



Legislative Fiscal Bureau

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February 14, 2006

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Substitute Amendment 1 to Assembly Bill 680: Increasing the Jurisdictional Amount for Small Claims

Assembly Bill 680, introduced on September 22, 2005, would increase the jurisdictional amount for small claims actions in circuit courts. The bill was referred to the Assembly Committee on Judiciary, and a public hearing was held on October 20, 2005. On January 11, 2006, Assembly Substitute Amendment 1 to Assembly Bill 680 (ASA 1 to AB 680) was introduced. By a vote of 5 to 3, the Assembly Committee on Judiciary recommended passage of ASA 1 to AB 680 on February 7, 2006, and the bill was referred to the Joint Committee on Finance.

On January 26, 2006, Assembly Substitute Amendment 2 was introduced, but not taken up by the Assembly Committee on Judiciary.

CURRENT LAW

Small Claims. Chapter 799 of the statutes provides for the procedures to be used in small claims actions. Under current law, small claims actions include all of the following:

1. Actions for eviction, regardless of the amount of rent claimed;
2. Actions to recover certain forfeitures;
3. Actions for the return of earnest money tendered pursuant to a contract for purchase of certain real properties, regardless of the amount claimed;

4. Actions for the confirmation, vacation, modification or corrections of an arbitration award where arbitration was in settlement of a controversy arising out of a transaction for the purchase of certain real properties;

5. Actions for replevin (actions for the return of movable goods) where the value of the property claimed does not exceed \$5,000; or

6. Other civil actions where the amount claims is \$5,000 or less, if the actions or proceedings are: (a) for money judgments only, except for cognovit judgments (default judgments on agreements where the debtor accepted liability); (b) for garnishments or most attachments; or (c) to enforce a lien upon movable assets.

Court Support Services Surcharge. The court support services surcharge was created in 1993 as a \$20 fee on all forfeiture judgments and most civil court filings. The surcharge has increased over the years and is now applied as follows: (a) \$51 for various small claims filings; (b) \$169 for various large claims filings; and (c) \$68 for forfeiture action judgments, appeals from municipal courts or administrative decisions, and certain court filings not covered under (a) or (b). Revenue generated from the court support services surcharge is deposited to the state's general fund.

In addition to the court support services surcharge, a justice information system surcharge and filing fee are assessed for small and large claim actions. The justice information surcharge is \$12 for both small and large claims and is divided as follows: \$6 to the circuit courts automation programs (CCAP), \$5 to the Department of Administration for its justice information systems, and \$1 to the general fund. For small claims actions, a \$22 filing fee is assessed, with \$11.80 paid to CCAP and \$10.20 paid to the counties. For large claims actions, a \$75 filing fee is assessed, with \$15 paid to CCAP and \$30 each paid to the general fund and to the counties.

SUMMARY OF SUBSTITUTE AMENDMENTS

Assembly Substitute Amendment 1 to AB 680. Assembly Substitute Amendment 1 would increase the jurisdictional limit in small claims cases from \$5,000 or less to \$10,000 or less. In addition, ASA 1 would specify that small claims procedures would apply to negligence claims where the amount is \$5,000 or less. Further, under ASA 1 the \$75 filing fee and \$169 court support services surcharge would apply to small claims actions between \$5,001 and \$10,000 while the \$22 filing fee and \$51 court support services surcharge would continue to apply to small claims actions for \$5,000 or less. Further, ASA 1 to AB 680 would provide that 50% of the revenue generated from the \$169 court support services surcharge, applied to small claims actions between \$5,001 and \$10,000, would be retained by the counties.

Under ASA 1 to AB 680, since the maximum limit for claims against the state payable by the Claims Board is established by the small claims maximum, the Claims Board could approve payment of claims up to \$10,000 without legislative approval. In addition, attorney fees for the

prevailing party in civil actions involving money or property judgments are set to the small claims limit. Under ASA 1, maximum recoverable fees are: (a) \$500 for claims over \$10,000; (b) \$300 for claims between \$1,000 and \$10,000; and (c) \$100 for claims under \$1,000.

Assembly Substitute Amendment 2 to AB 680. Assembly Substitute Amendment 2 is similar to ASA 1 except that:

1. The small claims limit is increased to \$7,500 rather than \$10,000.
2. The current court support services surcharges are increased as follows: (a) from \$51 to \$58 for small claims, and certain civil actions, third-party complaints, garnishment or wage earner actions that are less than the small claims limit; (b) from \$68 to \$77 for non-monetary civil actions and special proceedings, and forfeitures; and (c) from \$169 to \$190 for civil actions in excess of the small claims limit (large claims).

The court support services surcharge was established in 1993 as a \$20 fee on all forfeiture judgments and most civil court filings. In 1995, the surcharge was increased to \$30 for filing small claims actions, \$100 for filing large claims actions, and \$40 for other civil filings and forfeiture judgments. In 2002 the surcharge was increased by 30% to \$39 for filing small claims actions, \$130 for filing large claims actions, and \$52 for other civil filings and forfeiture judgments. Under 2003 Act 33, the surcharge was further increased by 30% to \$51 for filing small claims actions, \$169 for filing large claims actions, and \$68 for other civil filings and forfeiture judgments. In 2004-05, the court support services surcharge generated \$47,746,700. Revenue from the surcharge is deposited into the general fund.

3. Funding of \$4,869,900 GPR is provided in 2006-07 for increased guardian ad litem (GAL) payments to counties. Under current law, GAL payments are funded at \$4,738,500 GPR annually. Total funding would be \$9,608,400 GPR in 2006-07. A guardian ad litem (GAL) is an attorney appointed by the court for persons (usually minor children) in certain proceedings, who is an advocate for the best interests of the person. Payments are distributed to counties based on each county's proportion of: (a) court branches; (b) revenue generated by the court support services surcharge; and (c) cases that would likely involve GAL services as determined by the Director of State Courts. No county may receive a GAL payment in an amount exceeding the total cost of GAL compensation that the county incurred under family, children and juvenile proceedings in the previous calendar year.

Two technical modifications to ASA 2 to AB 680 should be noted. First, as drafted it is unclear which court support services surcharge (under ASA 2 either \$58 or \$190) applies to claims between \$5,001 and \$7,500. The bill should be modified to apply the higher fee to these claim actions. Second, it is unclear how revenue generated from the court support services surcharge would be divided between the state and county. As under ASA 1 to AB 680, Assembly Substitute Amendment 2 to AB 680 should be modified to specify that revenue from the current surcharge continue to be remitted to DOA, while the new surcharge from claims between \$5,001 and \$7,500 would be divided between the state and the counties.

FISCAL EFFECT

Assembly Substitute Amendment 1

Legislative Fiscal Bureau. On January 31, 2006, this office prepared a supplemental fiscal note for ASA 1 to AB 680. As indicated in that estimate, increasing the jurisdictional limit for small claims actions will shift cases from the large claims caseload to the small claims caseload. However, it is not possible to predict the amount of the shift. Civil action filings are not classified by specific dollar amounts, and, based on discussions with state and county court officials, many large claim filings do not identify amounts being sought. For instance, under s. 802.02(1m), "the demand for judgment may not specify the amount of money the pleader seeks" for tort actions (the amount may be identified to a jury or the court).

Since the court fees and surcharges assessed to small claims actions are smaller than those assessed in large claims actions, a decrease in large claims actions would likely result in a loss of revenue to the general fund. While ASA 1 to AB 680 provides that the \$169 court support services surcharge and \$75 filing fee apply to small claims actions between \$5,001 and \$10,000 (instead of the \$51 surcharge and \$22 filing fee), the substitute amendment also provides that 50% of the \$169 court support services surcharge for small claims actions between \$5,000 and \$10,000 go to the counties, instead of entirely to the general fund.

In 2004, there were 160,228 small claims actions filed with the courts, and 54,959 large claims actions filed. The potential impact on revenue generated from small and large claim actions as a result of ASA 1 to AB 680 would be that for every 1,000 cases filed as a small claim rather than a large claim, state revenues to the general fund would decrease by approximately \$84,400 while counties would realize a corresponding increase in revenue of \$84,400.

Director of State Courts Office. On February 7, 2006, the Director of State Courts Office (DSCO) submitted a fiscal estimate for ASA 1 to AB 680. For the purposes of illustrating the possible impact of the substitute amendment, the DSCO assumed a shift of 20% of cases from large claims actions to small claims actions, a total of 10,992 cases, based on 2004 filing data. Under this assumption, state revenues to the general fund would decrease by approximately \$928,800 while counties would realize a corresponding increase in revenue of \$928,800.

Assembly Substitute Amendment 2

No fiscal notes have been prepared for ASA 2 to AB 680. However, based on updated data on case filings and generated revenue from the court support services surcharge, it is estimated that increasing the court support services surcharge would generate additional revenue of approximately \$6.3 million annually. Assuming a three-month delay in implementing the surcharge increase, additional revenue in the first year would be approximately \$4.8 million. For small claims actions between \$5,001 and \$7,500, half of the revenue generated from the court support services surcharge would go to the counties, instead of entirely to the general fund. The potential impact would be for

every 1,000 cases shifted from large claims to small claims, state revenues to the general fund would decrease by approximately \$95,000, while counties would realize a corresponding increase in revenue of \$95,000.

The attached table identifies the distribution of the applicable court fees and surcharges to small and large claims actions under current law, ASA 1 to AB 680, and ASA 2 to AB 680.

In addition to increasing the court support services surcharge, ASA 2 to AB 680 would increase state funding for GAL payments to counties by \$4,869,900 GPR annually. Current base funding for GAL payments is \$4,738,500 GPR. Under the substitute amendment, total funding would be \$9,608,400 GPR.

Prepared by: Chris Carmichael

**Distribution of Court Fees and Surcharges for Small Claims and
Large Claims Actions under Current Law, ASA 1 to AB 680, and ASA 2 to AB 680**

	Distribution				<u>Total</u>
	<u>State</u>	<u>County</u>	<u>CCAP</u>	Justice Information <u>System</u>	
Current Law					
<u>Small Claims (\$5,000 or less)</u>					
Filing fee	\$0.00	\$10.20	\$11.80	\$0.00	\$22.00
Court Support Services Surcharge	51.00	0.00	0.00	0.00	51.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$52.00	\$10.20	\$17.80	\$5.00	\$85.00
<u>Large Claims (over \$5,000)</u>					
Filing fee	\$30.00	\$30.00	\$15.00	\$0.00	\$75.00
Court Support Services Surcharge	169.00	0.00	0.00	0.00	169.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$200.00	\$30.00	\$21.00	\$5.00	\$256.00
ASA 1 to AB 680					
<u>Small Claims \$5,000 or less</u>					
Filing fee	\$0.00	\$10.20	\$11.80	\$0.00	\$22.00
Court Support Services Surcharge	51.00	0.00	0.00	0.00	51.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$52.00	\$10.20	\$17.80	\$5.00	\$85.00
<u>Small Claims \$5,000-\$10,000</u>					
Filing fee	\$30.00	\$30.00	\$15.00	\$0.00	\$75.00
Court Support Services Surcharge	84.50	84.50	0.00	0.00	169.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$115.50	\$114.50	\$21.00	\$5.00	\$256.00
<u>Large Claims (over \$10,000)</u>					
Filing fee	\$30.00	\$30.00	\$15.00	\$0.00	\$75.00
Court Support Services Surcharge	169.00	0.00	0.00	0.00	169.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$200.00	\$30.00	\$21.00	\$5.00	\$256.00
ASA 2 to AB 680					
<u>Small Claims \$5,000 or less</u>					
Filing fee	\$0.00	\$10.20	\$11.80	\$0.00	\$22.00
Court Support Services Surcharge*	58.00	0.00	0.00	0.00	58.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$59.00	\$10.20	\$17.80	\$5.00	\$92.00
<u>Small Claims \$5,000-\$7,500</u>					
Filing fee	\$30.00	\$30.00	\$15.00	\$0.00	\$75.00
Court Support Services Surcharge*	95.00	95.00	0.00	0.00	190.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$126.00	\$125.00	\$21.00	\$5.00	\$277.00
<u>Large Claims (over \$7,500)</u>					
Filing fee	\$30.00	\$30.00	\$15.00	\$0.00	\$75.00
Court Support Services Surcharge*	190.00	0.00	0.00	0.00	190.00
Justice Information Fee	<u>1.00</u>	<u>0.00</u>	<u>6.00</u>	<u>5.00</u>	<u>12.00</u>
Total	\$221.00	\$30.00	\$21.00	\$5.00	\$277.00

*The table identifies the court support services surcharge as applied to only small and large claims cases or which a \$58 or \$190 surcharge would apply. The substitute amendment also increases the court support services surcharge to \$77 for other civil actions.