

2009 SENATE APPROPRIATIONS

SB 2023

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2023

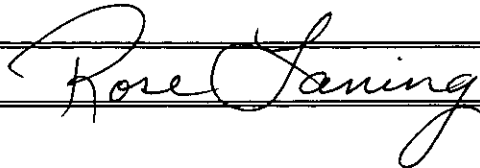
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 01-22-09

Recorder Job Number: 7543

Committee Clerk Signature



Minutes:

Chairman Holmberg called the committee hearing to order at 11:30 am in regards to SB 2023 concerning the Commission on Legal Counsel for Indigents.

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

(Written testimony # 1)

Chairman Holmberg suggested that on page 3, under the Budget Requests section, second paragraph, after the words "optional package", you should add the phrase "which was approved in the executive budget" otherwise, it sounds like you're asking for something optional that is already there. That is a term that OMB uses. It sounds like you're asking for more money than governor gave and that causes blood pressure problems.

Robin Huseby (Continuing reading from testimony - page 3)

Senator Christmann asked for clarification on the special funds.

Sandy Dies, Fiscal Analyst: I don't have the detail with me, but if I remember correctly, after the governors recommendation, after the 5 and 5, that we are anticipating a balance of \$1.3M that would still be remaining in that fund at the end of the biennium. I think that's about 12% of their overall operating costs.

Senator Robinson commended **Robin Huseby** for bringing agency online. On page 4, referencing complicated and difficult cases that could stretch budget your budget on a short term basis. If you have 3-4 cases in a short time, what options do you have?

Robin Huseby: I've tried to factor in a certain amount to try and alleviate those types of emergencies. If there were a series of cases, we would have the option of going to the emergency fund to ask for an increase in your authority to spend your special funds.

Chairman Holmberg: Some agencies come to the emergency commission for a \$600,000 kitty for last time. There is some flexibility.

Senator Krebsbach: I'm interested in knowing how many cases you deal with in each of the units in the state. Do you have that information?

Robin Huseby: For instance, Fargo has about 2700 cases; South Central about 2400 cases; Northeast Central district has about 750 cases; Minot about 750. So those are the types of numbers and if you want more detail, I can provide that later.

Senator Wardner: On page 4, you talk about 49% contracts with private attorneys, is work for people with low income the same as indigent counsel.

Robin Huseby: No, you have to be careful that you're not talking to someone who is doing Legal Services of ND work. You're talking about criminal work.

Chairman Holmberg asked if anyone else to testify.

Closed the hearing on SB 2023.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2023

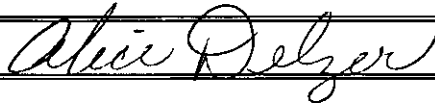
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-11-09

Recorder Job Number: 9275 (SB 2302, 2023, 2002 and 2385 on this job)

Committee Clerk Signature



Minutes:

Chairman Holmberg called the committee to order in reference to SB 2023 regarding to defraying expenses of the commission on legal counsel for indigents (10. 41)

Senator Christmann (12.02) presented amendment #98042.0101 to the committee and explained the amendments to them.

Senator Christmann moved the amendment # .0101. (13.45) Seconded by Senator Warner .

Senator Warner It is my understanding when this is set up that the people who are accepting responsibility on this understood that the financial officer would be within OMB and they were disalutoned that it was not and they found they were overwhelmed by the work that was involved which is why we recommended the financial officer. It was kind of disorientated to look at the amount of landmass that they expected Grand Forks to serve. It was the feeling of the subcommittee that if they would divide the work between 3 or 4 counties. (14.51)

Senator Mathern I understood that rational for 3 persons. If we don't have the three persons there how will they address the work load. Would they have money to do contrarcts.

Senator Christmann they would contract it and they have been doing that.

Senator Robinson I supported this from the get go. I share Senator Mathern's concern. This came up during the course of our discussion if we get into a tight budget situation if we ask

OMB what options they know that works because it is likely they will be back. I am very impressed with Robin and the work she has done. Their case load is growing. The Devils Lake thing is a difficult situation because they are driving a long, long time.

Senator Christmann In the Bottineau and Grand Forks districts you kind of wonder why they would send a lawyer from Grand Forks up to Bottineau the main office is just around the corner. We felt that they could make a go of it.

Senator Kilzer This is a growing item. I am sure there are some growing pains and you will know in two years.

Chairman Holmberg I would certainly go along with the amendment but I would agree with what previous speakers have said that I've been extremely impressed with Robin and the work she has done. When she was up in Grand Forks she was superb. We will take a vote on the amendment #98042.0101 removes 3 FTE's and leaves one, the financial person. All in favor say Aye, it carried.

SENATOR CHRISTMANN MOVED A DO PASS AS AMENDED. SECONDED BY VICE-CHAIRMAN BOWMAN. A ROLL CALL VOTE WAS TAKEN RESULTING IN 14 YEAS, 0 NAYS, 0 ABSENT. SENATOR CHRISTMANN WILL CARRY THE BILL.

Chairman Holmberg closed the hearing on SB 2023. (19.13)

98042.0101
Title. 0200
Fiscal No. 1

Prepared by the Legislative Council staff for
Senator Christmann
February 11, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2023

Page 1, line 12, replace "718,180" with "214,904" and replace "11,928,876" with "11,425,600"

Page 1, line 14, replace "752,788" with "249,512" and replace "2,453,493" with "1,950,217"

Page 1, line 16, replace "4.00" with "1.00" and replace "33.00" with "30.00"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98042.0101 FN 1

A copy of the statement of purpose of amendment is attached.

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2023 - Commission on Legal Counsel for Indigent - Senate Action**

	Executive Budget	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$11,928,876	(\$503,276)	\$11,425,600
Total all funds	\$11,928,876	(\$503,276)	\$11,425,600
Less estimated income	2,453,493	(503,276)	1,950,217
General fund	\$9,475,383	\$0	\$9,475,383
FTE	33.00	(3.00)	30.00

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

	Removes Funding for Public Defender Office¹	Total Senate Changes
Comm. on Legal Counsel for Indigents	(\$503,276)	(\$503,276)
Total all funds	(\$503,276)	(\$503,276)
Less estimated income	(503,276)	(503,276)
General fund	\$0	\$0
FTE	(3.00)	(3.00)

¹ This amendment removes 3 FTE positions and related operating costs for a new public defender office in Devils Lake.

Date: 2/11/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number 98042 on Amend. 0101

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Christmann Seconded By Warner

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner			Senator Robinson		
Senator Fischer			Senator Lindaas		
V. Chair Bowman			Senator Warner		
Senator Krebsbach			Senator Krauter		
Senator Christmann			Senator Seymour		
Chairman Holmberg			Senator Mathern		
Senator Kilzer					
V. Chair Grindberg					

Total Yes 1 yea voice vote No _____

Absent motion

Floor Assignment _____

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

Date: 2/11/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number 0101

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Christmann Seconded By Bowman

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer	✓		Senator Warner	✓	
Senator Christmann	✓		Senator Robinson	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Bowman	✓		Senator Lindaas	✓	
Senator Kilzer	✓		Senator Mathern	✓	
Senator Grindberg	✓		Senator Seymour	✓	
Senator Wardner	✓				
Chairman Holmberg	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Christmann

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

REPORT OF STANDING COMMITTEE

SB 2023: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2023 was placed on the Sixth order on the calendar.

Page 1, line 12, replace "718,180" with "214,904" and replace "11,928,876" with "11,425,600"

Page 1, line 14, replace "752,788" with "249,512" and replace "2,453,493" with "1,950,217"

Page 1, line 16, replace "4.00" with "1.00" and replace "33.00" with "30.00"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98042.0101 FN 1

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

2009 HOUSE APPROPRIATIONS

SB 2023

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2023

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 2/27/09

Recorder Job Number: 9876

Committee Clerk Signature	<i>Tonya Vaegh</i>
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Minutes:

Chairman Delzer opened the hearing on Senate Bill 2023. Roll was taken at a previous hearing.

Attached Testimony

Testimony of Robin Huseby- Attachment 2023.2.27.09A

Robin Huseby, Director of the Legal Counsel for Indigents presented her written testimony.

Vice Chairman Thoreson: The attorney's you are hiring, do they have experience or are they straight out of law school?

Robin Huseby, Director: It is a mix. We have a couple attorneys that were pretty much right out of law school but we always pair them up with more senior attorneys who have criminal law experience. I would say that the common denominator is that they love to do criminal law. Because you are not going to get somebody for this type of position that does not have a great interest in it. Most of them have experience.

Ms. Huseby continued her testimony on page two.

Chairman Delzer: Your \$2,829,557 in administration that includes the salaries for your attorney's correct?

Robin Huseby, Director: That is correct.

Ms. Huseby continued her testimony on page eight.

Chairman Delzer: When you say that you pay the attorneys \$65/hour you are talking when you hire a contract attorney?

Robin Huseby, Director: Yes. Either the contract attorneys or the off contract like if I give somebody a case, they get \$65/hour.

Chairman Delzer: What do you pay the ones that you have hired?

Robin Huseby, Director: The salaries range from \$45 up to \$62 for a supervising attorney. We pay a supervising attorney between \$56 and \$62. We pay the other people depending on experience anywhere from \$47 to \$55.

Chairman Delzer: Are they classified or unclassified?

Robin Huseby, Director: They are classified. The only people that are unclassified are I and my deputy.

Ms. Huseby explained the chart on page seven.

Chairman Delzer: The one that the Senate allowed you to add. All special funds, is that out of the fund that you are talking about that builds up at \$750,000/year?

Robin Huseby, Director: The special fund comes in. We get the first \$750,000 then the court improvement gets \$460,000 then we start splitting it. In a biennium our agency gets approximately \$1.7-1.8million each biennium.

Chairman Delzer: How long has that been in place?

Robin Huseby, Director: The \$100 court administration fee which is by far the more prolific of the two was enacted in 2003. The \$25 application fee was enacted in 2001.

Chairman Delzer: What is the history of the court improvement?

Robin Huseby, Director: They started that in 2003 and the Supreme Court administers it. They get the \$460,000 plus half after that of what is collected. I don't know how much they get a biennium. Probably not horribly off of what we get.

Chairman Delzer: The percentage would be about the same.

Representative Berg: First of all I would like to thank Robin for all of her hard work. One of my biggest fears in 2005 when this was set up is the Supreme Court did not want anything to do with it. The issue was to have a separation there between the defense and those that would be deciding the case. I was very fearful of having this entity out there kind of on its own. You have seven board members and yet I know the nature of those boards, so we have an entity here and again you have expressed one of the big problems on financial. Every one of these other agencies has financial systems set up checking, tracking and doing that and you have been really forced to do that on your own. Kind of in the bigger picture again rolling ten years down the road would it be more appropriate to have this under the Attorney General or under the Supreme Court? I would think now that it is established we can create an appropriate firewall but it just seems to me that there is a lot of shared services or shared knowledge that if they were a part of your effort it would benefit the efficiency.

Robin Huseby, Director: They are all good thoughts and one that has been thought of many, many times. You see the Attorney General is a direct conflict because they are a prosecutor and we are the defense. As far as the judges go, everywhere in the country this is happening in states where the judiciary is being separated from this conflict of interest. The judges don't want anything to do with it. The court system doesn't want to be back in the business of appointing attorneys.

Representative Berg: I understand that they don't want anything to do with it yet I am fearful that again it is probably the way that you have managed it that builds tremendous trust by me and how it is going but I just question that long term. We actually the bill when it passed put you under the Legislative Council because we didn't know where to put you and obviously that has been shifted around. Just kind of the other question that I have is of course prior to 2005 where we were contracting all of these out with local attorneys, here we get into a philosophical debate as well. I believe we should be contracting out as much as we can. Clearly \$65/hour is more expensive than \$60,000/year. Having said that these cases ebb and flow and we are not paying someone \$65/hour for 2000 hours. I guess I am very fearful long term that we are going to end up with an entity that has a large number of attorneys in it when we have the ability of some private sector attorneys to pick up some of the slack. You mentioned in your testimony that you would like to see it split 50/50. How many more FTEs would you need if it were to split 50/50?

Robin Huseby, Director: I don't have a number. I would not recommend FTEs in an area that we do not need them. The only place that I see another office going in is Devils Lake. That is the only region. The reason that I am not up here pounding the podium about the Devils Lake office is that I don't view it as being red alert that we have to do it because we do have people up there right now. I just see the trends up there that there is not private bar that want to take

cases at all. We have a green defense bar and they are getting older and I am just worried about what is going to happen. I don't know if that answers your question. When I said that I would like to see it 50/50 it was more of what I would like to see but I am not saying that we are going to do that.

Representative Berg: I guess I would like to know what that would mean if you want to take a look at that and say ok if we are at 50/50 this is what it would mean. Again everyone has a different perspective but one of the reasons I supported this was we had locations where they couldn't have any contract attorneys so there was a need to hire a full time one versus in markets where there are contract attorneys and part of my reasoning for this is I think the market in many of these communities certainly Fargo there is probably a lot of people willing to put part of their practice in this and they would probably keep the price down rather than drive the price up.

Robin Huseby, Director: You may know something that I don't know but it is not easy to find someone in Fargo to take contract cases. It is difficult. The problem with contracts is I can give you an illustration from your district when I first took over one of the contractors, most of these people tend to be private individuals not in a large firm, and one of the contractors got in some hot water and one of the first phone calls I got was that he had to drop off of the contract. He had 150 open cases. It cost us \$70,000 to farm that stuff out. That is one of the dangerous parts about having only contractors. If it was like it is now I would call my public defenders and say I know that this is going to stress you out but can you help us out and take these cases. That is just one example. It is not easy to find people in Fargo.

Representative Berg: Kind of talking big picture here and you are driven to make this work and do it as efficient as possible and I appreciate that. I am concerned a little bit in the bigger

picture and when you are no longer in this position and someone else is, what direction it will take.

Chairman Delzer: As a follow up to that, you have most of these people on contract so you just call them and tell them that the case is there. If you didn't have them under contract all of the time and yet you had a situation where you could put a case out and say we want to contract for this case and they could see where it was going to take them like 50 hours and they could decide on a case by case basis of taking it, how hard would it be to get them to take it? I think part of the problem that Representative Berg is saying is that when you have a full time contract out there with them, they have to dedicate that much of their time to it instead of using it to fill in time.

Robin Huseby, Director: If I understand your question, what you are suggesting that we do now. We have about twenty available attorneys around the state that will take a case when it comes in. They are not on contract they will just take a case and bill us out separately for us. So we do have those people. We tapped the well throughout the state. If there is anybody out there that wants to do indigent defense we put them on the list.

Chairman Delzer: How many do you have on contract and do you pay them a certain amount even when they do not have a case?

Robin Huseby, Director: We have 43 contractors throughout the state. We pay them a monthly contract amount. That amount is for however many cases they get. With that being said however one thing that we do that the Supreme Court didn't do and which the attorneys appreciate a great deal is that we watch their case load. I tell them from point blank, look if you are finding out in a year that you are getting more than 250-300 cases call me up and we will do something else. We enter in to a contract for the biennium with them. How the contract price is figured I am the product of inheriting it to some degree from the Supreme Court. What

we try to do is remember then numbers I am talking about, how much time did Joe work on a case? We talk all of those numbers and try to figure out an average number for a felony or a misdemeanor and then try to pay them \$65/hour. I can't the math here because I am a little nervous but we try to figure out if you were paid \$5000/month on a contract for this many cases you would try to figure it out at \$65/hour for those cases based on the hourly of what we know the cases worked on.

Chairman Delzer: To do that you must have to give them cases that are not in their area?

Robin Huseby, Director: With the contractors, they are always contracted in the area where they live but there are people out there that go from Minot to Dickinson. Yes there are those times. Let's say we have a big drug bust for instance that is the most typical example. Let's say we have a big drug bust in Grand Forks, our public defenders can only take one of the arrestees because they have a conflict on the other ones. Then we have a couple people on contract in Grand Forks, we give the other people to them. But let's say that we have a fourth defendant I might have to call somebody in Minot and they might have to go to Grand Forks.

Representative Berg: I hope we are not making you nervous.

Robin Huseby, Director: I was just telling Sandy that. I get nervous at this.

Representative Berg: You shouldn't be. You are doing an excellent job. So what you do if I understand this is you may go to an individual attorney and he agrees to \$2000/month and so you would pay them \$2000/month and then you would monitor their case load and depending on what they have done you would be adjusting that at \$65/hour. So I think that is a wonderful idea because then it allows some of those to again have a certain income stream that they can kind of bank on and so they would be willing to do things that they may not if it was just a \$65/hour once in a blue moon.

Robin Huseby, Director: Correct and we have five contractors in Fargo right now.

Representative Glassheim: Could you comment on in the long run on the big picture, I would expect that having a certain amount of stable staff who are doing this work because they want to do this work would be beneficial both to defendants and to the agency because they would be getting repeat kinds of cases and getting experience over several years as opposed to contractors who might come in and out. Am I right about that? Do you get savings in efficiencies and skills from having hired public defenders as well as contractors?

Robin Huseby, Director: The answer is a resounding yes. Part of the problems with contracts and I am not in any way denigrating any of the contractors in North Dakota because they are doing a lot of work with not a lot of pay but I have no control over the contractors. The only control I have is that contract. Even then you can spell out things but when you get the well he is not really doing a good job or the he is mediocre he is late for court; it is hard to deal with. With our full time employees, we have much more control over what they do, when they do it and how they do it. I feel much more invested in getting them trained. They do have a hire skill opportunity in my opinion which of course translates to better services to the client.

Chairman Delzer: How did we come up with the 125% of poverty?

Robin Huseby, Director: It is a pretty common amount that is used across the nation for various things, other programs too.

Chairman Delzer: Is there any kind of sliding fee scale?

Robin Huseby, Director: In North Dakota you either get an attorney or you don't. Then the issue comes in can the defendant afford to pay back some of his attorney fees and that is when the judge may look at some of those issues of well he is indigent but barely. He is close to the line. The judge may just make a mental note when this case is done let's have him in and talk about recoupment.

Representative Berg: I would like to take a different perspective on Representative Glassheim. I would contend that in part if we had 50 attorneys that work full time for indigent defense and they did that for their career of 30 years I think those people would have very good service. Having said that I think for the industry if you will of defense attorneys in North Dakota I think there is a better opportunity to provide that knowledge base beyond just this niche. If they contract out or if there is more movement through here so you have young attorneys that maybe come in and work a few years much the same as we have with DOT and they go out into private practice and they are available to help people with defense. I think you may see a situation where someone may have a legal situation and they work through your office with an assigned attorney, if that attorney is on a contract, maybe five years later they run into another problem but at that point they are at a different stage in life and they don't qualify they would have an attorney that they had a relationship with that would take their case. So I clearly understand from just this niche in this agency how it is very efficient to control all of your attorneys but I think for the again in part if you are concerned about people having options when hiring a defense attorney I think there is a benefit to having these contract attorneys doing this work or quite frankly having an environment where people are not necessarily lifers with the agency but move in and out. We should not be contracting with poor quality attorneys. I think that is one of the changes that you have made happen with your efficiency but what better to have someone contracted out that is one of the top defense attorneys helping someone that maybe qualifies for the indigent defense.

Robin Huseby, Director: You have brought up an excellent point. I will tell you that many times with these private contractors, we will take Steve Mottinger as an example in Fargo where a person will be deemed indigent and he goes in and talks to Steve and as legal problems go often times it is just one of many problems that you have. You might have

domestic or all kinds of things that mixed up. I will get a call from Mottinger and he will say you know what I talked to Joe and his family is hiring me because clearly he needs more help than just this so that is true.

Chairman Delzer closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2023

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/19/09

Recorder Job Number: 11315

Committee Clerk Signature

Tonya Voegle

Minutes:

Chairman Delzer opened the discussion of amendments for 2023.

Chairman Delzer: It has the equity in there that needs to come out. There is also the finance position. Committee members with what they have been doing are there a need for a position or is there need for them to hire some accounting?

Representative Dosch: I think just a part time bookkeeper is all they would need.

Representative Berg: I am not proposing any changes but I think its governance is set up to create problems down the road. It is an independent agency like the Racing Commission that we are extremely fortunate to have a good director and good people on there right now. But my fear is over time the only people that will serve on it will be people that have a vested interest and I just think it creates problems. Now having said that, I ruffled a few feathers by suggesting that there is some reason for a change. Again part of that is that if it were in the executive budget if it were attached someplace it would have accounting services that are already set up and they would not have to create their own position. If we don't move them as part of a larger entity they do need help with their accounting. One option would be to allow

them to contract out and not give them the FTE. If you didn't want to do the FTE but they are going to need something to take the pressure off their director to get these numbers.

Chairman Delzer: I don't disagree with that. Is there really a need for a full time accountant type person in what they do or is it a case of they could hire an accounting firm part time that would do it.

Representative Berg: There is almost \$200,000 in. I would think that this is more bookkeeping than a CPA role. My impression is that they kind of have some of these defenders on a stipend and at the end of the month they are paying them \$2000/month that they reconcile their hours against the stipend and they roll it forward. That is kind of where I think the time consuming part is. I am assuming their FTEs are on Central Personnel and their payroll is done so it is just the defenders.

Representative Meyer: I believe that. They have to keep account for every hour that they get paid and that is where the bookkeeping comes in to play.

Chairman Delzer: Again the question is do they have the work for 240,000 hours a year for a bookkeeper in this position or are we better off hiring an accounting firm to handle the books? Roxanne, why don't you go ahead and draft one for \$100,000 for contracting for financial needs?

Representative Dosch: Do you feel they need \$100,000 for that? That is \$50,000/year for a part time bookkeeper.

Representative Meyer: It is basically getting to be a full time bookkeeping position. That is what is taking a lot of time to do this.

Chairman Delzer: It certainly takes her a long time but if you had somebody that had the system and that it was their business I am not sure it would take that long. Representative Dosch do you have a different dollar figure that was appropriate?

Representative Dosch: I think \$50,000. That is \$25,000/year for a part timer to come in and have like a QuickBooks program and it would go pretty quick.

Roxanne Woeste, Legislative Council: They would not be able to use QuickBooks they would have to use the ConnectND system just like any other state agency.

Chairman Delzer: Do we have any other state agency that is doing financial work on a contract basis? Part of the problem is that I find it hard to believe that this needs to be a full time position just for this. Yet I think this is part of the deal that Representative Berg was saying if they were in combination with somebody somehow that they could have a current FTE that is working part time somewhere else if you could. Does it have to be a state employee to be on ConnectND?

Representative Meyer: I think you do.

Roxanne Woeste, Legislative Council: I know all of the new hires require a background check to have access. Perhaps if you don't like the full time would you like to consider a part time.

Representative Kaldor: I think Roxanne has, maybe, a point. I think we want this person to be under the state employment because of the security issues related to the case work. They are closing packages, doing audit reports, examining monthly reports and analysis and some of that material is pretty sensitive. I have been thinking about the possibility of maybe of realigning some of the responsibilities of the people who are there. Maybe with a half time FTE would give them the flexibility of rearranging a little bit so if they need full time financial services they can maybe do that and change the load of somebody else. I understand and am sympathetic with the thought but I think in this particular case maybe contracting won't work.

Representative Dosch: Half time sounds good.

Representative Berg: I am good with that. We are almost \$12million in money here. It is not like they can't find people.

Representative Glassheim: Just looking at the end of her testimony, she said that it is not just doing payroll but it is budgeting, payroll, closing packages, auditing, monthly reports, analysis of data sent in from contractors and public defenders which has an impact on how much we pay an hour for services. It is not just bookkeeping.

Representative Berg: I think some of those roles we still want her to be involved with. I think there is high level and then there is the mundane of going through these things.

Representative Glassheim: Reviewing the reports yes but making the reports up is more clerical.

Representative Berg: My personal frustrations and I remember back in 2003 when we put this in, the problem was and I am looking at the front page of the green sheet, the problem was that we couldn't get people to take the contracts in Williston. Now I see us with 33 full time people and again I guess I would like to maintain a balance between full time and part time somehow as we are moving forward.

Representative Kaldor: One thing that she says in her testimony that concerns me and it is something in the future I hope they address but in asking for the financial officer for their agency she states that none of the three persons in the Valley City office has much financial background. I think that is the issue. This office probably should have had someone with some financial background a long time ago. I don't mean to belittle her request or her requirements but I think that is something that I hope they can consider for the future.

Chairman Delzer: That is where the half time position would go. If they were realigning and if they wanted to hire somebody full time for this particular position and could realign somewhere else within the agency to free up a half time somewhere else they could do that too.

Representative Berg: Maybe more specifically I guess I would like an amendment that would say they would maintain a minimum of 50% contract work. My argument for that is if they have some of these attorneys on a stipend for \$2000/month I think they get a broader range of attorneys involved in this.

Chairman Delzer: Is there anything further? Committee members I think we are going to stop here for tonight. We still have 2024 which is the Racing Commission but there is some issues still being worked on there.

Chairman Delzer closed the discussion on Senate Bill 2023.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2023**

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: **1 April 2009**

Recorder Job Number: 11633 (79 to end)

Committee Clerk Signature



Minutes:

Chairman Delzer opened discussion of SB 2023.

It looks like what we have on the list is: remove the equity funding, finance position with three options, and a new section on contract services.

Representative Dosch: I think there was some comments and concerns brought up that it would be better if it's an FTE because they come under the state's liability on dealing with information—something like that. My other question is the difference between options c and d; why would d be more expensive. I think that that is turned around.

Chairman Delzer: It kind of looks that way to me if you are going to do a .6 position. I think we offered a .6 and .5. That's a removal out of the budget. You remove less.

(Unstructured discussion.)

Representative Dosch: It's not the money exactly but to have somebody on staff that has this capacity and they know what you do and they are there. It seems more stable to me to have a position rather than contract it out. You are better off having a person who knows the books and is working.

Chairman Delzer: Part of the issue is that there are 29 positions currently. This is raising three. It looks like the Senate removed all three of those positions. So there are 29 positions

there and what do you do if you give a .5 FTE, they might have to move a half time position to Valley City or something and that would work because they have the FTEs around. I guess I would feel comfortable with the half time FTE. You pay full benefits on that. Let's have a discussion on the section on the contract services. Representative Berg, I think that was your proposal that it be a minimum of 50% contract. Do we have any kind of numbers of whether or not they meet that right now?

?: I think they are at 60% contracting out now and 40%. . .

Chairman Delzer: This would not keep them from changing things but would keep them from adding a whole lot more staff in the future. Becky, do you need some guidance on that language on that. It's pretty straight forward.

Becky: If you are looking at using this section to go through future biennium, you would have to put it into code. This will only curtail it for the '09/'11 biennium.

Representative Berg: I'd prefer trying to keep a balance of 50:50 and putting it into code. On the other hand, it may be easier to do that now than two years from now. You would just write this to change statute then.

Becky: It would be a new section that keeps being added to every bill.

Chairman Delzer: Committee members we two ways to go about this. I think what we are probably thinking here is the equity money, the .5 FTE, and the section for a minimum of 50% contract service.

Representative Meyer: One of the big issues is that it is difficult to get people to fill the contracts.

Chairman Delzer: If they are at 60% now, the essence of that would be to try to keep them staying at somewhat the same as they are currently and not trying to add more FTEs.

Let's do this way. If everyone is comfortable with it, let's have a motion for the equity and the half time FTE if that is the option we want to take and we will take the others separate. We can vote on it and when the amendment comes back it will be ready for the full committee.

Representative Glassheim: I move the equity and the .5 FTE.

Representative Kempenich: Second.

(Unstructured discussion.)

A voice vote was taken and the amendment was adopted.

Representative Berg: If they have 33 employees at 50% they would be up about 41 or 41. They would hire 7 or 8 more people. My point is that if they were going to hire 50% of their work, they would probably be adding 8 – 10 more people. I don't think this really impacts them. What I heard in the testimony that I really like was the fact that they do stipends with their contracts so they will provide like a \$2000 a month stipend to an attorney which I think is a very good way to go and it brings in other legal people in to the system. **I would move the proposal that they would contract at least 50% of their caseload.**

Representative Meyer: I would hate to lock them in to a percentage. Why lock them in when what they are doing is working?

Representative Berg: Four or five years ago 100% of the work was contracted out. We've gone from that to where we are.

Representative Meyer: True, but there weren't any indigents that were having any one represent them.

Representative Kempenich: The judges weren't comfortable. They were finding attorneys but it was tough to do. People were getting represented but it was brought up that other states that went this way, went through a lawsuit and if I remember correctly it cost about them in the \$20 some odd million dollars. I think the intent isn't so much about the way it's operating

right now. We have a commission and a director who are very conscious of what they are doing and they have knowledge of why they did this. The problem is moving forward. It's like anything when people start losing the institutional knowledge of why they even did it; this is kind of the direction that we would like to see. That was brought up two years ago when we were discussing this was we wanted them to contract as much as possible and that's why it's working because you have a person with institutional knowledge of why they are doing it. I think it's moving forward that is more of a concern is on these percentages and how we would like this contracting to work.

Representative Glassheim: On their testimony I see we have currently 16 state-employed public defenders, 43 monthly contractors, and 20 conflict attorneys across the state so they are way under when you talk about the number of people. Another thing I found here is that they spent \$4.0 million on contracts during this biennium through January 1. Their total expenditures are about \$11 million. It looks to me like there is 70% contract people.

?: We wanted to keep them contracting as much as possible because we went from one to the other and we weren't spending anything. I think it's for the next people that move in to this is what this is trying to do whether right, wrong otherwise now.

Chairman Delzer: Becky, is there any way to put just Legislative Intent in the bill that would be written in to the bill again next time? I don't think it's ever been done. Another option would be to say it's the Intent of this Legislature that contracting services stay above 50% in future biennia, but that only stays for two years.

Representative Berg: I would prefer to have it as a statute for long term. I don't see it having any effect over the next two years. I see it more as a long-term thing.

Chairman Delzer: I don't either. If they come to the point where they want it to go below 50%, they would simply have to ask for that to be changed.

Representative Berg: I Move that.

Representative Kempenich: Second

A voice vote was taken. The amendment was adopted.

Chairman Delzer: So we have adopted those. Becky, would you run them together as one amendment. We have the amended bill. I think we could just as well kick this bill out.

Representative Berg: I move a do pass as amended.

Vice Chairman Thoreson: Second.

A roll call vote was taken: Yes: 7, No: 0, Absent: 1 (Kaldor)

Representative Berg will carry the bill.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2024

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11690

Committee Clerk Signature

Jeanette Cook

Minutes:

Chairman Delzer opened the discussion on Senate Bill 2024.

Chairman Delzer: I believe, last week we passed out two or three amendments. When we had that discussion didn't we settle on .0103? Rep. Berg, do you remember the differences in those?

Representative Berg: I believe .0103 transferred the pari-mutuel betting to the Attorney General's Office and then moved the Racing Commission into the Ag Commissioner's Office.

Chairman Delzer: I think .0103 was the one that ended up doing what we wanted to do.

Representative Berg: Just kind of a recap, I was concerned about the commission members feeling that they would not have the influence, so that is why I also proposed .0104 which would keep the commission independent but move the pari-mutuel over to the Attorney General. That didn't pass, so we went back to .0103. My primary concern in 03 was that the commission would still have total authority over those three funds. The funds wouldn't be in the role of the Ag Commissioner. I guess the other question is appointment of commissioners and that whole transition. We better take a look at that. It looks like they changed it to the Racing

Advisory Commission. I don't know if they will be real excited about that. I think we ought to call it the Racing Commission whether it is more advisory or not.

Representative Kempenich: Looking at this, why can't we just have this under...., whether it is advisory or not, those funds kind of come and go with what the Racing Commission does right now. If there is no money in them, it really isn't state money, per say, that they handle with that. The other thing I don't like is that the only place that the Ag Commissioner is the director would be more of an interest is if the Ag Commissioner and the Racing Commission puts some names together and then the Ag Commissioner appoints. I like the way in there. I don't know that they need a director. It is more of somebody to start the races. I think the Ag Commissioner could basically be the director of this, but he would have to hire an employee.

Chairman Delzer: Section four of .0103 actually says that the Ag Commissioner may appoint a director of racing.

Representative Berg: Can we just walk through each section here? I know it takes some time, but just to see if this is what we want to do. So the first section two is just definitions.

Vice Chairman Thoreson: It does remove the reference to commission. Is that correct?

Representative Berg: Yes.

Chairman Delzer: Later on it puts that back in, I believe.

Representative Berg: It defines racing as live horse racing. Then it talks about the promotion fund being administered by the Ag. Commissioner. I think we'd want that authority to the Racing Commission. On page 2-13.

Representative Thoreson: Why does it change the definition of racing from simulcast and also getting rid of the dog racing?

Rep. Berg: The intent is that the physical intent is the gambling stuff.... What you need in a horse race is someone to make sure that the jockeys are legal, the horses are legal, and

someone to license those and do that. The attempt was to separate those out, so the stuff that is by the ...like the pari-mutuel, like in the Holiday Inn, That was the attempt.

Let's walk through this. Section 3 changes it to an advisory commission. Section

Chairman Delzer: Are we satisfied with the advisory commission?

Representative Berg: I don't think so. I think that is negative.

Representative Kempenich: I would just as soon have them.... I don't think the Ag.

Commission want to become referee with the I think they need to fight amongst themselves with these funds, you know, and stuff on it. Because it is really their money. The purse fund is one thing, but the promotion fund and stuff like that I think we should stay....

Chairman Delzer: You want to leave that all up to the Racing Commission?

Representative Berg: We have the Board of Animal Health which is under the Ag.

Commissioner and really operates independently.

Chairman Delzer: And the Ag. Commissioner appoints them.

Rep. Berg: The Board of Animal Health is really appointed by groups within the industry.

Representative Meyer: I agree with Representative Berg and there wouldn't be a problem if we left this commission in place, so that they allocate the three funds. That is not where the controversy comes in. I do think that we need to retain them as a commission with the oversight from the Ag. Commission. I think that you will remove a lot of the problems and conflicts by doing it that way. I am not sure that the language does this. Basically, once you have this commission, that is under the Ag Commissioner, from then on, they allocate the people at the races who issue the licenses. They are always done on a contract basis now.

Representative Kempenich: I think basically that the Ag commissioner's role would be to receive reports from them.

Chairman Delzer: Do you want the Governor to appoint or do you want the Ag Commissioner to appoint the members?

Representative Kempenich: Right now it's the Governor that's appointing. I guess the Ag. Commissioner could appoint them. It isn't a big issue.

Chairman Delzer: The only thing that you would have to do in section three is to add 'in the Office of Ag Commissioner', so that it reports to the Ag. Commissioner. You would probably need to change 'the Governor', to 'Ag. Commissioner'. If you are going to have them report to the Ag. Commissioner, he needs to appoint.

Representative Kempenich: He needs some authority....

Representative Meyer: That is one of the complaints. If we could restructure that a little bit. Currently the Governor does these appointments. This board doesn't have anyone on it that has any interest or knowledge of the horse industry. They have never understood that, and I never have either. It causes a lot of problems.

Chairman Delzer: What we are going to do here is switch off of this to IT. I want to have Berg, Kempenich, and Meyer to have time to work on this. We'll work on this later.

Representative Kempenich: We can't get this done in 25 minutes.

Representative Meyer: We need to get the amendments right.

Chairman Delzer: I think what we want to do is make sure that the amendments are what we want.

2009 HOUSE STANDING COMMITTEE MINUTES

SB 2023

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: April 3, 2009

Recorder Job Number: 11716

Committee Clerk Signature

Janette Cook

Minutes:

Rep. Berg moved the amendment .0201 (Attachment A).

Rep. Meyer seconded the motion.

Rep. Berg summarized the amendments. They would remove the equity funding. There was a need for help in the financial area, so we put in a half time FTE for accounting. On the front page Section two would encourage them to contract out at least 50% of the legal work long-term. Currently they contract out about 60%. This is an entity that we started a couple of bienniums ago to provide defense for people that couldn't afford it. The request was for thirty-three FTEs. The other concern that was discussed in committee and is not in an amendment, was that this is a pre-standing entity that has a board that is made up of a couple of legislators and other people. It is not under an elected official. There is confidence in the way that it is being run, and it is efficient. But, long term we have to watch it and make sure that if they do have turnover in staff or other issues, we may want to look at aligning it with some agency or elected official.

A voice vote was taken on amendment .0201 for SB 2023.

The motion passed, and the amendment was adopted.

Rep. Berg moved a Do Pass as amended on SB 2023.

Rep. Delzer seconded the motion.

Rep. Wald: Is there a means test as to who qualifies to get the

Rep. Berg: There is, but I don't know the specifics of it.

Chm. Svedjan: Is this service growing? Did they talk about the utilization?

Rep. Berg: I would say yes. Was there pent up demand? We don't know. It should be leveling out. The bigger issue relates to before the Supreme Court dealt with contracting this work out. There were some Supreme Court cases that said, it's kind of like the fox in the hen house. If the Supreme Court is trying to try someone that is a criminal, they should not also be charged with providing defense for those criminals.

Rep. Delzer: (4:32) This was basically just pulled from the Supreme Court a short time ago. The key is that this is not much of an increase from the last time. There's quite a bit of turn back. We probably have a better handle on the budget needs this time. The manager is doing a good job, but the legislature is going to want to keep an eye on this in the future.

Rep. Kaldor: (5:26) I think they have had an increase in caseload, but I think it has the potential to level off. By providing these attorneys, which are means tested, (I think that it is 125% of poverty.) it streamlines the justice system. They don't get clogged up by cases in which they don't know what they are doing. In some respects it mitigates some of the things that might clog up the system.

Rep. Metcalf: (6:35) I've been asked by the individual that manages this, to ask if there is any reason you are going with a 50 percent contract versus one FTE. She maintains that with the contracted piece it causes her more work. Did you have a reason for that?

Rep. Berg: When you contract, that can ebb and flow based on the need. When we have a strong economy, we have less crime. When we have a poor economy, we have more crime. If there's not crime, and there is not work, it is easier not to do the contracting out.

The second reason is that the way they are doing their contracting is working with attorneys

throughout the state and providing a stipend. At the end of the month they would reconcile how much time that person has spent on a case. The contracting out helps to support our legal system throughout the state, especially in the rural areas. Then they will know that they will have some base income throughout the year. Four years ago, we contracted out 100 percent of this work. When this came to us, the problem area was Williston. They were having trouble contracting out and wanted to hire a person or two people. As this bill is amended there are 29.5 people. A balance is important to maintain, and therein is the reason to have it 50% contracting out.

Rep. Kreidt: (9:08) If someone qualifies for indigent funds and goes through the process, do the judges, as part of the sentence, make them pay back some of the funds, if at some point they become of the private sector and are doing OK?

Rep. Berg: My feeling is that there is not.

Rep. Kempenich: The indigents are charged a fee, but it's very minimal.

Rep. Kreidt: The judges could make that part of the sentence. If they do well, they could pay back part of the fees.

Chr. Svedjan: Does this bill have a fee source?

Rep. Kempenich: There is some. They have \$1.9 million in Special Funds that they are using.

Rep. Onstad: (10:55) On the green sheets, lines 4 and 5, it talks about decreasing funding due to public defender offices now being opened up in those various communities. How are those offices funded? Is that through the indigent defense fund?

Rep. Berg: Yes.

Rep. Kroeber: What is the contract hourly fee?

Rep. Berg: It varies with the community and the market. The number is \$65 sticks in my head.

Rep. Kempenich: It is \$65, but sometimes it gets more expensive.

Rep. Berg: We are not locking that dollar amount in statutorily. There is flexibility depending on what it takes in a particular market.

Rep. Kroeber: Jamestown is a contract place, and I think that has been working for them. It's important to make sure it stays high enough to keep the attorneys in Jamestown to handle those cases.

A roll call vote was taken on SB 2023 as amended. **Aye 23 Nay 1 Absent 1**

The motion passed.

Representative Berg will carry SB 2023.

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

House House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment

☐ Voice Vote

☐ Roll Call Vote

Motion Made By Representative Glassheim: Seconded By Representative Kempenich:

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Glassheim		
Vice Chairman Thoreson			Representative Meyer		
Representative Kempenich			Representative Kaldor		
Representative Berg					
Representative Dosch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Finance Position- .5 FTE

Remove Equity

Amendment Adopted

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

House House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment

☒ Voice Vote

☐ Roll Call Vote

Motion Made By Representative Berg: Seconded By Representative Kempenich:

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Glassheim		
Vice Chairman Thoreson			Representative Meyer		
Representative Kempenich			Representative Kaldor		
Representative Berg					
Representative Dosch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Regarding contract Services

Amendment Adopted

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

House House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

☐ Voice Vote

☒ Roll Call Vote

Motion Made By Representative Berg: Seconded By Vice Chairman Thoreson:

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Glassheim	X	
Vice Chairman Thoreson	X		Representative Meyer	X	
Representative Kempenich	X		Representative Kaldor		
Representative Berg	X				
Representative Dosch	x				

Total (Yes) 7 No 0

Absent 1

Floor Assignment Representative Berg:

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

VR
4/3/09
1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2023

Page 1, line 2, after "indigents" insert "; and to create and enact a new section to chapter 54-61 of the North Dakota Century Code, relating to contracting for public defenders"

Page 1, line 12, replace "214,904" with "115,500" and replace "11,425,600" with "11,326,196"

Page 1, line 14, replace "249,512" with "155,343" and replace "1,950,217" with "1,856,048"

Page 1, line 15, replace "(\$34,608)" with "(\$39,843)" and replace "9,475,383" with "9,470,148"

Page 1, line 16, replace "1.00" with ".50" and replace "30.00" with "29.50"

Page 1, after line 16, insert:

"SECTION 2. A new section to chapter 54-61 of the North Dakota Century Code is created and enacted as follows:

Contract services. The commission on legal counsel for indigents shall contract for public defender services at a minimum level of fifty percent of its caseload."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98042.0201 FN 1

A copy of the statement of purpose of amendment is attached.

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2023 - Commission on Legal Counsel for Indigent - House Action

	Executive Budget	Senate Version	House Changes	House Version
Comm. on Legal Counsel for Indigents	\$11,928,876	\$11,425,600	(\$99,404)	\$11,326,196
Total all funds	\$11,928,876	\$11,425,600	(\$99,404)	\$11,326,196
Less estimated income	2,453,493	1,950,217	(94,169)	1,856,048
General fund	\$9,475,383	\$9,475,383	(\$5,235)	\$9,470,148
FTE	33.00	30.00	(0.50)	29.50

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

	Removes Salary Equity Funding¹	Removes .5 FTE Position²	Total House Changes
Comm. on Legal Counsel for Indigents	(\$5,235)	(\$94,169)	(\$99,404)
Total all funds	(\$5,235)	(\$94,169)	(\$99,404)
Less estimated income	0	(94,169)	(94,169)
General fund	(\$5,235)	\$0	(\$5,235)
FTE	0.00	(0.50)	(0.50)

This amendment removes salary equity funding included in the executive recommendation.

² The finance-related FTE position included in the executive recommendation is reduced to a half-time position.

This amendment creates a new section to North Dakota Century Code Chapter 54-61 relating to contracting for public defenders.

Date: 4/3/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

Full House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .0201

Action Taken adpt amendment .0201

Motion Made By Burg Seconded By Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glassheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Voice Vote - Carries

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

Date: 4/3/09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

Full House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 20201

Action Taken No Pass as Amended by .0201

Motion Made By Berg Seconded By Delzer

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald		✓	Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew	✓		Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 23 No 1

Absent 1

Floor Assignment Rep. Berg

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

REPORT OF STANDING COMMITTEE

SB 2023, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (23 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2023 was placed on the Sixth order on the calendar.

Page 1, line 2, after "indigents" insert "; and to create and enact a new section to chapter 54-61 of the North Dakota Century Code, relating to contracting for public defenders"

Page 1, line 12, replace "214,904" with "115,500" and replace "11,425,600" with "11,326,196"

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Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98042.0201 FN 1

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

2009 SENATE APPROPRIATIONS

CONFERENCE COMMITTEE

SB 2023

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2023

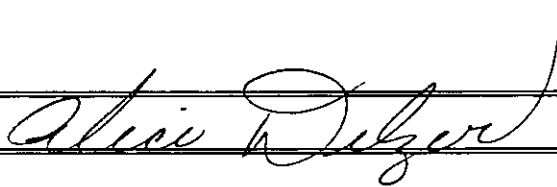
Senate Appropriations Committee

☒ Check here for Conference Committee

Hearing Date: 04-21-09

Recorder Job Number: 12078

Committee Clerk Signature



Minutes:

Chairman Christmann: opened the conference committee meeting at 5:30 pm in reference to SB 2023. Let the record show all conferees are present. They are as follows: Senators Kilzer, Warner; Representatives Berg, Thoreson, and Shirley Meyer. Becky Keller of Legislative Council and Sandy Deis of OMB were present.

Chairman Christmann: ask for explanation of the fairly brief amendments and explain why and the contract for public defenders.

Representative Berg: number 1 the salary equity we covered the last couple of days. The position that was added related to finance. I think we thought this position could be a half time position. My understanding of it was we need someone to monitor that, a lot of these attorneys area? the thought was I think the number was about \$100K added.

Chairman Christmann: sometimes in a big agency, you want someone to do a fractional job, are you envisioning one of the attorneys could work half time in law and half in CPA?

Representative Berg: Our vision was more of an accountant type person in the Devils Lake area and would receive full benefits but work half time. You bring up a bigger issue, I think this agency has done a great job, but it is a standalone intently, personal and larger staff, and so not that we are suggesting any changes in that but it does create a problem. It is a difficult

thing and what is the right number, who knows. But we felt this shows good faith bring in someone on a part time basis.

Senator Warner: when we have tried to hire accountants, half time bookkeeper, it is a complicated position, not someone you can just plug into the system, someone who is familiar with the law, the way things are structured from the legislature down to the director.

Representative Berg: here is our vision, a lot of it is monitoring the work the attorneys are doing and billing just handling the number of hours. Maybe we need more info about this position. We thought we need someone to help with the paper work. Someone needs to get their timesheets in and that they balance. Our understanding of that goal, might be someone more than a bookkeeper. The other option too, we debated providing dollars to contract out. The other factor if you look at the growth in gen fund dollars and the FTE's the state has been expanding.

Chairman Christmann: When you explored the possibility of contracting out, did you run into a road block? If there is not enough work for a FT, maybe contracting out the work would be a more viable option.

Representative Meyer: We did discuss that issue, as opposed to hiring a full time, from the testimony; we thought it would be harder to contract it out.

Chairman Christmann: get a little discussion on the other amendment.

Representative Berg: I think the again this is relatively a new agency, started in 2003 or 05 the genesis is all attorney contracted out. Part of these evolved, I think they have about 28 attorneys, of which 16 are employed as state public defenders, my understanding currently they have 40% employed and the rest contracted out. We want to keep a balance between for two (2) reasons: The 1st is a monthly contractor, it helps attorney across ND because they have a stable source of income and it also assures more attorney with experience in this area.

If our desire is to ensure that we have more attorneys with experience as public defenders, again we have 16 full time and 43 contractors. We could have 32 FTE and 0 contractors, but the feeling was we should have that balance.

Chairman Christmann: So you hit a real lull on these cases and over the course of 6 months or a year, your staff attorney are able to do the whole thing, does this law require them to pay these staff attorneys plus contract with some other people in order to have spent as much on contracts?

Representative Berg: I think this is the purpose of having this in here. We don't have 32 full-time employees and a workload reduces in half. So again part of the thought if there is an ebb in the flow in the workforce, having that balance. I never looked at it the other way, if the workload goes way down, then. However, the goal was more on a long term basis.

Chairman Christmann: it does seem like it is a big enough agency with that many employees could sure fluctuate real dramatically.

Senator Warner: I do agree with you there should be a mix. We don't allow them to hire the FTE rather than put something in statute. We should probably determine that by the board of directors. Keeps the power with the legislators to authorized FTE by the amount of money we allocate.

Senator Kilzer: Where did this idea come from? We didn't hear about it in the agency bill.

Representative Thoreson: it did come out of our committee. Our position we wanted to be more forward. We felt it was important that we place this.

Senator Kilzer: We have other agencies that have a combination of full time attorney and also contract part of their work so I don't see a problem here. For example, our own WSI, they have staff attorneys that work fulltime and they use an awful lot of outside attorneys also. I don't see the need for this.

Representative Berg: I'd have to step back on the premise of this again was the primary goal which was to separate this from the Supreme Court and having control over those people being defended. The whole idea of hiring contracting came with inability to contract with those in oil fields. Depending on the market, it is very easy to contract, but again what is the right balance? This is no more than a balance change. There are no other legislators on that board. It's not micro managing the board. It's an entity under the governor, or WSI, or AG. The citizen legislators who are on the board, there needs to be indigent defense.

Chairman Christmann: In your discussion on this, the 16 staff attorneys and contract attorneys, do they provide roughly 50% of the work or is it 60-40? What is the balance on that?

Representative Berg: 60% is done by contract. 40% is done by staff. So this amendment does not affect anything.

Chairman Christmann: The parameters of the discussion. Should we do away with some of the staff? The issue is whether we want to draw that line here; I don't think the issue is a significant part contracting them as opposed to hiring them.

Representative Berg: If you feel 100% should be employed, then think about that. Or if you think 100% should be contracted then think about that. What is best for people that need defense work around the state?

Chairman Christmann: It is our consensus that the balance was pretty good.

Senator Warner: Do we allow this agency to make decisions in their appropriation. We did not increase their FTEs. This was a pretty flexible responsible way of handling this.

Chairman Christmann: We are adding some FTE's.

Representative Berg: And we were to get more. You support contracting out.

Senator Warner: We legislate appropriation and authority to authorize FTEs.

Chairman Christmann: We're adjourned.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2023 Conference Committee

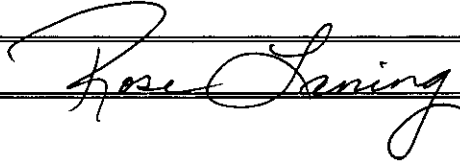
Senate Appropriations Committee

☒ Check here for Conference Committee

Hearing Date: April 23, 2009

Recorder Job Number: 12169

Committee Clerk Signature



Minutes:

Senator Christmann called the conference committee hearing to order on SB 2023 which concerns legal counsel for indigents. Minutes are to reflect all members present: **Senators Christmann, Kilzer, Warner and Representatives Berg, Thoreson and Meyer.**

Senator Christmann: This is still one of the few bills that do not have an equity issues. This bill addresses houses bookkeeping positions and the limits on how much of the case load is being done by contract defenders.

Senator Kilzer: I mulled on the contract services addition overnight and it's hard for me to see the necessity of that amendment. I suppose there is someone that benefits from that and I don't see that it would be the commission that would benefit by taking away their full choice of who they use to provide the service. Until I hear a better reason or plausible reason for that specific addition, I can't support it.

Senator Christmann: I spoke incorrectly. This one does have equity thing to address too.

Representative Berg: The issue in part relates to the fact that this is money straight from the general fund. We are at almost \$12 million in total funds, plus they have income. Obviously, this was lower last biennium and lower the biennium before, and also non-existent before that. The program obviously— the reason we have this I believe is the separation of Supreme Court who is ruling on the cases and having them linked with defense attorneys. There are kind of

two issues there. The first is issue is the reason this is stand alone. Second, the history up to 2 years ago was 100% contract, no full time employees and that really allowed the Supreme Court to ebb and flow the demand and the need. One of the arguments when this change was taking place, is there are areas where it was difficult to get contracts and so it made more sense to hire someone full time. Again, without any intent – so maybe the issue really is should we have 100% state employees defending these cases or not. Or should we contract out 100%. I think what I heard people saying, at our last meeting, that it makes sense to have a balance in there. Maybe that is the first premise, if people feel there should be a balance. If we don't agree on that, then obviously this is just an issue that we are not going to agree on. That is maybe my question, do you feel that all these people should be full time FTEs or do you feel we should have some contracted out.

Senator Kilzer: If you are asking me, I think it's working pretty well to let the commission have the discretion like they do now. If you are trying to protecting one group or another maybe that is a different situation, but to say that the majority of cases have to be contracted out then I don't think I have heard argument for that. If there is difficulty in getting contracts, why would you demand that more than half the cases be contracted? That would worsen problem.

7.23 Representative Berg: Again, these things are always interesting. Fifty percent is not a majority. It is an equal balance. Having said that, if you look at the trend: 0 FTEs, today 29 FTEs, 16 of them are attorneys. The question is where from the big picture do you want it to go? Do you want it to go to 90% or 100% FTES or not? I am not saying that it will. I am just saying that I think from a legislative policy standpoint, I believe very strongly that it is important to contract out much of these services. I have that belief for a couple of reasons. First, I think it is good for a legal profession. I think it enables people to receive a stipend if you will. Part of their practice would be doing this. I think it is good that especially in some of these

communities a lot of people don't do this work. It brings in a broader mix of attorneys with broader skills to help in some of these cases. Verses the alternative is having people fresh out of law school and this is their primary focus. I think it is more beneficial to have someone that may not take job full time but may be interested in contracting out 1000 hours a month or something like that. In my opinion you'll have some very outstanding attorneys doing this kind of like pro bono work and help. If we ended up hiring 100% of them and we ended up right now 40% of the work is by FTEs; if we hired them all out and we ended up with 40 full time FTE's, in my opinion, none of the other attorneys are going to do this kind of defense work. It would be a very small group that is going to do it. My question is, do you feel we should have them all hired or do you feel we should have them all contracted out? Which we don't have since we are not there.

Senator Warner: Some years ago I heard an argument by Pope John II arguing papal infallibility. I thought about what a strange thing for a person to argue. He said the point is that you become bound by the opinions of every previous pope. What we are really trying to do here has nothing to do with the balance between. What we are trying to do is insert into a policy portion of the century code a limitation on the ability of the appropriations committees, the future legislatures, to make determinations based upon what they think is the best balance in contracts. It is a false analogy to say that it's 100% contracted or 100% FTE's. That is a false analogy. We have intelligent appropriations committees that are going to be making arguments for the relative balance, a shift in the balance, back and forth as certain senses dictate over the long haul; over many bienniums. We really don't need to be locking this into code - that some set percentage that we can control from beyond the grave when none of us are here anymore.

Representative Berg: Apparently we are looking at this a lot deeper. I look at this as a trend that is happening and it is not going to happen and I think at some point, before we end up with 100%, 40 FTE's doing this legal work.

Senator Warner: If I could just respond, very briefly, studying it here in (inaudible). It's an agency that didn't exist two biennium ago. It makes no sense. The reason we made the policy decision to add FTEs is we couldn't find enough people to contract. We have developed a (inaudible) of people who are willing to work and develop expertise in the issue and are willing to take it on as a full time career opportunity.

Representative Berg: My only question is why did you remove the attorneys when it was in the Senate?

Senator Warner: We made a policy decision that we didn't need to open a second office. It was a policy decision that informed people in appropriations made.

Representative Meyer: In my observation, with some of the contracts being offered that there is a tendency for maybe a law firm, this doesn't happen in my area because we cannot get anyone to take these cases, however in a larger area where they take these contracts, they have younger people just coming out of law school that they tend to give these contract to verses the argument of – maybe against a little against what you were saying. Whereas if you have people that are fulltime FTE's that are dedicated to this service. You could get a little bit better defense for our indigents. I don't know. I have seen that some law firms do pick up these contracts to keep their junior employees busy and whether that allows for the best indigent defense, I am not sure.

14.10 **Representative Berg:** I think if I were an indigent and Vogel law firm picked up the contract and I am a new kid out of law school that is doing that work, I have a wealth of experience, litigation and all areas that can give me support. I want to make it clear that I have

no hidden agenda here. I just, probably in the bigger picture, have a fundamental desire that those jobs and roles that are available in the private sector; we should encourage state government to use those people in the private sector. Maybe that is why this is important to me. The reality is we can say what we want to say, but every year there will be requests for 3, 4, or 5 more FTEs. That will continue and at some point in time someone will come here and say they can do it cheaper with all FTEs. We will end up with it all FTE's. I think then you lose that ability to have some of this other experience that may come from that law firm. I think you reduce the pool of the people who are doing this and I do think in any profession you have an obligation to give back to your profession.

15.43 **Senator Christmann:** I think we're getting caught up in what is, in my opinion, the 2nd most important issue before us. In talking to Robin and looking around at some of the state agencies of similar size that have full time accountants, I really think that having an accountant on board that can do that work and free up her time so she can do what she needs to be doing, is the most important thing in here. I do hope that this impasse over this percentage doesn't derail that issue. As I listen here are good points on both sides. I don't want to see this go to all staff attorneys. I think that would be a big mistake on our part. However, if we don't have this language, that doesn't mean that some future session isn't going to do that. If they want to do that, I suppose at the same time they can grant additional FTEs and they can delete this language. I don't know that it is going to have a tremendous impact on preventing what we are trying to prevent. However, I don't think it hurts a great deal either. I am not seeing much more in this than a legislative intent thing that it continue to be a balanced approach between contract and FTE personnel taking care of this. Now we have about maybe 8-10 minutes left, and I would like to talk more about the accounting position.

17.51 **Senator Warner:** Sometimes we're so careful about saving money, and then other times we kind of make foolish decisions and it seems – clearly someone has to do the accounting work. So we have lawyers doing the accounting work. Do you want an accountant for around \$30,000 a year or do you want to hire an attorney at \$100/ hr.? To me it seems to be more economical to hire someone who has experience in bookkeeping. There is specialized kind of accounting that has to be done. The attorney who doesn't have an accountant is in the Secretary Of State. They have a separate office for that. It is headed by an elected official who loves accounting. He is complaining the work is burdensome. The indigent defense we're looking at contractors and offices that are all over the state and the information needs to be pulled together. I think this is a good conservative and economical decision to hire a physical manager for this office full time.

Senator Kilzer: On this issue, I agree with Senator Warner that an organization that has gone from practically nothing up to \$12 million in a few years deserves a full time physical manager. I certainly would want a full time person doing their books.

Senator Christmann: Representative Thoreson you've been quiet today.

Representative Thoreson: Yes I am.

Representative Berg: If we have 29 FTEs and we have 16 attorneys, it seems like we have fourteen other people on staff. Quite frankly, I am willing to be flexible in these things personally. You understand what is important to me. I think this balance is important. It is just a statute change. I probably have a more personal, longer term, historical perspective and care about this more than I should. I apologize for that. Having said that, that is why I feel strong about the first issue. The second issue, I would like to state again, I could not have asked for anything better from my perspective. I am very pleased with what they have done and where they have come. I would like to resolve this whole thing.

Senator Christmann: I fear that we can't resolve this at this meeting and I was hoping we could. Let me throw this out though. At some point, I don't know if the solution to the first issue is doing nothing, doing what you have here, the legislative intent paragraph, or what, but if it has to do with including this sentence in any way, let me find out if you would at least be comfortable with changing the very end of it to read 50% of its biennial case load or 50% of its caseload per biennium.

Representative Berg: I am not hung up on this and again these conference committees are so to me a little bit comical is a sense. We always take whatever side we want and fight like it is a life or death issue. There is no way for the foreseeable future that they will ever have 50% because we have not appropriated people. I am fine with that. I am not looking at some tracking thing that is going to keep track of it every month or every week or anything like that.

Quite frankly I wouldn't have a problem with giving an FTE for the financial. What we did I think with a half FTE and full benefits – we are going to add \$100,000 for the other half. I think the total we are spending is probably \$70 per hour for this position. The only other thing is the equity and I think there is an agreement on removing the equity. If you were open to that as amendment, I'd be fine with that as an amendment.

(The committee confers amongst themselves)

Senator Christmann: The House recedes from House amendments and further amends by eliminating the equity part and adding the finance person as full time and the biennial part.

Representative Berg: Moved the amendments.

Representative Meyer: Seconded.

A voice vote was taken. The vote was unanimous.

Senator Christmann closed the hearing on SB 2023.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2023

That the House recede from its amendments as printed on page 1249 of the Senate Journal and page 1180 of the House Journal and that Engrossed Senate Bill No. 2023 be amended as follows:

Page 1, line 2, after "indigents" insert "; and to create and enact a new section to chapter 54-61 of the North Dakota Century Code, relating to contracting for public defenders"

Page 1, line 12, replace "214,904" with "209,669" and replace "11,425,600" with "11,420,365"

Page 1, line 15, replace "(\$34,608)" with "(\$39,843)" and replace "9,475,383" with "9,470,148"

Page 1, after line 16, insert:

"SECTION 2. A new section to chapter 54-61 of the North Dakota Century Code is created and enacted as follows:

Contract services. The commission on legal counsel for indigents shall contract for public defender services at a minimum level of fifty percent of its biennial caseload."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98042.0202 FN 1

A copy of the statement of purpose of amendment is attached.

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2023 - 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	\$11,928,876	\$11,425,600	(\$5,235)	\$11,420,365	\$11,326,196	\$94,169
Total all funds	\$11,928,876	\$11,425,600	(\$5,235)	\$11,420,365	\$11,326,196	\$94,169
Less estimated income	2,453,493	1,950,217	0	1,950,217	1,856,048	94,169
General fund	\$9,475,383	\$9,475,383	(\$5,235)	\$9,470,148	\$9,470,148	\$0
FTE	33.00	30.00	0.00	30.00	29.50	0.50

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

	Removes Salary Equity Funding¹	Total Conference Committee Changes
Comm. on Legal Counsel for Indigents	(\$5,235)	(\$5,235)
Total all funds	(\$5,235)	(\$5,235)
Less estimated income	0	0
General fund	(\$5,235)	(\$5,235)
FTE	0.00	0.00

¹ This amendment removes salary equity funding included in the executive recommendation, the same as the House version.

This amendment creates a new section to North Dakota Century Code Chapter 54-61 relating to contracting for public defenders. The House also added this section.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number SB 2023 (, as ~~(S)~~ engrossed)

Date: April 23, 2009

Your Conference Committee Senate Appropriation

For the Senate:

For the House:

	YES / NO			YES / NO	
<u>Christmann</u>			<u>Berg</u>		
<u>Kilger</u>			<u>Thoreson</u>		
<u>Warner</u>			<u>Meyer</u>		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1249 - _____

_____, and place _____ on the Seventh order.

_____, adopt ~~(further)~~ amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) SB 2023 was placed on the Seventh order of business on the calendar.

DATE: April 25, 2009

CARRIER: Christmann

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep Berg

SECONDED BY: Rep Meyer

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

SB 2023, as engrossed: Your conference committee (Sens. Christmann, Kilzer, Warner and Reps. Berg, Thoreson, S. Meyer) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1249, adopt amendments as follows, and place SB 2023 on the Seventh order:

That the House recede from its amendments as printed on page 1249 of the Senate Journal and page 1180 of the House Journal and that Engrossed Senate Bill No. 2023 be amended as follows:

Page 1, line 2, after "indigents" insert "; and to create and enact a new section to chapter 54-61 of the North Dakota Century Code, relating to contracting for public defenders"

Page 1, line 12, replace "214,904" with "209,669" and replace "11,425,600" with "11,420,365"

Page 1, line 15, replace "(\$34,608)" with "(\$39,843)" and replace "9,475,383" with "9,470,148"

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Contract services. The commission on legal counsel for indigents shall contract for public defender services at a minimum level of fifty percent of its biennial caseload."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98042.0202 FN 1

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

Engrossed SB 2023 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

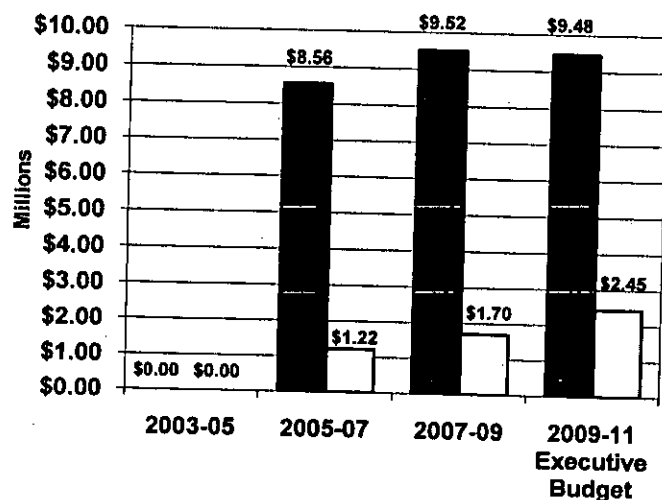
SB 2023

Department 188 - Commission on Legal Counsel for Indigents
Senate Bill No. 2023

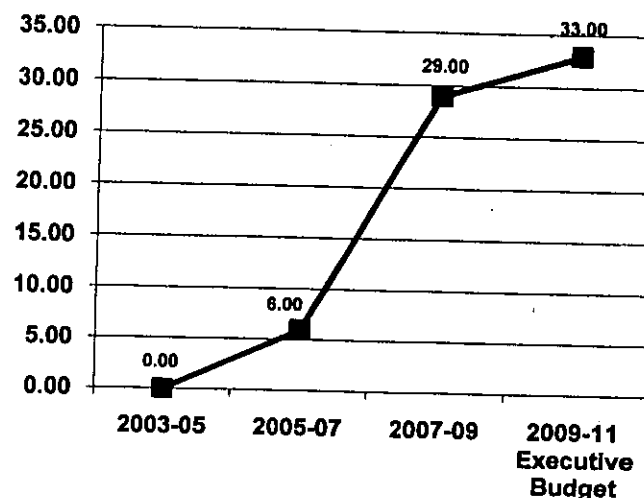
	FTE Positions	General Fund	Other Funds	Total
2009-11 Executive Budget	33.00	\$9,475,383	\$2,453,493	\$11,928,876
2007-09 Legislative Appropriations	29.00	9,517,522	1,700,705	11,218,227 ¹
Increase (Decrease)	4.00	(\$42,139)	\$752,788	\$710,649

¹The 2007-09 appropriation amounts include \$7,531 from the general fund for the agency's share of the \$10 million funding pool appropriated to the Office of Management and Budget for special market equity adjustments for classified employees.

Agency Funding



FTE Positions



■ General Fund □ Other Funds

Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2009-11 Executive Budget	\$9,475,383	\$0	\$9,475,383
2007-09 Legislative Appropriations	9,517,522	0	9,517,522
Increase (Decrease)	(\$42,139)	\$0	(\$42,139)

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. Provides funding to address salary equity issues (\$4,035) and related second-year salary increases (\$1,200)	\$5,235		\$5,235
2. Adds funding for 1 FTE finance position		\$188,337	\$188,337
3. Adds funding for 3 FTE positions to open a new public defender office in Devils Lake (\$414,766) and related operating expenses (\$88,510). The Senate removed these FTE positions and related funding.		\$503,276	\$503,276
4. Decreases funding for contract services due to public defender offices being established in Minot, Williston, Grand Forks, Dickinson, Bismarck, and Fargo	(\$484,304)	(\$438,825)	(\$923,129)
Decreases funding from the general fund for administration due to public defender offices being established in Minot, Williston, Grand Forks, Dickinson, Bismarck, and Fargo	(\$376,620)		(\$376,620)
6. Funding source change from the general fund to the indigent defense administration fund	(\$500,000)	\$500,000	\$0

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, additional amounts are deposited equally into the two funds.

Major Related Legislation

No major legislation is currently under consideration affecting this agency.

ATTACH:1

STATEMENT OF PURPOSE OF AMENDMENT:**ate Bill No. 2023 - Funding Summary**

	Executive Budget	Senate Changes	Senate Version
Commission on Legal Counsel for Indigent			
Comm. on Legal Counsel for Indigents	\$11,928,876	(\$503,276)	\$11,425,600
Total all funds	\$11,928,876	(\$503,276)	\$11,425,600
Less estimated income	2,453,493	(503,276)	1,950,217
General fund	\$9,475,383	\$0	\$9,475,383
FTE	33.00	(3.00)	30.00
Bill Total			
Total all funds	\$11,928,876	(\$503,276)	\$11,425,600
Less estimated income	2,453,493	(503,276)	1,950,217
General fund	\$9,475,383	\$0	\$9,475,383
FTE	33.00	(3.00)	30.00

Senate Bill No. 2023 - Commission on Legal Counsel for Indigent - Senate Action

	Executive Budget	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$11,928,876	(\$503,276)	\$11,425,600
Total all funds	\$11,928,876	(\$503,276)	\$11,425,600
Less estimated income	2,453,493	(503,276)	1,950,217
General fund	\$9,475,383	\$0	\$9,475,383
FTE	33.00	(3.00)	30.00

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

	Removes Funding for Public Defender Office¹	Total Senate Changes
Comm. on Legal Counsel for Indigents	(\$503,276)	(\$503,276)
Total all funds	(\$503,276)	(\$503,276)
Less estimated income	(503,276)	(503,276)
General fund	\$0	\$0
FTE	(3.00)	(3.00)

¹ This amendment removes 3 FTE positions and related operating costs for a new public defender office in Devils Lake.

SENATE BILL 2023-APPROPRIATIONS COMMISSION ON LEGAL COUNSEL FOR INDIGENTS-DEPT. #188

BACKGROUND

Our commission and agency was established as an executive branch agency in 2005 pursuant to §54-61-03(f) of the North Dakota Century Code. (Attachment 1) . The 7 (seven) commission members are appointed by the Supreme Court, Governor's office, State Bar Association, and Legislative Council. They serve on a staggering basis. (See Attachment II-current commission members). Prior to 2005, all indigent defense services were administered by the North Dakota Supreme Court and the 7 (seven) judicial districts. After repeated study by the indigent defense task force and state legislature, and after the state Bar Association commissioned the an analysis of the system by the Spangenburg Group, our agency was formed. The commission first met in August of 2005, and our administrative office was opened in Valley City. I was hired in November, 2005, and we took over the state system in January of 2006. In 2006 we opened 3 (three) public defender offices (Dickinson, Minot and Williston), in 2007 opened up the Grand Forks office, and in 2008 opened up the Fargo and Bismarck office. During the last biennium and during the present biennium we have been working toward meeting the mandates as set forth in the statute to create and sustain a system for the delivery of legal services in indigent criminal and juvenile cases around the state.

Our agency is currently fully staffed with 29 employees; 3 in the Valley City administrative office, 3 in the Williston office, 3 in the Dickinson office, 5 in the Minot office, 5 in the Bismarck office, 5 in the Grand Forks office, and 5 in the Fargo office. Pursuant to the legislation in 2007 we had been allowed to add 10 (ten) employees going from 19 to 29 FTE's. I have attached Attachment III which shows where our public defender offices are located.

PROVIDED SERVICES

Our services consist of providing legal counsel to those persons deemed indigent in criminal, juvenile, and some certain civil matters. Indigency is a finding made by a Judge using the Federal Poverty Guidelines. In ND, if your household earns less than 125% of the Federal Poverty Guidelines, you qualify for a free attorney. The person applies by filling out an application at the court, and the Judge or Clerk reviews the indigency status and contacts us, or

our designee, for an attorney appointment. To give you an example of who might be eligible for a free attorney, if the gross annual income of a household with 3 persons living there was less than \$22,000.00, one of your household members would qualify as indigent.

We provide those services from both private bar contractors, and full time public defenders. Our eventual goal would be to provide about half the services by each group. In indigent defense language we have three different types of providers all doing the same basic work; we have **public defenders**, who are our full time attorneys. We have **contractors**, who are private attorneys contracted with us on a monthly basis to take cases in a certain district, and we have **conflict attorneys**, who are also private attorneys who take the cases that the other two groups have a conflict with. We pay conflict attorneys the rate of \$65.00 an hour and this amount is about mid-point for what assigned counsel rates are around the country. We currently have 16 full time public defenders, 43 monthly contractors, and approximately 20 conflict attorneys across the state.

Our Valley City administrative office receives and authorizes payment of bills, performs human resource duties such as handling information on employee and personnel issues, leave and benefits, is in charge of procurement, and in all other ways administers the state-wide program.

In the State of North Dakota, we handle approximately **9500 (ninety-five hundred)** case assignments. Approximately 82% of those are criminal matters, and 17% are juvenile matters. Of the criminal matters, approximately 60% are felonies and 40% are misdemeanors. We have a smattering of civil cases which, by statute or rule, involve the availability of a free attorney. We did not seem much of a change in the number of case assignments from 2007 to 2008. We handle up to half the filed criminal cases in some jurisdictions.

FUNDING AND BUDGET ISSUES

Funding Sources

We are funded by general fund monies and special fund monies. The Special Fund money is derived from the collection of a \$100.00 court administration fee the clerks of courts collect from every criminal defendant coming through District Court. §29-07-01.1, North Dakota

Century Code. (Enacted in 2003) We also get an application fee for those who apply for an attorney, which is in the amount of \$25.00. §29-26-22, North Dakota Century Code. (Enacted in 2001) The Judge can waive both fees in exigent circumstances. The first \$750,000.00 of the court administration fee is given to the Commission on Legal Counsel for Indigents, the next \$460,000.00 collected is put into the "court improvement fund" for the benefit of local courthouses, and the money collected thereafter is split equally between us and the court improvement fund.

Budget Requests

For the current biennium we had a general fund allocation of \$9,517,552, a special fund allocation of \$1,700,707, for a total budget of **\$11,218,259**. For the 2009-2011 biennium we are not asking for an increase in general fund dollars. The Governor's recommended budget is \$9,475,383 in general fund dollars, and \$2,453,493 from special fund dollars, for a total budget of **\$11,928,876**.

We are seeking legislative approval for an "**optional package**" for the addition of 4 (four) full time employees for our agency during the next biennium. We are not asking for a general fund increase for these FTE's. One of those employees would be a financial officer for our agency. We have felt the need to have this FTE in our agency for some time, as none of the three persons in the Valley City office have any financial background. Although our agency is "small" compared to some of the others, nonetheless we need a budget and financial person on board. We have cobbled together some help from an individual to enter the budget the last two times on BARS, but this person will not be available to us any longer. We would also use this Financial Officer to assist with case information analysis and case load studies.

The other three slots would be for a possible public defender office in the Northeast Judicial District, an 11 (eleven) county area ranging from Renville County (north of Minot) to Pembina county on the Minnesota border. We have been in contact with attorneys and Judges in the Devils Lake/Grafton area explaining that we may be looking to add an office in that area. The Northeast Judicial District is a district which concerns me for the future, as we have a very

difficult time finding attorneys to take criminal cases in that district, and we have lost one of our major contractors, who died, and we operate there knowing full well that the loss of another major contractor could create an emergency situation.

One budget issue which is disconcerting is the problem of major case events occurring in a month which can cause spending spikes. We can go from month to month with fairly consistent spending, and then wham, have a huge case come in (mainly murders or gross sexual impositions) that needs to be handled by conflict counsel on an hourly basis. This case may cost \$25,000-\$60,000.00 or more. No one can anticipate how many times that may happen in a year.

Agency Expenditures

Our agency expenditures is split into four programs. We have the **District** program. That includes expenses for conflict attorney assignments, and accompanying expenses, in district court adult cases. We have the **Juvenile** program. That includes expenses for conflict appointments, and accompanying expenses, for juvenile district court cases. We have the **Contract** program. This includes the expenses for all monthly contract attorneys, and accompanying expenses. Lastly, we have the **Administration** program. This includes expenses for salary and overhead expenses for state employed public defenders and staff, and the main administrative office.

On an average, we spend about 49% of the expenditures on contracts with private attorneys and associated costs, 41% on Administration (which includes the public defender salary and operating expenses), and 10% on District and Juvenile expenses.

ACCOMPLISHMENTS FOR THE 2007-2009 BIENNIUM

1. **Case Reporting System and website**. We have now been utilizing our case reporting system for over one year. We developed the reporting system with the help of our state IT department. Attorneys now use the web, with a password, to enter information about the case they are assigned, and enter information when it is closed, including how many hours they spent on the case assignment. This case reporting system replaced a paper system where attorneys across the state were sending in stacks of case closing forms which we then had to enter on a

spreadsheet. We want to more fully utilize the data from this system to analyze case management issues for our attorneys.

Our website contains policies, standards, forms and information about our agency. www.nd.gov/indigents/ We update the website as changes occur.

2. **Audit.** We underwent our first audit, and received no formal recommendations. In the management letter, the state auditor's office made several suggestions, and we have implemented all the ones we were able to at this time. We will have all of the suggestions taken care of by the next audit period., including adopting a Business Code of Ethics.

3. **Performance Standards.**

We have complied with our statutory requirement and have adopted attorney performance standards for attorneys taking on criminal matters and juvenile matters. These standards are essential to the development of a criminal justice agency and we are very proud of them. They are available on our website.

4. **Opening of offices.**

In 2008 we opened up the Bismarck and Fargo office and will be fully operational in those two spots by February, 2009. Those would be our 5th and 6th public defender offices opened in the State of North Dakota. We will be still transitioning out contractors and transitioning in public defenders until at least June of 2009, so there will be some costs existent during this time period that will not be present during the next biennium.

The benefits of having public defender offices is very evident when they open; having the six around the state gives us flexibility in assigning out conflict cases. For example, let us say we have a murder case in Minot that the Minot public defender cannot take due to a conflict. Instead of having to hire an attorney to take the case on an hourly basis, we can reach out and find out if an attorney in one of our other offices can take the case. This approach does not always work but we have, in fact, done this on three different occasions. . The other benefit of public defender offices is that we have an employer-employee relationship with the staff and can hence mandate things like training, accountability to court staff, and professional conduct. With contractors or conflict counsel, all we have is the contract terms to use as leverage if something is not going right. Lastly, and more importantly, is that public defenders are only doing public

defense work; they are not worried about paying the office overhead, their private clients, or how to handle conflicts. Thus, the clients receive good, consistent service from them.

AREAS OF CONCERN

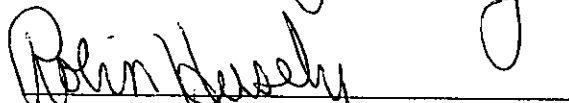
One problem to report is the looming problem in the oil patch regions with salaries being outmatched by oil related positions. We have the availability of retention bonus' to deal with this issue, in part. This problem is one that I believe all state agencies face. For an example, we were hiring a part time secretary in Williston. Normally we pay a part time person around \$10 an hour. We had to pay more as places like the gas stations were advertising for part time help at the same rate. Some of our attorneys have been approached to do oil and gas title work and have fortunately declined the offer to date.

I mentioned about our need for a financial officer. I believe this addition will relieve much concern and worry over whether we are getting things done in a timely and efficient matter when it comes to budget issues and financial matters.

One issue we continually battle is **case load management** for attorneys across the state. We do not want our attorneys overloaded with cases as it is not good for the attorney or for the client. That was one of the major complaints about the indigent defense system prior to our agency taking over. Therefore, we have methods in place, and are working on other systems, to reduce case load or better support those attorneys with a high case load. Some of those partial solutions are assigning out new cases, assigning appeals and post-conviction matters to separate counsel, providing investigative services for attorneys on cases, and adding contracts in affected regions.

I remain available for any questions or comments.

Dated this 10 day of January, 2009



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

CHAPTER 54-61
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

54-61-01. Commission on legal counsel for indigents - Membership.

1. The commission on legal counsel for indigents is established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for those individuals determined by the court to be eligible for and in need of those services.
2. The commission consists of the following members:
 - a. Two members appointed by the governor, one of whom must be appointed from a county with a population of not more than ten thousand.
 - b. Two members of the legislative assembly, one from each house, appointed by the chairman of the legislative council.
 - c. Two members appointed by the chief justice of the supreme court, one of whom must be appointed from a county with a population of not more than ten thousand.
 - d. One member appointed by the board of governors of the state bar association of North Dakota.
3. Appointing authorities shall make their initial appointments to the commission before August 1, 2005.
4. Initially, as determined by lot, one member will serve for one year, three members will serve for two years, and three members will serve for three years. At the expiration of the initial terms, the appointing authorities designated in subsection 2 shall make appointments for three-year terms. A member may not serve more than two consecutive three-year terms plus any initial term of less than three years.
5. Individuals appointed to the commission should have experience in the defense of criminal cases or other cases in which appointed counsel services are required or should have demonstrated a commitment to quality representation in indigent defense matters. Membership of the commission may not include any individual, or the employee of that individual, who is actively serving as a judge, state's attorney, assistant state's attorney, contract counsel or public defender, or law enforcement officer.
6. A member of the commission is entitled to reimbursement for travel and expenses as provided by law for other state officers. If not otherwise employed by the state of North Dakota, a member is entitled to receive per diem compensation of sixty-two dollars and fifty cents for each day devoted to attending meetings or performing other duties relating to the official business of the commission.
7. One of the two appointees of the chief justice, as determined by the chief justice, shall convene the commission's first meeting no later than August 15, 2005. The members of the commission shall select the chairman of the commission within thirty days after the commission's first meeting and annually thereafter.

54-61-02. Commission responsibilities.

1. The commission shall:

- a. Develop standards governing the delivery of indigent defense services, including:
 - (1) Standards governing eligibility for indigent defense services;
 - (2) Standards for maintaining and operating regional public defender offices if established;
 - (3) Standards prescribing minimum experience, training, and other qualifications for contract counsel and public defenders;
 - (4) Standards for contract counsel and public defender caseloads;
 - (5) Standards for the evaluation of contract counsel and public defenders;
 - (6) Standards for independent, competent, and efficient representation of clients whose cases present conflicts of interest;
 - (7) Standards for the reimbursement of expenses incurred by contract counsel; and
 - (8) Other standards considered necessary and appropriate to ensure the delivery of adequate indigent defense services.
- b. Establish and implement a process of contracting for legal counsel services for indigents.
- c. Establish public defender offices in the regions of the state as the commission considers necessary and appropriate.
- d. Establish a method for accurately tracking and monitoring caseloads of contract counsel and public defenders.
- e. Approve and submit a biennial budget request to the office of the budget.
2. Upon the request of a county or city, the commission may agree to provide indigent defense services in the county or city for those cases in which the county or city is otherwise required to provide such services. Moneys received by the commission in accordance with an agreement under this subsection must be deposited in the indigent defense administration fund.
3. The commission shall adopt rules for the exercise of its authority under this chapter in a manner generally consistent with the notice and comment provisions of section 28-32-11.

54-61-03. Commission director - Responsibilities.

1. The commission shall appoint a director who must be chosen on the basis of training, experience, and other qualifications considered appropriate. The director must be an attorney licensed and eligible to practice law in this state at the time of appointment and at all times during service as director. The director may be removed for cause by a majority vote of commission members.
2. The director shall:
 - a. Assist the commission in developing standards for the delivery of adequate indigent defense services;

- b. Administer and coordinate delivery of indigent defense services and supervise compliance with commission standards;
- c. Recommend the establishment of public defender offices when considered necessary and appropriate to the delivery of adequate indigent defense services;
- d. Conduct regular training programs for contract counsel and public defenders;
- e. Subject to policies and procedures established by the commission, hire the professional, technical, and support personnel, including attorneys to serve as public defenders, considered reasonably necessary for the efficient delivery of indigent defense services;
- f. Prepare and submit to the commission a proposed biennial budget for the provision of indigent defense services; an annual report containing pertinent data on the operation, needs, and costs of the indigent defense contract system and any established public defender offices; and any other information as the commission may require;
- g. Submit the annual report required under subdivision f to the legislative council; and
- h. Perform other duties as the commission may assign.

54-61-04. Records, files, and information - Accessibility - Confidentiality. Any file, record, or information regarding representation of a defendant under sections 54-61-01 through 54-61-03 which are attorney work-product or otherwise subject to any attorney-client privilege are confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission. Information or records obtained by the commission relating to allegations of misconduct by an attorney in the employ of, or providing indigent services for, the commission are exempt from disclosure except as otherwise provided in rules adopted by the commission unless and until the matter is referred for formal disposition under rules adopted by the supreme court.

CURRENT COMMISSION MEMBER-COMMISSION ON LEGAL COUNSEL

1. Senator Stanley Lyson, Williston, ND
2. Representative Duane DeKrey, Pettibone
3. Bruce Quick, Chair, Fargo, ND
4. Ted Seibel, Harvey, ND
5. Jonal Holt-Uglen, Hatton, ND
6. Jennifer Hauge, Carson, ND
7. W. Jeremy Davis, Grand Forks, ND

ATTACHMENT III



Williston(3) Bismarck(5)
Dickinson(3) FARGO (5)
Minot(5) Grand forks(5)

Total = 29

SENATE BILL 2023-APPROPRIATIONS
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS-DEPT. #188
HOUSE APPROPRIATIONS HEARING-FEBRUARY 27th, 2009, 10:30 a.m.

BACKGROUND

Our commission and agency was established as an executive branch agency in 2005 pursuant to §54-61-03(f) of the North Dakota Century Code. (Attachment 1) . The creation of our agency came as a result of years of study of the system of indigent defense delivery in the state of North Dakota. Prior to our agency being formed, all indigent defense was administered by the Supreme Court and the seven judicial districts. While individual task forces had been looking at the declining state of indigent defense several times prior to 2003, the State Bar Association finally commissioned the recognized expert in this area, The Spangenberg Group, to conduct an objective analysis of indigent defense in our state. The Spangenberg Report was issued in January, 2004. It was highly critical of our indigent defense delivery system in terms of our constitutional requirement to provide adequate counsel to indigents. There were areas of the state where the individual courts were not able to find attorneys to do the work, the Judges were too involved in the process of assigning attorneys, and some attorneys were grossly overworked and underpaid. The legislation referenced above was drafted after the Spangenberg report was issued.

Our agency is governed by a commission. The 7 (seven) commission members are appointed by the Supreme Court, Governor's office, State Bar Association, and Legislative Council. They serve on a staggering basis. (See Attachment II-current commission members). The commission first met in August of 2005, and our administrative office was opened in Valley City in November, 2005, when I was hired. I had been the Barnes County States Attorney for approximately 20 years prior to this position. We took over the state indigent defense system in January of 2006.

In 2006 we opened 3 (three) public defender offices (Dickinson, Minot and Williston), In 2007 we opened up the Grand Forks office. In 2008 and at the beginning of this year we opened up the Bismarck and Fargo office. We are just finishing staffing the Fargo office,

however, they are taking cases now. During the last biennium and during the present biennium we have been working toward meeting the mandates as set forth in the governing statute to create and sustain a system for the delivery of legal services in indigent criminal and juvenile cases around the state.

Our agency is currently staffed with 28 employees (it will soon be 29); 3 in the Valley City administrative office, 3 in the Williston office (2 are attorneys), 3 in the Dickinson office (2 are attorneys), 5 in the Minot office (3 are attorneys), 5 in the Bismarck office, (three are attorneys) 5 in the Grand Forks office, (3 are attorneys) and 5 in the Fargo office (3 will be attorneys). Pursuant to the legislation in 2007 we had been allowed to add 10 (ten) employees going from 19 to 29 FTE's. I have attached Attachment III which shows where our public defender offices are located.

We have had no turnover of staff with the exception of two administrative persons, and those spots were re-filled as soon as possible. We are filling the last FTE position we have available this biennium-the last Fargo Public Defender attorney.

Our agency organizational chart is on page 12.

PROVIDED SERVICES

Our services consist of providing legal counsel to those persons deemed indigent in criminal, juvenile, and some certain civil matters. Indigency is a finding made by a Judge using the Federal Poverty Guidelines. In ND, if your household earns less than 125% of the Federal Poverty Guidelines, you qualify for a free attorney. The person applies by filling out an application at the court, and the Judge or Clerk reviews the indigency status and contacts us, or our designee, for an attorney appointment. To give you an example of who might be eligible for our legal services, if the gross annual income of a household with 3 persons living there was less than \$22,000.00, for example, one of your household members would qualify as indigent.

We provide those services from both private bar members, and full time public defenders. Our eventual goal would be to provide about half the services by each group. In indigent defense language we have three different types of providers all doing the same basic work; we have **public defenders**, who are state employed. We have **contractors**, who

are private attorneys contracted with us on a monthly basis to take cases in a certain district, and we have **conflict attorneys**, who are also private attorneys who take the cases that the other two groups have a conflict with. We pay conflict attorneys the rate of \$65.00 an hour and this amount is about mid-point for what assigned counsel rates are around the country. We currently have 16 state employed public defenders, 43 monthly contractors, and approximately 20 conflict attorneys across the state.

Our Valley City administrative office receives and authorizes payment of bills, performs human resource duties such as handling information on employee and personnel issues, leave and benefits, is in charge of procurement, and in all other ways administers the state-wide program. Jean Delaney, deputy director, and I oversee the outlying public defender offices and the contracted attorneys.

In the State of North Dakota, we handle approximately **9500 (ninety-five hundred)** case assignments per calendar year. Approximately 82% of those are criminal matters, and 17% are juvenile matters. We have a smattering of civil cases which, by statute or rule, involve the availability of a free attorney. We did not seem much of a change in the number of case assignments from 2007 to 2008. We handle up to half the filed criminal cases in some jurisdictions.

FUNDING AND BUDGET ISSUES

Funding Sources-Special Funds

We are funded by general fund monies and special fund monies. The special fund money is derived from the collection of a \$100.00 court administration fee the clerks of courts collect from every criminal defendant coming through District Court. §29-07-01.1, North Dakota Century Code. (Enacted in 2003) We also get an application fee for those who apply for an attorney, which is in the amount of \$25.00. §29-26-22, North Dakota Century Code. (Enacted in 2001) The Judge can waive both fees in exigent circumstances. The first \$750,000.00 of the court administration fee is given to the Commission on Legal Counsel for Indigents, the next \$460,000.00 collected is put into the "court improvement fund" for the benefit of local courthouses, and the money collected thereafter is split equally between us and the court improvement fund.

The Governor's recommendation included granting us the authority to spend \$2.4 million for the next biennium out of this fund; the amended Senate Bill 2023 granted us the authority to spend \$1.9 million.

The history of the special fund is as follows:

We collect approximately \$1.7-1.9 a biennium from the court fees.

2005-2007 biennium: We opened our agency in November, 2005. On January 1st, 2006, the Supreme Court transferred \$1,161,000.00 to us. We had authority to spend \$1.2 million and in that biennium we spent \$404,518.00.

2007-2009 biennium: We carried over \$1.8 million this biennium. We have authority to spend \$1.7 million, which we plan to spend. At the end of this biennium, we project we will have approximately \$1.9 million in the fund.

2009-2011 biennium: If we were granted authority to spend \$2.4 million out of this special fund, as per the Governor's recommendation, we project we will have approximately \$1.3 million in the fund at the end of the 2009-2011 biennium. If we are granted the authority to spend the \$1.9 million in the amended Senate budget bill we would have approximately \$1.8 million.

General Fund and Budget Requests

For the current biennium we had a general fund allocation of \$9,517,522, a special fund allocation of \$1,700,705, for a total budget of **\$11,218,227**.

For the 2009-2011 biennium we did not ask for an increase in general fund dollars. The Governor's recommended budget was \$9,475,383 in general fund dollars, and \$2,453,493 from special fund dollars, for a total budget of **\$11,928,876**.

The Senate passed an amended budget bill which gave us \$9,475,383.00 in general funds, authority to spend \$1,950,217.00 in special funds, for a total budget of **\$11,425,600**.

We are seeking legislative approval for the optional package recommended by the Governor for the addition of one full time employee for the next biennium.

We are not asking for a general fund increase for this FTE's.

As you can see from the Senate amended budget bill, the Senate allowed for that one FTE. We had asked for four FTE's; three for a potential public defender office in Devils Lake, an area I am very concerned with as it is most difficult to obtain legal services in that area. However, the Senate did not see it as a priority.

I'd like to speak about that one FTE position we feel is a must. We are asking for a financial officer for our agency. We have felt the need to have this FT in our agency for some time, as none of the three persons in the Valley City office has much financial background and the duties have become such to overwhelm the 3 person administrative staff. We are very uncomfortable assuming some of the financial tasks we take on. There are three main issues of concern in that regard.

The first is the fact our agency has grown incrementally over the past 3+ years and our financial needs have increased accordingly. When we first started, we were unaware, as was our commission, of what our staffing needs would be or what our financial obligations would be. We created the agency from scratch. As it turned out, all bills and payroll needs go through our Valley City office. Our outlying offices have no financial responsibilities nor do we want them to. Secondly, we have been relying on the good graces of either the Supreme Court, or an individual we contracted with who will no longer be available, to help us prepare our budget, submit it, and run monthly reports. This has to end. The two people who know the financial end of indigent defense in the Supreme Court are no longer going to be available to assist us, nor should they have to. We need to have a person ourselves. Lastly, we have many duties which would keep a financial person more than busy; we have budget issues, payroll issues, closing packages, audit reports, examination of monthly reports, and the analysis of data sent in from our contractors and public defenders which has an impact on how much we pay an hour for services.

We have no federal fund support nor do we utilize any grant monies.

Turn back funds

OMB is aware that we will be turning back general fund dollars this biennium. At the end of this biennium, I would anticipate turning back approximately \$1,000,000.00 (one million). We ended up opening up our two offices later than anticipated, and hence did not have their costs to pay for several months when I had hoped to have had them open. We have been trying to be very conservative with our bills and spending.

Agency expenditures

A spreadsheet is on the next page showing what our expenditures have been to date this biennium, and what they are expected to be in the 2009-2011 biennium.

Our agency expends the vast majority of its' funds in three areas; administration, contracts with attorneys for services, and legal fees in off contract conflict cases. Administration includes the expenses associated with the operation of our full time public defender offices and the operation of our office in Valley City. During this biennium, through January 31st, 2009, we have spent **\$2,829,557.00 on administration, \$3,929,937.00 on contracts, and \$496,759.00 on off contract legal fees**, for a total of **\$7,256,253.00**. Interestingly, while the amount we spend on off contract legal fees is approximately 7-9% of our expenditures, depending on the month, those fees can be the most mercurial. We never know when a big case, such as a Murder or Gross Sexual Imposition, will come in and need to be conflicted out to private counsel. We have had cases that have cost the agency up to \$60,000.00 for one case. Our monthly expenditures can and will deviate.

On the next page is a spread sheet explaining our expenditures this biennium and proposed for the next biennium.

Commission on Legal Counsel for Indigents Request/Recommendation Comparison Summary

Expenditures through 01/31/2009	2007-09 Appropriation	Executive Recommendation 2009-11	Change from 07-09 Appropriation	Engrossed SB 2023 Appropriation	Change from 2009-11 Executive Recommendation
Expenditures					
510000 Salaries and Benefits	1,668,885.77	2,372,582.00			
511000 Salaries - Permanent	27,115.19	33,360.00	1,259,637.00	3,329,439.00	(302,780.00)
513000 Temporary Salaries	532,544.05	766,507.00	95,600.00	128,960.00	0.00
516000 Fringe Benefits	2,228,545.01	3,172,449.00	535,051.00	1,189,572.00	(111,986.00)
510000 Salaries and Benefits			1,890,288.00	4,647,971.00	(414,766.00)
520000 Operating Expenses					
521000 Travel	118,580.28	208,460.00	20,480.00	218,440.00	(10,500.00)
531000 Supplies - IT Software	15,845.50	21,613.00	(6,113.00)	12,000.00	(3,500.00)
532000 Supply/Material-Professional	48,640.08	85,491.00	(1,691.00)	82,300.00	(1,500.00)
533000 Food and Clothing	20.35	0.00	0.00	0.00	0.00
535000 Miscellaneous Supplies	13,740.54	17,398.00	5,502.00	21,100.00	(1,800.00)
536000 Office Supplies	19,167.03	37,131.00	10,169.00	34,500.00	(2,800.00)
541000 Postage	19,024.04	27,111.00	8,669.00	44,000.00	(1,800.00)
542000 Printing	3,462.21	15,334.00	1,866.00	16,700.00	(500.00)
551000 IT Equip under \$5,000	11,512.30	42,899.00	(4,000.00)	27,600.00	(5,000.00)
552000 Other Equip under \$5,000	2,043.12	10,000.00	(39,728.00)	6,000.00	(18,500.00)
553000 Office Equip & Furniture-Under	64,271.72	75,728.00	(1,106.00)	17,500.00	(100.00)
571000 Insurance	248.21	2,356.00	(8,400.00)	1,150.00	0.00
581000 Rentals/Leases-Equip & Other	0.00	8,900.00	93,341.00	279,281.00	(24,000.00)
582000 Rentals/Leases - Bldg/Land	169,332.17	209,940.00	(3,676.00)	11,100.00	(400.00)
591000 Repairs	4,727.91	15,176.00	20,315.00	78,444.00	(2,034.00)
601000 IT - Data Processing	61,664.15	60,163.00	9,935.00	68,136.00	(5,808.00)
602000 IT-Communications	41,066.37	64,009.00	(50,428.00)	6,804.00	(2,268.00)
603000 IT Contractual Services and Re	4,695.36	59,500.00	1,484.00	80,700.00	(4,000.00)
611000 Professional Development	23,510.19	83,218.00	(31,189.00)	142,650.00	(1,500.00)
621000 Operating Fees and Services	109,733.51	175,339.00	(1,194,790.00)	5,626,724.00	(2,500.00)
623000 Fees - Professional Services	4,296,422.57	6,826,014.00	(1,179,639.00)	6,777,629.00	(88,510.00)
520000 Operating Expenses	5,027,707.61	8,945,778.00			
Total Expenditures	7,256,252.62	11,218,227.00	11,928,876.00	11,425,600.00	(503,276.00)
Expenditures by Source					
Total General Fund Expenditures	6,064,754.62	9,517,522.00	(42,139.00)	9,475,383.00	0.00
Total Federal Fund Expenditures	0.00	0.00	0.00	0.00	0.00
Total Special Fund Expenditures	1,191,498.00	1,700,705.00	752,788.00	1,950,217.00	(503,276.00)
Total Expenditures by Source	7,256,252.62	11,218,227.00	710,649.00	11,425,600.00	(503,276.00)

ACCOMPLISHMENTS FOR THE 2007-2009 BIENNIUM

1. **Case Reporting System and website.** We have now been utilizing our case reporting system for over one year. We developed the reporting system with the help of our state IT department. Attorneys now use the web, with a password, to enter information about the case they are assigned, and enter information when it is closed, including how many hours they spent on the case assignment. This case reporting system replaced a paper system where attorneys across the state were sending in stacks of case closing forms which we then had to enter on a spreadsheet. We want to more fully utilize the data from this system to analyze case management issues for our attorneys.

Our website contains policies, standards, forms and information about our agency. www.nd.gov/indigents/ We update the website as changes occur.

2. **Audit.** We underwent our first audit, and received no formal recommendations. In the management letter, the state auditor's office made several suggestions, and we have implemented all the ones we were able to at this time. We will have all of the suggestions taken care of by the next audit period. We have adopted a Business Code of Ethics.

3. **Performance Standards.**

We have complied with our statutory requirement and have adopted attorney performance standards for attorneys taking on criminal matters and juvenile matters. These standards are essential to the development of a criminal justice agency and we are very proud of them. They are available on our website.

4. **Opening of offices.**

In 2008 we opened up the Bismarck and Fargo office and will be fully operational in those two spots by March, 2009. Those would be our 5th and 6th public defender offices opened in the State of North Dakota. We will be still transitioning out some of the contractors and transitioning in public defenders for several months; it is a process that evolves over time. One important factor in us having the turn back amount we probably will have is that we had

anticipated opening the Bismarck and Fargo offices sooner than when they were opened, and hence did not spend some of the funds we had anticipated spending in those areas. Sustaining the offices will require the continuation of the funds, however.

The benefits of having public defender offices is very evident when they open; having the six around the state gives us flexibility in assigning out conflict cases. For example, let us say we have a murder case in Minot that the Minot public defender cannot take due to a conflict. Instead of having to hire an attorney to take the case on an hourly basis, we can reach out and find out if an attorney in one of our other offices can take the case. This approach does not always work but we have, in fact, done this on three different occasions. The other benefit of public defender offices is that we have an employer-employee relationship with the staff and can hence mandate things like training, accountability to court staff, and professional conduct. With contractors or conflict counsel, all we have is the contract terms to use as leverage if something is not going right. Lastly, and more importantly, is that public defenders are only doing public defense work; they are not worried about paying the office overhead, their private clients, or how to handle conflicts. Thus, the clients receive good, consistent service from them.

EFFORTS TOWARDS EFFICIENCY

It is the belief of our agency that having a financial officer will help make us more efficient; certainly we will be using our time more efficiently. We also will be able to analyze data with case load information which will assist us in knowing where contracts should be improved, deleted, or expanded.

We will continue efforts to share training time with other agencies; in 2008 for the first time ever we partnered with the Judges and prosecutors for a multi-jurisdictional CLE training and it was very successful. We all ended up reaping some cost savings. In this regard, I am also getting all of our attorneys up to speed on their CLE needs so as to avoid last minute training requests prior to their hours having to be reported.

We continue to improve our web based reporting system; this will cut down on postage costs and increase the information flow to and from all the attorneys with whom we work.

We are holding more meetings via conference phone to avoid the expenses of traveling,

however, Ms. Delaney and/or I have to do office periodic office visits to the area public defender offices.

AREAS OF CONCERN

One problem to report is the looming problem in the oil patch regions with salaries being outmatched by oil related positions. We have the availability of retention bonus' to deal with this issue, in part. This problem is one that I believe all state agencies face. Some of our attorneys have been approached to do oil and gas title work for a greater wage and have fortunately declined the offer to date.

I mentioned about our need for a financial officer, and the reasons therefore.

One issue we continually battle is **case load management** for attorneys across the state. We do not want our attorneys overloaded with cases as it is not good for the attorney or for the client. That was one of the major complaints about the indigent defense system prior to our agency taking over. Therefore, we have methods in place, and are working on other systems, to reduce case load or better support those attorneys with a high case load. Some of those partial solutions are assigning out new cases, assigning appeals and post-conviction matters to separate counsel, providing investigative services for attorneys on cases, and adding contracts in affected regions.

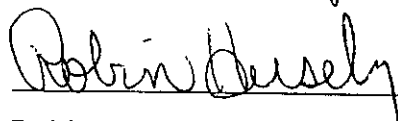
I remain concerned about unanticipated costs that we cannot control. I referenced them earlier in talking about protracted or unusually complicated cases that require "off contract" counsel. We have to maintain funds to anticipate these costs. Sometimes that requires plain old guessing as who knows what a year might bring; I think as we mature as an agency we will begin to see trends that we can rely on more fully for budgetary purposes. I would certainly want to see 5-7 years of costs associated with off contract cases before I made any sweeping generalities about the "usual" costs. That is one reason I believe it is imperative not to spend down our special fund reserve.

Our attorneys want to see the rate of compensated changed from \$65.00 an hour to something higher. We have resisted this request to date as we have been doing some other things to relieve some of their responsibilities. However, I think this is a topic that should be carefully

considered sometime in the future, and I am anticipating raising some contract prices slightly this next biennium.

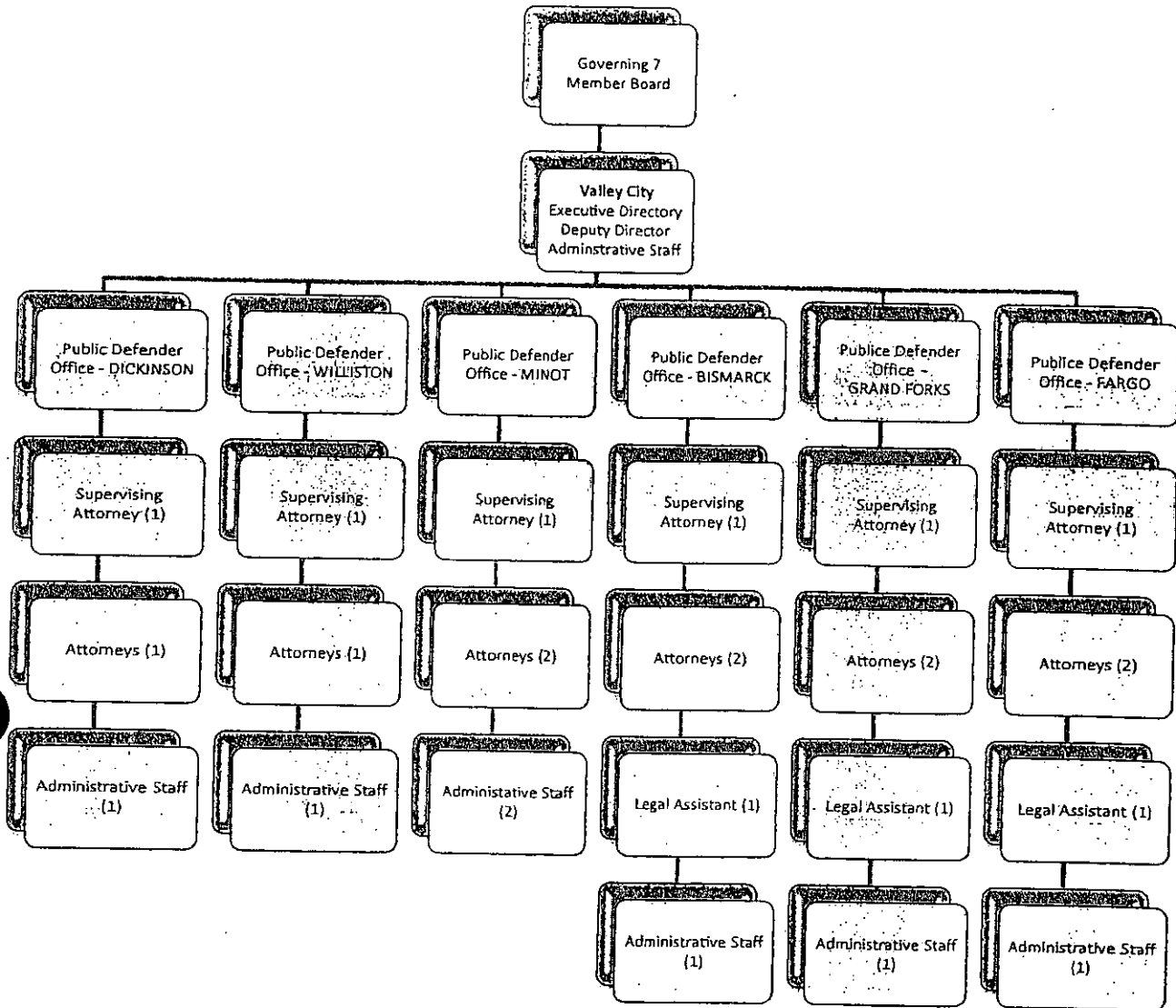
I remain available for any questions or comments. If there is a subcommittee to which I am assigned, I would make myself available anytime to meet with them. My contact information is below.

Dated this 23 day of February, 2009



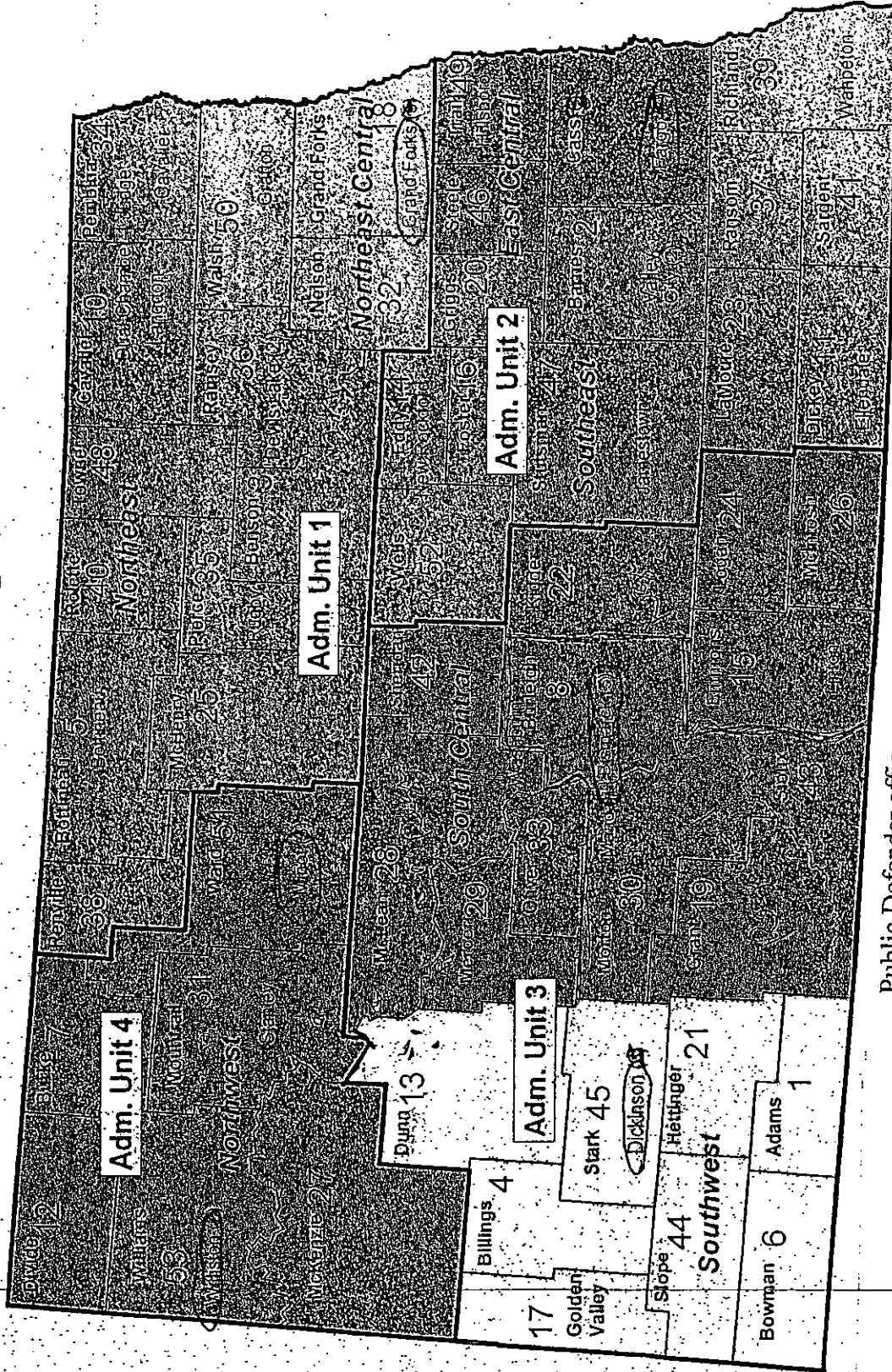
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Organizational Chart
ND Commission On Legal Counsel For Indigents
2-23-2009



ATTACHMENT III

Attachments I & II are same
as given for Senate



Public Defender offices

Dickinson: 2 attorneys, one admin. staff(3)
 Williston: 2 attorneys, one admin staff(3)
 Minot: 3 attorneys; two admin. staff(5)
 Valley City office (3)
 Total employees: 29

Bismarck: 3 attorneys, two admin.(5)
 Grand Forks: 3 attorneys, two admin.(5)
 Fargo: 3 attorneys, two admin. (5)