

HB 1002 – Judicial Branch Budget: FTE Requests

Considerations:

- **Constitutional right to a speedy trial** – ND has a similar number of judges now as we did 30 years ago, but the caseload has grown and cases are taking longer to resolve.
- **Financial consequences for counties** if capacity within the judicial branch doesn't match caseload. When the wait for trial is longer, defendants remain incarcerated longer. The average length of stay in Cass County jail has doubled in the last few years from 9 to 18 days (cost is \$110+ / day). Bed space is already at a premium.
- **Consequences for children in need of protection** if there's a gap between capacity and caseload (interim testimony.) With full dockets, ND too often exceeds statute & rule time limits for certain juvenile cases, so these cases aren't resolved as quickly as they should be.
- **Business consequences** if civil litigation / contract disputes take longer to resolve.
- **Adding capacity might help alleviate some of the salary concerns.** Several judges who advocated for significant salary increases also testified about having heavy caseloads and inadequate staff assistance. If we do not increase judicial officer wages by 35%, providing more capacity through additional judges, staff attorneys and clerks could be a positive factor.

Request versus Proposal:

FTE REQUESTS	FTE PROPOSAL
4 judges	3 judges
6 attorneys	4 attorneys
11 clerks	11 clerks
1 assistant court administrator	1 assistant court administrator
2 court improvement staff (<i>been temps for 12 years</i>)	2 court improvement staff
Total request - 24	Total proposal – 21

Judges:

Request: 4 judges: 2 in EC (Fargo area), 1 in NE Central (GF area), and 1 in SC (Burleigh/Morton area).

Proposal: authorize 3

- 2 in EC (Fargo area) -> study indicates they need 2.41 more judges (22% shortage in case load capacity). That would give them 13 total.
- 1 in NEC (GF area) -> study indicates they need 1.21 more judges (24% shortage in case load capacity). That would give NEC 6 total.
- 0 in SC (Burleigh/Morton) -> study indicates they need 0.40 more judges (3.3% shortage in capacity). They currently have 12.
- The other most under-judged district is North Central (Minot area) at 0.47 judges short (7.8% gap) but they didn't ask for a judge.

Background:

- OVERALL, the study indicates that ND has a 3.2% gap between judges and case load – representing 1.83 FTEs.
- Some districts are slightly over capacity with their judges where others like Cass County (EC) have a major shortfall in judge capacity (2.41) – so the AVERAGE between the over-capacity and under-capacity districts is 1.83. However, a district with excess capacity can't easily pick up some of the work from the districts that are under capacity because they are hundreds of miles apart.
- EC (Cass) – high concentration of ND's population but also a large number of corporate entities – so lots of complex litigation. Also, all asbestos litigation – which is very complex with hundreds of parties / thousands of filings – goes through EC.
- For each new judge, we have to add one staff attorney position.

Staff Attorneys

Request: 6 new staff attorneys. 4 would be assigned to work with the 4 new judgeships in lieu of a court reporter. Of the remaining 2, one would be assigned to NC (Minot area) and NW (Divide, Williams & McKensie).

Proposal: 4

- We would remove one staff attorney, if we approve only 3 judges (3 staff attorneys assigned to 3 judges).
- Of the remaining 2 requested, I would prioritize adding 1 staff attorney for NC (Minot) since there is a bigger capacity issue with their judges (they need ½ a judge). A staff attorney would be able to provide more assistance for NC's 6 existing judges.

Deputy Clerks:

Request: 11

Proposal: 11

- Currently have 109 state-employed clerks in 14 counties. Workload shows ND has a need for 11.75 more (gap of 11% in capacity).

Related legislation / caveat:

- SB 2277 would require at least 1 clerk of court or deputy to be located in each county - converting county employees who contracts with the state.
- If SB 2277 passes the Senate, we can re-evaluate the clerk staffing level in HB 1002 - because bringing them over would add some capacity overall. (Some individuals would go from a part-time contract employee to full-time state employee.)
- Remaining 39 counties employ the equivalent of 23.4 FTEs (based on the work) employed by the county / contracted by the state. Some of these contracted clerks work as combination of clerk & recorder. Some clerks are elected, some recorders are elected.
- Of these 39 counties, 7 counties are already eligible to have their clerks become state employees because they've crossed the 1.0 threshold. (Current law).

HB 1002 – Judicial Branch Budget: Request for Raises

Considerations: Candidate diversity. Open judgeships are not attracting as many candidates or candidates from the private sector as in the past. A higher salary would help ensure high-quality judges with diverse professional backgrounds.

Agency request compared to 3 other options:

Title	Count*	Base Salary	Agency Requested											
			FY 2024		FY 2025		FY 2024		FY 2025		FY 2024		FY 2025	
			20%	15%	6%	4%	10%	4%	8%	4%				
District Court Judges	44	155,219	186,263	214,202	164,532	171,113	170,741	177,571	167,637	174,342				
Presiding Judges	8	159,629	191,555	220,288	169,207	175,975	175,592	182,616	172,399	179,295				
Referees	5	124,175	149,010	171,362	131,626	136,891	136,593	142,056	134,109	139,473				
Supreme Court Justices	4	169,162	202,994	233,444	179,312	186,484	186,078	193,521	182,695	190,003				
Chief Justice	1	173,946	208,735	240,045	184,383	191,758	191,341	198,994	187,862	195,376				
			\$6.9m - total				\$3m - total		\$2.5m - total					

**does not include new FTE positions we decide upon*

A 35% raise might feel too high for many legislators, especially when most other state employees will not get a raise that high and we have recruitment and retention problems in most areas of state government. However, the governor has proposed an equity bump for employees in the executive branch – in addition to the regular salary raise that all public employees will get (such as 6%/4%). Equity bumps may vary by agency and by individual, but it appears that OMB has included 2% of payroll as an estimate for agencies that identified an equity need but did not provide OMB with detail to support that need. Some areas like higher ed suggested higher amounts like 3.7%.

Since the judicial branch is not part of the governor’s 2023 equity bump package and because the judicial branch has not received an equity bump in recent memory, it is reasonable to propose a salary raise of 8%/4% or 10%/4% for judicial officers.

Equity adjustments for non-judicial officers

Considerations:

- Staff attorneys, IT professionals and other key positions were not considered when requesting the need for significant '23-25 salary increases. (They would get what all public employees get).
- These roles have never received an equity adjustment in recent memory and are not included in the governor's proposal giving an equity adjustment to executive branch employees this year. The judiciary branch is losing staff attorneys, IT professionals and others to other areas of state govt.
- I asked Sally Holewa and Don Wolf what this would look like if the judiciary branch had an equity adjustment package similar to the executive branch for these high-need areas with significant salary gaps.

Proposal: \$339,090 for equity adjustments and associated fringe increases for about 37 specific roles