

OFFICE OF THE PUBLIC DEFENDER RESPONSES

OFFICE OF LEGISLATIVE SERVICES ANALYSIS OF THE NEW JERSEY BUDGET FISCAL YEAR 2011-2012

BUDGET QUESTIONS FOR ALL DEPARTMENTS AND UNITS

1. The FY 2011 budget required all departments to cope with reduced appropriations. In some instances these reductions could be handled through improved efficiency and operational adjustments. In other instances less money resulted in programmatic reductions, including both fewer recipients and reduced benefits. Please provide examples of operational improvements in your department that saved money in FY11 and provide examples where less government meant reduction in services.

The Office of the Public Defender (OPD) continues to carefully manage the resources appropriated for OPD purposes in the FY2011 Appropriations Act. As part of these ongoing management efforts, for the first time, the OPD along with all of the State's other major departments and agencies is publishing data providing insight into OPD priorities and performance, including how resources are allocated across the OPD's core mission areas. In this regard, the OPD posts up-to-date performance data or metrics every month related to identified core mission areas, available at <http://www.yourmoney.nj.gov>. This performance measurement reporting is the first step in an ambitious, multi-year performance improvement and efficiency program known as the "Governor's Performance Budgeting Initiative." The goals of the initiative include ensuring that budget priorities align with departmental and agency missions, focusing managers on achieving positive results and outcomes for citizens, clients, and taxpayers, and building a culture of innovation and continuous improvement, while making government more transparent and accountable.

More specifically, the OPD has improved operational efficiencies by maximizing the use of its' professional services account appropriations, which pays for services provided by private attorneys ("pool attorneys" and "per diem attorneys"), experts, court reporters, and temporary clerical services. The hiring of full-time staff or "insourcing" of work currently performed by outside contractors for the Office of the Public Defender (OPD) contributes the greatest portion of the operational efficiencies for FY 2011 and FY 2012. The Public Defender determined that in-house full-time staff is more cost-effective and provides a higher quality and quantity of legal representation relative to that which is provided through the use of per diem attorneys.

Over the last three years, due to the hiring freeze, the OPD was only authorized to backfill a limited number of staff attorney positions dedicated to the OPD's Child Welfare programs through the Office of Law Guardian and the Office

of Parental Representation. The hiring freeze demanded the utilization of these contractors in lieu of permanent full-time attorney staff to meet the staffing requirements pursuant to the Belsole/Pashman court staffing formula and Child Welfare Reform mandates. Since 1990, the OPD staffing level was set in conformance with the Belsole/Pashman court staffing formula requiring 2 attorneys, 1 investigator, and 1.25 clericals for each sitting criminal judge. In addition, in order to fulfill our constitutional mandate the OPD engaged and assigned a share of its criminal (trial) caseload to private per-diem attorneys. Per Diem attorney representation includes all aspects of vertical representation from case assignment by the Administrative Office of the Courts until disposition.

One area targeted for "insourcing" was the replacement of more costly per diem attorneys with full-time staff. In order to reduce its spending on private per diem attorneys the OPD began filling critical full-time attorney vacancies. The long term goal calls for the elimination of the 113 per diem attorneys. Since last April, the OPD was able to hire 62 new full-time attorneys but lost 23 full-time attorneys due to attrition. The net gain of 39 full-time attorneys allowed the agency to eliminate 50 per diem attorneys thereby reducing the statewide count from 113 to 63 as of March, 1, 2011. The OPD continues to work to reduce its per diem count, and has saved over \$750,000 to date on this initiative. The OPD continues to evaluate and monitor staff attorney caseloads from regional office to regional office to ensure maximum efficiency and requiring where appropriate that managing attorneys carry partial caseloads.

The second area of "insourcing" was the anticipated replacement of costly temporary clerical workers with full-time staff. On April 1, 2010, the OPD was mandated to eliminate all 95 temporary service workers in order to reduce the annual clerical cost of \$2.7 million. These workers filled a critical void in Office of the Public Defender clerical ranks over the last three fiscal years due to the OPD's inability to hire permanent staff for the clerical functions of the agency consistent with the Belsole/Pashman formula. Therefore, as attrition occurred in the clerical ranks, the OPD was forced by a hiring freeze to address its clerical need through the temporary service mechanism. The services provided included timely and daily data input critical for the efficient opening and closing of over 110,000 OPD clients annually in all 21 counties, as well as timely client billing of each case processed by the OPD. Additionally, these temporary services employees provided other clerical needs including but not limited to the clerical support of attorneys and investigators.

It was anticipated that displaced full-time clericals from other State agencies would be re-employed to the OPD. That expectation would have served as the first step of "in-sourcing" the clerical function within the OPD. However, this step did not occur, and since last April, the OPD has had little success with "in-sourcing" of temporary clerical services with full-time staff to fill critical vacancies. During this period, the OPD was able to hire 14 new full time clericals but lost another 18 full time clericals due to attrition. The net loss of 4 full-time clericals along with the elimination of the 95 temporary service clericals statewide has directly and

negatively impacted our ability to close cases and bill clients in a timely manner. This is an example of where less government translates into in a reduction in services that has an overall negative impact. Direct services to clients are affected and the billing and collection function is equally impacted.

A positive area of operational efficiencies that OPD implemented in FY 2011 was the design and implementation of a web-based automated Pool Attorney Timekeeping System (PATS) that allow pool attorneys too efficiently, accurately and consistently detail time dedicated to the billing of Public Defender cases. The system will match and accumulate pool attorney's cases and hours assigned for each day noted on an electronic timesheet. Submissions with excessive billings will be detected immediately. Under the new system pool attorneys will be able to go on line and submit standard, concise, and legible invoices to expedite payments while at the same time allow for a greater degree of Public Defender scrutiny and accountability in the processing of payments. The new automated system will automatically conduct pre-audit reviews of all pool attorney payables and automatically ensure against the duplication of billing for all pool attorneys assigned cases in every county. To date, PATS has captured over \$75,000 in pre-audit finds with potential over billings. In addition, there has been significant in-house savings in the number of staff time dedicated by each regional office in the processing and review of over 40,000 pool attorney invoices annually. Furthermore, two staff positions assigned to conduct post audits were not backfilled last fiscal year when those two positions became vacant.

Another area of operational efficiencies implemented in FY2011 was in the use of Experts and/or Expert Witnesses. Experts are used extensively in the representation of OPD clients where necessary. It is the position of the Public Defender that financial reductions required during austere financial times must be extended to all components of the OPD operation to ensure that OPD services to our clients will continue to be unimpeded. To assure the Public Defender philosophy of shared sacrifice, the private, as well as the public portion of our operation, should shoulder the economic burden during difficult financial times. Essentially, the Public Defender is requiring a fair distribution of sacrifice. Therefore, the Public Defender has required each expert engaged on behalf of our clients to reduce their fees. So, while all experts are being asked to participate in this savings, we do not perceive any decline in either the extent of expert usage or the quality of their service. The OPD has realized expert cost savings of \$314,731 for FY 2011.

2. The FY 2011 budget included reductions requiring Federal approvals, waivers or similar actions in order to achieve the projected savings. Please identify each such reduction in your FY 2011 budget, and indicate whether approvals/waivers have been obtained. If not, please explain whether approvals are still expected in this case, and if so, why. If federal approval is not received, what alternative actions may have to be taken to achieve savings of comparable value?

No federal action was required.

3. The revised budget plan for Fiscal Year 2011 requires appropriation lapses of \$605 million to achieve a balanced budget and an ending surplus. Please list all appropriation items and amounts in your agency's chart of accounts that have been identified to contribute to that lapse target. Please describe the impact of each lapse on the nature, breadth or level of service or benefit provided by each appropriation, and identify and quantify the population that may be affected. Please also identify the amount of FY 2012 funding, if any, recommended to restore, in part or in full, the lapsed amount.

The Office of Management and Budget has submitted, under separate cover, the list of anticipated lapses totaling \$605 million. This amount represents under-spending by departments due to their diligence and oversight in managing their budgets. In addition, oversight of discretionary spending and hiring has led to surplus balances. In some cases, funds that were not needed in FY 2011 to fund programs and services will be necessary in fiscal year 2012. These lapses had no impact on the Office of the Public Defender.

4. The FY 2011 Appropriation Act assumed savings of \$50 million from privatization initiatives. Please describe all privatization initiatives undertaken/to be undertaken by your department, and specify the effective date, the amount of savings in FY 2011 and FY 2012, respectively, and the reduction in positions, filled and vacant. Please also indicate the private vendor(s) involved in the initiative, and the quantity and quality of services required of the vendor(s) relative to the quantity and quality provided by the department prior to privatization.

It has been a top priority of the administration that all State departments and independent authorities carefully explore a variety of opportunities to improve efficiency, reduce the cost of government services, and right-size government's footprint in New Jersey. Among those opportunities are those that would privatize, outsource or otherwise make available a service previously provided by government employees via the private sector – but only if it can be done more efficiently and less expensively.

Following the issuance of the findings contained in the Zimmer Commission report, numerous recommendations, either identified in that report or by the administration before and after the release of that report, have been in various degrees of implementation. For example, some of the Request for Proposals (RFP) that have already been released includes:

- **The Department of Corrections has released an RFP for a vendor to run a pilot food services project at one adult correctional facility as a way to determine if it can save substantially and provide healthier food service options throughout the correctional facility system.**
- **The Department of Environmental Protection has released an RFP to find a private operator and manager of the spring meadow golf course.**
- **The Department of State has released an RFP to find a private operator and manager of the Trenton war memorial.**
- **The New Jersey Turnpike Authority has accepted numerous bids, the result of an RFP, for a private company to provide cash toll collections on its two roads. The South Jersey Transportation authority, which operates the Atlantic City expressway, has done the same.**

The administration also is moving responsibly in other areas of government to reform a variety of enterprises, whose operation can be provided by the private sector, including:

- **The Department of the Treasury, after a task force involving both the executive branch and the legislature agreed to the initiative, is working to turn NJN into a private, non-profit broadcasting entity with no state subsidy.**
- **Leases with private vendors for the operation of Monmouth Park and the Meadowlands Racetrack are currently being negotiated.**

5. For each line item reduction in the department's or unit's FY 2012 budget, specify the change, if any, in the nature, breadth or level of service or benefit that will be provided and identify and quantify the population that may be affected.

In developing the FY 2012 budget, the Office of the Public Defender worked cooperatively with the Treasurer and Treasury staff to identify core departmental mission areas and, consistent with law, to allocate limited budget resources with reference to those core priorities. Developing the budget in this manner, from the bottom up, recognizes fiscal realities while at the same time focusing available funding on key priorities and mission areas.

More specifically, as outlined in the budget summary, the OPD FY 2012 budget proposes to reallocate \$1.093 million from state-wide professional services account appropriations to state-wide salary accounts. This net realignment in funding would allow for the hiring of an additional 30 full-time employees, mostly attorneys and some clericals for the OPD, and thus allow for the continued elimination on the use of state-wide per diem attorneys. The hiring of some clericals for certain regional trial offices will fill critical shortages. This budget reallocation listed above continues to improve the cost-effectiveness of providing legal representation to Public Defender clients.

6. For each line item reduction in the department's or unit's FY 2012 budget, please indicate the number of positions (budgeted, funded and filled or unfilled) that will be eliminated and the number of individuals whose employment will be ended. Please also indicate areas where funded and/or filled positions are projected to significantly increase, and the justification (s) for those increases.

OMB will prepare a response to this question for all agencies.

7. In his budget address, the Governor stated that "Zero-based budgeting...has finally come to New Jersey." This would mark a change from budget processes used in other years. Please provide examples of how the recommended budget for your department is substantively different than it would have been if the budget had been developed by the procedures used in prior years.

Although New Jersey experimented with a form of zero-based budgeting in the 1970's under Governor Byrne, more recent budgets were constructed primarily in an incremental manner. This process typically involved almost automatic acceptance of most, if not all, of the previous year's expenditure levels and then incrementally increasing or decreasing them to correspond with available revenues, without regard to performance. Rather than layering new upon old, zero-based budgeting requires a comprehensive system of planning, analysis, and control requiring assessment, reassessment, and justification of OPD operations and spending priorities from the ground up. Zero-based budgeting is primarily a management tool, as opposed to an accounting method, and focuses on whether current departmental activities are efficient and effective in delivering timely, high quality services within core mission areas. One important example of this approach for FY 2012 involved the support of New Jersey's hospitals. After undergoing a thorough, bottom-up examination of the policies and goals of the State with regard to hospital funding, the Governor's FY 2012 budget recommends an increased funding for hospitals by \$20 million, while at the same time, revising the charity care, hospital relief, and graduate medical education formulas to improve efficiency and predictability.

The Governor's FY2011 budget recommendation for OPD included a similar budget review on the cost of providing legal representation to the indigent client population of this State. A thorough, bottom-up examination on the cost effectiveness of "insourcing" OPD services by having in-house full-time staff to represent criminal and civil clients in lieu of private attorneys was completed. That review supported the Governor's FY 2012 budget reallocation of \$1.093 million from state-wide professional services account appropriations to state-wide salary accounts. This net realignment in funding would allow for the hiring of an additional 30 full-time employees, mostly attorneys and some clericals for the OPD,

and thus allow for the continued elimination on the use of state-wide per diem attorneys. The efficiencies of having full-time staff will directly increase the quality of legal representation provided to all OPD clients.

8. Please identify any reductions in the department's or unit's FY 2012 budget that constitute one-time savings that are not likely to recur in Fiscal Year 2013.

OMB will prepare a response to this question for all agencies.

9. Are any of the appropriations recommended for FY 2012 required to compensate for the effects of Fiscal Year 2010 or FY 2011 reductions? If so, please identify and explain.

OMB will prepare a response to this question for all agencies.

10. Please list any anticipated increase in fees, fares or co-payments that are reflected in the FY 2012 budget recommendation, including the amount of revenue or cost reduction, and the intended effective date.

The fiscal year 2012 proposed budget does not anticipate any new or increases fees, fares or co-payments.

11. Please identify proposed FY 2012 budget reductions which require Federal approvals, waivers or similar actions, and the timetable for seeking and obtaining approvals in order to achieve the projected savings. Please indicate whether approvals/waivers have been previously sought and not obtained, and explain why approvals should be expected in this case. If federal approval is not received, what alternative actions may have to be taken to achieve savings of comparable value? Please also identify proposed budget reductions that may reduce the receipt of federal funds, and the estimated loss of federal funds that would result from such reductions.

No federal approval is required.