

# 2ESSB 5454

## Revising Trial Court Funding Provisions

### Bill Summary and Analysis

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#### **Intent**

“The legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants and to parents in dependency and termination cases. The legislature also recognizes that trial courts are critical to maintaining the rule of law in a free society and that they are essential to the protection of the rights and enforcement of obligations for all. Therefore, the legislature intends to create a dedicated revenue source for the purposes of meeting the state's commitment to improving trial courts in the state, providing adequate representation to criminal indigent defendants, providing for civil legal services for indigent persons, and ensuring equal justice for all citizens of the state.<sup>1</sup>”

#### **Fee Increases and Law Library Funding**

Superior court civil filing fees are increased from \$110 to \$200, and district court civil filing fees are increased from \$31 to \$43. Counterclaims, cross-claims, and third-party claims will be assessed the same filing fee as the fee for initiating the action in superior and district courts. A new \$43 fee is assessed against a criminal defendant upon conviction or plea of guilty in a court of limited jurisdiction. Jury fee demand charges in district and superior courts are increased. Other increased fees involve small claims actions, courthouse facilitator programs, unlawful detainer complaints and answers, non-judicial probate disputes, petitions for modifying decrees of dissolution or paternity, certified copy fees, supplemental proceeding filings, writs of garnishment, transcripts of judgment, and various fees associated with real property.

Funding for county law libraries is increased. The portion of each superior court civil filing fee which is distributed to county law libraries is increased from \$12 to \$17. The portion of each district court civil filing fee distributed to county law libraries is increased from \$6 to \$7. The filing fees which now must be paid for counterclaims, cross-claims, and third-party claims are subject to the law library fee division requirement.

The estimated revenue derived from the fee increases are:

- \$12.7 million to the Equal Justice Sub-Account.
- \$17.7 million to county general funds, of which approximately \$1.6 million would accrue to county law library accounts.
- \$2.1 million to city general funds.

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<sup>1</sup> 2ESSB 5454, New Section, Section 1.

## **Equal Justice Sub-Account**

The Equal Justice Sub-Account is created within the Public Safety and Education Account (PSEA). The funds received by the State Treasurer from the increase in fees which are subject to division with the state are deposited in the Equal Justice Sub-Account.

Funds in the Equal Justice Sub-Account are appropriated by the legislature for only the following purposes:

- Criminal indigent defense assistance and enhancement at the trial court level, including a criminal indigent defense pilot program.
- Representation of parents in dependency and termination proceedings.
- Civil legal representation of indigent persons.
- Contribution to district court judges' salaries and to eligible elected municipal court judges' salaries.

## **Appropriations for the 2005-07 Biennium**

For the 2005-07 biennium, the following direct appropriations are made<sup>2</sup>:

- \$2.3 million for criminal indigent defense, \$1 million of which is provided solely for a criminal indigent defense pilot program.
- \$5.0 million for representation of parents in dependency and termination proceedings<sup>3</sup>.
- \$3.0 million for civil legal representation of indigent persons<sup>4</sup>.
- \$2.4 million for contribution to district and elected municipal court judges' salaries<sup>5</sup>.

## **Contribution to Judges' Salaries as a Percentage of Revenue**

For the 2005-07 biennium the bill states in Section 8 (2) (b) that an amount equal to 25% of the revenues to the equal justice sub-account less one million dollars are appropriated to the administrative office of the courts for judges' salaries. Therefore, the actual amount disbursed in the 05-07 biennium will be determined by the actual (versus estimated) revenues that accrue to the account, with an effective cap of \$2.4 million dollars.

For the 07-09 biennium, the bill states that 50% of the revenues to the equal justice sub-account are appropriated to the administrative office of the courts for judges' salaries.

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<sup>2</sup> These direct appropriations are found in 2ESSB 5454, section 20.

<sup>3</sup> This appropriation is in addition to a general fund appropriation of \$1.8 million contained in the state operating budget (ESSB 6090, Section 114) as a continuation and enhancement of the parents' representation pilot program under the Office of Public Defense.

<sup>4</sup> This appropriation is in addition to the \$13.4 million contained in the operating budget from the general fund, public safety and education account and violence reduction and drug enforcement account for the Office of Civil Legal Aid (ESSB 6090, Section 115).

<sup>5</sup> See also discussion under "Contribution to Judges' Salaries as a Percentage of Revenue" regarding appropriation calculated as a percentage of total revenue.

Assuming the revenue projections are realized, it is estimated that \$6.4 million would be distributed by the AOC to counties and participating cities in the 07-09 biennium.

Distribution of the amounts allocated for judges' salaries will be administered by the administrative office of the courts. The administrative office of the courts is directed to develop a distribution formula that does not differentiate between district and municipal courts.

For the 07-09 biennium the legislature will appropriate and allocate the other 50% of the revenue among criminal indigent defense, parents' representation in dependency and termination proceedings and civil legal representation for indigent persons.

### **Trial Court Improvement Accounts**

All counties, cities, and towns for which the state contributes to district or municipal court judges' salaries are required to create trial court improvement accounts. An amount equal to 100 percent of the state's contribution to the judges' salaries must be deposited into the trial court improvement account. Funds in the account must be appropriated by the legislative authority of each county, city, or town and must be used to fund improvements to court staffing, programs, facilities, and services.

### **Implementation and Estimated Contributions to Judges' Salaries**

At this very early stage following enactment of the bill by the state legislature there are perhaps more questions than answers regarding implementation. It is expected that it will take 4 to 8 weeks to consider, reconsider, and decide upon implementation issues.

Notwithstanding, the following very preliminary thoughts are offered:

- The effective date of the bill, and therefore initiation of the revenue stream from the fee increases, will be July 24<sup>th</sup> (90 days following the end of the legislative session).
- Disbursements for judges' salaries would begin September 1<sup>st</sup> at the very earliest, but in any event not likely later than November 30<sup>th</sup>.
- A decision will have to be made regarding the cycle of distribution: most likely monthly or quarterly.
- The distribution will most likely be a lump sum distribution to the jurisdiction and not a direct salary warrant disbursement to individual judges.
- The distribution formula will most likely be based on the proportionate share of the available revenue that each jurisdiction spends for judges' salaries. Consideration is likely to be given to establishment of a "small jurisdiction base."
- A process for determining each jurisdiction's actual expenditure for judges' salaries will have to be implemented.
- At some fixed point (six, nine, or twelve months) it is likely that the base amount available for distribution under the formula will have to be revisited to adjust to actual revenues into the account.

A very preliminary calculation of what individual jurisdictions may receive has been completed based upon the following assumptions:

- The full \$2.4 million will be available for distribution in the 05-07 biennium.
- The full \$6.4 million will be available for distribution in the 07-09 biennium.
- The proposed Sept. 1, 2004 district court judge salary (\$120,235) currently under consideration by the Salary Commission was used for all calculations.
- All current elected municipal court positions (21.5 FTE) would qualify and would be compensated at 95% of the proposed district court judge salary.

Based upon these assumptions, the annual distributions for each jurisdiction per judge FTE<sup>6</sup> would be approximately:

- \$10,100 for each year in the 05-07 biennium for each district court judge FTE.
- \$9,600 for each year in the 05-07 biennium for each elected municipal court judge FTE<sup>7</sup>
- \$26,800 for each year in the 07-09 biennium for each district court judge FTE.
- \$25,400 for each year in the 07-09 biennium for each elected municipal court judge FTE<sup>6</sup>

***These numbers will change pending adoption of a distribution formula, the number of participating city jurisdictions, the actual revenue available for distribution, and adoption of the district court judge salary schedule by the salary commission for the upcoming and future years. These figures should not be used for the purposes of budget projections at this time.***

### **Elected Municipal Court Judges**

In order for cities to qualify for receipt of state funds for judges salaries, the city must meet three criteria enumerated in Section 7 of the bill, sub paragraph 20 (b) which are:

- The judge is serving in an elected position.
- The city has established by ordinance the compensation of a full time judge (or part-time judge on a pro-rata basis) at between 95% and 100% of a district court judge salary.
- The city has certified to the administrative office of the courts that the prior two conditions have been met.

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<sup>6</sup> Part-time judge FTE calculate at their actual share of total salaries resulting in a pro-rata distribution. Therefore for a three-quarter time judge, multiply the annual distribution by 0.75.

<sup>7</sup> The Tacoma Municipal Court, as a municipal department would calculate at the district court judge rate. A city which compensated their elected municipal court judge at 100% of a district court judge would also calculate at the district court rate.

A process for certification will be developed. It is assumed that a city which meets the first two criteria could choose to not provide certification and would therefore not receive the funds or be required to create a local trial court improvement account.

### **Municipal Departments**

There are several variations of municipal departments in existence. The language in Section 2 of the bill establishing the local trial court improvement accounts for municipal departments was drafted to ensure that it would work appropriately for each of the several variations:

- A city with separately elected municipal department judges would create a local trial court improvement account within the city budget funded in an amount equal to the total amount received from the state for judges' salaries.
- A city which shares county-wide elected district court judges would create a local trial court improvement account within the city budget funded in an amount equal to the total amount received from the state for the city's proportionate share of the district court judges' salaries.
  - It is assumed that where a city maintains a separate administrative staff, the city legislative authority would appropriate funds from the account to improve the operation of the separate municipal department operations.
  - It is assumed that where a city receives all judicial branch functions from the district court serving as a municipal department that the city legislative authority would appropriate funds from the account for improvements to the district court which would serve to benefit the services received by the city.

### **General Fund Filing Fee Revenue**

The one area unaffected by the changes to the bill in the final days of the legislative session was the amounts of the filing fee increases and the resulting revenue that would accrue to county and city general funds. The following page contains a table listing the estimated revenue that would accrue to each county from the local share of the filing fee increases. The amount shown is the amount of the estimated increase and is in addition to current revenues.

Estimates of city general fund revenue from the assessment and collection of the cost to be assessed against criminal defendants upon conviction (bill section 10) can be provided upon request.

For further information, please contact:

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<b>County</b>	<b>Annual Fee Increase Revenue</b>
Adams	\$23,573
Asotin	\$25,630
Benton	\$225,697
Chelan	\$113,344
Clallam	\$84,864
Clark	\$482,379
Columbia	\$6,459
Cowlitz	\$151,448
Douglas	\$37,165
Ferry	\$6,263
Franklin	\$87,662
Garfield	\$3,851
Grant	\$142,441
Grays Harbor	\$132,411
Island	\$78,643
Jefferson	\$38,390
King	\$2,190,191
Kitsap	\$326,517
Kittitas	\$66,836
Klickitat	\$28,786
Lewis	\$113,477
Lincoln	\$259,496
Mason	\$80,035
Okanogan	\$55,409
Pacific	\$31,581
Pend Oreille	\$15,409
Pierce	\$961,490
San Juan	\$15,578
Skagit	\$167,579
Skamania	\$16,675
Snohomish	\$844,968
Spokane	\$632,490
Stevens	\$46,867
Thurston	\$293,680
Wahkiakum	\$7,692
Walla Walla	\$96,111
Whatcom	\$215,998
Whitman	\$40,090
Yakima	\$312,168