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2d Session

SENATE

REPORT
110–432

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

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

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

JULY 25, 2008.—Ordered to be printed

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JULY 25, 2008.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

REPORT

[To accompany H.R. 5551]

The Committee on Homeland Security and Governmental Affairs, to which 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, reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE & SUMMARY

The purpose of H.R. 5551 is to raise the hourly compensation for private attorneys appointed to represent indigent criminal defendants in the D.C. Superior Court and the D.C. Court of Appeals from $65 per hour to $80 per hour, and increase the maximum total compensation such attorneys can receive for each case. In the District of Columbia Appropriations Act, 2008, Congress provided funding to support this increase in compensation. H.R. 5551 would authorize this already appropriated money to be spent for the intended purposes, by amending the District of Columbia Code to raise the compensation amounts provided for in law.

II. Background

The District of Columbia Criminal Justice Act[1] (CJA) provides for the appointment and payment of attorneys to represent criminal defendants in the District of Columbia courts. Currently, attorneys so appointed are compensated at the rate of $65 per hour, a pay rate last increased in 2002.[2]

The Committee believes that an increase in the compensation for attorneys appointed under the CJA to $80 per hour is appropriate and warranted. The increase is roughly commensurate with inflation during this time period. Moreover, attorneys appointed to represent indigent defendants in similar matters in the U.S. District Court for the District of Columbia are presently paid $100 per hour.[3] Without at least a reduction in the disparity in pay between the Federal and District of Columbia systems, the D.C. Courts would likely have greater difficulty in obtaining competent attorneys to represent indigent criminal defendants. The bill would also change the maximum payments CJA attorneys can receive for each case to be the same as the maximum payments for court-appointed attorneys appearing in federal court.[4]

Funds to support this increased compensation have already been appropriated through the District of Columbia Appropriations Act, 2008.[5] H.R. 5551 makes the corresponding changes to the District of Columbia Code necessary to implement the new compensation rates.

III. Legislative History

The legislation was introduced in the House of Representatives as H.R. 5551 by Mr. Davis of Illinois and Ms. Norton on March 6, 2008, and was passed by the House of Representatives on April 1, 2008. The bill was received by the Senate and referred to the Committee on Homeland Security and Governmental Affairs on April 2, 2008. On April 10, 2008, the Committee considered H.R. 5551 and ordered the bill reported favorably by voice vote without amendment. Members present were Lieberman, Levin, Akaka, Carper, Landrieu, McCaskill, Tester, Collins, Voinovich, and Sununu.

IV. Section-by-Section Analysis

Section 1(a) amends subsection 11–2604(a) of the District of Columbia Code to raise the rate of compensation for attorneys appointed to represent indigent defendants in the District of Columbia courts from $65 per hour to $80 per hour.

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[1] D.C. Code § 11–2601 et seq.

[2] D.C. Code § 11–2604(a); District of Columbia Appropriations Act, 2002, Pub. L. No. 107–96, 115 Stat. 923. The $65 rate set in 2002 represented a $15 per hour increase from the previous rate of $50 per hour.

[3] See Judiciary Appropriations Act, 2008, Pub. L. No. 110–161, Division D, Title III, 121 Stat. 1986, 1987 (2007) (enacted as part of the Consolidated Appropriations Act, 2008) (providing funding sufficient to support the $100 per hour rate). The federal Criminal Justice Act authorizes the Judicial Conference of the United States to raise the maximum rates for attorney compensation based on cost-of-living adjustments for federal General Schedule employees, subject, of course, to Congressional appropriations. 18 U.S.C. § 3006A(d)(1).

[4] See 18 U.S.C. § 3006A(d)(2).

[5] Pub. L. No. 110–161, Division D, Title IV, 121 Stat. 1990, 1992 (2007) (enacted as part of the Consolidated Appropriations Act, 2008). Congress appropriated $47,975,000, to remain available until expended, for compensation of CJA attorneys, attorneys who participate in the Counsel for Child Abuse and Neglect (CCAN) program, and guardianship attorneys.

Section 1(b) also amends subsection 11–2604(b) of the District of Columbia Code to make the maximum amount of compensation that such attorneys can receive for handling misdemeanor, felony, appellate and post-trial matters in the Superior Court of the District of Columbia or the District of Columbia Court of Appeals equal to the maximum amount of compensation allowed for attorneys appointed to represent defendants in United States courts.

Section 2 of the bill provides that the amendments made by the bill shall apply to cases initiated on or after the date of enactment of the bill.

V. Estimated Cost of Legislation

April 14, 2008.

Hon. Joseph I. Lieberman, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5551, an act 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.

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—An act 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 District of Columbia courts system, including Defender Services, is funded by federal appropriations, and its expenditures are recorded on the federal budget. Based on information from the courts, CBO estimates that increasing 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 legislation 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.

On March 24, 2008, CBO provided a cost estimate for H.R. 5551, as ordered reported by the House Committee on Oversight and Government Reform on March 13, 2008. The two versions of the legislation are identical, as are their estimated costs.

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

VI. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local, or tribal governments. The legislation contains no other regulatory impact.

VII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 and existing law, in which no change is proposed, is shown in roman):

DISTRICT OF COLUMBIA CODE

TITLE 11, ORGANIZATION AND JURISDICTION OF THE COURTS

CHAPTER 26. REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

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 compensated 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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