

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: **05/19/99**

Received By: **nelsorp1**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Zabawa (DS)**

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

Drafter: **nelsorp1**

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Subject: **Courts - costs and fees**

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Pre Topic:

LFB:.....Zabawa (DS) -

Topic:

Legal fees charged to other state agencies by the department of justice

Instructions:

See attached: yank governor's changes

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>
/1	nelsorp1 05/19/99	ygeller 05/19/99	jfrantze 05/20/99	_____	lrb_docadmin 05/20/99		

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Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 18, 1999

Joint Committee on Finance

Paper #607

Legal Fees Charged to Other State Agencies (Justice)

[LFB 1999-01 Budget Summary: Page 388, #26]

CURRENT LAW

Under current law, the Department of Justice (DOJ) is required to furnish all legal services required by the Investment Board, the lottery division in the Department of Revenue, the Public Service Commission, the Department of Transportation, the Department of Natural Resources, the Department of Tourism and the Department of Employee Trust Funds, the Department of Regulation and Licensing and the Department of Agriculture, Trade and Consumer Protection. DOJ is also required to furnish bond counsel services to the Building Commission, and provide legal services to the Department of Health and Family Services in certain proceedings. In addition, DOJ may, at the request of the head of any department of state government, represent any state department, state officer, employe or agent of the department in civil actions or other matters arising from the lawful course of the officer's, employe's or agent's duties.

With certain exceptions, for agencies not funded with general purpose revenue, DOJ is required to annually submit an itemized statement of the cost of legal services provided. Upon finding the amount to be correct, state agencies are to certify the amount of the statement to the Department of Administration to be paid into the general fund out of the agency's proper appropriation. DOJ is also authorized to spend monies received from other state agencies for legal services provided by DOJ under its interagency/intra-agency program revenue appropriation.

GOVERNOR

Provide that any money received by the Department as a result of a contract or understanding between the Department and another state agency that is approved under a passive review process authorized under s. 16.505 or s. 16.515 or as part of the biennial budget act be

deposited to the Department's legal services interagency and intra-agency assistance program revenue appropriation. Provide that if the authority to spend money received as the result of a contract or understanding between the Department and another state agency is not approved under a passive review process or as part of the biennial budget act, the money received must be paid into the general fund. Further, provide that an agency not enumerated under the section of the statutes concerning the duties of the Department and that does not have a contract or understanding with the Department that is approved under a passive review process or as part of the biennial budget may not be charged for legal services provided by DOJ. This provision would not affect current law provisions under which 10 percent of the amounts awarded to DOJ for legal actions relating to medical assistance, marketing and trade practices, trusts and monopolies and environmental cases are deposited to a legal services investigations and prosecutions program revenue appropriation, and the remainder deposited to the general fund.

DISCUSSION POINTS

1. Under current law, DOJ bills specified state agencies for DOJ legal services performed for non-GPR funded programs and deposits payments into the general fund. AB 133 estimates that \$474,900 annually will be deposited into the general fund as GPR-Earned for the provision of legal services in 1999-01.

2. DOJ also deposits monies state agencies pay for legal services into DOJ's interagency/intra-agency assistance program revenue appropriation. This appropriation, created in 1991 Act 39, receives monies for the provision of legal services to state agencies under agreements between DOJ and the agencies. The adjusted base for the appropriation is \$401,400 PR and 3.0 PR positions. In December, 1998, the Joint Committee on Finance approved, under s. 16.505/515, \$161,500 PR and 5.5 PR positions annually to enable DOJ to provide legal services to the University of Wisconsin Medical Foundation (UWMF) in malpractice suits and to defend the Department of Transportation in eminent domain actions. Currently, DOJ has agreements with the following agencies: (a) the Department of Administration (DOA) for hazardous waste litigation; (b) the Department of Transportation; and (c) the University of Wisconsin for legal services related to the Physicians Plus/UWMF merger and for legal services related to DOA/UWMF risk management.

3. The State Budget Office believes that the statutes are unclear as to when state agency payments for legal services provided by DOJ should be deposited into the general fund or to DOJ's interagency/intra-agency assistance appropriation. DOJ indicates that the program revenue appropriation is used when a state agency agrees to provide funding to enable DOJ to perform additional legal work above and beyond what DOJ would otherwise be able to do. As such, these agreements would have no impact on general fund revenues.

4. According to the State Budget Office, the provision under the bill is intended to clarify when the program revenue appropriation can be used to provide legal services to state agencies. AB 133 states that DOJ may only credit its interagency/intra-agency assistance appropriation with monies received from other state agencies for the provision of legal services

when those monies are approved under the 16.505/16.515 process or as part of the biennial budget act. However, there are technical problems with the proposed statutory language. Under the bill, if authority to spend the money received by DOJ is not approved under s.16.505 or s. 16.515 or as part of the biennial budget act, the money would be paid into the general fund. However, DOJ indicates that if the Legislature does not approve the expenditure authority, there would be no money to deposit to the general fund because the agreement between the agencies would not be implemented. The provision would also preclude legislative approval of additional expenditure authority through the budget adjustment act or other legislation. The provision also states that an agency that is not enumerated in a statutory section and that does not have a contract or understanding with DOJ that is approved under s.16.505 or 16.515 or as part of the biennial budget act may not be charged for legal services by DOJ. However, the statutory section refers to all state agencies, so it is unclear which agencies are not enumerated. Because of the technical problems with the proposal, the Governor's recommendation would appear to have little practical effect on current practice.

5. Under current law, agencies are to certify the amount of DOJ's itemized statement for the legal services to the Department of Administration (DOA), who then deposits the amount into the general fund. Under current practice, however, DOJ submits statements to the agencies, the agencies pay DOJ directly and then DOJ deposits these monies into the general fund. The GPR-Earned estimates for DOJ under the bill reflect this long-standing practice. The Committee may wish to modify the statutes to reflect current accounting practice.

6. As a result, the Committee may wish to delete the Governor's recommendation and, instead, create statutory language that specifies when DOJ has authority to credit its interagency/intra-agency assistance appropriation or the general fund. This could be accomplished by authorizing DOJ to enter into agreements with state agencies to provide legal services funded with program revenue, provided that the agreements between DOJ and other state agencies for the provision of legal services result in an increase in legal work performed and, therefore, the agreements do not impact general fund revenues. In addition, the Committee may wish to modify statutory language to reflect the current accounting practice of DOJ receiving payments from state agencies and then depositing the checks to the State Treasurer as GPR-Earned.

7. Alternatively, the Committee may wish to maintain current law. DOJ maintains that, although the statutes may be somewhat ambiguous, the current system meets the intent of the law. The Legislature's creation of the interagency/intra-agency assistance appropriation for the provision of legal services to other state agencies and the Committee's approval of positions and funding through the s.16.505/515 process provide sufficient authorization for current practice.

ALTERNATIVES

1. Delete the Governor's recommendation. Instead, make the following changes concerning DOJ's legal fees charged to other state agencies: (a) specify that state agencies, upon receipt of a statement from DOJ for legal services, shall pay the amount to DOJ for deposit to the general fund, in order to properly reflect current accounting practice in the statutes; and (b)

statutorily authorize DOJ to enter into written agreements with state agencies to provide legal services funded with program revenue, provided that the agreements between DOJ and other state agencies for the provision of legal services result in an increase in legal work performed so that the agreements do not impact general fund revenues.

2. Maintain current law.

Prepared by: Barbara Zabawa



5004 5/19
State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0351/1

RPN.....
jlg

LFB:.....Zabawa (DS) – Legal fees charged to other state agencies by the department of justice

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 445, line 10: delete lines 10 to 14. ✓

3 2. Page 1062, line 13: delete the material beginning with that line and ending
4 with page 1063, line 3. ✓

5 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

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