

DEPARTMENT OF THE PUBLIC ADVOCATE

1. The Salaries and Wages line (D-324) decreases from \$11.96 million in FY 2008 to \$10.63 million in FY 2009, yet the number of State funded positions is projected to remain at 149, the same level as FY 2008.

Please explain how the budget will be reduced while maintaining the same staffing level.

Answer

The decrease in the salary line reflects elimination of funding for vacancies at the Public Advocate and Rate Counsel. In addition, the anticipated reimbursement of administrative expenses from Rate Counsel, voluntary furlough savings and offset for increased mediation services revenue were also taken from the salary line.

2. The Division of Mental Health Advocacy is project to add and close fewer cases in FY 2009 than it did in FY 2007 (D-323), however the Division has added 9 new positions since FY 2007.

Please explain why the Division has added new positions while handling a similar or slightly reduced case load from FY 2007?

Answer

The "actual FY2007" Division of Mental Health's staffing level reflects the historic low point in staffing levels at the Division. In 2007, the Division eliminated the use of per diem employees and hired additional staff in order to provide representation to individuals in civil commitment hearings which is constitutionally mandated. In addition, four other policy staff were hired to meet the Legislature's mandate to advocate on behalf of individuals with mental illness.

3. The budget for the Advocacy for the Developmentally Disabled includes a reduction from \$299,000 in FY 2008 to \$149,000 in FY 2009 (D-324).

How will this cut impact services? What expenses are included in this \$150,000 reduction?

Answer

The reduction reflects a reduction of one full-time vacant funded position. The Division currently has three full-time positions.

The Department remains committed to advocating on behalf of individuals with developmental disabilities. In the last year, the Public Advocate has protected the rights of children to receive appropriate special education services by lobbying successfully for the "burden of proof" in special education hearings to shift from parents back to school districts, where it was for 17 years prior to recent federal court rulings. The Public Advocate also won

a landmark New Jersey Supreme Court decision that required the state to broaden eligibility requirements for services provided by the state Division of Developmental Disabilities. This change will benefit thousands of adults with developmental disabilities who live with aging caregivers and may not have sought assistance from the state when they were younger. In 2008, the Division will prioritize the long-standing waiting list for people with developmental disabilities in need of residential placement or other support services. At the same time, the Advocate continues to monitor closely the state's ongoing effort to reduce the number of people living in state institutions.

- 4A. Federal funding for the rate counsel appears to be declining from \$1.1 million in FY 2008 to \$149,000 in FY 2009 (D-324).

Why was this funding cut? What will be the impact on services?

Answer

The Division of Rate Counsel does not receive any federal funding.

The reduction of \$951,000 is for the Rate Counsel's insurance assessment which is assessed on behalf of Rate Counsel by the Department of Banking and Insurance. Rate Counsel is a party to a limited number of auto and health insurance matters. The reduction is an adjustment based on actual spending in FY08.

- 4B. The division of rate counsel has the same number of funded positions in FY 2009 as in FY 2008.

How will the Division managing this cut while receiving less federal funding?

Answer

The Division of Rate Counsel staffing has been reduced from 45 positions in FY2008 to 35 positions in the proposed FY2009 budget. An additional four vacant funded positions were eliminated as part of the \$951,000 reduction in the insurance assessment. In 2007, the Department hired a new Director, Stefanie Brand (the former Litigation Director for the State), and under her leadership, the Division has undergone a series of management initiatives to improve the Division's handling of its caseload.

5. While the final details of the proposed Early Retirement Incentive Program are not finalized, the general guidelines have been discussed by the Treasurer.

How many Public Advocate employees would be eligible? Assuming one half of those take the ERI package and only 10% of the positions can be filled, will the Department be able to operate and provide the same level of service? How will the reductions impact the Department's operations?

Answer

Based on the assumptions in the budget for the projected \$135.9 million net ERI savings, 31 of Department's staff will be eligible for participation. The savings assumes an overall 50% participation rate that varies by Department. The initial proposal is still under discussion and could be refined in the enabling legislation. Regardless, the Governor has stated that the backfills of participants will be limited to 10% on a statewide basis.

It is hard to predict the impact of this program without knowing the actual number of employees who would take advantage of the incentive and which divisions would be affected.

6. The proposed FY 2009 budget shows requested funding for FY 2009 at approximately \$2 million above the expended level of FY 2007.

Please provide an explanation of any new programs or responsibilities added to the Department since July 1, 2006. Please explain whether these increased responsibilities were mandated by statute.

Answer

The legislation reestablishing the Department of the Public Advocate became effective on January 17, 2006. The Department was not fully staffed up in FY2007, accounting for the lower spending levels. The Department's responsibilities have not changed since its reestablishment.

7. Evaluation data found in the FY 2009 proposed budget indicates the department will fund 188 positions, identical to the revised FY 2008 number which is actually up 33 positions from FY 2007 actual counts. The majority of the increases from 2007 to 2009 are in the Divisions of Mental Health Advocacy (net gain of 8) and Public Interest Advocacy (9) and the Office of the Child Advocate (15).

Please provide a detailed list of the department's positions, including funded vacancies and positions the department anticipates filling in FY 2009?

What accounts for the increase in funded positions between FY 2007 and FY 2009?

To what extent if any are these projected increased positions the result of mandates imposed either federally or by the State?

Answer

As stated above, the legislation reestablishing the Department of the Public Advocate became effective on January 17, 2006. The Department was not fully staffed up in FY2007, accounting for the lower spending levels. See attached list of positions.

8. Under Current statutes, the Division of Rate Counsel (DRC) has jurisdiction concerning public utility matters and limited jurisdiction with respect to insurance matters.

Concerning public utilities, statute provides that the DRC may “represent and protect the public interest in proceedings before and appeals from any State department, commission, authority, council, agency, or board charged with the regulation or control of any business, industry, or utility regarding a requirement that the business, industry, or utility provide a service or regarding the fixing of a rate, toll, fare, or charge for a product or service. The DRC may initiate any such proceedings when it is determined that a discontinuance or change in a required service or a rate, toll, fare, or charge for a product or service is in the public interest.”

As current statute is written, it appears that the DRC could initiate a proceeding on behalf of the public interest regarding any change in tolls by the State’s toll road authorities. Currently the Governor has final approval of toll road authorities’ minutes and his veto of toll increases could negate the need for DRC intervention.

However in early 2008 Governor Corzine announced his intentions establish a “public benefit corporation” (“PBC”) for the purpose of managing the State’s toll roads and issuing bonds paid from toll revenues. It is widely understood the PBC will not be considered a public entity and potentially not subject to rate regulation by any State entity. Further, the minutes of the PBC and the toll rate schedules fixed by the PBC would not be subject to the Governor’s approval.

Has the Public Advocate had any role in the formulation of the Governor’s financial restructuring proposal?

Do you feel as an advocate for the public interest, this toll road proposal falls under your purview?

Given the Governor’s plan, as well as an alternative put forth by Assemblyman Wisniewski, contains toll rate increases as much as 800% shouldn’t the Department, through either the Division of Rate Counsel or the Division of Public Interest Advocacy be involved in every aspect of these plans?

In order to protect the public interest (concerning toll rates and the proposed PBC) legislation would be needed to grant a State entity the powers to regulate tolls and allow the DRC to review toll rates and intervene before the State entity on behalf of toll ratepayers in order to protect the “public interest.” Since the DRC’s general powers apply only in situations concerning a State entity’s rate regulation of public utilities and certain insurance matters, such powers would have to be broadened to expand the jurisdiction of the DRC.

Has the department considered working with the Legislature to expand the role of the DRC to include review of toll rates, if the Governor’s or similar toll raising legislation is implemented?

Would you support such legislation if it meant providing proper protective oversight in the interest of the public?

The Division of Public Interest Advocacy (DPIA) is empowered to “represent the public interest in such administrative and court proceedings, other than those under the jurisdiction of the DRC as the Public Advocate deems shall best serve the public interest.”

One such power of the DPIA is to institute “litigation on behalf of a broad public interest when authorized to do so by the Public Advocate. Such litigation or representation may include, but is not limited to, litigation on behalf of, or representation of, consumers, the indigent, the elderly, senior citizens, people with disabilities, persons with mental illness and developmental disabilities, or any other group or interest deemed appropriate by the Public Advocate.”

If legislation to expand the powers and duties of the DRC to cover toll road ratepayers is in your opinion not practically possible or outside the proper context of the DRC, the DPIA might be better suited to protect the interests of toll road ratepayers. Would you support legislation expanding the role of the DPIA to protect toll ratepayers?

Answer

The Department of the Public Advocate has broad powers to involve itself in an array of public interest issues that affect New Jersey residents. In the DPA Restoration Act, the Legislature defined public interest broadly as “an interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens.” The Department is not advocating for any expansion of its authorities.

Due to limited funding and the need to be strategic in the issues that the Department works on (along with not duplicating other state watchdog functions), we have prioritize a set of issues, including preventing child lead poisoning, reforming the state’s redevelopment laws to stop the abuse of eminent domain, protecting voters’ rights, advocating for individuals with developmental disabilities and mental illness, representing ratepayers, children and the elderly. These issues reflect the Legislature’s will to target these specific constituencies, as expressed in the Act reestablishing the Department.

The Department reviews these priorities each year. The Department, at this time, has not prioritized the issue of any tolls or specific budget proposal of the Governor or the Legislature.

9. The Division of Citizen Relations investigates citizen complaints to determine if any governmental activities are unreasonable, unfair, oppressive, potentially discriminatory or inefficient.

To date, has the department received any complaints from citizens regarding the potentially unreasonable, unfair, oppressive, discriminatory and inefficient nature of New Jersey’s property taxes?

How many investigations were started based on complaints related to New Jersey's tax structure, be it the income, property, sales and use, or corporate tax?

Answer

Since the beginning of the Office of Citizen Relations, the Department has received approximately 6-8 calls regarding property taxes. The Office receives on average 142 calls per month and approximately 2-3 cases per month regarding tax issues.

Two examples of the Department's work in this area include:

1. R.D., Denville. R.D., a small business owner in Denville, Morris County, saved \$117,000 due to the efforts of the Public Advocate's Office of Citizen Relations. Told he owed \$145,000 to the New Jersey Department of Labor (DOL) in unemployment taxes, R.D. and his accountant K.H. had been lobbying unsuccessfully for years for a more accurate accounting of his tax exposure from the DOL. The \$145,000 tax bill, they maintained, was based on an auditor's estimate and had no factual basis. Their complaints to the DOL went nowhere.

It wasn't until OCR Advocate Representative Steven Walker got involved, and was able to reach individuals in the DOL legal department, that R.D. got an accurate accounting of how much he owed -- \$28,000 -- and was able to make payment arrangements and clear up the matter. A father of 10 and with seven of his children still at home, R.D. had his bank accounts frozen and almost lost his home before the Public Advocate got involved. Walker "rolled up his sleeves and he dived in", K.H.. "Steven is the best, He really is. He cares. I'm sure he went far from his duties."

2. R.C and V.C., Somerset. "People need to know about you," says R.C. when talking about the Department of the Public Advocate's Office of Citizen Relations. "I think this is a good service you have." A Somerset resident, R.C. contacted the Office of Citizen Relations in Aug. 10, 2007 after he and his wife, V., found out that the New Jersey Division of Taxation was not properly crediting the scheduled tax payments they had been making via credit card.

"We sent them checks, they said we didn't, so we decided to pay with credit card instead," R.C. explains. They received an invoice for taxes owed for the 2005 income tax return, a payment that had already been made. After trying to solve the problem unsuccessfully, the R.C.s called the Office of Citizen Relations.

Advocate Representatives Elizabeth Hulse and Steven Walker took their information, and followed up with the Division of Taxation. Elizabeth Hulse told the R.C.s that their payment was placed on the wrong tax year payment, 2006 instead of 2005. The Division of Taxation corrected the matter. "Once you guys got involved, they acknowledged they had made a mistake," R.C. recalls. "I would certainly recommend the Department of the Public Advocate if someone needs help when dealing with government agencies."