



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #400

Elimination of the Judicial Council (Judicial Council and Supreme Court)

[LFB 2017-19 Budget Summary: Page 263, #1 and Page 425, #4]

CURRENT LAW

The Judicial Council includes 21 members, including: one Supreme Court justice designated by the Supreme Court, one Court of Appeals judge designated by the Court of Appeals, the Director of State Courts or his or her designee, four Circuit Court judges designated by the judicial conference, the Chairpersons of the Senate and Assembly committees dealing with judicial affairs or a member of each committee designated by the Chairpersons, the Attorney General or his or her designee, the Chief of the Legislative Reference Bureau or his or her designee, the Deans of the University of Wisconsin and Marquette University law schools or a member of the law schools' faculty designated by the Deans, the State Public Defender or his or her designee, the president-elect of the State Bar of Wisconsin or a member of the State Bar Board of Governors, three additional members of the State Bar selected by the State Bar to serve three-year terms, one District Attorney appointed by the Governor, and two citizens at large appointed by the Governor to serve three-year terms.

Current base funding for the Council is \$111,400 PR and 1.0 PR position. The PR position is funded with monies from the Supreme Court's Director of State Courts and State Law Library programs.

GOVERNOR

Delete statutory language, funding, and position authority for the Council (-\$111,400 PR and -1.0 PR position annually). Transfer to the Supreme Court all assets, personal property and contracts associated with the Judicial Council, as determined by the Secretary of the Department of Administration. Under a separate provision, create a PR interagency and intra-agency appropriation for monies received from a court or state agency under the Supreme Court. Create

1.0 PR position in the new appropriation.

DISCUSSION POINTS

1. The Judicial Council is composed of 21 members and has one attorney staff position to support the work of the Council. Powers and duties of the Council include:

a. Observe and study the rules of pleading, practice, and procedure, and advise the Supreme Court as to changes that will simplify procedure and promote a speedy determination of litigation upon its merits.

b. Survey and study the organization, jurisdiction and methods of administration and operation of all the courts.

c. Receive, consider and investigate suggestions pertaining to the administration of justice and make recommendations.

d. Keep advised concerning court decisions relating to court procedure and practice and pending legislation affecting court organization, jurisdiction, operation, procedure and practice.

e. Recommend to the Legislature any changes in the organization, jurisdiction, operation and methods of conducting business of the courts, including statutes governing pleading, practice, procedure, which can be put into effect only by legislative action.

f. Recommend to the Supreme Court, Governor, and Legislature any changes in the organization, operation and methods of conducting the business of the courts that will improve the efficiency and effectiveness of the court system and result in cost savings.

2. The Judicial Council was created by the Legislature in 1951 and was an independent agency prior to 1995. In the 1995-97 biennial budget, funding and staffing for the Council were deleted, with the associated functions transferred to the Judicial Commission. In the 2007-09 biennial budget, the Council was reestablished as a separate agency with one GPR position. In the 2011-13 biennial budget, the position was split to be 0.5 GPR and 0.5 PR, with the 0.5 PR position supported from a continue program revenue appropriation with monies from the Supreme Court's Director of State Courts and State Law Library programs. In the 2015-17 biennial budget, the position was converted entirely to a 1.0 PR position to be funded under the Supreme Court.

3. As indicated above, the Council's duties are to review and conduct technical research on pleading, practice, and procedures in the Courts, and to make recommendations to the Supreme Court, Governor, and Legislature regarding court procedures. Recent examples of the Council's work include introducing recommendations during the 2015 session for a comprehensive revision of Wisconsin's procedural code, as well as drafting recommendations to amend rules related to class actions, certain appellate procedures, and rules of evidence.

4. Under the budget bill, Judicial Council funding would be deleted with position authority transferring to the Supreme Court. According to the Department of Administration's

Executive Budget Summary, the Governor recommends "eliminating the council as a statutory entity. The court has the authority to create an advisory council if deemed necessary."

5. In her statements to the Joint Committee on Finance on March 28, 2017, the Chief Justice of the Supreme Court expressed concern regarding the Council's deletion:

"Repealing the statute by which the legislature created the Judicial Council also saves no money and overlooks the significant work that the Council does for both the legislature and the courts."

6. Elimination of the Judicial Council and creation of a new PR interagency and intra-agency appropriation with 1.0 PR position was not requested by either the Council or the Supreme Court.

7. In the 2015-17 budget, the Governor recommended that the Judicial Council be eliminated. The Joint Committee on Finance and the Legislature deleted the provision from the budget and maintained the Council as a separate agency.

8. While the Executive Budget Summary indicates that the Courts could create an advisory council if deemed necessary, it could be argued that the Council's work evaluating court operations and its administration and providing recommendations to the Supreme Court, Governor, and Legislature might be compromised if conducted under the influence of the branch which it is evaluating. As such, the Committee may wish to delete the provision and restore the Council to its current status as a separate PR-funded agency.

9. On the other hand, the Supreme Court has a planning and policy advisory committee (PPAC) which, by Supreme Court rule, assists the Supreme Court and Director of State Courts Office in evaluating the administrative structure of the court system, including recommending appropriate changes in court administration and methods of operation, the volume and condition of court business and advise on the expeditious handling of judicial matters. While this committee is not independent and does not assist or report to the Legislature and Governor related to court organization, operation, and methods of conducting business, it could be argued that many of the Council's general functions could be provided under the work of PPAC and of assistance to the Courts.

ALTERNATIVES

1. Approve the Governor's recommendation to delete statutory language, funding, and position authority for the Council (-\$111,400 PR and -1.0 PR position annually), and create a PR interagency and intra-agency appropriation with 1.0 PR position under the Supreme Court.

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
<u>Judicial Council</u>				
PR	- \$222,800	- 1.00	\$0	0.00
<u>Supreme Court</u>				
PR	\$0	1.00	\$0	0.00

2. Delete provision and maintain the Judicial Council as an independent agency.

ALT 3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
<u>Judicial Council</u>				
PR	\$0	0.00	\$222,800	1.00
<u>Supreme Court</u>				
PR	\$0	0.00	\$0	- 1.00

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