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Joint Committee on Finance

Paper #590

Judicial Compensation (Supreme Court and Legislature)

[LFB 2017-19 Budget Summary: Page 291, #8 and Page 423, #2]

CURRENT LAW

Wisconsin's Court System contains a Supreme Court, four Courts of Appeals, and 69 circuits with 249 court branches. In general, each county is its own circuit, except for three, two-county circuits including Buffalo and Pepin Counties, Menominee and Shawano Counties, and Florence and Forest Counties. Seven Supreme Court justices preside over the Supreme Court, 16 appellate judges preside over the four Courts of Appeals, and 249 judges preside over the Circuit Courts. Article VII Section 10 of the Wisconsin Constitution provides that, "Justices of the supreme court and judges of the courts of record shall receive such compensation as the legislature may authorize by law, but may not receive fees of office." In addition, Article IV Section 26 provides that, "When any increase or decrease in the compensation of justices of the supreme court or judges of any court of record becomes effective as to any such justice or judge, it shall be effective from such date as to every such justice or judge."

Annual salaries for Supreme Court justices and circuit court and appeals court judges, along with other elected executive and legislative officials, are included in the state employee compensation plan. The state employee compensation plan is established by the administrator of the Division of Personnel Management (DPM) within the Department of Administration (DOA) and submitted to the Joint Committee of Employment Relations (JCOER) for review and approval. Generally, the compensation plan is established on a biennial basis to coincide with each biennial budget.

Judicial salaries are supported by sum sufficient general purpose revenue (GPR) appropriations that support the general operations of the Circuit Courts, the Court of Appeals, and the Supreme Court. Base funding for these appropriations is \$72,793,500 GPR annually for the Circuit Courts, \$10,706,500 GPR annually for the Court of Appeals, and \$5,292,500 GPR

annually for the Supreme Court. Since these appropriations are sum sufficient, the Court System may make expenditures from these appropriations beyond the amounts appropriated by the Legislature, so long as the expenditures are for purposes authorized by the law.

The Director of State Courts, who is appointed by the Supreme Court, is responsible for the overall management of the judicial system. Such responsibilities include personnel, budget development, judicial education, the circuit court information program, inter-district court assignments, and court planning and research. In order to fulfill its duties, the Director of State Courts has a biennial general program operations GPR appropriation that may be utilized at the direction of the Supreme Court. The appropriation is also utilized to support the operations of the state law library. Base funding for this biennial appropriation is \$10,334,900 GPR annually. Under a biennial appropriation, an agency may expend up to the total amount appropriated by the Legislature during a given biennium at any point during the two-year fiscal period.

GOVERNOR

Provide \$334,000 GPR on a one-time basis in 2018-19 to the Director of State Courts biennial appropriation to support salary increases for justices of the Supreme Court as well as circuit and appeals court judges. Funding under the bill is intended to support a 2% salary increase for judges on September 30, 2018, as well as another 2% salary increase for judges on May 26, 2019. [The timing and level of the salary increases for judges are similar to the timing and level of general wage adjustments budgeted for other state employees under compensation reserves.] Funding under the bill is provided on a one-time basis and would, therefore, not be included in the Court System's base budget for the 2019-21 biennium. [Notwithstanding the one-time nature of the funding for judicial wage adjustments, any salary increases provided to judges and justices during the 2017-19 biennium would be ongoing, and funding for such salary increases would be supported by the full funding of continuing salary and fringe benefits standard budget adjustment provided in the 2019-21 biennial budget.]

Create a continuing PR appropriation under the Court System for judicial wage adjustments. Authorize the appropriation to receive money from the Supreme Court or from the Director of State Courts from transfers from other judicial appropriations, as approved in the new process for determining judicial compensation (discussed below). Provide that no moneys may be transferred to this appropriation from sum sufficient appropriations utilized to support: (a) salaries and expenses of the judges, reporters, and assistant reporters of the circuit courts; (b) the functions of the Court of Appeals; and (c) the functions of the Supreme Court.

Establish a new procedure under which compensation (salaries and employee benefits) for state justices and judges are recommended to JCOER and established. Require the Director of State Courts to submit to JCOER recommendations and a proposal for adjusting the compensation and employee benefits for circuit and appeals court judges and justices of the Supreme Court. Require the Director to include all of the following in the proposal to JCOER: (a) a plan for the transfer of moneys from one or more appropriation accounts under subchapter VII of Chapter 20 of the statutes (judicial appropriations) to the new judicial wage adjustments appropriation created under the bill, except that the proposal may not include a plan to transfer

funds from the sum sufficient appropriations utilized to support the circuit courts, Court of Appeals, and Supreme Court; (b) an identification of the appropriation from which the transfers under "a" are proposed to be made; (c) a projection of the amounts that will be transferred in each fiscal year; and (d) a projection of the amount the Director will receive in the judicial wage adjustments appropriation created under the bill during the biennium. Require JCOER to review the Director's proposal.

Provide that if JCOER approves one or more of the recommendations in the Director's proposal to transfer funds from other judicial appropriations to the judicial wage adjustments appropriation, the Director may make the corresponding transfers between appropriations. Under the bill, separate legislation or approval of the Joint Committee on Finance (JFC) would not be required to authorize the transfer of funds between appropriations if such a transfer is approved by JCOER. Provide that in reviewing the Director's proposal, JCOER must apply certain procedures required of the review of the state employee compensation plan for general state employees. These procedures include:

- *Legislative Action.* If JCOER approves a provision of the Director's proposal that requires legislative action for implementation, JCOER would be required to introduce a bill or companion bills to be put on the legislative calendar to effectuate such a provision. [Notwithstanding, as identified above, separate legislation or JFC approval would not be required to authorize the Director of State Courts to transfer funds between judicial appropriations if such a transfer is approved by JCOER.] The bill or companion bills introduced by JCOER: (a) would not be required to be referred to the Joint Committee on Finance even if the bill appropriated money; (b) would not be required to be referred to the Joint Survey Committee on Retirement Systems even if the bill related to retirement or pension payments for public officers or employees; and (c) could be passed by either house of the Legislature prior to the budget bill being passed by both houses even if the bill introduced by JCOER increased or decreased state revenues or costs by an annual amount exceeding \$10,000. The Joint Committee on Employment Relations would be required to accompany the introduction of such proposed legislation with a message that informs the Legislature of JCOER's concurrence with the matters under consideration and which recommends the passage of such legislation without change.

- *Public Hearing of Proposal.* In reviewing the Director of State Court's plan, JCOER would be required to hold a public hearing on the proposal.

- *Adoption of Plan, Governor's Veto.* The recommendations from the Director of State Court's proposal that are approved by JCOER could be vetoed by the Governor within 10 calendar days of JCOER approval. A vote of six members of JCOER would be required to override such a gubernatorial veto.

DISCUSSION POINTS

Background

1. Annual salaries for Supreme Court justices and circuit court and appeals court judges,

along with other elected executive and legislative officials, are included in the state employee compensation plan that is prepared by DPM and approved by JCOER. The current state employee compensation plan for the 2015-17 biennium establishes the salary level for judges and justices, as identified in Table 1. Under the Wisconsin State Constitution, most elected officials may not receive a salary increase or decrease while serving a term of office. However, the Constitution provides that, "When any increase or decrease in the compensation of justices of the Supreme Court or judges of any court of record becomes effective as to any such justice or judge, it shall be effective from such date as to every such justice or judge."

TABLE 1

Annual Salaries of Judges and Justices

<u>Court</u>	<u>Annual Salary</u>
Supreme Court	\$147,403
Appellate Court	139,059
Circuit Court	131,187

2. Under current law, during the biennial budget process, anticipated pay increases for state employees (such as general wage adjustments) are typically budgeted for within compensation reserves. Compensation reserves represent reserves in the budget to provide funding for any increases in state employee salary and fringe benefit costs that may be required in the biennium, but for which funding is not included in the individual agency budgets as a part of the biennial budget. The reserve funds are not allocated at the time of budget development to individual agencies because neither the amount of any salary and fringe benefit cost increases, nor the specific amount of funding needed by each individual agency, is known at the time of budget development. At the end of each fiscal year of the biennium, agencies may request that funds from compensation reserves be released to the agency, in order to support salary and fringe benefit cost increases that the agency cannot support within its base budget. The release of compensation reserves to state agencies is approved by the Joint Committee on Finance. In previous fiscal years, anticipated salary increases for judges and justices have been budgeted for in this manner.

3. The bill includes compensation reserves totaling \$14,361,900 GPR (\$29,001,600 all funds) in 2017-18, and \$35,276,600 GPR (\$71,235,800 all funds) in 2018-19. Amounts in compensation reserves include \$15,431,200 GPR (\$31,161,000 all funds) in 2018-19 to support a 2% general wage adjustment (GWA) for state employees on September 30, 2018, as well as another 2% GWA for state employees on May 26, 2019. Amounts are included in compensation reserves for a 2% general wage adjustment for state legislators and executive constitutional officers for when these elected officials become eligible for a pay increase under the Wisconsin State Constitution (which is typically when a new term of office begins).

4. In contrast, amounts are not included in compensation reserves for a general wage adjustment for judges and justices under the bill. Rather, the bill establishes a new procedure through which the Director of State Courts would request that JCOER approve compensation

(salary and employee benefits) modifications for judges and justices outside of the compensation plan. In addition, the bill appropriates \$334,000 on a one-time basis in 2018-19 directly to the Director of State Courts in order to support a 2% salary increase for judges on September 30, 2018, as well as another 2% salary increase for judges on May 26, 2019.

5. The Court System has expressed a concern with regards to current salary levels of judges and justices. In her testimony before the Committee, the Chief Justice of the Supreme Court stated the following: "In regard to judicial compensation, Wisconsin's judicial salaries rank 43rd among 50 states, according to the January 1, 2017 survey of the National Center for State Courts...In order to recruit and retain the judges we need to decide a variety of claims that the people of Wisconsin are presenting to our Courts, we need to raise judicial salaries."

6. The National Center for State Courts is a nonprofit organization that provides research, information, education, and consulting services in order to assist in the operation of court systems. The organization surveys judicial salaries across all states (and the District of Columbia) twice annually. The result of the most recent survey, which is based on judicial salaries as of January 1, 2017, is provided in Appendix I and Appendix II to this paper. Appendix I identifies the salaries for judges and justices on each state's highest court (Supreme Court), intermediate court (Appellate Court), and court of general jurisdiction (Circuit Court). Appendix II identifies these salaries, adjusted for a cost-of-living index. Table 2 summarizes how Wisconsin's judicial salaries compare to other Midwestern states.

TABLE 2

Judicial Salaries in Midwestern States, As of January 1, 2017¹

Supreme Court			Appellate Court ²			Circuit Court		
State	Unadjusted Salary	Adjusted Salary	State	Unadjusted Salary	Adjusted Salary	State	Unadjusted Salary	Adjusted Salary
Illinois	\$224,628	\$200,292	Illinois	\$211,416	\$188,512	Illinois	\$194,001	\$172,984
Missouri	172,017	174,195	Indiana	165,443	169,999	Nebraska	159,077	158,744
Nebraska	171,975	171,615	Nebraska	163,476	163,133	Minnesota	149,605	141,967
Iowa	170,544	172,354	Minnesota	159,370	151,234	Missouri	148,263	150,109
Indiana	170,195	174,882	Missouri	157,242	159,200	Iowa	143,897	145,424
Minnesota	169,135	160,500	Iowa	154,556	156,196	North Dakota	143,869	136,693
Michigan	164,610	167,185	Michigan	152,955	155,347	Michigan	141,318	143,528
North Dakota	157,009	149,177	Ohio	145,550	148,566	Indiana	141,311	145,202
Ohio	156,150	159,386	Wisconsin	139,059	134,917	Ohio	133,850	136,623
Wisconsin	147,403	143,013	Kansas	131,518	131,164	Wisconsin	131,187	127,280
Kansas	135,905	135,539	North Dakota	NA	NA	South Dakota	126,346	124,027
South Dakota	135,270	132,787	South Dakota	NA	NA	Kansas	120,037	119,714

¹ The source for the judicial salary data is the National Center for State Courts. The cost-of-living factor utilized for each state to determine adjusted judicial salaries was created by the Council for Community and Economic Research (C2ER), a research organization, and reported by the National Center for State Courts.

² Certain states do not have an intermediate (appellate) court.

7. As identified in Table 2, judicial salaries in Illinois are meaningfully higher than other Midwestern states. The average unadjusted judicial salary for Midwestern states at each level of court, not including Illinois, totals \$159,110 for the Supreme Court, \$152,130 for the Appellate Court, and \$139,887 for the Circuit Court. By comparison, Wisconsin's Supreme Court salary of \$147,403 is \$11,707 (7.4%) below the Midwestern average (excluding Illinois), Wisconsin's Appellate Court salary of \$139,059 is \$13,071 (8.6%) below the same average, and Wisconsin's Circuit Court salary of \$131,187 is \$8,700 (6.2%) below the same average.

8. Another way to view Wisconsin judicial salaries is in comparison to the salaries of other top elected and executive state officials in Wisconsin. As with judicial salary levels, the state employee compensation plan sets the salaries of these other elected and executive state employees. Table 3 identifies the salaries of statewide constitutional officers and legislators, effective in January, 2017. Table 4 identifies the salaries of elected district attorneys for those who took office in January, 2017. Finally, Table 5 identifies the current salary ranges for the state's top executives in Executive Salary Groups (ESG) one through 10.

TABLE 3

**Annual Salaries of Statewide Constitutional Officers and Legislators,
Effective January, 2017**

<u>Office</u>	<u>Annual Salary</u>
Governor	\$147,328
Attorney General	142,966
State Superintendent of Public Instruction	121,307
Lieutenant Governor	77,795
Secretary of State	69,936
State Treasurer	69,936

TABLE 4

Annual Salaries of Elected District Attorneys for Those Taking Office January, 2017

<u>Prosecutorial Unit Size (Population)</u>	<u>Annual Salary</u>
More than 500,000	\$136,900
More than 250,000 but not more than 500,000	123,848
More than 100,000 but not more than 250,000	117,615
More than 75,000 but not more than 100,000	117,615
More than 50,000 but not more than 75,000	111,990
More than 35,000 but not more than 50,000	111,990
More than 20,000 but not more than 35,000	100,122
Not more than 20,000	100,122

TABLE 5

Current Salary Ranges for State Executives in Executive Salary Groups One Through 10

<u>ESG Range</u>	<u>Annual Salary</u> <u>Minimum</u>	<u>Maximum</u>
1	\$60,382	\$99,632
2	65,208	107,598
3	70,429	116,210
4	76,066	125,528
5	82,139	135,533
6	88,712	146,390
7	95,826	158,122
8	103,480	170,747
9*	111,758	184,413
10*	120,702	199,160

*No executive positions are currently assigned to these ESG levels under s. 20.934(4) of the statutes.

9. Supreme Court justices (\$147,403) receive more in annual salary than any other elected state official or district attorney, including the Governor. Court of Appeals judges (\$139,059) receive more in annual salary than all state elected officials and district attorneys except for the Governor and the Attorney General. Circuit Court judges (\$131,187) receive more in annual salary than all state elected officials and district attorneys, except for the Governor, the Attorney General, and the District Attorneys for Milwaukee and Dane Counties.

10. Table 5 identifies the salary ranges for the state's top executives. The lowest salary range in which the current annual salary for a Circuit Court judge appeals is ESG 5. Some of the current state executives assigned to ESG 5 include the commissioners and chairperson of the Wisconsin Employment Relations Commission, the commissioners and chairperson of the Labor and Industry Review Commission, and the Director of the State Fair Park Board. The lowest salary range in which Court of Appeals judges appear is ESG 6. Some of the current state executives assigned to the ESG 6 include the Secretaries of the Departments of Children and Families, Agriculture, Trade, and Consumer Protection, Financial Institutions, Veterans Affairs, Safety and Professional Services, and Tourism. Finally, the lowest range in which the current annual salary for a Supreme Court justice appears is ESG 7. Some of the state executives assigned to ESG 7 include Secretaries of the Departments of Natural Resources, Revenue, Transportation, and Workforce Development. The current salaries of Supreme Court justices, Court of Appeals judges, and Circuit Court judges are all within the current highest ESG range, ESG 10.

11. It is also argued that increasing judicial salaries will assist with retaining judges and justices. A judgeship can become vacant because either: (a) the term of office of a judge or justice is completed, which would trigger an election to fill the position for a new term of office; or (b) a judge or justice vacates the judgeship prior to the end of his or her term. In the latter case, the

Governor may appoint an attorney until a successor is elected. Table 6 identifies data received from the Director of State Courts on judicial mid-term departures from calendar years 2012 through 2016.

TABLE 6

Mid-Term Departures from Supreme Court Justice and Court of Appeals and Circuit Court Judge Positions, Calendar Years 2012 Thru 2016

<u>Court</u>	<u>Reason for Departure</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Supreme Court	Retirement	0	0	0	0	1
	Resignation	0	0	0	0	0
	Death	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
	Subtotal	0	0	0	1	1
	# of Justices	7	7	7	7	7
	Mid-year departure %	0.0%	0.0%	0.0%	14.3%	14.3%
Court of Appeals	Retirement	1	0	0	1	1
	Resignation	0	0	1	0	0
	Death	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
	Subtotal	1	0	2	1	1
	# of Judges	16	16	16	16	16
	Mid-year departure %	6.3%	0.0%	12.5%	6.3%	6.3%
Circuit Court	Retirement	7	9	9	5	12
	Resignation	1	1	0	1	1
	Death	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
	Subtotal	8	10	9	6	15
	# of Judges	249	249	249	249	249
	Mid-year departure %	3.2%	4.0%	3.6%	2.4%	6.0%
Wisconsin Court System	Total Departures	9	10	11	8	17
	# of Justices/Judges	272	272	272	272	272
	Departure %	3.3%	3.7%	4.0%	2.9%	6.3%

Provisions Under the Budget Bill

12. The bill creates a new process in which judicial salaries and benefits would be determined. Under the new process, the Director of State Courts must submit to JCOER recommendations and a proposal for adjusting the compensation and employee benefits for circuit and appeals court judges and Supreme Court justices. The recommendations submitted by the Director of State Courts to JCOER would be subject to JCOER's approval, in a similar manner to how the state employment compensation plan is currently approved by JCOER.

13. Under the bill, the compensation for judges and justices would no longer be established under the state employee compensation plan. Rather, judicial compensation would be

outside the compensation plan as is the compensation for University of Wisconsin System employees. The Director of State Courts would be required to recommend adjustments to judicial salaries and employee benefits in a separate proposal to JCOER. Notwithstanding, any adjustments to judicial salaries and employee benefits would still need to adhere to other statutory requirements related to state employee salaries and benefits. For example, health insurance benefits for judges and justices would still need to adhere to requirements established under Chapter 40 of the statutes.

14. The bill creates a new program revenue appropriation under the Court System for judicial wage adjustments. The bill provides that the Director of State Courts must include in his or her recommendations to JCOER on judicial compensation a plan for the transfer of moneys from one or more appropriation accounts under subchapter VII of Chapter 20 of the statutes (judicial appropriations) to the new judicial wage adjustments appropriation created under the bill, except that the proposal may not include a plan to transfer funds from the sum sufficient appropriations utilized to support the circuit courts, Court of Appeals, and Supreme Court. If JCOER approves one or more of the recommended transfers, the Director of State Courts would be authorized to make the corresponding transfer between appropriations.

15. The administration indicates that its intent was to provide that the total cost of any judicial compensation increases during a given biennium would be supported through the transfer of funds to the new judicial wage adjustments appropriation, as recommended by the Director of State Courts and approved by JCOER. Subsequent to the biennium in which the wage adjustments are made, the full funding and continuing positions salaries and fringe benefits standard budget adjustment provided to the Court System would adjust the Courts' sum sufficient GPR appropriations to account for the fact that judicial salaries have been increased.

16. Table 7 identifies the various GPR and PR appropriations that the Director of State Courts could utilize to transfer funds for judicial wage adjustments under the bill, as well as base funding for each appropriation. [Note that Table 7 includes appropriations that currently do not have base funding only to illustrate that funding could be appropriated to these appropriation in future fiscal years and then be utilized to support judicial wage adjustments.]

TABLE 7

**GPR and PR Appropriations That Could Transfer Funds
for Judicial Wage Adjustments Under The Bill**

<u>Court/Program</u>	<u>Appropriation</u>	<u>Fund Source</u>	<u>Base Funding</u>	
Circuit Court				
Court Operations	Circuit court costs	GPR	\$24,676,800	
	Permanent reserve judges	GPR	0	
	Court interpreters	PR	232,700	
	Sale of materials and services	PR	0	
Supreme Court				
Director of State	General program operations	GPR	\$10,334,900	
Courts and Law	Court information systems	PR	7,000,000	
Library	Gifts and grants	PR	606,500	
	Central services	PR	236,800	
	Municipal judge training	PR	164,800	
	Materials and services	PR	127,200	
	Library collections and services	PR	118,800	
	Court commissioner training	PR	65,100	
	Court interpreter training and certification	PR	45,100	
	Interagency and intra-agency automation assistance	PR	0	
	Bar Examiners and Responsibility	General program operations; judicial commission	GPR	285,700
		Contractual agreements, judicial commission	GPR	16,200
Office of lawyer regulation		PR	3,050,400	
	Board of Bar examiners	PR	769,300	

17. In reviewing Table 7, note that two appropriations are identified under the Supreme Court's program for bar examiners and responsibilities that relate to the judicial commission. Under the bill, the administration of the Judicial Commission is transferred to the Supreme Court. [This issue is addressed in a separate budget paper.] If the Judicial Commission is not transferred to the Supreme Court, these two Judicial Commission appropriations could not be utilized to support judicial wage adjustments.

18. The bill appropriates \$334,000 GPR in 2018-19 on a one-time basis to the Director of State Courts biennial GPR appropriation. Funding is intended to support a 2% salary increase for judges on September 30, 2018, as well as another 2% salary increase for judges on May 26, 2019 (similar to the GWAs provided to other state employees). When the Director of State Courts recommends judicial salary adjustments to JCOER for the 2017-19 biennium, as provided for under the bill, the Director could recommend that the funds appropriated to the general program operations appropriation be transferred to the judicial wage adjustments PR appropriation that is created under the bill.

19. Under current law, judicial salaries are established in the state employee compensation plan, which is developed by DPM and approved by JCOER. The bill would provide that the Director of State Courts makes recommendations on judicial compensation directly to JCOER, for

JCOER's approval. It could be argued that authorizing the Court System to directly request judicial compensation adjustments from JCOER would provide the Court System a greater ability to seek compensation adjustments. To this point, the administration indicates that, "The courts sought a pay raise of 16%. This was beyond the GWA offered to other elected officials, whereas other elected officials did not seek additional compensation beyond the GWA. This provision provides a mechanism for the justices and judges to receive a pay raise that is more in line with the amount they are seeking."

20. In addition, it could be argued that creating a process through which the Courts could transfer funds between appropriations to support judicial wage adjustments could provide the Courts flexibility in managing its budget in order to support compensation adjustments that the Courts deem are necessary.

21. For the reasons identified above, the Committee could approve the Governor's recommendation and create a new process through which judicial compensation is established [Alternative 1].

22. The bill inadvertently miscalculates the cost of providing a two 2% GWAs for the judges and justices on September 30, 2018, and May 26, 2019, respectively. Specifically, the bill's calculation: (a) assumes that only 50% of the salaries for judges and justices are supported by general purpose revenue, when, in fact, 100% of judicial salaries are supported by GPR; and (b) utilizes payroll data that does not include salary amounts for certain judgeships that were vacant at the time the payroll data was generated. With regards to the latter concern, while vacant judgeships do occur, on occasion, funding for judicial wage adjustments could assume that all judgeships will be filled. In order to address these issues, the Committee could increase the funding provided to the Director of State Courts for judicial wage adjustments from \$334,000 GPR in 2018-19 to \$694,400 GPR in 2018-19 only [Alternative 2a]. This alternative would increase funding under the bill by \$360,400 GPR in 2018-19.

23. In addition, as noted above, the administration indicates that its intent was to provide that the total cost of any judicial compensation increases during a given biennium would be supported through the transfer of funds to the new judicial wage adjustments appropriation, as recommended by the Director of State Courts and approved by JCOER. However, the statutory language created under the bill does not specify that the total cost of any judicial compensation increases would need to be supported by funding transfers recommended by the Director of State Courts. As a result, it is conceivable that judicial compensation adjustments recommended by the Director and approved by JCOER would be supported by funding transfers only in part. The remaining costs of any adjustments would be supported by the Court System's sum sufficient GPR appropriations that are utilized to support the operations of the Circuit Courts, the Court of Appeals, and the Supreme Court. In order to more clearly effectuate the administration's intent, the Committee could modify the Governor's recommendation and create statutory language specifying that the cost of any judicial compensation adjustments during the biennium in which the adjustments are made would need to be fully supported by the transfer of funds between appropriations in the Court System, as recommended by the Director of State Courts and approved by JCOER [Alternative 2b].

24. On the other hand, one could question the new process established under the bill for developing judicial compensation levels. The new process removes judicial compensation from the state employee compensation plan. The compensation plan currently establishes compensation levels for all state employees (excluding employees of the University of Wisconsin System), including elected officials. Having a uniform process for the establishment of compensation levels could be beneficial to the state. It could be argued that such uniformity creates equality in how different employee classifications and elected officials are treated. Further, to the extent that the Court System has concerns over its judicial compensation levels, it could raise those concerns to DPM when DPM is establishing the state employee compensation plan.

25. In addition, the bill authorizes JCOER to approve the transfer of funds between appropriations in order to the support judicial wage adjustments. Under the current legislative process, such approval authority is vested with the Joint Committee on Finance, under s. 13.101 of the statutes, and the Legislature as a whole. Under s. 13.111 of the statutes, the duties of JCOER are to perform functions assigned to it for the administration of: (a) state employment labor relations laws (Subchapter V of Chapter 111 of the statutes); (b) state civil service laws (Subchapter II of Chapter 230 of the statutes); (c) the payment of salaries and benefits to state employees; (d) traveling expenses, moving expenses, and temporary lodging allowances authorized under ss. 20.916 and 20.917 of the statutes; (e) statutorily established salaries. It could be argued that the authority to transfer funding between appropriations is outside of the current statutory purpose of JCOER.

26. Finally, the bill requires the Director of State Courts to submit a plan to JCOER that would transfer funds from other appropriations within the Court System for judicial wage adjustments. An argument can be made that funding appropriated for specific purposes within the Judiciary, such as for making payments to counties to support the costs of operating Circuit Courts or administering court automation systems, should not be utilized for judicial wage adjustments. [The GPR and PR appropriations that could be utilized to transfer funds for judicial wage adjustments under the bill are identified in Table 7, above.] To this point, staff at the Director of State Courts indicates that, "Tying judicial compensation to self generated savings rather than funding them through the current compensation process or a funded replacement process would seriously compromise or eliminate our ability to provide any judicial salary adjustments."

27. In her testimony before the Joint Committee on Finance, the Chief Justice of the Supreme Court requested, "...that judicial compensation remain in the State's compensation plan, with the compensation of all other elected officials, just as it is now."

28. In light of these considerations, the Committee could decide to maintain current law and provide that compensation levels for judges and justices are established under the state employee compensation plan. In addition, in order to support a 2% GWA for judges and justices on September 30, 2018, as well as another 2% GWA for judges and justices on May 26, 2019, the Committee could (a) increase funding in compensation reserves by \$694,400 GPR in 2018-19; and (b) eliminate funding appropriated directly to the Court System (\$334,000 GPR in 2018-19) for judicial wage adjustments [Alternative 3]. Under this alternative, funding under the bill would increase by \$360,400 GPR in 2018-19 (\$694,400 GPR in 2018-19 for compensation reserves and

-\$334,000 GPR in 2018-19 for the Court System).

29. The Chief Justice of the Supreme Court also stated the following in her testimony to the Finance Committee: "The Governor's budget includes a compensation increase for the judicial branch in September of 2018 and another in May of 2019. I ask you to allocate those compensation increases to our judges." As it does for other state employees, compensation reserves under the bill includes funding to support two 2% GWAs for non-judicial court staff. Amounts in compensation reserves specifically for GWAs for non-judicial court staff total \$329,400 GPR in 2018-19. [Note that compensation levels for non-judicial court staff are established at the discretion of the judicial branch, independent of the state employee compensation plan for executive branch employees and elected officials.] Given that the intent of the bill is to provide two 2% GWAs for all state employees, the Committee may wish to ensure that that increase is provided to non-judicial court staff, and that funding be provided to ensure appropriate increases for judges and justices.

On the other hand, the Courts argue that general wage adjustment funding calculated for non-judicial court staff could be reallocated for judicial salary increases since non-judicial court staff received raises during the 2015-17 biennium. According to the Courts, 511 non-judicial court employees received a raise effective June 12, 2016. On average, non-judicial court staff who handle work related to the consolidated court automation program (CCAP) received a 9.5% wage increase, while other non-judicial court staff received a 7.5% wage increase. The Courts estimate the annual cost of these wage increases to be \$2,830,000 (all funds) in 2016-17. The average compensation increase (salary and variable fringe benefits) for the 511 individuals was approximately \$5,500. Wage increases were supported by base resources within the Court System.

30. Providing two 2% GWAs for the judges and justices would increase the salaries for judges and justices by 4.04% over the 2017-19 biennium. As noted above, according to the administration, the Courts have sought a 16% salary increase for judges and justices over the biennium. In order to increase judicial salaries by an amount greater than 4.04% over the 2017-19 biennium, the Committee could provide funding to support a greater GWA for judges and justices. For example, the Committee could support two 3.925% GWAs for judges and justices (an 8% wage increase over the biennium). In providing two 3.925% GWAs for judges and justices, the Committee could also decide whether to: (a) retain funding in compensation reserves for GWAs for non-judicial court staff; or (b) eliminate funding in compensation reserves for GWAs for non-judicial court staff [Alternatives 4a and 4b]. Alternatively, the Committee could provide funding to support two 7.705% GWAs for judges and justices (a 16% wage increase over the biennium), and decide whether or not to retain funding in compensation reserves for GWAs for non-judicial court staff [Alternatives 5a and 5b]. Under these alternatives, funding would be provided to support GWAs on September 30, 2018, and May 26, 2019. The cost of the GWAs for judges and justices during the 2017-19 biennium, as well as the annual cost of these adjustments after the 2017-19 biennium, is identified in Table 8. Table 9 identifies the effect that each GWA would have on judicial salaries. Similar to Alternative 3, under Alternatives 4a, 4b, 5a, and 5b, funding for judicial wage increases would be provided to compensation reserves in 2018-19.

In reviewing the amounts identified in Table 8, note that under Alternatives 4b and 5b, compensation reserves would also be reduced by \$329,400 in 2018-19 to reflect the Chief Justice's

request to use any general wage adjustment funding calculated for non-judicial court staff instead for judicial salary increases. If funding is removed from compensation reserves for GWAs for non-judicial court staff, compensation reserves would generally include funding for GWAs for all state employees except for non-judicial court staff.

TABLE 8

Cost of Certain General Wage Adjustments for Judges and Justices

<u>Alternative</u>	<u>1st GWA on September 30, 2018</u>	<u>2nd GWA on May 26, 2019</u>	<u>GWA during 2017-19 Biennium</u>	<u>Cost of GWAs during the 2017-19 Biennium</u>	<u>Annualized Cost of GWAs After 2017-19 Biennium</u>
3	2.00%	2.00%	4.04%	\$694,400	\$1,679,800
4a & 4b*	3.925	3.925	8.00	1,365,400	3,328,100
5a & 5b*	7.705	7.705	16.00	2,690,400	6,654,400

*Under Alternatives 4b and 5b, compensation reserves would also be reduced by \$329,400 GPR in 2018-19 to reflect the elimination of funding for GWAs for non-judicial court staff.

TABLE 9

Judicial Salaries After Certain General Wage Adjustments

<u>Court</u>	<u>Current Annual Salary</u>	<u>Annual Salary After 4.04% GWA [Alternative 3]</u>	<u>Annual Salary After 8% GWA [Alternative 4a & 4b]*</u>	<u>Annual Salary After 16% GWA [Alternative 5a & 5b]*</u>
Supreme Court	\$147,403	\$153,358	\$159,201	\$170,993
Court of Appeals	139,059	144,677	150,189	161,314
Circuit Court	131,187	136,487	141,687	152,182

*Note that resulting annual salaries may differ from actual resulting salaries due to the rounding of percent increases.

31. Alternatively, the Committee could maintain current law, and not increase compensation reserves to support a judicial wage increase. Under this alternative, the state employee compensation plan prepared by DOA and approved by JCOER could still provide for a general wage adjustment for judges and justices. Funding for such increases would need to be supported by existing funding in compensation reserves, as well as the Court System's existing budget [Alternative 6]. Under this alternative, funding under the bill would be reduced by \$334,000 GPR in 2018-19. As under current law, the Courts could utilize its sum sufficient appropriations to support increased costs. However, any such increases would exceed the estimates for sum sufficient appropriations, and would not be accounted for in compensation reserves.

ALTERNATIVES

1. Include the Governor's recommendation to create a new process through which judicial compensation (salaries and employee benefits) would be established and approved by the Joint Committee on Employment Relations. In addition, create a new PR appropriation within the Court System to support judicial wage adjustments. Finally, appropriate \$334,000 GPR in 2018-19 only to the Director of State Courts general program operations GPR appropriation support a 2% general wage adjustment for judges and justices on September 30, 2018, as well as another 2% general wage adjustments for judges and justices on May 26, 2019. [This alternative would increase justices' and judges' salaries by 4.04% over the biennium.]

ALT 1	Change to	
	Base	Bill
Court System		
GPR	\$334,000	\$0

2. Modify the Governor's recommendation in either or both of the following manners. [Alternatives 2a and 2b may be chosen in addition to Alternative 1].

a. In order to correct an inadvertent calculation error, increase funding appropriated to the Court System by \$360,400 GPR in 2018-19 only to support a 2% GWA for judges and justices on September 30, 2018, as well as another 2% GWA for judges and justices on May 26, 2019. As a result, total funding appropriated to the Court System for judicial wage adjustments would equal \$694,400 GPR in 2018-19 only.

ALT 2a	Change to	
	Base	Bill
Court System		
GPR	\$360,400	\$360,400

b. Create statutory language specifying that the cost of any judicial compensation adjustments during the biennium in which the adjustments are made would need to be supported by the transfer of funds between appropriations in the Court System, as recommended by the Director of State Courts and approved by JCOER.

3. Do not include the Governor's recommendation to create a new process through which judicial compensation would be established and approved by JCOER. Instead, maintain current law that judicial compensation is established under the state employee compensation plan. In addition, increase compensation reserves by \$694,400 GPR in 2018-19 in order to support a 2% GWA for judges and justices on September 30, 2018, as well as another 2% GWA for judges and justices on May 26, 2019. [This alternative would increase justices' and judges' salaries by 4.04% over the biennium.]

ALT 3	Change to	
	Base	Bill
Court System		
GPR	\$0	- \$334,000
Compensation Reserves		
GPR		\$694,400

4. Do not include the Governor's recommendation to create a new process through which judicial compensation would be established and approved by JCOER. Instead, maintain current law that judicial compensation is established under the state employee compensation plan. In addition, increase compensation reserves in either of the following manners:

a. Increase compensation reserves by \$1,365,400 GPR in 2018-19 in order to support a 3.925% GWA for judges and justices on September 30, 2018, as well as another 3.925% GWA for judges and justices on May 26, 2019. [This alternative would increase justices' and judges' salaries by 8% over the biennium.]

ALT 4a	Change to	
	Base	Bill
Court System		
GPR	\$0	- \$334,000
Compensation Reserves		
GPR		\$1,365,400

b. Increase compensation reserves by \$1,365,400 GPR in 2018-19 in order to support a 3.925% GWA for judges and justices on September 30, 2018, as well as another 3.925% GWA for judges and justices on May 26, 2019. In addition, reduce compensation reserves by \$329,400 GPR in 2018-19 to eliminate funding for GWAs for non-judicial court staff during the 2017-19 biennium. [This alternative would increase justices' and judges' salaries by 8% over the biennium.]

ALT 4b	Change to	
	Base	Bill
Court System		
GPR	\$0	- \$334,000
Compensation Reserves		
GPR		\$1,036,000

5. Do not include the Governor's recommendation to create a new process through which judicial compensation would be established and approved by JCOER. Instead, maintain current law that judicial compensation is established under the state employee compensation plan. In addition, increase compensation reserves in either of the following manners:

a. Increase compensation reserves by \$2,690,400 GPR in 2018-19 in order to support a 7.705% GWA for judges and justices on September 30, 2018, as well as another 7.705% GWA for

judges and justices on May 26, 2019. [This alternative would increase justices' and judges' salaries by 16% over the biennium.]

ALT 5a	Change to	
	Base	Bill
Court System		
GPR	\$0	- \$334,000
Compensation Reserves		
GPR		\$2,690,400

b. Increase compensation reserves by \$2,690,400 GPR in 2018-19 in order to support a 7.705% GWA for judges and justices on September 30, 2018, as well as another 7.705% GWA for judges and justices on May 26, 2019. In addition, reduce compensation reserves by \$329,400 GPR in 2018-19 to eliminate funding for GWAs for non-judicial court staff during the 2017-19 biennium. [This alternative would increase justices' and judges' salaries by 16% over the biennium.]

ALT 5b	Change to	
	Base	Bill
Court System		
GPR	\$0	- \$334,000
Compensation Reserves		
GPR		\$2,361,000

6. Maintain current law.

ALT 6	Change to	
	Base	Bill
Court System		
GPR	\$0	- \$334,000

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 Appendices

APPENDIX I

Judicial Salaries, By State, As of January 1, 2017 ¹

Highest Court (Supreme Court)		Intermediate Court (Appellate Court) ²		General Jurisdiction Court (Circuit Court)	
<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>
California	\$233,888	California	\$219,272	District of Columbia	\$205,100
Illinois	224,628	Illinois	211,416	Hawaii	197,112
Hawaii	218,820	New York	203,400	Illinois	194,001
District of Columbia	217,600	Hawaii	202,596	New York	193,000
New York	213,600	Pennsylvania	194,442	California	191,612
Pennsylvania	206,054	Alaska	193,836	Alaska	189,720
Alaska	205,176	Alabama	178,878	Delaware	183,444
Delaware	195,245	Tennessee	176,616	Pennsylvania	178,868
Virginia	192,458	Virginia	176,510	Tennessee	170,520
Connecticut	185,610	New Jersey	175,534	Connecticut	167,634
New Jersey	185,482	Georgia	174,500	Virginia	166,136
Washington	183,021	Connecticut	174,323	Washington	165,870
Tennessee	182,688	Washington	174,224	New Jersey	165,000
Maryland	176,433	Utah	167,000	Georgia	162,442
Massachusetts	175,984	Colorado	166,170	Nevada	160,000
Rhode Island	175,870	Indiana	165,443	Arkansas	160,000
Georgia	175,600	Massachusetts	165,087	Massachusetts	159,694
Utah	174,950	Nevada	165,000	Colorado	159,320
Colorado	173,024	Maryland	163,633	Nebraska	159,077
Missouri	172,017	Nebraska	163,476	Utah	159,050
Nebraska	171,975	Arkansas	161,500	Rhode Island	158,340
Iowa	170,544	Minnesota	159,370	Maryland	154,433
Indiana	170,195	Texas	158,500	New Hampshire	152,159
Nevada	170,000	Louisiana	157,294	Louisiana	151,218
Minnesota	169,135	Missouri	157,242	Wyoming	150,000
Louisiana	168,045	Iowa	154,556	Minnesota	149,605
Texas	168,000	Florida	154,140	Texas	149,000
Alabama	167,685	Michigan	152,955	Missouri	148,263
Arkansas	166,500	Arizona	152,250	Arizona	147,175
Wyoming	165,000	Ohio	145,550	Florida	146,080
Michigan	164,610	South Carolina	145,074	Vermont	145,011
New Hampshire	162,240	Mississippi	144,827	Iowa	143,897
Florida	162,200	Oregon	144,535	North Dakota	143,869
Arizona	157,325	North Carolina	140,144	South Carolina	141,354
North Dakota	157,009	Wisconsin	139,059	Michigan	141,318
Ohio	156,150	Oklahoma	138,235	Indiana	141,311
Vermont	152,538	Kansas	131,518	Mississippi	136,000
Mississippi	152,250	Kentucky	130,044	Oregon	135,775
South Carolina	148,794	Idaho	130,000	Alabama	134,943
Oregon	147,559	New Mexico	124,616	Ohio	133,850

APPENDIX I (continued)

Judicial Salaries, By State, As of January 1, 2017 ¹

Highest Court (Supreme Court)		Intermediate Court (Appellate Court) ²		General Jurisdiction Court (Circuit Court)	
<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>
Wisconsin	\$147,403	District of Columbia	NA	North Carolina	\$132,584
North Carolina	146,191	Delaware	NA	Oklahoma	131,835
Oklahoma	145,914	Maine	NA	Wisconsin	131,187
Idaho	140,000	Montana	NA	Idaho	128,500
Montana	136,177	New Hampshire	NA	South Dakota	126,346
West Virginia	136,000	North Dakota	NA	Montana	126,131
Kansas	135,905	Rhode Island	NA	West Virginia	126,000
Kentucky	135,504	South Dakota	NA	Kentucky	124,620
South Dakota	135,270	Vermont	NA	Maine	121,968
New Mexico	131,174	West Virginia	NA	Kansas	120,037
Maine	130,136	Wyoming	NA	New Mexico	118,384

¹ The source for judicial salary data is National Center for State Courts.

² Certain states do not have intermediate courts.

APPENDIX II

Judicial Salaries By State, As of January 1, 2017, Adjusted for Cost-of-Living ¹

Highest Court (Supreme Court)		Intermediate Court (Appellate Court) ²		General Jurisdiction Court (Circuit Court)	
<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>
Illinois	200,292	Illinois	\$188,512	Tennessee	\$177,755
Tennessee	190,439	Alabama	186,896	Illinois	172,984
Pennsylvania	182,526	Tennessee	184,109	Delaware	169,401
Delaware	180,298	Georgia	173,891	Arkansas	168,279
Virginia	178,599	Pennsylvania	172,240	Georgia	161,875
Alabama	175,201	Indiana	169,999	Nebraska	158,744
Arkansas	175,116	Arkansas	169,857	Pennsylvania	158,445
Georgia	174,988	Virginia	163,799	Utah	155,080
Indiana	174,882	Nebraska	163,133	Virginia	154,172
Missouri	174,159	Utah	162,832	Louisiana	151,886
Iowa	172,354	Mississippi	159,256	Missouri	150,109
Nebraska	171,615	Missouri	159,200	Mississippi	149,549
Utah	170,583	Louisiana	157,989	Texas	146,050
Louisiana	168,788	California	156,746	Nevada	145,719
Mississippi	167,418	Iowa	156,196	Colorado	145,631
California	167,194	Texas	155,362	Iowa	145,424
Michigan	167,185	Michigan	155,347	Indiana	145,202
Texas	164,674	Colorado	151,892	Washington	144,448
Minnesota	160,500	Washington	151,723	Michigan	143,528
Ohio	159,386	Minnesota	151,234	Minnesota	141,967
Washington	159,384	Nevada	150,273	Alabama	140,992
Colorado	158,157	Ohio	148,566	District of Columbia	140,374
Nevada	154,827	Florida	145,649	Alaska	139,860
Wyoming	153,374	Oklahoma	143,204	Wyoming	139,431
Florida	153,265	Alaska	142,894	South Carolina	139,196
Alaska	151,254	South Carolina	142,860	Florida	138,033
Oklahoma	151,159	Arizona	140,647	California	136,973
North Dakota	149,177	New Jersey	139,667	North Dakota	136,693
District of Columbia	148,929	North Carolina	138,537	Ohio	136,623
New Jersey	147,583	Kentucky	138,536	Oklahoma	136,574
South Carolina	146,523	New York	136,730	Arizona	135,958
Maryland	146,175	Maryland	135,570	Kentucky	132,758
Arizona	145,335	Wisconsin	134,917	Idaho	132,529
North Carolina	144,515	Idaho	134,076	New Jersey	131,286
Idaho	144,389	Kansas	131,164	North Carolina	131,064
Kentucky	144,353	Hawaii	128,298	New York	129,739
New York	143,587	Connecticut	128,103	Maryland	127,948
Wisconsin	143,013	Oregon	126,463	Wisconsin	127,280
Hawaii	138,573	Massachusetts	123,883	West Virginia	126,812
Rhode Island	137,452	New Mexico	118,818	Hawaii	124,826

APPENDIX II (continued)

Judicial Salaries, By State, As of January 1, 2017 ¹

Highest Court (Supreme Court)		Intermediate Court (Appellate Court) ²		General Jurisdiction Court (Circuit Court)	
<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>	<u>State</u>	<u>Salary</u>
West Virginia	\$136,876	Delaware	NA	South Dakota	\$124,027
Connecticut	136,398	District of Columbia	NA	Rhode Island	123,751
Kansas	135,539	Maine	NA	Connecticut	123,188
South Dakota	132,787	Montana	NA	Montana	121,152
Massachusetts	132,061	New Hampshire	NA	New Hampshire	120,284
Montana	130,801	North Dakota	NA	Massachusetts	119,836
Oregon	129,109	Rhode Island	NA	Kansas	119,714
New Hampshire	128,253	South Dakota	NA	Oregon	118,799
New Mexico	125,071	Vermont	NA	Vermont	116,465
Vermont	122,511	West Virginia	NA	New Mexico	112,876
Maine	106,242	Wyoming	NA	Maine	99,574

¹ The source for the judicial salary data is the National Center for State Courts. The cost-of-living factor utilized for each state to determine adjusted judicial salaries was created by the Council for Community and Economic Research (C2ER), a research organization, and reported by the National Center for State Courts.

² Certain states do not have an intermediate court.