



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

March 16, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Substitute Amendment 1 to Assembly Bill 524: Small Claims Jurisdictional Amount and Court Fees

Assembly Substitute Amendment 1 to Assembly Bill 524 (ASA 1 to AB 524) would increase the jurisdictional amounts and filing fees for small claims actions. Assembly Bill 524 was introduced on October 27, 2009 and referred to the Committee on Judiciary and Ethics. Assembly Substitute Amendment 1 was offered on January 8, 2010, and recommended for adoption by a vote of 7 to 3 on February 5, 2010. The assembly substitute amendment was referred to the Joint Committee on Finance on February 5, 2010.

CURRENT LAW

Under current law, the jurisdictional limit in small claims cases is \$5,000 or less. Further, since the maximum limit for claims against the state payable by the Claims Board is established by the small claims' maximum, the Claims Board may approve the payment of claims up to \$5,000 without legislative approval.

The applicable filing fees for small claims actions total \$94.50 and include: (a) \$22 filing fee; (b) \$51 court support services surcharge; and (c) \$21.50 justice information fee. For large claims actions (\$5,001 or more), filing fees total \$265.50 and include: (a) \$75 filing fee; (b) \$169 court support services surcharge; and (c) \$21.50 justice information fee. The resulting difference in fee revenue between a small claims action and a large claims action is \$171.

Further, current law provides that if a counterclaim (a defendant's claim in opposition to, or as an offset against, a plaintiff's claim) or cross complaint (a claim asserted by a defendant against another party to an action or another person not a party to the action for a matter relating to the subject of the action) is filed in a small claims action and is beyond the small claims jurisdictional

limits, the person filing the counterclaim or cross complaint must pay the difference (\$53) between the costs to commence an action (\$75) and the small claims filing fee (\$22), and the entire matter will be tried under civil procedure (rather than small claims procedure). Revenue from this \$53 fee is divided as follows: (a) \$17.20 to the general fund; (b) \$10 for the circuit courts automation programs; and (c) the remainder to the county where the action is filed.

SUMMARY OF ASA 1 TO AB 524

The substitute amendment would modify the jurisdictional limit in small claims cases as follows: (a) \$8,000 or less, if the plaintiff has commenced 20 or fewer actions within the previous year; or (b) \$5,000 or less, if the plaintiff has commenced 21 or more actions within the previous year. The maximum limit for claims against the state payable by the Claims Board would remain at \$5,000.

The substitute amendment would modify the current \$22 filing fee for small claims actions as follows:

- a. \$22 filing fee for small claims \$2,000 or less, if the plaintiff has commenced 20 or fewer actions within the previous year;
- b. \$33 filing fee for small claims \$2,001 to \$8,000, if the plaintiff has commenced 20 or fewer actions within the previous year; and
- c. \$44 filing fee for small claims \$5,000 or less, if the plaintiff has commenced 21 or more actions within the previous year.

As a result, the total applicable fees for filing a small claims money action would depend on the case, either remaining at the current law amount of \$94.50 (a. above), or increasing to \$105.50 (b. above) or \$116.50 (c. above). Additional revenue from the increases to the fee would be retained by the counties. Attachment 1 provides a breakdown of the applicable fees and surcharges and where amounts are deposited.

In addition, ASA 1 to AB 524 provides that if a counterclaim or cross complaint is filed in a small claims action, and the counterclaim or cross complaint is for more than \$5,000 but not more than \$8,000, the person filing the counterclaim may elect to pay the difference (\$42) between the costs to commence an action (\$75) and the small claims filing fee (\$33), and the entire matter will be tried under civil procedure (rather than the more expedited small claims procedure).

FISCAL EFFECT OF ASA 1 to AB 524

As a result of increasing the maximum jurisdictional amount for small claims from \$5,000 to \$8,000 (if the plaintiff has 20 or fewer actions within the year), there will likely be a shift of cases from large claims to small claims. Since applicable fees for small claims actions are less than for

large claims actions, a shift in cases results in a decline in revenue to the state. However, ASA 1 to AB 524 also increases the filing fees for certain small claims actions, potentially limiting the decline in revenue.

In order to determine the potential fiscal impact of ASA 1 to AB 524, it is necessary to estimate: (a) the number of cases that would shift from large claims to small claims as a result of the increased jurisdictional limit; and (b) how many cases involve money claims of: (i) \$2,000 or less, if the plaintiff has 20 or fewer actions within the year; (ii) \$2,001 to \$8,000, if the plaintiff has 20 or fewer actions within the year; and (iii) \$5,000 or less, if the plaintiff has 21 or more actions within the year.

Based on data provided by the Director of State Courts Office, there were 178,461 money claims filed in 2008, including 143,308 for small claims (\$5,000 or less) and 35,153 for large claims (\$5,001 or more). Due to statutory restrictions that prohibit the amount of money sought to be specified [s. 802.02(1m)], determining the actual number of cases seeking specific dollar amounts is not possible. However, based on the number of docketed judgments recorded in 2008 (a formal court action to recover monies determined in a previous court action), it is estimated that approximately 8% of the 35,153 large claim money actions were for \$5,001 to \$8,000, with the remaining cases involving amounts greater than \$8,000.

From January 1, 2009, through June 30, 2009, a total of 18,834 small money claims were filed in Milwaukee and Dane Counties, with a total of 14,187 involving plaintiffs filing 10 or more actions in that time period. Based on this data, it is estimated that 75.3% of cases involve plaintiffs who file 21 or more actions a year. As a result, the estimated fiscal impact of ASA 1 to AB 524 would be a net increase of revenue of \$2,422,400, including; (a) -\$101,000 to the state's general fund; (b) -\$2,200 to the circuit courts automation programs; and (c) \$2,525,600 to the counties. Because the bill increases the filing fee for small claims actions and counties receive the entire increase, counties would realize an increase in revenue. The state would realize a decrease in revenue as a result of the large claims actions being shifted to small claims. Attachment 2 provides a breakout of the estimated revenue amounts.

It should be noted that revenue amounts related to counterclaim and cross complaints are impacted by ASA 1 to AB 524. Under current law, if a counterclaim or cross complaint is filed in a small claims action that is beyond the jurisdictional limits of small claims, the person filing the counterclaim must pay the difference between the costs to commence a civil action (\$75) and the small claims filing fee (\$22) -- a \$53 fee -- and the matter will be transferred to civil court. Under the substitute amendment, the fee for counter-claim or cross complaint exceeding the small claims jurisdictional amount would be either \$53 (\$75 minus \$22), \$42 (\$75 minus \$33), or \$31 (\$75 minus \$44) depending on the type of small claims action. Further, the substitute amendment allows the person filing a counter-claim or cross complaint for more than \$5,000 but not more than \$8,000 to elect to pay the fee, thus moving the matter to civil court, or not pay the fee and retaining small claims jurisdiction. Data on the number of counterclaims or cross complaints in small claims actions is not readily available. Further, it is unknown how many individuals would elect to pay the

fee, thus moving the case to civil court, or not pay the fee, keeping the case in small claims. Since statutory provisions specify that \$17.20 of the fee be deposited to the state's general fund, \$10 be credited to the circuit courts automation programs, and the remainder be retained by the counties, any variances in case filings and fees would most likely impact county revenue amounts.

The closing balance of the general fund as of June 30, 2011, was projected at \$55.7 million in this office's memorandum relating to revenue estimates dated January 27, 2010, which is less than the statutory reserve of \$65 million. Because ASA 1 to AB 524 would reduce estimated general fund revenues, the Committee may wish to adopt an amendment that would specify that the requirement for a \$65 million statutory reserve does not apply to the provisions of the bill.

Prepared by: Chris Carmichael
Attachments

ATTACHMENT 1

Small Claims Action Fees and Surcharges

	<u>Current Law</u>	<u>ASA 1 to AB 524</u>
	<u>Small Claims</u>	<u>Small Claims \$2,000 or less, Plaintiff with 20 or fewer Actions</u>
	<u>Large Claims</u>	<u>Small Claims \$2,001 to \$8,000, Plaintiff with 20 or more Actions</u>
	<u>Small Claims</u>	<u>Small Claims \$5,000 or less, Plaintiff with 21 or more Actions</u>
	<u>Large Claims</u>	<u>Large Claims</u>
Filing Fee	\$22.00	\$22.00
County Share	10.20	10.20
CCAP Share	11.80	11.80
State General Fund	30.00	30.00
Court Support Services Surcharge (General Fund)	\$51.00	\$51.00
Justice Information Fee	\$21.50	\$21.50
DOA Share	11.50	11.50
OJA Share	3.00	3.00
CCAP Share	6.00	6.00
State General Fund	1.00	1.00
Total Fees/Surcharges	\$94.50	\$94.50
	\$75.00	\$44.00
	\$30.00	32.20
	15.00	11.80
	30.00	30.00
	\$169.00	\$51.00
	\$21.50	\$21.50
	11.50	11.50
	3.00	3.00
	6.00	6.00
	1.00	1.00
	\$265.50	\$116.50
	\$105.50	\$116.50

CCAP, Circuit Court Automation Program; DOA, Department of Administration; and OJA, Office of Justice Assistance.

ATTACHMENT 2

Estimate Revenue under ASA 1 to AB 524

	<u>Current Law</u>		<u>ASA 1 to AB 524</u>		<u>Difference</u>		
	<u>Small Claims</u>	<u>Large Claims</u>	<u>Small Claims \$2,000 or less, Plaintiff with 20 or fewer Actions</u>	<u>Small Claims \$2,001 to \$8,000, Plaintiff with 20 or more Actions</u>	<u>Small Claims</u>	<u>Large Claims</u>	<u>Total</u>
Number of Claims	143,308	35,153	21,595	13,970	108,424	34,471	
Filing Fee	\$3,152,800	\$2,636,500	\$475,100	\$461,000	\$4,770,700	\$2,585,300	-\$51,200
County Share	1,461,700	1,054,600	220,300	296,200	3,491,300	1,034,100	-20,500
CCAP Share	1,691,000	527,300	254,800	164,800	1,279,400	517,100	-10,200
State General Fund	0	1,054,600	0	0	0	1,034,100	-20,500
Court Support Services							
SurchARGE (General Fund)	\$7,308,700	\$5,940,900	\$1,101,400	\$712,500	\$5,529,600	\$5,825,600	-\$115,300
Justice Information Fee	\$3,081,100	\$755,800	\$464,300	\$300,400	\$2,331,100	\$741,100	-\$14,700
DOA Share	1,648,000	404,300	248,300	160,700	1,246,900	396,400	-7,900
OJA Share	429,900	105,500	64,800	41,900	325,300	103,400	-2,100
CCAP Share	859,800	210,900	129,600	83,800	650,500	206,800	-4,100
State General Fund	143,300	35,200	21,600	14,000	108,400	34,500	-700
Total Fees/Surcharges	\$13,542,600	\$9,333,200	\$2,040,800	\$1,473,900	\$12,631,400	\$9,152,000	-\$181,200
					\$2,603,500	\$2,422,300	\$2,422,300

*Based on 2008 case number data

CCAP, Circuit Court Automation Program; DOA, Department of Administration; and OJA, Office of Justice Assistance.