

HOUSE BILL REPORT

HB 2276

As Reported By House Committee On:

Law & Justice

Title: An act relating to civil legal services.

Brief Description: Promoting civil legal services for indigent persons.

Sponsors: Representatives Lisk, Huff and Sheahan.

Brief History:

Committee Activity:

Law & Justice: 3/28/97, 4/1/97 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Minority Report: Without recommendation. Signed by 3 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; and Cody.

Staff: Trudes Hutcheson (786-7384).

Background: In Washington, various legal service organizations provide civil representation to indigent residents. These organizations receive funding from different sources, including the federal Legal Services Corporation (LSC), state appropriations, the state supreme court, and private contributions.

State Law.

Money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements, or assessments by district courts, municipal courts, and superior courts is deposited in the Public Safety and Education Account (PSEA). The Legislature appropriates PSEA funds to promote various programs, including the civil representation of indigent persons.

Washington's statute requires that any money appropriated from the PSEA for civil representation of indigent persons shall be used solely for the purpose of contracting with qualified legal aid programs for representation in matters of (a) domestic relations and family law; (b) public assistance, health care, and entitlement programs; (c) public housing and utilities; and (d) unemployment compensation. Funds distributed to qualified legal aid programs may not be used for lobbying or in class action suits. A qualified legal aid program— means a not-for-profit corporation, operating exclusively in Washington, which has received funding for civil legal services to indigents under federal law.

Federal Law.

Congress established the LSC, which makes grants to and contracts with individuals, organizations, and state and local governments to provide legal assistance to indigent persons. Federal law places various restrictions on how the recipients of LSC funds may use the money. Some of those restrictions include the prohibition of a recipient to (a) engage in grassroots lobbying; (b) participate in any public demonstration, picketing, boycott, or strike; (c) initiate the formation of any association, federation, labor union, coalition, network, alliance, or any similar entity; (d) provide representation to ineligible aliens or offer unsolicited in-person advice; and (e) initiate litigation, or challenge or participate in efforts to reform a federal or state welfare system (except that a recipient may represent a plaintiff seeking specific relief from a welfare agency). The federal law also requires recipients to identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court has entered an order protecting the plaintiff from such pre-complaint disclosure. Recently, the federal law was amended to provide that many of the federal restrictions apply not only to federal funds, but also to any other funds the recipient receives.

Washington's statute provides that the funds distributed to legal aid programs in Washington are subject to all limitations imposed on the use of funds under the federal law as currently in effect or hereafter amended.—

Washington's Legal Services Organizations.

Before January 1996, the Spokane Legal Services Center, Puget Sound Legal Assistance Foundation, and Evergreen Legal Services received some federal funding to provide civil representation to indigent residents. Thereafter, the three organizations were merged to form Columbia Legal Services (CLS). CLS does not receive federal funding. Civil legal services for indigent residents may also be available through law school clinics, volunteer attorneys, and other programs.

Summary of Substitute Bill: The Legislature intends to promote civil legal services to indigent persons, subject to available funds, while ensuring accountability. The Legislature recognizes an attorney's duty to represent clients without interference, but

also that the Legislature has authority to specify the types of cases a legal aid program can participate in when it uses state money.

The definition of a qualified legal aid program– is amended to mean a nonprofit corporation operating exclusively in Washington that has received federal LSC funding or funding from the PSEA before July 1, 1997.

The categories of eligible cases are changed. Express authorization to represent people in entitlement– cases and unemployment compensation cases is removed. However, money appropriated from the Legislature may be used for representation in (a) Social Security cases; (b) mortgage foreclosures; (c) home protection bankruptcies; (d) consumer fraud and unfair sales practices; (e) rights of residents of long-term care facilities; (f) wills, estates, living wills; (g) elder abuse; and (h) guardianship.

The reference to the restrictions in federal law is deleted. The following restrictions are specifically added to the existing prohibition against lobbying and class action suits:

- grassroots lobbying;
- participating in or identifying the legal aid program with prohibited political activities (including advertising or contributing or soliciting financial support for or against any candidate, political group, or ballot measure, and voter registration or transportation activities);
- representation in fee-generating cases, unless the case has been rejected by the local lawyer referral service or two private attorneys;
- organizing any association, federation, or union, or representing any labor union;
- representation of undocumented aliens;
- picketing, demonstrations, strikes, or boycotts;
- engaging in inappropriate solicitation; and
- conducting training programs that advocate particular public policies, encourage or facilitate political activities, labor or anti-labor activities, and other various activities.

Rule-making activity is added to the definition of lobbying. The restrictions and requirements apply to all money appropriated by the Legislature from the PSEA and from other state funds or accounts.

The Department of Community, Trade and Economic Development (CTED) must establish a distribution formula based on the distribution of indigent people by county. The CTED may establish client contributions, including copayment and sliding fee scale requirements. Expenditure of state funds must be audited annually by an independent outside auditor, and may be audited by the state auditor. The legal aid program shall make available to the auditors case-specific information, except for confidential and privileged information. The CTED must recover or withhold amounts that have been improperly used. The CTED is authorized to adopt rules.

A bipartisan, bicameral legislative oversight committee is established, which must meet at least four times during each fiscal year and accept public testimony in at least two meetings.

Substitute Bill Compared to Original Bill: The original bill (a) removed from the category of cases entitlement and unemployment compensation cases, and added only Social Security cases; (b) defined a qualified legal aid program as a program that received only state money; (c) did not have "rule making" as part of lobbying activities; (d) prohibited representation in welfare reform efforts; (e) did not expressly prohibit organization and representation of labor unions; (f) required disclosure of the identity of plaintiffs and statement of facts in pre-complaint negotiations; and (g) did not contain specific audit language with recognition of client confidentiality.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill recognizes the need to provide civil representation to the poor and, at the same time, the desire to limit how state money may be used.

Testimony Against: The bill precludes a legal aid program from using state money to represent the poor in many types of cases, such as consumer fraud and discrimination.

Testified: Representative Lisk, prime sponsor; Stephen Crossland, Washington State Bar Association (con); and Ragan Powers, Equal Justice Coalition (con).