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HOUSE BILL 2276

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State of Washington                      55th Legislature                      1997 Regular Session

By Representatives Lisk, Huff and Sheahan

Read first time 03/25/97. Referred to Committee on Law & Justice.

1            AN ACT Relating to civil legal services; amending RCW 43.08.260;  
2 adding a new section to chapter 43.08 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

12           (1) Any money appropriated by the legislature from the public  
13 safety and education account pursuant to RCW 43.08.250 or from any  
14 other state fund or account for civil representation of indigent  
15 persons shall be used solely for the purpose of contracting with  
16 qualified legal aid programs for legal representation of indigent  
17 persons in matters relating to: (a) Domestic relations and family law  
18 matters, (b) public assistance, health care, and ((entitlement

1 programs)) social security, and (c) public housing and utilities~~((, and~~  
2 ~~(d) unemployment compensation))~~.

3 (2) For purposes of this section, a "qualified legal aid program"  
4 means a not-for-profit corporation incorporated and operating  
5 exclusively in Washington ~~((which has received basic field funding for~~  
6 ~~the provision of civil legal services to indigents under Public Law~~  
7 ~~101-515))~~ that has received funding for civil legal representation of  
8 indigent persons under this section before July 1, 1997.

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

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

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

32 ~~((b)(i))~~ (a) Lobbying. (i) For purposes of this section,  
33 "lobbying" means any personal service, advertisement, telegram,  
34 telephone communication, letter, printed or written matter, or other  
35 device directly or indirectly intended to influence any member of  
36 congress or any other federal, state, or local nonjudicial official,  
37 whether elected or appointed:

38 (A) In connection with any act, bill, resolution, or similar  
39 legislation by the congress of the United States or by any state or

1 local legislative body, or any administrative rule, standard, rate, or  
2 other enactment by any federal, state, or local administrative agency;

3 (B) In connection with any referendum, initiative, constitutional  
4 amendment, or any similar procedure of the congress, any state  
5 legislature, any local council, or any similar governing body acting in  
6 a legislative capacity; or

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

11 (ii) "Lobbying" does not include the response of an employee of a  
12 legal aid program to a written request from a governmental agency, an  
13 elected or appointed official, or committee on a specific matter. This  
14 exception does not authorize communication with anyone other than the  
15 requesting party, or agent or employee of such agency, official, or  
16 committee.

17 (b) Grass roots lobbying. For purposes of this section, "grass  
18 roots lobbying" means preparation, production, or dissemination of  
19 information the purpose of which is to encourage the public at large,  
20 or any definable segment thereof, to contact legislators or their staff  
21 in support of or in opposition to pending or proposed legislation; or  
22 contribute to or participate in a demonstration, march, rally, lobbying  
23 campaign, or letter writing or telephone campaign for the purpose of  
24 influencing the course of pending or proposed legislation.

25 (c) Class action lawsuits.

26 (d) Litigation, lobbying, or representation in rule making  
27 regarding federal, state, or local welfare reform efforts. However,  
28 this subsection (4)(d) does not preclude representation of individual  
29 clients as otherwise permitted by this section where the relief sought  
30 does not involve an effort to amend or challenge statutes or rules in  
31 effect on the date of the initiation of the representation.

32 (e) Participating in or identifying the program with prohibited  
33 political activities. For purposes of this section, "prohibited  
34 political activities" means (i) any activity directed toward the  
35 success or failure of a political party, a candidate for partisan or  
36 nonpartisan office, a partisan political group, or a ballot measure;  
37 (ii) advertising or contributing or soliciting financial support for or  
38 against any candidate, political group, or ballot measure; or (iii)  
39 voter registration or transportation activities.

1 (f) Representation in fee-generating cases. For purposes of this  
2 section, "fee-generating" means a case that might reasonably be  
3 expected to result in a fee for legal services if undertaken by a  
4 private attorney. However, a fee-generating case may be accepted when  
5 the case has been rejected by the local lawyer referral service or two  
6 private attorneys.

7 (g) Organizing any association or federation. However, nothing in  
8 this subsection (4)(g) prohibits the provision of legal services to  
9 clients as otherwise permitted by this section.

10 (h) Representation of undocumented aliens.

11 (i) Picketing, demonstrations, strikes, or boycotts.

12 (j) Providing in-person unsolicited advice. For purposes of this  
13 section, "in-person" means a face-to-face encounter or a personal  
14 encounter via other means of communication, such as a personal letter  
15 or a telephone call, and "unsolicited advice" means advice to obtain  
16 counsel or take legal action given by a program or its employee to an  
17 individual who did not seek the advice or with whom the program does  
18 not have an attorney-client relationship. Nothing in this subsection  
19 (4)(j) prohibits a program from providing information regarding legal  
20 rights and responsibilities or providing information regarding the  
21 program's intake procedures through community legal education  
22 activities such as public service announcements, distribution of  
23 community legal education publications, and giving presentations to  
24 groups that request them.

25 (k) Conducting training programs that (i) advocate particular  
26 public policies; (ii) encourage or facilitate political activities,  
27 labor or antilabor activities, boycotts, picketing, strikes, or  
28 demonstrations; or (iii) attempt to influence legislation or rule  
29 making. Nothing in this subsection (4)(k) precludes representation of  
30 clients as otherwise permitted by this section.

31 (5) Before filing a complaint, otherwise initiating or  
32 participating in litigation, or engaging in precomplaint settlement  
33 negotiation with a prospective defendant, using funds distributed under  
34 this section, the program must:

35 (a) Identify each plaintiff by name, either in the complaint or  
36 before the precomplaint settlement negotiation;

37 (b) Upon a defendant's or prospective defendant's written request,  
38 provide the defendant or prospective defendant with a statement or  
39 statement of facts in English, and, if necessary, in a language that

1 the plaintiffs understand, that (i) contains the facts known to the  
2 plaintiffs on which the complaint is based; (ii) has been signed by the  
3 plaintiffs; (iii) the program keeps on file; and (iv) is made available  
4 to any entity that is auditing the program.

5 (6) The requirements of subsection (5) of this section do not apply  
6 when, upon establishment of reasonable cause that an injunction is  
7 necessary to prevent probable, serious harm to a potential plaintiff,  
8 a court of competent jurisdiction may enjoin the disclosure of the  
9 identity of any potential plaintiff pending the outcome of litigation  
10 or negotiations after notice and an opportunity for a hearing is  
11 provided to the potential parties to the litigation or negotiation. If  
12 this subsection (6) applies, other parties to the litigation or  
13 negotiations have access to the statement of facts in subsection (5) of  
14 this section only through the discovery process after litigation has  
15 begun.

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

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

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

25 (b) Are subject to audit by the state auditor. Nothing in this  
26 section limits the right of the state auditor to conduct statutorily or  
27 contractually required audits.

28 (9) The department must recover or withhold amounts determined by  
29 an audit to have been used in violation of this section.

30 (10) The department may adopt rules to implement this section.

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

33 The joint legislative civil legal services oversight committee is  
34 established.

35 (1) The committee's members are one member from each of the  
36 minority and majority caucuses of the house of representatives, who are  
37 appointed by the speaker of the house of representatives, and one

1 member from each of the minority and majority caucuses of the senate,  
2 who are appointed by the president of the senate.

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

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

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

13 (4) The committee shall meet at least four times during each fiscal  
14 year. The committee shall accept public testimony at a minimum of two  
15 of these meetings.

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