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Authors: Nash and others

Subject: State auditor litigation expenses

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Background on State Auditor Litigation

2015 legislation. As part of the 2015 state government finance budget, the legislature enacted a law that permits counties to choose to have their required audits conducted by a private CPA firm, rather than having them performed by the state auditor. Prior to this law being enacted, the state auditor, in her discretion, routinely chose to permit certain counties to use a private CPA firm as a way to prioritize the office's available resources.

Even if a county chooses to have their audits conducted by a private firm under this law, the state auditor retains the authority to set standards for the audit, to require additional information from the CPA firm, and to conduct additional examinations at the county's expense, if necessary.

Lawsuit challenging constitutionality. Following enactment of the law, the state auditor filed suit against three counties (Wright, Becker, and Ramsey) that had taken steps indicating a possibility that they might choose a private CPA firm for their audits. As part of the suit, the auditor alleged that, among other things, that the new law improperly interferes with a core function of her office directed by the state constitution and is, therefore, unconstitutional.

In the fall of 2016, the district court ruled that conducting county audits is a core function of the state auditor, but that the new law does not unconstitutionally interfere with that process because the auditor retains supervision and final authority over the conduct of the audits. The district court also rejected claims by the state auditor that the law violates the constitutional separation of powers and the "single-subject" rule.

Appeals. Both the counties and the state auditor have appealed different aspects of the district court's ruling. Oral arguments at the Court of Appeals are scheduled for March 9.

Comparison Summary of H.F. 295, H.F. 458, and H.F. 807

H.F. 295, H.F. 458, and H.F. 807 all address the expenses associated with the ongoing litigation. The differences in each of the three bills is summarized in the table that follows:

H.F. 295 (Nash and others)	**The auditor's litigation costs must be absorbed by the constitutional office.** H.F. 295 requires the state auditor to pay costs associated with the litigation using resources allocated to the office's "constitutional office" division. The "constitutional office" is the central administrative division of the office that oversees the activities of the office as a whole. Only those resources allocated on or before January 1, 2017 may be used, unless additional resources are expressly provided by law for this purpose. The auditor is prohibited from reallocating or reducing services from other divisions in her office in order to pay the litigation expenses. **Rate freeze.** As a separate item of policy, this bill also freezes the rates the auditor may charge to local governments for conducting examinations at the calendar year 2016 levels.
H.F. 458 (Lucero and others)	**The auditor's litigation costs must be absorbed by the constitutional office.** H.F. 458 requires the state auditor to pay costs associated with the litigation using resources allocated to the office's "constitutional office" division, with the same restrictions described for H.F. 295. This bill also requires the state auditor to reimburse Wright, Becker, and Ramsey Counties for their legal fees and expenses associated with the litigation.
H.F. 807 (Marquart)	**$150,000 reimbursement of litigation costs for Wright and Becker Counties.** H.F. 807 contains an appropriation of $150,000 to reimburse Becker and Wright Counties for their litigation expenses associated with the litigation. The reimbursement would be made as a grant from the Department of Employment and Economic Development. The bill specifies that the reimbursements must be proportionate to each county's costs, if the appropriation does not fully cover all expenses. The third county involved in the lawsuit, Ramsey County, would not be permitted a reimbursement under this bill.