

2013 SENATE APPROPRIATIONS

SB 2022

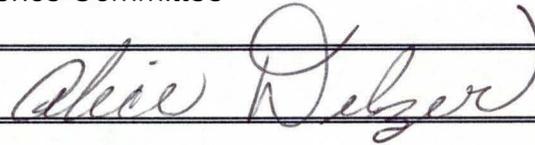
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2022
01-24-2013
Job # 17701

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an appropriation for the Commission on Legal Counsel for Indigents.

Minutes:

See attached testimony 2

Chairman Holmberg called the committee to order on Thursday, January 24, 2013 at 11:00 am in regards to SB 2022. All committee members were present. Becky J. Keller and Sheila Peterson were also present.

Chairman Holmberg: Vice Chairman Bowman will take over; it's the same subcommittee working on judicial branch.

Robin Huseby, Executive Director of the Commission of Legal Counsel for Indigents. Testimony attached # 1. Our story is similar to the judicial branch. We have had to import attorneys from other districts to handle Williston and Dickinson cases. McKenzie County shows a 98% case load increase in 3 years, Stanley 96%. We would be in total complete chaos if we did not have the public defender' system. It's a different era, our felony rates are going up. We assign out more felonies than misdemeanors, certainly the rise in felonies is connected to what is happening out west. The amount the governor has given is a significant increase, not sure it's enough. We have to grow with these times.

Chairman Holmberg: I wanted to remind the committee, the story you are telling us today puts you in the same category as collections and emergency rooms, you have no control over who comes in your door and you have to serve them no matter what.

Robin Huseby: continued her written testimony (12.46) the dollars the Governor recommended for our budget are to be used primarily for adding attorney contracts.

Vice Chairman Bowman: Speaking about all the felony cases out there, are these people coming to work in the oil field?

Robin Huseby: Our clients are not the hard working ones in the oil rigs, they are the ones sitting in their apartments in Colorado smoking crack and say " Hey I am going to North Dakota and get a job, and then they never do, or they are the hanger-on's that come up, or they get fired off their job. With a boom, you get this.

Vice Chairman Bowman: Do you think once the drilling phase is done, you have more professional people, it's a totally different group, and will you see the cases slow down or stabilize.

Robin Huseby: I hope so. One of the things that frighten me is thinking about new judges in Stanley, Williston, where a significant amount of work is getting backtracked or on hold. I am concerned when they get back into the system we will be very swamped.

Senator Carlisle: The numbers of felons are up in Burleigh County too.

Senator Wanzek: Is there any local moneys provided for indigent defense?

Robin Huseby: North Dakota is one of the states where it is all state money. It will be a step backward to start looking at local or county involvement because you get mixed up in politics and it just doesn't work.

Senator Wanzek: Do they provide funding for some of the other operating costs, like moving out a case to another venue?

Robin Huseby: All the costs are borne by the county in that case, except for the indigent defense attorney, we pay for that.

Jay Greenwood (18.09) Attorney with the Public Defender's office in Dickinson, ND. My intention today is to inform the members of this committee about what we do at the public defender's office, to show how those duties have changed, to illuminate the difficulties that have arisen due to the current economic climate in the western region of the state, and to stress the importance of evolving to meet the needs of the region, including but not limited to, increasing the funds allocated to do so. Testimony attached # 2, in favor of SB 2022. You have to understand about juvenile court is that kids are indigent by nature; sometimes their interests are different from those of their parents. We need to hire more attorneys and compensate the attorneys. Experienced well-compensated attorneys and work staff are integral to the process.

Vice Chairman Bowman any questions. Thank you.

Closed the hearing on 2022.

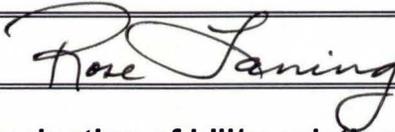
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2022 subcommittee
January 30, 2013
Job # 18003

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This is a subcommittee hearing on the Legal Counsel of Indigents

Minutes:

You may make reference to "attached testimony."

Senator Kilzer opened the hearing on the SB 2022 subcommittee. Also present are **Senator Carlisle** and **Senator Warner**.

Legislative Council - Brady Larson
OMB - Laney Herauf

Robin Huseby, Executive Director, Commission of Legal Counsel for Indigents

The governor's recommended budget wasn't too far off from what we had asked for financially, with the exception that the governor is recommending three employees (FTEs) and we had asked for 5 FTEs. We would still like to continue with that request. The FTEs are for 3 legal assistants (paralegals) and an administrative person in Bismarck and then one attorney.

Attorney services are what we need, but the housing situation makes it fruitless to ask for more attorneys in Williston with nowhere for them to live. We have a hellacious situation with our one attorney. She's paying \$3200 for a two bedroom apartment.

Financially, the governor recommended \$2.5M and an increase in our continuing appropriation authority of \$2,237,000 which is an increase of \$530,000.

We have two funding sources. We have the general fund which is the majority of our funding and then this continuing appropriation which consists of defendant fees, the court administration and an application fee that an indigent person may have to pay. We collect about \$1.7M a biennium in that continuing appropriation.

Senator Kilzer: I'm surprised it was that much.

Robin Huseby: It's been pretty consistent and we split that with the court facility fee. The Supreme Court court improvement fund.

Senator Kilzer: If the other bill (SB 2078) - if that bill were to pass, would you and Sally (Holewa) still be friends?

Robin Huseby: We weren't totally opposed to that bill, I'm just concerned about it - what the effect is going to have on that fund.

Senator Kilzer: Would you rather see it fail? Answer: yes.

Robin Huseby: The biggest deviation is those FTEs. I don't know what your posture is going to be on that, but we can use all the help we can get.

Senator Kilzer asked her to give a short review of the times they came before the budget section this last interim.

Robin Huseby came before the whole budget section once and that was in September. They can project exactly what's happening with their budget and when they went in front of the budget section, she said they were spending about \$35,000 a month on unexpected expenses out west primarily contracting attorneys. They will be in deficit spending as of about May.

Senator Kilzer asked if they had difficulty finding attorneys to get the work done.

Robin Huseby said the biggest battle of their agency is to find attorneys willing to take cases out west in Williston, Watford and Stanley. They have found attorneys but have to pay them more. If they hire an attorney in Bismarck to do a case in Williston, they are paying that attorney time to travel, mileage. It gets to be more expensive than they'd like.

Senator Kilzer: Overall for the whole biennium, would that be more expensive than receiving 5 FTEs as opposed to receiving 3? Would you be saving money?

Robin Huseby: I don't think we'd be saving money. Gave an example of attorney shortages in the west with the oil boom. The attorneys have to spend so much time in other counties because the caseloads have increased so much. They need a support staff in Dickinson that can help them with their cases. It probably won't help the state save money but it will help deliver the legal services in the fashion we believe the people have a right to have.

Senator Warner Housing asked about the housing and rental costs and probably bringing in attorneys from the eastern part of the state and wondered if they had done an analysis.

Robin Huseby: We are giving her a subsidy right now. We've developed a subsidy policy that has been approved by our commission. We use a variety of factors in determining who would get a housing subsidy - using market studies and that kind of thing. We rented an apartment in Williston, but the building was sold so we are losing it. Housing subsidy is definitely something we are factoring into our budget. We're giving our lawyer in Williston \$2500/month.

Senator Kilzer closed the subcommittee hearing on SB 2022.

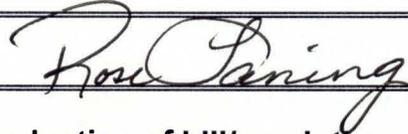
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2022 subcommittee
February 5, 2013
Job # 18344

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This is a subcommittee hearing on the Legal Counsel of Indigents Commission.

Minutes:

Chairman Kilzer opened the hearing on SB 2022. Senator Carlisle and Senator Warner were present.

Legislative Council - Becky J. Keller
OMB - Laney Herauf

Robin Huseby , Executive Director, Commission of Legal Counsel for Indigents

Chairman Kilzer The items that we will need to defend as we proceed are the additional FTEs and money up to \$14.5M total budget for the biennium. I'm in favor of the budget as the governor presented it.

Senator Warner said he would favor the Governor's budget.

Senator Carlisle took note of what director said. He said he would back the budget too.

Senator Kilzer said they would accept the 5 items on the green sheet and would bring it to full appropriations committee.

Senator Kilzer asked for any other comments.

Senator Warner pointed out that these are people who have been attracted by the oil industry and can't find employment.

Robin added, and opportunists that in their own criminal mind feel they can exploit others.

Senator Kilzer asked if they had a good relationship with other legal entities, state's attorneys, etc.

Robin answered that they have good relationship with attorneys. They have made it clear that if anyone wants to do Indigent defense they are welcome and are all inclusive.

Senator Kilzer AGs office says Indigent Defense is good. The AG was pressured into providing better prosecuting training. You should be good at what you do.

Robin said their public defenders do criminal defense full time and she would recommend any one of them. They are experts in the field.

Senator Kilzer closed the hearing on SB 2022.

Senator Warner will carry it all the way from the committee through to the floor.

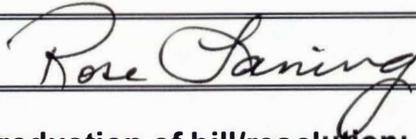
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2022
February 7, 2013
Job # 18525

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Legal Counsel for Indigent Defense

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg opened the hearing on SB 2022.

Senator Kilzer: This is 33 positions which is up three. Appropriation of \$14.5M. Robin Huseby does a good job so we didn't change anything at all.

Senator Kilzer Moved Do Pass.
Senator Robinson seconded

Discussion:

Senator Carlisle: She asked for a couple more positions, but she was willing to settle with this. She said she can deal with it, but we'll just have to see next session. They're super busy out best, Dickinson in particular.

Senator Warner: It was mentioned that much of the increase is because of the increase in population due to oil expansion. Most of the people who are working in the oil industry who get in trouble aren't able to defend themselves in court. There are many people who have moved here and have found themselves to be no more employable in ND than they were where they came from. That's where the extra work load is coming from.

A roll call vote was taken. Yea: 13 Nay: 0 Absent: 0

Senator Warner carry the bill.

Date: 2-7-13

Roll Call Vote # _____

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2022

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Kilzer Seconded By Robinson

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chariman Ray Holmberg | ✓ | | Senator Tim Mathern | ✓ | |
| Co-Vice Chairman Bill Bowman | ✓ | | Senator David O'Connell | ✓ | |
| Co-Vice Chair Tony Grindberg | ✓ | | Senator Larry Robinson | ✓ | |
| Senator Ralph Kilzer | ✓ | | Senator John Warner | ✓ | |
| Senator Karen Krebsbach | ✓ | | | | |
| Senator Robert Erbele | ✓ | | | | |
| Senator Terry Wanzek | ✓ | | | | |
| Senator Ron Carlisle | ✓ | | | | |
| Senator Gary Lee | ✓ | | | | |
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Total (Yes) 13 No 0

Absent 0

Floor Assignment Warner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2022: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2022 was placed on the
Eleventh order on the calendar.

2013 HOUSE APPROPRIATIONS

SB 2022

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

SB2022
March 14, 2013
Recording Job# 19939

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying for the expenses of the commission on legal counsel for indigents.

Minutes:

Chairman Thoreson: Opened the hearing on SB2022.

Robin Huseby, Executive Director, ND Commission on Legal Counsel for Indigents:
See testimony attachment 1.

07:50

Vice Chairman Brandenburg: What kind of cases are you getting? Are you getting local people who are a problem or people that have moved that have created a problem? Where is the caseload coming from?

Robin Huseby: With any kind of boom or industry that comes in a large group comes and follows the good hardworking people. We get a lot of those people that think they're going to come to work; they never do work. We get a lot of people that do come and get a job and are quickly terminated. Our clients are not the hardworking people. Our client is either unemployed or looking for employment. It's alarming the number of felonies that have risen in the northwest and southwest districts. We're seeing a lot more aggravated assaults, attempted murders; very serious cases involving weapons.

Vice Chairman Brandenburg: What you're getting are drifters.

Robin Huseby: That's correct. With any population rise, you're naturally going to have a higher amount of criminal activity. We're seeing trends that are unique to the oil boom. Also, the type of client has changed. Our clients used to have ties to North Dakota; and they had a reason to do well on probation. A lot of our clients are transients now; they don't have addresses, they're hard to get ahold of, they have no connection to North Dakota.

12:25

Chairman Thoreson: Right now they're asking for 2 new judgeships in the Williston area. Do you have any idea how many additional cases that you would have to deal with?

Robin Huseby: I don't know. There's no way to tell.

18:22

Vice Chairman Brandenburg: With the people that work with this are you helping with the filings?

Robin Huseby: Our attorneys have the clients and take the client to court and go through their case with them.

Vice Chairman Brandenburg: These people that want to represent themselves; do you assist them at all with those cases?

Robin Huseby: Either they have us as their attorney and they meet the eligibility guidelines which are 125% of the poverty level or they represent themselves or they hire an attorney.

Chairman Thoreson: Do you get that quite a bit where people are trying to come to you to save a buck?

Robin Huseby: Yes we do. We're always devising ways to make that not happen.

Vice Chairman Brandenburg: Why do people want to represent themselves?

Robin Huseby: Sometimes they can't get an attorney and self-representation is getting more popular. There are times when a person can do as good if it's not contested.

22:19

Vice Chairman Brandenburg: If these judgeships come through there are going to be more caseloads and they're going to move faster; you'll have a need for more people.

Robin Huseby: I think so. I'm hoping that maybe things are starting to calm down a bit.

23:40

Representative Glassheim: I noticed in this list that you have that Grand Forks has had a huge growth. Do we have enough people there to serve the clientele?

Robin Huseby: Grand Forks has had a big growth. We're lucky in Grand Forks so many young lawyers stay there from the law school.

Representative Glassheim: So you're getting contracts?

Robin Huseby: Yes.

Travis Finck, Supervising Attorney, Bismarck Public Defender Office: See testimony attachment 2.

30:20

Representative Kempenich: Are you able to even track them?

Travis Finck: Sometimes we'll get 4 or 5 different numbers and a lot of times with the track phones or pay as you go phones, they'll pay and our clients don't have a lot of money; so they'll run out of minutes. Instead of putting minutes on a new phone; it's cheaper to buy a new phone with a new plan; so they'll get a new number. A lot of times we're calling and we're getting people that have new numbers and we're not able to track them down.

Vice Chairman Brandenburg: Are these people incarcerated?

Travis Finck: A lot of our clients are in jail because they're not able to post bond. When they do post bond that's often times the last we see of them.

Vice Chairman Brandenburg: Maybe because of the cold weather they went south; they're probably down in Denver or Texas or California by now.

Travis Finck: That may be possible. Usually they're still in the area; they just don't find it necessary to call their attorneys or update us with an address. When they get arrested and they come back to court and the judge asks them why weren't you here, they say they never got the notice from their attorney.

Vice Chairman Brandenburg: Does the judge raise the bail higher so they can't get out?

Travis Finck: Yes, most of the time.

Travis Finck continued with his testimony.

34:38

Representative Glassheim: Can you give us a picture of the kinds of things you do?

Travis Finck: In the past year I have done everything from driving under influence, driving under suspension, not having a valid license to murder cases. It depends on the cases that come in. There has been an increase in more violent crime. The South Central District which includes Bismarck, Burleigh County, McLean County and the surrounding areas; we have more felonies than we have misdemeanors.

Chairman Thoreson: Closed the hearing.

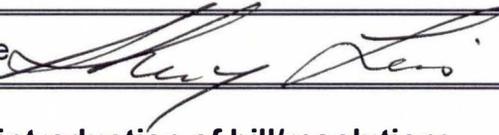
2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

SB2022
March 25, 2013
Recording Job# 20384

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying for the expenses of the commission on legal counsel for indigents.

Minutes:

Vice Chairman Brandenburg: Opened the discussion on SB2022. The record shows that no one is here from Indigent Council. He went through the green sheet.

Representative Glassheim: On page 4 of the testimony she talks about two legal assistants; one for Williston and one for Dickinson and one attorney for an unspecified location.

Representative Guggisberg: Going over these numbers again in the back of their testimony, it's obvious that their caseload is going up. In some parts of the state they are seeing more felonies than misdemeanors. It would appear that there are some crimes that are going unprosecuted and with more help they could possibly work on that.

Vice Chairman Brandenburg: It seems that with the good comes some problems also.

Vice Chairman Brandenburg continued with the green sheet.

Chairman Thoreson: We've had a debate where this was going to end up. If we're going to be adding the judgeship, law enforcement and other things to the western part of the state, there will be a demand for requests for legal services along with it.

Representative Kempenich: We're not getting all upstanding citizens coming into the state.

Chairman Thoreson: Do you recall what was included in the operating cost?

Vice Chairman Brandenburg: They had a building that they're losing the lease on and they're going to have to find another building.

Representative Guggisberg: You want to say they get so many dollars based on the number of cases or clients that are requesting services?

Representative Kempenich: The western part of the state is driving a lot of this.

Representative Guggisberg: I'm a little concerned that if we try doing this without talking to Ms. Huseby first, it might not work for her.

Representative Kempenich: When the Supreme Court was handling this, it was a line item. They couldn't find the attorneys to take cases.

Representative Glassheim: It seems to me that on the contract; if you don't have the cases, they aren't going to contract. Looking at the sheets at the end, I think they're already behind. They're playing catch up. I think she's responding to real stuff. If this calms down in 2 years, she'll come back and say she doesn't need this much.

Representative Kempenich: The whole thing is trying to figure out if we're trying to get them to pay more.

Representative Sanford: It makes sense to provide the support positions, most of the contracting and not necessarily add the full FTE on the attorney position. It seems that the support positions would be doing a lot of the leg work in those two offices.

Representative Kempenich: Brady, what do they charge in South Dakota for indigents?

Brady Larson, Fiscal Analyst, ND Legislative Council: I would need to check on that; I'm not aware of the what the other states are charging.

Representative Glassheim: It seems to me that the attorney supervises all the contracts. If you're adding contracts, you're adding a supervisor and the support people don't supervise the contracts.

Representative Sanford: I think she provided in her testimony that there were 2 full-time public defenders in each of those offices.

Vice Chairman Brandenburg: Wasn't there some talk that these people disappear and go to another state?

Representative Kempenich: They don't go to another state; they throw their cell phones away and you don't have contact information to get ahold of them again.

Chairman Thoreson: Do you want to check with Robyn to make sure that will work?

Representative Kempenich: The clientele you're representing now are mobile. I'd like to look at this nonrefundable fee.

Representative Guggisberg: Maybe her reasoning for wanting to hire full-time employees is because the cost of contracting has gone up so much; maybe she can hire them cheaper than what we can contract for.

Representative Kempenich: Five years ago we didn't have any attorneys on staff; they were all contract.

Chairman Thoreson: Closed the discussion.

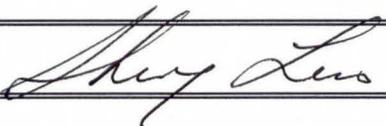
2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

SB2022
April 1, 2013
Recording Job# 20715

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying for the expenses of the commission on legal counsel for indigents.

Minutes:

Chairman Thoreson: Opened the discussion on SB2022.

Representative Kempenich: See attachment 1.

Representative Guggisberg: I'm going to need some clarification by what we mean by raising the attorney costs. Does that mean that we raise the amount that the attorneys can charge?

Representative Kempenich: The attorneys aren't charging anything; it's what the state would charge.

Representative Guggisberg: Charge who?

Representative Kempenich: The indigents. Technically, we can't charge anything; they have to have representation. It comes down to what the state charges for this; the individual attorneys aren't getting of this money. It covers some of our costs for representing these people.

Robin Huseby, Executive Director, ND Commission on Legal Counsel for Indigents: The court system can collect reimbursement of attorney fees. The court can also waive those fees if there's no possibility that the defendant can pay. Those fees are set by our agency. We can raise that amount; we set it every year. We base it on the information that we get from our hour attorney. That money goes to the general fund; it doesn't go to our agency. That's something that we're giving thought of introducing legislation next time to have it go directly into the indigent defense fund. It's not a huge amount of money. In quite a large percentage of the cases, the judge waives reimbursement of attorney fees.

Chairman Thoreson: Why did we have this go to the general fund in the first place?

Robin Huseby: I don't know.

Representative Kempenich: What is your outside income generated from?

Robin Huseby: We do have the indigent defense special fund; it's a continuing appropriation. What goes into there is a \$25.00 application fee for anyone applying for indigent defense services and then \$100.00 court administration fee.

Chairman Thoreson: The first two items listed there goes into that fund?

Representative Kempenich: Is that set by rule 2?

Robin Huseby: That's statutory for what goes into the special fund. This fund is split with the Supreme Court to improve courthouses.

Chairman Thoreson: Do other states around us have a similar setup where someone else sets the fees? Is that done by legislative mandate? Who handles the fee structure? In Montana who gets to make that determination over there? Do you have any idea?

Robin Huseby: I don't have the answer to that. I can find out if you would like.

Vice Chairman Brandenburg: The people that we represent and give them legal counsel; are they dead broke and don't have a dollar to their name? How do you make that determination?

Robin Huseby: We have an application that they fill out; and it's an affidavit that they sign. It shows their financial income and to some extent their liabilities and if they're making less than 125% of the federal poverty level. Some of them are the working poor. If you take a person with 4 children and they're making less than \$24,000.00/year they would probably qualify for our services. We're always working on who might be scamming the system.

Vice Chairman Brandenburg: You don't have someone that has assets somewhere else and we're giving legal counsel to people shouldn't be getting it free?

Robin Huseby: It has happened and it will happen. We are always thinking of ways to ensure that doesn't happen. We changed our application to reflect what's going on out west. We used to ask if they were employed; but, now we're asking if they're employed and if not, when were you terminated and when will you go back to work if you're let out on bond.

Representative Kempenich: What is a typical court fee or court costs?

Robin Huseby: There's a litany of costs that are involved; and it's set by statute. By the end of any court case, whether it goes to trial or not, a defendant can be paying \$700-\$800 dollars. North Dakota is cheap compared to Minnesota.

Representative Kempenich: What if we looked at \$50.00 for an application fee?

Robin Huseby: It's set by statute. If it went up we'd be happy.

Representative Kempenich: If they have enough ambition to commit a crime, I'm guessing that they could find \$50.00.

Representative Glassheim: Are we required to provide counsel and if they didn't pay the application fee can we say we won't take the case?

Robin Huseby: Yes. Both constitutionally and by case law we're required to provide counsel.

Representative Glassheim: If they don't pay the \$25.00 application fee, you still give them counsel?

Robin Huseby: Correct.

Representative Glassheim: Do you have anyway of tracking the collection rate?

Robin Huseby: We would go through the court system with the clerks and their statistics to find out that number.

Representative Glassheim: Would you guess half?

Robin Huseby: I would guess half.

Representative Glassheim: So some are collected and some just aren't.

Robin Huseby: Yes. With probation cases you'll probably get a higher number because they're more motivated to follow the court's order. With non-probation cases you probably have a high percentage of nonpayment.

Representative Kempenich: \$12.5 million is the amount of what the courts are sitting on for uncollected judgments that the court has rendered an opinion; but that number was 1.5 years ago.

Robin Huseby: Was that civil or criminal?

Representative Kempenich: I'm guessing that it was on the civil side.

Representative Glassheim: Moved that the application fee be raised \$10.00 and attorney costs for felonies be raised \$50.00.

Representative Brandenburg: Seconded the motion.

Representative Kempenich: Robin brought up that they can set those attorney costs by rule.

Robin Huseby: If that's what the consensus is we can do that.

Representative Glassheim: Withdrew the amendment.

Vice Chairman Brandenburg: Withdrew his second.

Representative Glassheim: Can we just put in legislative intent that the application fee goes to \$35.00?

Representative Kempenich: The application fee is statute so that would need to have a motion. Made a motion to raise the application and felony fee.

Chairman Thoreson: The application fee would be raised from \$25.00 to \$35.00 and it's the intent of the 63rd legislative assembly that the legal counsel for indigents raise their attorney costs to a total of \$575.00 for a felony.

Vice Chairman Brandenburg: Seconded the motion

A voice vote was made and carried.

Vice Chairman Brandenburg: Before this all started what happened to these people?

Robin Huseby: The court did what we are doing. The court appointed attorneys; it's been paid by the state for a long time.

Vice Chairman Brandenburg: Made a motion to adjust the pay package as we've done to the other budgets.

Representative Kempenich: Seconded the motion.

Voice vote was made and carried.

Vice Chairman Brandenburg: Made a motion for a "Do Pass as Amended".

Representative Sanford: Seconded the motion.

Roll call vote 6 Yeas 0 Nays 1 Absent

Representative Guggisberg: Carried the bill.

Chairman Thoreson: Closed the discussion.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

SB 2022
4/9/13
21026

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

Minutes:

You may make reference to "attached testimony."

Rep. Guggisberg went over amendment .02001 and moved adoption.

Rep. Thoreson seconded.

A voice vote was taken. Motion carries.

Rep. Guggisberg went over the green sheet.

04:10

Chairman Delzer: Did they give you the number of case increases?

Rep. Thoreson: Yes, by percentages. In Mountrail County the caseload has gone up 96%, Adams County, 55%, Sheridan County, 44%, Stark County, 22%, Burleigh County, 24%, and McLean County, 25%.

Chairman Delzer: What constitutes somebody using indigent defense?

Rep. Guggisberg: They can request it and apply, and if they are below 125% of poverty level, they qualify. Then they try to get the money back, the 575 for felonies, but sometimes the judge will waive that. I move a Do pass as amended.

Rep. Thoreson seconded.

Chairman Delzer: This seems to be part of what happens with growth sometimes. I would guess a lot of these people that use this are people that come in here looking for jobs that have a hard time getting jobs.

Rep. Skarphol: The change from 25 to 35, what's the net effect?

Rep. Kempenich: We went round and round on that; a lot of our growth affects this. They do have the authority to do it anyway. That's why we did intent language.

Chairman Delzer: We have the same issues come up in DOCR. We are trying to receive service fees on parole and probation. 35 does not seem too much to me. Further discussion?

A roll call vote was taken and resulted in **DO PASS AS AMENDED, 20-1, 1 ABSENT.**
Rep. Guggisberg is the carrier.

Y/C
4/9/13
10/2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2022

Page 1, line 2, after "indigents" insert "; to amend and reenact subsection 1 of section 29-07-01.1 of the North Dakota Century Code, relating to the application fee for indigent defense services; and to provide legislative intent"

Page 1, replace lines 12 through 16 with:

| | | | |
|--|--------------|-------------|--------------|
| "Commission on legal counsel for indigents | \$11,779,282 | \$2,402,080 | \$14,181,362 |
| Accrued leave payments | 0 | 116,872 | 116,872 |
| Total all funds | \$11,779,282 | \$2,518,952 | \$14,298,234 |
| Less special funds | 1,970,852 | 523,322 | 2,494,174 |
| Total general fund | \$9,808,430 | \$1,995,630 | \$11,804,060 |
| Full-time equivalent positions | 30.00 | 3.00 | 33.00 |

SECTION 2. AMENDMENT. Subsection 1 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of ~~twenty-five~~thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

SECTION 3. LEGISLATIVE INTENT - REIMBURSEMENT OF ATTORNEY FEES. It is the intent of the sixty-third legislative assembly that a defendant who has been charged with a felony and for whom counsel is provided by the commission on legal counsel for indigents pays \$575 for reimbursement of attorney fees."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2022 - Commission on Legal Counsel for Indigent - House Action

| | Executive Budget | Senate Version | House Changes | House Version |
|--------------------------------------|-------------------------|-----------------------|----------------------|----------------------|
| Comm. on Legal Counsel for Indigents | \$14,547,802 | \$14,560,287 | (\$378,925) | \$14,181,362 |
| Accrued leave payments | | | 116,872 | 116,872 |
| Total all funds | \$14,547,802 | \$14,560,287 | (\$262,053) | \$14,298,234 |
| Less estimated income | 2,501,677 | 2,502,051 | (7,877) | 2,494,174 |
| General fund | \$12,046,125 | \$12,058,236 | (\$254,176) | \$11,804,060 |
| FTE | 33.00 | 33.00 | 0.00 | 33.00 |

Department No. 188 - Commission on Legal Counsel for Indigent - Detail of House Changes

| | Adjusts State Employee Compensation and Benefits Package¹ | Provides Separate Line Item for Accrued Leave Payments² | Total House Changes |
|--------------------------------------|---|---|----------------------------|
| Comm. on Legal Counsel for Indigents | (\$262,053) | (\$116,872) | (\$378,925) |
| Accrued leave payments | | 116,872 | 116,872 |
| Total all funds | (\$262,053) | \$0 | (\$262,053) |
| Less estimated income | (7,877) | 0 | (7,877) |
| General fund | (\$254,176) | \$0 | (\$254,176) |
| FTE | 0.00 | 0.00 | 0.00 |

¹This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent per year.
- Reduces the market equity component from 2 to 4 percent per year for employees below the midpoint of their salary range up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

²A portion of salaries and wages funding from the general fund (\$113,366) and from other funds (\$3,506) for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees.

Sections are added to amend subsection 1 of Section 29-07-01.1 to change the indigent defense application fee from \$25 to \$35 and to add legislative intent that reimbursement for indigent defense costs assessed to indigents charged with a felony be increased from \$525 to \$575.

**2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2022**

House Appropriations - Government Operations Division Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Vice Chairman Brandenburg Seconded By Representative Sanford

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------------|------------|-----------|---------------------------|------------|-----------|
| Chairman Thoreson | x | | Representative Glassheim | x | |
| Vice Chairman Brandenburg | x | | Representative Guggisberg | | |
| Representative Kempenich | x | | | | |
| Representative Hawken | x | | | | |
| Representative Sanford | x | | | | |
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Total (Yes) 6 No 0

Absent 1

Floor Assignment Representative Guggisberg

If the vote is on an amendment, briefly indicate intent:

Date: 4/9/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2022

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number .02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Guggisberg Seconded By Rep. Thoreson

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|-----------------|-----|----|
| Chairman Delzer | | | Rep. Streyle | | |
| Vice Chairman Kempenich | | | Rep. Thoreson | | |
| Rep. Bellew | | | Rep. Wieland | | |
| Rep. Brandenburg | | | | | |
| Rep. Dosch | | | | | |
| Rep. Grande | | | Rep. Boe | | |
| Rep. Hawken | | | Rep. Glassheim | | |
| Rep. Kreidt | | | Rep. Guggisberg | | |
| Rep. Martinson | | | Rep. Holman | | |
| Rep. Monson | | | Rep. Williams | | |
| Rep. Nelson | | | | | |
| Rep. Pollert | | | | | |
| Rep. Sanford | | | | | |
| Rep. Skarphol | | | | | |

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote carries

Date: 4/9/13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2022**

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Guggisberg Seconded By Rep. Thoreson

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|-----------------|-----|----|
| Chairman Delzer | X | | Rep. Streyle | X | |
| Vice Chairman Kempenich | X | | Rep. Thoreson | X | |
| Rep. Bellew | X | | Rep. Wieland | X | |
| Rep. Brandenburg | X | | | | |
| Rep. Dosch | | X | | | |
| Rep. Grande | X | | Rep. Boe | X | |
| Rep. Hawken | X | | Rep. Glassheim | X | |
| Rep. Kreidt | X | | Rep. Guggisberg | X | |
| Rep. Martinson | X | | Rep. Holman | X | |
| Rep. Monson | X | | Rep. Williams | X | |
| Rep. Nelson | X | | | | |
| Rep. Pollert | | | | | |
| Rep. Sanford | X | | | | |
| Rep. Skarphol | X | | | | |

Total Yes 20 No 1

Absent 1

Floor Assignment Rep. Guggisberg

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2022, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2022 was placed on the Sixth order on the calendar.

Page 1, line 2, after "indigents" insert "; to amend and reenact subsection 1 of section 29-07-01.1 of the North Dakota Century Code, relating to the application fee for indigent defense services; and to provide legislative intent"

Page 1, replace lines 12 through 16 with:

| | | | |
|--|------------------|----------------|------------------|
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SECTION 3. LEGISLATIVE INTENT - REIMBURSEMENT OF ATTORNEY FEES. It is the intent of the sixty-third legislative assembly that a defendant who has been charged with a felony and for whom counsel is provided by the commission on legal counsel for indigents pays \$575 for reimbursement of attorney fees."

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2022 - Commission on Legal Counsel for Indigent - House Action

| | Executive Budget | Senate Version | House Changes | House Version |
|--------------------------------------|------------------|----------------|---------------|---------------|
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| FTE | 33.00 | 33.00 | 0.00 | 33.00 |

Department No. 188 - Commission on Legal Counsel for Indigent - Detail of House Changes

| | Adjusts State Employee Compensation and Benefits Package ¹ | Provides Separate Line Item for Accrued Leave Payments ² | Total House Changes |
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| General fund | (\$254,176) | \$0 | (\$254,176) |
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¹This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent per year.
- Reduces the market equity component from 2 to 4 percent per year for employees below the midpoint of their salary range up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

²A portion of salaries and wages funding from the general fund (\$113,366) and from other funds (\$3,506) for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees.

Sections are added to amend subsection 1 of Section 29-07-01.1 to change the indigent defense application fee from \$25 to \$35 and to add legislative intent that reimbursement for indigent defense costs assessed to indigents charged with a felony be increased from \$525 to \$575.

2013 CONFERENCE COMMITTEE

SB 2022

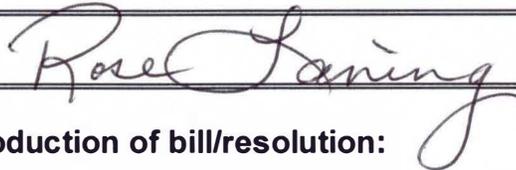
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2022 conference committee
April 18, 2013
Job # 21252

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents

Minutes:

Legislative Council - Becky J. Keller
OMB - Laney Herauf

Senator Kilzer opened the conference committee hearing on SB 2022. Senators Carlisle and Warner were present as well as Representatives Sanford, Hawken and Guggisberg.

Senator Kilzer explained the bill and asks the House members to explain the changes they made in the House.

Rep. Guggisberg replies that other than salary changes, the two changes they made were in application fees and legislative intent directing the commission to increase the reimbursement they asked for. He continues to explain why they made those changes.

Senator Warner asks how much discretion a judge has in imposing these fees and what percentage is actually collected.

Rep. Hawken replies they are often waived but that the fee must be there as a commitment to the process. The rationale being there needs to be some buy in by some of the people who can't afford a lawyer but may be able to afford \$35.00. The committee discusses the additional employees that were added and the ability to collect the extra fees. The committee is assured that this will not conflict with anything else they have.

Senator Carlisle points out they still have to wait on a salary package.

Senator Kilzer states that they do agree that the amendment is acceptable and the conference committee will hold it until they know about the compensation package.

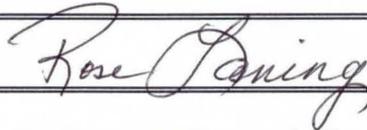
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

SB 2022 conference committee
April 23, 2013
Job # 21436

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents

Minutes:

You may make reference to "attached testimony."

Legislative Council - Becky J. Keller
OMB - Sheila Peterson & Laney Herauf

Senator Kilzer opened the conference committee hearing on SB 2022. **Senators Carlisle** and **Warner** were present as well as **Representatives Sanford, Hawken and Guggisberg**.

Senator Kilzer said the only issue was the compensation package and asked **Becky J. Keller** to explain it.

Becky J. Keller, Legislative Council said the compensation package will need to be adjusted. The House adjusted it to their level and now that the agreement has been made so we will change those numbers. We will also include the separate line item for the accrued leave payments. The House amended subsection 1 of section 29-07-01.1 to change the indigent defense application fee from \$25 to \$35 and to add legislative intent for felonies to go from \$525 to \$575.

Rep. Sanford moved that the House recede from the House amendments and further amend to add section 2 & 3.
Senator Carlisle seconded.

A roll call vote was taken. Yea: 6 Nay: 0 Absent: 0

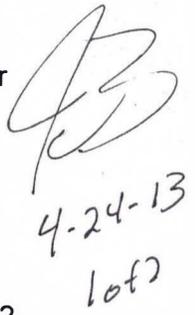
Senator Warner: The \$35 is in statute, but the felony fees would be addressed in rule?
(Answer - correct)

Robin Huseby, Legal Counsel for Indigent Defense: The commission itself sets the presumed rate for re-imbusement every year, so it would be our rule that we're setting the felony to be \$575. We can bring that to the commission.

Senator Warner: The idea of pursuing compensation - does your commission make the determination that it was not collectible?

Robin Huseby: If the judge finds there's no reasonable opportunity ability, then he/she can waive the fee.

**A roll call vote was taken. Yea: 6 Nay: 0 Absent: 0
Motion carried.**



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2022

That the House recede from its amendments as printed on pages 1251-1253 of the Senate Journal and pages 1334-1336 of the House Journal and that Engrossed Senate Bill No. 2022 be amended as follows:

Page 1, line 2, after "indigents" insert "; to amend and reenact subsection 1 of section 29-07-01.1 of the North Dakota Century Code, relating to the application fee for indigent defense services; and to provide legislative intent"

Page 1, replace lines 12 through 16 with:

| | | | |
|--|--------------|-------------|--------------|
| Commission on legal counsel for indigents | \$11,779,282 | \$2,525,122 | \$14,304,404 |
| Accrued leave payments | 0 | 116,872 | 116,872 |
| Total all funds | \$11,779,282 | \$2,641,994 | \$14,421,276 |
| Less special funds | 1,970,852 | 527,014 | 2,497,866 |
| Total general fund | \$9,808,430 | \$2,114,980 | \$11,923,410 |
| Full-time equivalent positions | 30.00 | 3.00 | 33.00 |

SECTION 2. AMENDMENT. Subsection 1 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of ~~twenty-five~~thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

2 of 2

SECTION 3. LEGISLATIVE INTENT - REIMBURSEMENT OF ATTORNEY FEES. It is the intent of the sixty-third legislative assembly that a defendant who has been charged with a felony and for whom counsel is provided by the commission on legal counsel for indigents pays \$575 for reimbursement of attorney's fees."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2022 - Commission on Legal Counsel for Indigent - Conference Committee Action

| | Executive Budget | Senate Version | Conference Committee Changes | Conference Committee Version | House Version | Comparison to House |
|--------------------------------------|------------------|----------------|------------------------------|------------------------------|---------------|---------------------|
| Comm. on Legal Counsel for Indigents | \$14,547,802 | \$14,560,287 | (\$255,883) | \$14,304,404 | \$14,181,362 | \$123,042 |
| Accrued leave payments | | | 116,872 | 116,872 | 116,872 | |
| Total all funds | \$14,547,802 | \$14,560,287 | (\$139,011) | \$14,421,276 | \$14,298,234 | \$123,042 |
| Less estimated income | 2,501,677 | 2,502,051 | (4,185) | 2,497,866 | 2,494,174 | 3,692 |
| General fund | \$12,046,125 | \$12,058,236 | (\$134,826) | \$11,923,410 | \$11,804,060 | \$119,350 |
| FTE | 33.00 | 33.00 | 0.00 | 33.00 | 33.00 | 0.00 |

Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Conference Committee Changes

| | Adjusts State Employee Compensation and Benefits Package ¹ | Provides Separate Line Item for Accrued Leave Payments ² | Total Conference Committee Changes |
|--------------------------------------|---|---|------------------------------------|
| Comm. on Legal Counsel for Indigents | (\$139,011) | (\$116,872) | (\$255,883) |
| Accrued leave payments | | 116,872 | 116,872 |
| Total all funds | (\$139,011) | \$0 | (\$139,011) |
| Less estimated income | (4,185) | 0 | (4,185) |
| General fund | (\$134,826) | \$0 | (\$134,826) |
| FTE | 0.00 | 0.00 | 0.00 |

¹ This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 3 to 5 percent for the first year of the biennium and 2 to 4 percent for the second year of the biennium.
- Reduces the market component from 2 to 4 percent per year to 1 to 2 percent per year for employees below the midpoint of their salary range.
- Reduces funding for retirement contribution increases to provide for a 1 percent state and 1 percent employee increase beginning in January 2014 and no increase in January 2015.

² A portion of salaries and wages funding from the general fund (\$113,366) and from other funds (\$3,506) for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees, the same as the House version.

Sections are added to amend subsection 1 of Section 29-07-01.1 to change the indigent defense application fee from \$25 to \$35 and to add legislative intent that reimbursement for indigent defense costs assessed to indigents charged with a felony be increased from \$525 to \$575, the same as the Senate version.

Date 4-23-13

Roll Call Vote # 1

**2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2022 as (re) engrossed

Senate Appropriations Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amends
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amends as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Sanford Seconded by: Sen. Carlisle

| Senators | 4-18-13 | 4-23 | Yes | No | Representatives | 4-18-13 | 4-23 | Yes | No |
|-------------------|---------|------|-----|----|-----------------|---------|------|-----|----|
| Senator Kilzer | ✓ | ✓ | ✓ | | Rep. Sanford | ✓ | ✓ | ✓ | |
| Carlisle | ✓ | ✓ | ✓ | | Hawken | ✓ | ✓ | ✓ | |
| Warner | ✓ | ✓ | ✓ | | Guggisberg | ✓ | ✓ | ✓ | |
| | | | | | | | | | |
| | | | | | | | | | |
| Total Senate Vote | | | 3 | | Total Rep. Vote | | | 3 | |

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Kilzer House Carrier Sanford

LC Number _____ of amendment

LC Number _____ of engrossment

REPORT OF CONFERENCE COMMITTEE

SB 2022, as engrossed: Your conference committee (Sens. Kilzer, Carlisle, Warner and Reps. Sanford, Hawken, Guggisberg) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1251-1253, adopt amendments as follows, and place SB 2022 on the Seventh order:

That the House recede from its amendments as printed on pages 1251-1253 of the Senate Journal and pages 1334-1336 of the House Journal and that Engrossed Senate Bill No. 2022 be amended as follows:

Page 1, line 2, after "indigents" insert "; to amend and reenact subsection 1 of section 29-07-01.1 of the North Dakota Century Code, relating to the application fee for indigent defense services; and to provide legislative intent"

Page 1, replace lines 12 through 16 with:

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| Accrued leave payments | 0 | <u>116,872</u> | <u>116,872</u> |
| Total all funds | \$11,779,282 | \$2,641,994 | \$14,421,276 |
| Less special funds | <u>1,970,852</u> | <u>527,014</u> | <u>2,497,866</u> |
| Total general fund | \$9,808,430 | \$2,114,980 | \$11,923,410 |
| Full-time equivalent positions | 30.00 | 3.00 | 33.00 |

SECTION 2. AMENDMENT. Subsection 1 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of ~~twenty-five~~thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

SECTION 3. LEGISLATIVE INTENT - REIMBURSEMENT OF ATTORNEY FEES. It is the intent of the sixty-third legislative assembly that a defendant who has been charged with a felony and for whom counsel is provided by the commission on legal counsel for indigents pays \$575 for reimbursement of attorney's fees."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2022 - Commission on Legal Counsel for Indigent - Conference Committee Action

| | Executive Budget | Senate Version | Conference Committee Changes | Conference Committee Version | House Version | Comparison to House |
|--------------------------------------|------------------|----------------|------------------------------|------------------------------|---------------|---------------------|
| Comm. on Legal Counsel for Indigents | \$14,547,802 | \$14,560,287 | (\$255,883) | \$14,304,404 | \$14,181,362 | \$123,042 |
| Accrued leave payments | | | 116,872 | 116,872 | 116,872 | |
| Total all funds | \$14,547,802 | \$14,560,287 | (\$139,011) | \$14,421,276 | \$14,298,234 | \$123,042 |
| Less estimated income | 2,501,677 | 2,502,051 | (4,185) | 2,497,866 | 2,494,174 | 3,692 |
| General fund | \$12,046,125 | \$12,058,236 | (\$134,826) | \$11,923,410 | \$11,804,060 | \$119,350 |
| FTE | 33.00 | 33.00 | 0.00 | 33.00 | 33.00 | 0.00 |

Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Conference Committee Changes

| | Adjusts State Employee Compensation and Benefits Package ¹ | Provides Separate Line Item for Accrued Leave Payments ² | Total Conference Committee Changes |
|--------------------------------------|---|---|------------------------------------|
| Comm. on Legal Counsel for Indigents | (\$139,011) | (\$116,872) | (\$255,883) |
| Accrued leave payments | | 116,872 | 116,872 |
| Total all funds | (\$139,011) | \$0 | (\$139,011) |
| Less estimated income | (4,185) | 0 | (4,185) |
| General fund | (\$134,826) | \$0 | (\$134,826) |
| FTE | 0.00 | 0.00 | 0.00 |

¹ This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 3 to 5 percent for the first year of the biennium and 2 to 4 percent for the second year of the biennium.
- Reduces the market component from 2 to 4 percent per year to 1 to 2 percent per year for employees below the midpoint of their salary range.
- Reduces funding for retirement contribution increases to provide for a 1 percent state and 1 percent employee increase beginning in January 2014 and no increase in January 2015.

² A portion of salaries and wages funding from the general fund (\$113,366) and from other funds (\$3,506) for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees, the same as the House version.

Sections are added to amend subsection 1 of Section 29-07-01.1 to change the indigent defense application fee from \$25 to \$35 and to add legislative intent that reimbursement for indigent defense costs assessed to indigents charged with a felony be increased from \$525 to \$575, the same as the Senate version.

Engrossed SB 2022 was placed on the Seventh order of business on the calendar.

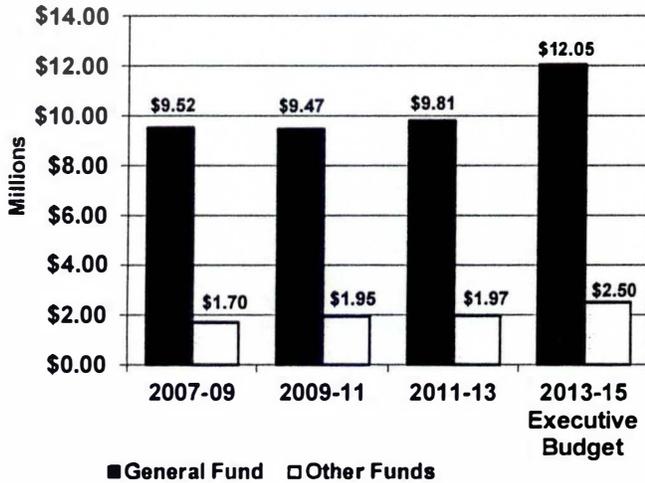
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SB 2022

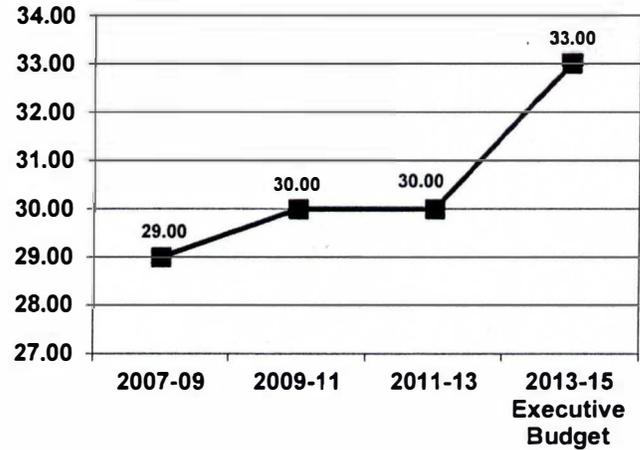
**Department 188 - Commission on Legal Counsel for Indigents
 Senate Bill No. 2022**

| | FTE Positions | General Fund | Other Funds | Total |
|------------------------------------|---------------|--------------|-------------|--------------|
| 2013-15 Executive Budget | 33.00 | \$12,046,125 | \$2,501,677 | \$14,547,802 |
| 2011-13 Legislative Appropriations | 30.00 | 9,808,430 | 1,970,852 | 11,779,282 |
| Increase (Decrease) | 3.00 | \$2,237,695 | \$530,825 | \$2,768,520 |

Agency Funding



FTE Positions



Ongoing and One-Time General Fund Appropriations

| | Ongoing General Fund Appropriation | One-Time General Fund Appropriation | Total General Fund Appropriation |
|------------------------------------|------------------------------------|-------------------------------------|----------------------------------|
| 2013-15 Executive Budget | \$12,046,125 | \$0 | \$12,046,125 |
| 2011-13 Legislative Appropriations | 9,808,430 | 0 | 9,808,430 |
| Increase (Decrease) | \$2,237,695 | \$0 | \$2,237,695 |

Executive Budget Highlights

| | General Fund | Other Funds | Total |
|---|--------------|-------------|-------------|
| 1. Adds 1 FTE attorney position | \$196,639 | | \$196,639 |
| 2. Adds 2 FTE legal assistant positions--one in Dickinson and one in Williston | \$235,486 | | \$235,486 |
| 3. Provides additional funding for contract attorneys | \$1,100,000 | | \$1,100,000 |
| 4. Provides additional funding from the indigent defense administration fund for increased operating costs | | \$500,000 | \$500,000 |
| 5. Provides funding for state employee salary increases, of which \$273,593 relates to performance increases and \$211,228 is for market equity adjustments | \$470,276 | \$14,545 | \$484,821 |

Continuing Appropriations

Indigent defense administration fund - North Dakota Century Code Sections 29-07-01.1 and 29-26-22 - Funding is from a \$25 nonrefundable fee for court-appointed defense services and from a \$100 court administration fee in all criminal cases except infractions. The first \$750,000 collected is used for indigent defense services, the next \$460,000 is used for court facilities, and additional amounts are deposited equally into the two funds.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

At this time, no major legislation has been introduced affecting this agency.

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COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Senate Appropriations-SB 2022

January 24th, 2013

Good Morning. My name is Robin Huseby, and I am Executive Director of the Commission on Legal Counsel for Indigents. We are an Executive Branch Agency which was created in 2005. We deliver indigent defense legal services for district court criminal and juvenile cases throughout the state. We provide services in approximately 10,611 cases a year. We have 30 full time employees and seven offices; our administrative office in Valley City, and public defender offices in Williston, Dickinson, Minot, Bismarck, Fargo, and Grand Forks.

We are funded from two sources; the General Fund, and fund 282, a continuing appropriation, which consists of fines collected from defendants in court (Indigent Defense Administration Fee). There is a \$100.00 court administration fee and a \$25.00 application fee that the Court imposes, unless the Judge waives the fee. The \$100 fee is statutorily split between our agency and the Supreme Court Court Improvement fund.* For the **2011-13** biennium, our budget consisted of **\$9.8 million** general fund dollars, and authority to spend **\$1.9 million** from fund 282. I went before the Budget Section in September, 2012, and informed them that due to exigent circumstances we would undoubtedly be spending more than \$1.9 million from fund 282 by the end of this biennium, and I will discuss this financial squeeze further in my presentation. We anticipate spending an additional \$650,000 from fund 282 by June 30th, 2013. After dipping into that continuing appropriations more than was anticipated, we project we will have a balance of approximately \$1.9 million in the fund at the end of this biennium. We bring in approximately \$1.7 million a biennium. We are going to be spending approximately \$2.5 million out of this fund this biennium, and are asking for authority to spend \$2.5 out of it next biennium. I am concerned about continued reliance on fund in the long term future.

***Our agency receives the first \$750,000; Supreme Court receives \$460,000; then split 50%-50%**

[Handwritten mark]

We utilize no federal funds nor grants. In this biennium we had no major one time funding items.

Our legal services are delivered utilizing a combination of our full time public defenders, and private attorneys with whom we contract at a rate of \$75.00 an hour. Our Dickinson and Williston offices each have two full time attorneys and one full time support staff, and all the rest have three full time attorneys and two full time support staff. When we started in 2005, we staffed Dickinson and Williston lower than the rest as they were considered the 'smaller' offices, and of course we didn't anticipate the population growth we are experiencing. We contract with approximately 45 private attorneys who either have monthly contracts with us, or take cases on an individual basis. Approximately 60% of our cases are handled by private attorneys, and 40% by public defenders.

In submitting our budget for 2013-2015, we had to take a good look at what has been happening to us over the past 24 months. Our story is not dissimilar to ones you have or will hear from other agencies which must provide services in the oil impacted areas. We have basically been under siege in certain areas, primarily Williston, Watford City, Stanley, Dickinson, and outlying areas. Before I explain some of these challenges, I want to say that our agency has had a great deal of support from the State Bar Association, the Judiciary, the Governor's office, including Human Resources and OMB, in dealing with our difficulties, and I want to thank them publically. It really helps to know that first and foremost you are not alone in difficult times and secondly, people do want you to succeed.

The problems our agency is having both financially and people wise stem from two major problems in western ND; a rapidly rising case load and difficulty in finding attorneys to take cases at \$75.00 an hour. I will speak to the latter first. Attorneys in Williston and Dickinson have helped us as much as they are able, but they, too, are swamped with their own cases. You have heard the Judiciary presentation and we have many similar problems as do the Judges and Clerks. We are an agency that must provide services; if there is a case with an indigent person who asks for counsel, we must provide counsel. If no one in Williston is available to take the

case, we must find counsel somewhere who will. We have people driving from Minot, Bismarck and other areas-even Grand Forks-to pick up cases which our public defenders cannot take. What that means is that what may have been a \$500.00 case can easily turn into a \$1,500.00 case, and that is putting a huge strain on our budget and attorneys.

In terms of the case load, I have attached hereto Attachments I and II, which show the growth in cases in some of these highly impacted areas in the last three years. McKenzie County shows a 98% increase in a three year period in case assignments. For many years the cases in Watford City were handled by the Williston Public Defenders office. Those days are over. The only way we could provide legal services in McKenzie County was to contract with an attorney in Bismarck to drive out to Watford two days a month.

In Mountrail County, the case load has risen 96%. We have our Minot Public Defender office primarily handling the case load there. The situation is similar in the SW Judicial District. Stark County is up 22%. Our Public Defender Office in Dickinson, which has two attorneys, is covering areas such as Adams County, which is up 55%, and Bowman County, up 21%. Hettinger County shows a huge increase. When our public defender offices such as Minot and Dickinson are providing services for outlying areas, we need to supply attorneys to help them, in their home city, to take on cases normally assigned to them. The impact of economic growth is not just being felt in our Williston and Dickinson areas. My latest concern has been the South Central Judicial District. That is Burleigh, Morton, Mercer, Mclean, Oliver, Grant, Sioux and Sheridan. If you look at the case numbers for Burleigh County, we are up 24% in 3 years; that trend appears to be rising. McLean is up 25%; Sheridan 44%, to name a few. The case load is growing so fast we have been having a difficult time adding enough contracts to keep up. Anyone who visits the Supreme Court website can see how often we advertise for contracts; that is attorneys willing to take on so many indigent defense cases a month for our agency. I just staffed this issue with our supervising attorney in the Bismarck office and we continue the search. But all of this costs money; more money that what we currently have.

The Governor has recommended the addition of three new full time employees; two support staff (legal assistants) and one attorney position, all for the western part of the State. We had requested five additional FTE's and I still feel strongly we need them. That would be for one Legal Assistant each in Williston, Dickinson, and Minot, and an Administrative Assistant in Bismarck. We also asked for one attorney FTE. I am requesting the additional two support staff the Governor eliminated in his recommendation. Why support staff? With the public defenders under the stress and strain of more work, support staff is vital to assist them to provide quality legal services. Our public defenders and private bar attorneys have all shared something with me over the past years. Not only do they have a higher case load, but their cases are harder, more challenging. A growing amount of their clients are from out of state; they are harder to get a hold of and maintaining contact is difficult. There are more violent crimes such as Aggravated Assault. I reference Attachment II, which show the types of cases assigned. Out of the 10,611 cases assigned in the 2011-2012 time period, there were more felonies than misdemeanors assigned. That's disturbing. In looking at the Double AA felonies, -Attachment II, page 1-which are, for example, Murder and Continuous Sexual Abuse, over a 3 year period they have increased 60%. If you look at page 2 of Attachment II, in the NW District at the bottom of the page, felonies in the NW District, which is Ward, Williams, McKenzie, Burke, Mountrail, Divide, have grown 60%. These are very labor intensive, often needing medical records, experts, or private investigators. Support staff is one way to assist these attorneys handle the growing case load.

The Governor is recommending a total general fund of **\$12,046,125**, for this next biennium. That is an increase in general fund dollars of **\$2,237,695**, and an increase in our authority to spend continuing appropriations of **\$530,825**, increasing our spending authority to **\$2,501,677**. His total budget recommendation is **\$14,547,802**. We are thrilled the Governor understands our challenges, however, since the budget was submitted events have occurred out west which makes me wonder if this money is even enough. In December we learned our

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building where our public defender's office is in Williston was sold. That not only means we are losing the office, but we are losing an apartment we rent behind the office for visiting counsel. That apartment was vitally important as we could not find hotel rooms for visiting attorneys with multi day trials. You can imagine what sort of problems we are having finding space at a reasonable cost. Other wild card factors are the potential addition of law enforcement and judicial resources. Both of those changes will impact our case load. These are events which are difficult to budget for.

The dollars the Governor recommended for our budget are to be used primarily for adding attorney contracts; many of which we have added. For instance we have added, in the past year, attorney contracts in Williston, Watford City, Minot, Dickinson and Bismarck. With the exception of Minot, the contractors travel to those cities from other cities.

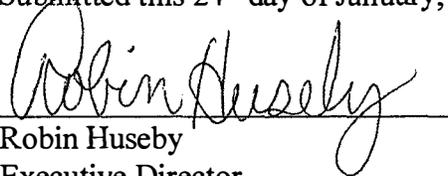
We have other needs for the agency besides the expedential growth in the west. We have been working on stabilizing case numbers in some of the bigger regions in the state such as Fargo and Grand Forks, by adding attorney contracts. One area that we try to budget for and sometimes do a better job than others is for high profile cases that we need to have a private attorney take on. For instance, if there is a multiple homicide that our public defenders cannot take due to a conflict, then we need to hire private counsel who will bill us at the \$75.00 an hour. Those cases can cost up to \$60,000, depending on what occurs. We try to budget for those events but let's face it, it is somewhat of a guess. Some years we get a rash of homicides or Double AA felonies, and then some years they tail off. However, with the statistics I referenced above about felony levels rising, it is unlikely those numbers will go down.

We do not anticipate receiving any federal funds or grants in the 2013-2015 biennium. We do not anticipate any one time spending items.

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I would happily take any questions at this time. I have my financial officer, Aaron Petrowitz here, who may be able to help out with some questions, and, after I am through, I would like to have one of our public defenders, Jay Greenwood from Dickinson, briefly fill you in on some of their challenges with public defense.

Submitted this 24th day of January, 2012



Robin Huseby
Executive Director
Commission on Legal Counsel for Indigents
P.O. Box 149
Valley City, ND 58072
701 845-8632
rhuseby@nd.gov

Count of Assignme Date Assigned2

| County | 11/1/2009- 10/31/2010 | 11/1/2010- 10/31/2011 | 11/1/2011- 10/31/2012 | Increase/ Decrease | % |
|--------------------|--------------------------|--------------------------|--------------------------|-----------------------|------------|
| ADAMS | 31 | 21 | 48 | 17 | 55% |
| BARNES | 127 | 155 | 169 | 42 | 33% |
| BENSON | 43 | 45 | 34 | -9 | -21% |
| BILLINGS | 10 | 9 | 6 | -4 | -40% |
| BOTTINEAU | 42 | 24 | 35 | -7 | -17% |
| BOWMAN | 38 | 33 | 46 | 8 | 21% |
| BURKE | 4 | 3 | 13 | 9 | 225% |
| BURLEIGH | 1611 | 1623 | 1998 | 387 | 24% |
| CASS | 2430 | 2326 | 2231 | -199 | -8% |
| CAVALIER | 25 | 28 | 31 | 6 | 24% |
| DICKEY | 47 | 31 | 45 | -2 | -4% |
| DIVIDE | 38 | 50 | 81 | 43 | 113% |
| DUNN | 26 | 28 | 44 | 18 | 69% |
| EDDY | 16 | 26 | 34 | 18 | 113% |
| EMMONS | 15 | 12 | 17 | 2 | 13% |
| FOSTER | 23 | 20 | 19 | -4 | -17% |
| GOLDEN VALLEY | 8 | 16 | 14 | 6 | 75% |
| GRAND FORKS | 854 | 886 | 1169 | 315 | 37% |
| GRANT | 21 | 9 | 11 | -10 | -48% |
| GRIGGS | 19 | 18 | 25 | 6 | 32% |
| HETTINGER | 1 | 10 | 29 | 28 | 2800% |
| KIDDER | 16 | 15 | 15 | -1 | -6% |
| LAMOURE | 24 | 28 | 21 | -3 | -13% |
| LOGAN | 2 | 8 | 7 | 5 | 250% |
| MCHENRY | 34 | 79 | 58 | 24 | 71% |
| MCINTOSH | 18 | 12 | 9 | -9 | -50% |
| MCKENZIE | 85 | 100 | 168 | 83 | 98% |
| MCLEAN | 127 | 95 | 159 | 32 | 25% |
| MERCER | 116 | 116 | 117 | 1 | 1% |
| MORTON | 659 | 604 | 705 | 46 | 7% |
| MOUNTRAIL | 27 | 64 | 53 | 26 | 96% |
| NELSON | 18 | 23 | 34 | 16 | 89% |
| OLIVER | 20 | 28 | 21 | 1 | 5% |
| PEMBINA | 58 | 76 | 72 | 14 | 24% |
| PIERCE | 53 | 58 | 52 | -1 | -2% |
| RAMSEY | 290 | 386 | 345 | 55 | 19% |
| RANSOM | 43 | 68 | 40 | -3 | -7% |
| RENVILLE | 3 | 13 | 6 | 3 | 100% |
| RICHLAND | 153 | 160 | 121 | -32 | -21% |
| ROLLETTE | 74 | 65 | 83 | 9 | 12% |
| SARGENT | 19 | 22 | 14 | -5 | -26% |
| SHERIDAN | 16 | 10 | 23 | 7 | 44% |
| SIoux | 16 | 8 | 6 | -10 | -63% |
| SLOPE | 6 | 7 | 6 | 0 | 0% |
| STARK | 330 | 407 | 402 | 72 | 22% |
| STEELE | 20 | 14 | 8 | -12 | -60% |
| STUTSMAN | 268 | 269 | 267 | -1 | 0% |
| TOWNER | 18 | 7 | 9 | -9 | -50% |
| TRAILL | 84 | 53 | 36 | -48 | -57% |
| WALSH | 165 | 149 | 188 | 23 | 14% |
| WARD | 726 | 706 | 686 | -40 | -6% |
| WELLS | 59 | 57 | 58 | -1 | -2% |
| WILLIAMS | 504 | 549 | 723 | 219 | 43% |
| Grand Total | 9480 | 9629 | 10611 | 1131 | 12% |

I

| Count of Assignment No | Date Assigned2 | | | Increase/ Decrease | % | | | |
|------------------------|----------------|---------------------|-------------|-----------------------|--------------|--------------------------|--------------------------|--------------------------|
| | Case Type2 | HighestLe | Highe | | | 11/1/2009- 10/31/2010 | 11/1/2010- 10/31/2011 | 11/1/2011- 10/31/2012 |
| Appeal | | | | 75 | 70 | 65 | -10 | -13% |
| Other | | | | 1212 | 1294 | 1369 | 157 | 13% |
| Criminal | Felony | FA | | 302 | 262 | 329 | 27 | 9% |
| | | FAA | | 65 | 63 | 104 | 39 | 60% |
| | | FB | | 423 | 422 | 440 | 17 | 4% |
| | | FC | | 2403 | 2569 | 3160 | 757 | 32% |
| | | Felony Total | | 3193 | 3316 | 4033 | 840 | 26% |
| | Misd. | | 3283 | 3307 | 3466 | 183 | 6% | |
| Juvenile | | | 1663 | 1567 | 1605 | -58 | -3% | |
| Post-Conviction | | | 54 | 75 | 73 | 19 | 35% | |
| Grand Total | | | 9480 | 9629 | 10611 | 1131 | 12% | |

Count of Assignment No

Date Assigned2

| Judicial District | Case Type2 | High HighestLevel | 11/1/2009- 10/31/2010 | 11/1/2010- 10/31/2011 | 11/1/2011- 10/31/2012 | Increase/ Decrease | % | |
|-------------------|-----------------|-------------------|--------------------------|--------------------------|--------------------------|-----------------------|-------------|------|
| EC | Appeal | | 11 | 6 | 11 | 0 | 0% | |
| | Other | | 239 | 263 | 237 | -2 | -1% | |
| | Criminal | Felon' FA | | 86 | 63 | 81 | -5 | -6% |
| | | FAA | | 22 | 11 | 19 | -3 | -14% |
| | | FB | | 145 | 97 | 98 | -47 | -32% |
| | | FC | | 627 | 641 | 678 | 51 | 8% |
| | | Felony Total | | 880 | 812 | 876 | -4 | 0% |
| | | Misd. | | 983 | 894 | 723 | -260 | -26% |
| | Juvenile | | 413 | 411 | 416 | 3 | 1% | |
| | Post-Conviction | | 8 | 7 | 12 | 4 | 50% | |
| EC Total | | | 2534 | 2393 | 2275 | -259 | -10% | |
| NE | Appeal | | 7 | 2 | 3 | -4 | -57% | |
| | Other | | 116 | 155 | 128 | 12 | 10% | |
| | Criminal | Felon' FA | | 12 | 19 | 17 | 5 | 42% |
| | | FAA | | 1 | 3 | 7 | 6 | 600% |
| | | FB | | 35 | 47 | 47 | 12 | 34% |
| | | FC | | 193 | 227 | 242 | 49 | 25% |
| | | Felony Total | | 241 | 296 | 313 | 72 | 30% |
| | | Misd. | | 256 | 282 | 297 | 41 | 16% |
| | Juvenile | | 180 | 180 | 167 | -13 | -7% | |
| | Post-Conviction | | 5 | 15 | 5 | 0 | 0% | |
| NE Total | | | 805 | 930 | 913 | 108 | 13% | |
| NEC | Appeal | | 7 | 8 | 12 | 5 | 71% | |
| | Other | | 147 | 121 | 157 | 10 | 7% | |
| | Criminal | Felon' FA | | 21 | 27 | 33 | 12 | 57% |
| | | FAA | | 4 | 7 | 10 | 6 | 150% |
| | | FB | | 40 | 33 | 42 | 2 | 5% |
| | | FC | | 266 | 306 | 376 | 110 | 41% |
| | | Felony Total | | 331 | 373 | 461 | 130 | 39% |
| | | Misd. | | 224 | 234 | 374 | 150 | 67% |
| | Juvenile | | 157 | 171 | 189 | 32 | 20% | |
| | Post-Conviction | | 6 | 2 | 10 | 4 | 67% | |
| NEC Total | | | 872 | 909 | 1203 | 331 | 38% | |
| NW | Appeal | | 18 | 15 | 13 | -5 | -28% | |
| | Other | | 176 | 171 | 147 | -29 | -16% | |
| | Criminal | Felon' FA | | 28 | 27 | 50 | 22 | 79% |
| | | FAA | | 16 | 15 | 18 | 2 | 13% |
| | | FB | | 51 | 80 | 89 | 38 | 75% |
| | | FC | | 373 | 390 | 601 | 228 | 61% |
| | | Felony Total | | 468 | 512 | 758 | 290 | 62% |
| | | Misd. | | 415 | 480 | 558 | 143 | 34% |
| | Juvenile | | 295 | 275 | 243 | -52 | -18% | |
| | Post-Conviction | | 12 | 19 | 5 | -7 | -58% | |
| NW Total | | | 1384 | 1472 | 1724 | 340 | 25% | |
| SC | Appeal | | 24 | 30 | 19 | -5 | -21% | |

| | | | | | | | |
|-------------|-----------------|--------------|-------------|-------------|--------------|------|-------|
| SC | Other | | 428 | 420 | 556 | 128 | 30% |
| | Criminal | Felon: FA | 97 | 75 | 114 | 17 | 18% |
| | | FAA | 17 | 21 | 38 | 21 | 124% |
| | | FB | 97 | 102 | 118 | 21 | 22% |
| | | FC | 629 | 640 | 890 | 261 | 41% |
| | | Felony Total | 840 | 838 | 1160 | 320 | 38% |
| | | Misd. | 852 | 830 | 911 | 59 | 7% |
| | Juvenile | | 476 | 399 | 417 | -59 | -12% |
| | Post-Conviction | | 17 | 23 | 25 | 8 | 47% |
| SC Total | | | 2637 | 2540 | 3088 | 451 | 17% |
| SE | Appeal | | 7 | 8 | 7 | 0 | 0% |
| | Other | | 58 | 83 | 62 | 4 | 7% |
| | Criminal | Felon: FA | 44 | 30 | 23 | -21 | -48% |
| | | FAA | 5 | 4 | 8 | 3 | 60% |
| | | FB | 42 | 44 | 29 | -13 | -31% |
| | | FC | 207 | 218 | 221 | 14 | 7% |
| | | Felony Total | 298 | 296 | 281 | -17 | -6% |
| | | Misd. | 355 | 388 | 360 | 5 | 1% |
| | Juvenile | | 76 | 73 | 94 | 18 | 24% |
| | Post-Conviction | | 4 | 6 | 9 | 5 | 125% |
| SE Total | | | 798 | 854 | 813 | 15 | 2% |
| SW | Appeal | | 1 | 1 | | -1 | -100% |
| | Other | | 48 | 81 | 82 | 34 | 71% |
| | Criminal | Felon: FA | 14 | 21 | 11 | -3 | -21% |
| | | FAA | | 2 | 4 | 4 | |
| | | FB | 13 | 19 | 17 | 4 | 31% |
| | | FC | 108 | 147 | 152 | 44 | 41% |
| | | Felony Total | 135 | 189 | 184 | 49 | 36% |
| | | Misd. | 198 | 199 | 243 | 45 | 23% |
| | Juvenile | | 66 | 58 | 79 | 13 | 20% |
| | Post-Conviction | | 2 | 3 | 7 | 5 | 250% |
| SW Total | | | 450 | 531 | 595 | 145 | 32% |
| Grand Total | | | 9480 | 9629 | 10611 | 1131 | 12% |

Testimony of Jay Greenwood
Commission on Legal Counsel for Indigents
January 24, 2013 *SB 2012*

Chair and committee members, my name is Jay Greenwood. I am an attorney with the Public Defender's office in Dickinson, North Dakota. My intention today is to inform the members of this committee about what it is we do at the public defender's office, to show how those duties have changed, to illuminate the difficulties that have arisen due to the current economic climate in the western region of the state, and to stress the importance of evolving to meet the needs of the region, including but not limited to, increasing the funds allocated to do so.

The public defender's office in Dickinson is comprised of two attorneys, one full-time office manager and one part-time assistant. This four-person office handles the entire criminal, juvenile and child support indigent case load for the southwestern region. This includes Stark, Adams, Billings, Dunn, Slope, Bowman and Golden Valley Counties. And while some cases require outside help from contract attorneys due to conflicts, this comprises a very small share. As has been addressed by Ms. Huseby, the case load has risen steadily since the office opened (and my job began) seven years ago and has jumped dramatically over the past two years. And while our office meets the needs of its clients, and advocates valiantly for those to which it is appointed, it cannot continue to do so without the support and funding from those charged with providing it.

With an increase in case load, there has been a change in the nature of the crimes charged. Not simply because people have changed in general or because the people that have come to the area are criminal in nature. Quite the contrary. Put simply, when there are more people in a region, there is more crime. When there are more people in a region

there are more people not paying their child support. And when there are more families in the region, there is an added burden on child protective services, juvenile court and thusly the attorneys that represent those needing guidance.

In addition, with an influx of out-of-state people, the logistics of adequate representation have become nightmarish. No longer are telephone numbers and addresses reliable. Because many individuals go without permanent versions of either, this makes the signing of plea agreements, the sending and receiving of notices and the service of process nearly impossible. The number of times I've had to cancel a jury trial due to no contact with my client cannot be counted on two hands. This results in wasted preparation time for me and wasted resources for the clerk's office. No longer is felony probation a simple and workable disposition. Because with its prohibition on interstate travel without officer permission or the satisfaction of interstate compact; defendants are unwilling to accept their terms.

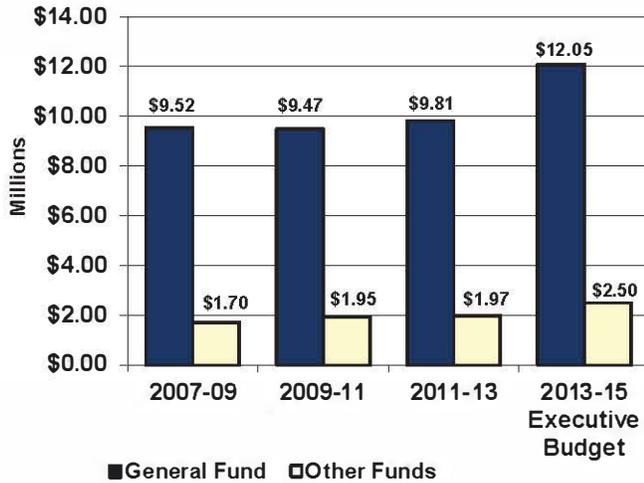
Also, like the additional case loads in the Southwest, there are increasing caseloads in the South Central and North Western judicial districts. And due to the minimal resources in those public defender offices, we find ourselves offering assistance to those offices whenever it is possible and vice versa. This adds to our already-mountainous caseload but, more importantly, requires travel. Driving to other judicial districts expends money on gas and lodging, burdens scheduling clerks in every district and, in the winter months, endangers the attorneys and staff doing the traveling. Tomorrow will mark my third trip to Williston in January. This is 6 hours of driving for, at most, 2 hours of courtroom work. This screams inefficiency.

One can reduce the above problems by 1) hiring additional attorneys; 2) compensating those attorneys already hired to account for the added responsibilities and rising cost of living; and 3) hiring and compensating office personnel to make all other tasks become more manageable. By hiring more attorneys the case load amongst them is diminished. The necessity of having outside counsel assist is reduced. And young, talented attorneys gain valuable experience in the courtroom at a rate they simply cannot duplicate in other arenas. By fairly compensating the attorneys that are already employed, it makes it more difficult to leave. When attorneys are compensated at the same rate as their peers, it is more unlikely that they will seek a different job with higher compensation. This improves our system of justice. Contrarily, if prosecutors are being fairly paid, while the public defenders are not, there will always be an imbalance of talent between the two sides. Those prosecutors who are compensated will remain in their positions, gain experience and talent and hone their craft. However, the public defenders will always remain inexperienced, young and looking for a bigger opportunity. This imbalance leads to a fracture in the courts, where indigent criminal defendants are afforded an unequal path to justice. Finally, by paying support staff, the offices run more smoothly. Training new hires becomes much simpler. And the system in general becomes much more efficient. I always say that the most important person in our office is Carol, our head administrator. She is in charge of all the filing, mailings and service. Without her, our office will completely break down. If she isn't fairly compensated, we suffer. The common denominator to the above problems is manpower. I do not simply refer to quantity. Experienced, well-compensated attorneys and work staff are integral to the process.

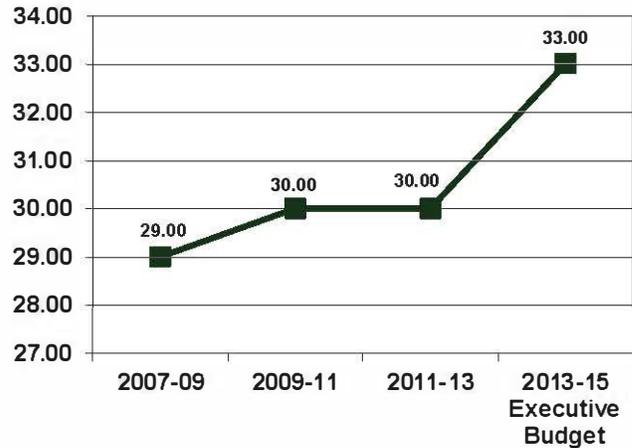
**Department 188 - Commission on Legal Counsel for Indigents
 Senate Bill No. 2022**

| | FTE Positions | General Fund | Other Funds | Total |
|------------------------------------|---------------|--------------|-------------|--------------|
| 2013-15 Executive Budget | 33.00 | \$12,046,125 | \$2,501,677 | \$14,547,802 |
| 2011-13 Legislative Appropriations | 30.00 | 9,808,430 | 1,970,852 | 11,779,282 |
| Increase (Decrease) | 3.00 | \$2,237,695 | \$530,825 | \$2,768,520 |

Agency Funding



FTE Positions



Ongoing and One-Time General Fund Appropriations

| | Ongoing General Fund Appropriation | One-Time General Fund Appropriation | Total General Fund Appropriation |
|------------------------------------|------------------------------------|-------------------------------------|----------------------------------|
| 2013-15 Executive Budget | \$12,046,125 | \$0 | \$12,046,125 |
| 2011-13 Legislative Appropriations | 9,808,430 | 0 | 9,808,430 |
| Increase (Decrease) | \$2,237,695 | \$0 | \$2,237,695 |

First House Action

Attached is a summary of first house changes.

**Executive Budget Highlights
 (With First House Changes in Bold)**

| | General Fund | Other Funds | Total |
|--|--------------|-------------|-------------|
| 1. Adds 1 FTE attorney position | \$196,639 | | \$196,639 |
| 2. Adds 2 FTE legal assistant positions--one in Dickinson and one in Williston | \$235,486 | | \$235,486 |
| 3. Provides additional funding for contract attorneys | \$1,100,000 | | \$1,100,000 |
| 4. Provides additional funding from the indigent defense administration fund for increased operating costs | | \$500,000 | \$500,000 |
| 5. Provides funding for state employee salary increases, of which \$273,593 relates to performance increases and \$211,228 is for market equity adjustments. The Senate added \$12,485 to correct the executive compensation package. | \$470,276 | \$14,545 | \$484,821 |

Continuing Appropriations

Indigent defense administration fund - North Dakota Century Code Sections 29-07-01.1 and 29-26-22 - Funding is from a \$25 nonrefundable fee for court-appointed defense services and from a \$100 court administration fee in all criminal cases except infractions. The first \$750,000 collected is used for indigent defense services, the next \$460,000 is used for court facilities, and additional amounts are deposited equally into the two funds.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

At this time, no major legislation is under consideration affecting this agency.

ATTACH:1

SB2022
March 14, 2013
attachment 1

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

SB 2022

March, 14th, 2013, 2:00 p.m., HOUSE APPROPRIATIONS, MEDORA ROOM

Good Morning. My name is Robin Huseby, and I am Executive Director of the Commission on Legal Counsel for Indigents. We are an Executive Branch Agency which was created in 2005. We deliver indigent defense legal services for district court criminal and juvenile cases throughout the state. We provide services in approximately 10,611 cases a year. We have 30 full time employees and seven offices; our administrative office in Valley City, and public defender offices in Williston, Dickinson, Minot, Bismarck, Fargo, and Grand Forks.

We are funded from two sources; the General Fund, and fund 282, a continuing appropriation, which consists of fines collected from defendants in court (Indigent Defense Administration Fee). There is a \$100.00 court administration fee and a \$25.00 application fee that the Court imposes, unless the Judge waives the fee. The \$100 fee is statutorily split between our agency and the Supreme Court Court Improvement fund.* For the **2011-13** biennium, our budget consisted of **\$9.8 million** general fund dollars, and authority to spend **\$1.9 million** from fund 282. I went before the Budget Section in September, 2012, and informed them that due to exigent circumstances we would undoubtedly be spending more than \$1.9 million from fund 282 by the end of this biennium, and I will discuss this financial squeeze further in my presentation. We anticipate spending an additional \$650,000 from fund 282 by June 30th, 2013. After dipping into that continuing appropriations more than was anticipated, we project we will have a balance of approximately \$1.9 million in the fund at the end of this biennium. We bring in approximately \$1.7 million a biennium. We are going to be spending approximately \$2.5 million out of this fund this biennium, and are asking for authority to spend \$2.5 out of it next biennium. I am concerned about continued reliance on fund in the long term future.

***Our agency receives the first \$750,000; Supreme Court receives \$460,000; then split 50%-50%**

We utilize no federal funds nor grants. In this biennium we had no major one time funding items.

Our legal services are delivered utilizing a combination of our full time public defenders, and private attorneys with whom we contract at a rate of \$75.00 an hour. Our Dickinson and Williston offices each have two full time attorneys and one full time support staff, and all the rest have three full time attorneys and two full time support staff. When we started in 2005, we staffed Dickinson and Williston lower than the rest as they were considered the 'smaller' offices, and of course we didn't anticipate the population growth we are experiencing. We contract with approximately 45 private attorneys who either have monthly contracts with us, or take cases on an individual basis. Approximately 60% of our cases are handled by private attorneys, and 40% by public defenders.

In submitting our budget for 2013-2015, we had to take a good look at what has been happening to us over the past 24 months. Our story is not dissimilar to ones you have heard from other agencies which must provide services in the oil impacted areas. We have basically been under siege in certain areas, primarily Williston, Watford City, Stanley, Dickinson, and outlying areas. Before I explain some of these challenges, I want to say that our agency has had a great deal of support from the State Bar Association, the Judiciary, the Governor's office, including Human Resources and OMB, in dealing with our difficulties, and I want to thank them publically. It really helps to know that first and foremost you are not alone in difficult times and secondly, people do want you to succeed.

The problems our agency is having both financially and people wise stem from two major problems in western ND; a rapidly rising case load and difficulty in finding attorneys to take cases at \$75.00 an hour. I will speak to the latter first. Attorneys in Williston and Dickinson have helped us as much as they are able, but they, too, are swamped with their own cases. You have heard the Judiciary presentation and we have many similar problems as do the Judges and Clerks. We are an agency that must provide services; if there is a case with an indigent person who asks for counsel, we must provide counsel. If no one in Williston is available to take the

3-SB 2022

case, we must find counsel somewhere who will. We have people driving from Minot, Bismarck and other areas-even Grand Forks-to pick up cases which our public defenders cannot take. What that means is that what may have been a \$500.00 case can easily turn into a \$1,500.00 case, and that is putting a huge strain on our budget and attorneys.

In terms of the case load, I have attached hereto Attachments I and II, which show the growth in cases in some of these highly impacted areas in the last three years. McKenzie County shows a 98% increase in a three year period in case assignments. For many years the cases in Watford City were handled by the Williston Public Defenders office. Those days are over. The only way we could provide legal services in McKenzie County was to contract with an attorney in Bismarck to drive out to Watford two days a month.

In Mountrail County, the case load has risen 96%. We have our Minot Public Defender office primarily handling the case load there. The situation is similar in the SW Judicial District. Stark County is up 22%. Our Public Defender Office in Dickinson, which has two attorneys, is covering areas such as Adams County, which is up 55%, and Bowman County, up 21%. Hettinger County shows a huge increase. When our public defender offices such as Minot and Dickinson are providing services for outlying areas, we need to supply attorneys to help them, in their home city, to take on cases normally assigned to them. The impact of economic growth is not just being felt in our Williston and Dickinson areas. My latest concern has been the South Central Judicial District. That is Burleigh, Morton, Mercer, Mclean, Oliver, Grant, Sioux and Sheridan. If you look at the case numbers for Burleigh County, we are up 24% in 3 years; that trend appears to be rising. McLean is up 25%; Sheridan 44%, to name a few. The case load is growing so fast we have been having a difficult time adding enough contracts to keep up. Anyone who visits the Supreme Court website can see how often we advertise for contracts; that is attorneys willing to take on so many indigent defense cases a month for our agency. I just staffed this issue with our supervising attorney in the Bismarck office and we continue the search. But all of this costs money; more money that what we currently have.

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The Governor has recommended the addition of three new full time employees; two support staff (legal assistants) and one attorney position. Two Legal Aassistants; one in Williston and one in Dickinson, and an attorney with his/her location unspecified. The Senate has followed suit and approved the budget as recommended.

Our public defenders and private bar attorneys have all shared something with me over the past two years. Not only do they have more cases, but their cases are harder, more challenging. A growing amount of their clients are from out of state; they are harder to get a hold and to keep in touch with. There are more violent crimes such Aggravated Assault. I reference Attachment II, which shows the types of cases assigned. Out of the 10,611 cases assigned in the 2011-2012 time period, there were more felonies than misdemeanors assigned. That's disturbing. In looking at the Double AA Felonies, -Attachment II, page 1-which are, for example, Murder and Continuous Sexual Abuse, over a 3 year period of they have increased 60%. If you look at page two of Attachment II, in the NW District at the bottom of the page, felonies in the NW District, which is Ward, Williams, McKenzie, Burke, Mountrail, Divide, have grown 60%. These are very labor intensive, often needing medical records, experts, or private investigators.. Support staff is one way to assist these attorneys handle the case load we ask them to handle.

Engrossed Senate Bill 2022 contains a total general fund of **\$12, 058,236**, which is an increase in our general fund dollars of **\$2,249,806**, and an increase in our authority to spend our continuing appropriation in the amount of **\$531, 199**, for a total of **\$2,502, 051**; the total budget being **\$14,560,287** for the 2013-2015 biennium. **(An overall increase of \$2,781,005)** We are thrilled to know the Governor and Senate understands our challenging and difficult times for our agency, however, we have recently had events happen in some of our western cities and counties since submitting the budget which have caused me to wonder if this money will even be enough. For instance, in December, 2012, we learned our building where our public defender's office is in Williston was sold. That not only means we are losing the office, but we are losing an apartment we rent behind the office for visiting counsel.

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That apartment was vitally important as we could not find hotel rooms for visiting attorneys with multi day trials. You can imagine what sort of problems we are having finding space at a reasonable cost. Other wild card factors are the potential addition of law enforcement and judicial resources. Both of those changes will impact our case load. These are events which are difficult to budget for.

The dollars the Governor and Senate recommended and approved for our budget are to be used primarily for adding attorney contracts; many of which we have added. For instance we have added, in the past year, attorney contracts in Williston, Watford City, Minot, Dickinson and Bismarck. With the exception of Minot, the contractors travel to those cities from other cities.

We have other needs for the agency besides the exponential growth in the west. We have been working on stabilizing case numbers in some of the bigger regions in the state such as Fargo and Grand Forks, by adding attorney contracts. One area that we try to budget for and sometimes do a better job than others is for high profile cases that we need to have a private attorney take on. For instance, if there is a multiple homicide that our public defenders cannot take due to a conflict, then we need to hire private counsel who will bill us at the \$75.00 an hour. Those cases can cost up to \$60,000, depending on what occurs. We try to budget for those events but let's face it, it is somewhat of a guess. Some years we get a rash of homicides or Double AA felonies, and then some years they tail off. However, with the statistics I referenced above about felony levels rising, it is unlikely those numbers will go down.

We do not anticipate receiving any federal funds or grants in the 2013-2015 biennium. We do not anticipate any one time spending items

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I would happily take any questions at this time. Present is Travis Finck , a public defender from Bismarck, who would like to make a short statement in support of this budget bill.

Submitted this 14th day of March, 2013



Robin Huseby
Executive Director
Commission on Legal Counsel for Indigents
P.O. Box 149
Valley City, ND 58072
701 845-8632
rhuseby@nd.gov

Count of Assignme Date Assigned2

| County | 11/1/2009- 10/31/2010 | 11/1/2010- 10/31/2011 | 11/1/2011- 10/31/2012 | Increase/ Decrease | % |
|--------------------|--------------------------|--------------------------|--------------------------|-----------------------|------------|
| ADAMS | 31 | 21 | 48 | 17 | 55% |
| BARNES | 127 | 155 | 169 | 42 | 33% |
| BENSON | 43 | 45 | 34 | -9 | -21% |
| BILLINGS | 10 | 9 | 6 | -4 | -40% |
| BOTTINEAU | 42 | 24 | 35 | -7 | -17% |
| BOWMAN | 38 | 33 | 46 | 8 | 21% |
| BURKE | 4 | 3 | 13 | 9 | 225% |
| BURLEIGH | 1611 | 1623 | 1998 | 387 | 24% |
| CASS | 2430 | 2326 | 2231 | -199 | -8% |
| CAVALIER | 25 | 28 | 31 | 6 | 24% |
| DICKEY | 47 | 31 | 45 | -2 | -4% |
| DIVIDE | 38 | 50 | 81 | 43 | 113% |
| DUNN | 26 | 28 | 44 | 18 | 69% |
| EDDY | 16 | 26 | 34 | 18 | 113% |
| EMMONS | 15 | 12 | 17 | 2 | 13% |
| FOSTER | 23 | 20 | 19 | -4 | -17% |
| GOLDEN VALLEY | 8 | 16 | 14 | 6 | 75% |
| GRAND FORKS | 854 | 886 | 1169 | 315 | 37% |
| GRANT | 21 | 9 | 11 | -10 | -48% |
| GRIGGS | 19 | 18 | 25 | 6 | 32% |
| HETTINGER | 1 | 10 | 29 | 28 | 2800% |
| KIDDER | 16 | 15 | 15 | -1 | -6% |
| LAMOURE | 24 | 28 | 21 | -3 | -13% |
| LOGAN | 2 | 8 | 7 | 5 | 250% |
| MCHENRY | 34 | 79 | 58 | 24 | 71% |
| MICINTOSH | 18 | 12 | 9 | -9 | -50% |
| MCKENZIE | 85 | 100 | 168 | 83 | 98% |
| MCLEAN | 127 | 95 | 159 | 32 | 25% |
| MERCER | 116 | 116 | 117 | 1 | 1% |
| MORTON | 659 | 604 | 705 | 46 | 7% |
| MOUNTRAIL | 27 | 64 | 53 | 26 | 96% |
| NELSON | 18 | 23 | 34 | 16 | 89% |
| OLIVER | 20 | 28 | 21 | 1 | 5% |
| PEMBINA | 58 | 76 | 72 | 14 | 24% |
| PIERCE | 53 | 58 | 52 | -1 | -2% |
| RAMSEY | 290 | 386 | 345 | 55 | 19% |
| RANSOM | 43 | 68 | 40 | -3 | -7% |
| RENVILLE | 3 | 13 | 6 | 3 | 100% |
| RICHLAND | 153 | 160 | 121 | -32 | -21% |
| ROLLETTE | 74 | 65 | 83 | 9 | 12% |
| SARGENT | 19 | 22 | 14 | -5 | -26% |
| SHERIDAN | 16 | 10 | 23 | 7 | 44% |
| SIOUX | 16 | 8 | 6 | -10 | -63% |
| SLOPE | 6 | 7 | 6 | 0 | 0% |
| STARK | 330 | 407 | 402 | 72 | 22% |
| STEELE | 20 | 14 | 8 | -12 | -60% |
| STUTSMAN | 268 | 269 | 267 | -1 | 0% |
| TOWNER | 18 | 7 | 9 | -9 | -50% |
| TRAILL | 84 | 53 | 36 | -48 | -57% |
| WALSH | 165 | 149 | 188 | 23 | 14% |
| WARD | 726 | 706 | 686 | -40 | -6% |
| WELLS | 59 | 57 | 58 | -1 | -2% |
| WILLIAMS | 504 | 549 | 723 | 219 | 43% |
| Grand Total | 9480 | 9629 | 10611 | 1131 | 12% |

| Count of Assignment No | Date Assigned2 | | | Increase/ Decrease | % | | |
|------------------------|-------------------------|-------------------------------|--------------------------|-----------------------|-------------|------------|------------|
| | 11/1/2009- HighestLe | 11/1/2010- High 10/31/2010 | 11/1/2011- 10/31/2011 | | | 10/31/2012 | |
| Appeal | | 75 | 70 | 65 | -10 | -13% | |
| Other | | 1212 | 1294 | 1369 | 157 | 13% | |
| Criminal | Felony | FA | 302 | 262 | 329 | 27 | 9% |
| | | FAA | 65 | 63 | 104 | 39 | 60% |
| | | FB | 423 | 422 | 440 | 17 | 4% |
| | | FC | 2403 | 2569 | 3160 | 757 | 32% |
| | | Felony Total | 3193 | 3316 | 4033 | 840 | 26% |
| | Misd. | 3283 | 3307 | 3466 | 183 | 6% | |
| Juvenile | | 1663 | 1567 | 1605 | -58 | -3% | |
| Post-Conviction | | 54 | 75 | 73 | 19 | 35% | |
| Grand Total | | 9480 | 9629 | 10611 | 1131 | 12% | |

II

Count of Assignment No

Date Assigned2

| Judicial District | Case Type2 | High HighestLevel | 11/1/2009- 10/31/2010 | 11/1/2010- 10/31/2011 | 11/1/2011- 10/31/2012 | Increase/ Decrease | % | |
|-------------------|-----------------|-------------------|--------------------------|--------------------------|--------------------------|-----------------------|------|------|
| EC | Appeal | | 11 | 6 | 11 | 0 | 0% | |
| | Other | | 239 | 263 | 237 | -2 | -1% | |
| | Criminal | Felon | FA | 86 | 63 | 81 | -5 | -6% |
| | | | FAA | 22 | 11 | 19 | -3 | -14% |
| | | | FB | 145 | 97 | 98 | -47 | -32% |
| | | | FC | 627 | 641 | 678 | 51 | 8% |
| | | | Felony Total | 880 | 812 | 876 | -4 | 0% |
| | Misd. | | 983 | 894 | 723 | -260 | -26% | |
| | Juvenile | | 413 | 411 | 416 | 3 | 1% | |
| | Post-Conviction | | 8 | 7 | 12 | 4 | 50% | |
| EC Total | | 2534 | 2393 | 2275 | -259 | -10% | | |
| NE | Appeal | | 7 | 2 | 3 | -4 | -57% | |
| | Other | | 116 | 155 | 128 | 12 | 10% | |
| | Criminal | Felon | FA | 12 | 19 | 17 | 5 | 42% |
| | | | FAA | 1 | 3 | 7 | 6 | 600% |
| | | | FB | 35 | 47 | 47 | 12 | 34% |
| | | | FC | 193 | 227 | 242 | 49 | 25% |
| | | | Felony Total | 241 | 296 | 313 | 72 | 30% |
| | Misd. | | 256 | 282 | 297 | 41 | 16% | |
| | Juvenile | | 180 | 180 | 167 | -13 | -7% | |
| | Post-Conviction | | 5 | 15 | 5 | 0 | 0% | |
| NE Total | | 805 | 930 | 913 | 108 | 13% | | |
| NEC | Appeal | | 7 | 8 | 12 | 5 | 71% | |
| | Other | | 147 | 121 | 157 | 10 | 7% | |
| | Criminal | Felon | FA | 21 | 27 | 33 | 12 | 57% |
| | | | FAA | 4 | 7 | 10 | 6 | 150% |
| | | | FB | 40 | 33 | 42 | 2 | 5% |
| | | | FC | 266 | 306 | 376 | 110 | 41% |
| | | | Felony Total | 331 | 373 | 461 | 130 | 39% |
| | Misd. | | 224 | 234 | 374 | 150 | 67% | |
| | Juvenile | | 157 | 171 | 189 | 32 | 20% | |
| | Post-Conviction | | 6 | 2 | 10 | 4 | 67% | |
| NEC Total | | 872 | 909 | 1203 | 331 | 38% | | |
| NW | Appeal | | 18 | 15 | 13 | -5 | -28% | |
| | Other | | 176 | 171 | 147 | -29 | -16% | |
| | Criminal | Felon | FA | 28 | 27 | 50 | 22 | 79% |
| | | | FAA | 16 | 15 | 18 | 2 | 13% |
| | | | FB | 51 | 80 | 89 | 38 | 75% |
| | | | FC | 373 | 390 | 601 | 228 | 61% |
| | | | Felony Total | 468 | 512 | 758 | 290 | 62% |
| | Misd. | | 415 | 480 | 558 | 143 | 34% | |
| | Juvenile | | 295 | 275 | 243 | -52 | -18% | |
| | Post-Conviction | | 12 | 19 | 5 | -7 | -58% | |
| NW Total | | 1384 | 1472 | 1724 | 340 | 25% | | |
| SC | Appeal | | 24 | 30 | 19 | -5 | -21% | |

II

| | | | | | | | |
|--------------------|-----------------|--------------|-------------|--------------|-------------|------|-------|
| SC | Other | | 428 | 420 | 556 | 128 | 30% |
| | Criminal | Felony FA | 97 | 75 | 114 | 17 | 18% |
| | | FAA | 17 | 21 | 38 | 21 | 124% |
| | | FB | 97 | 102 | 118 | 21 | 22% |
| | | FC | 629 | 640 | 890 | 261 | 41% |
| | | Felony Total | 840 | 838 | 1160 | 320 | 38% |
| | Misd. | 852 | 830 | 911 | 59 | 7% | |
| | Juvenile | 476 | 399 | 417 | -59 | -12% | |
| | Post-Conviction | 17 | 23 | 25 | 8 | 47% | |
| | SC Total | | 2637 | 2540 | 3088 | 451 | 17% |
| SE | Appeal | | 7 | 8 | 7 | 0 | 0% |
| | Other | | 58 | 83 | 62 | 4 | 7% |
| | Criminal | Felony FA | 44 | 30 | 23 | -21 | -48% |
| | | FAA | 5 | 4 | 8 | 3 | 60% |
| | | FB | 42 | 44 | 29 | -13 | -31% |
| | | FC | 207 | 218 | 221 | 14 | 7% |
| | | Felony Total | 298 | 296 | 281 | -17 | -6% |
| | Misd. | 355 | 388 | 360 | 5 | 1% | |
| | Juvenile | 76 | 73 | 94 | 18 | 24% | |
| | Post-Conviction | 4 | 6 | 9 | 5 | 125% | |
| SE Total | | 798 | 854 | 813 | 15 | 2% | |
| SW | Appeal | | 1 | 1 | | -1 | -100% |
| | Other | | 48 | 81 | 82 | 34 | 71% |
| | Criminal | Felony FA | 14 | 21 | 11 | -3 | -21% |
| | | FAA | | 2 | 4 | 4 | |
| | | FB | 13 | 19 | 17 | 4 | 31% |
| | | FC | 108 | 147 | 152 | 44 | 41% |
| | | Felony Total | 135 | 189 | 184 | 49 | 36% |
| | Misd. | 198 | 199 | 243 | 45 | 23% | |
| | Juvenile | 66 | 58 | 79 | 13 | 20% | |
| | Post-Conviction | 2 | 3 | 7 | 5 | 250% | |
| SW Total | | 450 | 531 | 595 | 145 | 32% | |
| Grand Total | | 9480 | 9629 | 10611 | 1131 | 12% | |

SB2022
March 14, 2013
Attachment 2

HOUSE APPROPRIATION

SENATE BILL 2022-COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

March 14, 2013

Good Morning. My Name is Travis Finck, and I am the supervising attorney at the Public Defender Office in Bismarck. I am a full time attorney employee devoted strictly to practicing criminal indigent defense cases. I am here supporting budget bill 2022.

I have been working in the Bismarck Public Defender office since we opened, almost five years ago. We have a three attorney office. When the oil boom started out west, we knew that Robin was struggling with case load in the Williston, Watford City and Dickinson area, we were hoping that we would be insulated from that growth. We were wrong. This region has, as you know, experienced unprecedented growth in housing, traffic and crime. This of course means our case load has exploded. We currently are handling in excess of 300 case assignments a year a piece, and the in the past Robin has asked for more contractors to handle cases. These additional contractors and these additional case cost money for the agency, and therefore we support any effort to increase our budget. I am not testifying personally as it will not affect my salary one way or another.

A phenomena of the oil impact is that we are seeing an increasingly changing demographic or our clientele. When I first started in 2008 as a public defender, you didn't see that many clients from out of state with no familial connection to North Dakota. Now it is commonplace. This too presents a more difficult client for us to represent as many of them are transient and have no permanent address. We could regal you with countless stories of cases in which our clients do not appear in Court, we can't find them to get plea agreements signed and generally lose track of them causing the court to enter "failure to appear" warrants, which means we may or may not get this client back when they are located. All this means extra time for our attorneys and staff who spend time looking for and waiting for clients.

Another problem for our Bismarck office has been travel. It has been difficult to maintain the case load in the western part of the state, which has meant we have been called upon, as well as our counterparts in the east, to travel to Dickinson, Minot and Williston more frequently than before. This only increases the stress and strain on our office which is already has a huge case load.

As the supervising attorney, I am also chasing hours at the end of the week. The increased case loads has meant more work for the administrative staff as well. My administrative assistants are non-exempt employees and therefore can only work 40 hours a week. I find myself on Friday afternoons walking from office to office asking employees to go home to avoid the expense of overtime. This often means are exempt employees, are working more hours than bargained for. The workload is on pace this year to well exceed last years' record pace, which suggests the need for our proposed budget.

In conclusion, anything the legislature can do to momentarily wise allow Robin to hire more attorneys or enter into more contracts will be greatly appreciated by the local offices. If you have any questions, I will be happy to answer them.

Dated this 14th day of March, 2013.



Travis W. Finck
Supervising Attorney
Bismarck Public Defender Office
tfinck@nd.gov

SD 2022
 April 1, 2013
 Attached 1

March 2013

FEEs CHARGED FOR LEGAL COUNSEL FOR INDIGENTS

The schedule below provides information on fees that may be assessed for legal counsel for indigents in North Dakota compared to three other states-- Minnesota, Montana, and South Dakota.

| | North Dakota | Minnesota | Montana | South Dakota |
|--|--|------------------|--|--|
| Application fee | \$25 | \$75 | N/A | N/A |
| Court administration fee/other court costs | \$100 | Varies by county | \$10 | \$40 liquidated costs Court automation - \$17.50 to \$61.50 |
| Attorney costs | \$300 for misdemeanors \$525 for felonies | | \$250 for misdemeanor plea \$800 for felony plea Cost of counsel if case goes to trial | \$84 per hour |
| Victim compensation | | | | \$2.50 |

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2022 - Funding Summary

| | Executive Budget | Senate Version | House Changes | House Version |
|---|-------------------------|-----------------------|----------------------|----------------------|
| Commission on Legal Counsel for Indigents | | | | |
| Commission on Legal Counsel for Indigents | \$14,547,802 | \$14,560,287 | (\$378,925) | \$14,181,362 |
| Accrued leave payments | | | 116,872 | 116,872 |
| Total all funds | \$14,547,802 | \$14,560,287 | (\$262,053) | \$14,298,234 |
| Less estimated income | 2,501,677 | 2,502,051 | (7,877) | 2,494,174 |
| General fund | \$12,046,125 | \$12,058,236 | (\$254,176) | \$11,804,060 |
| FTE | 33.00 | 33.00 | 0.00 | 33.00 |
| Bill Total | | | | |
| Total all funds | \$14,547,802 | \$14,560,287 | (\$262,053) | \$14,298,234 |
| Less estimated income | 2,501,677 | 2,502,051 | (7,877) | 2,494,174 |
| General fund | \$12,046,125 | \$12,058,236 | (\$254,176) | \$11,804,060 |
| FTE | 33.00 | 33.00 | 0.00 | 33.00 |

Senate Bill No. 2022 - Commission on Legal Counsel for Indigents - Senate Action

| | Executive Budget | Senate Changes | Senate Version |
|---|-------------------------|-----------------------|-----------------------|
| Commission on Legal Counsel for Indigents | \$14,547,802 | \$12,485 | \$14,560,287 |
| Total all funds | \$14,547,802 | \$12,485 | \$14,560,287 |
| Less estimated income | 2,501,677 | 374 | 2,502,051 |
| General fund | \$12,046,125 | \$12,111 | \$12,058,236 |
| FTE | 33.00 | 0.00 | 33.00 |

Department 188 - Commission on Legal Counsel for Indigents - Detail of Senate Changes

| | Corrects Executive Compensation Package¹ | Total Senate Changes |
|---|--|-----------------------------|
| Commission on Legal Counsel for Indigents | 12,485 | 12,485 |
| Total all funds | \$12,485 | \$12,485 |
| Less estimated income | 374 | 374 |
| General fund | \$12,111 | \$12,111 |
| FTE | 0.00 | 0.00 |

¹ Funding is added due to a calculation error in the executive compensation package.

Senate Bill No. 2022 - Commission on Legal Counsel for Indigents - House Action

| | Executive Budget | Senate Version | House Changes | House Version |
|---|-------------------------|-----------------------|----------------------|----------------------|
| Commission on Legal Counsel for Indigents | \$14,547,802 | \$14,560,287 | (\$378,925) | \$14,181,362 |
| Accrued leave payments | | | 116,872 | 116,872 |
| Total all funds | \$14,547,802 | \$14,560,287 | (\$262,053) | \$14,298,234 |
| Less estimated income | 2,501,677 | 2,502,051 | (7,877) | 2,494,174 |
| General fund | \$12,046,125 | \$12,058,236 | (\$254,176) | \$11,804,060 |
| FTE | 33.00 | 33.00 | 0.00 | 33.00 |

Department 188 - Commission on Legal Counsel for Indigents - Detail of House Changes

| | Adjusts State Employee Compensation and Benefits Package¹ | Provides Separate Line Item for Accrued Leave Payments² | Total House Changes |
|---|---|---|----------------------------|
| Commission on Legal Counsel for Indigents | (262,053) | (116,872) | (378,925) |
| Accrued leave payments | | 116,872 | 116,872 |
| Total all funds | (\$262,053) | \$0 | (\$262,053) |
| Less estimated income | (7,877) | 0 | (7,877) |
| General fund | (\$254,176) | \$0 | (\$254,176) |
| FTE | 0.00 | 0.00 | 0.00 |

¹ This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent per year.
- Reduces the market equity component from 2 to 4 percent per year for employees below the midpoint of their salary range to up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

² A portion of salaries and wages funding from the general fund (\$113,366) and from other funds (\$3,506) for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees.

Sections are added to amend subsection 1 of Section 29-07-01.1 to change the indigent defense application fee from \$25 to \$35 and to add legislative intent that reimbursement for indigent defense costs assessed to indigents charged with a felony be increased from \$525 to \$575.