

GOVERNOR'S PROGRAM BILL

2009

MEMORANDUM

AN ACT authorizing the state comptroller to distribute certain funds from the indigent legal services fund to certain counties

**Purpose of Bill:**

This bill would permit five counties to receive funding from the Indigent Legal Services Fund (ILSF) even though they did not meet the statutory maintenance of effort (MOE) formula.

**Summary of Provisions:**

Section 1 of the bill would amend State Finance Law § 98-b to allow the Office of the State Comptroller (OSC) to make a distribution of funds in the ILSF to counties that failed to meet the MOE requirements in section 98-b(4)(c). A county would receive its full share from the distribution to be made on March 31, 2009, if it could show that the amount of local funds expended on indigent defense in 2008 exceeded the average annual amount of local funds expended during the 2005, 2006 and 2007 calendar years. If a county does not qualify for ILSF funds based on this three-year averaging, it could still receive an ILSF distribution, but its share would be reduced by the percentage decrease in local funds expended in the 2008 calendar year. Any money deducted from the non-compliant county shares would be distributed to all of the remaining counties that met the MOE, according to their percentage share of the statewide sum of local funds expended by each county.

Section 2 of the bill provides that the act would take effect immediately and would be deemed to have been in full force and effect on March 31, 2009.

**Existing Law:**

State Finance Law § 98-b establishes the ILSF, which is the fund through which OSC distributes the State contribution to indigent services to the counties and New York City. This year, the fund contains about \$76.5 million.

To be eligible for its share of the fund, a county must meet an MOE formula designed to ensure that the State funds do not supplant local funds, and are used to improve the quality of indigent defense services. If counties fail to meet the MOE, they receive no State funds, and the shares of the non-compliant counties are distributed to the

compliant counties. Under the law, all distributions from the ILSF from funds received during a calendar year must be made by March 31<sup>st</sup> of the following year.

**Statement in Support:**

This year, five counties, Delaware, Herkimer, Nassau, Otsego and Wayne, did not meet the MOE, and they are therefore not eligible to receive any funds from the ILSF as part of the March 31, 2009 distribution. If they had met the MOE, these counties would have received approximately \$3 million. This loss of ILSF funding will place serious fiscal burdens on these counties, and the quality of indigent representation provided in the counties would likely suffer.

This bill would permit OSC, in the March 31, 2009 distribution, to make a full or partial ILSF distribution to the five counties that did not meet the MOE. These distributions would be made under either of two scenarios. First, if a county could establish that the amount of local funds expended in 2008 exceeded the average annual amount of local funds expended during 2005, 2006 and 2007, it could receive its full distribution from the fund. Second, if a county could not satisfy the three-year averaging formula, it would receive a distribution of ILSF funds, but its share would be reduced by the percentage decrease in local funds expended in the 2008 calendar year.

It is anticipated that, under the modified formula in this bill, Nassau County would qualify for a full distribution of ILSF funds, and that Delaware, Herkimer, Otsego and Wayne would receive reduced shares. The money not distributed to these four non-compliant counties would then be included in the amount to be distributed to the compliant counties. Because these distributions must be made by March 31, 2009, this bill must become law by March 27, 2009, in order to give OSC the time to re-calculate the amount of each county's distribution.

**Budget Implications:**

This bill will have no impact of the State financial plan but would provide fiscal relief to the five counties that did not meet the MOE formula.

**Effective Date:**

This bill would become effective immediately and would be deemed to have been in full force and effect on or before March 31, 2009.

PROGRAM BILL # 4

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

- s20 Adams s03 Foley s24 Lanza s12 Onorato s09 Skelos
s15 Addabbo s08 Fuschillo s39 Larkin s37 Oppenheimer s14 Smith
s55 Alesi s22 Golden s01 LaValle s11 Padavan s25 Squadron
s48 Aubertine s47 Griffo s40 Leibell s21 Parker s58 Stachowski
s42 Bonacic s06 Hannon s52 Libous s30 Perkins s16 Stavisky
s46 Breslin s36 Hassell- s45 Little s61 Ranzenhofer s35 Stewart-
s50 DeFrancisco Thompson s05 Marcellino s56 Robach Cousins
s32 Diaz s10 Huntley s62 Maziarz s41 Saland s60 Thompson
s17 Dilan s07 Johnson, C. s43 McDonald s19 Sampson s49 Valesky
s29 Duane s04 Johnson, O. s13 Monserrate s23 Savino s59 Volker
s33 Espada s34 Klein s18 Montgomery s31 Schneiderman s53 Winner
s44 Farley s26 Krueger s38 Morahan s28 Serrano s57 Young
s02 Flanagan s27 Kruger s54 Nozzolio s51 Seward

S. Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed, and when printed to be committed to the Committee on

A. Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the Committee on

\*COMPT\*

(Authorizes the state comptroller to distribute certain funds from the indigent legal services fund to certain counties)

State comp funds

AN ACT

authorizing the state comptroller to distribute certain funds from the indigent legal services fund to certain counties

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

- a049 Abbate a047 Colton a098 Gunther a027 Meyersohn a076 Rivera, P.
a001 Alessi a010 Conte a139 Hawley a019 McDonough a056 Robinson
a021 Alfano a032 Cook a148 Hayes a104 McEneny a067 Rosenthal
a105 Amedore a142 Corwin a083 Heastie a017 McKeVitt a118 Russell
a084 Arroyo a107 Crouch a028 Hevesi a022 Meng a012 Saladino
a035 Aubry a063 Cusick a048 Hkind a102 Miller a113 Sayward
a136 Bacalles a045 Cymbrowitz a018 Hooper a052 Millman a029 Scarborough
a099 Ball a138 DelMonte a144 Hoyt a103 Molinaro a016 Schimel
a124 Barclay a034 DenDekker a060 Hyer-Spencer a132 Morelle a140 Schimminger
a014 Barra a116 Destito a042 Jacobs a037 Nolan a145 Schroeder
a040 Barron a085 Diaz a095 Jaffee a128 Oaks a122 Scozzafava
a082 Benedetto a081 Dinowitz a057 Jeffries a069 O'Donnell a038 Seminerio
a079 Benjamin a114 Duprey a131 John a137 O'Mara a064 Silver
a073 Bing a003 Eddington a112 Jordan a051 Ortiz a100 Skartados
a055 Boyland a004 Englebright a074 Kavanagh a150 Parment a093 Spano
a068 Boyle a130 Errigo a065 Kellner a088 Paulin a121 Stirpe
a089 Bradley a072 Espallat a129 Kolb a141 Peoples a011 Sweeney
a044 Brennan a071 Farrell a135 Koon a039 Peralta a110 Tedisco
a092 Brodsky a005 Fields a025 Lancman a058 Perry a002 Thiele
a046 Brook-Krasny a123 Finch a091 Latimer a023 Pheffer a061 Titone
a147 Burling a007 Fitzpatrick a013 Lavine a068 Powell a031 Titus
a117 Butler a143 Gabryszak a050 Lentol a087 Pretlow a062 Tobacco
a101 Cahill a090 Galef a125 Lifton a146 Quinn a054 Towns
a096 Calhoun a133 Gantt a127 Lopez, P. a097 Rabbitt a115 Townsend
a043 Camara a036 Gianaris a053 Lopez, V. a009 Raia a015 Walker
a106 Canestrari a149 Giglio a126 Lupardo a006 Ramos a041 Weinstein
a026 Carozza a066 Glick a111 Magee a134 Reilich a020 Weisenberg
a086 Castro a108 Gordon a120 Magnarelli a109 Reilly a024 Weprin
a119 Christensen a075 Gottfried a059 Maisel a078 Rivera, J. a070 Wright
a033 Clark a077 Greene a030 Markey a080 Rivera, N. a094 Zebrowski

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Notwithstanding any other provision of law to the contrary,  
2 for the March 31, 2009 distribution of funds from the indigent legal  
3 services fund established pursuant to section 98-b of the state finance  
4 law, the state comptroller shall distribute funds to counties that, as  
5 of March 24, 2009, have failed to comply with the requirements of para-  
6 graph (c) of subdivision 4 of such section in accordance with the  
7 provisions of this act.

8 a. The state comptroller shall determine the average annual amount of  
9 local funds expended by each such county for services and expenses  
10 pursuant to article 18-B of the county law during the three calendar  
11 years beginning January 1, 2005 and ending December 31, 2007, based on  
12 the amounts of local funds reported to the state comptroller by such  
13 counties pursuant to section 722-f of the county law. Any such county  
14 that, pursuant to section 722-f of the county law, reported to the state  
15 comptroller that it expended such local funds during the calendar year  
16 beginning January 1, 2008 and ending December 31, 2008 in an amount  
17 equal to or greater than such three year annual average amount shall  
18 receive a distribution of state funds from the indigent legal services  
19 fund as if such county had complied with the requirements of paragraph  
20 (c) of subdivision 4 of section 98-b of the state finance law.

21 b. Any such county that does not qualify for a distribution of state  
22 funds from the indigent legal services fund pursuant to subdivision a of  
23 this section shall receive a distribution of funds from the indigent  
24 legal services fund in the amount such county would have received had  
25 such county complied with the requirements of paragraph (c) of subdivi-  
26 sion 4 of section 98-b of the state finance law less the product of the  
27 amount such county would have received had such county complied with the  
28 requirements of paragraph (c) of subdivision 4 of section 98-b of the

1 state finance law multiplied by the percentage decrease in local funds,  
2 expended by each such county in the calendar year beginning January 1,  
3 2008 and ending December 31, 2008 as compared to the calendar year  
4 beginning January 1, 2007 and ending December 31, 2007 as calculated by  
5 the state comptroller based on the amount of local funds reported to the  
6 comptroller by such counties pursuant to section 722-f of the county  
7 law.

8 c. Funds remaining in the indigent legal services fund for distrib-  
9 ution by March 31, 2009 that result from the calculation required by  
10 subdivision b of this section shall be distributed to all counties and,  
11 in the case of a county wholly contained within a city, a city that as  
12 of March 24, 2009, demonstrated compliance with paragraph (c) of subdi-  
13 vision 4 of section 98-b of the state finance law, according to the  
14 percentage share of the statewide sum of local funds expended by each  
15 such county and city.

16 § 2. This act shall take effect immediately and shall be deemed to  
17 have been in full force and effect on and after March 31, 2009.