

**1999 DRAFTING REQUEST**

**Bill**

Received: **10/5/98**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Etzler**

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **TNF**

**Topic:**

DOA:.....Etzler - Service of process fee

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 10/5/98	gilfokm 10/6/98		_____			State
/P1			jfrantze 10/7/98	_____	lrb_docadmin 10/7/98		

FE Sent For:

<END>

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1?	nilsepe	P1-10-6 king	10/7	10/7			

FE Sent For:

<END>

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**LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL**

DT1586 98

Wisconsin Department of Transportation

**Instructions:** Complete form for any budget/non-budget legislative initiative for which a Division requests Secretary's Office (SO) approval. Form must be signed by the Division Administrator(s). Return two completed copies to the Office of Policy & Budget (OPB). One copy will be retained by OPB and the other copy provided to the Office of General Counsel.

<b>Short Title of Issue</b> Should the Wisconsin Department of Transportation increase the fees associated with Service of Process requests for non-residents?	
<b>Date Submitted</b> 06/29/98	<b>Division(s)</b> Executive Division - Office of General Counsel
<b>OPB Contact Person</b> John Bolles	<b>Area Code - Telephone Number</b> (608) 266-1259
<b>Lead Division Contact Person</b> Jim Thiel	<b>Area Code - Telephone Number</b> (608) 266-8928
<b>OGC Contact Person</b> Jim Thiel	<b>Area Code - Telephone Number</b> (608) 266-8928
<b>Define Problem Precisely</b> Service of Process fees are specified in s. 345.09, Wis. Statutes. In order to initiate a legal action in Wisconsin to collect damages from an out of state motorist who has had a crash in Wisconsin, the legal documents must be served on the Wisconsin Department of Transportation. WisDOT follows a statutory process to complete legal service on the out of state motorist so that Wisconsin Courts have jurisdiction. Currently the service of process fee is \$15.00.	
<b>Proposed Solution</b> Due to salary increases that have taken place between 1993 and 1998, and the time taken to process non-residence claims, postage and other increases in costs, we propose increasing the fees from the current \$15.00 to \$25.00.	
<b>Legislative Background</b> request for fee increases was made in 1993 and was approved.	


6/30/98  
 \_\_\_\_\_  
 (Division Administrator Signature) (Date)

**RECEIVED**

**JUL 15 1998**

**WISCONSIN DOT  
OFFICE OF GENERAL COUNSEL**

## Department of Transportation FY 99-01 Biennial Budget Issue Paper

**Division:** Executive Division

**Program Name:** Service of Process Fees on Out of State Motorists

**Brief Statement of Issue:** Should the Wisconsin Department of Transportation increase the fees associated with Service of Process requests for non-residents?

**Background/Overview:**

Service of Process fees are outlined in s. 345.09, Wis. Statutes. In order to initiate a legal action in Wisconsin to collect damages from an out of state motorist who has had a crash in Wisconsin, the legal documents (Summons and Complaint) must be served on the Wisconsin Department of Transportation. WisDOT follows a statutory process to complete legal service on the out of state motorist so that Wisconsin Courts have jurisdiction. There is a statutory fee for this service. In 1993 a request was approved to raise the Service of Process fees from \$4.00 to \$15.00.

WisDOT receives approximately 125 - 150 requests per year. Currently the service of process fee is \$15.00. Due to salary increases that have taken place between 1993 and 1998, and the time taken to process non-resident claims, postage and other increases in costs, we propose increasing the fees from the current \$15.00 to \$25.00.

**Definition:** Wisconsin Statute 345.09 Service of process on nonresident.

"345.09(1) The use and operation of a motor vehicle over the highways of this state by a nonresident is deemed an irrevocable appointment by such nonresident of the secretary to be the true and lawful attorney upon whom may be served all legal processes in any action or proceeding against the nonresident or the nonresident's executor, administrator or personal representative, growing out of the use or operation of the motor vehicle in this state and resulting in damage or loss to person or property, whether the damage or loss occurs on a highway or on abutting public or private property. Such appointment is binding upon the nonresident's executor, administrator or personal representative. Such use or operation of a motor vehicle by such nonresident is a signification of the nonresident's agreement that any such process or notice against such nonresident or the nonresident's executor, administrator or personal representative which is so served shall be of the same legal force and validity as if served on them personally.

345.09(2) The secretary as attorney upon whom processes and notices may be served under this section shall, upon being served with such process or notice, forthwith mail by registered mail a copy thereof to such nonresident at the out-of-state nonresident address given in the papers so served. It is the duty of the party or the party's attorney to certify in the papers so served that the address given therein is the last-known out-of-state nonresident address of the party to be served. In all cases of service under this section there shall be served 2 authenticated copies for the secretary and such additional number of authenticated copies as there are defendants so served in the action. One of the secretary's copies shall be retained for the secretary's record of service and the other copy shall be returned with proper certificate of service attached for filing in court as proof of service of the copies by having mailed them by registered mail to the defendants named therein. The service fee shall be \$15 for each defendant so served. The secretary shall keep a record of all such processes and notices, which record shall show the day and hour of service.

345.09(3) This section applies to a nonresident defendant who was a resident of this state at the time of

the accident or occurrence which gave rise to the cause of action sued on.

***Analysis/Alternatives:***

**Analysis:**

The Office of General Counsel feels the increase of fees will preserve an existing service and maintain current commitments as outlined in s. 345.09 Wis. Stats. Increasing the fees will allow us to continue to meet our customer's needs and will allow us to continue delivering the Service of Process program for nonresidents.

**Alternatives:**

- A. Null alternative - leave fees at current \$15.00 level

This alternative is not acceptable. If we continue to process 125 to 150 requests per year and charge \$5.75 less than the actual costs of processing, we are losing approximately \$718.75 to \$862.50 per year.

- B. Increase fees to cover actual costs.

The approximate cost of processing a non-resident claim is as follows:

\$12.75	[Base salary (\$17.00/hr) + 45 minutes (the time it takes to process one claim), plus additional time spent in processing the unclaimed service (notifying the attorney by letter)].
\$ 7.00	Average cost for Postage (Papers sent to defendant by registered mail)
\$ 1.00	Average cost Postage (Papers sent to plaintiff's attorney)
\$20.75	<b>Total</b>

***Recommendation(s).***

It is our recommendation that the fees for Service of Process be increased from \$15.00 to \$25.00.

A request for fee increases was made in 1993 and five years have passed without any fee increases. Based on salary increases in previous years, the cost of processing these documents will continue to increase. By raising the fee to \$25.00, several years will pass before fee increases will be necessary.

Other divisions and/or programs are not impacted by this proposal. This proposal will require a simple statutory revision and therefore will have a minor impact on other agencies outside of the Department of Transportation. The fiscal impact and burden of this proposal will be placed on those seeking to serve process on out of state motorists to collect damages for motor vehicle crashes.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0435??

PEN.....

*Handwritten initials/signature*

DOA:.....Etzler - Service of process fee

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

*Lead transportation*  
*sub Other transportation*

1 *Don't Gen. Cat.*  
AN ACT...; relating to: the budget.

***Analysis by the Legislative Reference Bureau***

Under current law, to commence a legal action against a nonresident driver for damages arising from a motor vehicle accident in this state, the claimant must serve legal process upon the secretary of transportation as the attorney for the nonresident driver. The secretary of transportation collects a \$15 fee from the claimant for each defendant in the action, and forwards the legal process to the nonresident driver. This bill increases this service-of-process fee to \$25.

*fe-s*

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

2 SECTION 1. 345.09 (2) of the statutes is amended to read:

3 345.09 (2) The secretary as attorney upon whom processes and notices may be  
4 served under this section shall, upon being served with such process or notice,  
5 forthwith mail by registered mail a copy thereof to such nonresident at the  
6 out-of-state nonresident address given in the papers so served. It is the duty of the

1 party or the party's attorney to certify in the papers so served that the address given  
 2 therein is the last-known out-of-state nonresident address of the party to be served.  
 3 In all cases of service under this section there shall be served 2 authenticated copies  
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 10 of all such processes and notices, which record shall show the day and hour of service.

History: 1977 c. 29 ss. 1467, 1654 (7) (c); 1977 c. 60, 418; 1993 a. 16.

11 **SECTION 9350. Initial applicability; transportation.**

12 (1) SERVICE-OF-PROCESS FEES. The treatment of section 345.09 (2) of the statutes  
 13 first applies to processes and notices served upon the secretary of transportation  
 14 under section 345.09 (1) of the statutes on the effective date of this subsection.

15 (END)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0435/P1  
PEN:kmg:jf

DOA:.....Etzler - Service-of-process fee

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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*Analysis by the Legislative Reference Bureau*

**TRANSPORTATION**

**OTHER TRANSPORTATION**

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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16 under section 345.09 (1) of the statutes on the effective date of this subsection.

17 (END)

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**NOTE TO DRAFTING FILE for LRB-0435:**

Per the drafter, this draft has been redrafted to a “/1” as no problems remain in the draft that require resolution before introduction of the budget bill. There are no changes between the “/PX” and the “/1.”

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