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HOUSE OF REPRESENTATIVES

REPORT
110–560

TO AMEND TITLE 11, DISTRICT OF COLUMBIA OFFICIAL CODE, TO IMPLEMENT THE INCREASE PROVIDED UNDER THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2008, IN THE AMOUNT OF FUNDS MADE AVAILABLE FOR THE COMPENSATION OF ATTORNEYS REPRESENTING INDIGENT DEFENDANTS IN THE DISTRICT OF COLUMBIA COURTS, AND FOR OTHER PURPOSES

MARCH 31, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 5551]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5551) to amend title 11, District of Columbia Official Code, to implement the increase provided under the District of Columbia Appropriations Act, 2008, in the amount of funds made available for the compensation of attorneys representing indigent defendants in the District of Columbia courts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 5551 authorizes the increase provided under the FY 2008 Consolidated Appropriations Act, in the amount of funds made available for the compensation of attorneys representing indigent defendants in the District of Columbia courts. H.R. 5551 increases the hourly pay rate from $65 to $80. Because of the Home Rule Act, this hourly pay increase must be made by an Act of Congress signed by the President.

Attorneys representing indigent defendants in similar matters at the U.S. District Court are paid $100 an hour. H.R. 5551 attempts to decrease the disparity in the hourly rate of compensation between attorneys practicing before the DC Courts and those practicing before the U.S. District Court. The bill also would increase the maximum caps on the total compensation paid to CJA attorneys practicing in the DC Courts, per case type, to be equal to the total compensation paid to CJA attorneys representing the indigent in federal court.

BACKGROUND AND NEED FOR LEGISLATION

Upon passage of the Revitalization Act, the federal government assumed oversight responsibility and budgetary control over DC Courts. It was at this time that the D.C. Home Rule Act, which grants the District of Columbia powers of local self-government and rule, was also amended to prohibit the D.C. Council from making statutory changes to Title 11 of D.C. Official Code. Instead, the Act confers upon Congress the authority to alter language under Title 11 pertaining to the organization and jurisdiction of the DC Courts.

Attorneys who participate in the District's CJA and the Counsel for Child Abuse and Neglect (CCAN) programs currently are compensated at an hourly rate of $65 for representing an indigent client. This rate was established in FY 2002 and represented a $15 increase over the previously enacted rate of $50 per hour. The rate was originally financed through an unobligated balance in the Defender Services account and has not changed. Furthermore, in addition to implementing the $65 hourly rate for CJA attorneys, Congress adjusted per-case compensation caps for CJA attorneys in FY 2002. Unlike the current situation, both the authorizing language and the appropriated funding for the previous increase in compensation for CJA attorneys practicing before the DC Courts were included in the FY 2002 D.C. Appropriations bill.

Currently, attorneys representing indigent defendants in similar matters before the U.S. District Court are paid $100 an hour. This disparity in compensation makes it difficult for the District to secure competent representation for these most vulnerable residents. Recent reforms to the CJA and CCAN programs, including revision of the CJA plan and the creation of attorney panels based on a comprehensive review of qualifications and experience, has prompted the DC courts to pursue an increase in compensation for CJA and CCAN program attorneys.

Although congressional appropriators provided $47,975,000 in funding for Defender Services in the FY 2008 Consolidated Appropriations Act to support an increase in compensation paid to CJA

and CCAN attorneys, the DC courts continue to be restricted from providing the attorneys with an hourly rate increase. This is due to the fact that the requisite authorizing language has yet to be approved by Congress. H.R. 5551 would remedy this problem by increasing the hourly pay rate from $65 to $80 for CJA attorneys practicing in DC Courts. The measure would also increase the caps on the total compensation paid to CJA attorneys practicing in DC Courts per case type to be equal to the total compensation paid to attorneys representing similar clients in the federal court system.

LEGISLATIVE HISTORY

H.R. 5551 was introduced by Representatives Danny K. Davis and Eleanor Holmes Norton on March 6, 2008, and referred to the Committee on Oversight and Government Reform. It provides an increase in the hourly compensation rate of attorneys representing indigent defendants in the District of Columbia.

On March 13, 2008, the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia held a hearing to examine aspects of the District of Columbia's Criminal Justice System. The hearing witnesses, D.C. Superior Court Chief Judge Rufus King, III, and Betty Ballester, Esq., President, Superior Court Trial Lawyers Association, testified to the need for and merits of H.R. 5551. Both panelists indicated their support for the bill.

During the hearing, the Subcommittee learned from Ms. Ballester that the 350 CJA attorneys who practice criminal law in the District of Columbia have not had a pay increase since 2002. Since inflation has risen at an annual rate of 3%–4% during the last six years, the $65 hourly rate established in 2002 would be equivalent to $76–$78 per hour today. Therefore, the proposed increase to $80 per hour is an appropriate and acceptable rate for the participating attorneys.

SECTION-BY-SECTION

Section 1. Implementation of increase provided in funding for compensation of attorneys representing indigent defendants in District of Columbia courts

This section increases the hourly pay rate for CJA attorneys practicing in DC Courts from $65 to $80 per hour. This section also authorizes increases in the caps on the total compensation paid per case type to CJA attorneys practicing in DC Courts.

In addition, the caps on total compensation paid to an attorney for representation of a defendant before the Superior Court of the District of Columbia for misdemeanors, felonies, appellate cases, or post trial matters for misdemeanors or felonies cannot exceed the maximum amount provided for representation of a defendant before the United States magistrate judge or the U.S. District court for each of the previously mentioned types of cases.

Section 2. Effective date

Under this section, the attorney rate increase would only apply to cases and proceedings initiated on or after the date of the enactment.

EXPLANATION OF AMENDMENTS

No amendments to H.R. 5551 were adopted in Committee.

COMMITTEE CONSIDERATION

On Thursday, March 13, 2008, the Committee met in open session and favorably ordered H.R. 5551 to be reported to the House by a voice vote.

ROLLCALL VOTES

No rollcall votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 5551 does not apply to the Legislative Branch. The bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the need to authorize the increase provided under the FY 2008 Consolidated Appropriations Act, in the amount of funds made available for the compensation of attorneys representing indigent defendants in the District of Columbia courts.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including the Committee's desire to decrease the disparity in the hourly rate of compensation between attorneys practicing before the DC Courts and those practicing before the U.S. District Court.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 5551. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement on whether the provisions of the bill include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 5551 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 5551. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5551 from the Director of the Congressional Budget Office:

MARCH 24, 2008.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5551, a bill to amend title 11, District of Columbia Official Code, to implement the increase provided under the District of Columbia Appropriations Act, 2008, in the amount of funds available for the compensation of attorneys representing indigent defendants in the District of Columbia courts, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 5551—A bill to amend title 11, District of Columbia Official Code, to implement the increase provided under the District of Columbia Appropriations Act, 2008, in the amount of funds made available for the compensation of attorneys representing indigent defendants in the District of Columbia courts, and for other purposes

H.R. 5551 would amend the District of Columbia Code to increase—from $65 per hour to $80 per hour—the rate of pay for attorneys representing indigent defendants in the District of Columbia courts. Under current law, the budget of the D.C. Courts system, including Defender Services, is funded by federal appropriations, and its expenditures are recorded in the federal budget. Based on information from the District of Columbia courts, CBO estimates that increasing the pay for attorneys would cost about $7 million in 2009 and $35 million over the 2009–2013 period, subject to the appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues.

H.R. 5551 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DISTRICT OF COLUMBIA OFFICIAL CODE

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DIVISION II—JUDICIARY AND JUDICIAL PROCEDURE

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Title 11—Organization and Jurisdiction of the Courts

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CHAPTER 26—REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

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§ 11–2604. Payment for representation.

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be com-

pensated at a fixed rate of [$65] *$80* per hour. Such attorney shall be reimbursed for expenses reasonably incurred.

[(b) For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the following maximum amounts:

[(1) $1900 for misdemeanor cases;

[(2) $3600 for felony cases; and

[(3) $1900 for post-trial matters if the underlying case was a misdemeanor or $3600 for post-trial matters if the underlying case was a felony.]

(b) The compensation to be paid to an attorney appointed pursuant to this chapter shall not exceed the following maximum amounts:

(1) For representation of a defendant before the Superior Court of the District of Columbia for misdemeanors or felonies, the maximum amount set forth in section 3006A(d)(2) of title 18, United States Code, for representation of a defendant before the United States magistrate judge or the district court for misdemeanors or felonies (as the case may be).

(2) For representation of a defendant before the District of Columbia Court of Appeals, the maximum amount set forth in section 3006A(d)(2) of title 18, United States Code, for representation of a defendant in an appellate court.

(3) For representation of a defendant in post-trial matters for misdemeanors or felonies, the amount applicable under paragraph (1) for misdemeanors or felonies (as the case may be).

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