

Fiscal Estimate - 2013 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 13-2751/1	Introduction Number SB-235
Description Increasing the rate paid to private attorneys for representing indigent clients	
Fiscal Effect	
State:	
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local:	
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate	
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <u>0</u> <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
Fund Sources Affected	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.550(1)(d)	
Affected Ch. 20 Appropriations	
Agency/Prepared By	Authorized Signature
SPD/ Anna Oehler (608) 267-0311	Adam Plotkin (608) 264-8572
Date	
8/6/2013	

Fiscal Estimate Narratives

SPD 8/6/2013

LRB Number	13-2751/1	Introduction Number	SB-235	Estimate Type	Original
Description Increasing the rate paid to private attorneys for representing indigent clients					

Assumptions Used in Arriving at Fiscal Estimate

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a significant role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation has the potential to increase SPD costs if it creates a new criminal offense, expands the definition of an existing criminal offense, or increases the penalties for an existing offense.

The \$40 hourly reimbursement rate for the private bar has remained unchanged for two decades and was actually decreased in 1992. The rate is now well below market rate. Attorneys in private practice set their hourly rates to take into account operational costs and a compensation rate commensurate with their experience. As small business operational costs and general costs of living have increased, the average hourly rate that private sector attorneys charge has increased. According to surveys conducted by the State Bar of Wisconsin the average hourly rate charged by attorneys in Wisconsin has increased from \$116 per hour in 1992 to \$200 per hour in 2009.

Other attorneys retained by federal, state and local government are paid substantially more than \$40 per hour. Most Wisconsin counties pay private attorneys at the Supreme Court rate – currently \$70 per hour – to take court appointments or to serve as guardians ad litem. Defense attorneys are paid \$125 per hour for non-capital federal cases. The Office of Lawyer Regulation uses outside counsel in some disciplinary matters at a reimbursement rate of \$70 per hour. Other state agencies charge-back for their in-house attorney services. For example, the Department of Safety and Professional Services charges back attorney time to those license holders who are found to have committed misconduct at the rate of \$61.00 per hour.

Private attorneys on the SPD appointment list are the only group of private sector professionals whose compensation is set by statute. For example, state procurement contracts for professional services on the VendorNet system include hourly rates for: Accountants (\$63-\$94), Facilitation Consultants (\$100), Auditors (\$77-\$133), Project Implementation Coordinators (\$89-\$112), and Environmental Consulting Services Senior Consultants (\$56). Many of these positions do not require similar schooling and continuing education requirements as an attorney; however, they are contracted at a significantly higher pay than attorneys representing clients for the Public Defender.

This bill increases the rate for a private attorney who is assigned a case by the SPD from \$40 per hour to \$75 per hour for time spent on a case (it makes no change the current travel rate of \$25 per hour). Based on 56,054 cases appointed to assigned counsel at the current \$40 an hour rate in Fiscal Year 2012 (as both rotational and contract appointments). The SPD estimates that this bill would increase the SPD costs for representation by \$16,121,008 annually. This estimate is based upon 1) the total number of SPD cases assigned to the private bar; 2) the sub-totals in different case categories that are included in this total; and 3) the average hours approved as reasonable in the SPD's review process of invoices received from the private bar.

Long-Range Fiscal Implications