

Discussion Points

Department of the Public Advocate

1. The FY 2009 budget recommendation reduces the number of State employees through an early retirement initiative and layoffs. The Governor has further proposed that the ability to hire employees to fill these positions be limited to 10 percent of the positions vacated. The impact these personnel actions may have on the Department of the Public Advocate's programs and services is not clear.

• Question: How many employees are eligible for the early retirement initiative or may be laid off, by division? To the extent that new employees cannot be hired, what services or programs will be reduced or eliminated? How will the reductions affect 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. These reductions would have to be analyzed in light of the proposed FY2009 budget cut of 17%, or 39 of the Department of Public Advocate staff positions.

2. Evaluation data on Budget Page D-323 indicate that the Division of Mental Health Advocacy anticipates the addition of 380 cases requiring the department to represent civilly committed sexual offenders, 10 more cases than the number added in FY 2008. The FY 2009 Budget recommends that funding for the representation of civilly committed sexual offenders be reduced from \$1 million to \$850,000, a \$150,000 or 15 percent reduction.

• Question: What is the rationale for placing this program within the Department of the Public Advocate when the Office of the Public Defender is responsible for representing defendants in criminal cases? What impact will the proposed reduction in funding have on the department's ability to handle the increase in the number of cases?

Answer

The "Public Advocate Restoration Act of 2005" specifically transferred the functions of the Division of Mental Health Advocacy from the Office of the Public Defender to the newly established Department of the Public Advocate. The Division of Mental Health Advocacy has historically provided constitutionally-mandated legal representation in involuntary civil committed proceedings, including sexual offenders. These proceedings are civil not criminal. The sexual offender Civilly Committed appropriation dropped from \$1 million to \$850,000 due to elimination of funding for two vacant positions associated with this account as of pay period 2. 380 cases is the total number of cases handled by this unit, which represent a small increase from the previous year. The Department expects existing staff to be able to handle this level of caseload.

3. Since the re-establishment of the Department of the Public Advocate in FY 2006, budget evaluation data has not included statistics on the number of minority individuals employed by the department. This is the only department for which this information is not included in the budget documents.

• Question: Please provide the committee with the number of male, female and total minorities employed by the Department of the Public Advocate. Why has this information not been included in the Budget Recommendation?

Answer

The Department of the Public Advocate is proud of its diverse workforce. The most recent data prepared by the Department of Treasury shows that of 170 employees, 97 were White, 40 Black, 23 Hispanic, 9 Asian and 1 Indian American. The Department will ensure that the updated DOP data is contained in next year's proposed budget.

4. Since its re-establishment in FY 2006, the Department of the Public Advocate received carry forward language allowing it to maintain funds not spent in previous fiscal years. In addition to the department's FY 2008 adjusted appropriation of \$20.357 million, the department carried forward \$7.3 million into FY 2008. Excluding the budgets of the Rate Counsel, which is funded through industry assessments, and the Office of the Child Advocate, which is "in but not of" the department, the department's remaining divisions were appropriated \$11.396 million and carried forward \$3.322 million, bring the total funds available to the department at \$14.718 million. As of March 31, 2009, \$7.217 million had been spent. While the Division of Rate Counsel and the Office of the Child Advocate are recommended to receive carry forward language in FY 2009, no carry forward language is recommended for the remainder of the department in FY 2009

• Question: What is the estimated lapse balance in each of the department's divisions for FY 2008?

Answer

The Department estimates the following end of the year balances:

Division of Citizen Relations -- \$732,000
Division of Mental Health Advocacy -- (\$183,000)
Division of Developmentally Disabled Advocacy -- \$270,000
Division of Public Interest Advocacy -- \$949,000
Division of Elder Advocacy -- \$160,000
Division of Administration -- (\$351,000)
Commissioner's Office -- \$136,000

These figures do not include amounts that had been set-aside for case management and other smaller projects that may not materialize in FY08.

5. The New Jersey State Office of Dispute Settlement provides mediation and other neutral dispute resolution services to the public and private sectors. The FY 2008 revenues for Office of Dispute Settlement Mediation totaled \$44,000 in FY 2007 and are anticipated to total \$100,000 in FY 2008. Anticipated revenues for FY 2009 are estimated at \$50,000 (Budget pg. C-10). In response to a question posed by OLS, OMB noted that the Salaries and Wages account is being reduced as a result of additional fees anticipated from increased mediation services provided by the Office of Dispute Settlement. However, anticipated revenues for this program for FY 2009 are estimated at \$50,000 (Budget pg. C-10), \$50,000 less than the amount anticipate for FY 2008.

• Question: What services are provided by the Office of Dispute Settlement and what are the fees charged for these services? What portion of this fee revenue will be used to offset reductions in the Salaries and Wages line? Why have the office's revenues doubled in FY 2008? Please explain why these same revenues have been reduced by half in FY 2009.

Answer

The Office of Dispute Settlement (ODS) provides neutral dispute resolution services in the public interest. These services include: 1) mediating and arbitrating cases for the courts and ADR programs; 2) training attorneys in mediation techniques; and 3) managing dispute resolution programs.

ODS serves as a neutral mediator to resolve cases in the state and federal courts. ODS charges \$250/hr for this service. The Office also provides a three day training program for attorneys who wish to be on the state court mediation roster. ODS charges \$450 per person for this training. In addition, ODS also manages two new home warranty arbitration programs which resolve disputes between new home builders and home owners pursuant to a contract it has with both the Department of Community Affairs and a private home warranty company. (The office receives a set yearly fee for this service as well as a fee based on the number of cases handled.) Finally, ODS mediates disputes arising under the Open Public Meetings Act pursuant to a contract it has with the Government Records Counsel. The office receives a set annual fee for this service.

Presently, only fees from the New Home Warranty and Residential Warranty are used to offset operational costs. Based on the FY07 actuals, and a revised projection for FY08 based on actuals through 9.5 months, about \$360,000 in collected fees will be used to offset operational costs in FY09. However if the ODS Mediation Fees were also appropriated to offset costs, this figure would increase by \$50,000 to \$410,000. Additionally, the direct appropriation of OPRA fees to ODS will further increase this figure to \$530,000.

In total, the FY08 collections are consistent with those collected in FY07. Unless there is a surge in activity associated with these fees, projections for FY09 should remain consistent with those of the last 2 fiscal years. Specific fees charged by ODS include:

ODS Mediation Fees

- Mediating cases for the state and federal courts and charging \$250/hr for this service which is paid for by the parties in each case.
- Mediating cases for the US Postal Service and EEOC. ODS receives \$550/case for postal and \$800/case for EEOC cases.
- Training attorneys in mediation and charging \$450 for a three day course.
- Arbitrating cases for the New Home Warranty Program at approximately \$300 per case and \$5,000/yr.
- Arbitrating cases for the Residential Warranty Program at approximately \$300 per case and \$10,000/yr.
- Revenues from all the above sources are approximately \$50,000/yr.

New Home Warranty

- Managing the New Home Warranty Program through an inter-agency contract with DCA where they pay a set fee that covers the salaries of a staff member and a secretary (\$212,535). The program resolves disputes between new home owners and builders through the use of a neutral arbitrator.

Residential Warranty

- Managing the Residential Warranty Program through a contract with the Residential Warranty Corporation. The fee is contingent on the number of cases that this office handles each year, but covers most of the salary of a staff member (we received approximately \$91,500 from this contract last year). The program resolves disputes between new home owners and builders through the use of a neutral arbitrator.

Other Fees (ODS, not directly collecting)

- Providing mediation services to the Government Records Counsel to resolve OPRA disputes through an inter-agency contract where they pay a set fee that covers the entire salary and benefits of a staff mediator (approximately \$98,516.26/yr).

6. The Division of Rate Counsel is funded through assessments on public utilities and provides oversight of utility and insurance rates and charges. It is responsible for ensuring

adequate representation of the interests of consumers whose interests would otherwise be inadequately represented in matters within the jurisdiction of the Division. The FY 2008 revenues for Division of Rate Counsel totaled \$7.29 million in FY 2007, and \$7.45 million in FY 2008. Anticipated revenues for FY 2009 are estimated at \$6.75 million (Budget page C-10). Rate Counsel Insurance revenue totaled \$32,000 in FY 2007, \$1.12 million in FY 2008, and are anticipated to total \$149,000 in FY 2009. (Budget page C-19)

• **Question:** Please provide an explanation of the fluctuations in the Division of Rate Counsel's revenues.

Answer

The Division of Rate Counsel has authority to review utility rate increases and certain insurance rate increases. The FY08 estimate for costs related to review of these rate increases significantly exceeds the actual expenses anticipated, and the FY 2009 recommendation reflects projected costs in line with recent expenditures. The difference is likely due to 14 funded positions that were not filled.

7. The State Auditor recently released a report on the former Division of the Ratepayer Advocacy (now the Division of Rate Counsel). In that report, it raised issues concerning assessments on the public utility industry, personal services contracts and cash receipts.

• **Question:** How has the division responded to the State Auditor's recommendation that sums assessed to the public utility industry not exceed costs required for the operation of the division and any overassessments be credited in subsequent periods? What actions have been taken to assure that the division comply with Treasury Circular Letter No. 98-14-0MB for all contracts with independent contractors? Has the division complied with the recommendation that all receipts be deposited daily, including overpayments and that refunds be issued when necessary? Has the division implemented a complete log of incoming checks and reconciled it to daily deposits as recommended?

Answer

The Division of Rate Counsel's (Division) utility assessments are calculated, billed and collected by the Department of the Treasury, in coordination with the Office of Management and Budget (OMB). The Division serves as a reference point for Treasury with respect to submitting data and reviewing the figures that are assessed to the utility companies. OMB takes two approaches to insure that the industry is not over assessed regarding any year-end unexpended balance:

- 1) One approach is to lapse any unexpended balance at the end of a fiscal year and credit the industry that same amount by reducing the industry assessment. This was the approach used by OMB in FY2005 and FY2006.

- 2) A second approach is to carry forward any unexpended balance from one fiscal year to the next. This does not impact the calculation of the assessment in the next fiscal year, but it does increase the Division's budget authority for that fiscal year. This approach was used in FY2007 and will be used again in FY2008.

The FY2007 budget authority for Rate Counsel included the FY2007 appropriation and carry forward balance from FY2006. In relation to the audit findings, OMB took corrective action regarding the calculation of fringe benefits. The FY2007 assessment included an adjustment for the prior year actual expenditures for fringe benefits and this practice will be continued in future assessments

The Division of Rate Counsel now retains consultants strictly to work on utility-related matters. The Division is now under the Department of the Public Advocate and follows directives consistent with Treasury's Circular Letter No. 98-14-OMB. All contracts for services rendered by independent contractors are in accordance with the Department and Treasury's directives.

The Department of Treasury presently receives the vast majority of cash receipts in accordance with all state policies. The Division of Rate Counsel has instituted new policies and supervision for the miscellaneous cash receipts it receives. All such incidental receipts are deposited in a timely manner by the Administrative Analyst. This individual has been placed under direct supervision of the Chief of Staff to ensure proper and timely compliance. The Administrative Analyst maintains a log for incoming checks and routinely meets with the Chief of Staff to reconcile daily deposits.

Office of the Child Advocate Discussion Points

1. The Office of the Child Advocate, an office "in but not of", the Department of the Public Advocate, is recommended to receive \$2.268 million in FY 2009, a decrease of \$319,000 from the FY 2008 adjusted appropriation of \$2.587 million. This reduction reflects the elimination of funding for one vacant position and a reduction in one-time non-salary expenses. The office carried forward \$1.9 million from FY 2007 into FY 2008 giving the office total available funding of \$4.5 million. Recommended budget language would permit the Office of the Child Advocate to carry forward unexpended balances into FY 2009. As of March 31, 2008, the office had an uncommitted balance of funding available for expenditure totaling \$2.95 million in its account.

• Question: What is the estimated carry forward for the Office of the Child Advocate in FY 2009? Since the office has been in operation two full fiscal years, and start up costs are no longer required, please explain the need for such a large carry forward amount.

Answer

To clarify, the \$1.9 million figure from FY 2007 does not reflect a one-time reduction of \$374,000, which was debited from the larger amount. Due to that reduction, the agency

carried forward \$1.6 and started FY 2008 with \$4.1 in available funds. Much of the remaining uncommitted balance for this fiscal year will be used for salaries and agency operations. We currently anticipate a carry forward of \$1.3 million to FY 2009.

Although the rebuilding of the agency started in November 2006, when Dr. Hodgson assumed the role of Child Advocate, much of the remaining time in FY 2007 was spent identifying and hiring staff. Due to the lengthy interview and hiring process, the agency was still only 60% staffed in July 2007 at the start of FY 2008. Given the recommended reduction of one staff position we anticipate that we will reach full staff capacity by June 2008. When these circumstances are considered, it is clear that FY 2007 and FY 2008 offer little to no indication the costs of a fully staffed, fully operational Office of the Child Advocate.

2. The FY 2009 budget recommendation reduces the number of State employees through an early retirement initiative and layoffs. The Governor has further proposed that the ability to hire employees to fill these positions be limited to 10 percent of the positions vacated. The impact these personnel actions may have on the Office of the Child Advocate's programs and services is not clear.

• Question: How many employees are eligible for the early retirement initiative or may be laid off, by division? To the extent that new employees cannot be hired, what services or programs will be reduced or eliminated? How will the reductions affect the office's operations?

Answer

Based on the assumptions in the budget for the projected \$135.9 million net ERI savings, two of Agency 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. Depending on those final circumstances, we will evaluate the impact on agency operations by considering where vacancies occur, the impact on mandated services, and the effect on staffing decisions.