



## Legislative Fiscal Bureau

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

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May 31, 2011

Joint Committee on Finance

Paper #427

### **One-Time Transfer of Funding to State Law Library (Justice and Supreme Court)**

[LFB 2011-13 Budget Summary: Page 274, #10, and Page 420, #6]

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#### **CURRENT LAW**

The Supreme Court maintains the Wisconsin State Law Library for the use of officers and employees of the state, attorneys and the public. Among the resources that the Law Library maintains for legal research is West's National Reporter System.

#### **GOVERNOR**

Create non-statutory language providing for the one-time transfer of \$41,000 PR from the Department of Justice's (DOJ) Division of Administrative Services gifts, grants, and proceeds PR appropriation to the Supreme Court's law library PR gifts and grants appropriation in 2011-12 for the purchase of West's National Reporter System on CD-ROM. The Department of Justice utilizes this appropriation to receive and allocate legal settlement funds that are distributed at the discretion of the Attorney General.

#### **DISCUSSION POINTS**

1. The Law Library currently maintains, in print, the West's National Reporter System, a collection of reported decisions of all state and federal appellate courts. Since the collection is updated for new decisions, the number of volumes continues to grow. In anticipation of future space limitations, the bill would provide one-time funding of \$41,000 for the purchase of West's National Reporter System on CD-ROM. The CD-ROMs include: (a) the first series for each regional reporter; (b) the second series for each regional reporter through 1995 (in some cases, the third series through 1995 is also included); and (c) the federal reporters from 1880-1985. Having

these collections online would allow the library to remove the printed copies to expand and better manage its space. Additionally, library users are more frequently utilizing online legal services for legal research. If the funding were not provided, the Law Library would continue to receive the printed updates for its collections and need to find ways to manage increasing space issues as they arise.

2. According to the Director of State Courts Office, West Publishing is currently offering a 40% discount if the entire collection is purchased at one time. The following table provides a breakout of the costs for the West National Reporter System on CD-ROM:

<u>Regional Reporters</u>	
North Western	\$4,655
New York	3,087
California	1,601
Southwest	6,989
Southern	7,247
Southeast	4,549
Pacific	7,520
Northeastern	6,981
Atlantic	7,222
<u>Federal Reporters</u>	
Federal Reporter	5,595
Federal Supplements	5,595
Federal Rules Dec.	1,543
Supreme Court Reports	2,499
Bank. Reports	<u>3,312</u>
<b>Total</b>	<b>\$68,395</b>
<b>40% Discount</b>	<b>\$41,037</b>

3. In order to permit the Supreme Court to better manage the physical space of the State Law Library, and in order to take advantage of the current 40% discount with West Publishing, the Committee could consider approving the Governor's recommendation to provide for the one-time transfer of \$41,000 PR in discretionary settlement funding from DOJ to the Supreme Court's law library PR gifts and grants appropriation in 2011-12. [Alternative 1]

4. The Attorney General, however, has expressed concerns that the appropriation of discretionary settlement funds for one-time acquisition costs for the State Law Library and for the Section 1033 excess military property program is not legal. The Attorney General has further expressed the concern that this budget provision could jeopardize the state's receipt of specific legal settlements that would be allocated at the sole discretion of the Attorney General. In his testimony to the Committee, the Attorney General stated that:

"Funds in the discretionary settlement account arise from defendant payments made pursuant to a *court order*. Pursuant to those orders, these funds may be spent at the *sole discretion* of each signatory Attorney General as permitted by state law. By mandating use of these funds for a specific purpose, no matter how noble that purpose-and I would submit that the proposed transfers are not as essential as the core functions the Department provides-the state would jeopardize losing the funds in their entirety." (Emphasis included in original quotation.)

5. Legislative Council staff has indicated, however, that it is unclear whether any court would have an objection if the Attorney General chose to exercise his discretion to further gubernatorial and legislative intent as expressed in the bill provision. Second, in issuing future court orders, courts could be anticipated to take state law into account, and issue orders that conform with state law. Finally, in negotiating future settlement agreements (which could be issued as court orders in the form of consent judgments), the Attorney General could seek to ensure that the settlement terms and settlement language conform to Wisconsin law.

6. In addition to these concerns, it may be worth noting that DOJ has utilized discretionary settlement funding in recent years to address funding needs and priorities of the Department as well as to provide funding to meet state budget lapse requirements. As a result, transfers of this funding to other agencies or branches of government may reduce the ability of the Department to address its internal funding needs and priorities.

7. As a result, the Committee could consider deleting the recommendation to provide for the one-time transfer of \$41,000 PR in discretionary settlement funding from DOJ to the Supreme Court's law library PR gifts and grants appropriation in 2011-12. [Alternative 3] Instead, the Committee could provide \$41,000 GPR to the GPR annual law library general program operations appropriation in 2011-12, to permit the Supreme Court to purchase West's National Reporter System on CD-ROM. [Alternative 2]

8. Finally, the Committee could consider deleting the recommendation entirely. [Alternative 3] Under this alternative, the State Law Library would continue to receive the printed updates for its collection and would need to find ways to manage increasing space issues as these issues arise.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to create non-statutory language providing for the one-time transfer of \$41,000 from the Department of Justice's Division of Administrative Services gifts, grants and proceeds appropriation to the Supreme Court's law library PR gifts and grants appropriation in 2011-12, for the purchase of West's National Reporter System on CD-ROM.

2. Provide \$41,000 GPR to the GPR annual law library general program operations appropriation in 2011-12, for the purchase of West's National Reporter System on CD-ROM.

<b>ALT 2</b>	<b>Change to Bill Funding</b>
GPR	\$41,000

3. Delete provision.

Prepared by: Chris Carmichael and Paul Onsager