THE SENATE TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII

S.B. NO. ¹⁰⁷³ S.D. 2

S.D. 2 H.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in November 2007, -2 the Access to Justice Hui released a report entitled: 3 "Achieving Access to Justice for Hawai'i's People". Part of that 4 report, "The 2007 Assessment of Civil Legal Needs and Barriers 5 of Low- and Moderate-Income People in Hawai'i", noted that four out of five low- and moderate-income residents did not have 6 7 their legal needs met, and that legal service providers are only 8 able to assist one in three who contact them for assistance. 9 The legislature also finds that to increase the delivery of 10 legal services, more funding is necessary. Additional funds 11 could be generated by increasing the surcharge for indigent

12 legal services, as recommended by another component of the above 13 report, "The Community Wide Action Plan: Ten Action Steps to 14 Increase Access to Justice in Hawai'i by 2010".

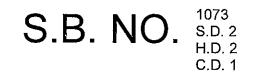
15 The purpose of this Act is to implement the funding 16 recommendation of the Access to Justice Hui by increasing the 17 amount of the surcharges for indigent legal fees.

1 SECTION 2. Section 607-5.7, Hawaii Revised Statutes, is 2 amended to read as follows: 3 "[+]§607-5.7[+] Surcharge for indigent legal services. 4 (a) In addition to the costs and fees prescribed in section 5 607-5, any person in a civil action in the circuit court who is required to pay an initial filing fee shall pay an additional 6 7 surcharge [of \$25] at the time of the person's initial filing [-Initial filings for which this-surcharge shall be assessed 8 9 include: 10 (1)-Complaints, petitions, interventions, applications for 11 special proceedings, and answers containing one or 12 more cross claims or counter-claims; and 13 (2)Third party complaints, but-shall not include post-14 judgment-civil process.] as follows: 15 (1) Effective January 1, 2012, \$50; and 16 (2) Effective January 1, 2014, \$65. 17 (b) In addition to the costs and fees prescribed in 18 section 607-4, any person [who files an action for summary 19 possession in the district court] in a civil action in the 20 district court who is required to pay an initial filing fee

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21 shall pay an additional surcharge [of \$10] at the time of the 22 person's initial filing[-] as follows:

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1	(1)	Effective January 1, 2012, \$25; and
2	(2)	Effective January 1, 2014, \$35.
3	<u>(c)</u>	Any person in a civil action in the [supreme court]
4	courts of	appeal who is required to pay an initial filing fee
5	also shal	l pay an additional surcharge [of \$25] at the time of
6	the perso	on's filing[-] <u>as follows:</u>
7	(1)	Effective January 1, 2012, \$50; and
8	(2)	Effective January 1, 2014, \$65.
9	(d)	Initial filings for which surcharges in this section
10	shall be	assessed include:
11	(1)	Complaints, petitions, interventions, applications for
12		special proceedings, and answers containing one or
13		more cross-claims or counter-claims; and
14	(2)	Third-party complaints, but shall not include post-
15		judgment civil process.
16	<u>(e)</u>	No surcharge in this section shall be assessed
17	against:	
18	(1)	Small claims cases;
19	(2)	Petitions for temporary restraining orders;
20	(3)	Petitions for protective orders;
21	(4)	Any party who has received the court's permission to
22		proceed in forma pauperis; or
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(5) Any party proceeding on behalf of the county or State.
 Surcharges subject to this section shall be limited to one
 payment per party.

4 [(c)] (f) There is established a special fund to be known
5 as the indigent legal assistance fund. The funds raised under
6 subsections [(a) and (b)] (a), (b), (c), and (d) shall be
7 transmitted to the administrative director of the courts and
8 deposited in the indigent legal assistance fund.

9 [(d)] (g) This fund shall be administered by the 10 administrative director of the courts, or pursuant to contract 11 with the administrative director of the courts. If the fund is 12 administered pursuant to contract with the administrative 13 director of the courts, the contractor shall be a nonprofit 14 organization that has at least one year's experience in 15 administering grants to providers of civil legal services for 16 indigents. The fund administrator shall receive not more than 17 five per cent of the total amount collected under this section 18 each fiscal year as compensation for performing the duties under 19 this section.

20 [-(e)-] (h) The fund administrator shall annually accept 21 applications for grants funded from the indigent legal 22 assistance fund from organizations that provide civil legal 2011-2388 SB1073 CD1 SMA.doc



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1	assistance to indigent persons. Applications shall be received
2	no later than April 15 for assistance in the following fiscal
3	year. The fund administrator shall determine the specific
4	information required of the applicant and, at a minimum, shall
5	require applicants to provide information concerning:
6	(1) Their governance, staffing, and total annual budget;
7	(2) Other funding sources;
8	(3) Geographic area of service;
9	(4) The number of clients served in the previous fiscal
10	year; and
11	(5) The nature and scope of services provided.
12	[(f)] <u>(i)</u> To be eligible for assistance from the indigent
13	legal assistance fund, an applicant shall meet all of the
14	following standards at the time of application:
15	(1) Be either a nonprofit organization incorporated and
16	operated exclusively in Hawaii and determined by the
17	Internal Revenue Service to be exempt from federal
18	income tax or a program operated exclusively in Hawaii
19	by an accredited nonprofit law school[, which] <u>;</u>
20	provided that the organization or program provides as
21	its primary purpose and function civil legal services
22	to indigent persons;



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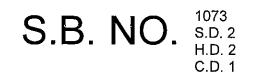


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1	(2)	Have a governing board whose members have no material
2		conflict of interest and serve without compensation;
3	(3)	Have bylaws or policies that describe the manner in
4		which business is conducted, and policies that relate
5		to nepotism and management of potential conflict of
6		interest situations;
7	(4)	Have at least one year's experience in providing civil
· 8		legal services to indigents;
9	(5)	Be licensed and accredited, as applicable, in
10		accordance with the requirements of federal, state,
11		and county governments;
12	(6)	Agree not to charge client fees for services that are
13		funded in any part by a grant from the indigent legal
14		assistance fund, except that token payments for costs
15		and expenses shall not be considered fees;
16	(7)	Agree to use any grant received under this section
17		exclusively to provide civil legal services to
18		indigent persons; and
19	(8)	Have in place sound financial management systems, a
20		client grievance procedure, a method of ensuring the
21		quality of service provided, and a policy that
22		provides that no person may interfere with any
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1	attorneys funded in whole or in part by this section		
2	in carrying out their professional responsibilities to		
3	their clients, as established by the Hawaii rules of		
4	professional conduct.		
5	(j) The administrative director of the courts, or the		
6	contractor administering the fund pursuant to contract with the		
7	administrative director of the courts, shall review, on a		
8	biennial basis, the indigent legal assistance fund to determine		
9	whether it is meeting the civil legal needs of indigent persons		
10	and shall report its findings and recommendations to the		
11	legislature no later than twenty days prior to the convening of		
12	the regular session of the legislature in each even-numbered		
13	year beginning with the regular session of 2014.		
14	[(g)] <u>(k)</u> Funds shall be distributed on a pro rata basis		
15	to organizations that meet the criteria in subsection $[-(f), f]$		
16	(i), based upon the portion of their total budget expended in		
17	the prior year for civil legal services to indigent persons as		
18	compared to the combined total expended in the prior year for		
19	legal services by all qualifying organizations applying for		
20	funding. An applicant that provides services other than civil		
21	legal services to indigent persons may establish its		
22	proportionate entitlement to funds based upon financial		
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statements [which] that strictly segregate [that] the portion of the organization's expenditures in the prior year [which] that were devoted exclusively to the provision of civil legal services for indigents.

5 [-(h)] (1) As used in this section, unless the context
6 otherwise requires:

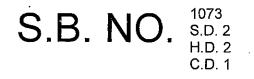
7 "Civil legal services" means direct legal services provided 8 by attorneys or by attorney-supervised staff to clients in civil 9 matters, including pro bono, judicial, and administrative 10 advocacy relating to the civil legal problems of indigents. 11 "Indigent person" means:

12 (1) Any individual whose income is not greater than one
13 hundred twenty-five per cent of the official poverty
14 line established by the Secretary of Health and Human
15 Services under the Community Services Block Grant Act,
16 42 U.S.C. [section] Section 9902;

- 17 (2) Any individual who is eligible for free services under
 18 the Older Americans Act or Developmentally Disabled
 19 Act; or
- 20 (3) Any organization or client group whose purpose is to
 21 further the interests of indigent persons and which is



1	at least fifty per cent composed of persons who meet
2	the requirements of paragraph (1) or (2)."
3	SECTION 3. Statutory material to be repealed is bracketed
4	and stricken. New statutory material is underscored.
5	SECTION 4. This Act shall take effect on January 1, 2012.



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Report Title: Indigent Legal Fees; Surcharge

Description: Increases the amount of surcharges for indigent legal fees. Requires biennial review and report by fund administrator. Effective January 1, 2012. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

