



GOV. MSG. NO. 1284

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 5, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 5, 2011, the following bill was signed into law:

SB1073 SD2 HD2 CD1

RELATING TO SURCHARGE FOR INDIGENT
LEGAL SERVICES.
Act 180 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUL 5 2011

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 180
S.B. NO. 1073
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
6 out of five low- and moderate-income residents did not have
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
6 required to pay an initial filing fee shall pay an additional
7 surcharge [~~of \$25~~] at the time of the person's initial filing [~~-~~
8 ~~Initial filings for which this surcharge shall be assessed~~
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
21 shall pay an additional surcharge [~~of \$10~~] at the time of the
22 person's initial filing[~~-~~] as follows:

1 (1) Effective January 1, 2012, \$25; and

2 (2) Effective January 1, 2014, \$35.

3 (c) 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 shall pay an additional surcharge [~~of \$25~~] at the time of
6 the person's filing[-] as follows:

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 (e) 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



1 (5) Any party proceeding on behalf of the county or State.
2 Surcharges subject to this section shall be limited to one
3 payment per party.

4 [~~(e)~~] (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



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~~] (i) 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 [~~r-which~~];
20 provided that the organization or program provides as
21 its primary purpose and function civil legal services
22 to indigent persons;



- 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



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)]~~ (k) Funds shall be distributed on a pro rata basis
15 to organizations that meet the criteria in subsection ~~[(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



1 statements [~~which~~] that strictly segregate [~~that~~] the portion of
2 the organization's expenditures in the prior year [~~which~~] that
3 were devoted exclusively to the provision of civil legal
4 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

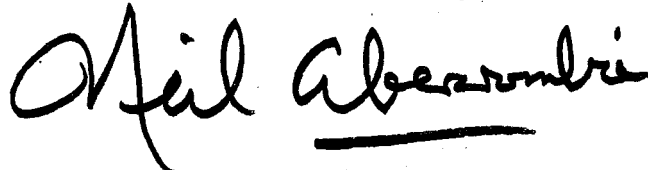


1 at least fifty per cent composed of persons who meet
2 the requirements of paragraph (1) or (2)."

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.

APPROVED this 5 day of JUL, 2011

A handwritten signature in black ink that reads "Neil Abernethy". The signature is written in a cursive style. The name "Abernethy" is underlined with a single horizontal line.

GOVERNOR OF THE STATE OF HAWAII