

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1679 – SB 2377

February 9, 2016

SUMMARY OF ORIGINAL BILL: Adds a new section to the Tennessee Governmental Tort Liability Act (Title 29, Chapter 20) requiring a court to reward reasonable attorneys' fees and costs to a state employee when (1) the employee was sued in his or her individual capacity arising from actions or omissions of the employee acting in an official capacity or under the color of law, and (2) the employee prevails.

Requires the attorneys' fees and costs be paid to the state or other governmental entity if the state or other governmental entity agrees to represent, or retain and pay for counsel to represent, the employee sued in an individual capacity.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (012196): Deletes subdivisions (b)(2) and (b)(3) of Section 1 of the bill and replaces it with language clarifying that an employee is a prevailing party if the employee successfully defends the claim or the claim is dismissed more than 45 days after an answer or other responsive pleading is filed in which the employee asserts that the employee was not acting in his or her individual capacity at the time of the matters involved in the suit.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

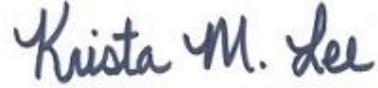
- There are cases in which a government-employed attorney will represent a state employee sued in his or her individual capacity. See *Johnston v. Geise*, 88 F.Supp.3d 833 (M. D. Tenn., Feb. 18, 2015); *Davidson v. Bredesen*, 330 S.W.3d 876 (Tenn. Ct. App. 2009). However, it is assumed that there will not be a significant number of attorneys' fee awards collected as a result of the bill.

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- It is assumed that the bill will not significantly impact the operations of state or local governmental entities.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm