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HOUSE BILL 1927

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State of Washington                      55th Legislature                      1997 Regular Session

By Representatives Clements, Appelwick, O'Brien, Costa and Conway

Read first time 02/14/97. Referred to Committee on Law & Justice.

1            AN ACT Relating to civil legal services; adding a new chapter to  
2 Title 2 RCW; adding new sections to chapter 43.131 RCW; creating new  
3 sections; repealing 43.08.260; prescribing penalties; providing an  
4 effective date; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.** INTENT. It is the intent of the legislature  
7 to promote equal access to justice for the people of the state of  
8 Washington. The legislature finds that progress toward this goal  
9 requires continued state funding for civil legal representation of low-  
10 income persons and development of an accountable, nonpartisan framework  
11 within which that representation will be provided as authorized by the  
12 legislature. By establishing the office of civil legal services, the  
13 legislature intends, subject to available funds, to provide civil legal  
14 representation to low-income state residents and to provide oversight  
15 of and information about state-funded activities of legal services  
16 providers.

17            The legislature intends the office of civil legal services to  
18 oversee the provision of civil legal assistance within a framework that  
19 ensures accountability and responsible, quality, client-oriented legal

1 advocacy. Within this framework, the legislature recognizes the  
2 exclusive authority of the judicial branch to regulate and oversee the  
3 practice of law, including the provision of civil legal services to  
4 indigent residents of Washington under this chapter.

5 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
6 section apply throughout this chapter unless the context clearly  
7 requires otherwise.

8 (1) "Board" means the civil legal services oversight advisory  
9 board.

10 (2) "Director" means the director of the office of civil legal  
11 services.

12 (3) "Lobby" and "lobbying" each mean attempting to influence the  
13 passage or defeat of any legislation by the legislature of the state of  
14 Washington, or the adoption or rejection of a rule, standard, rate, or  
15 other legislative enactment of a state agency under the state  
16 Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor  
17 "lobbying" includes an association's or other organization's act of  
18 communicating with the members of that association or organization.

19 (4) "Office" means the office of civil legal services.

20 (5) "Political activity" means an activity directed toward the  
21 success or failure of a political party, candidate for a partisan  
22 political office, or a partisan political group.

23 (6) "Political purpose" means a purpose concerned with the support  
24 or opposition to a candidate for a partisan or nonpartisan office or  
25 concerned with the support or opposition to a ballot proposition or  
26 issue, and includes but is not limited to such activities as  
27 advertising for or against any candidate or ballot measure or the  
28 solicitation of financial support.

29 (7) "State funding" means amounts appropriated by the legislature  
30 to the office for purposes of civil indigent legal representation and  
31 moneys in the indigent civil legal services revolving fund.

32 NEW SECTION. **Sec. 3.** OFFICE OF CIVIL LEGAL SERVICES ESTABLISHED.

33 (1) An office of civil legal services is established as an independent  
34 agency of the judicial branch.

35 (2) The office shall not provide direct representation of clients.

1        NEW SECTION.    **Sec. 4.**    MEMBERSHIP OF THE OVERSIGHT BOARD--DUTIES.

2    (1) A civil legal services oversight advisory board is established,  
3    consisting of the following members:

4        (a) Three persons appointed by the supreme court, one of whom  
5    should be the chair of the access to justice board established by  
6    Supreme Court Order No. 25700-B, dated May 10, 1994;

7        (b) Two senators, one from each of the two largest caucuses,  
8    appointed by the president of the senate;

9        (c) Two members of the house of representatives, one from each of  
10   the two largest caucuses, appointed by the speaker of the house of  
11   representatives;

12       (d) Three persons appointed by the governor, at least one of whom  
13   is an eligible low-income civil legal services consumer; and

14       (e) One person appointed by the Washington state bar association.

15       (2) Members of the board serve for three-year terms, and may be  
16   reappointed. Members receive no compensation for their services as  
17   members of the board, but may be reimbursed for travel and other  
18   expenses in accordance with rules adopted by the office of financial  
19   management.

20       (3) Members of the board may not be board members or employees of  
21   legal services providers receiving state funding under this chapter.

22       (4) The duties of the board are to:

23       (a) Appoint a director of the office of civil legal services  
24   meeting the qualifications of section 5 of this act;

25       (b) Determine the salary of the director; and

26       (c) Advise the director on activities of the office and provision  
27   of civil indigent representation, in accordance with section 10 of this  
28   act.

29       (5) A majority vote of the board is required to appoint the  
30   director and a two-thirds vote of the board is required to remove the  
31   director. Decisions of the board require the affirmative vote of at  
32   least two legislators, one from each political party.

33       NEW SECTION.    **Sec. 5.**    DIRECTOR--QUALIFICATIONS.    Qualifications

34   for the director include admission to practice law in this state for at  
35   least five years, experience in the representation of low-income people  
36   in civil matters, which experience may be in the form of volunteer  
37   representation, knowledge of and demonstrated commitment to promoting

1 civil equal justice efforts, and proven managerial or supervisory  
2 experience. The director serves at the pleasure of the board.

3 NEW SECTION. **Sec. 6.** DIRECTOR--DUTIES. The director shall:

4 (1) Contract with one or more qualified legal services providers to  
5 provide civil indigent legal representation under this chapter;

6 (2) Develop a system to evaluate the use of state funding for civil  
7 legal services to ensure effective and efficient use in accordance with  
8 professional standards established by the supreme court, the American  
9 bar association, the Washington state bar association, and the access  
10 to justice board established by Supreme Court Order No. 25700-B, dated  
11 May 10, 1994. In developing the system, the director shall, to the  
12 extent practicable, focus on outcome-based, objective, and measurable  
13 factors, consistent with the considerations set forth in RCW  
14 43.88.090(3);

15 (3) Monitor the use of state funding for compliance with this  
16 chapter and other applicable conditions, and periodically evaluate the  
17 effectiveness of the use of those funds in promoting access to the  
18 civil justice system for low-income residents of Washington;

19 (4) Receive, investigate, and respond to complaints regarding  
20 allegations of improper activities of legal services providers  
21 receiving state funding. If, in the course of performing this  
22 function, the director becomes aware of facts that reasonably give rise  
23 to the suspicion that state or federal laws or rules of professional  
24 conduct have been violated by a provider receiving state funding, the  
25 director shall report the facts to the appropriate authorities. The  
26 director shall defer when appropriate to the authority of the  
27 Washington state bar association to investigate allegations of  
28 professional misconduct on the part of attorneys licensed to practice  
29 in the state of Washington;

30 (5) Impose sanctions under the procedures authorized by this  
31 chapter;

32 (6) Coordinate with the access to justice board to define uniform  
33 standards for determining and verifying indigency;

34 (7) Report biennially to the supreme court and the appropriate  
35 committees of the legislature on the status of civil access to the  
36 justice system and make recommendations regarding efforts that should  
37 be undertaken to promote meaningful access to the civil justice system  
38 for low-income residents of Washington state. The reports must include

1 appropriate detailed explanations of any sanctions that have been  
2 imposed or are pending;

3 (8) Cooperate with the access to justice board, the private sector,  
4 and state and local bar associations to develop initiatives that  
5 enhance the coordinated delivery of civil legal services to low-income  
6 residents and foster greater public awareness and understanding of the  
7 need to ensure equal access to the civil justice system for all  
8 residents of Washington;

9 (9) Submit a biennial budget request to the state legislature.

10 NEW SECTION. **Sec. 7.** CONTRACTS, QUALIFIED LEGAL SERVICES  
11 PROVIDERS--LIMITS ON USE OF FUNDING. (1) Subject to available  
12 appropriations, state funding of the office must be used to support the  
13 administration of the office and to contract with one or more qualified  
14 legal services providers to deliver civil legal services to eligible  
15 low-income clients.

16 (2) To be a "qualified legal services provider" eligible for  
17 contracts with the office under this chapter, the contract applicant  
18 must:

19 (a) Be a nonprofit corporation with a board of directors. The  
20 membership of its board of directors must meet the following criteria:

21 (i) Not more than fifty-one percent of its members are affiliated  
22 with the same political party. A board member is "affiliated" with a  
23 political party if, at the time of the person's appointment to the  
24 board of directors, the person is a national, state, or local committee  
25 member, delegate to a county, state, or national political convention,  
26 precinct committee officer, or holds another elected or appointed  
27 position within a political party or party organization;

28 (ii) At least fifty percent are lawyers licensed to practice law in  
29 this state;

30 (iii) Not less than twenty-five percent are eligible clients  
31 appointed by organizations that serve or represent low-income people;

32 (iv) Except as permitted by this subsection (2)(a), appointments to  
33 the applicant's board of directors must be made without regard to  
34 political philosophy or ideology but solely on the basis of an  
35 individual's interest and demonstrated commitment to ensuring access to  
36 the justice system for all residents of Washington;

1 (b) Adopt a biennial plan to provide civil legal services to low-  
2 income clients consistent with client needs as identified through a  
3 periodic community-based priority needs assessment process;

4 (c) Have an accounting and timekeeping system that meets generally  
5 accepted accounting practices and all federal office of management and  
6 budget and state auditor requirements for nonprofit organizations, and  
7 that allows for the contemporaneous segregation of costs and  
8 expenditures by funding source;

9 (d) Adopt a biennial plan to provide effective, reasonably  
10 equivalent access to legal services for low-income clients in all  
11 thirty-nine counties;

12 (e) Contract with an independent auditing firm for the preparation  
13 of an annual fiscal audit, and file the audit report with the director  
14 within one hundred twenty days of the close of the provider's fiscal  
15 year, but nothing in this subsection (e) limits the authority of the  
16 state auditor to carry out statutorily prescribed powers and duties;

17 (f) Adhere to the highest quality of service and professional  
18 standards;

19 (g) Adopt a biennial plan to ensure regular community-based advice  
20 and input into the activities of local or regional legal services  
21 offices;

22 (h) Adopt a biennial plan to encourage the timely and effective  
23 consideration of alternative approaches to the resolution of client  
24 legal disputes, including, but not limited to, mediation, arbitration,  
25 and facilitated negotiation;

26 (i) Adopt and enforce policies that prohibit the use of its  
27 resources, regardless of source (i) for political activities or  
28 political purposes, except as permitted by section 7 (2)(a)(i) and  
29 (3)(c) of this act; (ii) to represent or promote the activities or  
30 efforts of a political party; or (iii) to represent or to act as an  
31 organizer for a labor union, or for a communication or a meeting to  
32 advocate that anyone organize or join a labor union. For purposes of  
33 this subsection (2)(i)(iii), "communication" does not include advice or  
34 representation given an individual client during the course of legal  
35 consultation or representation;

36 (j) Adopt and enforce policies to prevent and sanction violations  
37 of this chapter;

38 (k) Enter into a protocol to coordinate the delivery of civil legal  
39 services to low-income persons referred by the office of the family and

1 children's ombudsman and other public agencies that represent or assist  
2 persons receiving state family and children's services; and

3 (1) Adopt a biennial plan for client involvement in the provision  
4 of direct, extended legal representation supported by state funding,  
5 including but not limited to copayments, sliding fee scales, suggested  
6 voluntary contributions, or other appropriate revenue-generating  
7 mechanisms, to be effective no later than July 1, 1999. In addition to  
8 revenue-generating mechanisms, the plan may include client involvement  
9 in the form of community-based volunteer services. All receipts from  
10 client payments under this subsection must be deposited in the indigent  
11 civil legal services revolving account.

12 (3) State funding may not be used, directly or indirectly, to  
13 support in whole or in part:

14 (a) The representation of any client in a criminal proceeding;

15 (b) Preparation, production, or dissemination of information the  
16 purpose of which is to encourage the public at large, or any definable  
17 segment of it, to contact legislators or their staff in support of or  
18 in opposition to pending or proposed legislation; or contribute to or  
19 participate in a demonstration, march, rally, lobbying campaign, or  
20 letter writing or telephone campaign for the purpose of influencing the  
21 course of pending or proposed legislation; or

22 (c) Lobbying. However, state funding may be used:

23 (i) To support lobbying activities designed to provide legislative  
24 or executive officials, committees, or staff members with information  
25 about the activities of a qualified legal services provider or civil  
26 access to justice needs of residents of Washington;

27 (ii) To appear and testify at public hearings in response to a  
28 written request by a state legislator.

29 The provider shall simultaneously file with the office copies of any  
30 filings it makes with the public disclosure commission.

31 (4) Contracts entered into by the office under the authority of  
32 this section must require that attorneys' fees awarded in cases  
33 supported by state funding be deposited into the indigent civil legal  
34 services revolving account. Attorneys' fees awards in cases supported  
35 in part by state funding and in part by funding from other sources must  
36 be apportioned on a pro rata basis, with the portion attributable to  
37 representation provided with state funding deposited in the indigent  
38 civil legal services revolving account.

1        NEW SECTION.    **Sec. 8.**    The indigent civil legal services revolving  
2 account is created in the custody of the state treasurer. All receipts  
3 generated under sections 7 and 11 of this act must be deposited into  
4 the account. Expenditures from the account may be used only for  
5 purposes of this chapter. Only the director of the office of civil  
6 legal services or the director's designee may authorize expenditures  
7 from the account. The account is subject to the allotment procedures  
8 under chapter 43.88 RCW, but an appropriation is not required for  
9 expenditures.

10        NEW SECTION.    **Sec. 9.**    NONPARTISAN STATUS. Except as provided in  
11 section 7 (2)(a)(i) and (3)(c) of this act, the office, qualified legal  
12 services providers receiving state funding, and board members and  
13 employees of the providers shall not:

14            (1) Identify the office or provider with a partisan or nonpartisan  
15 political activity, with a political purpose, or with the campaign of  
16 a candidate for elective public or party office;

17            (2) Use a partisan or ideological political test or qualification  
18 in making a decision, taking action, or performing a function connected  
19 with providing civil legal services funded in whole or in part with  
20 funding provided by the office.

21        NEW SECTION.    **Sec. 10.**    NONINTERFERENCE WITH PROFESSIONAL  
22 RESPONSIBILITIES. (1) The director must ensure that no person  
23 associated with the office or the board interferes with the discharge  
24 of professional responsibilities to clients by an attorney providing  
25 legal services with state funding.

26            (2) Nothing in this chapter abrogates or limits the professional  
27 responsibilities of attorneys providing legal services to low-income  
28 clients with funding provided by the office under this chapter.

29            (3) For purposes of this section, "professional responsibilities"  
30 are duties and responsibilities established by the rules of  
31 professional conduct and other nondiscretionary duties applicable  
32 generally to members of the legal profession, including the duty to  
33 preserve inviolate and prevent the disclosure of client information  
34 protected by the United States Constitution, the Washington  
35 Constitution, the attorney-client privilege, or any applicable attorney  
36 rule of professional conduct.



1        NEW SECTION.    **Sec. 11.**    OVERSIGHT--SANCTIONS.    (1) The director

2 must ensure that legal services providers receiving state funding  
3 comply with the requirements of this chapter and any other applicable  
4 requirements.    If the director determines that a provider receiving  
5 state funding, or a board member or employee of such a provider, has  
6 used the state funding or caused the provider to use the state funding  
7 in violation of this chapter, or has otherwise failed to comply with  
8 this chapter, the director may impose one or more of the following  
9 sanctions:

10        (a) Issue a reprimand describing the facts giving rise to the  
11 director's determination that a violation of this chapter has occurred.  
12 The director shall forward copies of all reprimands issued under  
13 authority of this section to the board;

14        (b) Withhold from the provider's next contractual payment the  
15 amount, if any, found to have been improperly expended on activities  
16 prohibited under this chapter;

17        (c) Levy a fine of up to two thousand five hundred dollars against  
18 the provider for each violation found by the director, which amounts  
19 must be deducted from the provider's next contractual payment; or

20        (d) Commence proceedings to terminate state funding of the  
21 provider.

22        In determining the appropriate sanction, the director shall  
23 consider, among other things, the nature of the violation, the client  
24 interest intended to be served by the conduct constituting a violation,  
25 the potential consequences resulting from the violation, the manner in  
26 which the provider responded to any prior notices of noncompliance, and  
27 whether the violation was an isolated or negligent oversight on the  
28 part of the provider's governing board or administration, or was the  
29 result of willful or repeated acts, including a demonstrated history of  
30 failure to comply with this chapter or other applicable law.

31        (2) Sanctions imposed under subsection (1)(c) of this section are  
32 authorized only when there has been a substantial failure on the part  
33 of a legal services provider to comply with a provision of law or a  
34 condition of a contract under which state funding is made available to  
35 the provider.

36        (3) Sanctions imposed under subsection (1)(d) of this section are  
37 authorized only where there has been either a substantial ongoing  
38 failure by a legal services provider to provide effective legal  
39 assistance as measured by generally accepted professional standards, or

1 a pattern of willful disregard of the requirements of this chapter. In  
2 the absence of unusual circumstances, state funding of a legal services  
3 provider shall not be terminated for this cause unless the director  
4 provides the provider with notice of the failure(s) and a reasonable  
5 period of time for the provider to take effective corrective action.

6 (4) No sanction imposed under authority of this section is  
7 effective until the director:

8 (a) Issues a notice to the provider's director and board chair  
9 advising (i) of the director's intent to impose one or more specified  
10 sanctions, (ii) of the reasons for the proposed sanction, (iii) of the  
11 right of the provider to obtain review of the proposed sanction by  
12 requesting a hearing before the proposed sanction's taking effect, and  
13 (iv) that the sanction will become effective if the provider does not  
14 request review within thirty days of receipt of the notice of intent to  
15 impose sanctions; and

16 (b) Provides a copy of the notice to the board.

17 (5) Hearings must be on the record and completed within sixty days  
18 of the provider's request for review of the proposed action. The board  
19 shall request assignment of an administrative law judge in accordance  
20 with chapter 34.12 RCW to conduct the hearing. A written decision must  
21 be issued within thirty days of the hearing. Review of the decision is  
22 available under chapter 34.05 RCW. The reviewing court may grant  
23 relief only if the decision is arbitrary and capricious or in violation  
24 of law.

25 (6) Sanctions authorized under this chapter are not exclusive.  
26 Nothing in this chapter limits the ability of the director, the state  
27 auditor, the state bar association, or other interested persons to  
28 pursue civil or criminal remedies otherwise authorized under applicable  
29 laws.

30 NEW SECTION. **Sec. 12.** All employees of the office are exempt from  
31 state civil service under chapter 41.06 RCW.

32 NEW SECTION. **Sec. 13.** On January 1, 1998:

33 (1) All powers, duties, and functions of the department of  
34 community, trade, and economic development pertaining to civil indigent  
35 legal representation are transferred to the office of civil legal  
36 services.

1       (2)(a) All reports, documents, surveys, books, records, files,  
2 papers, or written material in the possession of the department of  
3 community, trade, and economic development pertaining to the powers,  
4 functions, and duties transferred must be delivered to the custody of  
5 the office of civil legal services. All cabinets, furniture, office  
6 equipment, motor vehicles, and other tangible property employed by the  
7 department of community, trade, and economic development in carrying  
8 out the powers, functions, and duties transferred must be made  
9 available to the office of civil legal services. All funds, credits,  
10 or other assets held in connection with the powers, functions, and  
11 duties transferred must be assigned to the office of civil legal  
12 services.

13       (b) Any appropriations made to the department of community, trade,  
14 and economic development for carrying out the powers, functions, and  
15 duties transferred must, on the effective date of this act, be  
16 transferred and credited to the office of civil legal services.

17       (c) Whenever any question arises as to the transfer of any  
18 personnel, moneys, books, documents, records, papers, files, equipment,  
19 or other tangible property used or held in the exercise of the powers  
20 and the performance of the duties and functions transferred, the  
21 director of financial management shall make a determination as to the  
22 proper allocation and certify that determination to the state agencies  
23 concerned.

24       (3) All employees of the department of community, trade, and  
25 economic development engaged in performing the powers, functions, and  
26 duties transferred are transferred to the jurisdiction of the office of  
27 civil legal services. All employees classified under chapter 41.06  
28 RCW, the state civil service law, are assigned to the office of civil  
29 legal services to perform their usual duties upon the same terms as  
30 formerly, without any loss of rights, subject to any action that may be  
31 appropriate thereafter in accordance with the laws and rules governing  
32 state civil service.

33       (4) All rules, contracts, and all pending business before the  
34 department of community, trade, and economic development pertaining to  
35 the powers, functions, and duties transferred are continued and must be  
36 acted upon by the office of civil legal services. All existing  
37 contracts and obligations remain in full force and must be performed by  
38 the office of civil legal services.

1 (5) The transfer of powers, duties, functions, and personnel of the  
2 department of community, trade, and economic development does not  
3 affect the validity of any act performed before the effective date of  
4 this act.

5 (6) If apportionments of budgeted moneys are required because of  
6 the transfers directed by this section, the director of financial  
7 management shall certify the apportionments to the agencies affected,  
8 the state auditor, and the state treasurer. Each of these shall make  
9 the appropriate transfer and adjustments in funds and appropriation  
10 accounts and equipment records in accordance with the certification.

11 (7) Nothing in this section may be construed to alter an existing  
12 collective bargaining unit or the provisions of an existing collective  
13 bargaining agreement until the agreement has expired or until the  
14 bargaining unit has been modified by action of the personnel board as  
15 provided by law.

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.131  
17 RCW to read as follows:

18 The office of civil legal services and its powers and duties are  
19 terminated on June 30, 2001, as provided in section 15 of this act.

20 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131  
21 RCW to read as follows:

22 The following acts or parts of acts, as now existing or hereafter  
23 amended, are each repealed, effective June 30, 2002:

- 24 (1) RCW 2.----.--- and 1997 c --- s 1 (section 1 of this act);
- 25 (2) RCW 2.----.--- and 1997 c --- s 2 (section 2 of this act);
- 26 (3) RCW 2.----.--- and 1997 c --- s 3 (section 3 of this act);
- 27 (4) RCW 2.----.--- and 1997 c --- s 4 (section 4 of this act);
- 28 (5) RCW 2.----.--- and 1997 c --- s 5 (section 5 of this act);
- 29 (6) RCW 2.----.--- and 1997 c --- s 6 (section 6 of this act);
- 30 (7) RCW 2.----.--- and 1997 c --- s 7 (section 7 of this act);
- 31 (8) RCW 2.----.--- and 1997 c --- s 8 (section 8 of this act);
- 32 (9) RCW 2.----.--- and 1997 c --- s 9 (section 9 of this act);
- 33 (10) RCW 2.----.--- and 1997 c --- s 10 (section 10 of this act);
- 34 (11) RCW 2.----.--- and 1997 c --- s 11 (section 11 of this act);
- 35 and
- 36 (12) RCW 2.----.--- and 1997 c --- s 12 (section 12 of this act).

1        NEW SECTION.    **Sec. 16.**    Sections 1 through 12 of this act  
2 constitute a new chapter in Title 2 RCW.

3        NEW SECTION.    **Sec. 17.**    Section captions used in this act are not  
4 part of the law.

5        NEW SECTION.    **Sec. 18.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 19.**    Effective January 1, 1998, RCW 43.08.260  
10 and 1995 c 399 s 62 & 1992 c 54 s 4 are each repealed.

11        NEW SECTION.    **Sec. 20.**    This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of the  
13 state government and its existing public institutions, and takes effect  
14 July 1, 1997.

--- END ---