Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2009 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number **09-3345/1**	Introduction Number **AB-0421**

Description
Indian child welfare

Fiscal Effect

State:
- ☐ No State Fiscal Effect
- ☒ Indeterminate
  - ☐ Increase Existing Appropriations
  - ☐ Decrease Existing Appropriations
  - ☐ Create New Appropriations
  - ☐ Increase Existing Revenues
  - ☐ Decrease Existing Revenues
  - ☒ Increase Costs - May be possible to absorb within agency's budget ☒ Yes ☐ No
  - ☒ Decrease Costs

Local:
- ☐ No Local Government Costs
- ☒ Indeterminate
  1. ☒ Increase Costs ☒ Permissive ☐ Mandatory
  2. ☒ Decrease Costs ☒ Permissive ☐ Mandatory
  3. ☐ Increase Revenue ☐ Permissive ☐ Mandatory
  4. ☐ Decrease Revenue ☐ Permissive ☐ Mandatory
  5. Types of Local Government Units Affected
     ☐ Towns ☐ Village ☐ Cities
     ☒ Counties ☐ Others
     ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEGS

Affected Ch. 20 Appropriations

Agency/Prepared By	Authorized Signature	Date
CTS/ Nancy Rottier (608) 267-9733	Nancy Rottier (608) 267-9733	9/29/2009

Fiscal Estimate Narratives

CTS 9/29/2009

LRB Number **09-3345/1**	Introduction Number **AB-0421**	Estimate Type **Original**
Description Indian child welfare		

Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill 421 is a codification into the Wisconsin statutes of the federal Indian Child Welfare Act of 1978 (ICWA). See 25 U.S.C. sec. 1901 et seq.

This bill may result in changes in court practices, even though ICWA currently supersedes state law in cases involving Indian children, because codification may result in greater clarity of the ICWA requirements. There are also areas of procedure on which ICWA is silent, and, to the extent this bill mandates procedures in those areas, there may be changes in current court practices.

Examples of changes in current court practices that are made by AB 421 include the following:
(1) A new requirement in s. 48.028 (4)(a) and s. 938.028 (4)(a) for written notice of subsequent hearings to parents, Indian custodian and the tribes. The required notice for the first hearing is identical to current law. The issue of required notice for subsequent hearings is an area on which ICWA is silent. This new requirement may, in some instances, result in changed court practices.
(2) The bill provides a definition and an order of preference for qualified expert witnesses. There is potential for adjournments of hearings in order to obtain qualified expert witnesses that meet the criteria set forth in the bill. At the same time, there is potential for less litigation and shorter hearings as a result of this clarification.
(3) There is greater clarity in what constitutes active efforts to prevent the breakup of the Indian family. We anticipate that certain court hearings, such as permanency plan hearings and CHIPS dispositional hearings, may be lengthier as a result of having more detailed discussions or testimony regarding active efforts.
(4) In the area of termination of parental rights (TPR) cases, the bill may result in fewer jury trials, and thus save court time and costs. Section 127 of the bill (on page 83) directs that the judge, not a jury, make the determinations related to active efforts and damage to the child, if partial summary judgment was granted.

Changes in court practices are likely to result in more court proceedings in some circuit court cases but may also result in less litigation and fewer court proceedings in other circuit court cases. An accurate estimate of the increased or decreased costs is impossible given the available data and differences in local court practices.

Because the number of cases impacted by this bill is relatively small and because the impact could include increased or decreased costs, it is expected that existing court staff would be able to absorb the fiscal impact of this bill.

Long-Range Fiscal Implications

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Affected Ch. 20 Appropriations

Agency/Prepared By	Authorized Signature	Date
DCF/ Nick Bubb (608) 266-5422	Robert Nikolay (608) 261-4349	9/15/2009

Fiscal Estimate Narratives

DCF 9/15/2009

LRB Number **09-3345/1**	Introduction Number **AB-0421**	Estimate Type **Original**
Description Indian child welfare		

Assumptions Used in Arriving at Fiscal Estimate

This bill codifies the federal Indian Child Welfare Act (ICWA) of 1978 into Wisconsin Statutes. While 25 U.S.C. § 1901 et seq supersedes Wisconsin law, compliance with the federal law is currently mixed. It is anticipated that codifying existing federal requirements will increase state and local compliance with ICWA. The Department of Children and Families estimates that this bill has an indeterminate fiscal effect.

Achieving full compliance with the ICWA requirements may increase costs to county child welfare agencies and, in the case of Milwaukee County, the Department of Children and Families. Presently cases that are subject to ICWA are not always identified. This means that some child welfare agencies may not be following all of the actions required by ICWA. Specifically, once a case is identified as being subject to ICWA jurisdiction, child welfare agencies are required to provide notice by registered mail to the child's Tribe or the Bureau of Indian Affairs. Before an Indian child may be removed from his or her home or before the rights of his or her parents are terminated, testimony of a qualified expert witness must be presented that remaining in the home would subject the child to serious physical or emotional damage. In addition, under ICWA, the court must find that active efforts have been made by the child welfare agency to prevent the breakup of the Indian family. Under ICWA, indigent parents are also guaranteed the right to an attorney. Under current Wisconsin law, the provision of court-appointed attorneys to indigent clients is under the court's discretion. Furthermore, in ICWA cases, placements are subject to a hierarchy of placement preferences.

Because of these requirements, compliance with the federal law could also increase the amount of time that social workers spend on these cases. Because the number of ICWA cases in any given county is relatively low, it is assumed that these additional requirements could be absorbed within the existing budgets of child welfare agencies.

In order to achieve compliance with ICWA requirements, the Department of Children and Families will need to provide training and technical assistance. The Department may need to modify the child welfare information system. To the extent necessary, these activities can be absorbed in the Department's current budget.

Implementation of this bill may assist in Wisconsin avoiding federal financial penalties. Compliance with ICWA is a measured category on the federal Child and Family Services Review (CFSR). ICWA compliance was identified as an issue in Wisconsin's 2004 CFSR. Wisconsin is undergoing its second CFSR in 2010. If the State of Wisconsin were to fall farther out of compliance with ICWA requirements, the state could face financial penalties.

If compliance with ICWA increases notification of cases to the Tribes, there may be increased costs to the tribal courts to respond to notices and assume tribal jurisdiction of cases.

The net effect of these changes is unknown and so the fiscal effect of this bill is indeterminate.

Long-Range Fiscal Implications