

MONTANA PUBLIC DEFENDER COMMISSION
BUDGET COMMITTEE MEETING

Helena Regional Office and Conference Call
139 North Last Chance Gulch, Helena, MT 59601

March 27, 2014

(Approved at the April 17, 2014 Budget Committee Meeting)

Committee Members Present

Fritz Gillespie, (Chair), Helena; Ken Olson, Great Falls; Roy Brown, Billings; Margaret Novak, Chester

Committee Members Absent

Chris Daem, Billings

Agency Team Members Present

Bill Hooks, Chief Public Defender; Harry Freebourn, Administrative Director; Wade Zolynski, Chief Appellate Defender; Wendy Johnson, Contract Manager; Carleen Green, Accountant

Interested Parties

Timm Twardoski, Executive Director, American Federation of State, County and Municipal Employees (AFSCME); Greg DeWitt, Legislative Analyst, Legislative Fiscal Division

1. Call to Order

Committee Chair Fritz Gillespie called the meeting of the Budget Committee to order at 1:05 p.m.

2. Approval of Minutes (*Action Item)

- A. March 10, 2014
- B. March 22, 2012
- C. March 12, 2012

Commissioner Olson moved to approve the minutes of the March 12, 2012; March 22, 2012; and March 10, 2014 Budget Committee meetings as drafted. Chairman Gillespie seconded and the motion carried.

3. 2017 Biennium Budget Items (*Action Item)

Chairman Gillespie invited public comment throughout the discussion.

The draft Executive Planning Process (EPP) document has been revised based on comments at the February 24 Commission meeting and the March 10 Budget Committee meeting. Sections 1 and 2 provide an overview of the EPP process and the agency funding history. Commissioner Brown suggested that it might be helpful to provide a summary of this information to the Appropriation and Judiciary committee members when they are appointed. He has heard that some legislators are astounded at how fast the public defender

program has grown since its inception, not realizing that the state-wide system took over an already huge program and consolidated it.

Mr. Freebourn said that the decision packages (DPs) in this draft request \$14.9 million new dollars and 93 new FTE, although some of the numbers are placeholders. Next week the Commission will prioritize the DPs, and then the agency will present them to the Office of Budget and Program Planning (OBPP) on April 11.

Mr. Freebourn reviewed the decision packages individually beginning with Program 1. Decision packages to support current caseload include staffing needs, salary challenges, capital defense costs and contract costs. New proposals include additional eligibility determination specialists, resource advocates, and resources to handle growth in Eastern Montana.

DP A: Staffing Needs

A large part of the request for additional FTE is a carryover from the 77 positions requested last session, of which only 8 were approved. The new request builds slightly on that. It includes 21 modified positions for Program 1. Chief Hooks explained in detail the types of modified positions and where they are (or will be) located. Funding for the modified positions for FY 14 will be covered by SB 410 funds and there will be ongoing discussions with OBPP on how to fund FY 15. The need for an additional 19 new positions was calculated to reduce attorney caseloads down to the recommended ethical limits under the case weighting system, and includes staff to support the additional attorneys using existing attorney to support staff ratios.

DP B: Salaries

The excessive attorney turnover was addressed last session by funding the career ladder for FY 14 and adjusting the market. Although attorney turnover was significantly reduced, the career ladder was not funded for FY 15 and beyond. In addition, support staff salaries (both union and non-union) are at the 2006 market and turnover continues to be high in those positions. **Chairman Gillespie moved that the FY 17 request to fund market adjustments for non-attorney positions be increased to include the FY 14 market when those numbers are available in early summer. Commissioner Novak seconded and the motion carried.** Mr. Freebourn noted that the support staff workforce also has a career ladder and that needs to be incorporated into the FY 17 request as well.

Timm Twardoski asked why the career ladder increase for attorneys is not included in the FY 15 budget when it was negotiated and included in the collective bargaining agreement. Mr. Freebourn replied that the contract clearly states that the career ladder is frozen for FY 15, although the 5% increase for all state employees is funded. A lengthy discussion ensued regarding how the payroll "snapshot" is used, the difference between statutory pay increases and negotiated increases, and the legislature's view that they are not obligated to fund union-executive negotiated contracts.

DP C: Death Penalty Defense

The \$1 million per year request reflects the average of the expenditures for capital defense in

the last two fiscal years. Greg DeWitt suggested that the request be for a biennial, restricted appropriation. However, the ability to transfer these funds from Program 1 to Program 2 in case of an appeal must be maintained.

DP D: Contract Services

Chairman Gillespie said the Contracts Committee established a target rate of \$88 per hour for contract attorney services, but intended to implement the rate increase incrementally. Commissioner Novak suggested at least a 30% increase to the current rate to prevent being in the same situation down the road. Commissioner Brown asked if the difficulty in recruiting contract attorneys at the current rate is anecdotal. Although the situation differs by region, it is virtually impossible to find contractors for public defender work in the Glendive, Miles City and Havre regions where private attorneys can bill \$250 per hour. Commissioner Brown said that needs to be substantiated with data. Mr. DeWitt offered his opinion that since employees can be paid differently based on location, the rate for contractors could be varied in the same way. Mr. Twardoski has concerns about the number of contractors OPD uses; other state agencies do not have as high a ratio of contractors to FTE. Mr. Freebourn said that although adding FTE is more cost-effective, it's seen as triggering growth of government. Commissioner Novak commented that it is less a fiscal issue than a philosophical issue. In addition, there are some areas of the state where having FTE would not be cost-effective, and contractors will always be needed for conflict work. The current ratio of conflict to overflow work is about 60/40.

This DP also requests funding for growth in contract services, aside from the proposed rate increase.

DP E1: Eligibility Determination Specialists

Implementing more uniform standards as a response to the performance audit will require additional staff to process the applications for counsel.

DP E2: Resource Advocates

Resource advocates are seen as a win-win for society and the taxpayer. They can assist with DN cases, reducing contract costs; work with incarcerated clients to identify services and improve sentencing outcomes; reduce jail populations; and make attorney time more productive.

DP F: Managers' Caseloads

This item to comply with internal policy was not funded previously. Reducing managers' caseloads was encouraged by the American University report as well as some legislators.

DP G1 and G2: Growth in Eastern Montana

Chief Hooks has been monitoring the primary Bakken region closely and has seen a big spike in felonies and DN cases in those counties. A bill in the last session to provide funding for all agencies to handle the need for additional services in the east didn't go anywhere. In addition to new offices in Glasgow and Sidney, there is expected to be a ripple effect in the Miles City region.

The Conflict Coordinator program has many of the same issues as Program 1. The 1.5 new FTE would be in the east, where the contractor pool is insufficient for both overflow and contract work. There are the same salary challenges as Program 1, and the same FY 14 market increase should apply for their support staff.

DPJ: Commission Support

Chairman Gillespie has a lot of confidence in the Central Services staff and doesn't think that separate Commission staff should be a high priority. Commissioners Novak and Brown concurred.

Program 2 also shares issue with Program 1 related to staffing and salaries. Chief Zolynski said that although their office is not reactive in the same way that the trial division is, they need a high ratio of support staff due to the numerous deadlines they have to track from filings to transcript requests. The request for additional attorneys is also based on keeping case numbers with the recommendations of the appellate case weighting system.

Support staff salaries are at the 2012 market, but will need to be included in the FY 17 adjustment to 2014 markets. There is currently no pay ladder for appellate support staff since they are not union employees, but Chief Zolynski intends to remedy this.

Chairman Gillespie moved to forward the decision packages to the full Commission for prioritization with the changes discussed. Commissioner Novak seconded and the motion carried. Mr. Freebourn will make the changes to the EPP document for discussion at the April 3 Commission meeting.

4. Public Comment

There was no additional public comment.

5. Adjourn

The meeting adjourned at 3:10 p.m.