

ANALYSIS OF THE NEW JERSEY BUDGET

**DEPARTMENT OF
THE TREASURY**

FISCAL YEAR

2009 - 2010

NEW JERSEY STATE LEGISLATURE

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This report was prepared by the Revenue, Finance and Appropriations Section of the Office of Legislative Services under the direction of the Legislative Budget and Finance Officer. The primary author was Thomas Koenig. Amy Denholtz authored the background paper entitled "Offshore Wind Energy."

Questions or comments may be directed to the OLS Revenue, Finance and Appropriations Section (609-984-6798) or the Legislative Budget and Finance Office (609-292-8030).

DEPARTMENT OF THE TREASURY

Budget Pages..... C-8; C-17; C-25; C-27; D-379 to
D-429; E-8 to E-9; G-4 to G-8.

Fiscal Summary (\$000)

	Expended FY 2008	Adjusted Appropriation FY 2009	Recommended FY 2010	Percent Change 2009-10
State Budgeted	\$3,939,206	\$3,440,393	\$2,670,238	(22.4%)
Federal Funds	2,522	43,717	79,617	82.1%
<u>Other</u>	<u>1,307,670</u>	<u>1,272,735</u>	<u>1,274,169</u>	<u>0.1%</u>
Grand Total	\$5,249,398	\$4,756,845	\$4,024,024	(15.4%)

Personnel Summary - Positions By Funding Source

	Actual FY 2008	Revised FY 2009	Funded FY 2010	Percent Change 2009-10
State	4,057	3,893	3,890	(0.1%)
Federal	10	34	34	0.0%
<u>Other</u>	<u>2,261</u>	<u>2,109</u>	<u>2,106</u>	<u>(0.1%)</u>
Total Positions	6,328	6,036	6,030	(0.1%)

FY 2008 (as of December) and revised FY 2009 (as of January) personnel data reflect actual payroll counts. FY 2010 data reflect the number of positions funded.

To be consistent with the data display in the Governor's budget, the above table includes the funding data in the Department of the Treasury for Higher Educational Services. Other explanatory data for these programs are included in a separate booklet entitled "Higher Educational Services."

Key Points

- The Governor recommends a total appropriation of \$4.02 billion in FY 2010 for the **Department of the Treasury**, which represents a decrease of \$733 million, or 15.4 percent, from FY 2009. While a multitude of changes produce this net effect, the \$534 million in reduced funding for the Homestead Property Tax Rebate/Credit program accounts for 72.9 percent of the department's lower budget recommendation.
- The Governor's Budget provides for **6,030 funded positions** in the Department of the Treasury, which is essentially identical to 6,036 actual positions in FY 2009. There are

Key Points (Cont'd)

- no significant shifts in staffing levels among the department's programs, divisions, and agencies.
- The Governor's Budget reflects the following **reorganizations** as they pertain to the Department of the Treasury: a) the FY 2009 abolition of the New Jersey Commerce Commission and the creation of the Division of Business Assistance, Marketing and International Trade in the New Jersey Economic Development Authority; b) the FY 2009 transfer of the Urban Enterprise Zone program from the New Jersey Commerce Commission to the Department of Community Affairs; c) the FY 2009 abolition of the Department of Personnel and the attendant transfer of the Human Resource Development Institute and the Equal Employment Opportunity and Affirmative Action programs to Treasury; d) the FY 2009 transfer of the Division of Medical Assistance and Health Services in the Department of Human Services to the new Office of the Medicaid Inspector General in the Treasury; and e) the recommended transfer of the Governor's Council on Alcoholism and Drug Abuse from the Treasury to the Department of Human Services.

PROPERTY TAX RELIEF: GRANTS-IN-AID AND STATE AID

- The Governor's Budget provides \$2.34 billion for **property tax relief** in the Department of the Treasury, which reduces the FY 2009 adjusted appropriation by \$582.4 million, or 20.0 percent. **Grants-in-Aid**, which finance direct property tax relief to residents, account for \$1.35 billion of the total (\$530 million, or 28.3 percent, less than in FY 2009) and **State Aid** to local subdivisions of State government accounts for the remaining \$990 million (\$52 million, or 5.0 percent, less than in FY 2009). **Table 1** on page 7 lists the individual components of the recommended State Aid total.
- The Executive proposes lowering the appropriation to the **Homestead Property Tax Credit** program from \$1.71 billion in FY 2009 to \$1.17 billion in FY 2010, a decrease of \$534 million, or 31.3 percent. The decline would be achieved through the elimination of non-senior homeowners and tenants with annual incomes above \$75,000 from the program and from the reduction of rebate amounts to non-senior homeowners and tenants with annual incomes exceeding \$50,000 but not exceeding \$75,000. In all, the Executive estimates that 1.14 million homeowners would collect a \$1,022 average benefit in FY 2010 and 847,000 tenants a \$153 average benefit. **Table 2** on page 27 indicates the homestead rebate amounts individuals received in FY 2009 and the amounts they would receive in FY 2010 according to statute and the Governor's proposed Budget.
- The Governor requests \$172.5 million for the **Senior and Disabled Citizens' Property Tax Freeze** program in FY 2010, an increase of \$3.5 million, or 2.1 percent. A 2008 program expansion and rising property tax liabilities account for the expenditure growth. The Executive expects 166,000 program participants in FY 2010, 11,000 more than in FY 2009, and projects the average benefit to fall from \$1,072 to \$1,039, mostly due to an influx of new program participants whose relatively lower benefit amounts depress the average.

Key Points (Cont'd)

- The Governor recommends that municipalities receive approximately \$1.03 billion from the off-budget **Energy Tax Receipts Property Tax Relief Fund** in FY 2010, a \$63 million, or 6.5 percent, increase over FY 2009. Two funding sources comprise this appropriation: \$788.5 million from the Energy Tax Receipts Property Tax Relief Fund proper and an amount not to exceed \$240.6 million to be transferred to the fund from the Consolidated Municipal Property Tax Relief Aid account pursuant to budget language.
- Superseding the program's statutory sunset in FY 2010, a new language provision would continue \$1.8 million in allocations from the Highlands Protection Fund to the **Pinelands Property Tax Stabilization Aid** program for distribution to 33 municipalities.
- The Governor proposes a \$400 million FY 2010 State contribution to the various retirement systems for the employer's share of normal and accrued liabilities. Of this total, \$18.4 million would be appropriated to the **Police and Firemen's Retirement System** (Treasury's budget includes \$8.6 million as a State Aid appropriation on behalf of local governmental entities for **Police and Firemen's Retirement System** obligations). The \$18.4 million represents 6.2 percent of the \$299.1 million certified by the actuaries as necessary to fully fund both the system's normal FY 2010 contribution and its accrued State liability. The system provides pension coverage to all full-time county, municipal, and State police officers and firefighters (but not to State Police troopers).

TREASURY OPERATIONS

- As in past years, the Governor's Budget includes broad language that would permit the appropriation of additional resources for the **Division of Taxation** and the **Division of Revenue** without further legislative action.
- The Governor's Budget no longer carries language allowing for the engagement of consultants to explore the **monetization of the State Lottery**.
- The Governor proposes suspending funding for four **Office of Information Technology (OIT) initiatives and programs**: a) the Enhanced 911 Grants awarded to Public Safety Answering Points, which handle 911 calls for emergency assistance from police, fire, and ambulance services (\$12.4 million); b) the Quality Assurance Program, which was to provide oversight of large information technology projects (\$2.0 million); c) the Data Center Consolidation initiative (\$800,000); and d) the State's "*myNewJersey!*" Internet portal (\$1.0 million).
- The OIT is in the process of restructuring the delivery of **information technology** services for State government. Under the reform, the OIT would become the central authority for the State's shared information technology infrastructure. Individual agencies or affinity groups (organized IT communities of interest spanning several State agencies) would eventually assume the responsibility for the development of their business applications under the OIT's oversight. The State's fiscal situation, however, has forced the office to modify its original consolidation strategy.

Key Points (Cont'd)

- In August 2008, the Superior Court of New Jersey upheld the authority of the Division of Investment to **invest public employee pension moneys in alternative asset classes** such as commodities, hedge funds, private equity, and real estate. The Superior Court, however, prohibited the delegation of investment-decision-making authority for the public employee pension funds to private investment firms. FY 2010 funding for the division would remain at \$13.2 million under the Governor's budget proposal.
- On March 17, 2009, New Jersey's Attorney General filed a **lawsuit against nine executives and nine directors at Lehman Brothers Holdings Inc.** as well as against the investment bank's longtime accountant, Ernst & Young LLP, after the Division of Investment had lost \$118 million of the \$182 million it had placed in the now-bankrupt investment bank in June 2008.
- The Office of Energy Savings is developing a centralized, web-based **energy tracking system** to measure and track State government's energy usage. The Administration expects that the system's future use will save an estimated \$2.7 million annually by enabling the State to target energy conservation measures at high-use State facilities.

TREASURY DEBT SERVICE

- The Governor's Budget for the department includes \$5.2 million for **Debt Service** payments on general obligation bonds. This amount represents a decrease of \$206.0 million, or 97.6 percent, from FY 2009. Payments would decline because of the Administration's anticipated debt restructuring plan. The reduction's specific amount, however, is contingent upon the plan's finalization. Although the savings would accrue in the general obligation debt service line, they would come from the refinancing of general obligation and appropriations-backed debt.

ECONOMIC DEVELOPMENT

- The Governor seeks \$55.2 million to pay out capital investment and job creation grants under the **Invest in New Jersey Business Grant Program** (InvestNJ) in FY 2010. The program, which was created in 2008, has a \$120 million lifetime funding cap. Accordingly, \$39.8 million would remain for disbursement in FY 2011 after expending \$55.2 million in FY 2010 and \$25 million in FY 2009. On March 5, 2009, the New Jersey Economic Development Authority announced that InvestNJ reached its lifetime funding limit two months after making applications available on its website.
- The Governor requests \$10 million for grants awarded by the New Jersey Commission on Science and Technology in support of scientific and technological companies and research. At the onset of FY 2009, the grant account had \$37.8 million in spending authority. However, as a mid-year measure to align State spending with declining revenue collections, the Office of Management and Budget indicated its intention to lapse \$33.2 million of the unspent balance to the General Fund, leaving \$4.5 million for **Science and Technology grants** in FY 2009.

Key Points (Cont'd)

BOARD OF PUBLIC UTILITIES

- In reply to Board of Public Utilities (BPU) Discussion Point #1 in the FY 2009-2010 Department of the Treasury Budget Analysis, the board states that it anticipates receiving \$88.1 million from the **American Recovery and Reinvestment Act (ARRA) of 2009**. Specifically, it projects obtaining \$73.7 million from the federal State Energy Program to develop renewable energy and alternative fuel projects, promote ENERGY STAR products, upgrade the energy efficiency of state and local government buildings, and help households reduce their energy bills. The BPU also anticipates receiving \$14.4 million under the federal Energy Efficiency and Conservation Block Grant to fund projects that improve energy efficiency, reduce energy consumption, and lower fossil fuel emissions. At least 60 percent of the \$14.4 million has to be made available to municipalities and counties that do not receive direct funding under the program.
- In December 2008, New Jersey received \$32.1 million from auctioning, for the first time, carbon dioxide emission allowances to power plant owners under the Regional Greenhouse Gas Initiative (RGGI). The moneys were placed in the off-budget "**Global Warming Solutions Fund.**" The BPU receives 20 percent of the proceeds for programs that reduce electricity costs of low-income and moderate-income ratepayers. Of its auction receipts, the board has therefore awarded the nonprofit New Jersey Statewide Heating Assistance and Referral for Energy Services (NJ SHARES) an off-budget appropriation of \$2.8 million. The Governor's budget document does not include information on the "Global Warming Solutions Fund."
- In Board Order No. EO07030203 (August 2008), the BPU estimates that the **cost of its energy efficiency and renewable energy programs** would represent 2.59 percent of projected statewide electricity revenues in 2009. The breakout of the \$282.7 million cost is as follows: \$169.1 million raised through the societal benefits charge, \$70.0 million cost of CO₂ emissions allowances under the RGGI, \$42.2 million cost of Solar Renewable Energy Certificates sold to electricity suppliers, and \$1.4 million cost of PSE&G's Solar Loan Program. All but the \$169.1 million raised through the societal benefits charge are embedded in the base rates that utilities charge electric ratepayers.
- In August 2008, the BPU approved Board Order No. EO07030203, which sets the **Clean Energy Program** budget for calendar years 2009 through 2012. The program's funding level will increase from \$235 million in 2008 to \$379 million in 2012, reflecting a 12.7 percent annualized growth rate. The BPU projects that by 2012 Clean Energy Program proceeds will represent 2.09 percent of estimated retail electricity revenues and 1.54 percent of estimated retail natural gas revenues. The program finances renewable energy and energy efficiency programs.
- In October 2008, the Energy Master Plan Committee, chaired by the President of the BPU, released the **New Jersey Energy Master Plan**. Serving as a blueprint for managing the State's energy needs through 2020, the plan seeks to ensure that the State has a reliable supply of energy, at a reasonable price that is produced and consumed in a manner consistent with the State's environmental needs. The plan includes numerous initiatives geared towards accomplishing the State's environmental twin goals of reducing the State's electricity consumption by 20 percent from projected 2020 consumption levels and of meeting 30 percent of the State's electricity needs with renewable energy by 2020.

Key Points (Cont'd)

OFFICE OF THE STATE COMPTROLLER

- In February 2009, the Governor named his Chief of Staff and the State Comptroller to lead a group overseeing New Jersey’s implementation of the \$787 billion **American Recovery and Reinvestment Act (ARRA) of 2009**. The monitoring group is to ensure that the State uses the federal aid efficiently, effectively, and transparently. For FY 2009 and 2010 combined, the Governor’s FY 2010 Budget incorporates an estimated \$5.183 billion in ARRA stimulus funding. The Administration recommends an \$8.2 million appropriation for the Office of the State Comptroller in FY 2010, which would support 59 budgeted positions.

OFFICE OF THE INSPECTOR GENERAL

- The Governor’s Budget includes \$1.4 million in State funding and \$2.3 million in federal funds for the new **Office of the Medicaid Inspector General (OMIG)**, which is expected to have 54 positions. The appropriation and positions represent reallocations from the Division of Medical Assistance and Health Services in the Department of Human Services. The office is intended to prevent, detect, investigate, and reduce fraud, waste, and abuse in the State’s Medicaid program. It is part of the Office of the Inspector General, which would receive a \$5.5 million appropriation to support 71 funded positions under the Governor’s FY 2010 Budget, inclusive of the OMIG.

OFFICE OF ADMINISTRATIVE LAW

- The Administration proposes continuing an amendment to the FY 2009 Appropriations Act that suspended the statutory 5.1 percent **salary increase for administrative law judges** otherwise effective January 1, 2009. Maintaining the suspension in FY 2010 would save \$141,000 over FY 2009 and \$282,000 over statutory provisions.

LEGAL SERVICES OF NEW JERSEY

- **Legal Services of New Jersey** would receive an unchanged \$29.6 million under the Governor’s Budget. The FY 2009 Appropriations Act made \$20.4 million available to the organization (\$4.0 million more than in FY 2008). P.L.2008, c.113 subsequently appropriated an additional \$9.2 million to compensate the organization for declining non-State resources. An independent non-profit organization, Legal Services provides free legal assistance in civil matters to low-income citizens.

Background Papers:

Offshore Wind Energy p. 109
 The Office of the Public Defender and Child Welfare Reform p. 114

Table 1
Department of the Treasury
State Aid to Local Governmental Entities
FY 2008 – FY 2010

STATE AID	Expended FY 2008	Adj. App. FY 2009	Recom. FY 2010
Energy Tax Receipts*	\$920,228	\$966,249	\$1,029,065
Municipal Reimbursement for Veterans' Property Tax Deductions	71,667	71,500	69,500
Municipal Reimbursement for Senior and Disabled Citizens' Property Tax Deductions	20,410	20,500	19,500
Police & Firemen's Retirement System – Post Retirement Medical	22,306	24,283	27,528
Police & Firemen's Retirement System	39,001	39,001	5,607
Police & Firemen's Retirement System (P.L.1979, c.109)	21,001	21,011	3,020
Solid Waste Management – Debt Service Aid	28,588	30,000	27,000
Debt Service – Pension Obligation Bonds	10,179	11,097	12,058
South Jersey Port Corporation – Property Tax Reserve Fund	3,220	9,130	9,130
South Jersey Port Corporation – Debt Service Reserve Fund	6,882	7,460	8,983
Other Distributed Taxes	6,882	4,168	4,168
Highlands Protection Fund - Highlands Property Tax Stabilization Aid	124	3,600	3,600
Highlands Protection Fund - Incentive Planning Aid	0	2,650	2,650
Highlands Protection Fund - Watershed Moratorium Offset Aid	2,218	2,200	2,200
Highlands Protection Fund - Pinelands Property Tax Stabilization Aid	1,800	1,800	1,800
Highlands Protection Fund - Regional Master Plan Compliance Aid	201	1,750	1,750
County Boards of Taxation	1,769	1,714	1,778
Consolidated Police & Firemen's Pension Fund	523	1,256	820
Total State Aid	\$1,156,999	\$1,219,369	\$1,230,157

* Energy Tax Receipts totals include annual transfers of varying amounts to the Energy Tax Receipts Property Tax Relief Fund from the Consolidated Municipal Property Tax Relief Aid account (please see pages 38 and 39 of this analysis).

Fiscal and Personnel Summary

AGENCY FUNDING BY SOURCE OF FUNDS (\$000)

	Expended FY 2008	Adj. Approp. FY 2009	Recom. FY 2010	Percent Change	
				2008-10	2009-10
General Fund					
Direct State Services	\$476,866	\$437,921	\$426,307	(10.6%)	(2.7%)
Grants-In-Aid	379,399	428,788	463,907	22.3%	8.2%
State Aid	222,067	291,176	244,301	10.0%	(16.1%)
Capital Construction	8,888	0	0	(100.0%)	0.0%
Debt Service	362,938	211,162	5,165	(98.6%)	(97.6%)
Sub-Total	\$1,450,158	\$1,369,047	\$1,139,680	(21.4%)	(16.8%)
Property Tax Relief Fund					
Direct State Services	\$0	\$0	\$0	0.0%	0.0%
Grants-In-Aid	2,243,398	1,876,500	1,346,100	(40.0%)	(28.3%)
State Aid	217,585	165,406	157,886	(27.4%)	(4.5%)
Sub-Total	\$2,460,983	\$2,041,906	\$1,503,986	(38.9%)	(26.3%)
Casino Revenue Fund	\$0	\$0	\$0	0.0%	0.0%
Casino Control Fund	\$28,065	\$29,440	\$26,572	(5.3%)	(9.7%)
State Total	\$3,939,206	\$3,440,393	\$2,670,238	(32.2%)	(22.4%)
Federal Funds	\$2,522	\$43,717	\$79,617	3056.9%	82.1%
Other Funds	\$1,307,670	\$1,272,735	\$1,274,169	(2.6%)	0.1%
Grand Total	\$5,249,398	\$4,756,845	\$4,024,024	(23.3%)	(15.4%)

PERSONNEL SUMMARY - POSITIONS BY FUNDING SOURCE

	Actual FY 2008	Revised FY 2009	Funded FY 2010	Percent Change	
				2008-10	2009-10
State	4,057	3,893	3,890	(4.1%)	(0.1%)
Federal	10	34	34	240.0%	0.0%
All Other	2,261	2,109	2,106	(6.9%)	(0.1%)
Total Positions	6,328	6,036	6,030	(4.7%)	(0.1%)

FY 2008 (as of December) and revised FY 2009 (as of January) personnel data reflect actual payroll counts. FY 2010 data reflect the number of positions funded.

AFFIRMATIVE ACTION DATA

Total Minority Percent	24.9%	26.1%	26.3%	---	---
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Significant Changes/New Programs (\$000)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
<u>ECONOMIC PLANNING AND DEVELOPMENT</u>					
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY					
General Fund, Grants-in-Aid: InvestNJ — Job Credits, EDA	\$0	\$25,000	\$25,000	—	D-388
InvestNJ — Capital Credits, EDA	<u>\$0</u>	<u>\$30,200</u>	<u>\$30,200</u>	<u>—</u>	D-388
TOTAL	\$0	\$55,200	\$55,200	—	

The Governor has proposed a \$55.2 million General Fund appropriation in FY 2010 to cover the projected cost of paying out grants under the Invest in New Jersey Business Grant Program (InvestNJ), including \$200,000 for administrative expenses. The program has a \$120 million lifetime funding cap. Accordingly, \$39.8 million would remain for disbursement in FY 2011 after expending the proposed \$55.2 million out of the General Fund in FY 2010 and \$25 million out of the off-budget Long Term Obligation and Capital Expenditure Fund in FY 2009.

P.L.2008, c.113 established the bifurcated Invest in New Jersey Business Grant Program and charged the New Jersey Economic Development Authority (EDA) with its administration. Under its \$70 million capital investment component, the EDA awards businesses grants of up to seven percent of qualifying capital investments made before January 1, 2011. Under the program's \$50 million job creation component, the authority awards businesses \$3,000 for each additional full-time job created. On March 5, 2009, the EDA announced that InvestNJ reached its \$120 million lifetime funding limit two months after making applications available on its website.

General Fund, Grants-in-Aid: Division of Business Assistance, Marketing and International Trade, EDA	\$3,861	\$3,291	(\$570)	(14.8%)	D-388
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The recommended \$570,000 cut to the FY 2010 appropriation to the Division of Business Assistance, Marketing, and International Trade has two components. First, the division's operating expenditures are reduced by \$320,000 reflecting the attrition of positions following the abolition of the New Jersey Commerce Commission and the transfer of its functions and duties to the division in the course of FY 2009. Second, the Administration proposes halving

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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the FY 2010 appropriation to the New Jersey Small Business Development Centers (NJSBDC) network from \$500,000 in FY 2009 to \$250,000. However, the requested FY 2010 appropriation actually represents flat funding and not a reduction, given that, as a mid-year adjustment to align State spending with declining revenue collections, the Office of Management and Budget placed \$250,000 of the FY 2009 appropriation in reserve in anticipation of a year-end lapse to the General Fund.

Newly created as the successor agency to the New Jersey Commerce Commission pursuant to P.L.2008, c.27, the Division of Business Assistance, Marketing, and International Trade helps businesses create and maintain jobs in New Jersey, assists them in navigating through the intricacies of New Jersey government agencies and regulations, and promotes New Jersey as a business destination.

A federal-state partnership with institutions of higher education, the nonprofit NJSBDC network provides counseling and training for small business owners to help them finance, market, and manage their companies. Headquartered on the Newark campus of Rutgers Business School, the network is comprised of 11 regional centers and 16 affiliated offices located throughout the State. In calendar year 2008, the NJSBDC counseled and trained 21,844 clients and helped them secure \$40.0 million in financing through loan and equity investments. The organization received \$250,000 in State funding in calendar year 2008, \$2.6 million in federal funding, and \$2.0 million in cash and in-kind donations from its host universities. According to the NJSBDC, reducing the State appropriation from \$500,000 to \$250,000 in FY 2009 jeopardized \$890,000 in federal funding.

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY**General Fund,****Grants-in-Aid:****Science and****Technology Grants**

\$19,250

\$10,000

(\$9,250)

(48.1%)

D-391

At the onset of FY 2009, Science and Technology grants had \$37.8 million in spending authority composed of an \$18.6 million opening balance and a \$19.3 million FY 2009 appropriation. However, as a mid-year measure to align State spending with declining revenue collections, the Office of Management and Budget placed \$33.2 million of the \$37.8 million in reserve in anticipation of a year-end lapse to the General Fund, leaving \$4.5 million for Science and Technology grants. The proposed \$10 million FY 2010 appropriation therefore reflects a \$5.5 million increase in authorized program spending over the anticipated adjusted FY 2009 funding level.

The New Jersey Commission on Science and Technology (CST) encourages the development of scientific and technological programs, stimulates academic-industrial collaboration, and coordinates the activities of technology centers and business facilities. A major activity of the commission is the awarding of grants. The Governor's FY 2010 Budget includes funding for

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
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the following CST grants: a) \$3.5 million for the Edison Innovation Research and Development Fund, which provides funding to New Jersey technology companies partnering with a New Jersey research university, company or institution for research and development activities required for the commercialization of an identified technology; b) \$2.0 million to stem cell research to encourage the development of stem cell-based treatment options for patients; c) \$1.5 million for the New Jersey Business Incubator Network, which provides a professional business environment, administrative support, and networking opportunities for entrepreneurs through 14 centers located throughout the State; d) \$1.45 million for New Jersey Technology Fellowships, which provide salary funding for recent doctoral graduates of New Jersey universities to work in small New Jersey technology companies; e) \$800,000 for New Jersey Entrepreneur Fellowships, which provide salary funding for recent MBA graduates of New Jersey universities to work in small New Jersey technology companies; f) \$400,000 for the Small Business Innovative Research Bridge Grant Program, which provides grants to companies awaiting federal moneys to help bridge a funding gap; g) \$250,000 for the Incubator Seed Fund, which awards grants to emerging technology businesses located in business incubators to help them commercialize technologies; and h) \$100,000 to the Small Business Innovation Research Program, under which the CST offers training sessions to help entrepreneurs successfully submit Small Business Innovation Research and Small Business Technology Transfer proposals to federal agencies.

General Fund,**Grants-in-Aid:****Business Incubator****Network**

\$630

\$0

(\$630)

(100.0%)

D-391

The Governor's FY 2010 Budget does not renew the \$630,000 grant directly appropriated to the New Jersey Business Incubation Network in FY 2009. Despite eliminating the grant, the Governor proposes continuing the State's support of business incubation through science and technology grants awarded by the New Jersey Commission on Science and Technology. Specifically, the commission intends to award \$1.5 million to the New Jersey Business Incubation Network in FY 2010 and to provide \$250,000 for the Incubator Seed Fund, which awards grants to emerging technology businesses located in business incubators to help them commercialize technologies.

The New Jersey Business Incubation Network is comprised of 14 technology business incubators, which supported 560 start-up companies in 2008. Business incubation is a process designed to assist start-up companies in their quest to become commercially viable, freestanding firms. To that end, incubators offer resources and services such as access to appropriate rental space and flexible leases, shared business services and equipment, technology support services, assistance in obtaining financing, and management guidance.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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ECONOMIC REGULATION**BOARD OF PUBLIC UTILITIES****General Fund,****Direct State Services:**

Salaries and Wages	\$25,744	\$24,142	(\$1,602)	(6.2%)	D-394
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The proposed \$1.6 million reduction in this budget line aggregates lower recommended allocations for salaries and wages across several, but not all, Board of Public Utilities (BPU) divisions: the Division of Administration and Support Services (\$671,000 reduction, or 6.2 percent, from \$10.9 million to \$10.2 million), the Division of Gas (\$354,000 reduction, or 23.1 percent, from \$1.5 million to \$1.2 million), the Division of Service Evaluation (\$193,000 reduction, or 12.0 percent, from \$1.6 million to \$1.4 million), the Division of Telecommunication (\$164,000 reduction, or 9.7 percent, from \$1.7 million to \$1.5 million), the Office of Cable Television (\$124,000 reduction, or 5.9 percent, from \$2.1 million to \$2.0 million), and the Division of Water and Sewer (\$96,000 reduction, or 6.4 percent, from \$1.5 million to \$1.4 million). The proposed FY 2010 salaries and wages allocations for Regulatory Support Services (\$4.0 million), the Division of Electric (\$1.6 million), and the Energy Assistance programs (\$885,000) are unchanged from their adjusted FY 2009 levels.

Addressing BPU Discussion Point #2 in the FY 2009-2010 Department of the Treasury Budget Analysis, the BPU indicated that it had 264 filled positions in April 2009—41 fewer filled positions than in 2004. The board also indicated that it would respond to its continued downsizing by reorganizing the agency so that priority work areas would continue to function effectively. Those areas were: Energy, Clean Energy, Policy and Planning, and the Reliability and Security of the State's utility infrastructure. Other programmatic areas would have to absorb more significant cuts.

General Fund,**Grants-in-Aid:****New Jersey Statewide****Heating Assistance****and Referral for****Energy Services**

	\$0	\$5,000	\$5,000	—	D-395
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The recommended \$5.0 million FY 2010 appropriation for New Jersey Statewide Heating Assistance and Referral for Energy Services (NJ SHARES) reflects a funding shift, at a decreased level, from the off-budget Long Term Obligation and Capital Expenditure Fund to the State General Fund and not new State spending.

In FY 2009, NJ SHARES received \$13.6 million in State funding as of May 5, 2009. P.L.2008, c.113 appropriated \$10.0 million to the organization from the off-budget Long Term Obligation and Capital Expenditure Fund to address the heightened need for energy assistance at a time of

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
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declining non-State revenues. In addition, pursuant to N.J.S.A.26:2C-51, the Board of Public Utilities awarded NJ SHARES \$2.8 million of the \$32.1 million placed in the off-budget "Global Warming Solutions Fund" from the December 2008 auction of carbon dioxide emission allowances to power plant owners under the Regional Greenhouse Gas Initiative (RGGI). NJ SHARES also received \$800,000 from the off-budget Unclaimed Utility Deposits Trust Fund in accordance with subsection b. of N.J.S.A.46:30B-74.

A Statewide nonprofit energy assistance organization, NJ SHARES lends financial support to needy households that do not qualify for assistance under the Low Income Home Energy Assistance Program (LIHEAP) to help them pay their electric and heating fuel bills. The maximum annual grant per household is \$700 for heating fuel and \$300 for electricity. In calendar year 2008, the organization had \$6.7 million in revenues, \$8.8 million in operating expenditures, and provided an average grant of \$575 to 12,379 households (the \$10.0 million FY 2009 State appropriation is part of NJ SHARES' 2009 budget). At the same time, it had to turn away 15,000 applicants due to insufficient funding. The organization estimates that it would need to award \$30 million in grants per year to meet the demand for energy assistance.

Federal Funds:

**Energy Resource
Management**

\$39,592	\$75,492	\$35,900	90.7%	D-395
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This line aggregates several sources of federal funding the Board of Public Utilities (BPU) receives for energy resource management. The American Recovery and Reinvestment Act (ARRA) of 2009 accounts for the entire projected FY 2010 increase, as the Administration anticipates \$36.0 million in ARRA funding in FY 2009 and \$71.9 million in FY 2010. In reply to BPU Discussion Point #1 in the FY 2009-2010 Department of the Treasury Budget Analysis, the BPU states, however, that it now expects to receive \$7.4 million in ARRA funds in FY 2009 and \$80.7 million in FY 2010, which would result in a \$73.3 million growth in the budget line in FY 2010.

The BPU anticipates receiving moneys under two ARRA initiatives. First, it projects obtaining \$7.4 million in FY 2009 and \$66.3 million in FY 2010 from the federal State Energy Program to be deposited in the Clean Energy Fund. Program allocations have to be used to develop renewable energy and alternative fuel projects, to promote ENERGY STAR products, to upgrade the energy efficiency of state and local government buildings, and to help households reduce their energy bills.

Second, the BPU anticipates receiving \$14.4 million in FY 2010 for state energy conservation under the federal Energy Efficiency and Conservation Block Grant. At least 60 percent of the program moneys have to be made available to the 501 municipalities and 11 counties that do not receive direct federal funding under the program. Grants have to fund projects that improve energy efficiency, reduce energy consumption, and lower fossil fuel emissions.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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GOVERNMENTAL REVIEW AND OVERSIGHT**OFFICE OF THE STATE COMPTROLLER**

General Fund, Direct State Services: Services Other Than Personal	\$1,100	\$1,950	\$850	77.3%	D-399
Maintenance and Fixed Charges	\$866	\$100	(\$766)	(88.5%)	D-399

The Governor's FY 2010 Budget maintains total operational funding for the Office of the State Comptroller at its FY 2009 level of \$8.2 million. Although the total appropriation would remain unchanged, the State Comptroller anticipates several changes to its accounts. The largest decrease would occur in the maintenance and fixed charges account, where rent savings would contribute a major share to the anticipated \$766,000 decline. The largest increase would affect the Services Other Than Personal account, which pays for services provided by outside experts. No detail has been provided to the Office of Legislative Services upon its request for a justification of the State Comptroller's anticipated \$850,000 increase in spending on third party contracts in FY 2010.

The Office of the State Comptroller was created pursuant to P.L.2007, c.52. Organized "in but not of" the Department of the Treasury, the office's budgeted 59 employees conduct financial audits, engage in procurement contract audits and monitoring, and review the efficiency and effectiveness of State and local governmental entities. In February 2009, the Governor named the State Comptroller to co-lead a group overseeing New Jersey's implementation of the \$787 billion American Recovery and Reinvestment Act (ARRA) of 2009. The monitoring group is to ensure that the State uses the federal aid efficiently, effectively, and transparently. For FY 2009 and 2010 combined, the Governor's FY 2010 Budget incorporates an estimated \$5.183 billion in ARRA stimulus funding

FINANCIAL ADMINISTRATION**DIVISION OF TAXATION**

General Fund, Direct State Services: Taxation Services and Administration	\$117,083	\$113,608	(\$3,475)	(3.0%)	D-404
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Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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The recommended \$3.5 million decrease in the FY 2010 appropriation to the Division of Taxation results mostly from lower anticipated expenses for Services Other than Personal (page D-405), notably the nonrenewal of a \$3.2 million supplemental FY 2009 appropriation for a debt collection contract with an outside vendor. However, the Governor's Budget includes a language provision on page D-406 allowing for supplemental appropriations of unspecified amounts for tax and debt collection and processing activities without additional legislative approval. The division invoked this language provision to authorize such supplemental appropriations in FY 2009 and theretofore.

CASINO CONTROL COMMISSION

**Casino Control Fund,
Direct State Services:
Administration of
Casino Gambling**

\$29,440	\$26,572	(\$2,868)	(9.7%)	D-404
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The Governor's FY 2010 Budget recommends lowering total operational expenditures of the Casino Control Commission by a net \$2.9 million, or 9.7 percent, over FY 2009. The following commission accounts would see decreases under the Administration's proposal: Salaries and Wages, \$1.4 million (from \$18.1 million to \$16.8 million); Services Other Than Personal, \$784,000 (from \$1.8 million to \$1.0 million); Employee Benefits, \$488,000, (from \$6.8 million to \$6.3 million); Maintenance and Fixed Charges, \$169,000 (from \$1.7 million to \$1.6 million); Materials and Supplies, \$57,000 (from \$210,000 to \$153,000); and Additions, Improvements and Equipment, \$22,000 (from \$161,000 to \$139,000). These decreases would be slightly offset by proposed increases in two commission accounts: \$4,000 for the Chairman and Commissioners (from \$641,000 to \$645,000) and \$5,000 in the Special Purpose appropriation for the Administration of Casino Gambling (from \$40,000 to \$45,000).

Along with the Division of Gaming Enforcement in the Department of Law and Public Safety, the Casino Control Commission regulates the New Jersey casino industry pursuant to P.L.1977, c.110 (C.5:12-1 et seq.). Its operations are funded out of the Casino Control Fund into which are deposited all revenues accruing from the licensure of facilities, slot machines, employees, and ancillary industries.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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GENERAL GOVERNMENT SERVICES**OFFICE OF INFORMATION TECHNOLOGY**

General Fund,
Direct State Services--
Special Purpose:
Quality Assurance
Oversight

	\$2,000	\$0	(\$2,000)	(100.0%)	D-416
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The Governor recommends discontinuing the appropriation in FY 2010. Required spending cuts have prompted the Office of Information Technology (OIT) to reevaluate its priorities. It determined that running the State's information technology infrastructure and supporting agencies in their program development was of greater importance than oversight.

The Quality Assurance Program was intended to provide oversight of large information technology projects following significant delays and cost overruns in the implementation of the State's Statewide Automated Child Welfare Information System (SACWIS), also known as NJ SPIRIT. OIT would have used the quality assurance appropriation to engage vendors who would have largely functioned as program managers for large information technology projects and to hire staff qualified to oversee the vendors. As a result, OIT expected greater cost containment and better project monitoring. But the initiative has never gotten fully off the ground. The State's hiring freeze preempted the hiring of staff qualified to oversee any quality assurance consultant and the Request for Proposal (RFP) for the consultants was just issued recently. Accordingly, the FY 2008 and FY 2009 program appropriation of \$2 million each lapsed into the State General Fund and the RFP has been cancelled.

General Fund,
Direct State Services--
Special Purpose:
Data Center
Consolidation

	\$800	\$0	(\$800)	(100.0%)	D-416
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The State allocated a total of \$1.7 million to the data center consolidation initiative in FY 2008 and FY 2009. Of the \$1.7 million, the Office of Information Technology (OIT) spent \$74,000 before the Office of Management and Budget responded to declining revenue collections by placing the remaining \$1.6 million in reserve in anticipation of a year-end lapse to the General Fund. For budgetary reasons, the Governor's FY 2010 Budget also does not include an appropriation for data center consolidation.

The OIT has meant to consolidate several agencies' data centers into the space currently occupied in its data center by its printing operations. Doing so would avoid \$2.5 million in expenditures by State agencies on building or expanding their own data centers and yield operational efficiencies from pooling available infrastructure, resources, and personnel.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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Accordingly, the OIT spent \$74,000 on an architectural study of a recommended building for its printing operations, but ultimately rejected it because of structural problems and opposition by local residents. The project's funding evaporated thereafter, thereby staying OIT's attempt to relocate its printing operations and consolidate data centers. Data centers house mainframes, network infrastructure, servers, and storage devices, along with the backup power systems and environmental controls necessary to ensure efficient operations and prevent systems failure.

General Fund,
Direct State Services--
Special Purpose:
Information
Technology Online
State Portal

	\$1,000	\$0	(\$1,000)	(100.0%)	D-416
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In FY 2009, the State allotted \$1 million to the State's "myNewJersey!" Internet portal. The appropriation was to pay for upgrades needed to accommodate the growth in the portal's usage and the number of e-government applications accessible through the portal. Of the \$1 million, the Office of Information Technology (OIT) spent \$590,000 before the Office of Management and Budget responded to declining revenue collections by placing the remaining \$410,000 in reserve in anticipation of a year-end lapse to the General Fund. For budgetary reasons, the Governor's FY 2010 Budget also does not include an appropriation for the portal.

The State's "myNewJersey!" Internet portal gives registered users dynamic access to online information and over 300 e-government applications. Registered users can actively personalize and customize the web content in which they are interested, such as events calendars and air quality information. According to evaluation data in the Governor's FY 2010 Budget, the portal supports an estimated 383,000 registered users in FY 2009 who will have logged into the portal over 5 million times by the end of the fiscal year. The OIT expects 460,000 registered users in FY 2010 and over 6 million logins.

General Fund,
Grants-in-Aid:

Enhanced 911 Grants	\$12,425	\$0	(\$12,425)	(100.0%)	D-417
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This line funded the Enhanced 911 Grants awarded to Public Safety Answering Points (PSAPs) by the Office of Emergency Telecommunications Services in the Office of Information Technology. The Governor recommends suspending the program in FY 2010. The suspension continues the Governor's decision to freeze the grants in the second half of FY 2009 as part of the package of budget cuts designed to align State spending with declining revenue collections. The FY 2009 Appropriations Act allotted \$12.4 million to the program under which \$8.0 million in grants was disbursed in FY 2009 and \$13.1 million in unexpended account balances was placed in reserve in anticipation of a year-end lapse to the General Fund.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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PSAPs are responsible for handling 911 calls for emergency assistance from police, fire, and ambulance services. Criteria for Enhanced 911 Grants favored the regional consolidation of municipal and county PSAPs by limiting grants to countywide and other high-volume PSAPs. Specifically, the grants assisted municipal and county PSAPs in studying consolidation opportunities and purchasing, upgrading, maintaining, and operating the equipment needed to run the Statewide Enhanced 911 System. The Emergency Preparedness and 911 System Assessment, created by P.L.2004, c.48 (C.52:17C-17 et seq.), typically funds the grant program, among other initiatives. Customers pay the \$0.9 assessment in each billing cycle for their cell or landline phones.

STATE SUBSIDIES AND FINANCIAL AID

PTRF, Grants-in-Aid:
Homestead Property
Tax Credits/Rebates
for Homeowners

\$1,583,500	\$1,044,400	(\$539,100)	(34.0%)	D-419
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PTRF, Grants-in-Aid:
Homestead Property
Tax Rebates for
Tenants

<u>\$124,000</u>	<u>\$129,200</u>	<u>\$5,200</u>	<u>4.2%</u>	D-419
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TOTAL	\$1,707,500	\$1,173,600	(\$533,900)	(31.3%)	
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The recommended \$534 million funding decrease for the New Jersey Homestead Property Tax Credit program (N.J.S.A.54:4-8.57 et seq.) reflects the elimination of certain homeowners and tenants from the program and the reduction of rebate amounts for certain other homeowners and tenants. In sum, the Executive estimates that 1.14 million homeowners would collect an average \$1,022 benefit in FY 2010 and 847,000 tenants an average \$153 benefit. **Table 2** on page 27 indicates the amounts individuals received in FY 2009, the amounts they would have received under statutory provisions, and the amounts they would receive in FY 2010 according to statutes and the proposed language. The OLS notes that the Governor's FY 2010 Budget includes \$35 million in the adjusted FY 2009 appropriation for homeowner rebates that has been placed in reserve in anticipation of a year-end lapse to the General Fund. Accordingly, the Executive's recommended FY 2010 program appropriation implies a decrease of \$498.9 million, or 29.8 percent, over FY 2009.

Senior Homeowners: The Governor's FY 2010 Budget maintains the program changes implemented in FY 2009 for homeowners who are 65 years of age or older, or blind, or disabled. Specifically, the Governor recommends: a) eliminating rebates for homeowners with incomes above \$150,000; b) preserving rebates ranging from \$500 to \$2,000 for homeowners

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
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with incomes not exceeding \$150,000; and c) maintaining 2006 property taxes paid as the basis for calculating all rebates.

Non-Senior Homeowners: For all other homeowners the Governor's FY 2010 Budget proposes: a) eliminating rebates for homeowners with incomes above \$75,000 (homeowners with incomes not exceeding \$150,000 received rebates of up to \$2,000 in FY 2009); b) lowering the maximum rebate amount from \$2,000 in FY 2009 to \$1,334 for homeowners with incomes in excess of \$50,000 but not over \$75,000; c) preserving rebates of up to \$2,000 for homeowners with incomes not exceeding \$50,000; and d) maintaining 2006 property taxes paid as the basis for calculating all rebates.

Senior Tenants: The Governor's FY 2010 Budget proposes no program changes compared with FY 2009 for tenants with a gross income of not more than \$100,000 who are 65 years of age or older, or blind, or disabled. Such tenants would receive rebates in FY 2010 ranging from \$160 to \$860, which is unchanged from FY 2009 levels. The Governor thus proposes foregoing the statutory inflation adjustment to the maximum in FY 2010.

Non-Senior Tenants: For all other tenants who have a gross income not exceeding \$100,000 the Governor's FY 2010 Budget recommends that: a) tenants with a gross income not exceeding \$50,000 receive \$80; b) tenants with gross income in excess of \$50,000 but not of \$75,000 receive \$54; and c) tenants with gross income in excess of \$75,000 but not of \$100,000 be eliminated from the program. All these tenants received \$80 in FY 2009.

**PTRF, Grants-in-Aid:
Senior and Disabled
Citizens' Property Tax
Freeze**

\$169,000	\$172,500	\$3,500	2.1%	D-419
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A 2008 program expansion and rising property tax liabilities drive the anticipated expenditure growth of the Senior and Disabled Citizens' Property Tax Freeze program, or Homestead Property Tax Reimbursement program (N.J.S.A.54:4-8.67 et seq.). Overall, the Executive forecasts the average payment to 166,000 projected participants (an increase of 11,000 over FY 2009) to fall from \$1,072 in FY 2009 to \$1,039 in FY 2010, mostly due to an influx of new program participants whose relatively lower benefits depress the average. In addition, the OLS notes that the Executive has placed an unexpended \$3 million of the FY 2009 program appropriation in reserve in anticipation of a year-end lapse to the General Fund. Accordingly, the Executive's recommended FY 2010 program appropriation implies an increase of \$6.5 million, or 3.9 percent, over the FY 2009 authorized spending level.

P.L.2008, c.119 raised the income ceiling for program participation. Hitherto applicants would have needed a 2007 income of no greater than \$45,135 if single, or \$55,344 if married, and a tax year 2008 income of no greater than \$47,753 if single, or \$58,554 if married, to qualify for program payments in FY 2010. Instead, P.L.2008, c.119 removed the distinction between single and married applicants and raised the ceiling to \$60,000 in tax year 2007 and \$70,000 in tax year 2008. It will increase to \$80,000 in tax year 2009 and will be adjusted for inflation

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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annually thereafter. The Department of the Treasury estimated that the law would create an additional cost of \$5 million in FY 2010, \$14 million in FY 2011, and \$32 million in FY 2012. These numbers reflect an estimated new 15,000 recipients in FY 2010, 26,000 in FY 2011, and 27,000 in FY 2012.

The Senior and Disabled Citizens' Property Tax Freeze program reimburses qualified homeowners for the difference between the amount of property taxes they paid on their principal residence in tax year 2008 and the amount they had paid in their base year. Qualified homeowners in FY 2010 must be at least 65 years of age or disabled or both. In addition, they must have a tax year 2007 income no greater than \$60,000, and a tax year 2008 income of no greater than \$70,000, whether married or single. Moreover, they must have paid property taxes directly, or indirectly by means of rental payments, on any homestead or rental unit used as a principal residence in New Jersey for at least ten consecutive years, the last three of which must have been as owners of the homesteads for which they seek the reimbursement.

General Fund,**State Aid:****South Jersey Port****Corporation Debt**

Service Reserve Fund	\$7,460	\$8,983	\$1,523	20.4%	D-420
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The South Jersey Port Corporation (SJPC) Debt Service Reserve Fund ensures that the corporation meets its debt service obligations. The higher FY 2010 appropriation is needed to cover increases in debt service payments on existing bonds and to make payments on a new bond issuance. As of December 31, 2007, the SJPC had \$207.4 million in debt service payments outstanding on its Marine Terminal Revenue Bonds through final maturity in January 2033. In October 2008, the SJPC's Board of Directors approved an additional bond issue of up to \$26 million to continue the development of the Paulsboro Marine Terminal and to fund infrastructure improvements at the Port of Camden.

Organized "in but not of" the Department of the Treasury, the SJPC manages and operates the ports of Camden and Salem and is currently building a new marine terminal in Paulsboro. In calendar year 2007, it had \$26.2 million in operating revenues and \$21.3 million in operating expenditures. The Governor recommends an \$18.1 million subsidy to the corporation in FY 2010: \$9.1 million in payments in lieu of property taxes to counties and municipalities in which the SJPC has facilities (a \$6.0 million supplemental appropriation in FY 2009 is repeated as part of the \$9.1 million FY 2010 appropriation) and \$8.9 million in payments to finance a portion of the corporation's debt service.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
General Fund, State Aid: Solid Waste Management — County Environmental Investment Debt Service Aid	\$30,000	\$27,000	(\$3,000)	(10.0%)	D-420

Several county and municipal solid waste authorities that have received disbursements from this budget account have improved their finances. Accordingly, they need less State Aid to meet their debt service obligations in FY 2010.

The Solid Waste Management – County Environmental Investment Debt Service Aid program assists counties and county utility authorities in meeting debt service obligations for solid waste disposal investments effectuated up to 1997 if the debt is at risk of default without State assistance. A recurring language provision in the annual appropriations acts provides the program's legal authority.

General Fund, State Aid: State Contribution to Consolidated Police and Firemen's Pension Fund	\$1,256	\$820	(\$436)	(34.7%)	D-420
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Declining pension obligations explain the proposed funding reduction for the Consolidated Police and Firemen's Pension Fund (CPFPPF). Nonetheless, pursuant to the actuary's determination, a State appropriation is still required as the value of fund assets does not fully support the CPFPPF's accrued liability.

The CPFPPF is a closed system without contributing members that provides pension coverage to municipal police officers and firemen who were appointed prior to July 1, 1944. Participating municipalities pay two-thirds of the fund's liabilities, while the State covers the remaining third. As of July 1, 2008, the fund had 532 beneficiaries who had received \$3.7 million in total pension benefits in FY 2008 and its total assets were \$17.3 million, according to *The Consolidated Police and Firemen's Pension Fund of New Jersey Annual Report of the Actuary Prepared as of July 1, 2008* for the New Jersey Division of Pensions and Benefits. A year prior, the fund had 620 beneficiaries who received \$4.3 million in total pension benefits, and its total assets were \$21.1 million.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
General Fund, State Aid: Debt Service on Pension Obligation Bonds	\$0	\$12,058	\$12,058	—	D-420
PTRF, State Aid: Debt Service on Pension Obligation Bonds	<u>\$11,097</u>	<u>\$0</u>	<u>(\$11,097)</u>	<u>-100.0%</u>	D-420
TOTAL	\$11,097	\$12,058	\$961	8.7%	

The recommended increase reflects changing contractual debt service payments for the *State Pension Funding Bonds* in FY 2010. The Governor also recommends shifting the funding source for the appropriation in FY 2010 from the Property Tax Relief Fund (PTRF) to the General Fund, as the PTRF is expected to have insufficient resources in FY 2010 to cover required debt service payments on pension obligations bonds. The above budget lines capture only that portion of total debt service payments that is allocated to the State as employer contribution on behalf of local governmental entities for the Police and Firemen's Retirement System and the Consolidated Police and Firemen's Pension Fund.

In 1997, the New Jersey Economic Development Authority issued the \$2.8 billion appropriations-backed *State Pension Funding Bonds, Series 1997A – 1997C* pursuant to P.L.1997, c.114, the "Pension Bond Financing Act of 1997" (\$375 million of which were refinanced in 2003 as *State Pension Funding Variable Rate Refunding Bonds, Series 2003*). Its proceeds were intended to finance \$2.8 billion of the State's \$3.2 billion unfunded retirement systems liability in 1997. According to the *2008 State of New Jersey Debt Report*, the State will have \$2.57 billion in outstanding debt service payments at the end of FY 2009 through the bonds' maturity in 2029. In FY 2010, the Governor recommends \$230.6 million in total pension bond debt service payments, which represents an increase of \$18.4 million, or 8.7 percent, over the \$212.2 million FY 2009 appropriation. The outlay is allocated as follows: (1) \$122.3 million in the Department of Education (page D-107), (2) \$96.2 million in Interdepartmental Accounts (pages D-446 and D-447), and (3) \$12.2 million in the Department of the Treasury (pages D-386 and D-420).

PTRF, State Aid: Police and Firemen's Retirement System – Post Retirement Medical	\$24,286	\$27,528	\$3,242	13.3%	D-420
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The recommended FY 2010 amount would cover the State's obligation to pay 80 percent of the health care premiums for Police and Firemen's Retirement System (PFRS) members who retired

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
General Fund, State Aid: Police and Firemen's Retirement System	\$39,001	\$5,607	(\$33,394)	(85.6%)	D-421
Police and Firemen's Retirement System (P.L.1979, c.109)	<u>\$21,011</u>	<u>\$3,020</u>	<u>(\$17,991)</u>	<u>(85.6%)</u>	D-421
TOTAL	\$60,012	\$8,627	(\$51,385)	(85.6%)	

on disability or with at least 25 years of creditable service (N.J.S.A.52:14-17.32i). The growth in the requested appropriation is largely due to premium rate increases for retirees and a projected 1,398 increase in the number of retirees to 35,647 pensioners in FY 2010, as shown in the evaluation data in the Governor's FY 2010 Budget (page D-445). The following "significant change" summarizes the PFRS.

The \$51.4 million decline in the requested FY 2010 appropriation for the State's share of the employer contributions to the Police and Firemen's Retirement System (PFRS) for full-time county and municipal police officers and firefighters represents a measure to align State spending with anticipated revenues. The OLS notes that in response to decreasing FY 2009 revenue collections the Administration has announced that it would contribute markedly less to the PFRS in FY 2009 than the amounts displayed in the Governor's FY 2010 Budget.

The total adjusted FY 2009 appropriation for the PFRS equals \$128.0 million. For FY 2010, the Governor recommends contributing \$18.4 million to the PFRS allocated as follows: (1) \$9.2 million in Direct State Services under Interdepartmental Accounts (page D-446), (2) \$611,000 in Grants-in-Aid for State colleges' and universities' campus police, also under Interdepartmental Accounts (page D-447), and (3) \$8.6 million in State Aid on behalf of local governmental entities in the Department of the Treasury (page D-421). The \$18.4 million would fund 6.2 percent of the amount certified by the actuaries as necessary to fully fund both the normal FY 2010 contribution and the accrued State liability for the PFRS (the required FY 2010 State PFRS contribution is \$299.1 million according to page 11 of *The Police and Firemen's Retirement System of New Jersey Annual Report of the Actuary Prepared as of July 1, 2008* for the New Jersey Division of Pensions and Benefits). The balance of this liability would be deferred.

The PFRS provides pension coverage to all full-time county, municipal, and State police officers and firefighters (but not to State Police officers who are covered by the State Police Retirement System). The system is projected to have 35,647 pensioners in FY 2010, as displayed in the evaluation data in the Governor's FY 2010 Budget (page D-445). Local employers and the State pay employer contributions. The Police and Firemen's Retirement System account pays for the State's basic pension contribution, whereas the Police and Firemen's Retirement System (P.L.1979, c.109) account covers, at 1.1 percent of covered salary, the State's liability for

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
enhanced pension benefits consisting of a retirement allowance of 65 percent of final compensation for PFRS members who retire after 25 years of service.					
<u>MANAGEMENT AND ADMINISTRATION</u>					
General Fund, Direct State Services: Contract Compliance and Equal Employment Opportunity in Public Contracts	\$1,626	\$1,053	(\$573)	(35.2%)	D-424
All Other Funds: Contract Compliance and Equal Employment Opportunity in Public Contracts	<u>\$278</u>	<u>\$573</u>	<u>\$295</u>	<u>106.1%</u>	D-424
TOTAL	\$1,904	\$1,626	(\$278)	-14.6%	

These accounts represent the budgetary outlay of the Division of Public Contracts Equal Employment Opportunity Compliance for activities intended to ensure that firms contracting with a public agency in the State of New Jersey provide equal opportunities in employment pursuant to P.L.1975, c.127 (N.J.S.A.10:5-31 et seq.). The division's recommended \$278,000 decline in FY 2010 spending reflects mostly a \$239,000 reduction in salaries and wages by reason of attrition and the elimination of funded vacancies.

In addition, the Governor's Budget recommends shifting \$573,000 of the division's operating expenditures to other sources. In the course of FY 2009, the division adopted regulations that required vendors who won a contract award to pay a \$150 fee when they apply for a Certificate of Employee Information Report. The resultant proceeds defray a part of the division's operating expenses. Accordingly, \$278,000 of its spending was moved off-budget and financed by this new revenue stream in FY 2009. Since regulations adopting the \$150 fee did not take effect until October 20, 2008, the \$295,000 increase in projected off-budget spending in FY 2010 represents the annualized collection of fee payments.

A Certificate of Employee Information Report constitutes evidence that a vendor complies with the State's equal employment opportunity policies, including that the vendor has made a good faith effort to achieve county-specific goals as to the percentage of the vendor's workforce that is composed of minorities and women.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp. FY 2009</u>	<u>Recomm. FY 2010</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
General Fund, Debt Service	\$211,162	\$5,165	(\$205,997)	(97.6%)	D-424, E-8, E-9

Under the terms of current bond covenants, the State would have to make \$408.6 million in general obligation bond debt service payments in FY 2010, of which \$348.1 million would be funded in the Department of the Treasury budget and \$60.5 million in the Department of Environmental Protection budget. But because of the Administration's anticipated debt restructuring plan, the State would only make \$47.6 million in payments, a reduction of \$361.0 million. The reduction's specific amount, however, is still in flux, as Treasury has not yet finalized the restructuring plan. The savings appear in the general obligation debt service lines, but they would come from the refinancing of general obligation and appropriations-backed debt. As of June 30, 2008, the State had \$31.9 billion in outstanding debt obligations from which it could seek debt service savings.

The Administration's envisioned debt refinancing plan would decrease by \$206.0 million over FY 2009 the appropriation for debt service payments on Department of the Treasury general obligation bonds. The OLS notes that the \$206.0 million understates by \$135.0 million the savings required to reach \$5.2 million in FY 2010 debt service payments, as the \$211.1 million FY 2009 adjusted appropriation excludes \$135.0 million in debt service payments assumed by the off-budget (and since depleted) Long Term Obligation and Capital Expenditure Fund. Accordingly, actual FY 2009 debt service payments on Department of the Treasury general obligation bonds are \$346.2 million. The restructuring would thus lower debt service payments under this line by \$341.0 million over FY 2009.

General Fund, Grants-In-Aid: Legal Services of New Jersey—Legal Assistance in Civil Matters (P.L.1996, c.52)	\$10,000	\$19,200	\$9,200	92.0%	D-429
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The recommended growth in this budget line reflects a funding shift and not an increased appropriation, as Legal Services of New Jersey would receive an unchanged \$29.6 million under the Governor's FY 2010 Budget. The FY 2009 Appropriations Act made \$20.4 million available to Legal Services (\$4.0 million more than in FY 2008). P.L.2008, c.113 subsequently supplemented the appropriation with \$9.2 million from the off-budget Long Term Obligation and Capital Expenditure Fund to compensate the organization for declining non-State revenues. Given that this fund's resources have since been depleted, the Governor proposes shifting the \$9.2 million appropriation to the General Fund in FY 2010.

Significant Changes/New Programs (\$000) (Cont'd)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2009</u>	<u>Recomm.</u> <u>FY 2010</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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The \$9.2 million FY 2009 supplemental appropriation responded to a precipitous decline in Legal Services revenue from the Interest On Lawyers' Trust Accounts (IOLTA) Fund of the New Jersey Bar Association. Legal Services received \$40.2 million from the IOLTA Fund in calendar year 2007, \$25.7 million in calendar year 2008, and projects to receive \$3.0 million in calendar year 2009. IOLTA funds represent the interest automatically transferred from attorney trust accounts holding clients' funds that are nominal in amount or to be held only for a short period of time. Legal Services receives at least 75 percent of annual IOLTA collections, which fluctuate depending on market interest rates and escrow balances earning interest. IOLTA returns have been dropping as the Federal Reserve Bank has gradually lowered the federal funds rate from 5.25 percent in June 2006 to near zero percent, and as the sagging economy and real estate market have depressed escrow balances on which IOLTA interest accrues.

An independent non-profit organization, Legal Services of New Jersey provides free legal assistance in civil matters to low-income citizens. It had 658 employees and reported opening more than 67,000 cases in 2008. Legal Services also advocates for the disadvantaged and runs the Poverty Research Institute, which studies poverty in New Jersey. In calendar year 2008, the organization had \$63.7 million in revenues, of which \$26.7 million came from the State, \$25.7 million from the IOLTA Fund, \$8.8 million from the federal government, \$1.3 million from private support, and \$1.2 million from other sources.

**Table 2
Homestead Property Tax Rebate Amounts
FY 2009 Statutory and Actual, FY 2010 Statutory and Proposed**

Homeowner or Tenant	Status	Gross Income	Rebate Amounts			
			FY 2009		FY 2010	
			Statutory	Actual	Statutory	Proposed
Homeowner	Senior or Disabled	Not over \$70,000	\$1,000 - \$2,000	\$1,000 - \$2,000	\$1,000 - \$2,000	\$1,000 - \$2,000
		\$70,001 to \$100,000	\$600 - \$2,000	\$600 - \$2,000	\$600 - \$2,000	\$600 - \$2,000
		\$100,001 to \$125,000	\$600 - \$1,500	\$600 - \$1,000	\$600 - \$1,500	\$600 - \$1,000
		\$125,000 to \$150,000	\$500 - \$1,500	\$500 - \$1,000	\$500 - \$1,500	\$500 - \$1,000
		\$150,001 to \$200,000	\$500 - \$1,000	\$0	\$500 - \$1,000	\$0
		\$200,001 to \$250,000	\$0 - \$1,000	\$0	\$0 - \$1,000	\$0
	Under Age 65 and not Disabled	Not over \$50,000	\$0 - \$2,000	\$0 - \$2,000	\$0 - \$2,000	\$0 - \$2,000
		\$50,001 to \$75,000	\$0 - \$2,000	\$0 - \$2,000	\$0 - \$2,000	\$0 - \$1,334
		\$75,001 to \$100,000	\$0 - \$2,000	\$0 - \$2,000	\$0 - \$2,000	\$0
		\$100,001 to \$150,000	\$0 - \$1,500	\$0 - \$1,000	\$0 - \$1,500	\$0
\$150,001 to \$250,000		\$0 - \$1,000	\$0	\$0 - \$1,000	\$0	
Tenant	Senior or Disabled, Married	Not over \$70,000	\$150 - \$880	\$160 - \$860	\$150 - \$910	\$160 - \$860
		\$70,001 to \$100,000	\$150	\$160	\$150	\$160
	Senior or Disabled, Single	Not over \$35,000	\$150 - \$880	\$160 - \$860	\$150 - \$910	\$160 - \$860
		\$35,001 to \$100,000	\$150	\$160	\$150	\$160
	Under Age 65 and not Disabled	Not over \$50,000	\$150	\$80	\$150	\$80
		\$50,001 to \$75,000	\$150	\$80	\$150	\$54
\$75,001 to \$100,000		\$150	\$80	\$150	\$0	

Significant Language Changes

New Jersey Small Business Development Centers

Revision

2009 Handbook: p. B-186
2010 Budget: p. D-389

Of the amount hereinabove appropriated ~~for the New Jersey Commerce Commission, or any entity succeeding to the duties and functions of the New Jersey Commerce Commission, pursuant to separate legislation, to the Division of Business Assistance, Marketing, and International Trade, EDA, \$500,000~~ \$250,000 shall be used for New Jersey Small Business Development Centers, ~~subject to the approval of~~ pursuant to a spending plan ~~by the New Jersey Commerce Commission, or any entity succeeding to the duties and functions of the New Jersey Commerce Commission, and such sums as are necessary shall be made available to the Office of Economic Growth, established pursuant to Executive Order #50, and for the Division of Minority and Women Business Development in the Department of the Treasury, subject to the approval of the Director of the Division of Budget and Accounting~~ approved by the New Jersey Economic Development Authority.

Explanation

The revised language provision encompasses four changes. First, it halves the proposed FY 2010 appropriation to the New Jersey Small Business Development Centers (NJSBDC) network from \$500,000 in FY 2009 to \$250,000. However, the proposed FY 2010 appropriation represents flat funding and not a reduction, given that the Office of Management and Budget has indicated its intention to lapse \$250,000 of the \$500,000 as a mid-year measure to align State spending with declining revenue collections. Second, the Governor's FY 2010 Budget recommends a direct \$1.1 million appropriation to the Office of Economic Growth, thereby obviating the need for an indirect appropriation through the language provision. Third, the language takes into account the establishment of the Division of Business Assistance, Marketing, and International Trade in the Economic Development Authority as the successor agency to the New Jersey Commerce Commission pursuant to P.L.2008, c.27. Fourth, the Division of Minority and Women Business Development is now financed out of the budget of the Division of Administration in the Department of the Treasury as opposed to that of the New Jersey Commerce Commission.

A federal-state partnership with institutions of higher education, the nonprofit NJSBDC network provides counseling and training for small business owners to help them finance, market, and manage their companies. Headquartered on the Newark campus of Rutgers Business School, the network is comprised of 11 regional centers and 16 affiliated offices located throughout the State. In calendar year 2008, the NJSBDC counseled and trained 21,844 clients and helped them secure \$40.0 million in financing through loan and equity investments. The

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

organization received \$250,000 in State funding in calendar year 2008, \$2.6 million in federal funding, and \$2.0 million in cash and in-kind donations from its host universities. According to the NJSBDC, reducing the State appropriation from \$500,000 to \$250,000 in FY 2009 will result in the loss of \$890,000 in federal funding if local revenues do not compensate for the lower State appropriation.

Electric Facility Need Assessment Act	
Deletion	2009 Handbook: p. B-190 2010 Budget: ----

~~Fees received from the "Electric Facility Need Assessment Act," P.L.1983, c.115 (C.48:7-16 et seq.), are appropriated.~~

Explanation

This language provision has become functionally obsolete. The "Electric Facility Need Assessment Act" authorized the Board of Public Utilities (BPU) to charge a fee not exceeding \$250,000 for the review of an application for a "certificate of need" filed by a public utility company seeking to construct an electric generation facility. Deregulating electric utilities, the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (N.J.S.A.48:3-49 et al.), ended the requirement that the BPU approve the construction of new electric generation facilities, repealed the "Electric Facility Need Assessment Act," and thereby obviated the need for this language provision.

Office of the Medicaid Inspector General	
Addition	2009 Handbook: ---- 2010 Budget: p. D-400

To ensure the proper reallocation of funds, the Office of the Medicaid Inspector General may transfer appropriations to the Department of Human Services, subject to the approval of the Director of the Division of Budget and Accounting.

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough. Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

Explanation

This new language provision provides the Administration with authority to shift funds from the Office of the Medicaid Inspector General (OMIG) to the Department of Human Services. In the course of FY 2009, the OMIG began its operations and assumed the positions and financial resources of the Division of Medical Assistance and Health Services in the Department of Human Services. Given that the OMIG's novelty creates uncertainty as to its actual FY 2010 funding needs, the language provision enables the Office of Management and Budget to return any funds to the Department of Human Services that might have been transferred to the OMIG in excess of actual funding needs.

The "Medicaid Program Integrity and Protection Act", P.L.2007, c.58, authorized the creation of the OMIG in the Office of the Inspector General. In December 2008, the State's first Medicaid Inspector General was appointed. The office is intended to prevent, detect, investigate, and reduce fraud, waste, and abuse in the State's Medicaid program. It has the authority to supervise all State government activities relating to Medicaid integrity, fraud, and abuse, except the activities of the Medicaid Fraud Control Unit in the Department of Law and Public Safety. The federal government matches State expenditures for the office 200 percent through the Medicaid program. The Governor's FY 2010 Budget includes a \$1.4 million State appropriation and anticipates \$2.3 million in federal funds for the office, which is expected to have 54 positions. The appropriation and positions represent reallocations from the Division of Medical Assistance and Health Services in the Department of Human Services.

State Lottery Business Plan Study

Deletion

2009 Handbook: p. B-195
2010 Budget: ----

~~In addition to the amounts hereinabove appropriated for the administration of the State Lottery, there are appropriated such additional sums as may be necessary for the cost of a State Lottery business plan study, subject to the approval of the Director of the Division of Budget and Accounting.~~

Explanation

The language provision has become functionally obsolete. Its purpose was to authorize the engagement of consultants to explore a public-private partnership involving the State Lottery as part of the Governor's financial restructuring plan.

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

Since the Governor has decided against monetizing the State Lottery, the Administration has not retained a consultant and does not intend to retain one in FY 2010.

The Governor's FY 2010 Budget projects net lottery sales of \$2.48 billion and net lottery proceeds of \$928.8 million. The Constitution mandates that all net lottery proceeds fund State Aid for education and institutions.

Management of DEP Properties	
Revision	2009 Handbook: p. B-200 2010 Budget: p. D-412

Receipts derived from the leasing of Department of Environmental Protection real properties are appropriated for the costs incurred for maintenance, repairs and utilities on the properties, and the ~~The~~ unexpended balances at the end of the preceding fiscal year in excess of \$300,000 in the Management of the Department of Environmental Protection Properties account are appropriated for the same purpose.

Explanation

The revision to this language provision represents a technical clarification setting forth existing policy regarding the use of balances in the Management of Department of Environmental Protection (DEP) Properties account. The account receives its funding from income generated by residential properties owned by the DEP and leased to the general public, such as housing for DEP employees in or near State parks. In FY 2008, \$518,000 accrued in the account and the Administration anticipates \$515,000 in receipts in FY 2009 and FY 2010. The language appropriates these receipts to the payment of maintenance, repair, and utility expenses incurred in managing the income-producing properties. At the end of the fiscal year, the first \$300,000 in unexpended account balances lapses to the General Fund and the amount in excess of \$300,000 is carried into the next fiscal year and available for the purposes of the account.

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough. Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

Administrative Law Judges Salary Increases	
Addition	2009 Handbook: ---- 2010 Budget: p. D-414

Notwithstanding the provisions of section 4 of P.L.1978, c.67 (C.52:14F- 4) to the contrary, including the reference therein to salaries of administrative law judges determined as a percentage of the annual salary of judges of Superior Court, there shall be no increase paid from appropriations made herein for annual salary increases for administrative law judges.

Explanation

The proposed language would continue an amendment to the FY 2009 Appropriations Act that suspended the scheduled January 1, 2009 salary increase for administrative law judges. Maintaining the suspension in FY 2010 would save \$141,000 over FY 2009 and \$282,000 over statutory requirements. The differing numbers reflect six months of savings that are already built into FY 2009 base appropriations.

P.L.2007, c.350 granted administrative law judges a 5.4 percent salary increase effective January 1, 2008 and an additional 5.1 percent increase effective January 1, 2009. The judges received the 2008 raise, but P.L.2009, c.22 suspended the 2009 increase.

Quality Assurance Oversight -- OIT	
Deletion	2009 Handbook: p. B-198 2010 Budget: ----

~~Notwithstanding the provisions of any law or regulation to the contrary, the amount hereinabove appropriated to the Office of Information Technology for Quality Assurance Oversight shall be used to enhance supervision over the implementation of current and future information technology contracts, including but not limited to oversight of existing quality assurance contracts for information technology.~~

Explanation

The language provision is no longer needed because the Quality Assurance Program has been discontinued. Required spending cuts have prompted the Office of Information Technology (OIT) to reevaluate its priorities. It determined

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough. Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

that running the State's information technology infrastructure and supporting agencies in their program development was of greater importance than oversight.

The Quality Assurance Program was intended to provide oversight of large information technology projects following significant delays and cost overruns in the implementation of the State's Statewide Automated Child Welfare Information System (SACWIS), also known as NJ SPIRIT. OIT would have used the quality assurance appropriation to engage vendors who would have largely functioned as program managers for large information technology projects and to hire staff qualified to oversee the vendors. As a result, OIT expected greater cost containment and better project monitoring. But the initiative has never gotten fully off the ground. The State's hiring freeze preempted the hiring of staff qualified to oversee any quality assurance consultant and the Request for Proposal (RFP) for the consultants was just issued recently. Accordingly, the FY 2008 and FY 2009 program appropriations totaling \$4 million lapsed to the General Fund and the RFP has been cancelled.

Email Systems Consolidation — OIT

Revision

2009 Handbook: p. B-198
2010 Budget: p. D-418

The unexpended balances at the end of the preceding fiscal year in the ~~Email Systems Consolidation~~, Data Center Consolidation, and ECATS Timekeeping System accounts are appropriated for the same purposes, subject to the approval of the Director of the Division of Budget and Accounting.

Explanation

The language, which provides for unexpended balances to be carried forward, is moot with respect to the Email Systems Consolidation initiative. This initiative, which was initially appropriated \$1.1 million in the FY 2008 Appropriations Act, had a carryforward of \$66,000 at the beginning of FY 2009. However, as this amount was placed in reserve as part of the Governor's midyear spending adjustments to align State spending with declining revenue collections, the Email Systems Consolidation account has no funding that could be carried into FY 2010.

Prior to FY 2008, the State ran multiple email applications across agencies. The Email Systems Consolidation appropriation was to pay for the building of the software and hardware infrastructure needed to operate a single Statewide email system. A consolidated system was to produce cost savings due to increased

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

economies of scale. The project, however, has not been completed, as its complexity, scale, and scope would require currently unavailable additional funding.

Enhanced 911 Grants	
Deletion	2009 Handbook: p. B-198 2010 Budget: ----

~~Grant awards and expenditures supported by the appropriation for Enhanced 911 Grants, including 911 operating assistance or equipment grants, shall be determined in accordance with the recommendations of an efficiency study prepared by the Rutgers University-Heldrich School as well as grant criteria to be jointly developed by the 911 Commission and the Department of the Treasury, the purpose of which will be to create incentives for the regional consolidation of 911 call services and public safety answering points. Those grant criteria, the specific requirements of which will be defined by the Office of Emergency Telecommunication Services, shall include a requirement that applicants provide information to the Office of Emergency Telecommunication Services on existing budget and staffing resources, including salary and non salary line items and position titles, as well as equipment and operating performance data related to the existing public safety answering point operations, public safety dispatch and radio communications systems and services.~~

~~The unexpended balance at the end of the preceding fiscal year in the Enhanced 911 Grants account is appropriated for the same purpose, subject to the approval of the Director of the Division of Budget and Accounting.~~

Explanation

The language provisions applicable to Enhanced 911 Grants are functionally obsolete, as the Governor recommends suspending the program in FY 2010. The suspension continues the Governor's decision to freeze the grants in the second half of FY 2009 as part of the package of budget cuts designed to bring State spending in line with plunging revenue collections. The FY 2009 Appropriations Act allotted \$12.4 million to the program under which \$8.0 million in grants was disbursed in FY 2009 and \$13.1 million in unexpended account balances was placed in reserve in anticipation of a year-end lapse to the General Fund.

The Office of Emergency Telecommunications Services (OETS) in the Office of Information Technology awarded Enhanced 911 Grants to Public Safety Answering Points (PSAPs). The first deleted language provision required the OETS to award grants pursuant to criteria favoring the regional consolidation of PSAPs. The

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

language thus reinforced P.L.2007, c.56, which mandates that the State Plan for the Enhanced 9-1-1 System advance the consolidation of PSAPs and that the OETS allocate PSAP monies contingent on the merging and sharing of PSAP functions by municipalities, counties, and the State Police. PSAPs are responsible for handling 9-1-1 calls for emergency assistance from police, fire, and ambulance services. The Enhanced 911 Grants assisted PSAPs in purchasing, upgrading, maintaining and operating the equipment needed to run the Statewide Enhanced 9-1-1 System. The Emergency Preparedness and 9-1-1 System Assessment, created by P.L.2004, c.48 (C.52:17C-17 et seq.), typically funds the grant program, among other initiatives. Customers pay the \$0.9 assessment in each billing cycle for their cell or landline phones.

Homeowner Property Tax Rebates

Revision

2009 Handbook: p. B-202
2010 Budget: p. D-421

The amount hereinabove appropriated for the Homestead Property Tax Credits/Rebates for Homeowners program shall be available to pay homestead rebates pursuant to the provisions of section 3 of P.L.1990, c.61 (C.54:4--8.59) as amended by P.L.2004, c.40, and by P.L.2007, c.62, except that, notwithstanding the provisions of that law to the contrary, residents who are not 65 years of age or older at the close of the tax year, or residents who are not allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b. of N.J.S.54A:3- 1, with gross income in excess of \$75,000 are excluded from the program, and residents with gross income in excess of \$50,000 but not in excess of \$75,000 for tax year 2008 are eligible for rebates in the amount of 13.34% of the first \$10,000 of property taxes paid; residents who are 65 years of age or older at the close of the tax year, or residents who are allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b. of N.J.S.54A:3- 1, with gross income in excess of \$150,000 for tax year ~~2007~~ 2008 are excluded from the program; , and residents with gross income in excess of \$100,000 but not in excess of \$150,000 for tax year ~~2007~~ 2008 are eligible for rebates in the amount of 10% of the first \$10,000 of property taxes paid. In calculating the rebates, the Division of Taxation will utilize 2006 property tax amounts assessed or as would have been assessed on the October 1, ~~2007~~ 2008 principal residence of eligible applicants. A rebate paid to an eligible applicant may not exceed the amount paid for tax year 2006, absent a change in an applicant's filing characteristics. If the amount hereinabove appropriated for the Homestead Property Tax Credits/Rebates for Homeowners program is not sufficient, there is appropriated from the Property Tax Relief Fund such additional sums as may be required for payment of such credits/rebates, subject to the approval of the Director of the Division of Budget and Accounting.

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

Explanation

*Relative to statutory provisions, the recommended language would eliminate certain recipients from the homeowner portion of the New Jersey Homestead Property Tax Credit program (N.J.S.A.54:4-8.57 et seq.) and reduce benefits for others. **Table 2** on page 27 indicates the amounts homeowners received in FY 2009, the amounts they would have received under statutory provisions, and the amounts they would receive in FY 2010 according to statutes and the proposed language. Overall, the Governor proposes reducing the program appropriation for homeowners by \$499 million, or 32.3 percent, from \$1.54 billion in FY 2009 to \$1.04 billion in FY 2010 (the Governor's FY 2010 Budget shows an adjusted \$1.58 billion FY 2009 appropriation, of which \$35 million has been placed in reserve in anticipation of a year-end lapse and \$4.7 million has been transferred to the program's tenant portion).*

Under the statutory structure, a homeowner's credit amount is based on the homeowner's gross income and the homeowner's property taxes paid in the last calendar year up to \$10,000. Credits equal 20 percent of allowable property taxes paid for incomes up to \$100,000, 15 percent of allowable property taxes paid for incomes over \$100,000 up to \$150,000, and 10 percent of allowable property taxes paid for incomes over \$150,000 up to \$250,000. Homeowners who are age 65 or older, disabled, or blind with an income of no more than \$200,000 are guaranteed minimum rebates ranging from \$500 to \$1,000.

For homeowners who are neither 65 years of age or older, nor blind, nor disabled, the Governor's FY 2010 Budget proposes: a) eliminating rebates for homeowners with incomes above \$75,000 (homeowners with incomes not exceeding \$150,000 received rebates of up to \$2,000 in FY 2009); b) lowering the maximum rebate amount from \$2,000 in FY 2009 to \$1,334 for homeowners with incomes in excess of \$50,000 but not over \$75,000; c) preserving rebates of up to \$2,000 for homeowners with incomes not exceeding \$50,000; and d) maintaining 2006 property taxes paid as the basis for calculating all rebates.

For homeowners who are 65 years of age or older, or blind, or disabled, the Governor's FY 2010 Budget maintains the program changes implemented in FY 2009. Specifically, the Governor recommends: a) eliminating rebates for homeowners with incomes above \$150,000; b) preserving rebates ranging from \$500 to \$2,000 for homeowners with incomes not exceeding \$150,000; and c) maintaining 2006 property taxes paid as the basis for calculating all rebates.

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

Tenant Property Tax Rebates	
Revision	2009 Handbook: p. B-202 2010 Budget: p. D-421

The amount hereinabove appropriated for the Homestead Property Tax Rebates for Tenants program shall be available to pay homestead rebates pursuant to the provisions of section 4 of P.L.1990, c.61 (C.54:4--8.60), except that, notwithstanding the provisions of that law to the contrary, residents who are not 65 years of age or older at the close of the tax year, or residents who are not allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b. of N.J.S.54A:3--1, with gross income in excess of \$75,000 for tax year 2008 are excluded from the program, residents with gross income of \$50,000 or less for tax year 2008 are eligible for rebates not to exceed \$80, and residents with gross income in excess of \$50,000 but not in excess of \$75,000 for tax year 2008 are eligible for rebates not to exceed \$54; residents who are 65 years of age or older at the close of the tax year, or residents who are allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b. of N.J.S.54A:3--1, with gross income of \$70,000 or less are eligible for minimum rebates of \$160 and maximum rebates of \$860 for tax year ~~2007~~ 2008, and residents with gross income in excess of \$70,000 but not in excess of \$100,000 are eligible for rebates of \$160 for tax year ~~2007~~ 2008. If the amount hereinabove appropriated for the Homestead Property Tax Rebates for Tenants program is not sufficient, there is appropriated from the Property Tax Relief Fund such additional sums as may be required for payment of such rebates, subject to the approval of the Director of the Division of Budget and Accounting.

Explanation

Relative to statutory provisions, the recommended language would eliminate or reduce rebate amounts for certain tenants under the New Jersey Homestead Property Tax Credit program (N.J.S.A.54:4-8.57 et seq.). Table 2 on page 27 indicates the amounts tenants received in FY 2009, the amounts they would have received under statutory provisions, and the amounts they would receive in FY 2010 according to statutes and the proposed language. In all, the Governor proposes increasing the appropriation for tenant rebates by \$500,000, or 0.4 percent, from \$128.7 million in FY 2009 to \$129.2 million in FY 2010 (the Governor's FY 2010 Budget shows an adjusted \$124.0 million FY 2009 appropriation, which a \$4.7 million transfer from the program's homeowner portion has since taken to \$128.7 million).

Statutory FY 2010 rebate amounts for tenants with a gross income of not more than \$100,000 who are 65 years of age or older, blind or disabled would range from \$150 to \$910, depending on a tenant's gross income and property taxes paid in calendar year 2008. The Governor's proposed language would eliminate the

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

statutory inflation adjustment to the maximum so that FY 2010 amounts would range from \$160 to \$860, which is unchanged from FY 2009 levels.

Statutorily, tenants who are neither 65 years of age or older, nor blind, nor disabled who have a gross income not exceeding \$100,000 are entitled to a \$150 rebate. In FY 2009, they received \$80 rebates. For FY 2010, the Governor recommends that: a) tenants with gross income not exceeding \$50,000 receive an unchanged \$80; b) tenants with gross income in excess of \$50,000 but not of \$75,000 receive a reduced \$54; and c) tenants with gross income in excess of \$75,000 but not of \$100,000 be eliminated from the program.

Energy Tax Receipts Property Tax Relief Fund

Revision

2009 Handbook: p. B-203
2010 Budget: p. D-422

There is appropriated from the Energy Tax Receipts Property Tax Relief Fund the sum of \$788,492,000 and an amount not to exceed ~~\$177,757,000~~ \$240,573,000 which is transferred from the Consolidated Municipal Property Tax Relief Aid (PTRF) account to the fund and shall be allocated to municipalities in accordance with the provisions of subsection b. of section 2 of P.L.1997, c.167 (C.52:27D--439). Each municipality that receives an allocation from the amount so transferred from the Consolidated Municipal Property Tax Relief Aid program shall have its allocation from the Consolidated Municipal Property Tax Relief Aid program reduced by the same amount. Of the amount hereinabove appropriated from the Energy Tax Receipts Property Tax Relief Fund, an amount equal to \$25,000,000 shall be allocated to municipalities proportionately based on population, except that Newark and Jersey City shall each receive \$390,000 of the \$25,000,000 and Paterson shall receive \$375,000 of the \$25,000,000.

Explanation

The Governor's FY 2010 Budget recommends level funding of municipal aid from, and a \$240.6 million transfer of Consolidated Municipal Property Tax Relief (CMPTR) Aid to, the Energy Tax Receipts Property Tax Relief Fund (ETR Fund). Total recommended disbursements from the ETR Fund are thus \$1.03 billion, which is \$63 million, or 6.5 percent, more than in FY 2009. Overall, the proposed FY 2010 budget decreases State Aid to New Jersey's 566 municipalities by \$31.2 million, or 1.7 percent, to \$1.8 billion.

The State established the ETR Fund (N.J.S.A.52:27D-439) in 1997 as an off-budget account through which it distributes receipts from the taxation of certain regulated

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

utilities and telecommunications companies as aid to municipalities. Amendatory legislation enacted in 1999 instituted a \$755 million funding requirement for FY 2002 and mandated that the amount be annually adjusted for inflation thereafter. Failure in a given year to appropriate monies in the prescribed amount would void taxpayers' corporation business tax liabilities for that tax year.

In five recent fiscal years, energy tax receipts allocated from the ETR Fund have been inadequate to fund the statutory inflation adjustment. To fulfill the funding requirement, language provisions have transferred monies from the CMPTR Aid account to the ETR Fund. For municipalities, the net effect of these reallocations has been zero, as increased ETR disbursements have fully corresponded to decreases in CMPTR Aid.

Pinelands Property Tax Stabilization Aid	
Addition	2009 Handbook: ---- 2010 Budget: p. D-422

Notwithstanding the provisions of section 20 of P.L.2004, c.120 (C.54:1- 84) to the contrary, the amount hereinabove appropriated for Highlands Protection Fund - Pinelands Property Tax Stabilization Aid shall be distributed to the same municipalities and in the same amounts as was distributed in the previous fiscal year.

Explanation

The recommended language provision would continue \$1.8 million in allocations from the Highlands Protection Fund to the Pinelands Property Tax Stabilization Aid program for distribution to 33 municipalities. The municipalities would receive the same amount in Pinelands Property Tax Stabilization Aid in FY 2010 that they received in FY 2009. The language would effectively supersede the program's statutory sunset in FY 2010 under subsection c. of N.J.S.A.54:1-84.

The Pinelands Property Tax Assistance Fund was created in 2004 as part of the Highlands Water Protection and Planning Act (P.L.2004, c.120). The fund is one of five financed through the Highlands Protection Fund, which receives \$12 million in dedicated State realty transfer fee receipts annually until FY 2014. Thereafter, the amount will decrease to \$5 million per year. The Pinelands Property Tax Assistance Fund is statutorily limited to five fiscal years following enactment of the Highlands Water Protection and Planning Act and would therefore expire in FY 2010 absent the above language.

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

Office of Information Technology Rate Changes	
Deletion	2009 Handbook: p. E-6 2010 Budget: ----

~~With respect to appropriations provided to various departments for services provided by the Office of Information Technology, any change by the Office of Information Technology to their rate structure that would affect the rates charged to the various State agencies for Office of Information Technology services shall first be approved by the Director of the Division of Budget and Accounting.~~

Explanation

This General Provisions language no longer serves a purpose. It allowed the Office of Management and Budget (OMB) to provide oversight of the rates the Office of Information Technology (OIT) charged client agencies for information technology services funded through the agencies' State appropriations. In FY 2008, however, the OIT ceased to bill agencies for services funded through direct State appropriations.

The language dates from an era in which the OIT operated as a revolving fund and fully supported itself by billing State user agencies for information technology services performed. In FY 2008, the OIT revolving fund was abolished and the office began receiving direct State appropriations (offset by corresponding reductions in the departments' information technology budgets). Accordingly, the OIT ceased billing State agencies for services that would have otherwise been paid out of the agencies' State appropriations. It does, however, continue to charge agencies for services provided to programs financed by federal or dedicated funds, and the OMB continues to monitor these billings. The Governor's FY 2010 Budget includes a proposed \$53.3 million direct State appropriation to the OIT and \$67.2 million in other resources, including \$62.2 million comprising federal and dedicated funds budgeted in client agencies' accounts.

Tobacco Settlement Fund	
Deletion	2009 Handbook: p. E-7 2010 Budget: ----

~~Notwithstanding the provisions of P.L.2000, c.12, or any law or regulation to the contrary,~~

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

~~funds may be transferred from the Tobacco Settlement Fund to the General Fund during this fiscal year, which transfer amount shall be based upon the available balances in the Tobacco Settlement Fund, subject to the approval of the Director of the Division of Budget and Accounting.~~

Explanation

The Office of Management and Budget (OMB) considers the language to be unnecessary, as it does not believe that it needs an express authorization in the annual appropriations act to transfer moneys from the Tobacco Settlement Fund to the General Fund. Upon OLS inquiry, the OMB did not substantiate the basis for this belief. At the time of its inclusion, the language superseded the requirement to make a one-time \$50 million payment from the Tobacco Settlement Fund to the New Jersey Insolvent Health Maintenance Organization Assistance Fund, as stipulated by P.L.2000, c.12.

The Tobacco Settlement Fund was established to hold the payments the State receives from the Master Settlement Agreement (MSA) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers. The agreement settled New Jersey's claims for relief with respect to the year of payment and earlier years. As announced in the MSA, New Jersey is expected to receive approximately \$7.6 billion in payments through 2025 with unquantified payments continuing in perpetuity thereafter. In accordance with P.L.2002, c.32, the State has sold 76.26 percent of its future MSA payment stream to bondholders under the terms of the Tobacco Settlement Asset-Backed Bonds (Series 2007-1). The State uses the remaining MSA payments for general State purposes. The Governor's FY 2010 Budget thus anticipates an interfund transfer of \$63.8 million from the Tobacco Settlement Fund to the General Fund in FY 2010.

Surplus Revenue Fund	
Deletion	2009 Handbook: p. E-7 and E-8 2010 Budget: ----

~~Notwithstanding the provisions of sections 5 and 6 of P.L.1990, c.44 (C.52:9H-18 and 52:9H-19) or any law or regulation to the contrary, there may be transferred from the Surplus Revenue Fund to the General Fund an amount up to the credit made to the Surplus Revenue Fund during the 2008 fiscal year, but not in excess of \$250,000,000 as revenue for general State purposes, subject to the approval of the Director of the Division of Budget and Accounting.~~

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough. Proposed, new language for FY 2010 denoted by underlining.

Significant Language Changes (Cont'd)

~~Notwithstanding the provisions of any law or regulation to the contrary, funds may be transferred from the Surplus Revenue Fund to the Unemployment Compensation Fund in an amount such that it will not be necessary to increase the rate of tax contributions for Unemployment Insurance for fiscal year 2010, the amount of such transfer to be determined by the State Treasurer in consultation with the Commissioner of Labor and Workforce Development subject to the approval of the Director of the Division of Budget and Accounting.~~

Explanation

The FY 2009 language provisions have become functionally obsolete, as the Surplus Revenue Fund currently carries no balance and is not projected to carry one in FY 2010. At the end of FY 2008, the fund held \$734.7 million. Following a marked decline in revenue collections in FY 2009, \$392.2 million of the balance was transferred to the State General Fund and \$342.5 million to the Property Tax Relief Fund.

Created pursuant to P.L.1990, c.44 (C.52:9H-14 et seq.), the Surplus Revenue Fund is a restricted reserve fund that receives one-half of the excess of actual General Fund revenue collections over their anticipated level in any fiscal year. Surplus Revenue Fund amounts may be appropriated to cover unanticipated mid-year revenue shortfalls. Whenever amounts in the Surplus Revenue Fund exceed five percent of General Fund revenues anticipated for a fiscal year, the amount of excess, but not more than two percent of the amount of anticipated General Fund revenues, may be used to retire State general obligation bonds, pay for capital projects, and provide property tax relief. Whenever amounts in the Surplus Revenue Fund exceed seven percent of General Fund revenues anticipated for a fiscal year, the amount of excess is automatically transferred to the General Fund for general State purposes.

EXPLANATION: FY 2009 language not recommended for FY 2010 denoted by strikethrough.
Proposed, new language for FY 2010 denoted by underlining.

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DEPARTMENT OF THE TREASURY

1. For FY 2009 and 2010 combined, the Governor's FY 2010 budget incorporates an estimated \$5.183 billion in **federal stimulus funding** provided by the American Recovery and Reinvestment Act (ARRA) of 2009. Of this amount, the State will use \$3.074 billion (\$854 million in FY 2009 and \$2.220 billion in FY 2010) for budget relief to offset revenue shortfalls (Budget-in-Brief, Appendix II, page 12), and \$2.109 billion to fund new or expanded programs or initiatives. The ARRA allocates funds to states both by formula and by competitive awards. The Governor's FY 2010 Budget includes \$107.9 million from ARRA for the Department of Treasury (\$36 million in FY 2009 and \$71.9 million in FY 2010, as displayed on page C-25 of the Governor's FY 2010 budget). All of the funding, however, is for two programs operated by the Board of Public Utilities.

- **Questions:** Please itemize the federal stimulus funding, other than portions of the \$3.074 billion allocated for budget relief, included in Treasury's budget, by fiscal year and federal program, setting forth program goals and eligible uses together with the amount for state administrative expenses and the amount for allocation to local public and private recipients, respectively. Please identify intended and actual recipients and the process by which the department determines recipients and funding awards. Are there ARRA funds that flow through the department for which the State has no discretion? Please also set forth the timetable for obtaining federal approval of funding, obligation and allocation of funding to recipients, and use by recipients. Could any of this funding be used to offset other State appropriations, and if so, what programs and in what amount? What additional positions, if any, have been and will be hired with these funds? If this money is being used for new or expanded activities, will the new or expanded activities be continued in FY 2011? If so, how will they be funded?
- In addition to funding incorporated in the Governor's FY 2010 budget, what specific competitive grant opportunities has the department identified that it is eligible to pursue, has applied for, and has been awarded, respectively?

2. Attrition, a hiring freeze, and an early retirement program have shrunk the Executive Branch workforce by almost 4,000 since FY 2007, producing an annualized \$312 million in cost savings (FY 2010 Budget-in-Brief, page 73). The Governor's FY 2010 budget proposal envisions continuation of the **hiring restrictions coupled with possible furloughs or layoffs**.

Addressing OLS Discussion Point #1a in the FY 2008-2009 Department of the Treasury Budget Analysis, the department conveyed that while it had not eliminated any positions since January 2006, it had reduced the number of filled positions by 144 from January 2006 through March 2008. The department explained that the hiring freeze adversely affected certain Treasury operations. For example, the average wait time for clients attempting to reach a Division of Pensions and Benefits phone counselor had increased, and the Division of Revenue expressed concern that its inability to fill vacant supervisory and managerial positions could lead to missing internal controls and breakdowns in tax return processing.

Discussion Points (Cont'd)

- *Questions:* In general terms and by means of specific examples, how has the reduction in staffing affected Department of the Treasury operations? What strategies has the department employed to deal with staff reductions? What projects, work products or functions has the department scaled back, discontinued or deferred because of declining staffing levels?
- Would the department be able to accommodate furloughs in FY 2010 without increasing spending for overtime or temporary workers? In which programmatic areas would layoffs occur, if any? Please comment on the likely impact of the planned furlough program and contemplated employee cuts on department operations and services. Would the department be ceasing certain activities, programs, or services? Would the downsizing cause the department to reassess its priorities and reassign staff accordingly among its programs? If so, please describe the internal reorganization.
- How many employees was the department authorized to hire in FY 2009 despite the hiring freeze? Please indicate for which activities these hires were crucial.

3. The FY 2009 Appropriations Act anticipated that executive departments would achieve \$25 million in **procurement savings**. A chart on page 75 of the FY 2010 Budget-in-Brief categorizes those savings and indicates that they will continue into FY 2010. The Governor's FY 2010 budget includes another \$25 million in savings from "smarter procurements" (Budget-in-Brief, page 54).

- *Questions:* Please indicate the FY 2009 amount of procurement savings achieved by the Department of the Treasury, by the categories set forth in the referenced table, and the sources of those savings by department program. What is the annual amount of these savings as continued into FY 2010? How have these reductions affected the department? What projects, work products or functions has the department scaled back, discontinued or deferred in order to achieve these savings?
- Please list the projected contributions of the Department of the Treasury to the \$25 million in savings from "smarter procurements" budgeted in the Governor's FY 2010 budget proposal. How would these reductions affect the department? What projects, work products or functions would the department scale back, discontinue or defer in order to achieve these savings?

4. P.L.2008, c.29 abolished the Department of Personnel and transferred some of its functions to the Department of the Treasury. Section 117 of that law (C.11A:6-25.1) makes the Treasury responsible for **developing programs to improve the efficiency and effectiveness of the public service**, including, but not limited to, employee training, development, assistance and incentives, establish an internship program, and assist the Governor in general work force planning, personnel matters and labor relations. In addition, section 78 of that law (N.J.S.11A:11-2) transferred to the Treasury the Department of Personnel's planning and research unit.

Discussion Points (Cont'd)

- **Questions:** Has the Department of the Treasury assumed operational control over the development of programs to improve the efficiency and effectiveness of the public service? Is the Department of Personnel's former planning and research unit carrying out this new statutory charge? Please indicate where the Department of the Treasury has allocated the planning and research unit and describe the organizational structure of the entity charged with developing the programs to improve the efficiency and effectiveness of the public service, including the number of employees and their job titles. On which initiatives is the department currently working to improve the efficiency and effectiveness of the public service? How are these initiatives coordinated with the Civil Service Reform Task Force established under section 118 of P.L.2008, c.29?

CIVIL SERVICE REFORM TASK FORCE

5. Section 118 of P.L.2008, c.29 established the temporary nine-member **Civil Service Reform Task Force** in the Department of the Treasury to evaluate the current civil service system and suggest improvements thereto. Within 12 months following its organizational meeting the task force must report its findings and recommendations to the Governor, the Civil Service Commission, and the Legislature.

- **Questions:** Please provide an update on the Civil Service Reform Task Force. How many of its nine members have been appointed? Has the task force held its organizational meeting? If so, when did the organizational meeting take place and how often has it met since? What is the task force's work plan? If there are still vacancies on the task force, by which date does the Administration anticipate the task force to hold its organizational meeting?

OFFICE OF MANAGEMENT AND BUDGET

6. Article VIII, Section II, paragraph 2 of the New Jersey State Constitution obliges the State not to spend more in a fiscal year than "the total amount of revenue on hand and anticipated." Spending plans thus hinge on the soundness of revenue projections. Even though predicting the future is always parlous, there is concern that standard forecasting and budgeting techniques may be particularly out of their depth in the present climate of exceptional economic volatility. In other words, the risk of substantial mid-year revisions to spending plans is uncommonly acute these days as elephantine uncertainty shrouds short-term economic assumptions on which to build pinpoint revenue forecasts. Some firms have therefore opted to expand their use of "**scenario planning**." This budgeting approach involves generating a number of different revenue scenarios as part of an annual budget and developing contingency spending plans for each scenario. The firm can thus react more nimbly to deteriorating financial fortunes in the midst of its accounting year.

- **Questions:** Please comment on the preparedness of the Office of Management and Budget (OMB) to respond to underperforming mid-year revenue inflows in FY

Discussion Points (Cont'd)

2010. Does the OMB have different options on-the-shelves in case of falling mid-year revenues? As a proportion of spending anticipated in the Governor's FY 2010 Budget, what is the range of backup options OMB could implement swiftly, if needed? In general, how much time elapses before OMB can implement mid-year spending adjustments following updated revenue estimates?

- Given that the State does not have a clear picture of gross income tax collections until April of each year, does the OMB feel that it has sufficient options at its disposal to balance a budget after an unanticipated drop in April gross income tax collections? What spending reduction options does the OMB typically have at its disposal at that time? Although N.J.S.A.54:4-8.63 requires the State to pay homestead rebates on or before October 31 of each year, would it be wise to enhance OMB's flexibility to react to any shortfall in April gross income tax collections by delaying the payment of rebates until mid-May?

DIVISION OF REVENUE

7. P.L.2008, c.24 statutorily centralizes the **non-tax debt management** functions for State government in the Division of Revenue by requiring every State agency in the executive branch to transfer to the division every non-tax debt owed to the agency for 90 days. The law codifies preexisting Department of the Treasury policies to which many State agencies did not adhere (see Reorganization Plan No. 004-2005 and Circular Letter 06-03, Statewide Non-Tax Debt Collections and Write-Off). According to the August 2007 Office of the State Auditor report on the division, for example, eight out of 17 State departments did not comply with the administrative directives. Replying to OLS Discussion Point #3 in the FY 2008-2009 Department of the Treasury Budget Analysis, however, the department conveyed that State agencies had since achieved "substantial compliance" with the centralized non-tax debt collection program. This occurrence might allow the State to determine the amount of outstanding debt and the adequacy of its collection strategy.

The Treasury declared State agencies to be in "substantial compliance" after the Division of Revenue and the Office of Management and Budget had completed a statewide non-tax debt inventory based on a questionnaire to which all State agencies and departments had responded. The inventory would be repeated annually. The department noted, however, that not all non-tax debt was transferred for various legal and technical reasons: debt relating to contracts, grants, and interagency receivables; child support; and uncollectible debt associated with individuals who are incarcerated or institutionalized or who are already on agency payment plans.

The cumulative outstanding non-tax debt amount that 15 agencies and departments had transferred to the division was \$668 million as of March 26, 2008. The division intended to write \$200 million of the \$668 million off as uncollectible by the end of fiscal year 2008. From 2000 through March 26, 2008, \$713.0 million in non-tax debt was transferred to the division and \$44.8 million was collected (6.3 percent collection rate).

- **Questions:** Please provide an update on the Division of Revenue's efforts to consolidate the State's non-tax debt collection functions. Are State agencies and

Discussion Points (Cont'd)

- departments still in “substantial compliance” with the centralized non-tax debt collection program? Please define “substantial compliance” and explain the ways in which it differs from “full compliance”. Which agencies are not complying with P.L.2008, c.24? Have all agencies replied to the most recent non-tax debt inventory questionnaire? If not, which recipients have ignored the questionnaire?
- What is the cumulative amount of current outstanding non-tax debt for each participating department and agency? For FY 2008 and FY 2009 to date, please provide for each participating department and agency the amount of non-tax debt collected, the amount of new balances due, and the amount of non-tax debt written off since March 2008. Please indicate, by department and agency, the amount of non-tax debt that is not managed by the division but by the agency to which the debt is owed. Has non-tax debt been written off as uncollectible since March 2008, as intended? If not, please explain the reason(s) for the delay in the write-off.
8. The Office of the State Auditor recommended in its August 2007 audit report on the Division of Revenue that the division employ **wage garnishment** opportunities opened up by P.L.2005, c.124, which authorizes the Treasury to seek certificates of debt (COD) on behalf of State agencies to which debts are owed and to file wage execution applications against debtors. The State Auditor found that the division had not implemented an ongoing process for CODs and wage executions, although it did initiate garnishment actions on over 700 accounts for the Office of the Public Defender and the Office of Insurance Fraud, thereby collecting \$300,000 on \$2 million of debt through January 2007. Comparing files in the debtor database with wage reporting records for individuals reporting wages of at least \$10,000 for the second quarter of 2006, the State Auditor located 12,000 cases with debts totaling \$21.4 million that may be at least partially collectible through wage garnishment. Addressing OLS Discussion Point #4 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division related that it had since implemented an on-going wage garnishment system using the services of its primary non-tax debt collection contractor.
- *Questions:* What has been the Division of Revenue’s experience with its on-going wage garnishment system to collect debts owed to State agencies? How many debtor files for what debt total have been identified as potential targets for wage garnishment? How many garnishment actions for which debt total has the division initiated based on the new system? What amounts have already been collected?

DIVISION OF TAXATION

9. N.J.S.A.54:32B-8.45 lowers from seven percent to 3.5 percent the **sales tax rate imposed in Salem County** on receipts of retail sales. Notwithstanding this general rule, the law does not extend the partial rate reduction to retail sales of motor vehicles, alcoholic beverages, digital products, and cigarettes. The rate reduction has been in effect since July 1, 1994.
- *Question:* Please provide annual statistics on Salem County sales tax collections from fiscal year 1985 onwards or from whenever the data are available.

Discussion Points (Cont'd)

10. Section 25 of P.L.2007, c.62 (C.54:4-8.63) revised the **Homestead Property Tax Credit** program so that homestead rebates would be disbursed as credits through electronic funds transfer to the local property tax account for the claimant's homestead. Notwithstanding this directive, the law authorizes the Director of the Division of Taxation to continue paying the homestead rebate as a check to claimants if the director determines for a particular year that the division cannot deliver homestead benefits as a credit efficiently. The director issued such a determination for fiscal years 2009 and 2010.

In a written follow-up response to a question raised during the Department of the Treasury's budget hearing before the Senate Budget and Appropriations Committee on April 14, 2008, the department submitted a memorandum in which the Director of the Division of Taxation justified her recommendation to deliver fiscal year 2009 homestead benefits as checks. The director noted that the division needed more time to design a manageable process before benefits could be disbursed as credits. One unresolved concern revolved around maintaining the confidentiality of income tax records. A credit mechanism would partially lift that privacy as homestead rebate amounts would become part of municipalities' public property tax records, and homestead rebate amounts are a function of a claimant's income. In addition, the director warned that a homestead credit filing season would coincide with the gross income tax filing season, resulting in significantly higher call volumes for the division's services center. The director also noted that 75 percent of homeowners paid their property taxes through escrow accounts set up by mortgage services companies. Since rebate amounts tend to fluctuate regularly, it would be difficult for these companies to credit escrow accounts with the correct amounts to cover property tax payments. Municipal tax collectors and assessors also worried that citizens would contact them with questions about homestead credit information that would be newly included in local tax documents. The division also mentioned that in fiscal year 2008, distributing homestead rebates as credits would have produced \$12.2 million in administrative expenses, \$1 million more than the \$11.2 million cost of distributing the rebates as checks. The additional cost would have accrued entirely due to the need to provide supplemental call center services, as a contractor would have had to handle homestead rebate inquiries during the gross income tax return filing season. Those calls currently occur after the income tax filing season.

- **Questions:** Please explain the decision by the Division of Taxation to issue homestead rebates as checks as opposed to credits in fiscal year 2010. Has the division advanced in devising a process that would allow for the disbursement of homestead rebates as credits? Please indicate the progress the division has made in resolving some of the issues that kept it from transitioning to the credit system in fiscal year 2009, as outlined in the February 14, 2008 memorandum penned by the division's Director. For which fiscal year does the division project the issuance of homestead rebates as credits? If the projection is for a year other than fiscal year 2011, please explain the basis for projecting that the division will need more than an additional 12 months to implement the credit mechanism.

11. The Governor recommends \$1.174 billion in FY 2010 for the revised **Homestead Property Tax Credit** program (P.L.1990, c.61). This amount falls \$534 million, or 31.3 percent, below the FY 2009 adjusted appropriation of \$1.708 billion. The savings would be

Discussion Points (Cont'd)

realized by eliminating certain FY 2008 rebate recipients from the program and reducing rebate amounts for others.

Under its statutory structure, a homeowner's rebate amount is based on the homeowner's gross income and the homeowner's property taxes paid in the last calendar year up to \$10,000. Credits equal 20 percent of allowable property taxes paid for incomes up to \$100,000, 15 percent of allowable property taxes paid for incomes over \$100,000 up to \$150,000, and 10 percent of allowable property taxes paid for incomes over \$150,000 up to \$250,000. The Governor's FY 2010 Budget proposes to a) eliminate rebates for non-senior homeowners with incomes above \$75,000, b) eliminate rebates for senior homeowners with incomes above \$150,000, c) reduce rebates from 20 percent to 13.34 percent of property taxes paid for non-senior homeowners with incomes between \$50,000 and \$75,000, d) reduce rebates from 15 percent to 10 percent of property taxes for senior homeowners with incomes between \$100,000 and \$150,000, and d) maintain 2006 property taxes as the basis for calculating rebates. The Governor also proposes homestead property tax rebate benefits for tenants ranging from \$54 to \$860 dependent on a tenant's gross income and whether a tenant is 65 years of age, blind, or disabled.

- **Questions:** For FY 2009 Homestead Property Tax Rebate distributions, please provide the following data for the senior and non-senior and the homeowner and tenant populations: 1) distribution of rebates by income brackets; and 2) distribution of rebates by rebate amounts.
- Since homestead rebate amounts and income tax property tax deduction amounts are a function, in part, of real estate values, please provide a tax year 2008 statewide distribution of the number and the assessed value of residential property by no fewer than eight distinct brackets, broken up in increments of at least \$100,000.

NEW JERSEY TAX AND FISCAL POLICY STUDY COMMISSION

12. P.L.2007, c.43 created the permanent **New Jersey Tax and Fiscal Policy Study Commission** "in but not of" the Department of the Treasury. Composed of nine members, who by now have all been appointed, the commission is to engage in a continuous study of State and local tax structures as well as related fiscal issues. It should focus on policies to foster greater efficiency and equity in the assessment and collection of taxes, the identification and quantification of the effects of indirect expenditure policies, the relative incidence of tax burdens and the effects of redistributing tax burdens or tax bases, and the methods for providing funds for government services and infrastructure. The commission should also compile and publish a **tax expenditure budget**. In response to OLS discussion point #13 in the FY 2008-2009 Department of the Treasury Budget Analysis, the department noted that discussions with the Legislature were ongoing to determine the scope of the commission.

In January 2006, the Budget and Reengineering Government Transition Policy Group recommended in its report to the incoming Administration that the State join more than 30 other states in compiling and publishing tax expenditure information. Tax expenditures are the cost of statutory provisions which reduce the amount of revenue that would otherwise be generated, including exemptions, deductions, credits, and lower tax rates. Replying to OLS

Discussion Points (Cont'd)

discussion point #8 in the FY 2008-2009 Department of the Treasury Budget Analysis, the department stated that the Office of Revenue and Economic Analysis in the Division of Taxation had developed a list of exemptions and exclusions for the gross income tax, the corporation business tax, and the sales tax but that due to staffing changes the office had been unable to achieve any additional progress.

- **Questions:** Please outline the scope of the New Jersey Tax and Fiscal Policy Study Commission if it has been determined. How is its scope different from its statutory mandate? What is the commission's actual or planned staff organization? What is the expected timeframe for starting commission operations and for fully staffing the commission? What will be the commission's annual budget outlay once it will be fully staffed? Does the Governor's FY 2010 Budget include funding for the commission? If so, where is it located? If not, why has the Governor chosen not to provide funding in FY 2010?
- Please provide an update on the commission's activities in FY 2009. Has it collaborated with the Division of Taxation to compile and publish a comprehensive tax expenditure report? If the report has not been completed, please indicate the timeframe by the end of which the commission expects to have the report published. In the interim, please identify all tax credits, deductions, and rebates and provide the amount of annual foregone revenue for each tax expenditure for which the information is available.

OFFICE OF PUBLIC FINANCE

13. The Office of Public Finance **oversees the issuance of State debt**. As of June 30, 2008, the State had \$31.9 billion in outstanding obligations. Waning liquidity and jittery nerves in global capital markets have recently altered perceptions of the risks and benefits of different debt instruments and their issuance costs. In February 2008, for example, investors retreated en masse from the \$330 billion auction rate market spooked by fears that bond insurance companies, which guarantee many auction rate securities, might become insolvent. As auctions failed, interest rates soared. In response to OLS Discussion Point #12 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Office of Public Finance noted that the State had \$3.4 billion in outstanding appropriation-backed auction rate debt as of February 1, 2008. It has since converted its entire auction rate debt into other forms of indebtedness. In a press release dated October 29, 2008, the Department of the Treasury indicated that the issuance of auction rate bonds from 2003 through 2007 yielded a \$41 million net savings to the State after subtracting from the \$103.1 million in interest cost savings the \$62 million it cost the State to unwind its auction rate debt. The cost included fees to underwriters, bond counsel, financial advisors, terminations of interest rate swap agreements, and other expenses.

Auction rate securities are long-term, variable rate debt instruments for which the interest rate is frequently reset through an auction in which the bidder offering the lowest interest rate wins. Auctions are typically held every 7, 28, or 35 days. If an auction fails (not all shares could be sold), the interest rate resets to the maximum rate defined for the issuer to compensate the holders who have been unable to sell their positions.

Discussion Points (Cont'd)

- Questions:** Please comment on the effects the 2008 meltdown in global capital markets has had on the issuance and management of State debt. How has the Office of Public Finance adapted its debt issuance and management strategy to the new environment? What lessons has the office drawn from the failure of the auction rate market in February 2008? Is the State's retreat from auction rate securities intended to be permanent or temporary?

DIVISION OF INVESTMENT

14. In January 2005, the State Investment Council (SIC) authorized the "Alternative Investment Program" (AIP), under which 13 percent of the moneys in public employee pension funds were to be gradually invested in hedge funds, private equity, real assets, and real estate. After a December 2008 change in SIC's investment strategy, the AIP may now compose between 13.5 percent and 21.5 percent of the market value of any pension fund (the table below depicts the FY 2009 asset allocation ranges). As of October 2008, the Division of Investment had committed \$19.6 billion to 168 alternative investments, of which it had already contributed \$10.6 billion at that time. Rejecting a challenge to the AIP's legitimacy by the Communications Workers of America Local 1033 and the New Jersey Education Association in August 2008, the Superior Court of New Jersey upheld the division's authority to invest pension moneys in alternative assets (Communications Workers of America, AFL-CIO v. David Rousseau, No.: a5198-04 (N.J. Super. Ct. App. Div. Aug. 22, 2008)).

Fiscal Year 2009 Asset Allocation Ranges for Pension Funds	
Asset Class	Target Range
Cash:	2.0% - 7.0%
Public Equity:	32.75% - 52.0%
Domestic	17.75% - 28.0%
International	14.0% - 20.0%
Emerging Markets	1.0% - 4.0%
Fixed Income:	29.0% - 50.0%
US Fixed Income	25.0% - 35.0%
Treasury Inflation Protected Securities	3.0% - 7.0%
US High Yield	1.0% - 5.0%
International Fixed Income	0.0% - 3.0%
AIP:	13.5% - 21.5%
Private Equity	4.5% - 6.5%
Hedge Funds	4.0% - 6.0%
Real Estate	3.0% - 5.0%
Commodities & Other Real Assets	2.0% - 4.0%

In July 2006, the SIC voted to alter the **investment strategy for the State pension funds**. This modification reallocated pension fund resources among different asset classes so as to enhance and stabilize returns. The strategy involved shifting the management of 25 percent of the pension funds' portfolio from division employees to private money managers by the end of 2007. In its August 2008 decision, the Superior Court of New Jersey ruled that the division did not have the legal authority to delegate investment decisions for the pension funds to external money managers. The decision, however, does not apply to the AIP, which division employees are actively managing, but only to moneys entrusted to external money managers for placement in investments to be selected by the external money managers. The division chooses private investment firms whenever its employees do not possess the expertise necessary to invest in certain asset classes. In response to OLS Discussion Point #30 in the FY

Discussion Points (Cont'd)

2008-2009 Department of the Treasury Budget Analysis, the division noted that it used external money managers only for its emerging markets portfolio and that it expected to use private investment managers also for the high yield, small/small-to-mid cap, and international equity asset classes.

- **Questions:** Please list the investments approved under the AIP and indicate for each approved investment the approval and inception months and the amounts committed and contributed. Per AIP asset class, what have been the gross and net returns on these investments since inception? What was the total amount of fees and performance premiums paid to investment firms in FY 2007 and FY 2008?
- Please identify all current contracts, outside vendors or entities engaged for placing investments under the AIP, including the "General Consultant". Please specify the amount paid or expected to be paid for the services of each and the terms of each contract.
- Please comment on the impact of the August 2008 decision by the Superior Court of New Jersey that prohibited the delegation of investment-decision-making authority for the public employee pension funds to private investment firms. Which contracts with investment firms were affected by the decision? Does the division have to pay a penalty to the firms for a breach of contract? Are pension fund resources currently not invested in emerging market equities because of the decision? Is the division intending to build the internal capacity to invest in emerging market stocks?

15. The State Investment Council authorized the "**Alternative Investment Program**" to reap the touted benefits of asset diversification: earning uncorrelated returns that moderate fluctuations in the overall rate of return and inoculate the pension funds against plunging yields. The theory has not fared well during the recent turmoil in world financial markets. Since alternative assets have joined public equities in dropping precipitously, alternative and conventional asset classes now seem more correlated than previously claimed. Commentators have attributed the simultaneous nosedive to two shared factors: robust global economic growth and low interest rates, which led to the use of borrowing to enhance returns and then forced investors to sell their assets to make debt payments when liquidity dried up.

Hedge funds represent a significant alternative asset class. They come in a multitude of forms with distinct investment techniques. Lightly regulated, they consist of private pools of capital, often borrow to enhance returns, and are partly paid on the basis of performance (hedge funds tend to charge an annual management fee of 1.5 percent to 2.5 percent and take 20 percent of the profits). Their principle vocation is to produce consistent absolute returns whatever the condition of financial markets (in effect protecting investors against negative returns through their ability to bet on falling prices). Recent experience has not borne out that promise, as Hedge Fund Research reports that the return for the average hedge fund was negative 23.3 percent in 2008 (the Dow Jones Industrial Average fell 33.8 percent). In its October 25, 2008 edition, The Economist cites hedge fund executives predicting that assets under management by hedge funds could fall by 30 to 40 percent. The major culprits for the losses are bans on short-selling (a common strategy to bet on falling asset prices), forced sales of assets as investors

Discussion Points (Cont'd)

have reduced their positions, a withdrawal of credit for certain types of hedge funds, and the holding of many illiquid assets that have been hurt by the current crisis.

Private equity groups are another major alternative asset class. They raise capital from institutional investors and wealthy individuals to either purchase companies or to further invest in companies they already run. Given that companies managed by private equity firms are private, little information is available as to their performance. Private equity firms have been promoted as an alternative investment to public firms although the same economic forces that drive returns of public companies also drive the performance of their private counterparts.

- *Questions:* What has the division learned from the recent gyrations in world financial markets and how are these insights affecting its investment strategy? How does the division feel today about the arguments originally advanced in support of putting pension moneys in alternative assets (earning uncorrelated returns that moderate fluctuations in the overall rate of return and inoculate the pension funds against plunging yields)?
- Given that hedge funds have not delivered positive returns when financial markets sagged last year, has the division's evaluation of the risks of investing in hedge funds changed? Is the degree of correlation between overall market returns and the returns of hedge funds more significant than the division previously thought? Has the division decided to alter its exposure to hedge funds?
- How does the division currently feel about the merits of private equity as part of the pension fund portfolio? Does it evaluate the risks of investing in private equity firms differently now than it did a year ago? Is the degree of correlation between overall market returns and the returns of private equity more significant than the division previously thought? Has the division decided to alter its exposure to private equity?

16. During the November 24, 2008 meeting of the Senate Budget and Appropriations Committee, the Director of the Division of Investment testified that over the last five years the division had recovered over \$200 million through **legal action against 13 corporations** in which the division had invested pension fund moneys. On March 17, 2009, New Jersey's Attorney General filed a lawsuit against nine executives and nine directors at Lehman Brothers Holdings Inc. as well as against the investment bank's longtime accountant, Ernst & Young LLP, after the division had lost \$118 million of the \$182 million it had placed in the now-bankrupt investment bank in June 2008.

- *Questions:* Please describe the instances over the last five years in which the Division of Investment sought to recover amounts from corporations in which it had invested moneys, listing for each attempted recovery the name of the corporation, the amount of the original loss, the outcome of the litigation, and the rationale for the legal action. Is the division currently examining the possibility of or pursuing legal action against additional corporations? In the division's assessment, what types of corporate behavior merit litigation?

Discussion Points (Cont'd)

17. On August 31, 2007, the Department of the Treasury announced the creation of the **New Jersey Directed Investment Fund (NJDIF)**, which was a \$105 million private equity vehicle intended to achieve attractive investment returns by investing in growing New Jersey businesses. In concert with Lehman Brothers, which contributed \$5 million to the NJDIF and conducts the fund's day-to-day operations, the State expects to primarily invest in private equity funds, private companies, and companies issuing securities outside of a public offering. While Lehman Brothers runs the fund's day-to-day operations, the Division of Investment establishes investment criteria, holds veto rights over firms selected for the fund, and may refer companies to Lehman Brothers for possible selection. Replying to OLS Discussion Point #31 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division stated that NJDIF's confidential Limited Partnership Agreement maintained the confidentiality of the investments within the fund.

- **Questions:** Please explain how the bankruptcy of Lehman Brothers has affected the New Jersey Directed Investment Fund (NJDIF). Are its assets frozen as part of Lehman's bankruptcy proceedings? Is the fund still up and running? If so, has the bankruptcy occasioned a revision of the Limited Partnership Agreement? If not, how has the NJDIF been unwound and what has been the financial consequence on the pension funds? To date, how many firms selected for investment has the State of New Jersey vetoed, if any? To date, how many companies has the State of New Jersey referred to Lehman Brothers for possible selection, if any?

18. On January 15, 2008, Citigroup and Merrill Lynch announced that they raised \$19.1 billion through the sale of **convertible preferred securities** in private offerings (investors receive a fixed dividend payment until they convert the preferred securities into the company's common stock at a set price after a certain date). As the sole public pension fund in offerings that attracted Wall Street bankers and sovereign wealth funds (government funds set up to manage a portion of a nation's surplus assets), the Division of Investment placed \$400 million in Citigroup and \$300 million in Merrill Lynch. It was the division's first such involvement. In September 2008, Bank of America bought Merrill Lynch *in extremis* for \$50 billion. In October 2008, the United States Treasury Department extended a \$25 billion loan to Citigroup before investing another \$20 billion in Citigroup preferred stock and guaranteeing \$269 billion in illiquid mortgage assets in November 2008.

According to a January 25, 2008 Wall Street Journal article, the division had been discussing investment opportunities with "at least one" sovereign wealth fund as well as with several United States state pension funds and private-equity funds. The division was pursuing these discussions in the hope that a concerted stance by large investors would yield more favorable terms than the division could achieve on its own with less market power. Addressing OLS Discussion Point #32 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division noted that it intended to disclose neither by whom it was approached nor with whom it was in discussion regarding possible investment opportunities.

- **Questions:** Please comment on the performance of the investment in convertible preferred securities issued by Citigroup and Merrill Lynch. Has the division sold any of the securities? If so, what was the return on the investment? If not, how confident

Discussion Points (Cont'd)

is the division in the safety of its investment? Has the division provided any other rescue capital infusions alongside sovereign wealth funds, other pension funds, and private equity funds? If so, please detail the investments, including the partners with whom the division is providing capital to troubled companies.

DIVISION OF PURCHASE AND PROPERTY

19. As the State's central procurement agency, the Division of Purchase and Property, created pursuant to N.J.S.A. 52:18A-3 et seq., oversees the purchasing of goods and services (other than construction) necessary for the daily operation of State government. The division is to ensure that State agencies comply with State procurement guidelines and that vendors fulfill their contractual obligations.

During the Department of the Treasury's budget hearing before the Senate Budget and Appropriations Committee on April 14, 2008, Deputy State Treasurer Debra Bell stated the department's intent to **streamline the State procurement process**. Absent a protest against a bid award the average procurement currently takes about six months.

- **Questions:** Please outline the steps in the standard, advertised procurement process before the implementation of recent reforms aimed at streamlining the process. Please indicate the changes to the process that the Department of the Treasury has already implemented or intends to implement. To which extent does the division expect the reforms to accelerate the advertised procurement process?

20. According to N.J.A.C.17:12-1.1., the **Contract Compliance and Administration Unit (CCAU)** in the Division of Purchase and Property bears the ultimate responsibility for ensuring that vendors fulfill their contractual obligations and that using agencies comply with State procurement guidelines. But, in practice, the accountability for the day-to-day management of a contract through its life cycle has been devolved to the State Contract Manager who is an employee of the contracting agency. The CCAU only supervises State Contract Managers and handles significant performance problems with vendors. The CCAU's monitoring of State Contract Managers includes a review of contract management plans, a review of project records in the course of audits, a review of formal complaints filed with the division by the State Contract Manager, and the analysis of the project performance assessment forms required for all services contracts and of contracts that contain \$1 million or more of services. Two Assistant Inspectors General assist the CCAU in monitoring and assessing the performance of State Contract Managers (see Discussion Point #37).

N.J.S.A.52:34-10.7 mandates that a **State Contract Manager** administer each State contract. Among their responsibilities, State Contract Managers, who are employees of using agencies, prepare the contract's budget, assure that products and service deliveries occur according to contract specifications, and review the accuracy of contractor billing. State Contract Managers must also complete a project performance assessment form and submit it to the division and the Office of Management and Budget. Division of Purchase and Property Circular Letter 07-03-DPP, State Contract Manager, stipulates the division's intent to monitor contract managers

Discussion Points (Cont'd)

and to recommend disciplinary action for deficient performance against contract managers and their agencies. The division acknowledged in response to OLS discussion point #15 in the FY 2008-2009 Department of the Treasury Budget Analysis that 6.7 percent of managers of the 739 publicly advertised contracts and three percent of managers of the 587 waived contracts were monitored from FY 2006 through FY 2008. The division also estimated that if it were to effectively monitor all State Contract Managers, it would need 20 more full-time staff at a cost of about \$1.7 million per year. In addition, the division stated that as of the date of its response, it had neither recommended disciplinary action for the deficient performance of a contract manager nor suspended an agency's delegated purchasing authority.

- **Questions:** Does the Division of Purchase and Property provide any oversight of the State Contract Manager during the execution phase of a contract? If so, please explain the nature of the oversight. Even if there is no formal oversight, does the division routinely communicate with State Contract Managers during a contract's execution phase?
- What is the primary objective of the audits conducted by the Contract Compliance and Administration Unit: assessing the performance of the vendor or of the contract manager? How many audits does the unit perform in a fiscal year? Based on which factors does the unit select audit targets?
- What is the division's position on the adequacy of having 6.7 percent of managers of publicly advertised contracts and three percent of managers of waived contracts monitored from FY 2006 through FY 2008? Does the division have a target rate for the percentage of managers it would like to monitor?
- In the last year, has the division recommended disciplinary actions against State Contract Managers and their agencies for deficient performance? If so, please list the disciplinary actions.

21. The Division of Purchase and Property has recently sought to improve the quality of contract management in State government by developing **contract management training** programs. In its November 2007 report on the division, the Office of the State Auditor had stated that none of the contract managers in its sample had received such training. In reply to OLS discussion point #16 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division also acknowledged that not all State Contract Managers were "appropriately trained, skilled, or of a disposition appropriate to being a competent State Contract Manager." Duff contract management may lead to overpaying for procurements and not receiving all goods and services pursuant to contract specifications. The division noted in response to OLS discussion point #16, for example, that cost overruns might result when agencies do not clearly define the scope of work to be provided by contractors.

Prior to recent reform efforts, the division had only provided procurement training upon agency request. Addressing OLS discussion point #16, the division revealed that it was now developing training materials based on information from the National Contract Management Association and other contracting entities. Thereafter, the division planned to create a State contract management course based on the material. Due to limited resources, however, the

Discussion Points (Cont'd)

division intended to limit the training program to managers administering contracts whose value exceeds \$1 million and to provide the instruction under the "train the trainer" banner, whereby agencies would identify key employees to be trained by the division who would then train others within their agency. In addition, in January 2009, the division unveiled a mandatory web-based online training program for all State Contract Managers, which covers State procurement law, policy, procedure, and efficient and effective procurement practices.

- **Questions:** Please comment on the Division of Purchase and Property's progress in providing contract management training to State Contract Managers. What training programs are currently in place and what programs does the division expect to have in place within one year? By which date does the division anticipate to have all State Contract Managers properly trained for their duties?
- Is the division running a contract management training course based on information from the National Contract Management Association and other contracting entities? If so, does the division offer the course pursuant to the "train the trainer" instruction method? If so, what are the division's first experiences with the new approach as a substitute for comprehensive instruction of all contract managers? How much time does the training require on the part of a trainee? Is the formulation of a clear definition of the scope of work to be performed by vendors a key component of the contract management training? How often must State Contract Managers take the mandatory online training course?

22. The Division of Purchase and Property runs the **State Distribution and Support Services Center**, located in Ewing, which provides State agencies, counties, municipalities, colleges, school districts, and volunteer fire and first aid squads with goods acquired through bulk purchasing. Operating as a revolving fund, the self-supporting center bills its clients for the expenses it incurs in providing purchasing services to them--currently the cost of the goods purchased plus 15 percent. According to the Governor's FY 2010 Budget, the center is expected to spend over \$50.9 million in FY 2010, which is the same as in FY 2009 but \$1.2 million less than the amount actually expended in FY 2008 (page G-7).

Under the division's bulk purchasing policies, retailers ship some goods directly to the ordering governmental entity instead of the center if the direct shipment is more cost-effective than distribution by the center. Governmental entities, however, still place their orders through the division. In reply to OLS discussion point #20 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division indicated that goods purchased under 48 contracts were distributed through the center, while goods purchased under two vendor direct contracts were shipped directly to using agencies. The division projected the two direct shipment contracts to save the State \$637,000 per year. The division also stated that it had moved the distribution of three food commodity groups from direct distribution to the center because some client agencies did not have sufficient on-site storage to handle direct delivery and because the direct ship initiative caused distribution center sales to fall to such an extent that they threatened to no longer cover the center's fixed costs. The division was also examining whether the use of prime vendor contracts or other means of distributing the goods currently stocked at the distribution center could lower State costs without additional infrastructure investment.

Discussion Points (Cont'd)

In its February 2008 report on the State Distribution and Support Services Center, the Office of the State Auditor recommended that the center intensify its customer outreach to school districts and municipalities, given that only 52 of New Jersey's 566 municipalities and 33 of the State's over 600 school districts participated in the center's cooperative purchasing program in FY 2007. In response to OLS discussion point #20, the division noted that it intended to contact inactive customers to determine why they ceased to use the distribution center and whether to change its policies and procedures to attract additional users. In addition, the division stated that it was already attending the annual conferences of the New Jersey League of Municipalities, the New Jersey Conference of Mayors, the New Jersey School Board Association, and the New Jersey Association of Counties. Lastly, the center was designing an online ordering system for both State and non-State customers.

- **Questions:** Please indicate the number of contracts having adopted the direct buy option and the number of contracts having maintained the distribution of commodities through the State Distribution and Support Services Center. What have been the cost savings generated by contracts stipulating that vendors ship commodities directly to the ordering governmental entity? What have been the conclusions of the division's examination of whether the use of prime vendor contracts or other means of distributing the goods currently stocked at the distribution center could lower State costs without additional infrastructure investment?
- Please provide the number of municipal governments and school districts that have used the cooperative purchasing program of the State Distribution and Support Services Center in FY 2008 and 2009. What have been the conclusions of the division's attempts to contact inactive customers to determine why they ceased to use the distribution center and whether to change its policies and procedures to attract additional users? Has the division changed its customer outreach operations? Is the center's online ordering system for State and non-State customers operational? If more local governments participated in the cooperative purchasing program could the State achieve more cost savings by having contracts adopt the direct buy option, given that the delivery of some goods was recentralized through the distribution center after the direct ship initiative had caused center sales to fall to such an extent that they threatened to no longer cover the center's fixed costs? If so, should expanding the cooperative purchasing program have a high priority?

OFFICE OF ENERGY SAVINGS

23. Executive Order #11 of 2006 established the Director of Energy Savings in the Department of the Treasury to study and implement energy efficiency measures for State government. Subsequently, Executive Order #54 of 2007 instructed the director to develop specific targets and implementation strategies for reducing energy usage at State facilities and the State vehicle fleet's fuel consumption.

Responding to an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, the Office of Energy Savings outlined the strategy for reducing the energy consumption of State government by over 20 percent by 2020. To measure and track the

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energy usage of State government, the office was in the middle of developing a centralized, web-based **energy tracking system**. For each State agency, the system would allow the establishment of an energy usage baseline, the setting of energy consumption targets, and the tracking of actual energy usage against the targets. Addressing OLS discussion point #37 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Office of Energy Savings noted that the energy tracking system had a prospective startup date of July 1, 2008 and that baseline usage information and targets might be fixed by the end of 2008. The office estimated the system's annual cost at \$416,000. On page 73 of the FY 2010 Budget-in-Brief, the Administration now states that the future use of the new system will save an estimated \$2.7 million annually by enabling the State to target energy conservation measures at high-use State facilities.

- **Questions:** Please provide an update on the status of the energy tracking system. Is it operational? If not, please relate the reason(s) for the delay and indicate the system's new anticipated startup date. What was the one-time capital expense of developing the system? Have there been cost overruns? If so, what factors caused the cost overruns?
- What is State government's total energy expenditure and consumption? Have agency-level energy usage information and targets been set? If so, please list each agency's energy consumption baseline and targets for the next five years. If not, by which date does the office project the establishment of the baselines and targets?
- Please substantiate the estimate that the prospective use of the energy tracking system will result in \$2.7 million in energy savings annually.

24. Responding to an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, the Office of Energy Savings adumbrated a **strategy for reducing the energy consumption of State government by over 20 percent by 2020**. The office planned to develop a web-site to disseminate energy information; regularly communicate with State employees about energy conservation; and issue policy directives for purchasing energy, energy-efficient products, and vehicles. In addition, each department should establish an energy team addressing energy-related procurement, conservation, and recycling. The office expected to finance energy efficiency projects through guaranteed energy savings contracts, whereby vendor contract fees would be paid from energy cost savings. Even so, energy savings contracts could not be finalized prior to enactment of P.L.2009, c.4.

According to the office's response to OLS discussion point #37 in the FY 2008-2009 Department of the Treasury Budget Analysis the office had implemented low-cost energy conservation measures in State buildings, which it projected to reduce annual energy costs by more than \$800,000. Examples include the adjustment of building control settings to reduce lighting hours and the reduction of off-hours motor operations in certain buildings. The office intended to expand the implementation of these measures to all facilities. It also expected to realize \$1.4 million in annual energy cost savings from the launch of \$9.5 million in energy conservation projects (breaking even after 6.8 years). At the time of its response, the office still had to complete energy audits for all State buildings. Lastly, pursuant to page 40 of the FY 2009 Budget-in-Brief, the State will achieve \$27.1 million in savings over a three-year period

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because the office concluded new energy contracts and restructured the existing natural gas supply contract in 2007.

- **Questions:** Please describe the FY 2009 energy conservation measures developed by the Office of Energy Savings that State agencies have implemented, detailing the annual cost savings and capital cost per measure and the agencies in which each measure was implemented. Has the office already financed energy efficiency capital projects through guaranteed energy savings contracts? If so, what is the number of such contracts signed, reflecting which monetary amount? Have energy audits been performed for all State buildings? Are all State agencies still fully cooperating with the office? If not, which agencies are recalcitrant?
- Please describe the office's FY 2009 energy supply initiatives. What are the annual cost savings of each initiative?

25. Executive Order #54 of 2007 instructs the Office of Energy Savings to develop specific targets and implementation strategies for **reducing the State vehicle fleet's fuel consumption**. In reply to OLS discussion point #37 in the FY 2008-2009 Department of the Treasury Budget Analysis, the office stated that an inter-agency task force had determined that the State's alternate fuel fleet vehicles did not produce meaningful fuel efficiency improvements because of the limited availability of certain alternate fuels. The United States Department of Energy has since allowed the State to temporarily purchase more energy efficient vehicles, including Hybrid Electric Vehicles, instead of the alternate fuel vehicles normally mandated by the federal Energy Policy Act. The office also related that it had created a vehicle purchasing guide. The guide's midsize hybrid vehicle, for example, offered the State \$7,500 in expected fuel cost savings over the life of the vehicle at a \$5,000 purchase price premium. The office also stated that the Department of the Treasury had established a committee to review all agency vehicle purchase requests to ensure the purchase of the most efficient vehicles. Representatives of the Office of Energy Savings, the Central Motor Pool, the Division of Purchase and Property, and the Division of Administration comprise the committee.

- **Questions:** Has the Office of Energy Savings determined targets and implementation strategies for enhancing the State vehicle fleet's fuel efficiency? If so, what are the targets and strategies and what analytical considerations are underpinning them? If not, within which timeframe does the office expect to set them? When projecting a vehicle's life cycle fuel costs, what assumptions does the office use about the long-term price of gasoline?

DIVISION OF MINORITY AND WOMEN BUSINESS DEVELOPMENT

26. In December 2007, the **Division of Minority and Women Business Development** was transferred from the Office of Economic Growth to the Department of the Treasury. Created by Executive Order #34 of 2006, the division administers and monitors programs to increase the participation of minority- and women-owned businesses in State procurement processes. Addressing OLS discussion point #23 in the FY 2008-2009 Department of the Treasury Budget

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Analysis, the division noted that it was focusing on tracking State procurement spending with minority and women-owned businesses. To that end it had developed a new database and worked with State agencies to enhance the data collection process. The division interacts closely with the Office of Supplier Diversity, which uses division data to develop and fine-tune its training and technical assistance portfolio for minority- and women-owned businesses.

In July 2008, the division issued its first quarterly report on the utilization of minority and women businesses in State agency procurements. Such vendors received 7.96 percent, or \$67.7 million, of the \$851 million 109 State agencies expended on prime contracts in the fourth quarter of 2007. The data did not yet include information on subcontractors. In the report, the division recommended the development of a strategy to increase the pool of minority and women prime and subcontractors the State could engage, and efforts to encourage vendors to register with the State as minority and women companies.

- **Questions:** Please describe the FY 2009 activities of the Division of Minority and Women Business Development. Has the division developed a method to measure the use of minority and women subcontractors in State procurements? If so, what conclusions does the division draw from the data? What efforts, if any, has the division deployed to increase the pool of minority and women prime and subcontractors the State could engage, and to encourage vendors to register with the State as minority and women companies? Has the division encountered any obstacle to the implementation of policy changes and programs? If so, which ones? Which initiatives does the division intend to pursue in FY 2010? Have the division's efforts already measurably facilitated the access of minority- and women-owned businesses to State contracts?
- What was the total cost of developing the database the division uses to track State procurement spending with minority and women-owned businesses?

27. In reply to OLS discussion point #24 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Division of Minority and Women Business Development stated that the database it developed to track the utilization of minority and women businesses in State agency procurements would precede the setting of **utilization goals and benchmarks designed to increase the participation of minority- and women-owned businesses in State agency procurement processes**. The division clarified that benchmarks would be aspirational goals, not concrete objectives backed up by penalties for noncompliance as in a set-aside regime. Benchmarks would thus not compromise the State's race- and gender-free procurement policy. Even so, in its report on the utilization of minority and women businesses in State agency procurements in the fourth quarter of 2007, the division related that "the Governor's Senior Staff will help to convene meetings with all State agencies ... to ensure that all agencies understand the importance of [augmenting the participation of minority- and women-owned businesses in State procurement processes]."

Utilization goals would continue New Jersey's decades-old drive to raise the share of State purchases awarded to minority- and women-owned businesses. The 1984 "Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses" (N.J.S.A. 52:32-17 et seq.) required State agencies to award at least ten percent of their contracts to such businesses. In

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2003, the State permanently ended the practice of establishing concrete targets for State procurement dollars paid to minority- and women-owned businesses after signing a consent decree entered by the United States District Court for New Jersey in the matter of *GEOD v. State of New Jersey*, Civil Action No. 01-2656 (SRC) (D.N.J.). The litigation had resulted from the 1989 United States Supreme Court decision *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989), which permitted race-based set-aside programs in public contracting only if they were justified by a compelling interest and narrowly tailored to accomplish a remedial purpose. In effect, thereafter, these programs had to be supported by research demonstrating the prevalence of discrimination and underutilization of firms owned by underrepresented groups.

In 2005, the Disparity Study Commission then issued two reports finding discrimination and underutilization of firms owned by underrepresented groups in New Jersey State contracting. In 2006, the State created the division. New Jersey Transit also used the reports' findings to justify goals for contracts awarded to disadvantaged business enterprises. A lawsuit has been filed against the goals in the United States District Court for New Jersey, *GEOD v. New Jersey Transit Corporation*, alleging in part that the disparity studies were methodologically unsound.

- **Questions:** Has the division determined utilization goals for minority- and women-owned businesses in State agency procurements? If so, what are the goals? If not, by which date does the division expect to have them set? Has *GEOD v. New Jersey Transit Corporation* been decided? Has the lawsuit slowed down the development of utilization goals? Given that the division has enlisted the Governor's Office to impress upon State agencies the importance of augmenting the participation of minority- and women-owned businesses in State agency procurements, what would in effect be the consequence if a State agency did not increase the share of its contracts awarded to such businesses? Does the involvement of the Governor's Office suggest a lack of cooperation by State agencies? If so, please describe the resistance the office faces when it extols to State agencies the benefits of raising the participation of minority- and women-owned businesses in State agency procurements.

OFFICE OF SUPPLIER DIVERSITY

28. In January 2008, the Department of the Treasury announced the creation of the **Office of Supplier Diversity**. In conjunction with the Division of Minority and Women Business Development, the office shall facilitate the economic success of minority- and women-owned businesses. To that end, it would a) provide information to such businesses on State purchasing processes and on State programs designed to assist them, b) identify opportunities for such businesses to apply for public and private contracts, and c) create mentoring and networking strategies with established firms. Responding to OLS discussion point #25 in the FY 2008-2009 Department of the Treasury Budget Analysis, the office noted that it used division data on the utilization of minority and women businesses in State agency procurements to guide its efforts.

- **Questions:** Please outline the FY 2009 activities of the Office of Supplier Diversity. Which initiatives does the office intend to pursue in FY 2010? Please provide an example illustrating how data on the utilization of minority and women

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businesses in State agency procurements has prompted the office to better target its resources. What efforts, if any, has the office deployed to increase the pool of minority and women prime and subcontractors the State could engage, and to encourage vendors to register with the State as minority and women companies? Has the office faced any obstacle to the implementation of its initiatives? If so, which ones? Have the office's efforts already measurably facilitated the access of minority- and women-owned businesses to State contracts?

DIVISION OF ADMINISTRATION

29. In response to OLS discussion point #28 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Central Motor Pool (CMP) described a **new fueling system** it was exploring for State-operated fueling stations. The current system relies on fuel cards issued to State employees. Whenever a fuel card is used at a State-operated fueling station, the pump dispenses fuel. In addition, State employees must file monthly mileage reports. The CMP noted that this approach did not sufficiently protect the State against the theft of gas. State employees could share fuel cards with others and fill up their personal cars at State-operated fueling stations. Only CMP audits of transactions can unearth this abuse. The studied system, to the contrary, would do away with the fuel cards. Instead, it would use radio frequency technology to verify that a vehicle was authorized to fill up at the station prior to activating the fuel pump and it would electronically retrieve mileage data from the vehicle at that time. The technology would require one to two years to install at all sites and cost \$4 to \$5 million.

In February 2009, the Department of the Treasury announced that all State vehicles must now be fueled at State-operated fueling stations. 1,100 State employees could hitherto use **State-issued commercial gasoline credit cards** to fill up at any retail gas station. Intended to be used in emergency situations only, the cards appear to have become unduly popular. The Treasury fretted at their use as a gallon of gas pumped at State-operated fueling stations was about 77 cents cheaper than a gallon pumped at an average retail gasoline station. The Treasury estimated that discontinuing the gasoline cards would economize \$240,000 in FY 2010.

- **Questions:** Has a decision been made to procure the electronic fueling system? If so, when will it become operational and is its cost still projected to be \$4 to \$5 million? If not, in which timeframe does the Division of Administration anticipate making a decision? In the meantime, is the division reinforcing its auditing of fuel card transactions?
- How much fuel did the State's motor vehicle fleet consume in FY 2008? How many gallons were pumped at State-operated fueling stations and how many at regular retail gas stations? What was the total cost of the fuel pumped at State-operated fueling stations and at regular retail gas stations?

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DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION

30. According to page 80 of the FY 2010 Budget-in-Brief, the Administration intends to save \$3.3 million in FY 2010 by terminating or consolidating 14 real estate leases. An additional \$1.0 million would be saved in FY 2010 from 11 leases terminated in FY 2009. As indicated on page 73 of the FY 2010 Budget-in-Brief, the \$4.4 million in savings from lease terminations and consolidations would be supplemented by \$2.3 million in rent abatements on renegotiated long-term office leases.

Two recent developments favor the consolidation of office space. First, the downsizing of State government has had the attendant effect of diminishing the State's real estate needs. Second, the Division of Property Management and Construction, which manages the **real estate needs of State government**, now is in a position to do so centrally and effectively. Before FY 2008, it fell short of that objective because many State agencies ignored a statutory requirement to report the utilization of all space owned, leased, and subleased. In response to an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, however, the division reported that with the backing by the Governor and the State Leasing and Space Utilization Committee, it could impel each State agency to submit a space utilization plan including projections of future space needs. Subsequently, all the data were entered into the Land and Building Asset Management (LBAM) system. The division expected to rely on LBAM as a space planning tool that would allow it to better use existing vacancies and to devise an effective strategy to convert the 89 month-to-month facility leases as of March 2008 into term leases.

- **Questions:** Please detail which 25 leases have been or are slated to be terminated or consolidated in fiscal years 2009 and 2010 under the Governor's plan, including the projected savings per lease. To which facilities does the State intend to relocate the current occupants? What risks exist that the planned relocations might not occur?
- How many of the 89 month-to-month leases as of March 2008 have been converted to term leases? Have new term leases lapsed into the month-to-month category? Please state how much the State is projecting to spend on month-to-month leases in fiscal years 2009 and 2010?

31. In 2008, the Division of Property Management and Construction revised space leasing regulations aimed at streamlining and accelerating the **State's lease procurement process**, which, in 2005, took over two years from the initial space needs assessment to final approval. The process included (a) the public advertisement and solicitation of competitive bids; (b) the approval of all leases by the State Leasing and Space Utilization Committee; (c) the negotiation of final contract terms by the Attorney General's Office; (d) responding to changing space needs by client agencies during the procurement process; and (e) ensuring that all leased facilities meet regulatory requirements. Addressing OLS discussion point #21 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division noted that new regulations allowed it to bypass one of the preliminary lease procurement steps (the property profile form process) and to enter into direct negotiations with two or more of the most cost effective and responsive proposals. Before, the division had not been at liberty to exclude

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proposals that did not appear to be either cost effective or responsive based on initial submissions. In addition, in response to an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, the division stated that it was consulting with the State Leasing and Space Utilization Committee so that the committee would receive the requisite decision support to approve lease recommendations in a timely fashion.

- **Questions:** Please comment on the experiences of the Division of Property Management and Construction with the revised space leasing regulations. Have they performed as intended? Have they noticeably reduced the duration of the lease procurement process? What is currently the average length of the lease procurement process from the initial space needs assessment to final approval? With an eye for time savings, what additional improvements could be sensibly brought to bear on the process?

OFFICE OF THE STATE COMPTROLLER

32. The Governor's FY 2010 Budget recommends an \$8.2 million appropriation for the **Office of the State Comptroller**, which was created pursuant to P.L.2007, c.52. Organized "in but not of" the Department of the Treasury, the office's budgeted 59 employees conduct financial audits, engage in procurement contract audits and monitoring, and review the efficiency and effectiveness of State and local governmental entities. In exercising its functions, the office collaborates with the Office of the Inspector General; the Office of the State Auditor; the Departments of Transportation, Education, Law and Public Safety, Community Affairs and Treasury; and other related entities. Replying to an OLS discussion point in the FY 2008-2009 Department of the Treasury Budget Analysis, the department outlined its structure: it features the Office of the State Comptroller (four full-time employees), the Audit Division (34 full-time employees), the Performance Review Division (13 full-time employees), and the Procurement Division (eight full-time employees). The Office of the State Comptroller also operates a toll-free, confidential "Financial Waste and Mismanagement Hotline" that allows callers to alert the office of perceived waste or mismanagement.

- **Questions:** Is the Office of the State Comptroller fully staffed and operational? Which programs and governmental entities are the Audit Division, the Performance Review Division, and the Procurement Division currently reviewing and are planning to review in FY 2010? Please describe the method each division uses in determining which governmental entity or program to review.
- How many calls has the "Financial Waste and Mismanagement Hotline" received since inception and how many of these calls have merited further investigation?
- Please clarify the division of labor and the nature of the collaboration between the office's Procurement Division and the Division of Purchase and Property and the Division of Property Management and Construction, both in the Department of the Treasury. Is the Procurement Division duplicating the efforts of State Contract Managers or of the two Treasury Assistant Inspectors General who oversee State Contract Managers so as to ascertain effective contract administration and to propose enhancements to contracting policies?

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33. On February 23, 2009, the Governor named his Chief of Staff and the State Comptroller to lead a group overseeing New Jersey's implementation of the \$787 billion **American Recovery and Reinvestment Act of 2009**. The monitoring group is to ensure that the State uses the federal aid efficiently, effectively, and transparently.

For FY 2009 and 2010 combined, the Governor's FY 2010 budget incorporates an estimated \$5.183 billion in **federal stimulus funding** provided by ARRA. Of this amount, the State will use \$3.074 billion (\$854 million in FY 2009 and \$2.220 billion in FY 2010) for budget relief to offset revenue shortfalls (Budget-in-Brief, Appendix II, page 12), and \$2.109 billion to fund new or expanded programs or initiatives.

- **Questions:** Please expound the State Comptroller's role in monitoring New Jersey's use of American Recovery and Reinvestment Act (ARRA) moneys. Given that actively monitoring the use of ARRA funds is an internal control function in management, can the State Comptroller still conduct post-audits and performance reviews tied to these federal funds that would be considered independent according to professional standards? Pursuant to the most recent evaluation, please list ARRA amounts New Jersey expects to receive by fiscal year and program category.

34. Acknowledging the important role external auditors play in the financial oversight of governmental units in New Jersey, the Office of the State Comptroller issued its first report on August 12, 2008 entitled "**Selection and Use of Audit Firms by New Jersey Government Units**". For the report, the office had requested audit information from over 1,900 units of government. By July 11, 2008, 996 units had replied.

The office emphasized three weaknesses jeopardizing the integrity of many audits performed for governmental units. First, it indicated that 45 percent of all respondents had been using their auditors for more than ten years. Stating that periodic auditor rotation enhanced audit quality, the State Comptroller recommended that no governmental entity use the same audit firm for more than ten consecutive years. Second, the State Comptroller noted that 48 percent of survey respondents did not use a competitive contracting process to select audit firms. Reminding that a competitive selection process was a safeguard against illegal activity, overpriced services, and lax audit work, the office recommended that all governmental units put auditing contracts out to bid at a minimum of every five years. Third, the State Comptroller recommended that governmental units do not hire audit firms that have made political contributions within twelve months of bidding on an audit contract. The office related that the top ten audit firms with the largest number of government clients made political contributions exceeding \$1 million in 2006 and 2007.

- **Questions:** Please update the number of governmental units that have responded to the Office of the State Comptroller's notice to submit audit information. Do the submissions received after July 11, 2008 alter the findings published in the "Selection and Use of Audit Firms by New Jersey Government Units" report? Does the office have the means to compel governmental units to cooperate with information

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- requests? If not, does the State Comptroller have any suggestions that would help achieving universal compliance with the State Comptroller's requests?
- What has been the response to the State Comptroller's recommendations to rotate auditors on a regular basis, to award auditing contracts through a competitive bid process, and to bar audit firms that have made political contributions from bidding on an audit contract? Are governmental units implementing the recommendations or is it the State Comptroller's opinion that legislation is needed to provide for changes in auditor selection and rotation practices?

OFFICE OF THE INSPECTOR GENERAL

35. The Executive's FY 2010 Budget recommends that the **Office of the Inspector General** receive a \$1.7 million appropriation (excluding the \$1.4 million appropriation to the Office of the Medicaid Inspector General) and be staffed by 17 employees (excluding the 54 employees appropriation to the Office of the Medicaid Inspector General). Established under P.L.2005, c.119, the office is to identify waste, mismanagement, abuse, and fraud in government spending by means of a full-time program of investigation of recipients of State funds, including, but not limited, to State departments and agencies, independent authorities, county and municipal governments, and boards of education. P.L.2007, c.52 later allocated the office "in but not of" the Office of the State Comptroller and transferred the Inspector General's hitherto unused statutory authority to conduct a full-time program of audit and performance review to the State Comptroller. Complaints may be filed with the Inspector General by mail, via its website or statewide toll-free hotline. In response to OLS Discussion Point #34 in the FY 2008-2009 Department of the Treasury Budget Analysis, the office noted that it had received 238 correspondences in calendar years 2006 and 2007, of which about a dozen had spurred reviews by the office.

- **Questions:** Please provide an update on the activities in FY 2009 of the Office of the Inspector General. Which programs and governmental entities is the office currently reviewing or investigating? Which programs and governmental entities is the office planning to review in FY 2010? How many complaints has the office received in calendar year 2008? How many of these complaints spurred a formal investigation by the Inspector General?

36. Addressing OLS Discussion Point #35 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Office of the Inspector General reported that it had signed a Memorandum of Understanding with the **New Jersey Schools Development Authority (SDA)**, (the successor agency to the New Jersey Schools Construction Corporation) that created two permanent **Assistant Inspectors General positions** in the Office of the Inspector General dedicated to working solely on issues related to the SDA. The SDA reimburses the Inspector General for the cost of the two positions. The Inspector General noted that the two Assistant Inspectors General performed reviews and investigations relating to alleged "fraud, waste, abuse or mismanagement" by SDA employees, contractors, and third persons, such as tenants receiving

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relocation benefits from the SDA. In addition, the Inspector General advises the SDA on activities related to the SDA's restructuring.

In April 2005, the office issued its initial report on "weak internal management and financial controls and lax and/or nonexistent oversight and accountability" in the New Jersey Schools Construction Corporation. The report included several recommendations by the Inspector General for stronger internal controls. Subsequently, the office has worked with SDA's new leadership to remedy the internal control weaknesses. It has also publicly recognized significant improvements and the commitment of the new leadership to reforming the SDA.

- **Questions:** Please comment on the work performed in FY 2009 by the two Assistant Inspectors General dedicated to the New Jersey Schools Development Authority. Is the office still playing a role in the restructuring of the authority? If so, please describe its ongoing involvement.

37. The Office of the Inspector General has established two permanent **Treasury Assistant Inspector General** positions whose holders are employees of the office assigned full-time to the Department of the Treasury. The Treasury reimburses the Inspector General for the cost of the arrangement. The Assistant Inspectors General work, in part, on overseeing State Contract Managers so as to ascertain effective contract administration and to propose enhancements to contracting policies, if any. Replying to OLS Discussion Point #17 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Office of the Inspector General related that although it still needed to fill the positions, it had always performed the reviews requested by the Treasury. An example of that cooperation was the Inspector General's review of the audit performed by the Contract Compliance and Administration Unit in Treasury's Division of Purchase and Property regarding the monitoring by the Department of Corrections of the dental portion of the \$168 million inmate health services contract the Department of Corrections had with Correction Medical Services (CMS). The review revealed that the department's failure to accurately monitor contractual requirements cost the State between \$3.0 million and \$4.3 million. The University of Medicine and Dentistry of New Jersey has since replaced CMS as the supplier of inmate health services.

- **Questions:** Are the two permanent Assistant Inspectors General positions in the Department of the Treasury filled? If not, why? Please comment on the work performed in FY 2009 by the two Assistant Inspectors General. Is the Office of the Inspector General involved in overseeing State Contract Managers?

38. In December 2008, the State's first Medicaid Inspector General was appointed to head the newly created **Office of the Medicaid Inspector General**. The Governor's FY 2010 Budget includes a \$1.4 million State appropriation and anticipates \$2.3 million in federal funds for the new office, which is expected to have 54 positions. The appropriation and positions represent reallocations to the Department of the Treasury from the Division of Medical Assistance and Health Services in the Department of Human Services in the course of FY 2009. The Governor's proposed budget also anticipates \$25 million in cost savings from Enhanced Medicaid Fraud Prevention (page 54, FY 2010 Budget-in-Brief).

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The "Medicaid Program Integrity and Protection Act", P.L.2007, c.58, authorized the creation of the Office of the Medicaid Inspector General in the Office of the Inspector General. The Medicaid Inspector General is intended to prevent, detect, investigate, and reduce fraud, waste, and abuse in the State's Medicaid program. It has the authority to supervise all State government activities relating to Medicaid integrity, fraud, and abuse, except the activities of the Medicaid Fraud Control Unit in the Department of Law and Public Safety. The federal government matches State expenditures for the office 200 percent through the Medicaid program. Pursuant to the enabling legislation, 25 percent of the State share of the monies recovered by the Medicaid Inspector General must be deposited into the "Medicaid Fraud Control Fund" in the Department of the Treasury to pay for the investigation and prosecution of Medicaid fraud claims by the Office of the Medicaid Inspector General and the Medicaid Fraud Control Unit in the Department of Law and Public Safety. Proposed budget language, however, would transfer all such sums to the General Medical Services account in the Division of Medical Assistance and Health Services in the Department of Human Services. In response to an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, the department indicated that the budget language negated diverting \$25 million to \$30 million of funds currently used to support the Medicaid program to the "Medicaid Fraud Control Fund".

- **Questions:** What is the expected timeframe for starting operations and fully staffing the Office of the Medicaid Inspector General? Please describe the planned organizational structure of the office, detailing the number of subdivisions, if any, the hierarchy, and the number of employees within each job title category. In light of the budget language overriding the statutory mandate to deposit monies recovered by the Medicaid Inspector General in the "Medicaid Fraud Control Fund", does the Department of the Treasury intend to permanently break the direct statutory link between recoveries by the Medicaid Inspector General and the Medicaid Inspector General's expenses?
- Please indicate the rationale underlying the \$25 million in savings projected for FY 2010 from enhanced Medicaid fraud prevention. Through which means is the Medicaid Inspector General expected to contribute to that goal? In the office's assessment, how ambitious is that objective?

GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE

39. The Governor's FY 2010 Budget assumes a transfer of the Governor's Council on Alcoholism and Drug Abuse from the Department of the Treasury to the Department of Human Services. Established in 1989, the council (N.J.S.A.26:2BB-1 et seq.) is an independent agency placed in the Department of the Treasury that coordinates New Jersey's alcoholism, drug, and tobacco treatment, prevention, research, evaluation, education, and public awareness efforts. Receipts into the off-budget Drug Enforcement and Demand Reduction Fund from fines levied on convicted drug users and sellers finance the council's activities. The Governor's FY 2010 Budget makes \$17.4 million available to the council, of which the majority would fund grants awarded to community-based prevention programs and administered mainly by county coordinators.

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In December 2008, the Office of the State Comptroller concluded in its **audit report** that the council performed "inadequate" oversight over the alcohol and drug abuse programs it supports. Hence, the State Comptroller proffered ten recommendations to address "significant weaknesses", including:

- the establishment of grant review and approval guidelines and procedures to ensure that only allowable expenditures are funded, to which the council replied that it would convene a workgroup for that purpose;
 - the reallocation of staff to conduct one annual site review in each county, which review shall comprehensively examine grant expenditures, to which the council responded that it would initiate an independent audit process and that it was revising monitoring procedures so that each county would receive two visits per year;
 - the development of a system to evaluate the effectiveness of programs funded, to which the council retorted that it was now requiring municipal alliances receiving more than \$10,000 to implement evidence-based programs from a federal registry or to measure and report the outcomes of their customized programs; and
 - the reorganization of the council's "overstaffed" personnel structure (it currently has 11 employees), to which the council replied that it was exploring alternative staffing patterns.
- **Questions:** In which ways would the anticipated transfer of the Council on Alcoholism and Drug Abuse from the Department of the Treasury to the Department of Human Services affect the work and personnel structure of the council?
 - Please comment on the efforts by the council to redress the "significant weaknesses" the Office of the State Comptroller noted in its audit report. Has the council convened a workgroup to establish grant review and approval guidelines and procedures? If so, when will the council adopt the guidelines and procedures? Has staff been reallocated to ensure that each county receives two monitoring visits per year? If not, by which date will the council be able to conduct the site reviews? Have the rotating county audits started? If not, by which date will the audits begin? Please explain how the council is keeping track of the performance of programs it funds. Has the council reorganized its personnel structure? If so, please describe the new organization. If not, please explain which alternative staffing structures are being considered, and by which dates the council expects to make and implement a staffing decision.

OFFICE OF INFORMATION TECHNOLOGY

40. Organized "in but not of" the Department of the Treasury, the Office of Information Technology (OIT) provides information technology services to State agencies. To that end, it oversees the mainframes, servers, networks, and databases that compose the State's technical infrastructure; operates the Garden State Network, a statewide integrated communications network; and runs the State's major data centers, including the Office of Information Technology Availability and Recovery Site (OARS). In addition, it manages the State's internet

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environment and offers application development and maintenance, geographical information systems, and data management services.

Attrition, a hiring freeze, and an early retirement program have shrunk the Executive Branch workforce by almost 4,000 since FY 2007, producing an annualized \$312 million in cost savings (FY 2010 Budget-in-Brief, page 73). The Governor's FY 2010 budget proposal envisions continuation of the **hiring restrictions coupled with possible furloughs or layoffs**.

- **Questions:** In general terms and by means of specific examples, how has the reduction in staffing affected Office of Information Technology (OIT) operations? What strategies has the office employed to deal with staff reductions? What projects, work products or functions has the office scaled back, discontinued or deferred because of declining staffing levels?
- Would OIT be able to accommodate furloughs in FY 2010 without increasing spending for overtime or temporary workers? In which programmatic areas would layoffs occur, if any? Please comment on the likely impact of the planned furlough program and contemplated employee cuts on OIT operations and services. Would the office be ceasing certain activities, programs, or services? Would the downsizing cause OIT to reassess its priorities and reassign staff accordingly among its programs? If so, please describe the internal reorganization.
- How many employees was the office authorized to hire in FY 2009 despite the hiring freeze? Please indicate for which activities these hires were crucial.

41. The FY 2009 Appropriations Act anticipated that executive departments would achieve \$25 million in **procurement savings**. A chart on page 75 of the FY 2010 Budget-in-Brief categorizes those savings and indicates that they will continue into FY 2010. The Governor's FY 2010 budget includes another \$25 million in savings from "smarter procurements" (Budget-in-Brief, page 54).

- **Questions:** Please indicate the FY 2009 amount of procurement savings achieved by the Office of Information Technology (OIT), by the categories set forth in the referenced table, and the sources of those savings by office program. What is the annual amount of these savings as continued into FY 2010? How have these reductions affected OIT? What projects, work products or functions has the office scaled back, discontinued or deferred in order to achieve these savings?
- Please list OIT's projected contributions to the \$25 million in savings from "smarter procurements" budgeted in the Governor's FY 2010 budget proposal. How would these reductions affect the office? What projects, work products or functions would OIT scale back, discontinue or defer in order to achieve these savings?

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42. P.L.2007, c.56 reorganized OIT consistent with the provisions of Executive Order #42 of 2006. The restructuring institutes OIT as **State government's central information technology (IT) management and oversight body**. The law, however, does not consolidate all IT operations in the office, as agencies may continue to run some IT functions if OIT deems such devolution more cost-effective and efficient than rigorous consolidation. According to the IT reform model that is being implemented, OIT should become the central authority for the State's shared information technology infrastructure. Under the office's oversight, individual agencies or affinity groups (organized IT communities of interest spanning several State agencies) would eventually assume the responsibility for the development of their business applications.

In response to OLS discussion point #39 in the FY 2008-2009 Department of the Treasury Budget Analysis, OIT related that a cross-agency team had recommended the consolidation of certain IT services: networks, automated document services, enterprise services (e-mail, archiving, enterprise and multi-agency applications, portals), communications, security, disaster recovery, storage, information technology field support, service desk, desktops and data centers (servers and storage). The State's fiscal situation, however, forced OIT to instead adopt a modified, three-phase consolidation strategy. In the first phase, the office was already in the process of physically collocating mission-critical IT equipment to reduce the number of data centers and energy consumption, and to improve IT disaster recoverability. In a written follow-up response to a question raised during the Department of the Treasury's budget hearing before the Assembly Budget Committee on April 15, 2008, OIT admitted, however, that progress in migrating equipment to a central location was slow due to a lack of funding. Phase 2, which OIT was just beginning, involved the use of the procurement review process to optimize the IT infrastructure through platform consolidation or virtualization. Phase 3, which had not yet commenced, calls for service integration across affinity groups to improve service delivery and internal processes. OIT was also about to finalize the Service Level Agreements (SLAs) templates that would be used within the Executive branch to specify the technical support services OIT would provide to client agencies. OIT also intended to meet with each Executive branch agency in FY 2009 to determine each agency's IT requirements and the areas that would be conducive to consolidation.

Three barriers keep some agencies from fully cooperating with the goal of consolidating IT resources and management, according to OIT's written follow-up response to a question raised during the Department of the Treasury's budget hearing before the Assembly Budget Committee on April 15, 2008. First, federal funds must often be used for specific programs and cannot be used jointly by multiple programs or agencies. Second, rigid title specifications under civil service rules in agency IT offices prohibit the reassignment of duties in support of a centralized model. Lastly, agencies with public safety missions are unwilling to delegate IT responsibility to an agency outside their sphere of control.

- **Questions:** Please provide an update on the implementation of the three-phase IT consolidation strategy. Has the physical collocation of mission-critical IT equipment been completed? What are the anticipated cost savings of the collocation? If the collocation project has not yet been completed, by which date does OIT expect its completion? Has OIT secured sufficient funding for the migration of equipment to a central location? What level of funding would OIT need to complete the migration? Has OIT been able to focus on the use of the procurement review process to optimize the IT infrastructure through platform consolidation or virtualization? Have there

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- already been positive outcomes? Has OIT started to pursue service integration across affinity groups?
- Please explain whether the current three-phase IT consolidation strategy is compatible with the original consolidation strategy devised by the cross-agency team. Has OIT abandoned the original strategy permanently or has it conceived the current strategy as a slimmed down version of the original plan, which would easily allow for the implementation of the initial plan once financial resources permit? Is the pursuit of the current strategy likely to render a shift to the original strategy too costly?
 - Has OIT met with each Executive branch agency to determine each agency's IT requirements and the areas conducive to consolidation? If not, by which date does OIT expect to have completed the meetings? Into how many Service Level Agreements has OIT entered with client agencies? Please submit a copy of a Service Level Agreement with the Department of the Treasury. Have IT responsibilities been shifted to or from OIT following the start of the reorganization? If so, which responsibilities have been transferred and according to which rationale?
 - Does OIT have a strategy to address the three barriers that keep agencies from fully cooperating with the IT consolidation drive: federal funding that can only be used in support of specific programs, civil service rules that prohibit the reassignment of duties, and territorial agencies with public safety missions? Does OIT feel that it is receiving broad overall support from client agencies in its quest to reorganize the delivery of State IT services? Which agencies are stalling? Who settles disputes between OIT and client agencies about who should be performing certain functions?
 - What was the actual total amount of State information technology spending in FY 2008? What is the projected total amount of State information technology spending in fiscal years 2009 and 2010?

43. Pursuant to P.L.2007, c.56, a nine-member New Jersey Information Technology Governing Board heads the **reorganized OIT** and determines strategic direction, standards, and funding priorities. A Chief Technology Officer runs OIT's day-to-day operations and coordinates IT operations across the executive branch. Four Deputy Chief Technology Officers have responsibilities for IT management, planning, and budgeting within four Affinity Groups, or communities of interest that intersect several State agencies (Administrative Services; Health, Education, and Social Services; Public Safety; and Business and Community Services). State agency IT directors are accountable to their Affinity Group's Deputy Chief Technology Officer. A Project Review Board—composed of representatives from OIT, the Office of Management and Budget in the Treasury, and the Purchase Bureau in Treasury's Division of Purchase and Property—reviews and monitors all large scale IT projects in the executive branch. In response to OLS discussion point #40 in the FY 2008-2009 Department of the Treasury Budget Analysis, OIT noted that the new governance structure had been implemented except that agency IT directors still had to be made accountable to the Deputy Chief Technology Officers, which OIT was planning to organizationally accomplish by the end of calendar year 2008.

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- *Questions:* Please indicate whether OIT has made agency IT directors accountable to the Deputy Chief Technology Officers. If not, by which date does OIT expect to do so and what factors have accounted for the delay? Through which means does OIT hold, or intend to hold, agency IT directors accountable? Do the agency IT directors also answer to superiors in their agencies? If rivaling authorities exist, how does OIT ensure that agency IT directors do not receive conflicting instructions? In the event of conflicting instructions, do OIT instructions trump agency instructions in the mind of the typical agency IT director? On which grounds does OIT base its assessment of the likely behavioral response of the directors to conflicting instructions?
- Please comment on OIT's experiences with the new governance model. Has it helped to rationalize the management of the State's IT resources as intended? Has OIT become aware of any shortcomings in the governance structure that might justify additional modifications? If so, what changes would OIT support?

44. As part of the new governance structure at OIT, an interim **Project Review Board**—composed of representatives from OIT, the Office of Management and Budget in the Treasury, and the Purchase Bureau in Treasury's Division of Purchase and Property—reviews, approves, and monitors IT projects that typically exceed \$1 million in value. Replying to OLS discussion point #40 in the FY 2008-2009 Department of the Treasury Budget Analysis, OIT stated that the board was still overseeing many projects in whose conceptualization it had no part. Over time, OIT intended to place the board at the beginning of the planning cycle so that it could influence priority setting, funding, and resource allocation. OIT also noted that the board held each agency head accountable for the agency's IT projects.

- *Questions:* Please explain the process the Project Review Board uses to monitor large-scale IT projects. What is the periodicity of reviews of approved projects? Are there specific events that trigger a review? What means does the board have to hold an agency head accountable for floundering agency projects?
- Does the Project Review Board have rigid guidelines governing the decision whether to approve or reject a procurement request or do the board's procedures allow it some discretion in how to evaluate projects that come before it? What specific guidelines does the board have?
- Please list all projects with a value in excess of \$1 million that the Project Review Board has reviewed since inception, indicating for each project whether the board has approved or rejected it, as well as its original and most current cost projection.

45. In response to Discussion Point #39 in the FY 2008-2009 Department of the Treasury Budget Analysis, OIT indicated that its **Program Management Office** was planning to implement a Quality Assurance function for IT projects and to adopt a framework for facilitating the delivery of high-quality IT services. The Program Management Office coordinates multi-agency IT initiatives and guides in-house staff on application development

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and implementation, engagement management, project management and control, risk assessment and mitigation, cost estimation, and integrated planning. The office also participates in the review of strategic and tactical plans to ensure that agency projects conform to the State's Enterprise Architecture structure. It also reviews all procurement requests to facilitate compliance with tactical plans and to find opportunities for cost savings.

- **Questions:** Please explain OIT's specific role in the managing of IT contracts and the monitoring for contract compliance. Does OIT manage and monitor all IT contracts or only a subset that meets specific criteria? Concerning project monitoring, what are the respective responsibilities of OIT's Program Management Office, the Project Review Board, the Division of Purchase and Property in the Department of the Treasury, and the client agencies? Does OIT intend to alter this allocation of responsibilities? How many employees does the Program Management Office have?

46. In cooperation with IT organizations in Executive branch agencies, OIT has developed the **State of New Jersey Information Technology Strategic Plan for fiscal years 2008 through 2010**. The plan expresses goals, objectives, and strategies in six IT areas: governance, statewide efficiencies, enterprise architecture, e-government, security, and IT workforce management.

One goal under the plan is to maximize the efficient delivery of agency IT services through the cost-effective use of all state IT resources. Among the initiatives is the completion of an inventory of statewide IT assets and services, the completion of an infrastructure consolidation assessment and plan for all agencies, the establishment of statewide IT data sharing policies to increase efficiencies of data collection and use among different layers of government, and the creation of a formal process by which OIT and the Division of Local Government Services in the Department of Community Affairs meet periodically with all 21 of the county IT officers as a group and communicate with them on an ongoing basis so as to identify areas where the State and its counties could join resources to achieve greater statewide efficiencies.

- **Questions:** Please provide an update on the infrastructure consolidation assessment. Has the assessment been completed? If not, by which date does OIT expect its completion? What have been the results of the assessment? Does OIT perceive a potential for significant cost savings? Has an infrastructure consolidation plan been adopted? If not, by which date does OIT expect its completion? If so, please submit a copy of the plan.
- Please provide an update on the establishment of statewide IT data sharing policies to increase efficiencies of data collection and use among different layers of government. Have the policies been established? If not, by which date does OIT expect their establishment? If so, how do the new policies specifically allow for cost efficiencies and what are the projected cost savings?
- Please elaborate on OIT's outreach to county IT offices and its efforts to jointly leverage resources. Has a formal consultation process been established? With which counties has OIT communicated thus far? What categories of projects does OIT have

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in mind when it studies resource pooling with counties? Has OIT already identified a possible joint project or implemented one?

47. In December 2006, the Administration placed a **moratorium on the procurement of IT equipment and consultant services** under the Direct State Services budget category (operating expenses). Exempted from the moratorium are initiatives whose disruption would increase future costs or trigger a significant loss of investment, as well as emergency maintenance, repairs and supplies under \$2,500, and projects mandated by the federal government. In response to OLS discussion point #41 in the FY 2008-2009 Department of the Treasury Budget Analysis, OIT indicated that the moratorium was not only intended to achieve reductions in spending, but also to provide for structured growth in the IT infrastructure and to force agencies to prioritize their IT projects. OIT noted that the "unstructured growth of technology projects during 2002 and 2005 resulted in the individual build-out of infrastructure capacity within each agency" and that the State could no longer financially sustain that pace.

In a written follow-up response to a question raised during the Department of the Treasury's budget hearing before the Assembly Budget Committee on April 15, 2008, OIT stated that the continuation of the moratorium jeopardized projects that should normally be undertaken in fiscal years 2009 and 2010: a major upgrade to the State's core IT infrastructure to meet the projected growth in network demands; the replacement of enterprise servers and storage and of agency servers and PCs that are near the end of their useful life; the replacement of backend business applications that are more than 20 years old (payroll, financials, personnel); and the development of soft- and hardware for the retention and search of electronic records to better respond to requests for discovery from the courts.

- **Questions:** Please provide an example of the unstructured growth of IT projects during 2002 and 2005, explaining the ways in which the disorganized arrangement worked to the detriment of the State, and the ways in which OIT rectified it, including an indication of the resources the rectification consumed. Has OIT now gained control of the unstructured growth of IT projects? Has the ordering process consumed significant resources and kept OIT from advancing its restructuring agenda more aggressively?
- Is OIT aware of cases in which the moratorium has adversely affected the quality of services provided by State agencies? Please indicate in which areas OIT expects the continuation of the moratorium in fiscal year 2010 to adversely impact program performances and service delivery. Please report on the status of the following projects that OIT would normally like to undertake: an upgrade in the core infrastructure, the replacement of enterprise servers and storage, the replacement of agency servers and PCs, the development of backend business applications to replace applications that are more than 20 years old (payroll, financials, personnel), and the finding of an IT solution to e-mail archiving and electronic records retention needs.
- What was the value of approved IT equipment and consultant services procurements by department in fiscal years 2007 and 2008? What is their projected value in fiscal year 2008 and 2009?

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48. According to the Office of the State Auditor's March 2008 audit report on the Office of Information Technology, **Enterprise Data Warehouse**, an enterprise data warehouse "is a database environment dedicated to providing a single, comprehensive view of the enterprise and provides a reliable source of consistent information for financial and strategic decision-making for the enterprise as a whole." To improve the performance, integrity, and security of New Jersey's enterprise data warehouse; the State Auditor recommended that OIT develop a strategic plan for the enterprise data warehouse architecture; that it continue to develop and employ the required policies, procedures, and standards to fully implement OIT's Information Security Program; and that it continue to develop and employ the appropriate technical documentation required to ensure the integrity of processed data.

In reply OIT noted that a strategic plan for the enterprise data warehouse had existed since its inception, yet it disputed the practical need for the production of a project plan in light of the environment in which the project actually operated. Since the data warehouse had not had consistent funding, it had expanded incrementally and opportunistically as resources for smaller projects had become available. But OIT concurred that more emphasis needed to be placed on ensuring the accuracy of the data entered into databases. It stated that it had just improved the processes that document the loading of data and verify the quality of those loads.

- **Questions:** Please illustrate the history of the enterprise data warehouse either in the form of a brief description or a chronological listing. Please pay particular attention to any expansion and how it was financed. Does OIT believe that not having a project plan for the data warehouse might adversely affect the chances of securing funding for improvements?
- Please outline the strategy OIT would like to deploy to improve the integrity of the data stored in the enterprise data warehouse. Has the office devised multiple courses of action in anticipation of various financial contingencies? To which extent can OIT, as opposed to the users moving data into the data warehouse, control the quality of the data that are being stored in the data warehouse?

49. According to the Office of the State Auditor's December 2008 audit report on **Statewide Data Privacy**, OIT has significantly enhanced the privacy of confidential data. Nonetheless, the State Auditor concluded that personal data maintained at State agencies might still be at risk of unauthorized disclosure because of a lack of existing security policies and procedures. To remedy that shortcoming, the State Auditor recommended the promulgation of statewide data security policies on portable data storage devices and data encryption. In addition, the State Auditor advised the drafting of consistent and comprehensive agreements with third parties that require the safeguarding of the confidentiality of personal information.

- **Questions:** Please comment on the State Auditor's recommendation to develop statewide data security policies on portable data storage devices and data encryption and to draft consistent and comprehensive agreements with third parties that require the safeguarding of the confidentiality of personal information. Does OIT intend to pursue the initiatives? If so, has it begun to work on them and by which date does it

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expect their implementation? If not, for what reasons does OIT think that the initiatives do not merit its attention?

50. In its August 2007 audit report on the Board of Public Utilities (BPU), the State Auditor advised improving **computer applications the BPU used in the management of underground utility safety programs**. The State Auditor deemed inadequate the application tracking data on the location of interstate gas pipelines and their inspection status under the Pipeline Safety Program. The State Auditor also stated that meaningful analysis of incidents with underground facilities under the "Underground Facility Protection Act" pursuant to P.L.1994, c.118 (C.48:2-73 et seq.), was impossible because the current computer application could not provide adequate data. The law requires excavators to call a toll-free number three days prior to excavation and companies to mark their underground facilities near the excavation to prevent damage. Replying to Discussion Point #52 in the FY 2008-2009 Department of the Treasury Budget Analysis, the BPU affirmed that its current applications did not allow for the effective management of underground facilities. It also provided a chronological listing of events indicating that the BPU's IT staff had first contacted the OIT in August 2003 regarding a system upgrade. Since then, it appears that OIT has repeatedly endorsed a specific course of action just to make an about-face and impose a different course of action.

- **Questions:** Please provide an update on the status of the envisioned improvements of the computer applications the BPU uses in the management of underground utility safety programs. Please explain, from OIT's point of view, the complications that have led to the delay in the execution of the project. What kind of priority is OIT assigning to the development of applications for the management of underground utility safety programs? Does the failure to migrate to a new system significantly endanger public safety?

51. Addressing an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, the OIT stated that each State agency established its own policy of assigning State-issued **cellular wireless devices** (cell phones, blackberries, air cards, etc.) to its employees. Their number grew 370 percent from 3,613 devices in FY 2003 to 16,012 devices in FY 2007. OIT program data in the FY 2009 Executive Budget indicated that the office expected to support 24,000 cellular wireless devices in that fiscal year (page D-437). The FY 2010 Executive Budget no longer features information on the size of the State's voice network.

- **Questions:** What was the actual number of State-issued cellular wireless devices in FY 2008? What is the projected number of State-issued cellular wireless devices in FY 2009 and FY 2010? Please provide a breakout of the number of cellular wireless devices issued in FY 2009 by State agency. What is the estimated budgetary outlay for supporting State-issued cellular wireless devices in FY 2008, 2009, and FY 2010?

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OFFICE OF THE PUBLIC DEFENDER

52. In its December 2008 audit report on the Office of the Public Defender (OPD), the Office of the State Auditor expressed concern that OPD's **pool attorney hours** were not closely monitored for propriety. To avoid a conflict of interest, OPD staff attorneys handle only the legal defense of one defendant. In a multi-defendant case, the OPD outsources the legal representation of the other defendants to private pool attorneys who bill the office at an hourly rate. The State Auditor noted the lack of a routine review of the number of hours charged per day by an individual attorney who may work on several cases in a day and may also be working in different regional OPD districts on the same day (pool attorneys submit invoices on a per-client basis). The OPD replied that it had developed an automated process through which no pool attorney would receive a reimbursement for hours billed in excess of 12 hours per day. At the time of the audit, the new software was still being fine tuned.

An "in but not of" agency in the Department of the Treasury, the OPD primarily furnishes legal counsel to indigent defendants in criminal cases. But it also represents children and indigent parents in family court in child abuse and neglect as well as termination of parental rights proceedings. Through the FY 2009 Appropriations Act, the State made \$110.5 million available to the OPD, while anticipating \$4.9 million in public defender client receipts. According to evaluation data in the Governor's Fiscal Year 2010 Budget, the office projects 1,009 funded positions, expenditures of \$113.5 million, and 102,791 case closings in fiscal year 2010. In fiscal year 2008, it had closed 97,755 cases while expending \$110.6 million and filling 1,074 positions.

- **Questions:** Please provide a timeline for the statewide rollout of the automated process by which pool attorneys must submit their timesheets electronically. Does the software pass muster at this point? When will the program be piloted and when will it be rolled out statewide?

Discussion Points (Cont'd)

BOARD OF PUBLIC UTILITIES

1. Organized "in but not of" the Department of the Treasury, the Board of Public Utilities (BPU) is a cabinet level regulatory authority with a statutory mandate (R.S.48:2-1 et seq.) to ensure safe, adequate, and proper public utility services such as natural gas, electricity, water, sewer, and telecommunications including cable television.

For FY 2009 and 2010 combined, the Governor's FY 2010 budget incorporates an estimated \$5.183 billion in **federal stimulus funding** provided by the American Recovery and Reinvestment Act (ARRA) of 2009. Of this amount, the State will use \$3.074 billion (\$854 million in FY 2009 and \$2.220 billion in FY 2010) for budget relief to offset revenue shortfalls (Budget-in-Brief, Appendix II, page 12), and \$2.109 billion to fund new or expanded programs or initiatives. The ARRA allocates funds to states both by formula and by competitive awards. The Governor's FY 2010 Budget includes \$107.9 million from ARRA for the Board of Public Utilities (\$36 million in FY 2009 and \$71.9 million in FY 2010 for the Clean Energy Fund and the State Energy Conservation program, as displayed on page C-25 of the Governor's FY 2010 budget).

- **Questions:** Please itemize the federal stimulus funding, other than portions of the \$3.074 billion allocated for budget relief, included in the Board of Public Utilities' budget, by fiscal year and federal program, setting forth program goals and eligible uses together with the amount for state administrative expenses and the amount for allocation to local public and private recipients, respectively. Please identify intended and actual recipients and the process by which the board determines recipients and funding awards. Are there ARRA funds that flow through the BPU for which the State has no discretion? Please also set forth the timetable for obtaining federal approval of funding, obligation and allocation of funding to recipients, and use by recipients. Could any of this funding be used to offset other State appropriations, and if so, what programs and in what amount? What additional positions, if any, have been and will be hired with these funds? If this money is being used for new or expanded activities, will the new or expanded activities be continued in FY 2011? If so, how will they be funded?
- In addition to funding incorporated in the Governor's FY 2010 budget, what specific competitive grant opportunities has the BPU identified that it is eligible to pursue, has applied for, and has been awarded, respectively?
- Will the societal benefits charge be lowered as a result of the \$89.9 million the Clean Energy Fund is anticipated to receive in FY 2009 and FY 2010 combined from ARRA?

2. Attrition, a hiring freeze, and an early retirement program have shrunk the Executive Branch workforce by almost 4,000 since FY 2007, producing an annualized \$312 million in cost savings (FY 2010 Budget-in-Brief, page 73). The Governor's FY 2010 budget proposal envisions continuation of the hiring restrictions coupled with possible furloughs or layoffs.

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Anticipated additional **staffing reductions** had caused the BPU to reassess its priorities, as it stated in reply to Discussion Point #43 in the FY 2008-2009 Department of the Treasury Budget Analysis. The board noted further that it would reallocate employees to its highest priority work and that it would continue to evaluate whether to request the elimination of any legislative mandates, whether to curtail the work on any current priorities, or whether any opportunities remain to enhance efficiency in existing work.

- **Questions:** In general terms and by means of specific examples, how has the reduction in staffing affected BPU operations? What strategies has the board employed to deal with the continued downsizing? What projects, work products or functions has the BPU scaled back, discontinued or deferred because of declining staffing levels?
- Would the BPU be able to accommodate furloughs in FY 2010 without increasing spending for overtime or temporary workers? In which programmatic areas would layoffs occur, if any? Please comment on the likely impact of the planned furlough program and contemplated employee cuts on board operations and services. Would the BPU be ceasing certain activities, programs, or services? Would the downsizing cause the board to reassess its priorities and reassign staff accordingly among its programs? If so, please describe the internal reorganization.
- How many BPU positions are currently filled? How many employees was the department authorized to hire in FY 2009 despite the hiring freeze? Please indicate for which activities these hires were crucial.
- Please categorize the BPU's activities, programs, and services by level of priority, indicating what impediments would stand in the way of curtailing or eliminating the activity, program or service. Which legislative mandates would the board like to see eliminated, if any, and for what reasons?

3. The FY 2009 Appropriations Act anticipated that executive departments would achieve \$25 million in **procurement savings**. A chart on page 75 of the FY 2010 Budget-in-Brief categorizes those savings and indicates that they will continue into FY 2010. The Governor's FY 2010 budget includes another \$25 million in savings from "smarter procurements" (Budget-in-Brief, page 54).

- **Questions:** Please indicate the FY 2009 amount of procurement savings achieved by the BPU, by the categories set forth in the referenced table, and the sources of those savings by board program. What is the annual amount of these savings as continued into FY 2010? How have these reductions affected the BPU? What projects, work products or functions has the board scaled back, discontinued or deferred in order to achieve these savings?
- Please list the projected contributions of the BPU to the \$25 million in savings from "smarter procurements" budgeted in the Governor's FY 2010 budget proposal. How

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would these reductions affect the board? What projects, work products or functions would the board scale back, discontinue or defer in order to achieve these savings?

4. Imposed pursuant to N.J.S.A. 48:3-60 as a component of the "Electric Discount and Energy Competition Act" (P.L.1999, c.23), the **societal benefits charge** is embedded in electric and natural gas ratepayers' monthly utility bills. Proceeds finance nuclear plant decommissioning, manufactured gas plant remediation, utilities' uncollectibles, energy consumer education, energy assistance programs to low-income utility customers via the Universal Services Fund (page H-11 of the Governor's FY 2010 Budget), and energy demand management programs including BPU's Clean Energy Program. In calendar year 2007, the charge yielded \$607.2 million in revenues and supported \$555.0 million in expenditures.

In response to Discussion Point #47 in the FY 2008-2009 Department of the Treasury Budget Analysis, the BPU indicated that \$44.3 million, or eight percent, of calendar year 2007 charge expenditures covered utility company uncollectibles. The board explained that prior to the charge's creation utility companies included uncollectible balances in their base rates, which exerted some pressure on utilities to pursue collection of those monies. The "Electric Discount and Energy Competition Act," however, relieved utilities from this pressure by incorporating uncollectibles in the new societal benefits charge.

- **Questions:** Please indicate which amount of societal benefits charge collections financed each program supported by the charge in calendar year 2008. Has the charge been increased since January 1, 2008? If so, please divulge the rationale for doing so. The charge represented which percentage of an average ratepayer's annual energy utility bill in calendar year 2008?
- What efforts are currently being deployed to collect unpaid utility balances? Does the BPU require utility companies to make certain attempts at collecting outstanding sums before they can claim compensation out of societal benefits charge proceeds? If not, how can ratepayers be assured that they do not wind up paying for debt that may indeed be collectible?

5. After deeming inadequate the current **computer application that tracks data on the location of interstate gas pipelines and their inspection status** under the Pipeline Safety Program, the Office of the State Auditor advised in its August 2007 audit report on the BPU that the board improve the applications it used in managing underground utility safety programs. The State Auditor also noted that meaningful analysis of incidents with underground facilities under the "Underground Facility Protection Act" pursuant to P.L.1994, c.118 (C.48:2-73 et seq.), was impossible because the current computer application could not provide adequate data. The law requires excavators to call a toll-free number three days prior to excavation and companies to mark their underground facilities near the excavation to prevent damage.

Replying to Discussion Point #52 in the FY 2008-2009 Department of the Treasury Budget Analysis, the BPU affirmed that its current applications did not allow for the effective management of underground facilities. The board also clarified that its entire database

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management system was outdated. Furthermore, it provided a chronological listing of events indicating that the BPU's IT staff had first contacted the Office of Information Technology (OIT) in August 2003 regarding a database re-engineering project. Since then, the BPU contended that OIT had repeatedly endorsed a specific course of action just to make an about-face and impose a different course of action. As of the writing of the board's response to the discussion point, the BPU was expecting to submit a request for proposal for the re-engineering project to Gartner Group for review by May 2008.

- **Questions:** Please provide an update on the status of the envisioned re-engineering of the BPU's database management system. Has the request for proposal been written and submitted to Gartner Group?

6. In October 2008, the Energy Master Plan Committee, statutorily chaired by the President of the BPU, released the New Jersey Energy Master Plan. Serving as a blueprint for managing the State's energy needs through 2020, the plan seeks to ensure that New Jersey has a reliable supply of energy, at a reasonable price that is produced and consumed in a manner consistent with the State's environmental needs. The plan includes numerous initiatives geared towards accomplishing the State's environmental twin goals of reducing the State's electricity consumption by 20 percent from projected 2020 consumption levels and of **meeting 30 percent of the State's electricity needs with renewable energy by 2020**. Under the State's current Renewable Energy Portfolio Standard, the State has to source 22.5 percent of its electricity in 2020 from renewables. The Energy Master Plan raised the target to 30 percent.

- **Questions:** Please explain the factors that motivated the decision by the Energy Master Plan Committee to increase the percentage of New Jersey's electricity consumption that must be from alternative energy sources by 2020 from 22.5 percent to 30 percent. Which percentage of the electricity consumed in New Jersey is currently from alternative energy sources? What is the probability that New Jersey might fail to meet the 30 percent target? Has the committee prepared or commissioned a cost-benefit analysis to assess the economic ramifications of the new target? If so, please provide a copy of the analysis.
- In general, what weight did the committee assign to concerns that its actions could erode the competitive position of New Jersey-based energy-intensive businesses? In its deliberations, did the committee soften or reject any alternative energy initiative or goal because of a perceived risk to the State's economy?

7. New Jersey is among the ten Northeastern and Mid-Atlantic states comprising the **Regional Greenhouse Gas Initiative (RGGI)**. Members pledge to cap annual regional carbon dioxide emissions from power plants at their projected 2009 level from 2009 through 2014 and to lower emissions by ten percent from 2015 through 2018. RGGI created a mandatory cap-and-trade program effective as of January 1, 2009 under which participating states first auction off carbon dioxide emission allowances and power plant owners then trade them in a secondary market so as to match emissions with emission allowances. In response to Discussion Point #44 in the FY 2008-2009 Department of the Treasury Budget Analysis, the

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BPU stated that the 2009 regional emissions cap of 188 million tons of carbon dioxide was based on annual emissions data from 2000 to 2004. In 2006, however, emissions dropped significantly in part due to a significant shift in the composition of power generation inputs by utilities. Observers have suggested that a cap above actual emission levels may not impel utilities to reduce their emissions further and may undermine the market for emission permits by occasioning an oversupply of permits. The BPU surmised, however, that utilities may support the initial demand for permits if they purchased allowances for future use. In addition, RGGI authorized states to tighten their cap by retiring allowances from their emissions budgets. According to the Department of Environmental Protection (DEP), the State made 66 million tons of carbon dioxide emission allowances available at the December 2008 RGGI auction but expected only 22.9 million tons to be auctioned, generating \$68.7 million in receipts.

P.L.2007, c.340 instructs the DEP to design a market for carbon dioxide emission allowances with the assistance of the BPU and mandates that all proceeds therefrom be deposited in the "Global Warming Solutions Fund". The BPU shall use 20 percent of the proceeds to support programs reducing the electricity demand or costs of low- and moderate-income residential ratepayers primarily in urban areas. The New Jersey Economic Development Authority (EDA) and the DEP shall use the remaining proceeds for assorted energy efficiency projects and initiatives and to manage the State's forests and tidal marshes. In consultation with the BPU and the EDA, the DEP shall develop by January 13, 2009 guidelines for allotting fund revenues.

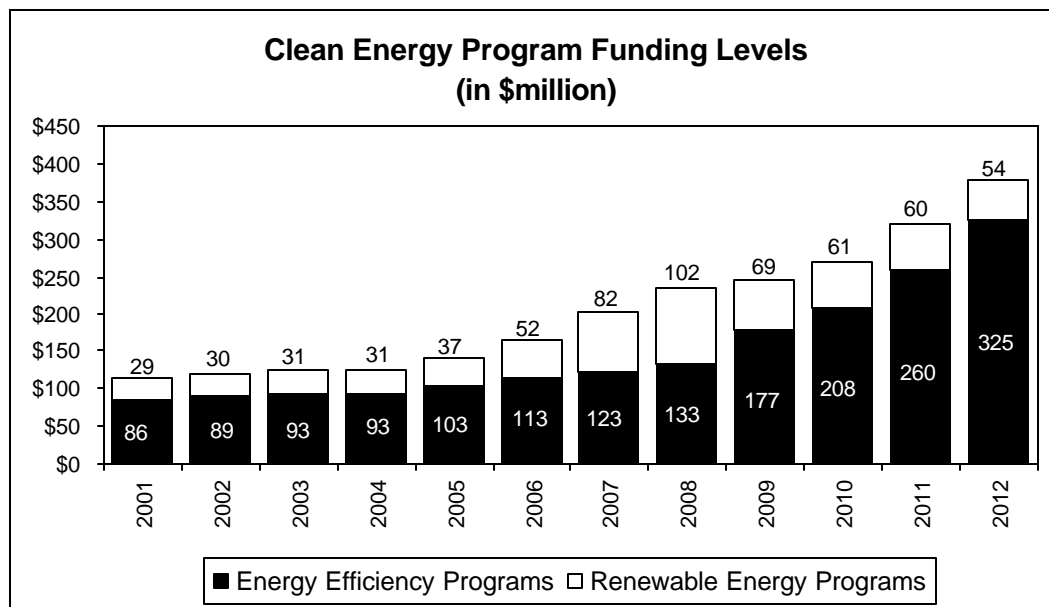
- **Questions:** Please comment on the performance to date of the market for carbon dioxide emission allowances. How many allowances did New Jersey auction at the December 2008 and March 2009 RGGI auctions and what were the ensuing proceeds? Was there an oversupply of allowances? If so, did the oversupply depress their price? If allowances were overabundant, does the BPU envision retiring a portion thereof in the future? Is the secondary market for allowances functioning?
- Considering that 25 percent of the electricity consumed in New Jersey is produced out-of-state and considering that PJM Interconnection LLC operates the electric transmission grid in a region that covers thirteen states of whom 10 states are not part of RGGI, how does RGGI treat electricity generated outside RGGI states but consumed inside RGGI states? Does RGGI create a cost advantage for power plants in non-RGGI states over power plants in RGGI states? Does the BPU expect the percentage of electricity consumed in New Jersey that originates out-of-state to increase because of New Jersey's adherence to RGGI and the non-adherence of states such as Pennsylvania? What are the prospects of the ten non-RGGI states in the PJM transmission system joining RGGI assuming no federal policy change?
- How does the BPU intend to use "Global Warming Solutions Fund" moneys? Does it anticipate supplementing existing Clean Energy Fund programs? Or does the board plan to develop new programs? If so, please outline the broad contours of the new programs and indicate a date by which the BPU plans to have them established.

8. In August 2008, the BPU approved Board Order No. EO07030203, which set the **Clean Energy Program** budget for calendar years 2009 through 2012. The program's funding level will increase from \$235 million in 2008 to \$379 million in 2012, reflecting a 12.7 percent

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annualized growth rate. Because funding for most of the solar program is transitioned away from the Clean Energy Program (see BPU Discussion Point #10), authorized spending on renewable energy programs will fall from \$102 million in 2008 to \$54 million in 2012. On the other hand, the approved funding level for energy efficiency programs will rise at an annualized rate of 25 percent from \$133 million in 2008 to \$325 million in 2012. The BPU projects that by 2012 Clean Energy Program proceeds will represent 2.09 percent of estimated retail electricity revenues and 1.54 percent of estimated retail natural gas revenues. The board states further that every dollar expended in the commercial and industrial energy efficiency program produces \$11 in customer bill savings and that every dollar expended in the residential energy efficiency programs yields \$4 in bill savings. In October 2008, the Administration released the New Jersey Energy Master Plan, which champions a redesign of the energy efficiency programs and the transfer of their operation to electric and gas utilities.

The BPU oversees the Clean Energy Program, created as part of P.L.1999, c.23 (C.48:3-49 et seq.) and operative since April 2001, through which the State seeks to promote increased energy efficiency and the use of renewable sources of energy including solar, wind, geothermal, and sustainable biomass. The program's financial incentives support residents' purchases of high efficiency heating and cooling systems, commercial energy efficiency projects, and installations of solar electric or other renewable energy systems, among other initiatives. New Jersey ratepayers finance the program via the societal benefits charge included in their electric and natural gas bills.



Addressing Discussion Point #48 in the FY 2008-2009 Department of the Treasury Budget Analysis, the BPU noted that it expected by May 2008 the receipt of a full funding reconciliation for the Clean Energy Program for calendar years 2001 through 2005. Thereafter, the reconciliation would serve as the basis for a full audit of all program managers, including the seven electric and natural gas utilities and all state agency managers. Audits on the program by the Department of the Treasury and the Office of the State Auditor highlighting significant internal control and record keeping shortcomings prompted the full audit.

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- *Questions:* For every energy efficiency program financed out of the Clean Energy Fund, please detail the authorized spending level for calendar years 2009 through 2012 and provide a short program description. Do these programs have the capacity to absorb the additional resources and to disburse them effectively, efficiently, and consistent with program goals? What changes, if any, are necessary to facilitate the effective and efficient operation of the programs at heightened funding levels?
 - Please provide an update on the implementation of the Energy Master Plan initiative to redesign the energy efficiency programs operating under the Clean Energy Program banner. Please list and justify any changes. If the energy efficiency programs are transferred to electric and gas utilities, will the programs still be funded out of the Clean Energy Fund or will their cost be built into the utilities' electricity and natural gas rates?
 - Please explain how the Clean Energy Program would have to be altered to meet the twin goals of the Energy Master Plan of reducing statewide energy consumption by at least 20 percent by 2020 and of having renewable sources meet 30 percent of the State's electricity needs by 2020. Will programs have to be revised? Please project the funding levels for the Clean Energy Program for calendar years 2012 through 2020.
 - Given that the commercial and industrial energy efficiency programs produce \$11 in customer bill savings for every \$1 in Clean Energy Program funds expended, please explain the rationale for subsidizing such projects. Would it be a more efficient use of public moneys if the Clean Energy Program ran informational campaigns targeting commercial and industrial energy users?
 - Has the funding reconciliation for the Clean Energy Program been completed? If so, what have been its findings? If not, what factors account for the delay? Has the BPU begun a full audit of all Clean Energy Program managers? If so, during which timeframe does the BPU anticipate its completion? If not, what factors account for the delay?
9. In October 2008, the BPU added the **Local Government Energy Audit Program** to the portfolio of energy efficiency incentives it offers to commercial, industrial, and governmental ratepayers under the Clean Energy Program. Under the program, the BPU covers at least 75 percent of the cost of approved energy audits of local government facilities. Subsequently, program participants also qualify for financial assistance if they implement energy improvements recommended in the audits.
- *Questions:* Please relate the number of local government entities that have successfully applied for an energy audit under the Local Government Energy Audit Program. How many audits have been completed thus far? Have auditees already qualified for additional financial support to implement energy improvements recommended in the energy audits? What has been the total cost to date of the audit program and of the ensuing financial assistance for implementing recommended

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energy savings initiatives? Have the audits already resulted in energy savings? If so, what has been the program's impact?

10. In April 2006, the BPU approved regulations to expand the State's Renewable Portfolio Standard pursuant to P.L.1999, c.23 (C.48:3-49 et seq.), which determines a minimal percentage of total kilowatt-hours sold in New Jersey by each electric power supplier and each basic generation service provider that must be from renewable energy sources. Under the rule, the percentage of electricity sold in New Jersey that must come from solar electric generation rises gradually from 0.0817 percent in 2008 to 2.12 percent in 2020. The projected financial impact of that increase on BPU's **solar system incentive program** impelled the agency to alter the subsidy. Financed through the Clean Energy Fund (whose balances originate from the societal benefits charge included in the electric and natural gas bills of New Jersey ratepayers), the prior program provided rebates of up to 70 percent of the cost of installing solar electric systems. The agency reported that it had thus approved \$170 million in rebate payments between May 2001 and August 2007. To meet the 2.12 percent 2020 target under prior program specifications, however, the BPU noted that it would have to disburse an estimated \$10.9 billion in rebates, which would add 7.5 percent to current electricity rates.

Under the revised program, only owners of solar installations with a capacity of less than 50kW may still receive rebates until May 31, 2012, by which date rebates will be completely phased out. The Clean Energy Program will bankroll the rebates and the BPU approved \$21 million for that purpose in 2009 and amounts declining to \$6.75 million in 2012. On September 10, 2008, however, The Press of Atlantic City reported that the board would allot an additional \$50 million in 2008 to solar projects already completed, that it would probably make rebates available to more projects in 2009, and that it would reopen the application process, first closed on December 20, 2007.

Owners of solar electric generation systems with a capacity of at least 50kW are receiving a different incentive as of 2008. In lieu of benefiting from a subsidy for the installation of the systems, they sell the solar electricity they produce to electricity suppliers in the form of Solar Renewable Energy Certificates (Solar RECs). BPU price calculations for Solar RECs assumed a twelve percent internal rate of return so that solar power system investors could break even on their investments after six years. Installations may only produce Solar RECs for fifteen years. To limit the solar incentive's cost to ratepayers, the board capped the cost at two percent of the estimated Statewide retail cost of electricity. In Board Order No. EO07030203, the BPU estimates that Solar RECs would cost ratepayers \$42.2 million in 2009 and \$268.5 million in 2012. The average residential ratepayer would pay \$4.37 in 2009 and \$15.96 in 2012.

- **Questions:** Please comment on whether the market for Solar Renewable Energy Certificates (Solar RECs) is operating as the BPU intended. What has been the trading volume of Solar RECs since January 1, 2008 and what has been the total value of Solar RECs exchanged in the market? Has the trading volume ticked up over time? What is the current market price of Solar RECs and what was the market price on January 1, 2008, April 1, 2008, July 1, 2008, October 1, 2008, and January 1, 2009? If the market is not working the way the BPU intended, what kind of modifications, if any, has the BPU undertaken or is planning to undertake to improve the market's vitality and operations?

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- According to current projections, how much would Solar RECs cost New Jersey ratepayers in the aggregate in 2020? How much would Solar RECs cost the average ratepayer in 2020?
- Please explain the rationale for relaxing the limitations on the rebate program for solar installations with a capacity of less than 50 kW. For which reason(s) has the BPU decided to make an additional \$50 million available in 2008, provide funding for additional rebates in 2009, and reopen the application process? What is the impact of the loosened restrictions on the Clean Energy Program's funding levels from 2009 through 2012? Does the BPU anticipate funding rebates beyond the levels stipulated therefor in Board Order No. EO07030203? If so, please indicate the revised funding levels.
- After the expiration of the rebate program for small solar systems in June 2012, will the solar system incentive program still provide economically meaningful incentives for homeowners to install solar systems on their rooftops? Has the philosophy of the program shifted to attracting large-scale investments in solar power and spurring the growth of a solar power industry in New Jersey?

11. On pages 53 and 54 of Board Order No. EO07030203, the BPU estimates that the **cost of its energy efficiency and renewable energy programs** would represent 2.59 percent of projected electricity revenues in 2009. The breakout of the \$282.7 million cost is as follows: \$169.1 million raised through the societal benefits charge, \$70.0 million cost of CO₂ emissions allowances under the Regional Greenhouse Gas Initiative, \$42.2 million cost of Solar Renewable Energy Certificates (Solar RECs) sold to electricity suppliers, and \$1.4 million cost of PSE&G's Solar Loan Program. Additional costs are possible in the future for other utility programs promoting energy efficiency and renewable energy. All but the \$169.1 million raised through the societal benefits charge are embedded in the base rates that utilities charge electric ratepayers.

- **Questions:** Please project the impact on electric rates of the board's energy efficiency and renewable energy programs in 2012. In 2012, what would be the estimated cost of the electric funding level through the societal benefits charge, CO₂ emissions allowances under the Regional Greenhouse Gas Initiative, Solar Renewable Energy Certificates, PSE&G's Solar Loan Program, and other utility programs promoting energy efficiency and renewable energy? The total cost would represent what percentage of estimated 2012 electricity revenues? Which percentage of electricity revenues does the BPU deem to be a reasonable burden on ratepayers to finance energy efficiency and renewable energy programs?
- Has any utility filed an application to operate an energy efficiency and renewable energy program besides PSE&G's Solar Loan Program? If so, has the board approved the program? Please briefly describe the program.

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12. The Energy Master Plan (EMP), released in October 2008, lays out plans for New Jersey to generate at least 1,000 MW of offshore wind energy by 2012. By 2020, the EMP calls for the production of 3,000 MW of **electricity from offshore wind** and of at least 200 MW from onshore wind. In December 2008, the BPU awarded three offshore wind developers each a \$4 million rebate towards the construction and operation of meteorological towers to support offshore wind projects, provided a meteorological station was operating at each site by the end of 2009 and supported a wind farm generating at least 200 MW of energy. The awarding of three \$4 million rebates to wind power developers marked a departure from the previous policy, based on a recommendation by the Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters, of undertaking a single offshore wind turbine test project. Under the initial pilot project, the BPU awarded \$4 million to a wind power developer. The pilot project having been jettisoned, the developer instead received one of the three \$4 million rebates to support the construction and operation of meteorological towers.

Two complications may slow down the construction of offshore wind power facilities off New Jersey's shores. First, the three meteorological towers would be constructed in federal waters, which begin three miles off the State's coast. The Minerals Management Service (MMS) in the United States Department of the Interior must hence approve these projects under the Energy Policy Act of 2005. But although the MMS has released proposed rules for offshore wind energy activities, as of March 2009, it has not yet issued final rules. Second, in February 2009, the New Jersey Department of Environmental Protection released draft *Ocean/Wind Power Ecological Baseline Studies*, a report concluding that the construction and operation of offshore wind turbines and transmission lines will harm avian species, fish, marine mammals, and turtles.

- **Questions:** Please explain the reasons behind the policy shift that has led to the BPU awarding three wind turbine facility developers a \$4 million rebate concurrently instead of providing financial support to a single pilot offshore wind project, as recommended by the Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters. How does the BPU fund the additional \$8 million in rebates? Has the board revised the Clean Energy Fund program budget to accommodate the \$8 million in additional rebates?
- Please comment on the State's ability to attain the Energy Master Plan offshore wind goal for 2012 given the delayed release of final rules for offshore wind development facilities in federal waters by the Minerals Management Service (MMS). Considering the final rule delay, when are the meteorological towers for which the BPU has awarded rebates projected to be installed and operating? If the towers are not completed by the end of 2009, will the BPU extend the timeline for construction and operation and will the rebates still be available to the three proposed projects?
- Please explain whether, and if so how, the Department of Environmental Protection's draft *Ocean/Wind Power Ecological Baseline Studies* will affect the three offshore wind projects underway. Does the BPU expect to see the projects, including the meteorological towers, continue within the expected timeframe or will the report cause delays to that schedule? What measures is the board taking to protect wildlife in developing offshore wind energy? With regard to the protection of wildlife in particular and to the development of offshore wind energy facilities in general, please describe the extent and nature of the cooperation between the BPU, the federal

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MMS, the New Jersey Department of Environmental Protection, and offshore wind developers.

- How have tightened credit markets impacted offshore wind developers? Will the credit crunch necessitate a modification to the State's offshore wind goals?

13. The Energy Master Plan includes a statement that the BPU will continue to challenge in the federal courts the **Reliability Pricing Model (RPM)** implemented by PJM Interconnection. The BPU also intends to work with PJM and the Federal Energy Regulatory Commission to modify or replace the RPM with a mechanism that focuses incentives on new generation capacity, demand response, and energy efficiency. PJM operates the regional electricity transmission system and administers regional wholesale electricity markets for a 13-state area including New Jersey. Fearing electricity shortages, PJM introduced the RPM in 2007 to increase capacity payments to power plant owners (basically payments for the right to call upon the plant, which are in addition to payments for electricity actually generated). The RPM is meant to guarantee power plant operators a revenue level sufficient to invest in new plants and not to retire existing ones. As a result, capacity costs now account for 15 to 20 percent of New Jersey electricity prices and capacity prices for the five years from July 1, 2007 through June 30, 2012 will cost New Jersey ratepayers \$7 billion more than under previous rules. The BPU contends that the RPM is excessive, as it spreads capacity payments indiscriminately all-round as opposed to targeting specific power plants.

- **Questions:** Please explain the grounds for BPU's dissatisfaction with the Reliability Pricing Model (RPM) implemented by PJM Interconnection. Please also comment on the challenges the BPU filed against the RPM in federal courts. What constitutes the legal bases for the challenges? What has been the outcome of the litigation to date? Please expound the nature of BPU's RPM-related advocacy before PJM and the Federal Energy Regulatory Commission. What program changes is the BPU lobbying for and what have been the results of these efforts to date?

14. Growth in peak electricity demand pushes up energy costs by necessitating investments in additional transmission lines and electricity generators. One of the goals of the Energy Master Plan is therefore to reduce peak demand. Most of the reduction should come from energy efficiency initiatives and the promotion of cogeneration. But the Energy Master Plan also calls for the **piloting of different technologies and rate structures to determine the best way to achieve peak demand reductions** for residential customers and all customers with a peak demand below 500 kilowatt. The pilots are supposed to help clarify how customer behavior changes with different rate structures, communication networks, and end-user technologies such as smart meters (track volume and time of customers' electricity usage, which information allows ratepayers to better manage their energy costs) and advanced metering infrastructure systems that measure, collect, and analyze energy usage, from an advanced electricity meter, through various communication media; permitting consumers, suppliers, and service providers to participate in price-based demand response programs). The BPU will design these pilot structures.

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- *Questions:* Please provide an update on BPU's activities towards determining the best way to achieve peak electricity demand reductions for residential customers and all customers with a peak demand below 500 kilowatt through different technologies and rate structures. What programs in other states has the BPU examined? What pilot programs is the BPU implementing or is planning to implement? Which pilot programs is the BPU rejecting and for what reason(s)?
15. Aiming to encourage utility companies to accelerate infrastructure improvement and energy efficiency projects, the BPU has instituted an expedited approval process for **Economic Stimulus Utility Filings** as a means to buoy the State's economy. The proposed schedule for Economic Stimulus infrastructure proceedings anticipated BPU action on utility filings on April 3, 2009 and for Economic Stimulus energy efficiency proceedings on June 9, 2009. The initiative stems from the Governor's October 16, 2008 address to the State Legislature in which he directed the commissioners of several State agencies, including the BPU, to authorize the acceleration of capital spending projects.
- *Questions:* What is the total value of infrastructure and energy efficiency Economic Stimulus Utility projects for which utility companies are seeking approval under BPU's expedited approval process? Is the BPU on schedule to act on the proposed project lists on April 3 for infrastructure projects and June 9 for energy efficiency projects?
 - What is the average duration of the regular approval process for utility infrastructure and energy efficiency projects? Please explain how the expedited process differs from the regular process, indicating the amount of time that is saved for each aspect of the regular process that is modified under the expedited process? Considering the recent decline in staffing levels, does the BPU have the capacity to thoroughly vet the proposed projects under the expedited timetable? If so, is the BPU shifting resources from other programmatic areas to the expedited approval process to realize its goals? If so, please indicate to which extent the expedited process is impeding the performance of the BPU in other areas.
16. On pages 83-4, the Energy Master Plan (EMP) discusses the anticipated growth in "**green collar jobs**" in this State as a direct result of the need to meet the EMP's "aggressive targets for energy efficiency, renewable energy, demand response, and new generation." Specifically, the EMP cites an economic impact calculation according to which implementation of the EMP would result in \$33 billion of investment into the energy infrastructure of New Jersey and the attendant creation of 20,000 additional jobs through 2015. The EMP states that the State would have to develop measures to train and prepare the green collar workforce needed to meet prospective demand.
- *Questions:* What are the most significant areas for green job growth in this State and what is the timeframe expected for these jobs to emerge? Where are the jobs geographically located throughout the State? How is the BPU working with the Department of Labor and Workforce Development to prepare the workforce to help

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meet the State's clean energy goals? With regard to the development of offshore wind, how many permanent and temporary jobs are expected to be created and what are the most common types of jobs to be created?

17. Public Service Enterprise Group (PSE&G) has petitioned the BPU to grant approval for the **Susquehanna-Roseland power line expansion** project. If implemented, the project would result in the construction of 150 transmission towers throughout the 45-mile right-of-way between the Delaware Water Gap and Roseland, essentially doubling the size of power lines running through 15 Highlands communities. The power grid upgrade would cost \$2 billion and needs the approval of the BPU and a waiver from the Highlands Council. PSE&G contends that the expansion of power-line carrying capacity is crucial if New Jersey wants to meet its growing power demands in the near future. Environmentalists stand opposed.

- **Questions:** Please indicate by which date the BPU intends to rule on PSE&G's application for the Susquehanna-Roseland power line expansion. Does the project fall under the expedited approval process for economic stimulus utility filings? If not, for which reasons does the project not qualify for an expedited review? To which extent does the BPU take environmental considerations into account when reviewing applications such as the one for the Susquehanna-Roseland power line expansion? Does the BPU have the necessary expertise to properly assess the environmental ramifications of the Susquehanna-Roseland power line expansion? Does it consult with the Department of Environmental Protection in such matters? Is the BPU coordinating its project review with the Highlands Council?

18. The 2008 New Jersey Energy Master Plan proposes spending \$90 million in accrued **Retail Margin Fund** balances to provide incentives to industrial facilities so that they erect plants to cogenerate electricity and heat. This marks a change of heart. In reply to an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, the BPU indicated that the funds were to support programs targeting customers in the Commercial Industrial Energy Price (CIEP) class and customers with a peak load share of at least 750kW: a \$6 million load management program to reduce peak time energy consumption in areas with energy transmission and distribution congestion constraints; a \$15 million energy audit program that would also help customers implement audit recommendations; a \$3 million allocation to develop a program that would prepare building operations and maintenance staff at CIEP facilities for certification in energy and resource efficient building systems; and a yet-to-be-designed program supporting distributed generation projects.

The Retail Margin Fund also finances the **BPU Office of the Business Energy Ombudsperson**, an office created by P.L.2005, c.215 (C.48:2-92 et seq.) with a FY 2010 budget of \$451,000 (page C-17). The office functions as a centralized resource for businesses to obtain information and assistance on energy costs, programs, and subsidies to lower their energy consumption. In response to Discussion Point #46 in the FY 2008-2009 Department of the Treasury Budget Analysis, the BPU stated that in pursuit of its mission the ombudsperson had repeatedly collaborated with the Office of Economic Growth to foster economic development. The 2008 New Jersey Energy Master Plan now also instructs the ombudsperson to target commercial and

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industrial customers with a peak demand of at least 500 kW for peak demand reductions and to develop incentives to that effect. In addition, the plan calls on the ombudsperson to create best practice manuals for up to ten industry sectors featuring recommendations for energy efficiency improvements and to select representative facilities for energy audits. The first manual was to cover local governments.

The Governor's FY 2010 Budget anticipates \$17.9 million in new Retail Margin Fund revenues for FY 2010 as well as an opening balance of \$125.0 million and \$60.4 million in expenditures, leaving a projected fund balance of \$82.5 million at the end of FY 2010 (page H-8). Administered by the BPU, the fund is expected to receive \$15.9 million in FY 2010 from the 0.5¢ per kilowatt-hour retail margin that electric distribution companies have been charging certain non-residential customers remaining on Basic Generation Service since August 2003 under sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57).

- **Questions:** Please detail the Retail Margin Fund's actual or estimated fiscal year 2009 and 2010 expenditures, indicating which sums the BPU intends to spend on each activity and program supported by the fund. Please outline the contours of the cogeneration development incentive program to which fund balances are intended to be applied. Is the BPU abandoning the programs which it had previously meant to finance out of the fund (see above for details)? If not, please explain with which initiatives the BPU is proceeding and which alternative funding sources sustain them.
- Please outline the work performed by the BPU Office of the Business Energy Ombudsperson in the last 12 months, including any accomplishments. Please explain the nature of the office's collaboration with the Office of Economic Growth. How often does the office become an explicit part of the State's activities to foster economic development?
- Does the BPU Office of the Business Energy Ombudsperson have sufficient resources to assume the responsibilities imposed on it by the 2008 New Jersey Energy Master Plan? If not, what will be the funding source of the additional spending, if any? Has the office already developed incentives that achieve peak demand reductions for commercial and industrial customers with a peak demand of at least 500 kW? If so, please describe the incentives. If not, by which date does the office intend to have the incentives designed? Has the office already created the best practice manual featuring recommendations for energy efficiency improvements for local governments? If so, is the office aware of local governments implementing the recommendations? If not, by which date does the office envision completing the manual? What other best practices manuals is the office currently crafting or plans to craft in the near future?

19. The BPU is considering revisions to two energy assistance programs under the **Universal Service Fund (USF)**: the USF and the "Fresh Start" credit programs. In FY 2008, their operation cost \$174.4 million, of which "Fresh Start" credits accounted for \$11 million. The USF credit program seeks to ensure that eligible utility customers pay no more than six percent of their annual income for their natural gas and electric service. The "Fresh Start" credit program, on the other hand, allows first-time USF credit recipients with at least \$60 in

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arrears on their energy bills to retire their outstanding balances by paying their USF-adjusted affordable energy bill in full for 12 consecutive months following program admittance. While New Jersey ratepayers fund the programs via the societal benefits charge included in their electric and natural gas bills, the BPU carries the financial responsibility for the programs, the Department of Community Affairs administers them, and the electric and natural gas utilities credit the benefits to customer accounts.

Based on an April 2006 report entitled "Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Service Fund" by the nonprofit Applied Public Policy Research Institute for Study and Evaluation ("APPRISE"), BPU staff suggested numerous USF program modifications to the BPU Board on June 14, 2006. They proposed (a) the elimination of the "Fresh Start" program; (b) the adoption of fixed USF credit amounts so as to shift the risk for fluctuating energy costs and increased energy usage to program beneficiaries; (c) the establishment of performance measures and annual targets to allow for an assessment of the program's effectiveness and efficiency; (d) the creation of an audit program through which the BPU ascertains that all program partners (utilities, the Department of Health and Senior Services, the Department of Community Affairs, the Office of Information Technology, and service providers) have fulfilled their fiscal responsibilities; and (e) since the program serves 49 percent of the eligible population, the removal of barriers to enrollment by implementing a "one-stop shopping" plan for all energy assistance and conservation plans and the pursuit of a centralized, coordinated, and targeted communications strategy. The BPU responded to OLS Discussion Point #50 in the FY 2008-2009 Department of the Treasury Budget Analysis that it was still reviewing the recommendations or in the process of implementing them.

USF expenditures increased 44.1 percent from \$209.7 million in FY 2008 to \$302.2 million in FY 2009 with a concomitant increase in revenues. The Governor's FY 2010 Budget now anticipates \$332.1 million in USF expenditures for FY 2010, an additional 9.9 percent increase (page H-11). Of this amount, the Governor proposes \$254.4 million in direct fund expenditures as well as a transfer of \$77.7 million to other funds, of which \$72.6 million would finance the "Lifeline Credit Program" (C.48:2-29.15 et seq.) and the "Tenants' Lifeline Assistance Program" (C.48:2-29.31 et seq.), under which 316,540 low-income households would receive up to \$225 in gas and electric utility credits in FY 2010.

- **Questions:** Please explain the factors underpinning the anticipated \$92.5 million increase in Universal Service Fund expenditures in FY 2009 and the additional \$29.9 million increase in FY 2010. Does the BPU expect the increases to be temporary or recurring? Given that anticipated USF resources are \$348.9 million in FY 2010, which contrasts with a \$30 million program budget in the 2003 program year, how does the BPU balance the increasing demand for USF energy assistance with the objective of keeping fund expenditures under control? Is there a point at which the BPU would be reluctant to increase the societal benefits charge further to meet the higher demand for energy assistance?
- Please provide FY 2008 and FY 2009 funding data for the USF proper and the "Fresh Start" program.
- Please provide a status report on the modifications to the Universal Services Fund (USF) energy assistance programs advanced by BPU staff. Which recommendations has the Board approved, which has it adopted in amended form, and which has it

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rejected? For each recommendation, please describe the rationale for the Board's determination. Please provide a detailed explanation of each change the Board intends to apply to the credit programs as well as a timeline for its full implementation. If the Board has not yet acted on the recommendations, please explain the cause(s) of the inaction and indicate, if possible, by which date the Board intends to consider the matter.

20. In authorizing a **system-wide cable television franchise system**, P.L.2006, c.83 established a two-tiered system of franchises under which a company may receive an approval for providing cable television service. A company may either seek the consent from each municipality in which it intends to offer cable television service or it may seek a system-wide cable television franchise covering multiple municipalities. The BPU ultimately approves both applications. On December 15, 2006, the agency granted the first system-wide cable franchise to Verizon New Jersey, which had requested an authorization to provide cable services to 316 municipalities via its fiber optic network.

In response to Discussion Point #51 in the FY 2008-2009 Department of the Treasury Budget Analysis, the BPU stated that every unit of the Office of Cable Television (OCTV) had seen an increase in the work related to the monitoring and enforcement of the system-wide franchise law. The workload has grown mostly because the law stipulates that incumbent cable companies' payments to a municipality rise from two to 3.5 percent of gross revenues when a competitor, in this case Verizon, becomes capable of serving 60 percent of the households in a jurisdiction. Requests for 60 percent certification trigger an intensive technical and legal review and often evoke challenges by incumbent cable television companies. The board stated further that the OCTV's franchising section bore the brunt of municipal discontent with P.L.2006, c.83. As shown on page D-393 in the Governor's FY 2009 Budget, the BPU anticipates an increase in the number cable television cases pending from 86 in FY 2008 to 103 in FY 2009 and 156 in FY 2010.

- **Questions:** Please provide an update on the impact of the system-wide cable television franchise system on the workload of the Office of Cable Television. Have companies other than Verizon filed an application for a system-wide cable television franchise? How many requests for 60 percent certification and challenges thereto have been filed? What is the backlog, if any, in granting 60 percent certifications? What is the cause for municipal discontent with the system-wide cable television franchise law?

Discussion Points (Cont'd)

SUPPLEMENTAL DISCUSSION POINTSDEPARTMENT OF THE TREASURY

1. In a written follow-up response to a question raised during the Department of the Treasury's budget hearing before the Senate Budget and Appropriations Committee on April 14, 2008, the department conveyed that the State of New Jersey began to review the effectiveness and efficiency of its financial, procurement, and human resources functions in July 2007. It did so within the context of a **benchmark study** conducted by the National Association of State Auditors, Comptrollers and Treasurers (NASACT). The study would allow New Jersey to compare its performance with that of private companies and other states participating in the NASACT project. As a result, the department hoped to gain a better understanding of best administrative practices, to quantify opportunities for improvement, and to establish baselines for further analysis. The department expected the Benchmark Steering Committee to present a final report to the Governor's Office in May 2008.

- **Questions:** Has the Benchmark Steering Committee completed the final report of the NASACT benchmark study? If so, please submit a copy of the report. If not, please explain the reasons for the delay in the report's drafting and provide an estimate as to its projected completion date. What has been the cost of participating in the benchmark study?
- How does the NASACT benchmark study evaluate the relative effectiveness and efficiency of the financial, procurement, and human resources functions of State government? What recommendations for improvement does the study contain? Which recommendations or changes has the State begun to implement as a result of the study? By which date does the State expect to have the changes fully implemented? What are the projected cost and benefits of implementing the changes? Which recommendations has the State chosen not to implement or to delay? What is the rationale for foregoing or delaying the implementation of the recommendations? What are the projected cost and benefits of implementing the initiatives the State is currently foregoing?

2. The Pew Center on the States spearheads the annual Government Performance Project, which assesses the quality of management in state government. In its report, *Grading the States 2008*, the center emphasized New Jersey's failure to **measure program performance** comprehensively as a key weakness causing the State to struggle in 1) effectively managing for performance, 2) carrying out true performance audits, and 3) reducing agency budgets in a way that preserved results-based outcomes. Accordingly, the center recommended that the State create formal systems for agencies to track and report performance data and that the State incorporate the use of that data into the budgeting process.

In response to OLS discussion point #7 in the FY 2007-2008 Department of the Treasury Budget Analysis, the Office of Management and Budget (OMB) stated that it had done some preliminary work on performance budgeting for selected programs in fiscal years 2000, 2001,

Discussion Points (Cont'd)

and 2002. The office concluded that properly developing and operating a performance budgeting framework would require a significant increase in its staff. It posited further that departments would likely also need to increase their staffing levels so as to devote more attention to data collection. In addition, the OMB noted that the State's existing budget system (Integrated Planning and Budgeting, or IPB, which was first implemented for the fiscal year 1991 budget) could not integrate performance measurements. Finally, the office cautioned that significant forethought would be required to ensure that any performance monitoring provided meaningful information in a cost-effective manner.

- **Questions:** Please comment on the recommendation by the Pew Center on the States that the State create formal systems for agencies to track and report performance data and that the State incorporate the use of that data into the budgeting process. To which extent does the Administration currently use program performance measures as a management and resource allocation tool? Does the Administration plan to expand the creation and use of performance measures to enhance the management of State government? If so, please outline any initiative the Administration is undertaking or intends to undertake to that effect. If the Administration does not intend to strengthen the use of performance measures as a management tool please set forth the rationale for not doing so.
- Has the Administration studied the likely cost of implementing a performance-based budgeting system? If so, what would be the cost of its implementation?
- Please explain the extent to which the Department of the Treasury currently uses program performance measures internally as a management and resource allocation tool. Does the department have plans to expand the creation and use of performance measures to improve its management? If so, please outline any initiative the department is undertaking or intends to undertake to that effect. If the department does not intend to strengthen the use of performance measures as a management tool please set forth the rationale for not doing so.

3. In June 2008, the Department of Environmental Protection issued its Open Public Records Act Annual Report for 2006-2007. According to the report, the Department of the Treasury received 2,914 **Open Public Records Act (OPRA)** requests in the five years from 2002 to 2007. Subject to certain exceptions, P.L.2001, c.404 makes government records accessible to the public. A governmental entity must grant or deny access to a record within seven business days unless if a record is in storage or archived. Noncompliance may be penalized. A governmental entity charges for the copying cost and may levy special service charges when accommodating a request involves an extraordinary expenditure of time and effort or if copies cannot be reproduced by ordinary copying equipment in ordinary business size.

- **Questions:** Please describe the efforts the Department of the Treasury deploys to comply with Open Public Records Act (OPRA) requirements. How many employees handle OPRA requests? Does Treasury operate a unit dedicated to OPRA? In the last fiscal year for which the information is available, what were the department's expenditures and employee hours devoted to OPRA requests? For the same fiscal

Discussion Points (Cont'd)

year, what were the Treasury's total collections from OPRA requestors differentiated between "ordinary copying charges" and "extraordinary request charges?"

- Which Treasury divisions field the most OPRA requests and what are the most common subjects of Treasury's OPRA requests? Do commercial interests account for a significant share of the department's OPRA requests? Which percentage of requests did the Treasury deny in the last fiscal year for which the data are available? How many such denials, if any, have been appealed to the Government Records Council and how has the council ruled on the appeals? How often has the department been penalized for noncompliance with OPRA since enactment of P.L.2001, c.404?

DIVISION OF TAXATION

4. The Division of Taxation publishes an annual *Statistics of Income* report based on gross income tax returns filed with the division. The personal income report includes a wealth of information, such as the number of returns filed, the distribution and source of income, and the total cost to the State of assorted exemptions, tax credits and deductions. In contrast, the division does not disclose aggregate **Corporation Business Tax (CBT) data**. The CBT tax return itemizes 18 tax credits: the HMO Assistance Fund Tax Credit, New Jobs Investment Tax Credit, Urban Enterprise Zone Employee Tax Credit, Urban Enterprise Zone Investment Tax Credit, Redevelopment Authority Project Tax Credit, Recycling Equipment Tax Credit, Manufacturing Equipment and Employment Investment Tax Credit, Research and Development Tax Credit, Smart Moves for Business Programs Tax Credit, Small New Jersey-Based High-Technology Business Investment Tax Credit, Neighborhood Revitalization State Tax Credit, Effluent Equipment Tax Credit, Economic Recovery Tax Credit, Remediation Tax Credit, AMA Tax Credit, Business Retention and Relocation Tax Credit, Sheltered Workshop Tax Credit, and the Film Production Tax Credit.

- **Questions:** For the most recent tax year for which the data are available, please indicate a) the number of corporation business tax (CBT) return filers, segregated into at least five net income brackets, b) the total net income that taxpayers in each bracket declared, and c) the total amount of tax they were charged. What percentage of CBT return filers paid the statutory minima? For the last three years for which the data are available, please list the number of filers claiming each of the CBT's 18 tax credits and the total monetary amount of tax credits granted.

5. On November 14, 2007, the United States Government Accountability Office (GAO) released a report on **tax evasion by Medicaid providers** (Medicaid: Thousands of Medicaid Providers Abuse the Federal Tax System, GAO-08-17). The GAO found that over 30,000 Medicaid providers in seven selected states (New Jersey was not included in the sample), or over five percent, had federal tax debts totaling over \$1 billion as of September 30, 2006. The unpaid taxes mostly consisted of individual income and payroll taxes. The GAO noted further that the federal government and the seven states surveyed had no process for screening health care providers for unpaid taxes and hence did not bar health care providers with tax debts from enrolling in or receiving payments from Medicaid.

Discussion Points (Cont'd)

In response to OLS Discussion Point #10 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division related that it did not have a database of Medicaid providers. Consequently, it was unable to screen the providers for unpaid taxes. Even so, the division intended to begin discussions with the Division of Medical Assistance and Health Services in the Department of Human Services to identify and to resolve any legal issues that might impede the exchange of provider information for tax administration purposes. If successful, the Division of Taxation could provide information to the Medicaid program on medical providers who have unpaid State taxes so that the Medicaid program may terminate such providers from the program or withhold Medicaid reimbursements until resolution of the tax matter.

- **Questions:** Has the Division of Taxation held discussions with the Division of Medical Assistance and Health Services in the Department of Human Services to identify and to resolve any legal issues that might impede the exchange of information on medical providers so that the Medicaid program may terminate providers with unpaid State tax liabilities from the program or withhold Medicaid reimbursements until resolution of the tax matter? If so, what has been the outcome of the deliberations? If not, does the division intend to pursue these discussions before the end of FY 2010?

DIVISION OF INVESTMENT

6. The Division of Investment manages the investment portfolios of the various State pension funds, whose total assets the division valued at an estimated \$60.6 billion on November 28, 2008. On June 30, 2008, their estimated value had been \$77.7 billion.

N.J.S.A.52:18A-89 authorizes the Director of the Division of Investment to invest public pension funds moneys in a vast array of financial products and assets, as long as the director acts as a **prudent trustee** in the sole interest of the beneficiaries of the portfolios. A prudent trustee, as defined in that law, behaves as other trustees similarly situated would behave. Even so, the relational prudence standard does not automatically prohibit the pioneering of new investment approaches.

- **Questions:** Please explain the division's interpretation of the statutory requirement that in investing pension funds moneys it shall act as a prudent trustee. In carrying out its mission, how does the division give concrete meaning to the prudent trustee standard? How exotic can the asset classes be in which the division feels it could invest as a prudent trustee? Please give examples of asset classes the division deems imprudent for the investment of moneys in the pension funds.

7. Numerous public pension funds engage in **shareholder activism** or **social activism** or both. Guided by a belief that good corporate governance leads to better performance, funds that act as shareholder activists use their influence as investors to pressure companies into practicing good corporate governance. The California Public Employees' Retirement System (CalPERS), for example, has been seeking corporate governance reform since launching its

Discussion Points (Cont'd)

governance program in 1984. It votes its proxies, works closely with regulatory agencies to strengthen financial markets, and invests with partners that use corporate governance strategies to turn around ailing companies. Funds that act as social activists, on the other hand, use their clout to take stands against corporate policies based on moral, political or social considerations. CalPERS, for example, liquidated its holdings in tobacco companies in 2000 on moral grounds and is currently supporting policies addressing climate change.

- Questions:** Is the Division of Investment using its power as an investor to pressure companies into practicing good governance or to promote moral, political or social causes? If so, what goals and policies guide the division's activism? Does the division act unilaterally or in concert with other pension funds when it operates as an activist shareholder? Please provide five examples in which the division has acted as an activist shareholder, including the objective of its activism and the outcome. Does the division intend to ramp up its shareholder activities? Does the division have the legal authority to engage in shareholder and social activism, given that section b. of C.52:18A-89 requires the division's director "to manage and invest the portfolio [of the pension funds] solely in the interests of the beneficiaries of the portfolio and for the exclusive purpose of providing financial benefits to the beneficiaries of the portfolio"?

DIVISION OF PURCHASE AND PROPERTY

8. Standard purchasing procedures hinge on the awarding of contracts based on a formal, advertised, competitive bidding process. The **Delegated Purchasing Authority (DPA)** and **Request for Waiver of Advertising (RWA)** programs, to the contrary, exempt certain State agency purchases from the regular process. Agencies can only employ the two alternatives if they cannot procure a purchase transaction through a State contract, the State Distribution and Support Services Center, the Bureau of State Use Industries or the Central Non-profit Agency (CNA), ACCSES NJ. Of the \$1.6 billion the State spent on procurements in FY 2007, 37.8 percent, or \$619.8 million, was expended under the DPA and RWA programs (\$478.5 million, or 29.2 percent, for RWAs and \$141.3 million, or 8.6 percent, for DPAs). In FY 2006, the total was \$601.5 million, or 36.1 percent, and in FY 2005 \$641.2 million, or 39.3 percent.

The DPA program covers State agency purchases valued at no more than \$29,000 (see N.J.S.A. 52:34-7 and N.J.A.C. 17:12-1A.2(b)). The table on the right summarizes basic DPA price solicitation requirements (see Division of Purchase and Property Circular Letter 06-16-DPP, Delegated Purchasing Authority (DPA)). To bypass the advertised competitive bidding process for a procurement whose price exceeds \$29,000 a State agency must obtain the approval for an RWA from the Division of Purchase and Property and the Department of Law and Public Safety. Existing law sanctions RWAs if an agency has contacted at least three viable firms for price quotations and if a procurement is an emergency; the services to be performed are highly

<u>DPA Price Solicitation Requirements</u>	
Purchase Value	Solicitation Requirements
Up to \$500	One Price Quotation
\$500 to \$17,500	Three Price Quotations
\$17,500 to \$29,000	Four Sealed Written Bids
Emergency	One Price Quotation

Discussion Points (Cont'd)

complex, technical, unique or specialized; or if only a single source of supply is available. The Department of Law and Public Safety reviews all RWAs so as to ascertain that they meet legal requirements. N.J.S.A. 52:34-8 et seq., N.J.A.C. 17:12-1A.2(f), and Division of Purchase and Property Circular Letter 00-02-DPP, Requests for Waivers of Advertising, set the legal framework for RWAs. The division reported in response to OLS discussion point #14 in the FY 2008-2009 Department of the Treasury Budget Analysis that the average processing time for a waiver was about two months (59.6 calendar days in FY 2007 and 66.3 calendar days in FY 2008 as of the date of its response).

In its November 2007 report on the division, the Office of the State Auditor noted that State agencies had generally followed the RWA process, but it criticized instances in which agencies had engaged vendors prior to division approval of the RWA. To enhance agencies' adherence to RWA procedures, the State Auditor recommended that the division seek legislation that would penalize agencies for noncompliance. In response to OLS discussion point #14, the division related that it was exploring with the Office of Management and Budget the feasibility of certain recourse options against agencies that confirm unauthorized RWAs. The analysis included the possibility of imposing pecuniary penalties. Currently, when an agency violates State purchasing rules, the division sends a letter of recrimination to the agency's chief procurement official, the employee making the unauthorized procurement, and the Office of the State Auditor. Disciplinary actions are left within the purview of the employee's agency. In FY 2007, the division recorded 22 unauthorized confirming waivers.

- **Questions:** How many purchases for which total amounts have been made by State agency under the Delegated Purchasing Authority (DPA) and the Request for Waiver of Advertising (RWA) programs in FY 2008? How do these figures compare to contracts awarded under the formal, advertised, competitive bidding process? What is currently the standard processing time for an RWA? In FY 2008 and FY 2009, how many RWAs did the Division of Purchase and Property decline?
- What have been the conclusions of the division's analysis of possible recourses against State agencies that engage vendors prior to division approval of the RWA? What options has the division considered and what has been the rationale for rejecting the options the division has rejected? After sending letters of recrimination, does the division follow up with agency supervisors to assess whether employees who had violated RWA rules have been disciplined? Please list the number of recorded violations per agency in FY 2008 and 2009.

9. N.J.A.C.17:12-4.3(a) requires contracting State agencies to file with the Contract Compliance and Administration Unit (CCAU) in the Division of Purchase and Property formal complaints against contractors that fail to meet contract requirements. Notwithstanding that regulatory requirement, the division noted in reply to OLS discussion point #19 in the FY 2008-2009 Department of the Treasury Budget Analysis that it "encourages" agencies to file formal complaints. As required by C.52:34-10.4, the CCAU then records all complaints and their resolution in a vendor performance database, which informs future contractor selection processes.

Discussion Points (Cont'd)

On page 42 of the FY 2009 Budget-in-Brief, the Administration conceded that the "State's current system for **evaluating contractors** is somewhat fragmented and the information that is gathered is not managed in a central, coordinated manner." It was hence possible that certain vendors receive additional work "despite a history of poor performance." As a remedy, the Administration recommended the creation of a central evaluation program beginning in FY 2009. Vendor performance details would be entered into a "contractor responsibility" database in a pilot program for construction-related contracts issued by the New Jersey Schools Development Authority, the Division of Property Management and Construction, and the New Jersey Building Authority.

- **Questions:** How does the Division of Purchase and Property assess the compliance of contracting State agencies with the regulatory requirement that they file formal complaints with the division whenever a vendor fails to heed the terms of a State contract? Is compliance universal? If not, what means does the division have to prod noncompliant agencies into filing the required documents? Based on the rate of noncompliance with the reporting requirement, what is the likelihood that vendors with a poor performance history win additional State contracts?
- Has the division started to create a central vendor evaluation program or a "contractor responsibility" database similar to the pilot project for construction-related contracts issued by the New Jersey Schools Development Authority, the Division of Property Management and Construction, and the New Jersey Building Authority? If so, please report on the project's progress. If not, please explain the reasons for the delay.

10. Between July 1, 1998 and June 30, 2001, the State received \$101.1 million in federal Medicaid funds for school-based health services claimed by school health providers under the **Special Education Medicaid Initiative (SEMI)**. In its May 18, 2006 audit of these claims, the Office of Inspector General in the United States Department of Health and Human Services recommended that New Jersey refund \$51.3 million to the federal government after finding that 109 of 150 audited school-based claims had violated federal and State program guidelines. The State contested the findings and has provided additional documentation to the federal government. In reply to an OLS discussion point in the FY 2007-2008 Department of the Treasury Budget Analysis, the department noted that it had not released the \$440,000 performance bond posted by the vendor, Maximus, Inc., and that it should seek to recover the contingency fees paid to Maximus on the final disallowed claim amounts, and, if possible, an additional amount for damages. The department reported no further development in response to OLS discussion point #18 in the FY 2008-2009 Department of the Treasury Budget Analysis.

SEMI is a school-based federal Medicaid Title XIX reimbursement program that allows participating school districts to recover a portion of the costs for certain Medicaid-covered services provided to Medicaid-eligible pupils. The services include physical therapy, occupational therapy, speech therapy, psychological counseling, nursing services, and specialized transportation services. The Department of the Treasury shares the administrative responsibility for operating SEMI with the Departments of Children and Families, Education, and Human Services. Specifically, Treasury serves as the contract manager for the billing agent whose responsibilities, in turn, include receiving and processing billing agreements and pupil

Discussion Points (Cont'd)

registration information from school health providers; conducting Medicaid eligibility verification for registered pupils; and monitoring program compliance.

- **Questions:** Please provide an update on the status of the federal claim for reimbursement of \$51.3 million in contested SEMI funding. Is the federal government still asking for reimbursement of the full amount or a portion thereof? If so, when will the State have to repay the monies?
- What legal recourse is the State considering, or has initiated, against the vendor to recoup the amount of any reimbursement to the federal government? Will the State be able to keep the vendor's performance bond?

11. A **performance bond** is a surety posted by a vendor to protect the State against risks associated with the possibility of vendor nonperformance. Addressing OLS discussion point #18 in the FY 2008-2009 Department of the Treasury Budget Analysis, the division noted that it did not have a standardized performance bond policy but that it worked with agencies to determine the necessity and specifics thereof. The division also cautioned that the cost of the bonds is included in the contractor's quotation and that setting bond requirements too high may deter bidders.

The financial risk of deficient contractor performance is particularly acute in instances in which the federal government may disallow claims for reimbursement that vendors file on the State's behalf. In one recent case, the Office of Inspector General in the United States Department of Health and Human Services recommended that New Jersey refund \$51.3 million to the federal government for Special Education Medicaid Initiative (SEMI) claims that had allegedly violated federal and State program guidelines. The program administrator, Maximus Inc., had posted a \$440,000 performance bond.

- **Questions:** Please describe the tools the Division of Purchase and Property has at its disposal to protect the State against the risk of the federal government disallowing claims for reimbursement that vendors file on the State's behalf. Does the division ascertain that bidders have the financial wherewithal to reimburse the State in case of nonperformance? Should the State consider self-administering programs in which noncompliance with program guidelines might prompt the disallowance of a substantial number of claims by the federal government? In the division's opinion, was the State adequately protected when it awarded the bid for the administration of Special Education Medicaid Initiative claims to Maximus Inc.?

DIVISION OF ADMINISTRATION

12. The Bureau of Transportation Services in the Division of Administration runs the State **Central Motor Pool** (CMP). Operating as a revolving fund, the self-supporting CMP bills client agencies for the expenses it incurs in managing the State's motor vehicle fleet. Its responsibilities include vehicle purchasing, assignment, maintenance, repair, and fuelling. According to the Governor's FY 2010 Budget (page G-5), the State's estimated FY 2010 vehicle

Discussion Points (Cont'd)

count is 15,394 (284 vehicles, or 1.8 percent, fewer than in FY 2009). This total includes 7,952 vehicles on agency assignment whose maintenance expenses are accounted for separately in using agencies' budgets. The CMP expects to oversee the remaining 7,442 vehicles at an estimated FY 2010 cost of \$26.0 million (the same as in FY 2009 but \$4.4 million, or 14.6 percent, less than actual expenditures in FY 2008 for operating 436, or 5.9 percent, more vehicles). Replying to OLS discussion point #27 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Division of Administration indicated that it purchased 1,160 passenger vehicles for \$22.1 million in FY 2007. Of these vehicles, 846 replaced retired vehicles and 314 were new additions to the State fleet. In FY 2007 and 2008 combined, the State retired 452 vehicles without replacing them.

Addressing OLS discussion point #37 in the FY 2008-2009 Department of the Treasury Budget Analysis, the Office of Energy Savings stated that it had created a vehicle purchasing guide as part of its strategy to reduce the State vehicle fleet's fuel consumption. The office also related that the Department of the Treasury had established a committee to review all agency vehicle purchase requests to ensure the purchase of the most efficient vehicles. Representatives of the Office of Energy Savings, the Central Motor Pool, the Division of Purchase and Property, and the Division of Administration comprise the committee.

- **Questions:** For FY 2008 and 2009, please provide the number of vehicles retired and purchased, indicating how many of the vehicles purchased directly replaced a retired vehicle. What sum has the Central Motor Pool (CMP) spent on new vehicle purchases in FY 2008 and 2009 and projects to spend thereon in FY 2010? Vehicles manufactured by General Motors, Ford, and Chrysler account for which percentage of the State's vehicle fleet?
- To which extent do the CMP and the Treasury committee to review agency vehicle purchase requests to ensure the purchase of the most efficient vehicles prescribe which vehicles State agencies must purchase? How much discretion do client State agencies have in choosing vehicles? What factors does the CMP take into account when procuring a passenger vehicle? How does the CMP balance environmental and financial considerations? Is the location of a car manufacturer's headquarters a decision factor?

Background Paper: Offshore Wind Energy

Budget Pages.... C-25, D-396, H-1

SUMMARY

In December 2008, the Board of Public Utilities (BPU) awarded three offshore wind developers each a \$4 million rebate towards the construction and operation of meteorological towers to support offshore wind projects. New Jersey considers wind energy a key solution to meeting its renewable energy goals, such as decreasing greenhouse gas emissions and reducing fossil fuel dependency. Certain factors have catalyzed the increased support of wind energy in the Garden State, including New Jersey's Renewable Energy Portfolio Standard, initiatives by the Office of Clean Energy in the BPU, a report issued by the Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters, the "Global Warming Response Act," the Regional Greenhouse Gas Initiative, and the newly updated and released Energy Master Plan (EMP).

While the EMP notes that efficiency, conservation, and new clean energy development may not be enough to match the projected increase in New Jersey's energy usage, the EMP asserts that renewable clean energy, such as wind, will reduce peak electricity demand and offset some increased demand. Conversely, although wind energy supports the State's clean energy goals, a recent report by the Department of Environmental Protection (DEP) gives pause to the offshore wind energy push because of environmental and wildlife concerns. The report finds that wind turbines along the shoreline of the Atlantic Ocean would negatively affect birds, marine life, and recreational and commercial fishing.

BACKGROUND

Renewable energy generation is a costly capital investment relative to fossil fuel-based energy generation. Despite historically declining costs of renewable energy technology and the abundance of some free and naturally occurring renewable energy sources, such as wind and solar, there is no guarantee that wind energy will be cheaper than fossil fuel-based energy. The State's Renewable Energy Portfolio Standard (RPS), approved by the BPU in April 2006, requires renewable energy sources to generate 22.5 percent of the State's electricity consumption by the year 2020, with 20 percent supplied from Class I renewable sources and 2.5 percent from Class II sources¹.

In October 2008, Governor Corzine issued the first Energy Master Plan (EMP) since it was last published in 1991 and updated in 1995. The EMP lays out ambitious plans for the immediate and long-term future, notably to: (1) reduce energy consumption at least 20 percent

¹ Class I renewable energy means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner. Class II renewable energy means electric energy produced at a resource recovery facility or hydropower facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. (P.L.1999, c.23, s.3 (N.J.S.A.48:3-51))

Background Paper: Offshore Wind Energy (Cont'd)

over baselines projections by 2020, (2) reduce peak electricity demand by 5,700 megawatts (MW) by 2020, (3) meet 30 percent of the State's electricity needs from renewable resources by 2020, (4) develop a sound energy infrastructure to support State goals, including to ensure system reliability and provide consumers greater power to self-manage energy consumption, and (5) support clean energy technology and stimulate industry growth.

Under the EMP, the State's RPS goal increases from 22.5 percent to 30 percent the State's electricity consumption to be supplied from renewable energy sources by the year 2020. The RPS would be increased further for 2021-2025. The following renewable energy would be supplied by 2020: 900 MW biomass and biofuel; 3,000 MW offshore wind and 200 MW onshore wind; and 2,120 GWh (approximately 1,800 MW) solar. New Jersey's wind energy goals also specifically include developing at least 1,000 MW of offshore wind by 2012, although no new large wind turbines have been developed since 2005. According to the United States Department of Energy, the areas with the highest wind power resources in the State are found along the Atlantic Ocean and Delaware Bay coastal areas, and on some of the high ridges in western and northwestern New Jersey.

Additionally, the "Global Warming Response Act," P.L.2007, c.112 (N.J.S.A.26:2C-37 et al.) and P.L.2007, c.340 (N.J.S.A.26:2C-45 et al.), known as the Regional Greenhouse Gas Initiative (RGGI), have prompted the State to develop ambitious goals to reduce carbon dioxide emissions from the generation of electricity and put a price on the environmental and public health impacts of greenhouse gas emissions. These laws directly and indirectly promote clean energy such as wind, by increasing the cost of generating electricity from fossil fuels.

STATE CLEAN ENERGY FUND AND FEDERAL STIPULATIONS

The State's Clean Energy Fund was created pursuant to the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (N.J.S.A.48:3-49 et al.) and has been funded through the societal benefits charge (SBC), under section 12 of that act (N.J.S.A.48:3-60). The SBC is a charge imposed on electricity and natural gas ratepayers as part of their utility bills to fund assorted programs, including energy efficiency and Class I renewable energy programs. The BPU's Clean Energy Program is one of six programs funded and supported by the SBC. According to the BPU, the Clean Energy Program received about 43 percent of the SBC disbursements in 2008 (or \$279.8 million of \$649.6 million in total expenditures).

No offshore wind energy generation facility outside of the State's three-mile offshore jurisdiction can be constructed or operated without the approval of the federal Minerals Management Service (MMS), in the U.S. Department of the Interior. The MMS published the final rules for offshore wind development on April 22, 2009, after publishing proposed regulations in July 2008. This delay of final rules posed a challenge to offshore wind energy development, specifically with regard to the installation and operation of meteorological towers expected this summer. While the MMS has entertained revenue sharing with states, this revenue depends on the location of the wind turbines in federal waters, so only certain wind projects off the coast would be eligible. At this time, it is unclear if any of the three projects underway would be close enough to State waters for this revenue stream to benefit the State.

While the federal "American Recovery and Reinvestment Act of 2009" provides significant funds to support State infrastructure projects, the "shovel-ready" project stipulation prevents, in effect, any otherwise eligible large scale wind projects pursued in the State from

Background Paper: Offshore Wind Energy (Cont'd)

qualifying for these federal funds. Conversely, the OLS notes that there may possibly be federal money available from the "American Recovery and Reinvestment Act of 2009" towards the construction of transmission facilities and lines. The funding could be applied against the cost of underwater transmission lines between the offshore wind turbines and the transmission facilities on land. However, it has yet to be determined if the State's necessary transmission upgrades and associated work would be eligible for these federal funds. The BPU is currently investigating this possibility.

WIND ENERGY DEVELOPMENT AND PROJECT FUNDING

The Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters, which was established pursuant to Executive Order #12 issued in December 2004, made a number of recommendations relating to offshore wind development. The panel recommended that the Commerce, Economic Growth and Tourism Commission investigate consumer opinions to gauge the economic impact of offshore wind turbines on tourism and shore communities, and that scientific baseline studies of the State's coastal waters be conducted. The panel also recommended a test project to "determine if future development is necessary and/or appropriate." In October 2008, the BPU accepted the proposal by Garden State Offshore Energy (GSOE), a joint venture by PSEG Renewable Generation and Deepwater Wind, to develop the State's pilot offshore wind project, and awarded GSOE a \$4 million grant from the Clean Energy Program for that purpose.

GSOE proposed a 96 turbine 345.6 MW wind farm off the coast of southern New Jersey which would produce more than 1.2 billion kilowatt-hours annually and would be located approximately 20 miles due east of Avalon, with the closest turbines more than 16.2 statute miles from the shore. Under the initial proposal, construction was expected to begin in 2010 after the completion of an ecological study by the Department of Environmental Protection (DEP). The \$1 billion project was estimated to become operational in 2013 and would produce enough electricity to power approximately 125,000 homes annually.

The EMP's ambitious offshore wind energy goal has since led the BPU to abandon the single pilot project policy in favor of a rebate program for offshore wind farms. In November 2008, the BPU authorized the offshore wind rebate program (Dkt. No. EO08110971). The following month, the initial pilot program and corresponding \$4 million grant award to GSOE was canceled when the BPU instead approved a \$12 million rebate program for three meteorological towers to support offshore wind projects (Dkt. No. EO07030203). Meteorological towers collect wind data and related information to support power generation. The rebate program would disburse \$4 million to each wind developer, provided a meteorological station was operating at each site by the end of 2009 and supported a wind farm generating at least 200 MW of energy. According to the BPU, meteorological towers proposed off the State's coast would likely cost between \$4.2 million and \$5.2 million each, based upon proposals submitted, so each company would still pay some amount toward the tower after the rebate.

The BPU approved three companies to each receive a \$4 million rebate – Bluewater Wind, Fishermen's Energy, and GSOE. GSOE will not receive the initial \$4 million under the wind pilot project but instead will receive \$4 million under the new meteorological tower rebate towards that same offshore wind proposal. All three project developers approved for the rebate are working with the MMS to lease specific sites that are designated as being in a MMS

Background Paper: Offshore Wind Energy (Cont'd)

New Jersey Interim Policy Lease Area. To meet the conditions of the rebate, the three companies have to complete the meteorological towers in 2009 in order to become operational and begin collecting offshore wind data as soon as possible. Some wildlife and natural resource advocates have expressed trepidation that three projects moving ahead concurrently before having properly collected and analyzed ecological data may pose a risk to the marine ecosystem or bird migration patterns, and that public support and future wind energy development could be jeopardized if the projects were considered unsuccessful.

The following table summarizes the three proposed projects eligible for the rebate:

Project	<i>Garden State Offshore Energy (GSOE)</i>	<i>Bluewater Wind</i>	<i>Fishermen's Energy</i>
Number of Turbines	96	116	74
Location	21.3 miles due east of Avalon; 16.2 miles from Ocean City at its closest point	15 to 19 miles off the coast of Atlantic City (AC)	Phase 1: 3 miles off the coast of AC Phase 2: 10 miles off the coast of AC
Capacity (in Mega Watts)	350 MW	Several hundred MW	350 MW
Estimated Investment	\$1.0 billion	\$1.4 billion	\$1.3 billion
Expected Completion Date	2013	2012	Two phases by 2012 or 2013

IMPACTS AND ASSOCIATED COSTS OF OFFSHORE WIND ENERGY

The proposed offshore wind energy projects raise some concerns regarding the impact of the large wind turbines on tourism along the State's 127 mile coast, marine wildlife, the fishing industry, and visual and noise pollution. Further costs are associated with offshore wind, due to necessary upgrades of transmission facilities, installation of underwater transmission lines, transportation of large turbine parts, and construction of the wind farms.

In 2009, the DEP released a draft *Ocean/Wind Power Ecological Baseline Studies* report, a scientific study recommended by the Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters to "collect basic data about the existence, location and nature of New Jersey's offshore natural resources" and to weigh the environmental costs and benefits of offshore wind. The draft report notes that avian species, marine mammals, and sea turtles were observed in the study area, including some federal species of concern and some species listed by New Jersey as endangered, threatened, or of special concern. The findings of the study indicate that birds and marine wildlife must be taken into consideration by any offshore wind project.

In response to the recommendation of the Blue Ribbon Panel to conduct a study of the economic impacts of offshore wind development, Global Insight published "An Assessment of the Potential Costs and Benefits of Offshore Wind Turbines" in September 2008. It specifically focuses on the economics of wind turbines off the New Jersey shore, including the direct impacts from project development; the indirect impacts on tourism, property values, and commercial and recreational fisheries; and the overall impact on New Jersey's image. The report concludes that wind farms would generally have a minimal impact on the economy. While in some cases there would be a negative impact, Global Insight suggests this would be

Background Paper: Offshore Wind Energy (Cont'd)

small in comparison to the economic output of the area, and that, in certain cases, a wind farm would have a positive impact and lead to the creation of jobs and add value to the State.

Based on its assessment, Global Insight suggests that in 2012, a wind farm generating about 700,000 MWh per year would reduce carbon dioxide emissions by about 430,000 metric tons, but would not lower the cost of electricity to homeowners or businesses. Global Insight also concluded that wind turbines would not have a large adverse impact on tourism. In Atlantic and Cape May counties, but not Ocean County, wind farms may even boost tourism if they are located about 20 miles off the coast. Residential and commercial property values would likely remain the same, with the exception of oceanfront properties whose value Global Insight estimates would, on average, decline between less than 1 percent and 5 percent. According to the report, the most significant economic impact to fisheries would be during the construction phase of the wind farms. Fisheries could lose between \$150,000 and \$6.5 million, although the fishing industry would be able to adapt to the introduction of a wind farm fairly quickly. Global Insight emphasizes that the "economic impacts to the fishing industry are very dependent on the location of a potential wind farm."

Background Paper: The Office of the Public Defender and Child Welfare Reform

Budget Pages.... C-8, D-426 to D-429

Executive Summary

The Office of the Public Defender (OPD) is an “in but not of” agency in the Department of the Treasury. Originally instituted in 1967 as the centralized organ of government to furnish legal counsel to indigent defendants in criminal cases, the OPD incorporated the Office of the Law Guardian (OLG) in 1994. The OLG represents children in child abuse and neglect (Title 9) and termination of parental rights (Title 30) proceedings in family court. In 1999, it also assumed responsibility for the representation of indigent parents in Title 9 and Title 30 cases and formed the Office of Parental Representation (OPR). To avoid the appearance of a conflict of interest in the simultaneous representation of children and their parents, the OLG and OPR units are administered separately. Adjusted FY 2009 OPD appropriations are \$113.5 million, while anticipated public defender client receipts are \$3.4 million. According to evaluation data contained in the Governor’s FY 2010 Budget, the office projects 1,029 funded positions and 102,762 case closings in FY 2009.

The child welfare process that separates a child from his or her parents closes with the judicial system delivering a permanent home to a child, either through reunification with the birth family or adoption. Accordingly, the 2004 child welfare reform plan, which aspires to overhaul New Jersey’s child protection system in accordance with a settlement reached with Children’s Rights, Inc., also includes specific steps to improve the legal representation of children and indigent parents in child welfare proceedings and to shorten the period of time it takes to place children under the auspices of the Division of Youth and Family Services (DYFS) in permanent homes.

The reform plan features five specific targets for the OLG and the OPR in three areas. First, both offices are given specific caseload targets per staff attorney (75 cases for each OPR staff attorney and 88 cases for each OLG staff attorney). In addition, except when more than one child with competing interests are involved in a case, the OLG is to discontinue its use of private attorneys to improve the quality of the legal representation it provides to each child. The OPR, on the other hand, is to limit its use of private attorneys to instances in which it has to represent two competing parents. Lastly, the hourly rate for private attorneys retained by the OPR was to increase from \$30 to \$75.

As **Figure 1** indicates, the OPD has achieved progress towards attaining its goals. Nonetheless, it has met only one of its five targets, namely the caseload target per OPR staff attorney. This accomplishment, however, has been made possible only by continuing the office’s heavy reliance on private attorneys. In response to an OLS Discussion Point in the FY 2008-2009 Department of the Treasury Budget Analysis, the OPD cites two causes for not yet having fully implemented child welfare reform: the State’s financial straits, which preclude the office from increasing its staffing level; and recent court decisions that have expanded the OLG’s legal responsibilities to include representation in post-termination of parental rights cases. In these cases a child is not placed in a permanent home at the conclusion of a Title 30 proceeding. The new obligation increased OLG’s total caseload by 10 percent, as of June 30, 2008.

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

Figure 1: Child Welfare Reform Targets for the OPD and its Actual Performance			
Child Welfare Reform Plan Target	Actual Performance	Target Attained?	Reason(s) for (Non)attainment
75 Cases of Parents Handled per Office of Parental Representation Attorney	75 Cases (as of June 2008)	↑	Use of Private Attorneys Ensures that each Staff Attorney Has no More than 75 Cases
88 Cases of Children Handled per Office of Law Guardian Attorney	113 Cases (as of June 2008)	↓	Budgetary Constraints; Attrition; Hiring Freeze; Recent Case Law Requiring OLG to take on additional responsibilities
Limit Office of Law Guardian's Recourse to Private Attorneys to Instances in which the Office Must Represent more than one Child with Competing Interests	FY 2003: 10% of all cases FY 2008: 16% of all cases	↓	Budgetary Constraints; Attrition; Hiring Freeze; Recent Case Law Requiring OLG to take on additional responsibilities
Limit Office of Parental Representation's Recourse to Private Attorneys to Instances in which the Office Must Represent two Competing Parents	FY 2003: 89% of all cases FY 2008: 61% of all cases	↓	Budgetary Constraints; Attrition; Hiring Freeze
Increase Hourly Rate for Private Attorneys from \$30 to \$75	\$50 per hour out of court and \$60 per hour in court	↓	Budgetary Constraints

The Office of the Public Defender

Following a 1966 decision by the Supreme Court of New Jersey, the State instituted the OPD in 1967 as the centralized organ of government to furnish legal counsel to indigent defendants in criminal cases. Since then, the office's scope of responsibilities has expanded to the legal representation of children and indigent parents in child abuse and neglect and termination of parental rights proceedings.

Article XVI of New Jersey's Constitution of 1776 first bestowed upon indigent criminal defendants the right to legal counsel: "all criminals shall be admitted to the same privileges of witness and counsel, as their prosecutors are or shall be entitled to." The act of March 6, 1795 (*Paterson, Laws 162 (1800)*) clarified that "the court before whom any person shall be tried upon indictment, is hereby ... required to assign to such person, if not of ability to procure counsel, such counsel ... as he or she shall desire...." This obligation was met by private counsel appointed by the courts on a case-by-case basis to handle the defense of indicted

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

indigents without compensation (statutes only afforded compensation in murder cases). With the OPD's establishment in 1967, this policy changed.

Two court decisions in the 1960s led to the office's creation: *State v. Rush*, 46 N.J. 399 (1966), by the Supreme Court of New Jersey and *Gideon v. Wainwright*, 372 U.S. 335 (1963), by the United States Supreme Court. In *State v. Rush*, the Supreme Court of New Jersey held that court-appointed private counsel to indigent criminal defendants shall no longer have to perform that duty without compensation. Based upon existing statutes it concluded that county governments would be obliged to bear the additional cost. The court, however, suggested the centralization of the defense function in an office of a public defender to spare local taxpayers and to provide for better and more cost-effective legal representation than under the system of assignment of counsel. The State adopted this recommendation also against a backdrop of nationwide interest in the provision of legal representation to the indigent following the 1963 United States Supreme Court *Gideon v. Wainwright* decision. In that ruling, the court had applied to the states the provision of the Sixth Amendment of the United States Constitution that the accused in all criminal prosecutions shall be entitled to the assistance of counsel. Hitherto, the constitutional amendment had applied only to criminal cases in federal courts.

P.L.1967, c.43 (N.J.S.A.2A:158A-1 et seq.) created the OPD to furnish legal counsel to indigent criminal defendants. To initiate assistance from the office, a court must first assign a defendant to the OPD after determining that the defendant's financial status does not allow for the hiring of a private attorney. A defendant who can pay some part of the cost of the services rendered by the OPD is required to reimburse the office in such amounts as the defendant can reasonably be expected to pay.

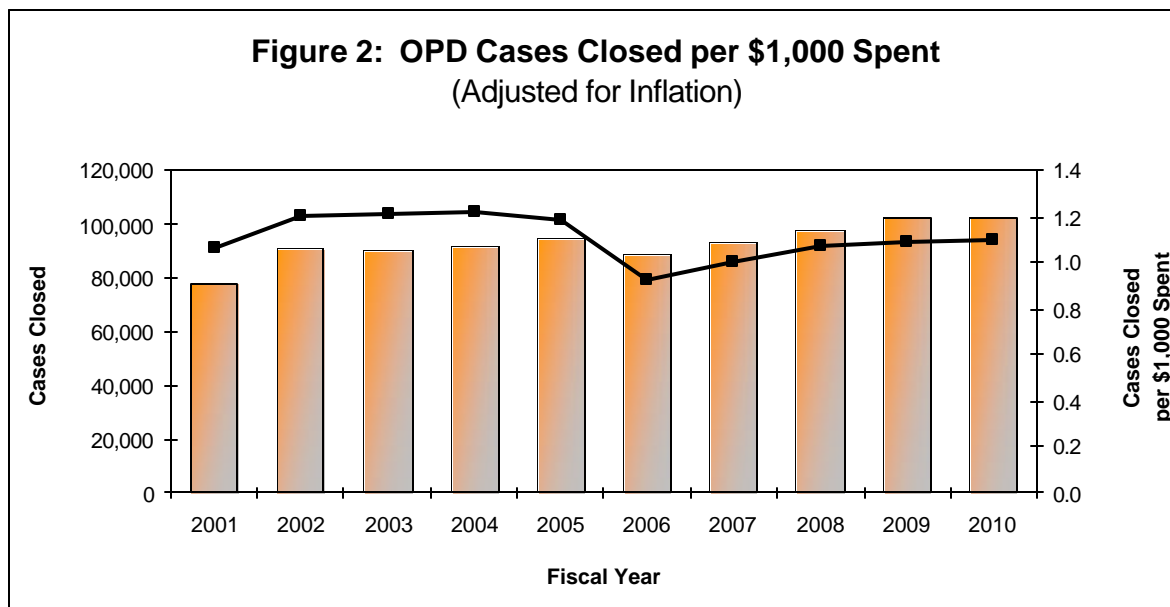
Over time, the OPD's role expanded to the representation of parties in certain civil cases (Legal Services of New Jersey, a private non-profit corporation, typically represents low-income residents in civil matters). P.L.1974, c.27 incorporated the office in a newly created Department of the Public Advocate. With the department's abolition pursuant to P.L.1994, c.58, the OPD absorbed some of the department's civil functions and was placed "in but not of" the Department of State. Under Reorganization Plan No. 004-1998, the office has been an "in but not of" agency in the Department of the Treasury since 1998. It runs the Office of the Law Guardian, which represents children in family court matters. Since the adoption of P.L.1999, c.53, the OPD also operates the Office of Parental Representation, which represents indigent parents in family court matters. From 1994 until enactment of P.L.2005, c.155 (N.J.S.A.52:27EE-1 et al.), which restored the Department of the Public Advocate, the OPD also included a Division of Mental Health Advocacy and the Office of Dispute Settlement, which the 2005 law transferred to the newly created department.

Adjusted FY 2009 OPD appropriations are \$113.5 million, while anticipated public defender client receipts are \$3.4 million. According to evaluation data contained in the Governor's FY 2010 Budget, the office projects 1,029 funded positions and 102,762 case closings in FY 2009.

Figure 2 shows the number of case closings from FY 2001 through FY 2010 and the number of case closings per \$1,000 spent adjusted for inflation. In FY 2010, the OPD expects to close 102,791 cases. In FY 2001, it closed 77,549 cases, which translates into a 32.6 percent increase in workload. Over the same timeframe, spending adjusted for inflation increased by 28.3 percent from \$73.2 million in FY 2001 to \$93.9 million in FY 2010 (or \$113.5 million in nominal terms, which reflects a 55.1 percent increase). The number of case closings per

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

\$1,000 spent adjusted for inflation went from 1.06 in FY 2001 to 1.09 in FY 2010, after peaking at 1.22 in FY 2004.



The OPD's Obligations in Child Welfare Proceedings

Two OPD units represent children and indigent parents in child abuse and neglect (Title 9) and termination of parental rights (Title 30) proceedings: the Office of the Law Guardian and the Office of Parental Representation.

P.L.1974, c.119 (N.J.S.A.9:6-8.21 et seq.) provides the statutory authority for the Office of the Law Guardian (OLG), which represents children in Title 9 and Title 30 cases. A law guardian is an attorney, either employed by the OLG or appointed by the court, who represents and protects a child's legal interests throughout the legal proceedings. The Commission to Study Child Abuse and Other Aspects of Child Welfare Laws recommended in its 1971 interim report extending independent legal counsel to children in State custody and other civil cases. The OLG was subsequently established in 1974 as a unit in the newly created Department of the Public Advocate to represent children in Title 9 cases. Upon the department's abolition in 1994, the OLG was integrated into the OPD. Section 54 of P.L.1999, c.53 (N.J.S.A.30:4C-15.4) later extended the OLG's responsibilities to the representation of children in Title 30 cases. To the extent feasible, the same law guardian shall continuously represent a child in a Title 9 and a Title 30 case. The OLG's FY 2009 adjusted appropriation is \$18.6 million. It expects to close 8,584 Title 9 and Title 30 cases this fiscal year. In addition, the OLG anticipated investigating 170 allegations of abuse in institutions operated by the Division of Youth and Family Services (DYFS) in the Department of Children and Families.

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

The Office of Parental Representation (OPR) defends indigent parents in Title 9 and Title 30 cases pursuant to section 54 of P.L.1999, c.53 (N.J.S.A.30:4C-15.4). The office represents indigent parents only in civil abuse and neglect cases brought by the Department of Children and Families; the criminal unit in OPD defends them in criminal abuse and neglect proceedings. The OPR may discharge its obligations through in-house attorneys or private lawyers hired on a case-by-case basis. To the extent feasible, the same attorney shall continuously represent an indigent parent in a Title 9 and a Title 30 case. The office was created as part of P.L.1999, c.53, which conformed State law to the provisions of the federal "Adoption and Safe Families Act of 1997", Pub.L.105-8. Seeking to accelerate the adoption of children in foster care, the federal law, however, did not mandate the office's establishment. The OPR's FY 2009 adjusted appropriation is \$14.9 million. It expects to close 7,473 Title 9 and Title 30 cases this fiscal year.

Consistent with a requirement established in N.J.S.A.30:4C-15.4, the OPD keeps its OLG and OPR units administratively separate to avoid the appearance of a conflict of interest in the simultaneous representation of children and their parents. In response to OLS discussion point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis, the OPD stated that the two units are housed in separate physical office spaces, that they report to separate Assistant Public Defenders, that they maintain separate case management systems, and that each unit develops separately training, administrative policies as well as litigation and appellate strategies. In its response, the OPD also underlined the importance of assigning equal weight to the spending needs of both units so that parents and children have access to legal representation of equivalent quality.

The 2004 Child Welfare Reform Plan and the OPD

On June 9, 2004, the State of New Jersey published its child welfare reform plan, entitled "A New Beginning: The Future of Child Welfare in New Jersey". Aspiring to overhaul the state's child protection system, the plan grew out of a settlement reached in 2003 with Children's Rights, Inc., which had filed a class action lawsuit against the State in 1999 on behalf of children in foster care. Most of the public's attention has focused on the plan's components that aim to ensure the well-being of children under observation or supervision by the Division of Youth and Family Services (DYFS). But the child welfare process ultimately closes with the judicial system delivering permanency to a child. Hence, the reform plan also includes specific steps to improve the legal representation of children and indigent parents in child welfare proceedings and to shorten the period of time it takes to place children under DYFS' auspices in permanent homes, either through reunification with their birth families or adoption.

Throughout the legal proceedings, the OPD acts as legal counsel to children and indigent parents. The office, however, is only one State entity involved in the judicial resolution of child abuse and neglect cases and termination of parental rights cases. Accordingly, the reform plan features commitments for all State participants in permanency proceedings: the Department of Children and Families, the Family Division of the New Jersey Judiciary, the OPD, and the Department of Law and Public Safety, which brings the case against parents.

As to the OPD's role in expediting adoptions, the reform plan criticized that the processing of termination of parental rights cases took too long "due in large part to a shortage of Deputy

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

Attorneys General, Law Guardians, counsel for parents, and often experts whose evaluations are required for a case to proceed". Accordingly, the plan's implementation steps for the OPD were a) the hiring and training of additional Law Guardian personnel by July 2005, b) the hiring and training of additional Parental Representation Unit personnel by July 2005, and c) increasing the hourly rate for private counsel accepting assignments as part of the Parental Representation pool from \$30 to \$75 by September 2005.

The reform plan also envisioned improving the legal representation of children and indigent parents. To that end it commissioned an assessment of the representation's quality. Any restructuring of the service delivery was to ensure that attorneys worked on child welfare cases exclusively, which meant the discontinuation of the common practice of assigning cases to private attorneys. The recourse to private counsel was deemed to produce representation of inferior quality because private lawyers did not benefit from pre-service training, professional camaraderie with more experienced attorneys in the same field, access to institutional supports such as paralegals and investigators, and appropriate supervision. Prior to the reform, OLG staff attorneys handled the vast majority of cases involving children (90 percent in FY 2003) and private attorneys most cases involving indigent parents (89 percent in FY 2003). In addition, while most children benefited from a continuity of representation as their cases went from child abuse and neglect proceedings to termination of parental rights proceedings, most parents did not. Consequently, the reform plan included a policy change that children and parents should both be entitled to representation by specialized OPD staff attorneys and that the use of private counsel should be limited to specific scenarios.

The OPD's Implementation of Child Welfare Reform

The OPD has achieved progress towards reaching the twin goals of the child welfare reform plan: accelerating the legal resolution of child welfare cases and improving the quality of legal representation to children and indigent parents. But the office has not yet fully attained most of the plan's specific targets. **Figure 1** on page 115 indicates the five targets, OPD's actual performance, and any reason for attaining or not attaining the target. Of the five targets, the OPD has met one and is still striving to reach the remaining four. In response to OLS Discussion Point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis, the OPD cites two root causes for not yet having fully implemented child welfare reform: the State's financial straits, which preclude the office from increasing its staffing level; and recent court decisions that have enlarged the office's legal responsibilities.

Caseload of Office of Parental Representation Attorneys: The reform plan calls for each OPR attorney to handle an average of 75 cases on behalf of indigent parents. This is the only reform target the OPD has met. In response to OLS Discussion Point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis, the OPD stated, however, that the OPR attained the caseload goal by relying heavily on private attorneys to take on cases. Prior to the reform, OPR staff attorneys represented indigent parents in about ten percent of all Title 9 and Title 30 cases. In FY 2008, they represented 39 percent. This increase reflects growth in the number of staff attorneys: in 2003, OPR had 11 staff attorneys; in 2008, it had 55.

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

Caseload of Office of Law Guardian Attorneys: The reform plan intends for each OLG attorney to handle an average of 88 cases on behalf of children. As **Figure 3** shows, since the end of FY 2004, the OLG managed to reduce the average caseload from 173 children per attorney to 113 children at the end of FY 2008. Simultaneously, the number of attorneys (staff and private attorneys) increased from 60 at the end of FY 2004 to 91 at the end of FY 2008. All the numbers in the table are actuals but for the figures for June 30, 2009, which represent OLG's projection. The case total for FY 2008 does not include 1,055 post-termination of parental rights cases as of June 30, 2008. In response to OLS Discussion Point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis, the OPD noted that insufficient funding and unanticipated additional representation duties have led to the delay in OLG meeting its caseload target.

Attaining the 88 caseload target is a function of the number of open cases and the number of attorneys handling those cases. While the OLG hired 25 additional lawyers in FY 2005 and 2006, reflecting an increase of over 40 percent, the expansion to the level necessary to meet the caseload target has practically stalled since. In FY 2007 and 2008, the attorney total grew by only six, or seven percent. This slowdown is due, in part, to the State's financial difficulties and the resultant imposition of a hiring freeze. At the same time, the office is experiencing attrition. The OPD estimates that it would need to hire 27 full-time OLG staff attorneys in addition to its current 80 staff attorneys to meet the caseload target. This total includes the hiring of staff attorneys to replace private lawyers.

New court-mandated representation requirements have also contributed to the delay in reaching the caseload target. The unanticipated workload increase has come on account of post-termination of parental rights cases, in which a child is not placed in a permanent home at the conclusion of Title 30 proceedings. Law guardians' obligations in that kind of cases involve client contact, investigation, court review hearings, and the monitoring of the DYFS. As of June 30, 2008, the OLG had 1,055 active post-termination cases, which increased the OLG's caseload by 10 percent over its traditional caseload.

Figure 3: Number of Children per Office of Law Guardian Attorney

Date	Open Cases	Staff Attorneys	Private Attorneys	Total Attorneys	Children per Attorney
6/30/2004	10,406	53	7	60	173
6/30/2005	10,096	66	3	69	146
6/30/2006	11,335	65	20	85	133
6/30/2007	10,328	77	11	88	117
6/30/2008	10,424	80	11	91	113
6/30/2009	10,532	80	11	91	113
Target	9,135	104	0	104	88

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

Eliminate Office of Law Guardian's Recourse to Private Attorneys: The reform plan envisages for the OLG to phase out its use of private attorneys, except in cases in which a conflict of interest prevents the OPD from representing more than one child in a case. As of January 18, 2008, the OLG still used outside lawyers to represent children in non-conflict situations. As **Figure 4** indicates, the number of case assignments handled by outside attorneys actually rose since the beginning of the implementation of the reform plan, despite a 51 percent increase in the number of staff attorneys from 53 in 2004 to 80 in 2008. Private attorneys handled 10 percent of all cases in FY 2003. In FY 2008, they handled 16 percent of all cases at a cost to the State of \$1.1 million.

Fiscal Year	Staff Attorneys	Private Attorneys
FY 2003	90%	10%
FY 2004	92%	8%
FY 2005	87%	13%
FY 2006	85%	15%
FY 2007	86%	14%
FY 2008	84%	16%
Target	100%	0%

New court-mandated representation obligations requiring the OLG to represent children in post-termination of parental rights proceedings (1,055 cases as of June 30, 2008, which increased the OLG's caseload by 10 percent over its traditional caseload) in addition to an increase in traditional cases explain the discrepancy between increasing staffing levels and a lower percentage of cases handled by OLG staff attorneys.

The OLG uses private attorneys as a safety valve whenever its staffing levels do not allow for the timely and adequate representation of all children by staff attorneys. Consequently, the OPD noted in response to OLS Discussion Point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis that its recourse to private attorneys related to budgetary constraints, the hiring freeze, and new court-mandated post-termination of parental rights representation obligations that combined to make the OLG's staffing level insufficient to meet the caseload target per staff attorney.

The OPD also noted that the OLG was experiencing increasing difficulties in recruiting and retaining a sufficient number of qualified private attorneys. When the OLG expanded as part of the reform, many private attorneys accepted full-time positions with the office. Others ceased to be available when they could not secure full-time positions.

Limit Office of Parental Representation's Recourse to Private Attorneys: The reform plan envisions for the OPR to limit the use of private attorneys to instances in which the office has to represent two competing parents. In that specific case, assigning one parent to a private attorney avoids a conflict of interest for the OPR. Given the unpredictability of conflict situations, the reform plan set no specific numeric target as to the number of OPR cases that private attorneys could handle.

Background Paper: The Office of the Public Defender and Child Welfare Reform (Cont'd)

The OPR still relies heavily on outside attorneys, as **Figure 5** shows. In FY 2008, private attorneys handled 61 percent of all OPR cases at a budgetary outlay of \$7.2 million.

Nonetheless, the percentage of cases handled by outside attorneys diminished from 91 percent in FY 2004, the year prior to the start of the reform's implementation. The decline reflects an increase in the number of OPR staff attorneys from 11 in 2003 to 55 in 2008. In response to OLS Discussion Point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis, the OPD estimates that the OPR would need to hire 46 staff attorneys, 24 attorney assistants, 10 investigators, and 16 clerical staff to meet its caseload target without having to rely on private attorneys.

Fiscal Year	Staff Attorneys	Private Attorneys
FY 2003	11%	89%
FY 2004	9%	91%
FY 2005	35%	65%
FY 2006	39%	61%
FY 2007	37%	63%
FY 2008	39%	61%
Target	None Specified	None Specified

The OPR uses private attorneys as a safety valve whenever its staffing levels do not allow for the timely and adequate representation of all children by staff attorneys. Consequently, the OPD noted in response to OLS Discussion Point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis that OPR's recourse to private attorneys resulted from budgetary constraints, the hiring freeze, and attrition that combined to make the OPR's staffing level insufficient to meet the caseload target per staff attorney.

Increase Hourly Rate for Private Attorneys from \$30 to \$75: The reform plan calls for the OPR to raise the hourly rate for private attorneys from \$30 to \$75 to attract qualified and experienced attorneys. In actuality, rates increased to \$50 for each hour of out-of-court work and \$60 for each hour of in-court work. The OPD cites budgetary constraints as the reason for not increasing the hourly rate to \$75. The OPD noted in reply to OLS Discussion Point #38 in the FY 2008-2009 Department of the Treasury Budget Analysis that the rate hike had not allowed the office to expand its pool of private lawyers, which may mean that the rates are still too low.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services provides nonpartisan assistance to the State Legislature in the areas of legal, fiscal, research, bill drafting, committee staffing and administrative services. It operates under the jurisdiction of the Legislative Services Commission, a bipartisan body consisting of eight members of each House. The Executive Director supervises and directs the Office of Legislative Services.

The Legislative Budget and Finance Officer is the chief fiscal officer for the Legislature. The Legislative Budget and Finance Officer collects and presents fiscal information for the Legislature; serves as Secretary to the Joint Budget Oversight Committee; attends upon the Appropriations Committees during review of the Governor's Budget recommendations; reports on such matters as the committees or Legislature may direct; administers the fiscal note process and has statutory responsibilities for the review of appropriations transfers and other State fiscal transactions.

The Office of Legislative Services Central Staff provides a variety of legal, fiscal, research and administrative services to individual legislators, legislative officers, legislative committees and commissions, and partisan staff. The central staff is organized under the Central Staff Management Unit into ten subject area sections. Each section, under a section chief, includes legal, fiscal, and research staff for the standing reference committees of the Legislature and, upon request, to special commissions created by the Legislature. The central staff assists the Legislative Budget and Finance Officer in providing services to the Appropriations Committees during the budget review process.

Individuals wishing information and committee schedules on the FY 2010 budget are encouraged to contact:

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