House of Representatives

General Assembly

File No. 860

January Session, 2015

House Resolution No. 33

House of Representatives, May 19, 2015

The House Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the resolution ought to be adopted.

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT IN STATE EMPLOYEES BARGAINING AGENT COALITION, ET AL. V. JOHN G. ROWLAND, ET AL.

Resolved by this House:

That the provisions of the settlement agreement dated May 1, 2015, in the action State Employees Bargaining Agent Coalition, et al. v. John G. Rowland, et al., United States District Court, District of Connecticut, No. 3:03 CV 221 (AVC), requiring an expenditure from the General Fund budget in excess of two million five hundred thousand dollars and submitted by the Attorney General to this Assembly for approval in accordance with section 3-125a of the general statutes, are approved.

JUD *House Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 $	FY 17 $
State Total (includes various state agencies)	All Funds - Cost	See Below	See Below

Note: All Funds=All Funds

Municipal Impact: None

Explanation

The resolution proposes approval of a settlement agreement for State Employees Bargaining Agent Coalition (SEBAC), et al. v. John G. Rowland, et al. The settlement class is estimated to include 29,800 current and 7,450 former state employees.

Total estimated costs of this agreement are unclear. OFA is currently awaiting information on the particular details and associated costs of each item in the agreement. Based on the information we have received to date, the costs could be $20,700,000 in FY 16; $4,722,000 in FY 17; $4,180,000 in FY 18; and $4,317,000 in FY 19. A summary of the estimated contract costs is provided below:

Cost Estimate of Agreement

	FY 16 $	FY 17 $	FY 18 $	FY 19 $
Economic Damages	3,800,000	3,990,000	4,180,000	4,317,000
Attorneys' Fees	15,968,000	-	-	-
Punitive Damages	732,000	732,000	-	-
Incentive Awards	$200,000	-	-	-
Claims Administrator	Potential	Potential	Potential	Potential
Overtime for Paid Leave	Potential	Potential	Potential	Potential
TOTAL	**20,700,000**	**4,722,000**	**4,180,000**	**4,317,000**

Sources: Office of the Attorney General

Economic Damages – The agreement requires the state to provide compensation for economic damages incurred by state employees who were laid off or moved to a lower salary grade. The estimate assumes the state only provides cash compensation for economic damages to those not currently employed by the state, about 550 individuals, paid over four years with 5% simple interest annually. This is estimated to cost the state $3.8 million in FY 16; $4 million in FY 17; $4.2 million in FY 18; and $4.3 million in FY 19.

For those currently employed by the state, about 2,200 individuals, the estimate assumes the state provides compensation in the form of vacation days as the settlement allows. This has the potential to increase costs for the state for agencies that must provide overtime coverage for those covering the additional time off.

To the extent the state provides cash compensation, instead of vacation and personal days, to all individuals eligible to receive economic damages, it is estimated to cost the state $19 million in FY 16; $20 million in FY 17; $20.9 million in FY 18; and $21.6 million in FY 19.

Attorney Fees – The settlement requires the state to pay Class Counsel attorneys' fees equal to 17.5% of each class member's economic and punitive damages and an additional $400,000 in litigation expenses. The state is also required to pay the law firm of Livingston, Adler, Pulda, Meiklejohn, & Kelly, P.C. the sum of $250,000 for legal services rendered for associated federal and state litigation. Attorneys' fees are estimated to cost $16 million in FY 16.

Punitive Damages – The settlement requires the state to provide compensation for emotional distress and violation of union members' first amendment right to free association. The settlement provides compensation in three groups.

Group 1: The state must provide each class member who was laid off by Governor Rowland's layoff order $1,500 or vacation and personal days, over two years, without interest. It is estimated 2,300 individuals were laid off, 460 of which are no longer working for the state and will receive cumulative cash payments of $345,000 in both FY 16 and FY 17. The other 1,840 individuals, who are currently employed by the state, will receive ten vacation and five personal days. This has the potential to increase costs for the state for agencies that must provide overtime coverage for those covering the additional time off.

Group 2: The state must provide each class member, whose employment was adversely affected as a result of Governor Rowland's layoff order, $700 or vacation and personal days, over two years, without interest. It is estimated 450 individuals were moved to a lower paying position, 90 of which are no longer working for the state and will receive cumulative cash payments of $15,750 in both FY 16 and FY 17. The other 360 individuals, who are currently employed by the state, will receive four vacation and three personal days. This has the potential to increase costs for the state for agencies that must provide overtime coverage for those covering the additional time off.

Group 3: The state must provide each class member, who was not laid off or had their employment adversely affected as a result of Governor Rowland's layoff order, $100 or 1.25 personal days, within 30 days of final judicial approval of the settlement. It is estimated 34,500 class members are subject to this provision, 6,900 of which are no longer working for the state and will receive cumulative cash payments of $690,000 in FY 16. The other 27,600 individuals, who are currently employed by the state, will receive 1.25 personal days. This has the potential to increase costs for the state for agencies that must provide overtime coverage for those covering the additional time off.

Incentive Awards – In certain class action lawsuits, incentive awards are given to the named plaintiffs to compensate class representatives for work done on behalf of the class and to make up for the financial or reputation risk undertaken in bringing the action. Between 1993 and 2002, 28% of settled class actions included incentive awards to class representatives.[1]

The settlement agreement requires the state to compensate named plaintiffs in the three class actions the amount of $10,000 each within 30 days of final judicial approval. There are 20 named plaintiffs, resulting in a $200,000 fiscal impact in FY 16.

Claims Administrator – The settlement agreement requires the state to bear the cost of a mutually agreed upon Claims Administrator. The Claims Administrator is required to simplify the claims process to enhance the efficient resolution of any disputed claims. This will result in a fiscal impact.

Overtime for Paid Leave – The agreement allows the state to offset a significant amount of damages by offering paid time off as a replacement for cash. Compensated paid time off comes in two forms, vacation and personal days. Personal days can be taken at any time, but vacation days must not interrupt agency operations and require prior approval by a supervisor. At least 80% of compensated paid time off is estimated to be vacation days. Therefore, it is estimated that the overtime costs associated with paid leave will not be significant.

However, the agreement allows the state to make individualized settlements. To the extent that a large number of personal days are given to essential employees such as healthcare workers and correctional officers, there is a potentially significant cost to the state in the form of overtime for coverage during additional days off.

[1]Source: Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 52 UCLA L.Rev. 1202 (2006).

Fringe Benefits - There may be a fringe benefit impact from the provisions of the agreement to the extent that portions of the award are subject to taxation including: (1) vacation time awarded which is paid out when a current employee separates from state service and/or (2) an award of back pay or other salary change. The total fringe impact depends on the final adjudication of individualized claims.

State Employees Retirement System (SERS) – There may be an impact to SERS for individuals who are granted a pension adjustment based on the extent to which either (1) being laid off and transitioning directly to retirement or (2) being rehired into a different job class which impacted what otherwise would have been their pension benefit. Most individuals who were reinstated had their service credit restored for the purposes of their pension and therefore are unlikely to be eligible for a pension adjustment. The total SERS impact depends on the final adjudication of individualized claims.

Sources: Office of the Attorney General

OLR Bill Analysis

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SUMMARY:

The Office of Legislative Research does not analyze Resolutions.

COMMITTEE ACTION

Judiciary Committee

House Favorable

Yea	17	Nay	13	(05/11/2015)