

Using unclaimed class-action funds for civil indigent legal services

SB 1601 by Ellis (Hartnett)

DIGEST: SB 1601 would have allowed a court to order defendants to pay unclaimed settlement or judgment funds resulting from a class action to a trust administered by the Supreme Court, which could have distributed these funds, along with interest earned on them, to programs that provide civil legal services for the indigent.

GOVERNOR'S REASON FOR VETO: "When a class action is settled or the defendant loses at trial, the defendant deposits the amount of the settlement or judgment into a trust fund. Individual plaintiffs may then apply to receive the money from the fund. Usually, a large sum of money is left over which is not needed to settle the claim of any plaintiff. Because the money belongs to the defendant, it reverts back to the defendant when an agreed amount of time has passed.

"Senate Bill No. 1601 would require that all the money in the fund that is not paid to any plaintiff would be transferred to the Supreme Court to pay for indigent civil representation. However, any funds not needed to settle the claim of a plaintiff are still the property of the defendant. No one, including the state, has the right to take this property.

"Senate Bill No. 1601 is an unconstitutional taking of property without compensation."

RESPONSE: Sen. Rodney Ellis, the bill's author, said: "I am disappointed that the governor chose to veto SB 1601, the *Cy Pres* bill. SB 1601 merely sought to add indigent defense services to the list of services or organizations that a court might grant excess or residue money in a class action suit. The governor's veto statement is incorrect when it says that these funds belong to the defendant. When a court enters an order, judgment, or settlement, the court makes a ruling that is final, and those funds or proceeds no longer belong to the defendant.

"The bill did not require or obligate the court to grant any such money or funds to any particular organization, but merely gave the court an additional resource to consider.

"The legal doctrine of *cypres* is a long-standing doctrine that enables a court to grant residue funds or money to other entities if such funds are left over or if other class members cannot be found or located.

"I hope that the Governor's Office will work closely with the legal services community to fashion a compromise during the interim."

Rep. Will Hartnett, the House sponsor, said: "After a court awards funds in a class action lawsuit and the money is disbursed to all affected beneficiaries, there is

sometimes money left on the table. Under current practice, the trial judge makes a *cypres* decision to award the remaining funds for a closely related purpose or charitable interest, such as the lawyer's alma mater. All this bill would have done is give the trial judge another option of where to give the leftover money. The awarded funds are not the property of the defendant because the defendant lost legal custody of the funds when the court rendered the judgment. If for some reason the funds were identified as belonging to the defendant, this bill would not have prohibited their return."

NOTES: SB 1601 was analyzed in the May 22 *Daily Floor Report*.