

**13.10 Meeting
April 24, 2001
Agenda Item I**

Issue: Supreme Court requests a one-time supplement of \$92,000 GPR to cover the State Law Library's increased costs of purchasing books and other publications.

Comments:

Much of this overrun is due to continuing publications which are only useful as long as they are kept current, since users must be able to use them to determine the current state of the law.

The Library has tried to manage it's book budget including (but not limited to) limiting the purchase of new titles, concentrating on the retention of continuations and using the Internet, but the problem with the Internet is that it is not always reliable and people like using printed materials.

Without a supplement, the Library would likely have to pay interest as well as cancel sets of books and repurchase them in the next fiscal year. Without the supplement, the deficit will continue to grow.

Estimates are that it will incur \$92,000 in continuation costs in 2000-01 that will have to be carried over to 2001-02.

Staff Recommendation: Alternative 1: A one time supplement of \$92,000 GPR from money reserved for contract prison beds to the Law Library's estimated book budget deficit.

Prepared by: Tanya



Legislative Fiscal Bureau

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April 24, 2001

TO: Members
Joint Finance Committee

FROM: Bob Lang, Director

SUBJECT: Supreme Court: Section 13.10 Request Relating to State Law Library -- Agenda Item I

REQUEST

The Director of State Courts, on behalf of the Supreme Court, requests a one-time supplement of \$92,000 GPR from the Joint Committee on Finance's GPR appropriation under s. 20.865(4)(a) to the State Law Library's general program operations appropriation under s. 20.680(4)(a) to cover the increased costs of purchasing book and other publications.

BACKGROUND

Under current law, the Supreme Court is required to maintain a state law library for the use of officers and employees of the state (including the Supreme Court, the Court of Appeals, the Legislature, the Governor's Office and state agencies), attorneys and the public. The Library is administered by the Supreme Court, which has responsibility for promulgating and enforcing rules governing the use of the Library. The Library's collection includes briefs for all Wisconsin Supreme Court and Court of Appeals cases, as well as session laws, statutory codes, court reports, administrative rules and regulations, legal indexes, and digests of the federal government, all fifty states and U.S. territories. General reference materials include selected documents of the federal government, legal and bar periodicals, legal treatises and legal encyclopedias. The Library also provides reference and basic legal research services.

ANALYSIS

For 2000-01, the GPR supplies and services and permanent property budget for the Library is \$501,400. Of this amount, 12.9% is budgeted for supplies and services (\$64,600), 4.8% is budgeted for copier rental and master lease payments for computer equipment (\$24,100) and 82.3% is budgeted for books (\$412,700).

Much of the Library's collection consists of continuations. Continuations are of several types: (a) sets of court decisions, administrative rules and regulations and statutory codes to which additional volumes or supplements are added as new law is made; (b) looseleaf services and other products which summarize and cross-reference court decisions, statutory law, rules and regulations to which supplements are added; and (c) periodicals that are bound into separate volumes when a sufficient number of unbound issues have accumulated. Most continuing publications are useful only as long as they are kept current, since users must be able to use continuing publications to determine the current state of the law.

In 1990-91, \$271,200 GPR was budgeted for the purchase of books, compared with \$412,700 GPR in 2000-01, a 52% increase. By comparison, from 1990 to 2000, the consumer price index increased approximately 32%. While the Library's budget increases for books over the last eleven years significantly outpaced the increase in the consumer price index, inflation for legal serial publications has consistently outpaced the growth in the consumer price index. Based on a 2000 survey of legal periodicals, the average price of 84 legal periodicals increased 31.2% from 1996 to 2000. Over the same period, the consumer price index increased 9.75%.

Rising prices for legal books and continuations have put increasing pressure on the Library's book budget. As the following table demonstrates, in recent years the Library has spent more than 99% of its book purchases on continuations and has increasingly carried over book and continuation purchases to the subsequent fiscal year as the book budget has been exhausted before the fiscal year ended. In 2000-01, the carryover purchases of \$58,900 represent approximately 14.3% of the Library's book budget. Without a supplement from the Committee, the Library estimates that it will incur \$92,000 in continuation costs in 2000-01 that will have to be carried over to 2001-02.

<u>Fiscal Year (FY)</u>	<u>Book Expenditures*</u>	<u>Carryover to Next FY</u>	<u>Spent on New Titles</u>
1996-97	\$365,876	\$14,674	\$3,659 (1.0%)
1997-98	388,702	24,180	8,551 (2.2%)
1998-99	396,383	29,890	2,775 (0.7%)
1999-00	426,366	58,900	2,558 (0.6%)
2000-01	504,700 (est.)		1,961 (0.4%)

*Includes funds reallocated internally

Court officials indicate that the Library has employed a number of techniques to try to manage its book budget including: (a) internal reallocation of resources; (b) limiting the purchase of new titles and concentrating on the retention of continuations; (c) carefully evaluating updates and supplements before deciding whether to keep or return; (d) canceling reference works, titles and supplementation subscriptions to selected treatises and looseleaves; and (e) eliminating or not purchasing multiple copies of materials in heavy demand. The Library has also explored increased use of the Internet as a way to manage its book budget. However, Library officials indicate that a problem with legal information on the Internet has been that it is not necessarily reliable, complete, or up-to-date, which are all critical issues for legal researchers. The experience of the Library has been that its users still prefer to use printed materials.

In previous years, the Library has been able to reallocate a portion of other funds for book purchases. However, it appears that these funds are not available in 2000-01 for reallocation. Without the \$92,000 supplement in 2000-01, Court officials indicate that the Library would likely have to pay interest required under state statute for book invoices not paid within 30 days of receipt as well as having to cancel sets of books and repurchase them in the next fiscal year when funds became available. Without the supplement, the growing deficit in the book budget would continue. The increasing deficit impacts the users of the Library as continuations that are not current generally cannot be used until they are brought current again.

If the supplement is not approved, the Library will begin 2001-02 with an estimated book budget deficit of \$92,000. It should also be noted that the 2001-03 budget bill makes a base budget reduction of \$52,500 annually from the Library's general program operations appropriation. At least a portion of this base budget reduction would likely come from the books budget. Unless significant reductions would be made in the Library's continuation collection, the recommended base budget reductions would likely exacerbate the current deficit.

Finally, it should be noted that the Court's funding request is larger than the amount currently available in the unreserved portion of the Committee's supplemental GPR appropriation. The remaining unreserved balance in the Committee's GPR appropriation is \$40,700. To provide the level of funding (\$92,000 GPR) requested by the Court, the Committee would have to provide funding from the portion of the Committee's appropriation reserved for contracts for prison beds. Reflecting Committee action through December, 2000, \$14,410,200 GPR remains in the Committee's appropriation reserved for prison bed contracts. The Department of Corrections has indicated that it will not be requesting these funds for this purpose.

ALTERNATIVES

1. Approve the Court's request to provide a one-time supplement of \$92,000 GPR in 2000-01 from the Committee's appropriation under s. 20.865(4)(a) reserved for contract prison beds to the Law Library's general program operations appropriation under s. 20.680(4)(a), to cover the Library's estimated book budget deficit.

2. Provide \$58,900 GPR in one-time funding in 2000-01 from the Committee's appropriation under s. 20.865(4)(a) reserved for contract prison beds to the Law Library's general program operations appropriation under s. 20.680(4)(a) to reduce the Library's book budget deficit. This amount reflects the amount of 1999-00 book purchases that was paid in 2000-01.

3. Deny the request.

Prepared by: Paul Onsager

MO# Att 1

2 BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
MOORE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input type="radio"/>	N	<input checked="" type="radio"/>
PLACHE	<input checked="" type="radio"/>	N	A
WIRCH	<input checked="" type="radio"/>	N	A
DARLING	<input type="radio"/>	<input checked="" type="radio"/>	A
WELCH	<input type="radio"/>	<input checked="" type="radio"/>	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
ALBERS	<input type="radio"/>	<input checked="" type="radio"/>	A
DUFF	<input type="radio"/>	<input checked="" type="radio"/>	A
WARD	<input checked="" type="radio"/>	N	A
HUEBSCH	<input type="radio"/>	<input checked="" type="radio"/>	A
HUBER	<input checked="" type="radio"/>	N	A
RILEY	<input checked="" type="radio"/>	N	A

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I. Supreme Court – Denis Moran, Director of State Courts

The Director of State Courts requests a supplement of \$92,000 GPR in fiscal year 2000-01 from the Committee's appropriation under s. 20.865(4)(a) to the Supreme Court's Law Library general program operations appropriation under s. 20.680(4)(a) to provide sufficient funds to purchase legal continuations that need to be purchased in fiscal year 2001.

Governor's Recommendation

Approve a one-time supplement of \$58,900 for past due invoices. Funding for this request should be released from the reserved portion of the Joint Finance Committee's supplemental appropriation under s. 20.865(4)(a).



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

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Date: April 20, 2001

To: Members, Joint Committee on Finance

From: George Lightbourn, Secretary
Department of Administration

Subject: Section 13.10 Request from the Director of State Courts on behalf of the Supreme Court for the Law Library.

Request

The Director of State Courts requests a supplement of \$92,000 GPR in fiscal year 2000-01 from the Committee's appropriation under s. 20.865(4)(a) to the Supreme Court's Law Library general program operations appropriation under s. 20.680(4)(a) to provide sufficient funds to purchase legal continuations that need to be purchased in fiscal year 2001.

Background

Section 758.01, Wisconsin Statutes, directs the Supreme Court to "maintain a state law library for the use of officers and employees of this state, attorneys and the public." The Wisconsin State Law Library (WSLL) is a public library and is open to all citizens of the State of Wisconsin. It is the primary legal resource center for the Wisconsin court system, the Department of Justice (DOJ), the Wisconsin Legislature, the Governor's office, executive agencies and the State Bar of Wisconsin.

The collection contains session laws, statutory codes, court reports, administrative rules, legal indexes and U.S. government digests for all fifty states and territories. The WSLL provides reference and basic legal research services and maintains general reference materials from the federal government, legal and bar periodicals, legal treatises and legal encyclopedias.

For expenditure purposes, the library's resource collection can be divided into two categories: new and continuing. Currently, the WSLL spends less than 1% of its

budget on new publications. Continuations must be purchased on a regular basis when issued or entire sets, when interrupted, are no longer useful.

Analysis

Law Library funding for FY2001 is \$1,037,000 GPR. A little over half of this funding supports staff and supplies and \$501,400 is for permanent property including books, copier rental and master lease payments for computer equipment.

Over the past twenty years the price for legal continuations has increased by 846% as compared to an increase in the CPI of 225%. Also, according to a study published in the Library Journal in April 1999, the cost for legal publications has risen 42% from 1995 to 1999; during that same period, the WSLL's book budget increased by 9.5%. Consolidations and mergers in the law book publishing industry have resulted in two major companies controlling most of the legal publishing market. This circumstance has limited the purchasing options available to the library.

The WSLL has made several efforts to manage its book budget as effectively as possible. Some of the strategies include:

- Internal reallocation. In fiscal year 1999 \$2,800 from the supplies line was reallocated and in fiscal year 2000 \$5,500 from the LTE line was reallocated for new book purchases.
- Limiting the purchase of new books. More than \$3,500 in new book orders is on hold.
- Returning annual cumulative supplements for treatises.
- Canceling supplements.
- Eliminating or not purchasing multiple copies of heavy demand materials.
- Canceling some reference works.
- Selectively canceling titles that are not currently in demand.

The WSLL has investigated using the Internet as a way to provide access to some materials at no cost. At this time, however, there are few legal materials available at no cost and those available have proven to be difficult to search and use online.

If the current legal publication purchasing policy remains intact, the WSLL would, without the supplemental request, be placed in a position of continuing its current

Members, Joint Committee on Finance

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policy of canceling publications and repurchasing them in the next fiscal year.

Of the \$92,000 being requested \$33,100 is for current FY01 inflationary increases, while \$58,900 is to pay for FY00 invoices that have been carried over from the previous fiscal year.

Recommendation

Approve a one-time supplement of \$58,900 for past due invoices. Funding for this request should be released from the reserved portion of the Joint Finance Committee's supplemental appropriation under s. 20.865(4)(a).

Prepared by: Brett Coomber
266-8270

Memorandum

STATE OF WISCONSIN
DIRECTOR OF STATE COURTS



DATE: March 16, 2001

TO: The Honorable Brian Burke, Co-Chair
Joint Committee on Finance

The Honorable John Gard, Co-Chair
Joint Committee on Finance

FROM: J. Denis Moran, Director of State Courts
Supreme Court of Wisconsin

SUBJECT: Request under s. 13.10 for \$92,000 GPR in 2000-2001 for appropriation
20.680 (4)(a), Law Library

REQUEST

Under the provisions of s. 13.10, Wis. Stats., the Director of State Courts, on behalf of the Supreme Court, requests \$92,000 in 2000-2001 for appropriation 20.680 (4)(a), Law Library to pay for legal continuations which need to be purchased in FY 2001, but for which funds are insufficient. These purchases cannot be deferred because they will interrupt long series of legal publications that need to remain current in order for the Law Library to adequately serve its users. This deficit situation has been building for the past few years and has currently reached a crisis situation.

STATUTORY CRITERIA FOR S. 13.10, WIS. STATS., REQUEST

This request is submitted under s. 13.101 (3)(a), under which the Joint Finance Committee may supplement the appropriation of any department, board, commission, or agency, which is insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which made. In this case, as covered under s. 13.101 (3)(a)(3), increases in the cost of publications beyond the level of the law library appropriation will prevent the library from purchasing publications essential to fulfilling its statutory responsibilities.

BACKGROUND

Section 758.01, Wis. Stats., directs the Supreme Court to "maintain a state law library for the use of officers and employes of this state, attorneys and the public". The Wisconsin State Law Library (WSLL) is a public library open to all the citizens of Wisconsin. It serves as the primary legal resource center for the Wisconsin Supreme Court and Court of

Appeals, the Department of Justice, the Wisconsin Legislature, the Office of the Governor, executive agencies and members of the State Bar of Wisconsin. It is administered by the Supreme Court, which determines the rules governing library use.

The state minimizes the cost of legal publications by centralizing them in the State Law Library. Executive and legislative agencies are able to limit their legal collections to volumes and series that they need at hand.

The collection contains session laws, statutory codes, court reports, administrative rules, legal indexes, and digests of the U.S. government, all fifty states and U.S. territories. General reference materials include selected documents of the federal government, legal and bar periodicals, legal treatises and legal encyclopedias. It also provides reference and basic legal research services. By the very nature of its collection and whom it serves, it is essential for the library's collection to remain up-to-date and complete.

For the purpose of budgeting and tracking expenditures, the library's resource collection may be divided into two categories: new and continuing. New publications increase the breadth and depth of the library's collection. They provide information in legal areas that are expanding such as laws relating to the use of the Internet and personal privacy. They also provide new or better examinations of existing law, and analyses that take into consideration changes in laws. New publications, which should account for at least 10% of a library's expenditures, account for less than 1% of the WSLI budget.

Continuing publications include updates to statutory law, case law, administrative rules and regulations (primary resource materials), and analyses of and commentaries on primary source materials (secondary materials). These include complete sets of statutes and court decisions for all 50 states and the federal government; regional reporters and digests; titles on various types of law, such as tax law, unemployment insurance, labor relations, social security, and employment safety and health. Many titles, such as the Congressional Index are update weekly; others such as the Wisconsin Digest, are updated monthly or quarterly. Continuations must be purchased on a regular basis, when issued. If not, entire sets, when interrupted, are no longer useful.

ANALYSIS

The funds available to the Wisconsin State Law Library are primarily from a GPR sum certain appropriation. For 2000-2001, the current authorized expenditure level is \$1,037,000: approximately half supports the salary and fringe benefits of 10.0 FTE permanent staff; \$17,200 for LTE assistance; \$64,600 for supplies' including support of the law library's on-line catalog system; \$412,700 for books; and \$24,100 for copier rental and master lease payments for computer equipment.

Law book prices have been rising at a significantly higher rate than the consumer price index for many years. For example, over the past twenty years, the price for legal continuations has increased by 846% as compared to an increase in the CPI of 225%. On

average, in the past few years, less than 1% of the WSLL book budget has been spent on the purchase of new titles. The Library can no longer afford to purchase the new materials necessary for the user, particularly in specific topic areas that several years ago were not even issues within the legal profession. Previously, the library was able to set as a goal that 10% of the book expenditure authority be allocated for new titles. However, the combination of steadily increasing prices and lower than requested expenditure authority has caused the WSLL to fall far short of that goal.

The library's budget has not increased enough over the last few years to account for the inflation in the law book-publishing field. While the cost of library materials has been increasing at well over 10% annually, the book budget of the WSLL has increased at an average annualized rate of 3.16% over the past ten years, and 2.57% annually during the past three biennia. In its 1999-2001 biennial budget proposal, the Court requested a 7.5% annual increase in the Law library's book budget to try and keep pace with inflationary pressures; instead, a 3.0% annual increase was provided to mirror the projected CPI increase. In contrast, the UW library budget received a 19.0% biennial increase.

Each year, despite the fact that the budget has increased some in most biennia, the WSLL gets further and further behind because the increases that are provided do not reflect the actual cost increases that the library is facing. According to a study published in the *Library Journal* in April, 1999, costs for legal books have risen 42% from 1995 to 1999; during the same period, the library's book budget increased by 9.5%. A separate study, based on a selected number of titles from the major publishers, shows a 35% inflationary price increase from FY96-97 to FY98-99.

Additionally, consolidations and mergers in the law book publishing industry have resulted in there being only two major companies who control most of the market. These companies are bringing out new products, revising old ones, raising shipping/handling charges, and increasing the costs of supplementation to existing sets at alarming rates.

The following table shows WSLL book expenditures, the amount of continuations that were purchased in one year, but had to be paid in the following year, and the amount and percentage of expenditures spent on new titles for the past four years.

<u>YEAR</u>	<u>BOOK EXPENDITURES*</u>	<u>CARRYOVER TO NEXT FY</u>	<u>SPENT ON NEW TITLES</u>
1996-97	365,876	14,674/ 4.0%	3,659/ 1.0%
1997-98	388,702	24,180/ 6.2%	8,551/ 2.2%
1998-99	396,383	29,890/ 7.5%	2,775/ 0.7%
1999-00	426,366	58,900/ 13.8%	2,558/ 0.6%
2000-01	504,700 (est.)**		1,961/0.4%

* Includes funds reallocated internally

** As of March 6, 2001, \$357,000 has been spent on book continuations

As can be seen from the above table, the financial hole that the WSLI has been finding itself in has been growing larger each year. Funds have not been spent on expanding the collection, and 14% of the FY 2001 budget will have to be spent on paying for previous years' continuations: this situation will only continue to get worse. Consequently, the Director of State Courts is requesting funding to make the WSLI whole in FY 2001, and has requested funding in the 2001-2003 biennial budget to prevent this situation from re-occurring.

The WSLI has been trying very diligently to manage the book budget as cost effectively as possible. Some of the strategies include:

- Internal Reallocation. Funds are reallocated from other purposes to help pay for books. For example, in FY 2000, \$5,500 in savings from LTEs was used for book purchases; in FY 1999, \$2,800 in saving from the supplies line was reallocated.
- Limiting the purchase of new books. In the past, the library allocated 10% of the book budget to new purchases, but by FY 01 the WSLI will spend less than 0.4% on new books. They currently have more than \$3500 in new book orders on hold - many of these titles have been requested by library patrons. Since the mission of the WSLI is to serve the needs of current legal research they are hampered by not being able to keep up with new areas of legal practice, such as Internet law and elder law, which are of great interest to their users.
- Carefully evaluate every update before deciding to keep or return. This requires a great deal of staff time as opposed to accepting most continuations on a standing order basis.
- Returning annual cumulative supplements for treatises with the hope that they can afford to buy next year's supplement. In FY 2000, the WSLI returned \$2413 worth of supplements; to date in FY 2001, \$3289 has been returned.
- Canceling supplementation subscriptions to selected treatises and looseleaves. Most of these materials are still important to the collection. Therefore, it is hoped that many of these canceled titles will be able to be repurchased within the next several years. This cycling of purchasing/canceling does save some money every year. In FY 2000, the WSLI canceled subscriptions totaling \$9528; in FY 2001, \$10,779 in subscriptions has been cancelled.
- Eliminating, and/or not purchasing, multiple copies of materials in heavy demand. This strategy does not facilitate the Library's efforts to expand circulation of its materials to all the citizens of Wisconsin.

- Canceling some reference works that, though very useful, are also very expensive. The most recent example is the decision not to purchase the new edition of *Law Books and Serials in Print* (\$734/year). This is a standard work for law libraries but it has to be considered a luxury at this point.
- Selectively weeding and canceling some titles which are not currently in demand.

The nature of a law library and its collections limits the strategies available for cutting back. A law library's collection must contain current information – old law is worse than no law. In order to remain up-to-date, the WSLL must maintain the current primary laws of the United States government and the fifty state governments. This means they purchase, on an ongoing basis, subscriptions which provide the text of court decisions, new laws, administrative rulings and regulations, etc. as well as supplements which update the older laws. The library has invested a great deal over the years to provide access to these sets; to stop updating them would basically make them of little or no use. The users of the library – state government employees, lawyers, judges, and the general public – count on being able to have access to these materials at the State Law Library.

In addition to maintaining primary legal materials the WSLL must also purchase secondary legal materials, the books and services that explain, index and update the law. Law reviews, legal journals, legal newspapers, treatises, digests and indexes, and looseleaf services are just some of the types of materials which are necessary to anyone doing any kind of legal research. Again, these materials and subscriptions must remain current in order to be useful.

The WSLL has turned to the Internet as a possible way to provide access to some materials at no charge. At this point in time there are few legal materials available at no charge. Those that are available are, for the most part, difficult to search and use online. Another major problem with legal information on the Internet is that it is not necessarily reliable, complete, or up-to-date – the characteristics most critical to those needing legal information. The library users tell us over and over again that they want and prefer paper copy, even if a source is available on a CD-ROM or the Internet. In order to provide WSLL users with the service they need, a collection of print materials that can be easily used and circulated must be maintained.

The impact of having to “do without” \$92,000 worth of updates and additions to the collection in this fiscal year would be devastating. The WSLL would have to cancel sets of books that are really needed and used. They would most likely have to be repurchased as soon as funds became available the next fiscal year. This does not accomplish anything, and the delay and lack of timeliness would hurt the users. The State Law Library is a major legal resource for the entire state of Wisconsin and the citizens who call, write and email for assistance are counting on the library to have the materials they need and cannot find in their local libraries. The demand for legal information from a broader population is increasing, and the State Law Library's

inadequate budget seriously impedes its ability to have current, accessible materials to meet this growing demand.

As a means of preventing this situation from re-occurring in future years, the WSLL requested a 7% increase in their book budget for the coming biennium along with "cost-to-continue" increases for the costs of Lexis/Westlaw services for their patrons and maintenance and license increases for their on-line catalog system. Instead of approving these requests, the Governor, in Senate Bill 55, reduced the WSLL budget by \$52,500. These cuts will have to come from their book budget. If this request is denied, and the budget reductions are approved, the State Law Library will be facing a shortage of almost \$150,000 (before inflation) in 2001-2002. Considering that the base funds available for book purchases is about \$412,000 in the current fiscal year, this means that there would be no funds to pay for more than 36% of the State Law Library's book continuations. The results could be devastating.

It is important to keep this major resource up-to-date. Information is a valuable commodity. Protecting the investment in the State Law Library by providing sufficient funds to allow the collection to maintain its currency and scope and permit the addition of materials to reflect new issues in the law is a wise investment. Most public libraries in this state cannot maintain any kind of legal collection – they look to the State Law Library to assist them and their users. The WSLL routinely receives letters, telephone calls and email questions from the general public from all across the state as well as from around the country, and it tries to serve them to the best of their ability. The best efforts will be severely hampered by an inadequate collection.

The State has made a considerable investment in the State Law Library, which has become an essential state resource. Continued erosion of funding, and our inability to keep our publications current, will undermine the State's investment. A series of publications, which cannot be kept current, is of little value to its users and a waste of taxpayers' money. Continued financial support will enable the WSLL to maintain its current high level of excellence.

SUMMARY

Under the provisions of s. 13.10, Wis. Stats., the Director of State Courts, on behalf of the Supreme Court, requests \$92,000 in 2000-2001 for appropriation 20.680 (4)(a), Law Library to pay for legal continuations which need to be purchased in FY 2001, but for which funds are insufficient. These purchases cannot be deferred because they will interrupt long series of legal publications that need to remain current in order for the Law Library to adequately serve its users. This deficit situation has become increasingly critical over the past several years and current funding for the WSLL is insufficient to pay for the continuations. A denial of this request, coupled with approval of the Governor's budget recommendations would have a devastating impact on the State Law Library – one from which it might not be able to recover.

J. Denis Moran, the Director of State Courts, will represent the Supreme Court at the Joint Finance Executive session.

cc. Chief Justice Shirley S. Abrahamson
Jane Colwin, WSL
Julie Tessmer, WSL

**13.10 Meeting
April 24, 2001
Agenda Item II**

Issue: Circuit Court requests a one-time supplement of \$60,000 GPR to reimburse counties for expenses incurred in providing court interpreters.

Comments:

In 1998-99 and 1999-00, \$188,000 was appropriated for court interpreters. \$42,100 was carried over from 1999-00 and paid in 2000-01.

Through 02/01, \$165,100 has been expended. Based on the previous years' reimbursement requests there is an estimated deficit of \$60,000 (31.8% of current funding).

If the request is denied, the estimated deficit of \$60,000 will remain an obligation to be carried over from 2001-02 appropriations (which is still at the same \$188,000 it's been since 1998).

Staff Recommendation: Alternative 1: A one time supplement of \$60,000 GPR from money reserved for contract prison beds to the Court's interpreter fees appropriation to reimburse counties.

Prepared by: Tanya



Legislative Fiscal Bureau

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April 24, 2001

amy

TO: Members
Joint Finance Committee

FROM: Bob Lang, Director

SUBJECT: Circuit Courts: Section 13.10 Request for Court Interpreter Reimbursement -- Agenda Item II

REQUEST

The Director of State Courts requests a one-time supplement of \$60,000 GPR in 2000-01 from the Joint Committee on Finance's GPR appropriation under s. 20.865(4)(a) to the Circuit Court's GPR court interpreter fees appropriation under s. 20.625(1)(c) to reimburse counties for expenses incurred in providing court interpreters.

BACKGROUND

The state currently provides reimbursement to counties for interpreter services for indigent persons under criminal, delinquency, protective service, Chapter 48 (Children's Code) and Chapter 51 (Mental Health Act) proceedings in circuit court. If a court has notice that a party, including children and parents in both children in need of protective services (CHIPS) actions and juvenile offenses, or a witness in any of the above proceedings has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the court must determine whether it is sufficient to prevent the individual from: (a) communicating with his or her attorney; (b) reasonably understanding the English testimony; or (c) reasonably being understood in English. If the court determines that an interpreter is necessary, the court must advise the party or witness that he or she has a right to a qualified interpreter and that, if the party or witness cannot afford one, an interpreter will be provided for him or her at the public's expense. (In other proceedings interpreters may be appointed by the court, but these appointments are infrequent.)

When a circuit court appoints an interpreter for an indigent person, the state provides reimbursement to the county for the resulting interpreter fees at the rate of \$35 per half day. The county must cover any costs in excess of \$35 per half day associated with retaining an interpreter for an indigent person and must also cover county-paid interpreter services provided to non-indigent persons.

The Circuit Court's court interpreter fees appropriation, which provides reimbursement to counties for furnishing interpreters for indigent persons, is appropriated \$188,800 GPR in 2000-01.

ANALYSIS

In 1998-99 and 1999-00, the Court expended the entire \$188,800 that was appropriated for court interpreter reimbursement. The Director of State Courts indicates that \$42,100 in reimbursable county expenses for indigent interpreter services was carried over from 1999-00 and paid in 2000-01.

Through February, 2001, \$165,100 has been expended on court interpreter reimbursements. It is difficult to project court interpreter expenses because the need for these services can be sporadic and counties can submit reimbursement requests at any time and with no time limits on submission of reimbursement requests. However, based on expenditures to date and the timing of previous years' reimbursement requests, the Court's estimate of a deficit of \$60,000 in 2000-01 appears reasonable. This represents 31.8% of the current funding amount.

It should be noted that the Court's funding request is larger than the amount currently available in the unreserved portion of the Committee's supplemental GPR appropriation. The remaining unreserved balance in the Committee's GPR appropriation is \$40,700. To provide the level of funding (\$60,000 GPR) requested, the Committee would have to provide funding from the portion of the Committee's appropriation reserved for prison bed contracts. Reflecting Committee action through December, 2000, \$14,410,200 GPR remains in the Committee's appropriation reserved for prison bed contracts. The Department of Corrections has indicated that it will not be requesting these funds for this purpose.

If the request is denied, the estimated deficit of \$60,000 in unpaid reimbursable county expenses for indigent interpreter services in 2000-01 would remain an obligation of the state that would be carried over and paid from the 2001-02 monies appropriated to the Circuit Court's GPR court interpreter fees appropriation.

ALTERNATIVES

1. Approve the Court's request for \$60,000 GPR in one-time funding in 2000-01 from the Committee's appropriation under s. 20.865(4)(a) reserved for contract prison beds to the Circuit

Court's court interpreter fees appropriation under s. 20.625(1)(c) to reimburse counties for expenses incurred in providing court interpreters for indigent persons.

2. Deny the request.

Prepared by: Paul Onsager

MO# A171

BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
MOORE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input type="radio"/>	N	A
PLACHE	<input checked="" type="radio"/>	N	A
WIRCH	<input checked="" type="radio"/>	N	A
DARLING	<input checked="" type="radio"/>	N	A
WELCH	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
DUFF	<input checked="" type="radio"/>	N	A
WARD	<input checked="" type="radio"/>	N	A
HUEBSCH	<input checked="" type="radio"/>	N	A
HUBER	<input checked="" type="radio"/>	N	A
RILEY	<input checked="" type="radio"/>	N	A

AYE 15 NO 0 ABS 1

II. Circuit Courts – Denis Moran, Director of State Courts

The Director of State Courts requests a supplement of \$60,000 GPR in fiscal year 2000-01 from the Committee's appropriation under s. 20.865(4)(a) to the Circuit Courts court interpreter fees appropriation under s. 20.625(1)(c) to provide sufficient funds for reimbursement to counties for costs they have incurred providing interpreters under s. 885.37(4)(a)2.

Governor's Recommendation

Deny the request. The Governor's budget recommendations of \$50,000 annually will eliminate the funding deficit by the end of fiscal year 2003.



WISCONSIN DEPARTMENT OF
ADMINISTRATION

SCOTT McCALLUM
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY

Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842
TTY (608) 267-9629

Date: April 20, 2001

To: Members, Joint Committee on Finance

From: George Lightbourn, Secretary
Department of Administration *George Lightbourn*

Subject: Section 13.10 Request for \$60,000 GPR in 2000-2001 for appropriation 20.625 (1)(c), Court Interpreter Fees.

Request

The Director of State Courts requests a supplement of \$60,000 GPR in fiscal year 2000-01 from the Committee's appropriation under s. 20.865(4)(a) to the Circuit Courts court interpreter fees appropriation under s. 20.625(1)(c) to provide sufficient funds for reimbursement to counties for costs they have incurred providing interpreters under s. 885.37(4)(a)2.

Background

The appointment of language interpreters in court is governed by s. 885.37, Wisconsin Statutes, which sets the criteria for court appointment of an interpreter at public expense. This statute was substantially revised in 1987 in response to State v. Neave, which held that an interpreter will be provided at court expense if a criminal defendant cannot afford one. Following this case, the Legislature specified that the court must provide an interpreter for indigent parties and witnesses in criminal, juvenile, mental health, and child protection cases.

According to s. 885.37, Wisconsin Statutes:

- Interpreters are required for persons who have a language difficulty because of the inability to speak or understand English, or who have a hearing or speech impairment, sufficient to prevent the person from consulting with an attorney, reasonably understanding the testimony, or reasonably being understood in English.
- Interpreters are required in four types of cases: criminal, children in need of protective services (CHIPS) under Chapter 48, juvenile offenses under Chapter 938, and mental commitments under Chapters 51 and 55.

- Interpreters are appointed for four types of participants: parties, witnesses, and children and parents in CHIPS actions and juvenile offenses.
- Interpreters are appointed at public expense only when the court finds that the party, witness, child or parent is indigent.

Section 885.37, Wisconsin Statutes, also provides that agencies shall pay for interpreters at administrative hearings, that the State Public Defender shall pay for an interpreter in preparing for court proceedings, and that municipal courts shall be subject to the same requirements as circuit courts

Individual counties pay the cost of court-ordered interpreter services in Wisconsin circuit courts. When a county provides interpreter services under the terms of s. 885.37, Wisconsin Statutes, the costs are partially reimbursable by the state. The fee for circuit court interpreters as set by s. 814.67, Wisconsin Statutes, is \$35.00 per half day, plus mileage. This amount is reimbursed to the counties from appropriation in s. 20.625(1)(c); in 1999-2001, the annual appropriation was \$188,800. The Director of State Courts office reimburses counties up to the amount of this appropriation; if the amount is insufficient to cover all requests for reimbursement, the Director's office holds the outstanding requests and pays them from next year's appropriation. The amount of this carryover of outstanding obligations was \$42,074.87 from FY 2000 to FY 2001.

Analysis

The Director of State Courts projects total spending for FY2001 to be \$247,616, which leaves a shortfall of \$58,616. Of that amount, \$42,075 is carryover for outstanding obligations from FY2000, leaving an actual spending deficit in FY2001 of \$16,541.

The Governor's budget recommendation provides an additional \$50,000 annually in the coming biennium to continue reimbursing counties at the statutory rate of \$35/half day. If the Director of State Courts continues with its current policy of carrying over outstanding reimbursement requests and the reimbursement requests from the counties remain stable, no deficit should exist at the end of fiscal year 2003.

Recommendation

Deny the request. The Governor's budget recommendations of \$50,000 annually will eliminate the funding deficit by the end of fiscal year 2003.

Memorandum

STATE OF WISCONSIN
DIRECTOR OF STATE COURTS



DATE: March 16, 2001

TO: The Honorable Brian Burke, Co-Chair
Joint Committee on Finance

The Honorable John Gard, Co-Chair
Joint Committee on Finance

FROM: J. Denis Moran, Director of State Courts
Supreme Court of Wisconsin

SUBJECT: Request under s. 13.10, Wis. Stats. for \$60,000 GPR in 2000-2001 for
appropriation 20.625 (1)(c), Court Interpreter Fees

REQUEST

Under the provisions of s. 13.10, Wis. Stats., the Director of State Courts, on behalf of the Supreme Court, requests \$60,000 in 2000-2001 for appropriation 20.625 (1)(c), Court Interpreter Fees to provide the Director's Office with sufficient funds to reimburse counties for costs they have incurred providing interpreters under s. 885.37(4)(a)2, Wis. Stats. While the current appropriation level is \$188,800, it is projected that requests for payment to the counties will be \$248,800 in FY 2001.

STATUTORY CRITERIA FOR S. 13.10, WIS. STATS., REQUEST

This request is submitted under s. 13.101 (3)(a), under which the Joint Finance Committee may supplement the appropriation of any department, board, commission, or agency, which is insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which made. In this case, as covered under s. 13.101 (3)(a)(3), it is projected that the costs incurred by counties for interpreters that are eligible for reimbursement by the state under s. 885.37(4)(a)2 will exceed the amount available for reimbursement by \$60,000.

BACKGROUND

The appointment of language interpreters in court is governed by Wis. Stat. s. 885.37, which sets the criteria for court appointment of an interpreter at public expense. This statute was substantially revised in 1987 in response to State v. Neave, which held that an interpreter will be provided at court expense if a criminal defendant cannot afford one. Following this case, the Legislature specified that the court must provide an

interpreter for indigent parties and witnesses in criminal, juvenile, mental health, and child protection cases.

According to Wis. Stat. s. 885.37:

- Interpreters are required for persons who have a language difficulty because of the inability to speak or understand English, or who have a hearing or speech impairment, sufficient to prevent the person from consulting with an attorney, reasonably understanding the testimony, or reasonably being understood in English.
- Interpreters are required in four types of cases: criminal, children in need of protective services (CHIPS) under chapter 48, juvenile offenses under chapter 938, and mental commitments under chapters 51 and 55. In other types of cases, interpreters may be appointed in the discretion of the court, but civil appointments are infrequent.
- Interpreters are appointed for four types of participants: parties, witnesses, and children and parents in CHIPS actions and juvenile offenses.
- Interpreters are appointed at public expense only when the court finds that the party, witness, child or parent is indigent.

Wis. Stat. s. 885.37 also provides that agencies shall pay for interpreters at administrative hearings, that the State Public Defender shall pay for an interpreter in preparing for court proceedings, and that municipal courts shall be subject to the same requirements as circuit courts

While the current statute gives the court the discretion to appoint an interpreter in other cases, this power is rarely used in civil cases. Interpreters are seldom appointed for divorces, domestic violence, restraining orders, paternity, evictions, debt collections, traffic citations, and a host of other common legal problems. The statute does not provide an interpreter for the many litigants who do not meet indigency criteria but who cannot afford an interpreter. It also does not provide an interpreter for crime victims other than in their capacity as witnesses, seriously undermining their protections under the victims' rights act.

Wis. Stat. s. 885.37 is intended to apply to court appointment of both foreign language interpreters and interpreters who provide services for deaf, deaf-blind, hard of hearing, and speech-impaired court users. However, Wis. Stat. s. 885.37 was passed prior to the Americans with Disabilities Act (ADA), 42 USC § 12101 *et seq.* (1990). Title II of the ADA provides that state and local governments must make their services, programs and activities readily accessible to and useable by people with disabilities. The ADA does not apply to foreign language speakers unless they are disabled.

The state statute does not conform to the ADA with respect to court interpreter services, a situation that causes confusion about the extent of the court's obligations. The ADA requires accommodation of disabled parties and witnesses in all types of cases, civil or criminal, regardless of indigency. The ADA also requires interpreters or other accommodations for jurors. Accommodation may take the form of interpreters, assistive listening devices, transcripts, or other means of assisting communication.

The cost of court-ordered interpreter services in Wisconsin circuit courts is paid by the individual counties. When the county provides interpreter services under the terms of Wis. Stat. s. 885.37, the costs are partly reimbursable by the state. Wis. Stat. s. 814.67 provides that the fee for interpreters in circuit court shall be \$35.00 per half day, plus mileage. This amount is reimbursed to the counties from a separate appropriation in the circuit court sum certain budget under s. 20.625(1)(c); in 1999-2001, the annual appropriation was \$188,800. The Director of State Courts office reimburses counties up to the amount of this appropriation; if the appropriation is not sufficient to cover all the requests for reimbursement, the Director's office holds the outstanding reimbursement requests and pays for from the next year's appropriation. The amount of this carryover of outstanding obligations was \$42,074.87 from FY 2000 to FY 2001. Conversely, counties are not required to submit their invoices in a timely manner – it is not unusual for requests for reimbursement to be submitted in a year subsequent to when the service was performed.

Individual counties are responsible for interpreter fees not covered by the statute. Thus, the counties are responsible for the full cost of interpreter services whenever the court appoints an interpreter for a nonindigent party. The counties are also responsible for any amount paid in excess of \$35.00 per half day. This rate was set in 1987 and does not reflect what counties must actually pay to get an interpreter to work for the court. The current market rate for interpreter services is approximately \$30 - \$40 per hour. As a result, counties currently pay about two-thirds of the cost of providing interpreter services.

In addition, Wis. Stat. s. 814.67 provides that the fee for interpreters shall be \$10.00 per half day in municipal court, but there is no state reimbursement.

ANALYSIS

Attached is a table (Attachment A) of reimbursements paid to counties in FY 2000, payments to date in FY 2001 and projected additional expenditures for this fiscal year. As was previously stated, requests totaling \$42,074.87 submitted in FY 2000 were carried over and paid in FY 2001 – funds ran out by the middle of May 2000. This situation is expected to get worse during the current year: based on past experience, we anticipate that requests for reimbursement will exceed available funds by \$60,000 during the current fiscal year.

The Governor's budget recommendations contained in 2001 Senate Bill 55 provide an additional \$50,000 annually in the coming biennium to continue reimbursing counties at the statutory rate of \$35/half day. These funds are not sufficient to even make the payments current, without taking into account the natural increase of reimbursement requests. Therefore, approval of this request is even more critical.

It should be noted that the statutory language associated with this appropriation limits the expenditure of these funds to the reimbursement of counties for payments they have already made to interpreters. Therefore, funds cannot be reallocated from other appropriations to make up the anticipated shortfall, and any excess funds appropriated to this appropriation would automatically lapse back to the state's general fund. If this request is either denied or partially funded, we will continue to have to carry over the requests for services rendered this fiscal year to next fiscal year, delaying payment further.

SUMMARY

Under the provisions of s. 13.10, Wis. Stats., the Director of State Courts, on behalf of the Supreme Court, requests \$60,000 in 2000-2001 for appropriation 20.625 (1)(c), Court Interpreter Fees, to provide the Director's Office with sufficient funds to reimburse counties for costs they have incurred providing interpreters under s. 885.37(4)(a)2, Wis. Stats. While the current appropriation level is \$188,800, it is projected that requests for payment to the counties will be \$248,800 in FY 2001. The appropriation to be supplemented is an annual appropriation that can only be used for payments to counties for interpreter services. In the absence of additional funds, reimbursement for services already paid for by the counties will have to be carried over to the next fiscal year, only exacerbating the current deficit situation.

J. Denis Moran, the Director of State Courts, will represent the Supreme Court at the Joint Finance Executive session.

cc. Chief Justice Shirley S. Abrahamson

Attachment A
INTERPRETER REIMBURSEMENTS

<u>COUNTY</u>	<u>PAID IN</u> <u>1999-2000</u>	<u>PAID IN</u> <u>2000-2001*</u>	<u>ADDITIONAL</u> <u>2000-2001</u>
Barron	\$1,240.00	\$793.40	\$600.00
Brown	\$14,647.56	\$15,704.94	\$5,000.00
Chippewa	\$540.80	\$398.00	
Dane	\$16,426.91	\$11,713.40	\$4,000.00
Dodge	\$2,189.00	\$2,030.20	\$900.00
Douglas	\$364.00	\$37.00	
Dunn	\$1,691.40	\$1,151.20	\$1,500.00
Fond du Lac	\$1,206.20	\$1,781.20	\$500.00
Green	\$308.20		
Jackson	\$35.00		
Jefferson	\$7,872.20	\$11,617.80	
Kenosha	\$7,601.28	\$5,050.42	\$4,100.00
LaCrosse	\$1,735.00	\$525.00	\$1,800.00
Lincoln		\$41.80	
Manitowoc	\$2,899.60	\$3,902.00	\$1,200.00
Marathon	\$3,655.00	\$8,309.00	
Milwaukee	\$74,357.26	\$52,054.54	\$45,000.00
Monroe	\$4,372.80		
Outagamie	\$4,717.40	\$7,252.80	\$2,000.00
Ozaukee	\$149.60	\$354.80	\$200.00
Pierce		\$53.80	
Portage	\$2,448.00	\$2,127.00	\$2,500.00
Racine	\$11,122.40	\$9,251.00	\$3,100.00
Rock	\$6,620.60	\$6,435.60	\$2,000.00
Sauk	\$1,325.84	\$890.52	\$600.00
Shawano	\$557.00	\$600.00	\$200.00
Sheboygan		\$2,092.92	
Trempeleau		\$333.80	
Walworth	\$6,580.00	\$8,115.00	\$2,200.00
Washington	\$1,231.00	\$595.00	\$1,000.00
Waukesha	\$9,333.80	\$9,494.60	\$3,000.00
Waupaca	\$1,167.40	\$1,112.00	
Waushara	\$1,108.00	\$429.40	\$600.00
Winnebago	<u>\$1,296.75</u>	<u>\$1,118.17</u>	<u>\$250.00</u>
TOTAL	\$188,800.00	\$165,366.31	\$82,250.00

* Thru March 5

Note: \$42,074.87 charges incurred in FY 2000 had to be carried over and paid in FY 2001.

13.10 Meeting
April 24, 2001
Agenda Item III

Issue: Corrections requests a \$6,718,900 GPR transfer to its general programs operations to offset an estimated deficit associated with health care costs.

Comments:

In July, 2000, DOC indicated that as a result of higher than estimated pharmaceutical costs and increased utilization of the UW Hospitals and Clinics contract, health care costs in 1999-00 would total \$2,015,568 more than budgeted. At this time, JFC approved a transfer of \$1,231,600 GPR from the inmate work centers. DOC funded the remaining \$784,000 through internal reallocation.

The current deficit is \$6,718,900. Of this deficit, 55% is related to the cost of pharmaceuticals. The per capita cost of drugs has risen 68.6% from 1997-98 to 1999-00. DOC estimates that in 2000-01 it will increase by an additional 37.2% and will exceed budget by \$4,618,600. The other portion of the increase comes from other health care supplies and services.

LFB notes that DOC's request could be reduced by \$1,045,600 based on actual pharmacological purchases as of April 1, 2001 and actual utilization of the UW Hospitals and Clinics contract as of March 1, 2001.

Staff Recommendation: Alternative 2: Transfer of \$5,673,300 GPR in 2000-01 to DOC's general program operations appropriation to offset the deficit and reflect the savings noted by LFB.

\$4,938,900 from DOC's contracts and agreements and \$734,400 from JFC's supplemental reserve for contract beds.

Prepared by: Tanya



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 266-3848

MO# Att 2

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A

TAMM/A

April 24, 2001

GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

AYE 14 NO 1 ABS 0

SUBJECT: Corrections: Section 13.10 Request Related to Health Care Costs -- Agenda Item III

The Department of Corrections requests that \$6,718,900 GPR in 2000-01 be transferred to its general program operations appropriation (s. 20.410(1)(a)) to offset an estimated deficit associated health care costs. Corrections requests that funds in 2000-01 be transferred from the following appropriations: (a) \$4,938,900 GPR from the unallotted portion of the Department's corrections contracts and agreements appropriation (s. 20.410(1)(ab)); and (b) \$1,780,000 GPR from the portion of the Joint Committee on Finance's supplemental appropriation reserved for prison contract beds (s. 20.865(4)(a)).

BACKGROUND

In 1999-00, health care supplies and services were budgeted at \$16,857,800 GPR in the Department of Corrections. These costs included a contract for health care services at the Supermax Correctional Institution, a contract for services with the University of Wisconsin Hospitals and Clinics, pharmaceutical costs and other medical supplies and services costs. In July, 2000, the Department of Corrections indicated that as a result of higher than estimated pharmaceutical costs and increased utilization of the UW Hospitals and Clinics contract, health care costs in 1999-00, would actually total \$18,873,368 (or \$2,015,568 more than budgeted funding). In order to address this deficit, on July 12, 2000, the Joint Committee on Finance approved the transfer of \$1,231,600 GPR in 1999-00 from the Committee's appropriation (s. 20.865(4)(a)) reserved for inmate work centers to the Department's 1999-00 general program operations appropriation (s. 20.410(1)(a)). Corrections funded the remaining costs of the deficit (\$784,000) through the internal reallocation of funds.

ANALYSIS

The Department of Corrections has a 2000-01 budget for health care-related supplies and services of \$18,889,400 GPR, including contracts for health care services at the Supermax and Redgranite Correctional Institutions and a contract for services with the University of Wisconsin Hospitals and Clinics. For 2000-01, the following table identifies the budget amounts, estimated total expenditures and the estimated balance for each health care item.

Department of Corrections Health Care Supplies and Services 2000-01

<u>Item</u>	<u>Budget</u>	<u>Estimated Expenditures</u>	<u>Balance</u>
UW Hospital and Clinics contract	\$4,764,800	\$6,801,700	-\$2,036,900
Supermax health services contract	1,170,700	1,081,900	88,800
Redgranite health services contract	626,000	689,400	-63,400
Pharmaceutical costs	4,582,300	9,200,900	-4,618,600
Other medical supplies and services	<u>7,745,600</u>	<u>9,504,400</u>	<u>-1,758,800</u>
Total	\$18,889,400	\$27,278,300	-\$8,388,900

Of the total estimated health care cost deficit, 55% is related to the costs of pharmaceuticals. Corrections indicates that the actual per capita pharmaceutical cost increased by 18.7% between 1997-98 and 1998-99 (from a per capita of \$271.44 in 1997-98 to \$322.14 in 1998-99) and by 42.1% between 1998-99 and 1999-00 (to a per capita cost of \$457.64 in 1999-00). Over the period from 1997-98 to 1999-00, pharmaceutical per capita costs increased by 68.6%. Corrections estimates that the per capita costs will increase in 2000-01 by an additional 37.2% to \$627.89. According to research cited by Corrections, drug therapies are cheaper than previous therapies, such as surgery, but "as successful new drug therapies are introduced, more patients may be treated, increasing the overall cost of health care." Corrections estimates that in 2000-01, pharmaceutical costs will exceed budgeted costs by \$4,618,600.

The contract that Corrections has with the University Hospital and Clinics provides inpatient and outpatient services for inmates referred to the Hospital. Under the contract for 2000-01, Corrections: (a) is charged a base rate of \$4,861,800 for inpatient and outpatient services; (b) is charged \$209 per day for all outpatient days of service in excess of 5,000 total days; (c) is charged \$6,536 for all inpatient discharges in excess of 500 for the year; (d) pays 60% of all inpatient discharges whose costs are in excess of \$60,000; and (e) will pay the UW Hospitals for transplant care at Medical Assistance rates. Based on utilization of the UW Hospital contract through December 31, 2000, Corrections estimates that it will exceed its budgeted funding by \$2,036,900 in 2000-01.

The Redgranite Correctional Institution opened in January, 2001. Health services at the facility are provided through contracted services. In 1999 Act 9, the health contract was budgeted at \$626,000 GPR in 2000-01 assuming a January, 2001, opening of the facility. Under the recently finalized health services contract, Corrections is required to pay a set monthly cost for medical services during the first eight months of the contract (\$82,149 per month for January and February, \$112,450 per month for March and April, \$150,116 per month for May and June and \$173,174 per month for July and August). Between August and December, 2001, the contract specifies a daily per capita rate based on the number of inmates at the facility ranging from \$12.77 (if there are 100 to 200 inmates in the facility) to \$7.59 (if there are 700 to 750 inmates). As of April 13, 2001, the facility had an inmate population of 598. Based on the contract, costs in 2000-01 will total \$689,400 and exceed the budgeted amount by \$63,400.

In total, the estimated health care deficit attributable to pharmaceuticals, the UW Hospital and Clinics contract and the Redgranite Correctional Institution health services contract totals \$6,718,900 GPR in 2000-01 under Corrections' request. Associated with the request, Corrections has identified an additional health care supplies and services deficit of \$1,758,800 attributable to other medical supplies and services. These other costs include medical and dental services provided outside of the contracts identified in the request, hospitalization costs in hospitals other than the UW Hospitals and Clinics and general medical and dental supplies. These costs would be partially offset by the \$88,800 balance remaining from the Supermax health services contract. Further, Corrections estimates that other supplies and services costs specifically associated with the Bureau of Health Services will exceed budgeted amounts by \$1,247,400 in 2000-01. Corrections indicates that it "will attempt to cover these increases through base resources. However, if this cannot be accomplished, the Department may seek funding at the next § 13.10 meeting."

The Department of Corrections' request was generally based on information through the end of December, 2000. The Committee should note that, based on more recent data, the Department's request could be reduced by \$1,045,600 GPR in 2000-01 as follows: (a) costs associated with pharmaceuticals could be reduced by \$455,100 GPR in 2000-01, based on actual pharmacological purchases as of April 1, 2001; and (b) costs associated with the UW Hospitals and Clinics contract could be reduced by \$590,500 GPR in 2000-01 based on utilization as of March 1, 2001 (the latest date for which information is available).

In order to fund the Department's request, two sources of funding would be utilized:

- The Department would support \$4,938,900 GPR of the total costs associated with health care cost increases by transferring funding in 2000-01 from the unallotted balance in the corrections contracts and agreements appropriation to the Department's general program operations appropriation. At the December, 1999, s. 13.10 meeting, a motion was adopted that required the Co-chairs of the Joint Committee on Finance to certify the release of funding for Corrections Corporation of America's Tutwiler, Mississippi facility. That motion required that the final release of \$1,986,800 GPR in 1999-00 and \$15,697,900 GPR in 2000-01 related to the Tutwiler facility was dependent on Corrections' assessment that the facility meets the Department's specifications and is ready to admit Wisconsin prisoners. On May 31, 2000, the Co-chairs certified Corrections' request to release \$1,092,400 GPR in 1999-00 and \$8,247,500 GPR in 2000-01 for out-of-state

contract beds. Since Corrections did not request release of all of the available funding, \$894,400 GPR in 1999-00 and \$7,450,400 GPR in 2000-01 remained in unallotted reserve in the appropriation. At the December, 2000, s. 13.10 meeting, the Committee approved the transfer of a total of \$1,924,000 GPR in 2000-01 from the unallotted portion of the appropriation for other departmental purposes. As a result, \$5,526,400 GPR remains in unallotted reserve in 2000-01. Under another s. 13.10 request currently before the Committee, an additional \$587,500 GPR is requested to be transferred from unallotted reserve. Combined, these two requests would fully utilize monies remaining in unallotted reserve in 2000-01. Corrections indicates that the funding in unallotted reserve would not be utilized for additional contract beds in 2000-01.

- The Department requests the remaining \$1,780,000 GPR associated with the health care services deficit from the portion of the Joint Committee on Finance's supplemental appropriation reserved for prison contract beds (s. 20.865(4)(a)). Currently, there is \$14,410,200 GPR in the Committee's supplemental appropriation associated with contract beds. It is not anticipated that Corrections will request the release of funding for additional contract beds. Funding is, therefore, available to support the health care costs.

Corrections states that it "cannot absorb the amount requested in this § 13.10." The Department estimates that the health care services budget will be fully expended by the middle of April, 2001. In addition, Corrections indicates that "the Department will experience a salary deficit requiring a fourth quarter salary supplement. In light of this, the Department is unable to absorb health care costs from the salary line." At the September, 2000, s. 13.10 meeting, the Joint Committee on Finance transferred a total of \$3,393,600 GPR to the Committee's appropriation reserved for an anticipated 2000-01 Corrections salary deficit.

ALTERNATIVES

1. Transfer \$6,718,900 GPR in 2000-01 to the Department of Corrections' general program operations appropriation (s. 20.410(1)(a)) to offset an estimated deficit associated health care costs. Transfer funding from the following appropriations: (a) \$4,938,900 GPR from the unallotted portion of the Department of Corrections' corrections contracts and agreements appropriation (s. 20.410(1)(ab)); and (b) \$1,780,000 GPR from the portion of the Joint Committee on Finance's supplemental appropriation reserved for prison contract beds (s. 20.865(4)(a)).

2. Transfer \$5,673,300 GPR in 2000-01 to the Department of Corrections' general program operations appropriation (s. 20.410(1)(a)) to offset an estimated deficit associated health care costs. Transfer funding from the following appropriations: (a) \$4,938,900 GPR from the unallotted portion of the Department of Corrections' corrections contracts and agreements appropriation (s. 20.410(1)(ab)); and (b) \$734,400 GPR from the portion of the Joint Committee on Finance's supplemental appropriation reserved for prison contract beds (s. 20.865(4)(a)).

3. Deny the request.

Prepared by: Jere Bauer

III. Department of Corrections – Jon Litscher, Secretary

The department requests the transfer of \$4,938,900 GPR from the department's corrections contracts and agreements appropriation under s. 20.410(1)(ab) and the release of \$1,780,000 GPR from the reserved portion of the Committee's appropriation under s. 20.865(4)(a) in fiscal year 2000-01 to the department's general program operations appropriation under s. 20.410(1)(a) to correct a projected health care deficit.

Governor's Recommendation

Approve the request to transfer of \$4,938,900 GPR from the department's corrections contracts and agreements appropriation under s. 20.410(1)(ab) to the department's general program operations appropriation under s. 20.410(1)(a).

Modify the request to release \$790,200 GPR from the Committee's appropriation under s. 20.865(4)(a) reserved for contract beds in fiscal year 2000-01. This reduced request reflects DOC's revised health care deficit costs.



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

SCOTT McCALLUM
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY

Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842
TTY (608) 267-9629

Date: April 20, 2001

To: Members, Joint Committee on Finance

From: George Lightbourn, Secretary
Department of Administration

Subject: Section 13.10 Request from the Department of Corrections for health care costs.

Request

The department requests the transfer of \$4,938,900 GPR from the department's corrections contracts and agreements appropriation under s. 20.410(1)(ab) and the release of \$1,780,000 GPR from the reserved portion of the Committee's appropriation under s. 20.865(4)(a) in fiscal year 2000-01 to the department's general program operations appropriation under s. 20.410(1)(a) to correct a projected health care deficit.

Background

The total variable health care budget allocated for adult inmates in the Department of Corrections (DOC) in fiscal year 2000-01 was \$19,703,900. DOC expenditures for health care are projected to exceed the budgeted amounts for fiscal year 2000-01 by \$6,718,900.

The DOC projects that health care expenditures will exceed budgeted amounts for several items, including: pharmaceuticals, the University of Wisconsin Hospitals and Clinics (UWHC) health care contract and the Redgranite Correctional Institution (RGCI) health care contract.

	FY01 Budget	FY01 Projected Expenditures	FY01 Request for Additional Funding
Pharmaceuticals	\$ 4,582,300	\$ 9,200,900	\$ (4,618,600)
UWHC Contract	\$ 4,764,800	\$ 6,801,700	\$ (2,036,900)
RGCI Contract	\$ 626,000	\$ 689,400	\$ (63,400)
Total	\$ 9,973,100	\$16,692,000	\$ (6,718,900)

Analysis

As a standard part of its biennial budget request the Department of Corrections estimates projected variable health care costs. Variable health care costs include medical and dental supplies, lab tests, pharmaceuticals, contract services with University Hospital and Clinics, ambulance service, emergency room and hospital visits in local communities and non-state employee physician and nursing services.

Variable health care costs for fiscal year 1999-2000 were budgeted based on the Department of Administration's 1999-2001 budget instructions. The budgeted increases for fiscal year 1998-1999 were 2.3% over fiscal year 1997-1998 expenditures, 3.9% over fiscal year 1998-1999 for fiscal year 1999-2000, and 3.8% over fiscal year 1999-2000 for fiscal year 2000-2001. This resulted in a total variable health care budget of \$19,703,900 in fiscal year 2000-01.

Pharmaceutical Costs

The majority of the variable health care deficit is due to increased pharmaceutical drug costs. Per capita pharmaceutical drug costs for fiscal year 1998-1999 were 18.7% over fiscal year 1997-1998 expenditures. Per capita costs for fiscal year 1999-2000 were 42% over fiscal year 1998-1999 expenditures. Fiscal year 2000-01 per capita expenditures for pharmaceuticals are projected to be 37% over fiscal year 1999-2000 expenditures.

	Budget Allocation			Actual Expenditures			Difference		
	Total	\$ Per Capita	% Change	Total	\$ Per Capita	% Change	Total	\$ Per Capita	% Change
FY98 (Base)	\$3,569,200	\$271.44		\$3,569,200	\$271.44				
FY99	\$3,929,800	\$277.69	2.30%	\$4,504,500	\$322.14	18.70%	\$318,100	\$44.46	16%
FY00	\$4,349,700	\$288.52	3.90%	\$6,648,600	\$457.64	42.10%	\$2,298,900	\$169.13	38%
FY01 Projected	\$4,582,300	\$299.48	3.80%	\$9,200,900	\$627.89	37.20%	\$4,618,600	\$328.41	33%

The department's experience with increased pharmaceutical costs is consistent with the nationwide trend of rapidly increasing drug prices. These increases often result from new drugs being introduced to the market. New drugs are usually patented for the first seven years, precluding the purchase of more economical generic versions during this time. Examples of these increases are the use of the drug, Rebetrone, to treat inmates with Hepatitis C and the use of various protease inhibitors to treat inmates with HIV. In addition, inmates are receiving more medications. The average number of medications distributed per inmate increased from 20 per year in fiscal year 1995-96 to almost 28 per year in fiscal year 1998-99.

Subsequent to its March 16, 2001, request, DOC was able to reestimate projected pharmaceutical expenditures, which are now projected to exceed the budgeted amounts in fiscal year 2000-01 by \$4,209,900.

UWHC Health Care Contract

In fiscal year 1999-2000, DOC spent \$5,501,811 GPR for the health care contract with University of Wisconsin Hospital and Clinics (UWHC). Expenditures for fiscal year 2000-01 were projected to be \$6,801,700 GPR. Subsequent to its March 16, 2001, request, DOC was able to reestimate projected UWHC expenditures, which are now projected to exceed the budgeted amounts in fiscal year 2000-01 by \$1,455,800.

RGCI Health Care Contract

The Redgranite Correctional Institution (RGCI) opened in January 2001. The fiscal year 2000-01 health care budget for RGCI is \$626,000 GPR. DOC anticipates contract costs will exceed the budgeted amount by \$63,400 GPR.

When 1999 Act 9 was put together, DOC did not have contract information available for RGCI. The department used the Prairie du Chien Correctional Institution contract per capita rates as a proxy. The RGCI health care contract with Prison Health Services is in the process of being finalized and contains fixed monthly costs through August 2001. After that time, the contract will be based on the daily per capita of inmates. The monthly rate for January and February is \$80,484 per month, \$110,239 per month for March and April, \$147,360 per month for May and June and \$170,417 per month for July and August.

As of March 23, 2001, there are 451 inmates at RGCI.

Additional Nonsalary Health Care Costs

The Department of Corrections indicates that it cannot absorb the funding requested in this s. 13.10. In fiscal year 1999-2000, DOC experienced a health care deficit of \$2.7 million. The department was able to offset that deficit by utilizing several program revenue balances. However, similar balances do not exist in fiscal year 2000-01.

DOC is experiencing increased costs in other non-salary health care areas that continue to challenge the department's health care budget. DOC will attempt to cover these other increased costs through base resources. If this cannot be accomplished, the department may seek additional funding at the next s. 13.10 meeting. Currently, DOC anticipates an additional health services deficit of \$2.9 million. The department will also experience a salary deficit requiring a fourth quarter salary supplement.

Members, Joint Committee on Finance
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April 20, 2001

The department submitted the 13.10 request at this time, rather than waiting for the fourth quarter 13.10 meeting, because the department's funds will be depleted prior to that meeting. The department has indicated that if this request is not approved, funding for the Bureau of Health Services (BHS) would be depleted by mid-April. BHS expenditures would then be shifted to other budgets within the department's general program operations appropriation, depleting the appropriation in early June. According to DOC, supplies of food, pharmaceuticals, critical supplies and the payment of inmate wages would cease.

Recommendation

Approve the request to transfer of \$4,938,900 GPR from the department's corrections contracts and agreements appropriation under s. 20.410(1)(ab) to the department's general program operations appropriation under s. 20.410(1)(a).

Modify the request to release \$790,200 GPR from the Committee's appropriation under s. 20.865(4)(a) reserved for contract beds in fiscal year 2000-01. This reduced request reflects DOC's revised health care deficit costs.

Prepared by: Jana D. Steinmetz
266-2213

Scott McCallum
Governor

Jon E. Litscher
Secretary



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III

State of Wisconsin
Department of Corrections

DATE: March 16, 2001

TO: The Honorable Brian Burke, Co-Chair
Joint Committee on Finance
Room 316 South, State Capitol
Madison, WI 53702

The Honorable John Gard, Co-Chair
Joint Committee on Finance
Room 315 North, State Capitol
Madison, WI 53702

FROM: Jon E. Litscher, Secretary
Department of Corrections

SUBJECT: §13.10 Request - Transfer of Funds to Cover Increased Health Care Costs

Request

The Department of Corrections (DOC) requests the transfer of \$4,938,900 GPR from appropriation §20.410(1)(ab), Corrections contracts and agreements and \$1,780,000 GPR from the Joint Committee on Finance's appropriation under §20.865(4)(a) to §20.410(1)(a) General program operations, to address FY01 health care funding shortfalls. The total \$6,718,900 GPR in funding for this request would be provided from funds currently in unallotted reserve in the DOC contract beds appropriations and from funds in the Joint Committee on Finance's appropriation that are reserved for out-of-state contract beds.

Background

DOC expenditures are projected to exceed budgeted amounts in FY01 for several items, including pharmaceuticals, the health care contract with the University of Wisconsin Hospitals and Clinics (UWHC) and the health care contract for Redgranite Correctional Institution. Table 1 shows the amounts budgeted, the anticipated expenditures and the projected deficit for FY01 for these items.

Table 1
FY01 Allotted Budget vs. Projected Expenditures

	FY01 Budget	Projected FY01 Expenditures	Balance
<i>Pharmaceuticals</i>	\$ 4,582,300	\$ 9,200,900	\$ (4,618,600)
<i>UW Contract</i>	\$ 4,764,800	\$ 6,801,700	\$ (2,036,900)
<i>Redgranite Contract</i>	\$ 626,000	\$ 689,400	\$ (63,400)
Total	\$ 9,973,100	\$ 16,692,000	\$ (6,718,900)

Analysis

FY01 variable non-salary health care costs (VNF), which includes pharmaceutical drugs and health care contracts, were budgeted based on the DOA's Budget Guidelines issued in June 1998. Variable health care costs are budgeted as a group, rather than by individual categories and therefore result in a blended per capita rate. The budgeted increases for FY99, FY00, and FY01 were 2.3% over FY98 expenditures for FY99, 3.9% over FY99 for FY00, and 3.8% over FY00 for FY01.

Pharmaceutical Costs- Pharmaceutical drug costs are expected to exceed the budgeted amount by \$4,618,600 GPR. Per capita pharmaceutical drug costs for FY99 were 18.7% over FY98 expenditures. FY00 per capita pharmaceutical drug costs were 42% over FY99 expenditures. It is projected that FY01 per capita drugs costs will be 37% over FY00 expenditures. Table 2 compares budgeted to actual costs for FY98, FY99, FY00 and projected costs in FY01 for pharmaceutical drugs.

Table 2
**FY98, FY99, FY00, FY01 Budget vs Actual Expenditures
 Pharmaceutical Drugs**

	BUDGET ALLOCATION			ACTUAL			DIFFERENCE		
	Total	\$ Per Capita	% Change	Total	\$ Per Capita	% Change	Total	\$ Per Capita	% Change
FY98 (Base)	\$3,569,200	\$271.44		\$3,569,200	\$271.44				
FY99	\$3,929,800	\$277.69	2.3 %	\$4,504,500	\$322.14	18.7 %	\$318,100	\$44.46	16 %
FY00	\$4,349,700	\$288.52	3.9 %	\$6,648,600	\$457.64	42.1 %	\$2,298,900	\$169.13	38 %
FY01*	\$4,582,300	\$299.48	3.8 %	\$9,200,900	\$627.89	37.2 %	\$4,618,600	\$328.41	33 %

* Projected FY01 costs

The Department is experiencing increased pharmaceutical costs, a trend being noticed nationally. Pharmaceutical costs are increasing significantly because "some new, successful drug therapies are less expensive overall than previous therapies, such as surgery" and "as successful new drug therapies are introduced, more patients may be treated, increasing the overall cost of health care"¹(Mehl, Santell, 2000). When new drugs are introduced to the market, they are usually patented

¹ Mehl, B., Santell, J., (2000, January) Projecting Future Drug Expenditures – 2000. American Journal Health-System Pharmacies. 57, 129-137

for the first seven years, precluding the purchase of more economical generic versions. An example of this is the use of Rebetron to treat Hepatitis C. Rebetron (approved by the FDA on June 3, 1998) was not purchased by DOC at all in FY98. The expenditures for Rebetron in FY99 were \$32,700 (52 kits), and \$255,000 (431 kits) in FY00. This drug therapy alone impacted the FY00 per capita rate by over \$17.20 per inmate.

UWHC Contract –In FY00, \$5,501,811 GPR was expended on the UWHC contract. Expenditures this fiscal year are expected to be \$6,801,700 GPR. The contract with the UWHC is projected to exceed the budgeted amount by \$2,036,900 GPR due to a combination of factors. One factor impacting the cost for the contract is increased usage. At the end of FY99, the average monthly number of outpatient days was 571 and the average number of inpatient discharges was 40 per month. It is projected that by the end of FY01, the average monthly number of outpatient days will be 662 and the average monthly number of inpatient discharges will be 48. The difference in the average monthly usage is 91 outpatient days and 8 inpatient discharges. The other factor contributing to the impact of the UWHC contract on the deficit is the increased contract rates. For example, the rates for each inpatient discharge have increased from \$6,285 to \$6,536 and rates for each outpatient day has increased from \$201 to \$209, or 4%.

Redgranite Health Care Contract – The Department has now opened Redgranite and is finalizing the Redgranite health care contract. It is anticipated that the contract costs will exceed the budgeted amounts by \$63,400 GPR.

It should be noted that the Department has been experiencing increased costs in other non-salary health care areas. Similar to what is happening nationwide, increasing health care costs continue to challenge the Department's non-salary health care budget. The Department will attempt to cover these increases through base resources. However, if this cannot be accomplished, the Department may seek additional funding at the next §13.10 meeting.

The Department cannot absorb the amount requested in this §13.10. In FY00, the Department experienced a health care deficit of approximately \$3 million. The department was able to offset the FY00 deficit by utilizing multiple program revenue balances. However, similar balances do not exist in this fiscal year. In addition, similar to last fiscal year, the Department will experience a salary deficit requiring a fourth quarter salary supplement. In light of this, the Department is unable to absorb health care costs from the salary line.

Given the current expenditure patterns, it is anticipated that the Bureau of Health Services will fully expend its budget by the beginning of April.

Summary:

The Department requests the transfer of \$4,938,900 GPR from appropriation §20.410(1)(ab) and \$1,780,000 GPR from appropriation §20.865(4)(a) to appropriation §20.410(1)(a). This total transfer of \$6,718,900 GPR would address some of the Department's projected FY01 health care deficit.

cc: Robert Lang, Legislative Fiscal Bureau
George Lightbourn, Department of Administration

Prepared by: Colleen Godfriaux, Bureau of Budget and Facilities Management
266-0300

**13.10 Meeting
April 24, 2001
Agenda Item IV**

Issue: Corrections requests a \$587,500 GPR transfer from it's contracts and agreements appropriation to support the Milwaukee Secure Detention Facility (MSDF).

Comments: In September, 2000, JFC approved 139.03 GPR positions to staff the expansion of the MSDF and provide central office staff increases associated to it.

In addition, JFC approved the transfer of \$2,847,900 GPR for future release in anticipation of salary shortfalls.

Staff Recommendation: Support Conclusion: It's consistent with the previous action in the September, 2000 meeting.

Prepared by: Tanya