

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1181

Introduced by Senator Cedillo

February 18, 2010

An act to amend Sections 8030.2, 8030.4, 8030.6, and 8030.8 of, and to add and repeal Section 8030.5 of, the Business and Professions Code, relating to shorthand reporters, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1181, as amended, Cedillo. Shorthand reporters: Transcript Reimbursement Fund.

Existing law provides for the certification of shorthand reporters by the Court Reporters Board of California. Existing law requires certain fees and revenues collected by the board to be deposited into the Transcript Reimbursement Fund, to be available to provide reimbursement for the cost of providing shorthand reporting services to low-income litigants in civil cases. Existing law provides that persons appearing pro se to represent themselves at any stage of a case are not eligible to apply for funds from the Transcript Reimbursement Fund. Existing law requires all unencumbered funds remaining in the Transcript Reimbursement Fund as of January 1, 2011, to be transferred to the Court Reporters' Fund, and repeals these provisions on January 1, 2011.

This bill would, until January 1, 2013, authorize low-income persons appearing pro se to apply for funds from the Transcript Reimbursement Fund, subject to specified requirements and limitations. The bill would

require the board, by ~~January~~ *March* 1, 2012, to submit a report to *specified committees* of the Legislature that includes a summary of the expenditures and claims from the Transcript Reimbursement Fund ~~by these persons~~. The bill would require unencumbered funds remaining in the Transcript Reimbursement Fund as of January 1, 2013, to be transferred to the Court Reporters' Fund, would repeal these provisions on January 1, 2013, and would make related changes. By *expanding the recipients of funds and* extending the operation of the Transcript Reimbursement Fund, which is a continuously appropriated fund, the bill would make an appropriation. *The bill would also declare findings of the Legislature and require the board to publicize the availability of the fund to prospective applicants.*

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8030.2 of the Business and Professions
2 Code is amended to read:
3 8030.2. (a) To provide shorthand reporting services to
4 low-income litigants in civil cases, who are unable to otherwise
5 afford those services, funds generated by fees received by the board
6 pursuant to subdivision (c) of Section 8031 in excess of funds
7 needed to support the board's operating budget for the fiscal year
8 in which a transfer described below is made shall be used by the
9 board for the purpose of establishing and maintaining a Transcript
10 Reimbursement Fund. The Transcript Reimbursement Fund shall
11 be established by a transfer of funds from the Court Reporters'
12 Fund in the amount of three hundred thousand dollars (\$300,000)
13 at the beginning of each fiscal year. Notwithstanding any other
14 provision of this article, a transfer to the Transcript Reimbursement
15 Fund in excess of the fund balance established at the beginning of
16 each fiscal year shall not be made by the board if the transfer will
17 result in the reduction of the balance of the Court Reporters' Fund
18 to an amount less than six months' operating budget.
19 (b) All moneys held in the Court Reporters' Fund on the
20 effective date of this section in excess of the board's operating
21 budget for the 1996–97 fiscal year shall be used as provided in
22 subdivision (a).

1 (c) Refunds and unexpended funds that are anticipated to remain
2 in the Transcript Reimbursement Fund at the end of the fiscal year
3 shall be considered by the board in establishing the fee assessment
4 pursuant to Section 8031 so that the assessment shall maintain the
5 level of funding for the Transcript Reimbursement Fund, as
6 specified in subdivision (a), in the following fiscal year.

7 (d) The Transcript Reimbursement Fund is hereby created in
8 the State Treasury. Notwithstanding Section 13340 of the
9 Government Code, moneys in the Transcript Reimbursement Fund
10 are continuously appropriated for the purposes of this chapter.

11 (e) (1) Applicants, *including applicants pursuant to Section*
12 *8030.5*, who have been reimbursed pursuant to this chapter for
13 services provided to litigants and who are awarded court costs or
14 ~~attorneys'~~ attorney's fees by judgment or by settlement agreement
15 shall refund the full amount of that reimbursement to the fund
16 within 90 days of receipt of the award or settlement.

17 (2) *An applicant pursuant to Section 8030.5 who has been*
18 *reimbursed for services provided to litigants under this chapter*
19 *shall refund the full amount reimbursed if a court orders the*
20 *applicant's fee waiver withdrawn or denied retroactively pursuant*
21 *to Section 68636 of the Government Code, within 90 days of the*
22 *court's order withdrawing or denying the fee waiver.*

23 (f) Subject to the limitations of this chapter, the board shall
24 maintain the fund at a level that is sufficient to pay all qualified
25 claims. To accomplish this objective, the board shall utilize all
26 refunds, unexpended funds, fees, and any other moneys received
27 by the board.

28 (g) Notwithstanding Section 16346 of the Government Code,
29 all unencumbered funds remaining in the Transcript
30 Reimbursement Fund as of January 1, 2013, shall be transferred
31 to the Court Reporters' Fund.

32 (h) This section shall remain in effect only until January 1, 2013,
33 and as of that date is repealed, unless a later enacted statute, that
34 is enacted before January 1, 2013, deletes or extends that date.

35 SEC. 2. Section 8030.4 of the Business and Professions Code
36 is amended to read:

37 8030.4. As used in this chapter:

38 (a) "Qualified legal services project" means a nonprofit project
39 incorporated and operated exclusively in California that provides
40 as its primary purpose and function legal services without charge

1 to indigent persons, has a board of directors or advisory board
2 composed of both attorneys and consumers of legal services, and
3 provides for community participation in legal services
4 programming. Legal services projects funded either in whole or
5 in part by the Legal Services Corporation or with Older Americans
6 Act funds are presumed to be qualified legal services projects for
7 the purposes of this chapter.

8 (b) “Qualified support center” means an incorporated nonprofit
9 legal services center, having an office or offices in California,
10 which office or offices provide legal services or technical assistance
11 without charge to qualified legal services projects and their clients
12 on a multicounty basis in California. Support centers funded either
13 in whole or in part by the Legal Services Corporation or with Older
14 Americans Act funds are presumed to be qualified legal services
15 projects for the purposes of this chapter.

16 (c) “Other qualified project” means a nonprofit organization
17 formed for charitable or other public purposes, not receiving funds
18 from the Legal Services Corporation or pursuant to the Older
19 Americans Act, which organization or association provides free
20 legal services to indigent persons.

21 (d) “Pro bono attorney” means any attorney, law firm, or legal
22 corporation, licensed to practice law in this state, that undertakes
23 without charge to the party, the representation of an indigent
24 person, referred by a qualified legal services project, qualified
25 support center, or other qualified project, in a case not considered
26 to be fee generating as defined in this chapter.

27 (e) “Applicant” means a qualified legal services project,
28 qualified support center, other qualified project, or pro bono
29 attorney applying to receive funds from the Transcript
30 Reimbursement Fund established by this chapter. *The term*
31 *“applicant” shall not include a person appearing pro se to*
32 *represent himself or herself at any stage of a case.*

33 (f) (1) “Indigent person” means any of the following:

34 (A) A person whose income is 125 percent or less of the current
35 poverty threshold established by the Office of Management and
36 Budget of the United States.

37 (B) A person who is eligible for supplemental security income.

38 (C) A person who is eligible for, or receiving, free services
39 under the Older Americans Act or the Developmentally Disabled
40 Assistance Act.

1 (D) A person whose income is 75 percent or less of the
2 maximum level of income for lower income households as defined
3 in Section 50079.5 of the Health and Safety Code, for purposes of
4 a program that provides legal assistance by an attorney in private
5 practice on a pro bono basis.

6 *(E) A person who qualifies for a waiver of fees pursuant to*
7 *Section 68632 of the Government Code.*

8 (2) For the purposes of this subdivision, the income of a person
9 who is disabled shall be determined after deducting the costs of
10 medical and other disability-related special expenses.

11 (g) “Fee-generating case” means any case or matter that, if
12 undertaken on behalf of an eligible client by an attorney in private
13 practice, reasonably may be expected to result in payment of a fee
14 for legal services from an award to a client, from public funds, or
15 from an opposing party. A reasonable expectation as to payment
16 of a legal fee exists wherever a client enters into a contingent fee
17 agreement with his or her lawyer. If there is no contingent fee
18 agreement, a case is not considered fee generating if adequate
19 representation is deemed to be unavailable because of the
20 occurrence of any of the following circumstances:

21 (1) If the applicant has determined that referral is not possible
22 because of any of the following:

23 (A) The case has been rejected by the local lawyer referral
24 service, or if there is no such service, by two private attorneys who
25 have experience in the subject matter of the case.

26 (B) Neither the referral service nor any lawyer will consider the
27 case without payment of a consultation fee.

28 (C) The case is of the type that private attorneys in the area
29 ordinarily do not accept or do not accept without prepayment of
30 a fee.

31 (D) Emergency circumstances compel immediate action before
32 referral can be made, but the client is advised that, if appropriate
33 and consistent with professional responsibility, referral will be
34 attempted at a later time.

35 (2) If recovery of damages is not the principal object of the case
36 and a request for damages is merely ancillary to an action for
37 equitable or other nonpecuniary relief or inclusion of a
38 counterclaim requesting damages is necessary for effective defense
39 or because of applicable rules governing joinder of counterclaims.

1 (3) If a court appoints an applicant or an employee of an
2 applicant pursuant to a statute or a court rule or practice of equal
3 applicability to all attorneys in the jurisdiction.

4 (4) In any case involving the rights of a claimant under a public
5 supported benefit program for which entitlement to benefit is based
6 on need.

7 (h) “Legal Services Corporation” means the Legal Services
8 Corporation established under the Legal Services Corporation Act
9 of 1974, Public Law 93-355, as amended.

10 (i) “Supplemental security income recipient” means an
11 individual receiving or eligible to receive payments under Title
12 XVI of the Social Security Act, Public Law 92-603, as amended,
13 or payment under Chapter 3 (commencing with Section 12000) of
14 Part 3 of Division 9 of the Welfare and Institutions Code.

15 (j) “Lawyer referral service” means a lawyer referral program
16 authorized by the State Bar of California pursuant to the rules of
17 professional conduct.

18 (k) “Older Americans Act” means the Older Americans Act of
19 1965, Public Law 89-73, as amended.

20 (l) “Rules of professional conduct” means those rules adopted
21 by the State Bar pursuant to Sections 6076 and 6077.

22 (m) “Certified shorthand reporter” means a shorthand reporter
23 certified pursuant to Article 3 (commencing with Section 8020)
24 performing shorthand reporting services pursuant to Section 8017.

25 (n) “Case” means a single legal proceeding from its inception,
26 through all levels of hearing, trial, and appeal, until its ultimate
27 conclusion and disposition.

28 (o) “Developmentally Disabled Assistance Act” means the
29 Developmentally Disabled Assistance and Bill of Rights Act of
30 1975, (42 U.S.C. Sec. 6001 et seq.) as amended.

31 (p) This section shall remain in effect only until January 1, 2013,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before January 1, 2013, deletes or extends that date.

34 SEC. 3. Section 8030.5 is added to the Business and Professions
35 Code, to read:

36 8030.5. (a) Notwithstanding subdivision (e) of Section 8030.4,
37 as used in this chapter the term “applicant” also means an indigent
38 person, as defined in subdivision (f) of Section 8030.4, appearing
39 pro se to represent himself or herself at any stage of the case and
40 applying to receive funds from the Transcript Reimbursement

Fund established by this chapter. ~~The person shall provide proof of a fee waiver from the court to establish indigent status in the case.~~

(b) Notwithstanding Section 8030.6, *total* disbursements to cover the cost of providing transcripts to *all* applicants pursuant to this section shall not exceed thirty thousand dollars (\$30,000) annually and shall not exceed ~~two one thousand five hundred~~ dollars ~~(\$2,500)~~ (\$1,500) per case.

(c) The board shall provide a report to the Legislature by January ~~Senate and Assembly Committees on Judiciary by March 1, 2012,~~ that includes a summary of the expenditures and claims relating to this ~~section.~~ *article, including the initial fund balance as of January 1, 2011; all funds received, including the amount of, and reason for, any refunds pursuant to subdivision (e) of Section 8030.2; all claims received, including the type of case, court involved, service for which reimbursement was sought, amount paid, and amount denied, if any, and the reason for denial; and all administrative fees. This report shall be provided using existing resources.*

(d) *The Legislature finds and declares that there are funds available for indigent pro se parties under this article only because the Transcript Reimbursement Fund has not been fully utilized in recent years by the eligible applicants for whom its use has been intended, despite the evident financial need among legal services organizations and pro bono attorneys. Accordingly, the board shall, using existing resources, undertake further efforts to publicize the availability of the Transcript Reimbursement Fund to prospective applicants, as defined in subdivision (e) of Section 8030.4, through appropriate entities serving these applicants, including the State Bar of California, the California Commission on Access to Justice, and the Legal Aid Association of California. These efforts shall be described in the report required by subdivision (b).*

(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 8030.6 of the Business and Professions Code is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges

1 by official reporters, of preparing either an original transcript and
2 one copy thereof, or where appropriate, a copy of the transcript,
3 of court or deposition proceedings, or both, incurred as a
4 contractual obligation between the shorthand reporter and the
5 applicant, for litigation conducted in California. If there is no
6 deposition transcript, the board may reimburse the applicant or the
7 certified shorthand reporter designated in the application for per
8 diem costs. The rate of per diem for depositions shall not exceed
9 seventy-five dollars (\$75) for a half day, or one hundred
10 twenty-five dollars (\$125) for a full day. If a transcript is ordered
11 within one year of the date of the deposition, but subsequent to
12 the per diem having been reimbursed by the Transcript
13 Reimbursement Fund, the amount of the per diem shall be deducted
14 from the regular customary charges for a transcript. Reimbursement
15 may be obtained through the following procedures:

16 (a) The applicant or certified shorthand reporter shall promptly
17 submit to the board the certified shorthand reporter's invoice for
18 transcripts together with the appropriate documentation as is
19 required by this chapter.

20 (b) Except as provided in subdivision (c), the board shall
21 promptly determine if the applicant or the certified shorthand
22 reporter is entitled to reimbursement under this chapter and shall
23 make payment as follows:

24 (1) Regular customary charges for preparation of original
25 deposition transcripts and one copy thereof, or a copy of the
26 transcripts.

27 (2) Regular customary charges for expedited deposition
28 transcripts up to a maximum of two thousand five hundred dollars
29 (\$2,500) per case.

30 (3) Regular customary charges for the preparation of original
31 transcripts and one copy thereof, or a copy of transcripts of court
32 proceedings.

33 (4) Regular customary charges for expedited or daily charges
34 for preparation of original transcripts and one copy thereof or a
35 copy of transcripts of court proceedings.

36 (5) The charges may not include notary or handling fees. The
37 charges may include actual shipping costs and exhibits, except
38 that the cost of exhibits may not exceed thirty-five cents (\$0.35)
39 each or a total of thirty-five dollars (\$35) per transcript.

1 (c) The maximum amount reimbursable by the fund under
2 subdivision (b) may not exceed twenty thousand dollars (\$20,000)
3 per case per year.

4 (d) If entitled, and funds are available, the board shall forthwith
5 disburse the appropriate sum to the applicant or the certified
6 shorthand reporter when documentation as provided in subdivision
7 (d) of Section 8030.8 accompanies the application. A notice shall
8 be sent to the recipient requiring the recipient to file a notice with
9 the court in which the action is pending stating the sum of
10 reimbursement paid pursuant to this section. The notice filed with
11 the court shall also state that if the sum is subsequently included
12 in any award of costs made in the action, that the sum is to be
13 ordered refunded by the applicant to the Transcript Reimbursement
14 Fund whenever the sum is actually recovered as costs. The court
15 may not consider whether payment has been made from the
16 Transcript Reimbursement Fund in determining the appropriateness
17 of any award of costs to the parties. The board shall also forthwith
18 notify the applicant that the reimbursed sum has been paid to the
19 certified shorthand reporter and shall likewise notify the applicant
20 of the duty to refund any of the sum actually recovered as costs in
21 the action.

22 (e) If not entitled, the board shall forthwith return a copy of the
23 invoice to the applicant and the designated certified shorthand
24 reporter together with a notice stating the grounds for denial.

25 (f) The board shall complete its actions under this section within
26 30 days of receipt of the invoice and all required documentation,
27 including a completed application.

28 (g) Applications for reimbursements from the fund shall be
29 filled on a first-come basis.

30 (h) Applications for reimbursement that cannot be paid from
31 the fund due to insufficiency of the fund for that fiscal year shall
32 be held over until the next fiscal year to be paid out of the renewed
33 fund. Applications held over shall be given a priority standing in
34 the next fiscal year.

35 (i) This section shall remain in effect only until January 1, 2013,
36 and as of that date is repealed, unless a later enacted statute, that
37 is enacted before January 1, 2013, deletes or extends that date.

38 SEC. 5. Section 8030.8 of the Business and Professions Code
39 is amended to read:

8030.8. (a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons. *If the applicant is an indigent person applying pursuant to Section 8030.5, the application shall be accompanied by a copy of the fee waiver form approved by the court in the matter for which the applicant seeks reimbursement.*

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or ~~attorneys'~~ *attorney's* fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

(7) The certified shorthand reporter's invoice for transcripts shall include separate itemizations of charges claimed, as follows:

(A) Total charges and rates for customary services in preparation of an original transcript and one copy or a copy of the transcript of depositions.

(B) Total charges and rates for expedited deposition transcripts.

(C) Total charges and rates in connection with transcription of court proceedings.

(b) For an applicant claiming to be eligible pursuant to subdivision (a), (b), or (c) of Section 8030.4, a letter from the director of the project or center, certifying that the project or center meets the standards set forth in one of those subdivisions and that

1 the litigant or litigants are indigent persons, is sufficient
2 documentation to establish eligibility.

3 (c) For an applicant claiming to be eligible pursuant to
4 subdivision (d) of Section 8030.4, a letter certifying that the
5 applicant meets the requirements of that subdivision, that the case
6 is not a fee-generating case, as defined in subdivision (g) of Section
7 8030.4, and that the litigant or litigants are indigent persons,
8 together with a letter from the director of a project or center defined
9 in subdivision (a), (b), or (c) of Section 8030.4 certifying that the
10 litigant or litigants had been referred by that project or center to
11 the applicant, is sufficient documentation to establish eligibility.

12 (d) The applicant may receive reimbursement directly from the
13 board when the applicant has previously paid the certified
14 shorthand reporter for transcripts as provided in Section 8030.6.
15 To receive payment directly, the applicant shall submit, in addition
16 to all other required documentation, an itemized statement signed
17 by the certified shorthand reporter performing the services that
18 describes payment for transcripts in accordance with the
19 requirements of Section 8030.6.

20 (e) The board may prescribe appropriate forms to be used by
21 applicants and certified shorthand reporters to facilitate these
22 requirements.

23 (f) This chapter does not restrict the contractual obligation or
24 payment for services, including, but not limited to, billing the
25 applicant directly, during the pendency of the claim.

26 (g) This section shall remain in effect only until January 1, 2013,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2013, deletes or extends that date.