



Shifting the Attorney General Legal Fees

RETIREMENT AND INDEPENDENT ENTITIES APPROPRIATIONS COMMITTEE
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ISSUE BRIEF

Summary

When a state employee files a formal grievance through the Career Service Review Office (CSRO), the employing state agency is represented by the Attorney General (AG). The cost of this representation was covered through the Attorney General Legal Fees rate, collected by the Department of Human Resource Management (DHRM) internal service fund and then transferred to the Attorney General's Office. In the 2016 General Session, the legislature authorized the Attorney General's Office to operate an internal service fund (ISF) of their own. The Department of Human Resource Management ISF will cease collecting the Attorney General Legal Fees rate at the end of FY 2017 which will result in an ISF impact reduction of \$288,900 for state agencies which includes \$148,600 from the General Fund or Education Fund. The elimination of this fee does not reduce the costs incurred by the Attorney General's Office to represent state agencies in these grievance claims. It merely eliminates the Department of Human Resource Management as the middle-man.

Background

In FY 2012, a \$100,000 ongoing General Fund appropriation was transferred from the Attorney General's Office to the Department of Human Resource Management and DHRM began collecting the Attorney General Legal Fees rate from customer agencies based on the agency employee count. DHRM would then add the collected fees to the General Fund appropriation and transfer it back to the AG's office. Due to lower than expected AG costs, the General Fund appropriation was eliminated in FY 2015 and the entire cost of the program was collected through the ISF rate.

Federal Share

For the past six years, the Department of Human Resource Management has been collecting for the Attorney General Legal Fees by charging customer agencies a set rate (\$21.13) for each full-time equivalent (FTE) employee. This was considered a payroll cost which allowed agencies to utilize restricted accounts and federal funds in the same proportion as their other payroll costs. During a 2016 review, the federal government concluded that since the agencies were not utilizing the AG Legal services in a uniform way, this fee should not be considered a payroll cost. The determination was that the federal government would not charge back for the rates already paid, but would not agree to continue to pay these rates as they were currently structured.

Attorney General ISF

During the 2016 General Session, the legislature passed H.B. 351 – "Attorney General Fiscal Amendments" which authorizes the AG's office to operate their own internal service fund. This will allow the AG's office to charge agencies directly when they are required to represent them in a CSRO hearing, thus eliminating the need for DHRM as a middle-man. The elimination of the DHRM rate leaves agencies without any direct funding for CSRO cases, which can get very expensive.

The Attorney General's Office has expressed concerns that agencies may try to represent themselves as a way to avoid these costs and that could expose the state to future lawsuits. As a way to ease the cost burden on agencies and to encourage agencies to consult with the AG's office prior to a CSRO hearing, the analyst is recommending that the General/Education fund appropriations that were previously going to customer agencies for the Attorney General Legal Fees rate be appropriated directly to the AG's ISF as

Shifting the Attorney General Legal Fees

contributed capital. This would provide the AG's Office a base level of funding to provide consultation with state agencies regarding their CSRO cases. If, after the consultation, the agency decides to have the Attorney General's Office represent them, they will be charged a rate to be determined by the AG's Office.

Conclusion

The fiscal analyst recommends that the DHRM Attorney General Legal Fees rate be eliminated and the impact reduction to state agencies be included in S.B. 8 – “State Agency Fees and Internal Service Fund Rate Authorization and Appropriations.” The fiscal analyst also recommends that the \$148,600 reduction in General/Education Fund appropriations be reallocated directly to the Attorney General's Office ISF as contributed capital in S.B. 8. Costs in excess of this appropriation will be collected by the Attorney General's Office ISF.