. The ability of the state to recover will largely depend on the financial assets available to the public servant found to have committed sexual harassment. Remedies for collection are liens, garnishment and asset forfeitures or seizures. Additional limitations to the state's ability to recover may include an accused filing for bankruptcy, the time required to satisfy a sizable debt through garnishment, and the capacity to collect from liens on immovable property. 25% of total monies recovered from the enforcement of the state's right to reimbursement from a sexual harasser are to be deposited into the statutorily dedicated Department of Justice Debt Collection Fund.

REVENUE EXPLANATION CONTINUED ON PAGE TWO

| | | |
|--|----------------------------|--|
| <u>Senate</u> | <u>Dual Referral Rules</u> | <u>House</u> |
| <input checked="" type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H} | | <input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S} |
| <input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H} | | <input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S} |

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Staff Director

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CONTINUED EXPLANATION from page one:
EXPENDITURE EXPLANATION CONTINUED FROM PAGE ONE

of public servants refusing to settle and going to trial may increase. To the extent the state must litigate additional actions through court trials above baseline levels, resolution of actions is prolonged, the odds that appeals will increase, and the potential accrual of additional judicial interest, **proposed law** may result in additional litigation expenditures. The ability of the AG to successfully recoup a judgment or settlement is indeterminable.

The AG interprets the provisions of **proposed law** to require that the AG to seek restitution from public servant sexual harassers. The AG reports that in order to avoid legal conflict, the agency will require creation of a new section with a minimum of three new T.O. positions. The AG reports that collection claims will not be covered under the Office of Risk Management (ORM) policy and would thus require a direct appropriation (assumed to be statutory dedications out of the Department of Justice Debt Collection Fund or SGF). The AG estimates first-year costs at \$374,652, including hiring three T.O. positions (2 Assistant Attorneys General and 1 Secretary) at a personal services cost of \$264,652 and acquisitions of office equipment and other supplies to support these positions at approximately \$10,000. The AG additionally reports that it will require approximately \$50,000 Other Charges expenditures annually to cover litigation costs (expert witnesses, court costs, etc.) and \$50,000 for collections support activities and contracts. The AG estimates that ensuing fiscal year costs will reflect an increase of approximately 4.06% annually in personal services costs, and ongoing acquisitions of supplies at approximately \$1,000 in FY 21 and growing by 10% annually in future fiscal years. The Legislative Fiscal Office is unable to determine or validate the staff level necessary to provide for the litigation as required in **proposed law**. To the extent the additional workload is less than the AG anticipates, the additional workload may be absorbable, either wholly or partially, using existing staff and resources. To the extent that ORM is able to subrogate a portion or portions of judgments or settlements to the responsibility of the accused harasser, additional litigation may be necessary in some or many cases.

AG's assumed cost estimates

| | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 |
|------------------------------|-----------|-----------|-----------|-----------|-----------|
| Personal Services | \$264,652 | \$275,397 | \$286,578 | \$298,213 | \$310,321 |
| Other Charges - Court Costs | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 |
| *Other Charges - Collections | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 |
| Acquisitions | \$10,000 | \$1,000 | \$1,100 | \$1,210 | \$1,271 |
| | \$374,652 | \$376,397 | \$387,678 | \$399,423 | \$411,592 |

As noted on the previous page, given that **proposed law** allows the AG to retain 25% of all monies recovered to be deposited into the Department of Justice Debt Collection Fund, the LFO assumes collections efforts are to be funded directly by appropriation out of this fund to the AG. At the current time, annual deposits into the fund appear to be sufficient to fund potential costs of approximately \$375,000 to \$415,000 regardless of total collections directly attributable to **proposed law**. If baseline collections should fall in the future, the LFO assumes these funds would require a replacement SGF appropriation or the activities of the AG would require reduction.

Proposed law may result in an indeterminable decrease, potentially significant, associated with expenditures by ORM as a result of judgments or settlements in sexual harassment claims cases. ORM reports that the ability to require or assign all or a portion of a judgment or settlement, within certain parameters, to an accused defendant may reduce state expenditures related to the payout of a judgment or settlement. An accused defendant would still be required to consent to any settlement of litigation, but the provision allowing the state to collect from an individual defendant up to the entire amount of any judgment rendered in connection with the suit may incentivize an individual to agree to contribute some amount to resolve the case by settlement.

Proposed law provides for annual notification to all public servants regarding potential individual liability if determined to have committed sexual harassment. This provision is unlikely to create a material expenditure impact.

NOTE: LSU manages its own risk management system outside the purview of the Office of Risk Management. LSU reports that the impact of proposed law is indeterminable. The LFO assumes that LSU may realize expenditure obligations and savings in a way similar to that reported for the state. The potential expenditure impact is indeterminable.

REVENUE EXPLANATION CONTINUED FROM PAGE ONE

For informational purposes, the Office of Risk Management (ORM) reports that it paid \$1.6 M in damages for sexual harassment claims between FY 09 and FY 18. An additional \$2.5 M was paid for attorney fees and litigation costs. Given these parameters, ORM estimates the potential sum that may be eligible for reimbursement annually at \$160,000 (\$1.6 M damages/10 years). This figure would be reduced based on the extent to which a state agency were assigned a percentage of fault if the suit were to go to trial. This percentage fault assigned to the state would reduce the portion of cost eligible to be recovered from the accused public servant.

Senate
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 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
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