



## Legislative Fiscal Bureau

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April 15, 2015

Joint Committee on Finance

Paper #410

### **Elimination of Judicial Council (Judicial Council)**

[LFB 2015-17 Budget Summary: Page 263, #2]

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#### **CURRENT LAW**

The Judicial Council includes 21 members, including: one Supreme Court justice designated by the Supreme Court, one Court of Appeals judge designated by the Court of Appeals, the Director of State Courts or his or her designee, four Circuit Court judges designated by the judicial conference, the Chairpersons of the Senate and Assembly committees dealing with judicial affairs or a member of each committee designated by the Chairpersons, the Attorney General or his or her designee, the Chief of the Legislative Reference Bureau or his or her designee, the Deans of the University of Wisconsin and Marquette University law schools or a member of the law schools' faculty designated by the Deans, the State Public Defender or his or her designee, the president-elect of the State Bar of Wisconsin or a member of the State Bar Board of Governors, three additional members of the State Bar selected by the State Bar to serve three-year terms, one District Attorney appointed by the Governor, and two citizens at large appointed by the Governor to serve three-year terms.

Current base funding for the Council is \$70,400 GPR and 0.50 GPR position and 0.50 PR position. The PR position is funded with monies transferred by the Supreme Court.

#### **GOVERNOR**

Eliminate the Judicial Council and staff. Delete funding and position authority of \$66,700 GPR and 0.5 GPR position in 2015-16 and \$67,000 GPR and 0.5 GPR position in 2016-17 and \$44,400 PR and 0.5 PR position annually. Prior to deletion, funding would be modified under standard budget adjustments for full funding of salary and fringe benefits and lease and directed moves costs (-\$3,700 GPR in 2015-16 and -\$3,400 GPR in 2016-17 and \$44,400 PR annually).

## DISCUSSION POINTS

1. The Judicial Council is composed of 21 members and has one attorney staff position to support the work of the Council. Powers and duties of the Council include:

a. Observe and study the rules of pleading, practice, and procedure, and advise the Supreme Court as to changes that will simplify procedure and promote a speedy determination of litigation upon its merits.

b. Survey and study the organization, jurisdiction and methods of administration and operation of all the courts.

c. Receive, consider and investigate suggestions pertaining to the administration of justice and make recommendations.

d. Keep advised concerning court decisions relating to court procedure and practice and pending legislation affecting court organization, jurisdiction, operation, procedure and practice.

e. Recommend to the Legislature any changes in organization, jurisdiction, operation and methods of conducting business of the courts, including statutes governing pleading, practice, procedure, which can be put into effect only by legislative action.

f. Recommend to the Supreme Court, Governor, and Legislature any changes in the organization, operation and methods of conducting the business of the courts that will improve the efficiency and effectiveness of the court system and result in cost savings.

2. The Judicial Council was created by the Legislature in 1951 and was an independent agency prior to 1995. In the 1995-97 biennial budget, funding and staffing for the Council were deleted, with the associated functions transferred to the Judicial Commission. In the 2007-09 biennial budget, the Council was reestablished as a separate agency with one GPR position. In the 2011-13 biennial budget, the position was split to be 0.5 GPR and 0.5 PR, with the 0.5 PR position supported from a continuing program revenue appropriation with monies from the Supreme Court's Director of State Courts and State Law Library programs.

3. As indicated above, the Council's duties are to review and conduct technical research on pleading, practice and procedures in the Courts, and to make recommendations to the Supreme Court, Governor, and Legislature regarding court procedures. Recent examples of the Council's work include recommendations for modification of presentence investigation reports, recommendations concerning calculation of time for appeals and new trial requests in small claims proceedings, and a comprehensive revision of Wisconsin's criminal procedural code. The criminal procedural code revision was introduced as 2013 legislation and recently reintroduced as 2015 Assembly Bill 90 and 2015 Senate Bill 82.

4. Under the budget bill, Judicial Council staff and funding would be deleted. According to the Department of Administration's Budget in Brief, the Judicial Council would be eliminated to streamline court operations. Further, the administration indicates that the "Supreme Court has the

authority to create and support such an advisory council if it so chooses."

5. In her statements to the Joint Committee on Finance on March 2, 2015, the Chief Justice of the Supreme Court expressed concern regarding the Council's deletion: "The Judicial Council wants to continue in its current form, serving the needs of all three branches. I agree. The Judicial Council is doing valuable work. It should not be eliminated."

6. In a statement submitted to the Committee on March 4, 2015, the Judicial Council Chair, on behalf of all Council members, also objected to the deletion, stating:

"Since the restoration of its independence and the addition of a staff person in 2008, the Council has nearly doubled the number of Supreme Court rule change petitions it submits to the Court. Additionally, the passage rate at which the Supreme Court has adopted rules proposed by the Judicial Council has risen from approximately 55% to 100%. The Council has also attained greater success with legislation. From 1999 to 2008, no bills drafted by the Judicial Council were enacted by the Legislature. In the years since restoration of its independence and staff, three bills drafted by the Judicial Council have been signed into law."

7. While the bill would delete the funding and position to streamline court operations, current statutory language specifies the Council is created to "improve the efficiency and effectiveness of the court system and result in cost savings." It could therefore be argued that retaining the Council would actually continue to assist with the function of streamlining court operations.

8. On the other hand, the Supreme Court has a planning and policy advisory committee (PPAC) which, by Supreme Court rule, assists the Supreme Court and Director of State Courts Office in evaluating the administrative structure of the court system, including recommending appropriate changes in court administration and methods of operation, the volume and condition of court business and advise on the expeditious handling of judicial matters. It could be argued that many of the Council's functions could be provided under the work of PPAC. However, PPAC is not an independent agency, nor does it report or make recommendations to the Governor and Legislature.

9. While the administration has indicated that the Supreme Court could create and support the work of the Council within its own budgetary resources, it is not clear that the Courts have sufficient resources to either newly create the Judicial Council or expand the work of PPAC to include Council functions and reporting requirements. If the Committee wished to ensure that the Council's work continue under operation of the Supreme Court as under current law, the associated funding and position could be provided under the Supreme Court (\$133,700 GPR and 0.50 GPR position, and \$88,800 PR and 0.50 PR position). [Alternative 2]

10. Under Alternative 2, the Judicial Council's funding and staffing as an independent agency would be deleted, but the statutory language regarding its membership, powers, and duties would be retained, with associated funding and position authority increased under the Director of State Court's general programs appropriation and central services appropriation.

## ALTERNATIVES

1. Approve the Governor's recommendation to eliminate the Judicial Council as an independent agency. Delete funding and position authority of \$66,700 GPR and 0.5 GPR position in 2015-16 and \$67,000 GPR and 0.5 GPR position in 2016-17 and \$44,400 PR and 0.5 PR position annually.

2. Approve the Governor's recommendation to eliminate the Judicial Council as an independent agency, but provide funding and position authority to support the Council's functions under the Supreme Court, including (a) \$66,700 GPR in 2015-16 and \$67,000 GPR in 2016-17 and 0.50 GPR position annually to the Director of State Courts' general program operations appropriation; and (b) \$44,400 PR and 0.50 PR position annually to the Director of State Courts' central services appropriation. Under this alternative, statutory language would be retained related to the Council's membership, power, and duties.

<b>ALT 2</b>	<b>Change to Bill</b>	
	Funding	Positions
GPR	\$133,700	0.50
PR	<u>88,800</u>	<u>0.50</u>
Total	\$222,500	1.00

3. Delete provision and maintain the Judicial Council as an independent agency.

<b>ALT 3</b>	<b>Change to Bill</b>	
	Funding	Positions
GPR	\$133,700	0.50
PR	<u>88,800</u>	<u>0.50</u>
Total	\$222,500	1.00

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