



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #122

### **Justice Information System Surcharge -- Civil Legal Services for the Indigent (DOA -- Office of Justice Assistance)**

[LFB 2009-11 Budget Summary: Page 32, #3, Page 52, #3, and Page 53, #4]

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#### **CURRENT LAW**

*Funding for Civil Legal Services for the Indigent.* The federal government distributes funding nationally for civil legal services through its Legal Services Corporation (LSC). In 2008, Legal Action of Wisconsin Inc. and Wisconsin Judicare Inc. received \$4,197,400 in federal funding from the LSC for civil legal services. This amount was up from \$3,993,300 in 2006, and \$4,176,900 in 2007.

Funding for civil legal services is also provided through the Wisconsin Trust Account Foundation, Inc. (WisTAF). The state, through the Wisconsin Supreme Court, provides the bulk of the funding for Foundation grants for civil legal services. Funding is provided through: (a) interest on lawyers' trust accounts; and (b) an annual \$50 assessment on all active attorneys of the State Bar of Wisconsin. In 2007, WisTAF reported total income of \$3,082,700 and grant awards totaling \$2,915,300.

Under 2007 Wisconsin Act 20, the state provides \$1,000,000 GPR annually in grants for civil legal services beginning in 2008-09. The Department of Administration (DOA) annually pays the \$1 million to WisTAF. The Foundation is required to distribute the moneys received as grants to programs that provide civil legal services to indigent persons. Programs receiving this grant funding may utilize the grants funds to match other federal and private grants. The grants may only be used for the purposes for which the funding was provided.

The Wisconsin Trust Account Foundation, Inc. was created in 1986 by the Wisconsin Supreme Court to receive funding from the interest on lawyers' trust accounts and to provide grants to agencies providing civil legal services to indigent persons.

*Justice Information System Surcharge.* The \$12 justice information system surcharge is generally assessed with a court fee for the commencement or filing of certain civil court proceedings, including large claims, small claims, forfeiture, wage earner, or garnishment actions, an appeal from municipal court, third party complaint in a small claims action, or for filing a counterclaim or cross complaint in a small claims action. Of the \$12 surcharge, \$5 is allocated to DOA for justice information systems, \$6 is allocated to the court system for the circuit court automation program (CCAP), and \$1 is credited to the general fund.

## **GOVERNOR**

*GPR Funding Changes.* Delete the GPR annual indigent civil legal services appropriation in DOA, and its associated funding of \$1,000,000 GPR annually.

*Justice Information System Surcharge.* Increase the justice information system surcharge by \$6 to \$18. Provide that \$2 from each assessed surcharge be allocated to DOA to provide funding for grants for indigent civil legal services. The increased fee is estimated to generate \$3,060,000 PR in 2009-10, and \$4,080,000 PR in 2010-11.

*PR Funding Changes.* Create a PR annual indigent civil legal services appropriation under DOA to provide grants for indigent civil legal services. Provide \$1,000,000 PR in 2009-10 and \$1,250,000 PR in 2010-11 to the new appropriation. [Current law would be maintained by requiring DOA to annually pay these amounts to WisTAF.]

*1% Across-the-Board Funding Reduction.* Reduce funding to the new PR grants appropriation by \$10,000 PR in 2009-10, and by \$12,500 PR in 2010-11. The administration has indicated its intent to lapse these amounts to the general fund.

## **DISCUSSION POINTS**

1. Since the mid-1970s, the federal government has distributed grant funding for civil legal services through the LSC. Individuals receiving civil legal assistance with LSC funding have incomes at or below 125% of the federal poverty guidelines (an income of \$27,563 per year for a family of four).

2. As a condition of receiving LSC funding, grant recipients may not utilize any of their funding (including non-LSC funds) for: (a) political activities; (b) criminal cases, except for minor offenses in Indian tribal courts; (c) abortion-related litigation of any kind; (d) proceedings involving desegregation of public schools; (e) class action lawsuits; (f) challenges to welfare reform; (g) collection of attorneys' fees; (h) rulemaking; (i) lobbying; (j) litigation on behalf of prisoners; (k) representation in drug-related public housing evictions; (l) representation of certain categories of aliens; (m) redistricting activities; and (n) influencing the time or manner of census taking.

3. In the mid-1980s, the Wisconsin Supreme Court created WisTAF to distribute and oversee state grant funding for civil legal services. These grants are funded primarily by interest earned on lawyers' trust accounts and, beginning in 2005, an annual \$50 assessment on all active

attorneys of the State Bar of Wisconsin.

4. On June 2, 2004, WisTAF petitioned the Supreme Court to create the \$50 assessment on Wisconsin's active attorneys to fund grants for civil legal services. In its petition, WisTAF indicated that it had experienced a drop in interest revenue from lawyers' trust accounts as a result of: (a) a 45-year low in interest rates; and (b) a decrease in the use of trust accounts by attorneys. On March 24, 2005, a majority of the Wisconsin Supreme Court approved the creation of a new annual \$50 assessment on Wisconsin's active attorneys, effective July 1, 2005. If an active Wisconsin attorney refuses to pay the \$50 assessment, his or her license to practice law will be suspended.

5. The following table identifies annual revenues, annual grant allocations, and annual administrative and related expenditures for WisTAF over the last 15 years. During this period, the annual revenues averaged \$1,977,000 and annual grant allocations averaged \$1,766,500.

#### **WisTAF Revenue, Grant Allocations, and Other Expenses**

<u>Calendar Year</u>	<u>Revenue</u>	<u>Grant Allocations</u>	<u>Other Expenses</u>
1994	\$977,800	\$1,428,500	\$112,800
1995	867,200	1,232,200	112,800
1996	1,346,400	988,000	119,300
1997	1,686,400	1,012,000	136,700
1998	1,949,700	1,475,000	154,500
1999	2,020,600	1,785,300	179,500
2000	2,425,400	2,313,800	235,200
2001	2,428,100	1,956,600	236,000
2002	2,710,600	2,839,900	290,700
2003	1,302,500	1,146,700	235,500
2004	937,500	1,135,200	238,200
2005	2,115,000	1,322,000	248,500
2006	3,296,300	1,201,000	182,400
2007	3,082,700	2,915,300	213,800
2008*	2,508,600	3,746,300	239,000

\*Revenue and expenditure data for 2008 is based on a preliminary, unaudited accounting of WisTAF activities for the calendar year.

6. Annual revenue to WisTAF improved substantially during calendar years 2005 through 2007, due to the new \$50 assessment as well as increased interest earnings on lawyers' trust accounts. As a result of these developments and new state GPR funding for civil legal services, in calendar years 2007 and 2008, WisTAF substantially increased the grant funding it made available to organizations providing civil legal services.

7. However, in calendar year 2008 WisTAF income would have been cut in half were it not for the new \$1 million in GPR grant funding. In calendar year 2008, net income (revenue minus expenditures) to WisTAF totaled -\$1,476,700. The loss of income was attributable to a

substantial downturn in funding made available from interest on lawyers' trust accounts. Under its proposed 2009 budget, WisTAF projects decreasing its grants for civil legal services to \$1,095,000. This budget for grant funding does not include any grant funding that may be provided by the state through the 2009-11 biennial budget process.

8. In its 2007 report, *Bridging the Justice Gap*, the State Bar of Wisconsin found that more than 500,000 Wisconsin residents whose income falls at or below 200% of the federal poverty guidelines face at least one significant legal issue in a year without legal assistance. The most common legal issues facing these residents are the loss or reduction of public benefits and financial or consumer issues, such as an unpaid medical bill.

9. Given the recent volatility in income from lawyers' trust accounts which is utilized by WisTAF to make grants for civil legal services, as well as the identification of need for such services by the State Bar of Wisconsin in its report, the Committee could consider approving the Governor's recommendations to: (a) delete \$1 million GPR annually in base grant funding for civil legal services which is allocated by WisTAF; (b) increase the justice information system surcharge by \$6 to \$18, and provide that \$2 from each surcharge be allocated to a new PR grants appropriation for civil legal services grant funding to be administered by WisTAF; (c) provide \$1,000,000 PR in 2009-10, and \$1,250,000 PR in 2010-11, in expenditure authority to the new appropriation; and (d) delete \$10,000 PR in 2009-10, and \$12,500 PR in 2010-11, from this new appropriation as a part of a 1% across-the-board reduction to most non-federal appropriations. The net effect of these recommendations would be to decrease funding by \$10,000 in 2009-10 to \$990,000 PR, and to increase funding by \$237,500 in 2010-11 to \$1,237,500 PR. [Alternative 1]

10. It could be argued that it is appropriate to require individuals who can afford to utilize the courts to pay an additional \$2 to assist those of lesser income to receive needed civil legal services. If the Committee adopts this view, it could approve the provisions under AB 75 related to civil legal services.

11. Alternatively, some could question the appropriateness of increasing the justice information system surcharge to provide grant funding for civil legal services. First, increasing this surcharge would further increase the cost for citizens to access their civil court system and resolve their grievances. In her testimony before the Committee, the Chief Justice of the Supreme Court expressed her concerns about further increases in the costs to citizens to access their courts. Second, some could question whether individuals commencing or filing civil actions have a special responsibility to fund grants for civil legal services. If the Committee has concerns about increasing the justice information system surcharge, it could delete the civil legal services initiative under AB 75. Deleting the Governor's recommendations would delete the \$2 increase to the justice information system surcharge and restore \$1 million GPR in annual funding for civil legal services. [Alternative 2]

12. Given the state's fiscal condition, if the Committee had concerns about increasing the justice information system surcharge, in lieu of restoring \$1 million GPR annually in grant funding for civil legal services it could consider partially restoring funding at \$500,000 GPR annually. [Alternative 3]

## ALTERNATIVES

1. Approve the Governor's recommendations to: (a) delete the GPR annual indigent civil legal services appropriation in the Department of Administration and its associated funding of \$1,000,000 GPR annually; (b) increase the justice information system surcharge by \$2 and allocate the additional revenue to a new PR annual indigent civil legal services appropriation under DOA to provide grant funding for civil legal services to the Wisconsin Trust Account Foundation, Inc.; (c) provide \$1,000,000 PR in 2009-10, and \$1,250,000 PR in 2010-11, in grant funding for civil legal services to the appropriation; and (d) reduce funding to the new PR grants appropriation by \$10,000 PR in 2009-10, and by \$12,500 PR in 2010-11, as a part of a 1% across-the-board reduction to most non-federal appropriations.

2. Delete provisions. [Under this alternative, \$1.0 million GPR annually would be restored for civil legal services.]

<b>ALT 2</b>	<b>Change to Bill Funding</b>
GPR	\$2,000,000
PR	<u>- 2,227,500</u>
Total	- \$227,500

3. Delete provisions. In addition, reduce base grant funding for civil legal services in the GPR annual indigent civil legal services appropriation by \$500,000 GPR annually. [Under this alternative, \$500,000 GPR annually would be provided for civil legal services.]

<b>ALT 3</b>	<b>Change to Bill Funding</b>
GPR	\$1,000,000
PR	<u>- 2,227,500</u>
Total	- \$1,227,500

4. Delete provisions associated with providing program revenue funding for civil legal services grants, but adopt the recommendation to delete the GPR annual indigent civil legal services appropriation in DOA and its associated funding of \$1 million GPR annually. Delete the associated statutory language providing for the administration of the civil legal services grant program. [Under this alternative, funding would be removed for civil legal services.]

<b>ALT 4</b>	<b>Change to Bill Funding</b>
PR	- \$2,227,500

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