

MINUTES
JOINT FINANCE-APPROPRIATIONS COMMITTEE

DATE: Monday, February 14, 2022
TIME: 8:00 A.M.
PLACE: Room C310
MEMBERS: Senators Co-chairman Agenbroad, Crabtree, VanOrden (Bair), Grow, Woodward, Lent, Riggs, Cook, Ward-Engelking, Nye
Representatives Co-chairman Youngblood, Troy, Horman, Amador, Syme, Bundy, Giddings, Nate, Green, Nash
**ABSENT/
EXCUSED:** None

Co-Chairman Youngblood called the meeting to order at 8:02 a.m.

Mr. Tim Hibbard, Analyst, LSO Budget & Policy Analysis, presented an overview of the State Appellate Public Defender office. The agency provides appellate representation in the Idaho Supreme Court and the Idaho Court of Appeal to indigent adults and juveniles who have been convicted of a felony or misdemeanor. They have no open audit findings.

Mr. Erick Fredericksen, State Appellate Public Defender, noted both the US Constitution and the Idaho Constitution require effective assistance of counsel on an appeal from a felony conviction. The right to counsel on post-conviction action is provided by Idaho statute and is discretionary in felony cases and mandatory in capital cases. Mr. Fredericksen explained the agency was created in 1998 because Idaho counties had an extraordinary burden in financing and handling appeals. To gain access to State Appellate Public Defender services, counties must participate in the Capital Crimes Defense Fund (CCDF). All counties have joined the CCDF and receive the services of this agency.

Mr. Fredericksen explained the agency's FY 2022 budget request. The agency requests a FY 2022 supplemental appropriation of \$98K in onetime funds with a carryover. These funds are necessary for extraordinary representation costs associated with the agency's death penalty caseload. The agency requests carryover authority due to the uncertain date of the evidentiary hearing.

Mr. Fredericksen explained the agency's FY 2023 budget requests. The agency requests \$19K in ongoing operating expenditures from the General Fund to restore amounts that were removed pursuant to the Governor's recommended 2% General Fund reduction in FY 2021. Prior to FY 2021, the agency had an ongoing total appropriation of \$302K for capital and conflict representation costs, of which \$95K was allocated specifically for capital representation costs. This line item would restore the agency's allocation for capital representation costs to pre-FY 2021 levels.

The agency requests \$135K from the General Fund for IT licenses and software. Of the total amount requested, \$62K is for ongoing operating expenditures for license and \$73K is for onetime capital outlay.

Mr. Hibbard presented an overview of the Public Defense Commission. The Commission promulgates administrative rules regarding public defense in the state of Idaho. Through the commission, counties apply for state-appropriated financial assistance to bring public defense systems into compliance with indigent defense standards. The agency has no open audit findings.

Ms. Kathleen Elliott, Executive Director, Public Defense Commission, explained the Legislature has tasked the Commission with rulemaking and distributing funds to counties and defending attorneys to improve public defense across the state of Idaho.

Ms. Elliott explained the agency's FY 2023 line-item appropriation request. The commission requests \$345K for a 3.4% increase in ongoing trustee and benefit payments to distribute to counties for compliance with indigent defense standards. These funds would be utilized by counties to comply with caseload standards for defense attorneys by hiring additional "workload attorneys." The amount requested would allow the commission to distribute funds for approximately 3.50 additional workload attorneys.

In response to committee questions, **Ms. Elliott** said the Commission is responsible for a workload standard, also known as a caseload limit. The Commission helps pay for extra attorneys beyond what the county can afford in order to comply with the caseload limit statute. Ms. Elliott says the starting salary range for the agency's attorneys is \$65K-\$70K. In response to further questions, she stated the agency has posted four cycles of job openings and received only two applicants, despite raising the starting salary.

Mr. Hibbard presented an overview of the Office of the Attorney General (OAG). The Attorney General is an elected constitutional official who serves as the state's chief legal officer. The constitutional and statutory responsibilities of the office are executed by eight separate divisions. There are three budgeted programs: State Legal Services, Internet Crimes Against Children (ICAC), and Special Litigation. The agency has no open audit findings.

Attorney General Lawrence Wasden gave an overview of the office. Attorney General Wasden stated the agency continues to return more money to the State Treasury than it is appropriated through the budget process. He reviewed the recent accomplishments of the OAG, including work in the Consumer Protection Division, defending Idaho against federal overreach, and work in the Internet Crimes Against Children unit. Attorney General Wasden reviewed the difficulties in recruiting and retaining qualified staff, many of whom have left for better salaries in other government agencies. He explained historically the OAG has a 10% turnover rate; it is on pace for a 20% turnover rate this year. Attorney General Wasden stated the agency is requesting an additional 10% salary increase, on top of 5% CEC, for attorneys.

Ms. Robin Lockett, Administration and Budget Chief, Office of the Attorney General, explained the agency's FY 2023 budget requests.

The OAG requests carryover authority from FY 2022 to FY 2023 for \$150K for mediation costs associated with the Portland/Spokane River Basin Adjudication. These mediation hearings began in fall 2021, but it is unlikely OAG will spend the entire appropriation of \$150K prior to June 2022.

The OAG requests \$50K from the General Fund in ongoing operating expenditures for security software. According to the agency, this would help to quickly identify security incidents, limit their impact on the network, and allow the agency to remain compliant with the Criminal Justice Information System's log collection, review, and storage requirements. The agency also requests \$49K in operating expenditures for the ongoing portion of its Microsoft Office 365 subscription.

The OAG requests \$160K in operating expenditures from the General Fund for the ongoing costs associated with the purchase of new case management software, which was recently purchased utilizing one-time savings. The software enhances the agency's ability to manage and adjudicate an increasing number of cases and will expand existing case management resources by implementing higher functionality for case intake, workflow assignments, calendaring, production of documents, trial presentation, and management of the office's federally required Statewide Cost Allocation Plan (SWCAP).

The OAG requests one FTP and \$93K from the Idaho Millennium Income Fund for a paralegal in the Consumer Protection Division to work on tobacco arbitration matters. Idaho is defending against ongoing efforts by the tobacco industry to eliminate settlement payments, and if they prevail, the settlement payments Idaho receives could be eliminated. The agency's work on this litigation has increased significantly and there is a pressing need for the paralegal to assist deputies in helping to protect Idaho's payments and to defend Idaho's tobacco-related laws.

The OAG requests \$2.12M for an office-wide 10% salary increase to combat a turnover rate projected at 20%, unsustainable workloads, non-competitive salaries, and excessive leave balances. The agency pointed out deputy attorney general (DAG) salaries lag 15% when compared to city, county, and state government counterparts; DAG salaries lag 39% when compared to city, county, state, and federal government counterparts.

The OAG requests one FTP and \$257K to hire an additional criminal investigator and affiliate investigator to address workload increases and investigation backlogs in criminal cases involving internet crimes against children (ICAC). The investigator would be housed in the Office of the Attorney General and the affiliate employed by a local law enforcement agency in an underserved part of the state.

The OAG requests one FTP and \$106K ongoing from the General Fund to hire a deputy attorney general (DAG) to assist the Idaho Transportation Department (ITD) in condemnation and construction cases. The department believes hiring an additional DAG will result in cost savings by avoiding the retention of outside counsel and by the development of in-house expertise.

The OAG requests one FTP and \$106K ongoing from the General Fund to hire a deputy attorney general to assist the Idaho Department of Water Resources with general stream adjudications. Ms. Lockett explained last year the Fifth Judicial Court issued orders commencing two new general stream adjudications for the Clark Fork-Pend Oreille River Basins and the Bear River Basin. The OAG anticipates receiving 23K new claims.

The OAG requests one FTP and \$116K from the General Fund to hire a deputy attorney general to assist the Department of Health and Welfare in conducting all administrative appeal hearings for its benefit programs, support services, and enforcement matters. Ms. Lockett explained the Fair Hearing Unit caseload has increased 131% since 2016; the number of hearing officers has increased by only 25%. Without an additional hearing officer, the State risks failing to comply with hearing timeliness standards required under state and federal law.

The OAG requests one FTP and \$126K to hire an investigative auditor for the Medicaid Fraud Control Unit (MFCU). The unit investigates and prosecutes Medicaid fraud and complaints of abuse or neglect of Medicaid recipients. Pursuant to standards applied by the U.S. Department of Health and Human Services, MFCUs are required to employ a total number of staff that is commensurate with the state's total Medicaid program expenditures.

The OAG requests one FTP and \$99K from the General Fund to hire a financial specialist. Currently, the division has three financial specialists to perform all accounting, auditing, reporting, billing, and human resource functions. Generally accepted standards recommend a minimum of one human resources position for every 100 employees; the agency currently dedicates half of one financial specialist for all HR work.

Ms. Lockett explained the Governor recommends an increase of \$66K in ongoing operating expenditures from the Federal Grant Fund to align the ICAC appropriation to match the most recent federal grant award.

As in prior years, the OAG requests lump sum spending authority, which requires legislative approval.

In response to committee questions, **Mr. Chris McCormick**, Commander of Idaho Internet Crimes Against Children (ICAC) Task Force, OAG, explained the task force serves each community within the state. Some jurisdictions have fulltime ICAC personnel; for smaller jurisdictions, the task force is available to assist upon request.

In response to committee questions about the request for one deputy attorney general to work with ITD, **Ms. Lockett** explained the agency estimates the cost savings of hiring the position, rather than using outside contractors, will be \$140K-\$190K. She further explained the agency estimates outside legal counsel fees range between \$250 and \$400 per hour; the agency's average attorney salary is \$87K per year.

In response to committee questions, **Ms. Lockett** explained 80% of the OAG personnel separations were attorneys, 14% were paralegals, and the remainder were in other positions. She stated as of January 28th, the OAG had 11 vacant positions, of which nine were attorney positions.

Sen. Nye expressed appreciation for the work of Attorney General Wasden and stated the OAG's attorney salary adjustment requests were very modest and did not match compensation offered by the private sector.

In response to committee questions, **Mr. Mark Kubinski**, Chief of the Criminal Law Division, OAG, stated the Idaho Medicaid Fraud Control Unit focuses on providers who commit fraud as well as the abuse and neglect of Medicaid recipients. Rep. Troy commented on the effects of Medicaid expansion efforts on the state's budget and requested an aggressive approach to Medicaid fraud to ensure applications to Medicaid are appropriate.

Mr. Nate Osborne, Analyst, LSO Budget & Policy Analysis, presented an overview of the Office of Energy and Mineral Resources. The office is responsible for coordinating energy and mineral resource planning and policy development for the state. The agency has no open audit findings.

Ms. Lori Wolff, Interim Administrator, Office of Energy and Mineral Resources (OEMR), stated the office coordinates with federal and state agencies, private industry, policymakers, and the public on federal environmental reviews and permitting to ensure the state's energy and mineral resources are developed in an efficient and streamlined manner to maintain the integrity of the state's mineral resources.

Ms. Wolff explained the funding sources for the agency include federal and dedicated funds. There are new opportunities through federal IJA monies for Idaho to invest in critical projects including fire mitigation, grid reliability upgrades, hydroelectric production and improvement, and other energy efficiency projects. OEMR is working with partners throughout the state including energy providers, cities, counties, the private sector, and rural communities to identify potential projects and programs.

Ms. Wolff explained the Governor's recommendation for the FY 2022 supplemental appropriation. The agency requests \$15M in General Funds for the Energy Resiliency Grant Program to support grid modernization, energy reliability and wildfire resilience projects throughout the state and in rural areas. A provision in the IJA makes \$5B available in competitive grants for these projects, but the grant does require a 15% match to apply for the funds. Ms. Wolff explained the \$15M state investment will allow Idaho to apply for and potentially receive up to \$100M in grant funding to invest in local projects such as upgrading transmission lines, vegetation and load management, battery storage, microgrids and transmission monitoring technology, and rural utility projects.

Ms. Wolff explained the Governor's recommendation for funding the State Energy Program. For FY 2023, the agency requests \$854K in federal and dedicated funds and one limited-service FTP to support administration of the funds. This program will implement energy efficiency measures, energy conservation, and renewable energy projects in accordance with guidance from the U.S. Department of Energy. Dedicated funds will be used to purchase a computer, desk, chair, and for workspace improvements.

Ms. Wolff explained the Governor's recommendation for funding the Energy Efficiency and Conservation Block Grant (EECBG) Program. For FY 2023, the agency requests \$500K in federal and dedicated funds and one limited-service FTP to administer the fund. This program will provide sub-grants to local governments to fund energy efficiency and conservation projects, renewable energy projects, and zero-emission vehicle infrastructure.

Ms. Wolff explained the Governor's recommendation for funding the Energy Efficiency Loan Program. For FY 2023, the agency requests \$172K in federal and dedicated funds and one limited-service FTP to administer the fund. This program offers energy efficiency loans to residential and commercial customers in Idaho at low interest rates. Funding will be available for the next five years, and there is potential for the annual funding amount to increase.

In response to committee questions, **Ms. Wolff** stated the requested limited-service positions will manage the influx of funding. She also explained the agency must have the \$15M in state funding to be eligible to apply for the IJA grant funds. Ms. Wolff stated if the agency does not receive the IJA funds, the agency would return to report on other projects it could complete with the state funds.

Mr. Jared Tatro, Deputy Division Manager, LSO Budget & Policy Analysis, reminded the committee of **H 316aaS**, passed by the Legislature in 2021. The law intended to remove the state's requirement to provide matching General Fund support to the counties.

Ms. Maggie Mann, Southeastern Idaho Health District Director, Public Health Districts, explained public health districts were created in 1970 to ensure essential public health services were available to all citizens of Idaho, regardless of the size of community in which they reside. The legislative intent at creation was for public health districts to operate not as state agencies, but as governmental entities authorized by the state.

Ms. Mann explained after the passage of **H 316aaS**, Public Health Districts have worked with other state agencies to develop memorandums of understanding. However, the Department of Administration has determined Public Health Districts will no longer be under the liability coverage umbrella. This would have a significant impact on their budgets and thus, the taxpayers. Ms. Mann explained private insurance companies have stated the insurance premiums would at least triple in cost.

In response to committee questions, **Ms. Mann** explained the Public Health Districts use funds from the Millennium Fund to provide tobacco cessation to all Idaho residents, free of charge. She stated the districts primarily focus these efforts on pregnant women and adolescents. When asked, Ms. Mann stated Public Health Districts have the capability to expand their vaping prevention work to elementary school-age children, but they are limited by funding.

Rep. Troy expressed concern the liability coverage cost shift was greater than expected, and noted according to Idaho code, nothing had really changed; the Public Health Districts were never considered members of the state employee pool and had previously received those benefits. **Ms. Mann** explained the decision to discontinue coverage was based on an opinion from a deputy attorney general.

Ms. Mann explained when **H 316aaS** was first initiated, they were greatly concerned about their ability to continue participation in PERSI, payroll services, and employee health insurance coverage, but the Districts have been able to remain in those programs. Ms. Mann stated the Public Health Districts continue to work with the Governor's office and hope to reside under their purview for this service.

In response to a committee question, **Ms. Mann** stated without Millennium Fund monies, the Public Health Districts could not provide one-on-one tobacco cessation services. If the Millennium Fund resources are redirected to Medicaid, 84% of Idaho residents would lose access to these tobacco cessation services.

Mr. Tatro explained while **H 316aaS** primarily dealt with Public Health Districts, it also included changes to eligibility for the county indigent and state-level Catastrophic Health Care (CAT) Program. If individuals are eligible for Medicaid or other health insurance, they are not eligible for the county indigent or CAT Program. Mr. Tatro stated the program does not request funds for FY 2023.

Mr. Greg Johnson, Chairman, Lewis County CAT Board, stated individuals receiving financial assistance from this program are required to reimburse the program. These payments are made to the county, and a portion of each payment is reimbursed to CAT. Annual reimbursement averages \$3.5M; these reimbursements will continue for years.

Mr. Johnson's Zoom call was disconnected and he was unable to reconnect service. **Mr. Tatro** explained counties work hard to collect reimbursements from anyone receiving funding through the indigent program; counties then reimburse the state for its share. If the CAT Program was eliminated, all debt due to the state would be forgiven.

Mr. Keith Bybee, Division Manager, LSO Budget & Policy Analysis, gave an overview of the Office of Performance Evaluations. The agency is a nonpartisan legislative office and promotes accountability and confidence in state government.

Mr. Rakesh Mohan, Director, Office of Performance Evaluations (OPE), explained the function of the agency is to evaluate state policies, programs, and agencies. OPE makes recommendations for improving programs and does follow-up to ensure recommendations are implemented. Mr. Mohan explained OPE is overseen by the Joint Legislative Oversight Committee (JLOC). JLOC assigns projects to OPE; OPE does not determine its own projects. Once OPE finishes its evaluations, JLOC releases the findings. Mr. Mohan stated the success of the agency depends on the types of work assigned to OPE and whether its evaluations are used to make decisions. The agency requests a FY 2023 maintenance budget with no new line items.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 10:26 a.m.

Representative Youngblood
Chair

Alyson Jackson
Secretary