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2003 HOUSE JUDICIARY

HB 1044

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1044

House Judiciary Committee

Conference Committee

Hearing Date 1-14-03

Tape Number	Side A	Side B	Meter #
2	xx		2-42
2		xx	8-15
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: 12 members present, 1 member absent (Rep. Bernstein)

Chairman DeKrey: We will now open the hearing on HB 1044.

Vonnette Richter, L.C.: (see testimony)

Rep. Boucher: I am in support of HB 1044, this particular piece of legislation came about as a result of hearings that were conducted during the interim by the Judiciary A Committee discussing the issues of who would have the proper responsibility of handling the indigent defense services. It was decided that the Office of Administrative Hearings would handle the selection of indigent defense counsel, and consequently, it really is a matter of simply trying to avoid and minimize any types of conflict of interest that may arise, either from the courts or the office of the Attorney General and also your state's attorney's office feeling that they are the prosecution and choosing the defense attorney also created a conflict of interest.

Chairman DeKrey: Thank you for your time.

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10/2/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number HB 1044
Hearing Date 1-14-03

Chief Justice VandeWalle: I come in support of HB 1044. We want to do away with the appearance of having a conflict of interest, since we have to be impartial in deciding cases, and if we choose the indigent defense lawyers, that can give the appearance of a conflict. It's not true, but that's the appearance. The bigger issue, our inability in judiciary to experiment with different methods of delivery of services to the indigent. We contract these services out. Most other states have a combination of both employees and contract. This bill would allow us to use something besides independent contractors. I have prepared some amendments to reassure myself. (see amendment)

Rep. Eckre: You made a statement that you said this is not true, that means they're not biased.

Chief Justice VandeWalle: I think our contract counsel provides pretty good defense. I am not going to tell you that we have not questioned in those instances. Anyone can be ineffective. How objective are we in determining who is effective and not.

Rep. Eckre: I think the whole problem comes down to money. We have plenty of good attorneys looking to do this, if the pay were more.

Chief Justice VandeWalle: There are two things, I think even really good people can be ineffective at times. I don't deny that money is an issue. If it is an issue, what is the most effective way of delivering services to indigent defense. I don't think a pure contract system is the most effective. I think a combination of contract and full time employees may be the solution, I don't know.

Rep. Klein: The amendment you are proposing about "within the limits of available funding", are you thinking there that the cost of a full or part-time legal services would come out of the monies that would otherwise go to the contract attorneys.

Page 3

House Judiciary Committee
Bill/Resolution Number HB 1044
Hearing Date 1-14-03

Chief Justice VandeWalle: Yes.

Rep. Klemin: Not out of the administration costs.

Chief Justice VandeWalle: I think what they are proposing is to hire full time counsel. It provides flexibility. We are very fortunate to have experienced, legal defense lawyers, but we have a lot of turnover in some other things. If you have a permanent employee, that helps to fill in some of these gaps until some of the contract lawyers become more experienced.

Rep. Klemin: The courts are going to retain the administration of the indigent defense counsel for the next six months of the next biennium, and that the Office of Administrative Hearings would take over on January 1, is that still the idea.

Chief Justice VandeWalle: Mr. Hoberg has an amendment that will adopt this. That would give them some lead time.

Chairman DeKrey: Thank you for appearing today, Chief Justice. Do you want to go on record as being in favor of HCR 3004?

Chief Justice VandeWalle: Yes, I do, thank you.

Allen Hoberg, Director, Office of Administrative Hearings: (see testimony) I am in favor of HB 1044, and will do its best to establish and implement an effective process working with the courts and working with other interested persons.

Rep. Delmore: One additional FTE, and your fiscal note is going up \$152,000, even with the money given to you from the funds, etc. Why for a note that high.

Mr. Hoberg: Actually, we think it is a little bit too low, we will be hiring a new person, that will work on rule drafting, putting this whole thing in place. We will also need support staff to do that. We don't ask for an FTE for that because we have a vacant FTE in our office right now,

Page 4
House Judiciary Committee
Bill/Resolution Number HB 1044
Hearing Date 1-14-03

where it might be possible that we may be able to use that person some of the time to help out and any other time that we need help, we will have to take out of those fund monies and hire a contract person to help out. It is not a high amount, I think it is an amount we can get by with.

Rep. Delmore: How many cases are you estimating that there will be in the coming biennium.

Mr. Hoberg: I do not know the numbers.

Rep. Kretschmar: If the appropriations or the money in the fund is appropriated to your office beginning July 1, and you won't take over until January 1, how will we pay for that six months.

Mr. Hoberg: That will be in the appropriations, $\frac{1}{4}$ (6 months), of that general fund appropriation will stay put for the six months, the other $\frac{3}{4}$ will go to our offices, for work starting January 1.

Rep. Klein: During the interim study, the Chief Justice brought in a table about the numbers and the costs and the history of the numbers of cases, that's still probably with the materials that the LC has, and maybe we can get a copy of that.

Chairman DeKrey: Thank you for appearing. Anyone in favor of HB 1044, anyone in opposition to HB 1044.

Brenda Neubauer: I am an attorney practicing in Bismarck. I have been on the indigent defense counsel for 9 years. I am lead firm in our district as well. I am going into my fifth year as lead firm, is that I administer the contract. Every case that comes to our district, comes through my office. What are they actually do when they take over, they are going to hire the attorneys to do the work every two years, why is all this money needed to do that. That is a very simple process. You don't have the appropriation for more attorney services, so you are probably going to be limited to the same pool of applicants, the ones that continue to do this. The bill

