

1 **SHB 2276 - H AMD 523 ADOPTED 4-10-97**

2 By Representatives Appelwick & Lisk

3 On page 1, after line 3, strike everything after the enacting
4 clause and insert the following:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 promote the provision of civil legal services to indigent persons,
7 subject to available funds. To the extent that funds are
8 appropriated for civil legal services for the indigent, the
9 legislature intends that civil legal services be offered within an
10 oversight framework that ensures accountability.

11 **Sec. 2.** RCW 43.08.260 and 1995 c 399 s 62 are each amended to
12 read as follows:

13 (1)(a) The legislature recognizes the ethical obligation of
14 attorneys to represent clients without interference by third
15 parties in the discharge of professional obligations to clients.
16 However, to ensure the most beneficial use of state resources, the
17 legislature finds that it is within the authority of the
18 legislature to specify the categories of legal cases in which
19 qualified legal aid programs may provide civil representation with
20 state moneys. Accordingly, moneys appropriated for civil legal
21 representation pursuant to this section shall not be used for legal
22 representation that is either outside the scope of this section or
23 prohibited by this section.

24 (b) Nothing in this section is intended to limit the authority
25 of existing entities, including but not limited to the Washington
26 state bar association, the public disclosure commission, the state
27 auditor, and the federal legal services corporation to resolve
28 issues within their respective jurisdictions.

29 (2) Any money appropriated by the legislature from the public
30 safety and education account pursuant to RCW 43.08.250 or from any
31 other state fund or account for civil representation of indigent
32 persons shall be used solely for the purpose of contracting with
33 qualified legal aid programs for legal representation of indigent
34 persons in matters relating to: (a) Domestic relations and family
35 law matters, (b) public assistance((7)) and health care, ((and

1 entitlement programs,)) (c) ((public)) housing and utilities,
2 ((and)) (d) ((unemployment compensation)) social security, (e)
3 mortgage foreclosures, (f) home protection bankruptcies, (g)
4 consumer fraud and unfair sales practices, (h) rights of residents
5 of long-term care facilities, (i) wills, estates, and living wills,
6 (j) elder abuse, and (k) guardianship.

7 (3) For purposes of this section, a "qualified legal aid
8 program" means a not-for-profit corporation incorporated and
9 operating exclusively in Washington which has received basic field
10 funding for the provision of civil legal services to indigents
11 ((under Public Law 101-515)) from the federal legal services
12 corporation or that has received funding for civil legal services
13 for indigents under this section before July 1, 1997.

14 ((2) Funds distributed to qualified legal aid programs under
15 this section shall be distributed on a basis proportionate to the
16 number of individuals with incomes below the official federal
17 poverty income guidelines who reside within the counties in the
18 geographic service areas of such programs. The department of
19 community, trade, and economic development shall use the same
20 formula for determining this distribution as is used by the legal
21 services corporation in allocating funds for basic field services
22 in the state of Washington.

23 (3)(a)) (4) The department of community, trade, and economic
24 development shall establish a distribution formula based on the
25 distribution by county of individuals with incomes below the
26 official federal poverty level guidelines. When entering into a
27 contract with a qualified legal services provider under this
28 section, the department shall require the provider to provide legal
29 services in a manner that maximizes geographic access in accordance
30 with the formula established in this subsection (4).

31 (5) Funds distributed to qualified legal aid programs under
32 this section may not be used directly or indirectly for ((lobbying
33 or in class action suits. Further, these funds are subject to all
34 limitations and conditions imposed on use of funds made available
35 to legal aid programs under the legal services corporation act of
36 1974 (P.L. 93-355; P.L. 95-222) as currently in effect or hereafter
37 amended.)):

1 (~~(b)(i)~~) (a) Lobbying. (i) For purposes of this section,
2 "lobbying" means any personal service, advertisement, telegram,
3 telephone communication, letter, printed or written matter, or
4 other device directly or indirectly intended to influence any
5 member of congress or any other federal, state, or local
6 nonjudicial official, whether elected or appointed:

7 (A) In connection with any act, bill, resolution, or similar
8 legislation by the congress of the United States or by any state or
9 local legislative body, or any administrative rule, rule-making
10 activity, standard, rate, or other enactment by any federal, state,
11 or local administrative agency;

12 (B) In connection with any referendum, initiative,
13 constitutional amendment, or any similar procedure of the congress,
14 any state legislature, any local council, or any similar governing
15 body acting in a legislative capacity; or

16 (C) In connection with inclusion of any provision in a
17 legislative measure appropriating funds to, or defining or limiting
18 the functions or authority of, the recipient of funds (~~pursuant to~~
19 ~~chapter 54, Laws of 1992~~) under this section.

20 (ii) "Lobbying" does not include the response of an employee
21 of a legal aid program to a written request from a governmental
22 agency, an elected or appointed official, or committee on a
23 specific matter. This exception does not authorize communication
24 with anyone other than the requesting party, or agent or employee
25 of such agency, official, or committee.

26 (b) Grass roots lobbying. For purposes of this section,
27 "grass roots lobbying" means preparation, production, or
28 dissemination of information the purpose of which is to encourage
29 the public at large, or any definable segment thereof, to contact
30 legislators or their staff in support of or in opposition to
31 pending or proposed legislation; or contribute to or participate in
32 a demonstration, march, rally, lobbying campaign, or letter writing
33 or telephone campaign for the purpose of influencing the course of
34 pending or proposed legislation.

35 (c) Class action lawsuits.

36 (d) Participating in or identifying the program with
37 prohibited political activities. For purposes of this section,
38 "prohibited political activities" means (i) any activity directed

1 toward the success or failure of a political party, a candidate for
2 partisan or nonpartisan office, a partisan political group, or a
3 ballot measure; (ii) advertising or contributing or soliciting
4 financial support for or against any candidate, political group, or
5 ballot measure; or (iii) voter registration or transportation
6 activities.

7 (e) Representation in fee-generating cases. For purposes of
8 this section, fee-generating- means a case that might reasonably
9 be expected to result in a fee for legal services if undertaken by
10 a private attorney. The charging of a fee pursuant to subsection
11 (6) of this section does not establish the fee-generating nature of
12 a case.

13 A fee generating case may be accepted when: (i) The case has
14 been rejected by the local lawyer referral services or by two
15 private attorneys, (ii) neither the referral service nor two
16 private attorneys will consider the case without payment of a
17 consultation fee, (iii) after consultation with the appropriate
18 representatives of the private bar, the program has determined that
19 the type of case is one that private attorneys do not ordinarily
20 accept, or do not accept without prepayment of a fee, or (iv) the
21 director of the program or the director's designee has determined
22 that referral of the case to the private bar is not possible
23 because documented attempts to refer similar cases in the past have
24 been futile, or because emergency circumstances compel immediate
25 action before referral can be made, but the client is advised that,
26 if appropriate and consistent with professional responsibility,
27 referral will be attempted at a later time.

28 (f) Organizing any association, union, or federation, or
29 representing a labor union. However, nothing in this subsection
30 (5)(f) prohibits the provision of legal services to clients as
31 otherwise permitted by this section.

32 (g) Representation of undocumented aliens.

33 (h) Picketing, demonstrations, strikes, or boycotts.

34 (i) Engaging in inappropriate solicitation. For purposes of
35 this section, "inappropriate solicitation" means promoting the
36 assertion of specific legal claims among persons who know of their
37 rights to make a claim and who decline to do so. Nothing in this
38 subsection precludes a legal services program or its employees from

1 providing information regarding legal rights and responsibilities
2 or providing information regarding the program's services and
3 intake procedures through community legal education activities,
4 responding to an individual's specific question about whether the
5 individual should consult with an attorney or take legal action, or
6 responding to an individual's specific request for information
7 about the individual's legal rights or request for assistance in
8 connection with a specific legal problem.

9 (j) Conducting training programs that (i) advocate particular
10 public policies; (ii) encourage or facilitate political activities,
11 labor or antilabor activities, boycotts, picketing, strikes, or
12 demonstrations; or (iii) attempt to influence legislation or rule
13 making. Nothing in this subsection (5)(j) precludes representation
14 of clients as otherwise permitted by this section.

15 (6) The department may establish requirements for client
16 participation in the provision of civil legal services under this
17 section, including but not limited to copayments and sliding fee
18 scales.

19 (7)(a) Contracts entered into by the department with qualified
20 legal services programs under this section must specify that the
21 program's expenditures of moneys distributed under this section:

22 (i) Must be audited annually by an independent outside
23 auditor. These audit results must be provided to the department;
24 and

25 (ii) Are subject to audit by the state auditor.

26 (b)(i) Any entity auditing a legal services program under this
27 section shall have access to all records of the legal services
28 program to the full extent necessary to determine compliance with
29 this section, with the exception of confidential information
30 protected by the United States Constitution, the state
31 Constitution, the attorney-client privilege, and applicable rules
32 of attorney conduct.

33 (ii) The legal services program shall have a system allowing
34 for production of case-specific information, including client
35 eligibility and case type, to demonstrate compliance with this
36 section, with the exception of confidential information protected
37 by the United States Constitution, the state Constitution, the
38 attorney-client privilege, and applicable rules of attorney

1 conduct. Such information shall be available to any entity that
2 audits the program.

3 (8) The department must recover or withhold amounts determined
4 by an audit to have been used in violation of this section.

5 (9) The department may adopt rules to implement this section.

6 NEW SECTION. Sec. 3. A new section is added to chapter 43.08
7 RCW to read as follows:

8 The joint legislative civil legal services oversight committee
9 is established.

10 (1) The committee's members are one member from each of the
11 minority and majority caucuses of the house of representatives, who
12 are appointed by the speaker of the house of representatives, and
13 one member from each of the minority and majority caucuses of the
14 senate, who are appointed by the president of the senate.

15 (2)(a) The committee shall oversee the provision of civil
16 legal services funded through RCW 43.08.260 and shall act as a
17 forum for discussion of issues related to state-funded civil legal
18 services.

19 (b) By December 1, 1997, and by December 1st of each year
20 thereafter, the committee must report to the appropriate standing
21 policy and fiscal committees of the legislature on the provision of
22 legal services under RCW 43.08.260.

23 (3) The committee chairman is selected by the members and
24 shall serve a one-year term. The chairman position rotates between
25 the house and senate members and the political parties.

26 (4) The committee shall meet at least four times during each
27 fiscal year. The committee shall accept public testimony at a
28 minimum of two of these meetings.-

EFFECT: Makes two changes to the underlying bill. First, qualified legal aid programs are authorized to use state moneys for representation in all housing cases, not only public housing. Second, the definition of a fee-generating-case is changed to permit representation in such cases under additional circumstances: 1) where the case would not be

considered by the private bar without a consultation fee; 2) where past attempts to refer similar cases have failed; 3) where there is an emergency. Payment of a co-payment or sliding scale fee payment to the program does not make the case fee-generating.-