

2011 HOUSE APPROPRIATIONS

HB 1023

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

HB1023
January 12, 2011
Recording job# 12781

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

Minutes:

Chairman Thoreson opened the hearing on HB1023

Robin Huseby Huseby, Executive Director, Commission on Legal Counsel for Indigents:
See attached testimony 1023.1.12.11A.

Chairman Thoreson: Under what circumstances would they not collect that fee?

Robin Huseby: Every judge has a different philosophy about it. Primarily, if it's just clear that they're not going to be able to pay. Some judges do a better job than other judges. In any kind of collection proceeding, if it's clear that the defendant has no means whatsoever, it can waived. That would be the primary reason why it wouldn't be collected.

Representative Dahl: When a defendant is ordered to repay, at least part of their defense costs; does that money go to your agency as well?

Robin Huseby: That's a good question. The \$100 fee and the \$25 fee are statutory in line of what needs to be paid. And by statute, it goes into our funds. Recoupment, which is a whole other issue; that is, let's say defendant Jones comes in on a DUI; he's ordered to pay the \$100.00. Then the judge says you also are ordered to pay \$300.00 worth of attorney's fees. If he pays that, it goes into the general fund. The only fund that goes into our fund are those set forth statutory fees. Any recoupment goes into the general fund.

Representative Dahl: Do you know approximately how much, that is, that goes back to the general fund from those fees that are actually repaid?

Robin Huseby: I have known that in the past, it's not that significant as are special fund. We get about 1.7/1.8 a biennium in our special fund; and I know it's then that but, I 'm not sure how much.

Representative Dahl: Do you plan on continuing to pay attorneys \$65.00/ hr this biennium? Is that sufficient?

Robin Huseby: This is an issue that we always look at. We had asked the Governor for some money to increase the fees. They weren't receptive to that; and we as an agency are going to look at this next biennium to see if we possibly can internally do that. \$65.00 across the country is acceptable; although, it's miniscule, we are probably average. We would definitely like to increase it to \$70.00 or \$75.00 an hour. There are some other programs that are paying that much.

Representative Klein: This \$1.7 million income; that's a biannual figure you have?

Robin Huseby: Correct.

Representative Klein: And that's from that \$25.00 or \$100.00 fee?

Robin Huseby: Yes. From the \$100.00 and the \$25.00

Testimony continued.

Chairman Thoreson: So that bill authorizes one FTE, is that correct?

Robin Huseby: It had a fiscal note attached to it of \$800,000.00 and then Senator Nothing was amending that to be inclusive of one FTE.

Representative Kempenich: You travel's going up quite a bit. Is it just the cost?

Robin Huseby: Our travel fees are primarily our attorney's traveling. We do a lot of traveling. Our attorneys have to travel from Dickinson to Rhame to Bowman; Williston to Watford City to Burke County. We don't have any control over that; mileage goes up, travel fees go up.

Rep Kempenich: Do they use state vehicles or do they use their own vehicles?

Robin Huseby: Our policy is that they use state vehicles at all times. But, if they are combining a trip to Watford City and then the weekend to their home, they'll use their home vehicles. They need to get authorization to use their personal vehicles.

Representative Kempenich: Then your ITD costs; what's happening there?

Robin Huseby: It's shocking to me how much ITD goes up. They're just fees that raise and there isn't anything we can do about them.

Representative Kempenich: Are you buying some new computers?

Robin Huseby: We have an IT plan, and it's been approved by IT, so we're on a rotating basis when we replace computers.

Representative Klein: So that \$338,000.00 increase is basically just the raises for the people?

Robin Huseby: Correct.

Representative Kroeber: What if you were to go to \$70.00 an hour. What would that increase your budget?

Robin Huseby: I think that we had projected, it could be upwards of \$250,000.00 for the biennium.

Representative Kroeber: In that area?

Robin Huseby: In that area. What we would do is look at the contracts and analyze them to see if maybe some contracts are being paid too much; maybe some are not being paid enough. So we would have to do some case analysis of it.

Chairman Thoreson: If SB2038 does pass, what numbers are you looking at for increase case load? How much more work is this going to be for the agency do you expect?

Robin Huseby: In looking at 2038, it's not so much the case numbers; because, they're fairly small. I think there's 59 people in the state hospital and for those 59 they each have an annual review. Then there's new people who are committed every year; upwards of 20 a year. The case numbers themselves are small; but, the cases are extremely complicated. The attorneys spend 8 to 10 times more on one of those cases than another case. Where the work comes in is administration from our office; organizing these attorneys to take the case, training them, getting them on board.

Representative Klein : SB2105; what the gist of that one?

Robin Huseby: 2105 is a bill that the Supreme Court is introducing. It's a bill where we would be taking clients; that are not necessarily indigent, but, mentally ill and the Court does not think that they can represent themselves. We're very much opposed to it.

Chairman Thoreson: This bill was introduced by the Supreme Court? They put this bill forward, is that correct?

Robin Huseby: Correct. In fact, it's being heard at 9:00 today.

Representative Kroeber: Along that line, who is doing the work now for the sexually dangerous individuals? Someone's doing it now, who is it?

Robin Huseby: Right now, there's always attorneys doing it. The question is who hires them, who pays for them; right now the counties do. The counties are driving the train on getting us to pay it; rather than the counties.

Representative Kroeber: So it's coming out dollars?

Robin Huseby: Right. County coffers and their biggest complaint is that, for some of these smaller counties, the defense bill for one of these can be a budget buster.

Chairman Thoreson: Robin, is there any one part of the state where you're seeing more growth than others in your workload? Is it being impacted by growth in one part of the state over the other?

Robin Huseby: Fargo and Bismarck are always ones that we're tweaking and working because of the case load just goes up. The are that's an aberration right now is Williston and Dickinson. It creates all kinds of problems. It creates number problems, it creates availability of attorney problems. We've just advertised for a supervising attorney in Williston because ours got the judgeship in Williston; and we had to spend \$3,000.00 on advertising. We advertised all over; but we did find an attorney from Montana who took the job.

Chairman Thoreson: Where's that attorney based now? Are they in Dickinson or Williston?

Robin Huseby: Williston. But we're having to look at increases in pay, incentives, retention bonuses and the numbers are going up.

Chairman Thoreson closed the hearing.

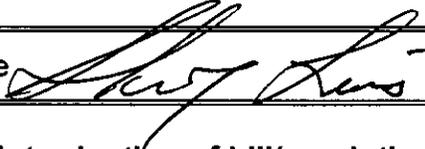
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

HB1023
January 26, 2011
Recorder Job# 13459

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

Minutes:

Representative Dahl opened the hearing on HB1023.

Representative Dahl: We're increasing your general fund appropriation from approximately \$9.47 million to \$9.8 million. Is that all benefit and salary increases?

Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents: That's correct.

Representative Dahl: Is that the 3 and 3?

Robin Huseby: I'm not sure what it is.

Representative Dahl: In regard to the other funds, it looks like in the last session that was approximately \$1.97 million. Is that the \$25.00 fee that's assessed in some cases; as well as the court administration fee? What comprises that \$1.97 million?

Robin Huseby: The majority the \$100.00 collection of the administration fee; and a small percent comes from the \$25.00 application fee.

Representative Dahl: That is the entire source of that \$1.9 million there are no other funds?

Robin Huseby: That correct. We don't have any other funds or grants coming in.

Representative Dahl: You said you contract out for \$65.00 if there's a conflict; then, you contract with attorneys for \$65.00 an hour. I just wondering generally your 16 full-time attorneys make?

Robin Huseby: We have attorneys that are identified as attorney I, attorney II, and attorney III; and we follow the human resource minimum/maximum. We are usually at a mid point

level. A new attorney getting out of law school, maybe, with 1 of experience would make around \$50,000.00 a year. An attorney II, who had 3 years of experience; and has worked in a firm, would probably be around \$55,000.00 to \$58,000.00 per year. The supervising attorney, whose attorney III, will usually start at around \$60,000.00 to \$62,000.00 per year.

Representative Dahl: That seems to be right in line with what a state's attorney would make.

Robin Huseby: We should be proud of that in the state of North Dakota; in many states, that's one of the top complaints of indigent defense is that they are not at parity with the prosecutors.

Representative Kempenich: Do you contract for attorneys in different areas?

Robin Huseby: Yes, everywhere.

Representative Kempenich: Is this somebody that you would actually hire or is this just contract money that you'd be using this for?

Robin Huseby: We're not asking for any new positions this year.

Representative Kempenich: So it's comparable numbers then?

Robin Huseby: Correct. We were just talking about what our attorneys get paid compared to what other state's attorneys get paid.

Representative Dahl: There are no big technology projects that the commission is looking is into at this time?

Robin Huseby: We're on a schedule when we replace; and we follow that schedule that we get approved with the IT department.

Representative Dahl: What is that schedule?

Robin Huseby: I don't know it. I can get it to you, we have it in writing.

Representative Klein: Have you had the hearing on SB2038 yet?

Robin Huseby: We have had it in the senate. From all indications, it sounds like it will be passing.

Representative Klein: This is going to be a major increase in your operation. The dollars to fund that isn't all coming from fees; in other words, there will be some general fund dollars in there. What kind of an approximate split do you look at?

Robin Huseby: If that does go through both chambers it will be all general funds; the \$813,000.00. It won't be coming from any special funds. It will be all general funds.

Representative Klein: In the past this was borne by the counties; now the state is taking it over?

Robin Huseby: The counties had paid the defense for all the people that are committed to the state hospital. The association of counties they wanted it all to be borne by us.

Representative Kempenich: How many times do they have the chance to use the service when they're committed?

Robin Huseby: There is a very strict civil commitment statute; and you have to follow the procedure, so, when you commit someone they have an attorney. Then they can appeal that to the Supreme Court; then, every year they have the right to a hearing. So this is a self-perpetuating program; it starts out small but mushrooms very rapidly.

Representative Kempenich: If this keeps going through, can we do something once you're on a civil commitment?

Robin Huseby: It does. In Minnesota they've had to build another facility from Moose Lake. They're looking at doing a mental hospital to fill with sex offenders that are committed. It's a program that perpetuates itself; however, those constitutional guarantees to the people who are committed are crucial; because in some cases, it's a life sentence.

Representative Dahl: Has there been a hearing on SB2105? I believe the Supreme Court introduced that?

Robin Huseby: There had been a hearing in the senate; but, we haven't gotten to cross over yet. It has not been voted on yet.

Representative Klein: Going back to SB2038; what did you use to arrive at that figure, that \$814,000.00? Was this what you gathered from the counties from the previous biennium? Then, to follow on SB2105; do you know if that's going to come out of the general fund also?

Robin Huseby: We were disappointed in the association of counties; because they had not gathered information from the counties as to how many cases there had been in the previous biennium. I talked to Alex Schweitzer, the head of the state hospital; and we came up with approximately how many new cases there are each year. We estimated that there would be 50 new cases for the biennium; 30 in the first year, 20 in the second year. We assigned a number to those cases of how many projected attorney hours there would be at \$75.00 an hour; and we also projected how much the annual reviews would cost of the people who are committed right now. There's approximately 50 people committed right now in the state hospital.

As to your second question, for SB2105 we don't know how many there might be. Our fear with the bill, is when the judges get tooled, I'm concerned if they'll see as a way to help alleviate tough situations they have in court. I'm worried that we might go from one year that they don't know what to do with; to many years because now they have us to take it. If we do get some of these cases, they will be tough cases; because, they are difficult clients.

They're clients that have gone before the court and said they want a lawyer, they're not going to pay for a lawyer; but, I want a trial.

Representative Klein: And probably changes in attorney's as they get frustrated?

Robin Huseby: Yes.

Representative Klein: Does the judge determine that you're not capable of acting in your own defense? How is that determination made?

Robin Huseby: They have proposed criteria that the judge will look at; the judge is supposed to follow this criteria. He'll look at the mental evaluation, the complexity of the case; and determine if that person can represent themselves competently.

Representative Klein: Based on previous bienniums, how many cases have you had or do you expect?

Robin Huseby: The Chief Justice believed that there had only been 2 since 2008. There was a Supreme Court in 2008 that set this new standard; where someone can be competent to be tried, but, incompetent to handle the trial. It's a very fine line.

Representative Dahl: With regard to the indigent defense fund; that you referenced in your initial testimony. Is that a fund that has an ending fund balance?

Robin Huseby: Between the 2 fees, we bring in approximately \$1.7 million to \$1.8 million per biennium. The court improvement committee is also the beneficiary of many hundreds of thousands of dollars through those fees. We do have a ending balance in our special fund; at the end of the biennium, we usually look at \$1.9 million.

Representative Klein: Of those 50 people that are in Jamestown right now; how many of them are veterans?

Robin Huseby: I can get the information for you.

Representative Klein: The reason I'm asking that is there may be some other funding through the Veteran's Administration, etc.

Robin Huseby: I can find out for you.

Representative Kroeber: First a statement then a question. Remember that all the sexual offenders that are in Jamestown, all those dollars are general fund dollars. All those dollars are in human services for the sexual offenders at Jamestown. So, they must be going back to their original county and they're having to pay for the yearly review?

Robin Huseby: Human services pays for the evaluations, the treatment, and the stay. This is about the defense of the people; who pays the lawyers, who pays for the lawyers to be trained, who pays for the representation; and the counties now pay that.

Representative Kroeber: When I was doing more work with corrections, a prisoner in normal facilities were around \$32,000.00 to \$34,000.00 per year; and these are \$90,000.00. I'm from Jamestown and this is an area where you don't have a full time staff; would you use contract attorneys? For the \$65.00 are they able to handle them all or are you having a problem as far as getting attorneys for all the people in Jamestown?

Robin Huseby: We're talking about criminal defendants? We have trouble taking care of people everywhere. Right now, in Jamestown, we're ok.

Representative Dahl: Do you have a high turnover rate; whether it be your full time staff or contract attorneys?

Robin Huseby: We have a very low turnover rate. We've lost 2 attorneys since 2005.

Representative Kempenich: Do you use a temporary salary line to make up some difference to get attorneys?

Robin Huseby: The part time salary items are for administrative help. It's something we think about a alot.

Representative Kempenich: Have you ever had to pull one of your attorneys and send them in a different direction?

Robin Huseby: We do it all the time.

Representative Dahl: With regard to the indigent defense fund. Do you have any other funds that you use that might have an ending fund balance?

Robin Huseby: No, we don't.

Representative Klein: The concern of mine is, there's a lot of concern about this thing growing. Do you see some of that continuing or is it happening in other states that you're familiar with?

Robin Huseby: It is a real concern. Part of the problem is when we have bills like SB2038, I'm concerned about several areas. One is veteran court; the Supreme Court just found a committee to look at that. Another one is mental health, regular mental health, the counties pay for that now; and that's a huge program.

Representative Dahl closed hearing on HB1023.

A roll call vote was taken with a "do pass".

2011 General Discussion
(Check appropriate box)

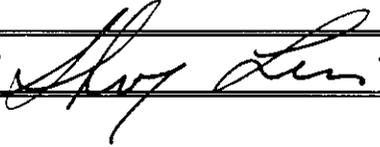
- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Government Operations

Date of meeting/discussion: February 10, 2011

Recorder Job Number: 14301

Committee Clerk Signature



Minutes:

Chairman Thoreson opened the general discussion on HB1023.

Representative Dahl: It's a pretty simple bill. They had a significant increase in FTE's in the 2007-2009 biennium, one last biennium. They're not asking for any additional FTE's and the only increases to their budget are the 3% and 3% salary package. There are no other big projects.

Chairman Thoreson: This is one that we saw pretty massive growth in from the beginning when it was created after the 2005-2007 biennium; but I think they reached the level that they're comfortable where they're at.

Chairman Thoreson: Ms. Huseby is kind of a no nonsense person.

Representative Klein made a motion to pass HB1023.

Representative Dahl seconded the motion.

A roll call vote was made by the clerk. 7 Yea's 0 Nay's 0 Absent

Representative Dahl has the floor assignment

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1023
February 18, 2011
Recorder Job# 14738

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

Minutes:

Chairman Delzer: Opened the discussion on HB1023.

Representative Dahl: This is a pretty simple budget, there are no new FTE's, no one time expense requests. So all that's in their budget is the 3% and 3%; in accordance with the executive recommendation.

Chairman Delzer: The administration fund, how much did they receive on that?

Representative Dahl: I think it was the first \$750,000.00. In criminal cases, there are \$225.00 in fees; \$100.00 of that gets split between the courts and indigent defense.

Chairman Delzer: No amendment to the bill?

Representative Dahl: No.

Representative Dahl: Made a motion for a "Do Pass".

Representative Thoreson: Seconded the motion.

Chairman Delzer: Discussion.

Representative Skarphol: I would like the opinion of the committee as to the success of this; this is a relatively new agency or entity that we created a couple of sessions ago. I believe they do some direct hiring of people and some contract hiring. I would like to hear a little of the success or failure aspects of that.

Representative Dahl: I think the council has been pretty impressive. You can see the spike on the green sheet from 2005-2007 where they hired the majority of their staff. They have done a lot with a fairly stagnant budget. It is difficult to find attorneys, since they can make (many times) more than what indigent defense is paying. I think they pay \$65.00 an

hour. That's always an issue; but, I think they've done a nice job with what they've been given. We're always looking to add things to their agency. There is a bill out there that would add the civil commitment of sex offenders; I know that's on the senate side. It would have a significant impact on their budget and what they would need to do for staff. That's not included in this particular budget.

Chairman Delzer: We made some changes last time, we added more duties to them. Was there any discussion in the section of whether we should have a report or a study to see how this is working? We only took it away from the courts four or six years ago.

Representative Dahl: I'm not aware of any significant duties that were added last time. I know they received an additional FTE. I know that they're still in their infancy in the life of their agency. So, I think they've done a nice job of developing standards for hiring counsel; they've gone through the administrative process. I'm not sure if they are required to come and give any reports other than on their budget.

Representative Skarphol: There was pressure at the time to get them to contract to the largest extent possible. You say they are still having difficulties in the west. They're comfortable with their situation; or are they still feeling some stress or pressure from us for them to do things that they think they can not do?

Representative Dahl: Ms. Huseby has said she will do whatever we make her do; I think she is somewhat resistant. She is very good at what she does; she'll do that. I think they're going to internally review their rate that they pay attorneys. I think they're going to be looking at that this next biennium; but, it's not anything that requires a significant study.

Vice Chairman Kempenich: They've been hitting almost exactly on their projections. One thing is that Ms. Huseby brought up the state of South Dakota when we first started this. They had a \$18 million budget; and we've been sitting around \$10 million to \$11 million for the last couple of bienniums. I think they do staff the harder to reach areas.

Representative Kroeber: If you want more information, the administrator of this program is very good. They had 9,500 criminal cases, they have public offices in Williston, Minot, Dickinson, Bismarck, Fargo, and Grand Forks; and 46% of the legal services are from their agency, 54% are still by contract to private attorneys. Their attorneys are at \$65.00 an hour; that's where they've been.

Chairman Delzer: Can you look up and see the status on SB2038?

Representative Thoreson: SB2038 which would have been the legal counsel for sexually dangerous individuals; that did fail in the senate. That was something that came out of an interim committee; I don't think the commission supported that bill. SB2105 also failed in the senate.

Chairman Delzer: Further discussion?

Representative Kreidt: With the indigent funds, when they've gone through the process and get back on their feet, is there some way that they have to repay some of those legal fees?

Chairman Delzer: It's my understanding there is no repayment after the fact.

A roll call vote was made for a "Do Pass". 20 Yea's 0 Nay's 1 Absent.

Chairman Delzer: Closed the discussion.

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1023

House Appropriations Government Operations Division Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Representative Klein Seconded By Representative Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman Thoreson	✓		Representative Glassheim	✓	
Vice Chairman Klein	✓		Representative Kroeber	✓	
Representative Brandenburg	✓				
Representative Dahl	✓				
Representative Kempenich	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Representative Dahl.

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

Date: 2/18
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1073

House Appropriations Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Dahl Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken					
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Rep. Dahl

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

REPORT OF STANDING COMMITTEE

HB 1023: Appropriations Committee (Rep. Delzer, Chairman) recommends DO PASS
(20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1023 was placed on the
Eleventh order on the calendar.

2011 SENATE APPROPRIATIONS

HB 1023

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

HB 1023
03-02-2011
Job # 14855

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

An appropriation for the Commission on Legal Counsel for Indigents.

Minutes:

See attached testimony.

Chairman Holmberg called the committee to order on Wednesday, March 2, 2011 in reference to HB 1023. Tad H. Torgerson, OMB and Becky J. Keller, Legislative Council were also present. We will open our hearing on 1023 early and thank-you, Robin for coming in early.

Robin Huseby, Executive Director for the Commission on Legal Counsel for Indigents testified in favor of HB 1023 and provided Testimony attached # 1. Her testimony provided a general description of her agency. We are asking for the same budget with a slight increase that consists of salary and benefits.

Chairman Holmberg Are there any questions? I am correct in stating that the House made no changes in your budget from the executive recommendation. He was told that was correct.

Senator Warner: You mentioned increases in salary and benefits, I assume that is for your administrative employees. Are you changing any of the fees that you paid towards contract lawyers or the lawyers that work within your agency and if you wanted to comment at the same time on your success on attracting and retaining lawyers at the fees that you pay?

Robin Huseby: We are not seeking an increase for our attorney fees which is at the rate of \$65.00 per hour. We did ask the governor for monies to be put into the budget and it was rejected for that particular matter. I know that it would be easy for me to get up and say "we should raise that to \$70.00, and I do feel we should. However, it would have about a \$300,000 fiscal impact on our agency for the biennium and we just didn't feel this was the time to do it. We do support our attorneys more and more in other ways that takes the burden off them by reducing case load, increasing services such as private investigators, things that make their life easier but necessarily monetarily. She was told recruiting and retaining was the other part. She replied it ebbs and flows like any thing but we've had fairly good luck recently of recruiting young attorneys and we try to pair them up with some of the older and more experienced ones but I think in the last couple 3 months I've signed up 4 or 5 new attorneys and if that keeps going up, it's been going up steadily in terms of recruitment so I am pretty happy about that. There are some areas though I might say that are kind of the black hole of North Dakota. I

have a real hard time recruiting attorneys up in Devils Lake area and that's a big concern of mine.

Senator Wardner: First a comment and then a question on history. First of all, I just want to complement your organization. Out in Dickinson your people do a wonderful job, they go above and beyond the call of duty and these poor people that get into trouble, whatever it may be, they seem to be there doing the very best they can representing them almost as if they were paying. From someone on the outside looking in, you can be proud of the two you have there. they could be working someplace else and so I am really pleased that they stay in there with you and every time I see them I complement them. What did we do before 2005? Did you have to contract for attorneys to represent these people?

Robin Huseby: Yes. They contracted with the attorneys and what had happened coincidentally with you folks passing the legislation in 2005, there had been a basic collapse of the system, because the contractors in your area and the contractors in Minot quit, so the clerks were going around calling people, anybody who had a law license. When I started it was bedlam so that's why in Dickinson, Minot and Williston we put in public defender offices right away.

Chairman Holmberg: Thank-you very much, Robin. Robin offered to come in the event there would be a subcommittee assigned. He stated he was sure we won't have a subcommittee.

Bill Neumann, Executive Director of State Bar Association of ND testified in favor of HB 1023. When I talk to other lawyers in other states I always proudly tell them that ND, thanks to the wisdom and foresight of our legislative branch of government is one of the best most effective and most economically efficient public indigent defense systems in the country. We are happy to support HB 1023.

Chairman Holmberg closed the hearing at this time. We will not have a subcommittee. We will take the bill up one time.

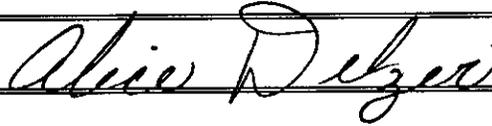
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1023
03-18-11
Job # 15662

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A ROLL CALL VOTE FOR A DO PASS ON THE INDEGENT DEFENSE BUDGET

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee to order on Friday, March 18, 2011 in reference to HB 1023. All committee members were present except Senator Warner. Sara Chamberlin, Legislative Council and Tammy R. Dolan, OMB were also present.

Chairman Holmberg asked for a motion on HB 1023. **V. Chair Grindberg moved a do pass. Seconded by Senator Erbele.**

Chairman Holmberg: We had Bill Neumann here to speak on this bill. Would you call the roll for a DO PASS on HB 1023.

A ROLL CALL VOTE WAS TAKEN ON HB 1023. YEA: 12; NAY: 0; ABSENT: 1. Senator Erbele will carry the Bill. The hearing was closed on HB 1023.

Date: 3-18-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1023

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Grindberg Seconded By Erbele

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner		
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Erbele

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

REPORT OF STANDING COMMITTEE

HB 1023: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1023 was placed on the Fourteenth order on the calendar.

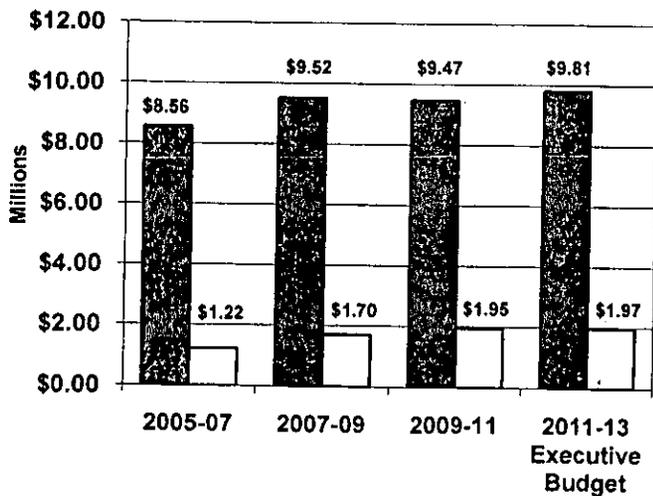
2011 TESTIMONY

HB 1023

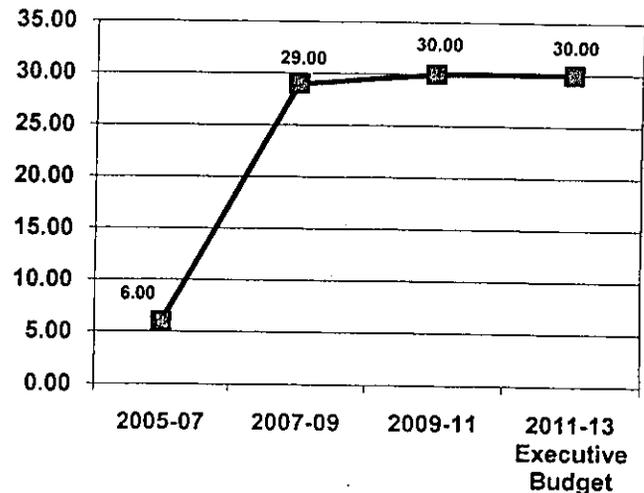
Department 188 - Commission on Legal Counsel for Indigents
House Bill No. 1023

	FTE Positions	General Fund	Other Funds	Total
2011-13 Executive Budget	30.00	\$9,808,430	\$1,970,852	\$11,779,282
2009-11 Legislative Appropriations	30.00	9,470,148	1,950,217	11,420,365
Increase (Decrease)	0.00	\$338,282	\$20,635	\$358,917

Agency Funding



FTE Positions



■ General Fund □ Other Funds

Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2011-13 Executive Budget	\$9,808,430	\$0	\$9,808,430
2009-11 Legislative Appropriations	9,470,148	0	9,470,148
Increase (Decrease)	\$338,282	\$0	\$338,282

Executive Budget Highlights

No major changes for this agency.

Continuing Appropriations

Indigent defense administration fund - North Dakota Century Code Sections 29-07-01.1 and 29-26-22 - Funding is from a \$25 nonrefundable fee for court-appointed defense services and from a \$100 court administration fee in all criminal cases except infractions. The first \$750,000 collected is used for indigent defense services, the next \$460,000 is used for court facilities, and additional amounts are deposited equally into the two funds.

Significant Audit Findings

The operational audit for the Commission on Legal Counsel for Indigents conducted by the State Auditor's office during the 2009-10 interim identified no significant audit findings.

Major Related Legislation

Senate Bill No. 2038 - Legal counsel for sexually dangerous individual commitment cases - Transfers from the counties to the Commission on Legal Counsel for Indigents the responsibility for providing legal services for those individuals who are indigent and who are the subjects of sexually dangerous individual commitment proceedings. The bill includes an appropriation of \$814,293 from the general fund for the 2011-13 biennium.

Senate Bill No. 2105 - Legal services in criminal cases - Requires the commission to provide legal counsel services to persons who refuse to retain their own counsel if the court has determined they are incompetent to represent themselves.

HOUSE BILL 1023-January 12th, 2011
APPROPRIATIONS FOR COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

General Description of Agency

The Commission on Legal Counsel for Indigents is an Executive Branch agency with 30 full time employees. We were legislatively created in 2005. We provide legal services to indigent clients across North Dakota in criminal and juvenile matters. In 2009-2010, we provided services in approximately 9500 case assignments.(criminal, juvenile, appeal, post-conviction, and miscellaneous cases). We have full time public defender offices in Williston, Minot, Dickinson, Bismarck, Fargo and Grand Forks. Of the 30 FTE'S, 16 are full time attorneys in the public defender offices providing legal services.

Our administrative office is in Valley City and we have an Executive Director, a Deputy Director, a Financial Officer (he works out of the Bismarck office), and an administrative officer.

Approximately 46% of the legal services provided from our agency are from the public defenders working for the agency. Because of conflicts and time constraints, more than half of our state indigent cases have to be handled by non public defenders. Approximately 54% of the services are provided for by private attorneys with whom we contract across the state. We currently pay them at a rate of \$65.00 an hour for their services. We have contracts with 40-50 attorneys at any one given time.

A copy of our governing statute is attached hereto.

Recent Audit

We recently underwent an audit by the North Dakota State Auditor's office. There were no formal recommendations. Two informal recommendations (that we have employees annually sign off on our business code of ethics, and that we follow procurement rules, were agreed to by the agency and followed through with).

Funding Sources

2-Budget/Commission on Legal Counsel

We receive general fund money for the vast majority of our agency spending. We also have a special fund (282, 'Indigent Defense Administration Fund') which has continuing appropriation, as follows. §29-07-01.1 (1) of the North Dakota Century Code sets for the continuing appropriation for our agency consisting of a defendant "application" fee collected by the clerks of courts. The Judges may order the applicants for indigent services to pay a \$25.00 application fee, and this fee is put into the defense administration fund. Likewise, in §29-26-22(2) the Judge may order a defendant to pay a 'court administration' fee of \$100.00. This one hundred dollar fee is also collected by the clerks, and the monies are split between our agency and the Supreme Court Court Improvement Committee (by statute), and our share is deposited in our indigent defense fund.

2009-2011 Appropriations and spending

In 2009-2011 we were funded with general funds of **\$9,470,148** and had authority to spend **\$1,950,217** of our special funds, for a total budget of **\$11,420,365**. We anticipate turning back very little general fund dollars at the end of this biennium.

Approximately half of our dollars spent go to 'professional services'; that is, paying the contractors to handle legal cases and support services for those attorneys (like private investigators, professional evaluations, etc.). These expenditures can be very volatile; if we get a high profile case in that our public defenders have to conflict out of, and we end up hiring a contractor to take the case, the costs can sky rocket and we are unable to always budget for this unknown. So far we have been able to absorb the costs with the general fund dollars and special fund availability.

2011-2013 appropriations

The general fund monies for our 2011-2013 budget are **\$9,808,430**. The authority for

3-Budget/Commission on Legal Counsel for Indigents

expenditure out of our special funds is **\$1,970,852**, for a total budget of **\$11,779,282**.

We expect **no major variances** in spending.

We anticipate **no major one time spending items**.

Other pending legislation of note

There are currently two bills before the legislature (SB2038, and SB2105), both of which would have a fiscal impact on our agency. SB2038 purports to give our agency the defense of cases for sexually dangerous individuals who are committed to the North Dakota State Hospital. We have submitted a fiscal note with that bill, and that includes one FTE position, if the bill and appropriation is approved. SB 2105 purports to revise our governing statute to allow us to handle 'other criminal defendants' who may not be indigent but otherwise have mental issues and a Judge finds he/she should have counsel provided by our agency. We have also submitted a fiscal note on that bill.

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

HOUSE BILL 1023
APPROPRIATION FOR COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
(Senate Appropriations-March 3rd, 2011, 3:30 p.m., Harvest Room)

General Description of Agency

The Commission on Legal Counsel for Indigents is an Executive Branch agency with 30 full time employees. We were legislatively created in 2005. We provide legal services to indigent clients across North Dakota in criminal and juvenile matters. In 2009-2010, we provided services in approximately **9500** case assignments.(criminal, juvenile, appeal, post-conviction, and miscellaneous cases). We have full time public defender offices in Williston, Minot, Dickinson, Bismarck, Fargo and Grand Forks. Of the 30 FTE'S, 16 are full time attorneys in the public defender offices providing legal services.

Our administrative office is in Valley City and we have an Executive Director, a Deputy Director, a Financial Officer (he works out of the Bismarck office), and an administrative officer.

Approximately 47% of the legal services provided from our agency are from the public defenders working for the agency. Because of conflicts and time constraints, more than half of our state indigent cases have to be handled by non public defenders. Approximately 53% of the services are provided for by private attorneys with whom we contract across the state. We currently pay them at a rate of \$65.00 an hour for their services. We have some attorneys on a monthly contract, or 'flat fee contract', in the larger communities such as Fargo and Bismarck. We also have conflict contracts with 30-40 attorneys at any one given time.

A copy of our governing statute is attached hereto.

Recent Audit

We recently underwent an audit by the North Dakota State Auditor's office. There were no formal recommendations. Two informal recommendations (that we have employees annually sign off on our business code of ethics, and that we follow procurement rules, were agreed to by the agency and followed through with).

Funding Sources

We receive general fund money for 83% of our budget. 17% of our budget consists of special funds money, as follows: §29-07-01.1 (1) of the North Dakota Century Code allows a defendant to be assessed an “application” fee collected by the clerks of courts. The Judges may order the applicants for indigent services to pay a \$25.00 application fee, and this fee is put into the defense administration fund. Likewise, in §29-26-22(2) the Judge may order a defendant to pay a ‘court administration’ fee of \$100.00. This one hundred dollar fee is also collected by the clerks, and the monies are split between our agency and the Supreme Court ‘Court Improvement Committee’ (by statute), and our share is deposited in our indigent defense fund.

2009-2011 Appropriations and spending

In 2009-2011 we were funded with general funds of **\$9,470,148** and had authority to spend **\$1,950,217** of our special funds, for a total budget of **\$11,420,365**. We anticipate turning back very little general fund dollars at the end of this biennium.

Approximately half of our dollars spent go to ‘professional services’; that is, paying the attorney contractors to handle legal cases and support services for those attorneys (like private investigators, professional evaluations, etc.). These expenditures can be very volatile; if we get a high profile case in that our public defenders have to conflict out of, and we end up hiring a contractor to take the case, the costs can sky rocket and we are unable to always budget for this unknown. So far we have been able to absorb the costs with the general fund dollars and special fund availability.

2011-2013 appropriations

The general fund monies for our 2011-2013 budget are **\$9,808,430**. The authority for expenditure out of our special funds is **\$1,970,852**, for a total budget of **\$11,779,282**.



3-Commission on Legal Counsel/1023

We expect **no major variances** in spending.

We anticipate **no major one time spending items.**

Robin Huseby
Executive Director
Commission on Legal Counsel for Indigents
P.O. Box 149
701 845-8632 rhuseby@nd.gov



CHAPTER 54-61
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

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

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

54-61-02. Commission responsibilities.

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

54-61-02.1. Contract services. The commission on legal counsel for indigents shall contract for public defender services at a minimum level of fifty percent of its biennial caseload.

54-61-03. Commission director - Responsibilities.

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

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

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

7/1/2006 1,495,562.03

FY07 Activity
Indigent Application Fee 81,574.35
Indigent Defense Facility Fee 706,244.75
Expenditures (404,518.00)

7/1/2007 1,878,863.13

FY08 Activity
Indigent Application Fee 95,896.20
Indigent Defense Facility Fee 907,997.47
Expenditures (272,807.00)

7/1/2008 2,609,949.80

FY09 Activity
Indigent Application Fee 86,935.08
Indigent Defense Facility Fee 705,606.99
Expenditures (1,353,286.50)

Last Biennium 07-09

7/1/2009 2,049,205.37

FY10 Activity
Indigent Application Fee 89,587.91
Indigent Defense Facility Fee 845,746.43
Transfer 102.01
Expenditures (837,602.00)

This Biennium 09-11

7/1/2010 2,147,039.72

FY11 Activity (As of Nov 30, 2010)
Indigent Application Fee 42,840.62
Indigent Defense Facility Fee 358,586.25
Expenditures 525,515.45

BALANCE AS OF 1/31/2011 = 2,022,951.14