

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON GENERAL GOVERNMENT & TRANSPORTATION

Call to Order: By CHAIRMAN ED GRADY, on January 19, 1995, at
8:15 a.m.

ROLL CALL

Members Present:

Rep. Edward J. "Ed" Grady, Chairman (R)
Sen. Thomas A. "Tom" Beck, Vice Chairman (R)
Rep. Gary Feland (R)
Sen. Eve Franklin (D)
Rep. Joe Quilici (D)

Members Excused: None

Members Absent: None

Staff Present: Terri Perrigo, Legislative Fiscal Analyst
Dan Gengler, Office of Budget & Program Planning
Rosa Fields, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: Department of Administration
- Appellate Defenders Program
- Public Employees Retirement System

Executive Action: Department of Revenue
- Income Tax Division

{Tape: 1; Side: A; Approx. Counter: 20}

Terri Perrigo, Legislative Fiscal Analyst (LFA), presented a recap of executive action taken to date by the subcommittee.
EXHIBIT 1 So far, subcommittee action has added 6.5 FTE less than proposed in the Executive Budget, including new proposals.

SEN. TOM BECK commented that the Judiciary still wants \$1 million each year for court automation, although they would probably be satisfied with the \$250,000 level given last biennium for updating the district courts information system.

Ms. Perrigo responded that the subcommittee actions used up or eliminated all of the money that was included in the budget, about \$123,000 per year, for court automation. The subcommittee didn't approve two FTE at about \$80,000, but did add back one FTE

at \$42,000. This is why the Supreme Court Operations Program is under the Executive Budget by approximately \$37,000 each year. **Ms. Perrigo** said current action to date is about \$100,000 in fiscal 1996 and \$200,000 in fiscal 1997 under the Executive Budget. About 95% of the present law has been accepted, with 70-80% of it being in personal services, fixed costs and inflation/deflation.

Ms. Perrigo presented a recap of the language approved to date by the subcommittee. **EXHIBIT 2**

EXECUTIVE ACTION ON
DEPARTMENT OF REVENUE, INCOME TAX DIVISION

{Tape: 1; Side: A; Approx. Counter: 363}

Discussion: **Mick Robinson, Director, Department of Revenue,** asked the subcommittee to revisit the new proposals in the Income Tax Division for Old Fund Liability Tax (OFLT), Electronic Data Interchange/Electronic Funds Transfer (EDI/EFT) and EDI/EFT Programming. The Office of Budget and Program Planning (OBPP) scrutinized these proposals carefully, even reducing the original request for 8.0 FTE for OFLT to 5.5 FTE. These three new proposals are very important for the Department of Revenue Income Tax Division to handle the growing workload. Because the OFLT required a lot more effort than initially estimated, individuals from the general funded activities, primarily income tax, have been borrowed to meet the OFLT workload. As a result, the income tax process is being slowed down dramatically, including responding to employers regarding the reporting under the OFLT as well as the withholding tax. An additional 5.5 FTE is critical in order to handle the present workload.

The other two new proposals in terms of moving into the electronic data interchange and the electronic funds transfer, will allow the Income Tax Division to be able to respond to the increased reporting demands resulting from a substantial sustained growth in employers in the state, as well as employees that are filing income tax returns. The only way to effectively handle that increase in volume in the future is to move into that technology as quickly as possible. **EXHIBIT 3**

If a consistent funding split is used, as discussed in the LFA Budget Analysis, there is a general fund savings of \$28,569 for the biennium as compared to the Executive Budget. This savings would come from changing a portion of the revenue used to fund EDI/EFT from general fund to the OFLT collections. Eventually, the department will be able to save some dollars in terms of the electronic technology, but there has to be an investment to get there. Possible FTE reductions depend on what the increase in the workload would be, but in all likelihood additional FTE would not be needed to handle additional volume.

CHAIRMAN ED GRADY asked how many FTE or portions of FTE are doing the EDI/EFT programming currently. **Mr. Robinson** said about 15% of 1.0 FTE has been used to develop the pilot program, which has amounted to about 320 programmer hours. It's a very small pilot program with 20 employers. The Income Tax Division is trying to get the largest employers in the state to utilize electronic data interchange, so that these dollars go automatically into the bank and don't have to be handled manually in the Income Tax Division. The EDI/EFT program gets money into the bank faster and reduces paperwork. The other area for EDI/EFT is in the individual income tax area, where individuals can either use electronic filing, or their paperwork can be imaged through the Income Tax Division to make the process more efficient. Right now, the EDI/EFT pilot program is focused on the business sector. It is time to try to expand it and move toward the individual income taxpayer as the federal government is doing.

CHAIRMAN GRADY commented that it seems that a move into electronic programs would relieve some of the workload. He asked why FTE can't just be moved into areas of need rather than bringing on additional FTE that may eventually be laid off. **Mr. Robinson** said moving into electronics would allow the Income Tax Division to reduce staff if there was a stable base of activity, but the division activity has been increasing. To get to the point of being able to reduce staff, there must initially be staff focused on making the move into the electronic system. If current staff working on the manual system is moved to start up the electronic system, the workload in the present system increases even more. The move into the EDI/EFT system is an investment that has to be made up-front in order to realize savings in the future.

CHAIRMAN GRADY asked if the pilot project would be continued if no additional FTE are approved. **Mr. Robinson** answered that the project would be continued at its present level with no expansions.

SEN. BECK asked if the program could be put in place the first year of the biennium and then not need the additional FTE in the second year. **Mr. Robinson** answered that at this point there isn't a timetable set for the full blown development of the EDI/EFT. The intention of the proposal is to expand the pilot program more fully in the business sector, as well as in the individual income tax area. It is estimated it will take the full biennium to accomplish this. Programmers in state government do not get laid off, because the competition from private business makes it difficult for the state to keep programmers. Even if at some point before the end of the biennium the EDI/EFT program no longer needs the programmer, that individual will be placed in another programmer position in state government.

SEN. BECK asked if the Income Tax Division could contract for these services. **Mr. Robinson** presented a proposal for contracting for the EDI/EFT services. **EXHIBIT 4** The contract

proposal has a somewhat larger savings to the general fund of \$34,399. The EDI/EFT is one of the programs within the Department of Revenue that could be more easily contracted than some of the other mainframe activities. The contracted program does not require additional FTE and would save on equipment purchase.

Ms. Perrigo reported that in general, contracted services for computer programming as opposed to FTE cost significantly more per hour. State programmers are typically paid an hourly wage of between \$17- \$20 an hour, while outside services typically cost between \$60-\$150 an hour.

REP. QUILICI commented that in his experience it generally is more expensive to go with contracted services.

SEN. BECK asked if a contracted service could be set at a finite dollar amount to accomplish the service, rather than on an hourly rate. **Ms. Perrigo** said that generally when programming and development of a system is purchased for a fixed amount, after the system is up and running that contract programmer is the only one who can work out the bugs, etc. Consequently, they are typically kept on retainer to provide technical assistance. With very large systems, oftentimes it involves long term retainers that last for years because the in-house people don't have the technical know-how for the system.

SEN. BECK asked if there are already in-house people who could do the EDI/EFT programming. **Ms. Perrigo** replied that there are in-house programmers, but it sounds like the Department of Revenue people are overextended as it is. The Information Services Division of the Department of Administration, which offers computer programming services to state agencies, has to turn away requests because they don't have enough staff. There's a lot of purchase of outside services simply because there aren't enough staff available in-house.

CHAIRMAN GRADY asked if the Income Tax Division is seeing a decline in the error rate under the OFLT. **Mr. Robinson** answered that the error rate has dropped and will continue to drop. The 5.5 FTE requested in this new proposal are not the number needed at the 50% error rate, but the estimate for the reduced ongoing error rate expected. An ongoing error rate of 25% is normal on the individual side, and the OFLT error rate should be reduced from the 50%--although probably not as low as 25%.

REP. QUILICI clarified with **Mr. Robinson** that the request for 5.5 new FTE will come from OFLT collections rather than the general fund.

{Tape: 1; Side: B}

CHAIRMAN GRADY commented that the more administrative costs taken out of the old fund liability tax collections, the longer it will

take to pay off the old fund liability. **Mr. Robinson** agreed, but said there is still the direct relationship with how much it costs to process the activity of the old fund liability tax.

{Tape: 1; Side: B; Approx. Counter: 46}

Motion: **REP. QUILICI** moved to reconsider Executive Budget New Proposals for Old Fund Liability Tax; Electronic Data Interchange/Electronic Funds Transfer (EDI/EFT) and EDI/EFT Programming.

Discussion:

SEN. BECK said although this is in the Governor's proposal, there are some things the legislature may want to do beyond the Governor's proposal which would require some savings from the Executive Budget.

CHAIRMAN GRADY asked if the Department of Revenue has presented to the legislature some items to consider for cutbacks, as was requested of all departments this session. **Mr. Robinson** answered that although a direct response has not yet been provided, the Department of Revenue is putting together information regarding the liquor division. All other divisions in the Department of Revenue--property tax, income tax and corporation/natural resource tax--are statutorily required.

CHAIRMAN GRADY said he would not be able to support this motion until the specifics of possible Department of Revenue cutbacks were presented.

Vote: The motion **FAILED** 2-3 with **SEN. EVE FRANKLIN** and **REP. QUILICI** voting yes.

**HEARING ON DEPARTMENT
OF ADMINISTRATION, APPELLATE DEFENDER PROGRAM**

{Tape: 1; Side: B; Approx. Counter: 176}

Ms. Perrigo explained that the appellate defender program gets its funding from district court criminal reimbursement funds. The source of these funds is a portion of the tax paid on licensing motor vehicles, and is used to reimburse district court criminal expenses through the Judiciary. The Judiciary transfers \$100,000 per year to the Department of Administration (DofA) to fund the appellate defender program, which is administratively attached to DofA. This appellate defender program currently operates under a statutory appropriation with 2.0 FTE. The de-earmarking legislation (SB 83) being considered this session recommends eliminating the statutory appropriation for the appellate defender program. If that bill passes, the appellate defender program would need to be budgeted in HB 2.

Dan Gengler, OBPP, explained that the appellate defender program is administratively attached to the Department of Administration, but is not a part of the Department of Administration. Because it is a statutory appropriation there is no Executive Budget recommendation with respect to this budget.

Bill Hooks, Appellate Defender for the State of Montana, provided an overview of the appellate defender program. **EXHIBIT 5**
The appellate defender program enables the state of Montana to fulfill a constitutional mandate that the state appoint attorneys to represent certain criminals that have been convicted of crimes in state court actions in Montana.

In Montana there are two avenues a person convicted in the state court system can pursue. A person convicted in state court has an absolute right, insured by the state and federal constitutions, to be represented by an attorney when appealing to the Montana Supreme Court. The constitution has been interpreted to mean that if the person cannot afford an attorney, the state of Montana must provide appointed counsel to represent that person on appeal. The other avenue is a post-conviction proceeding, which permits the person to file a challenge either in the district court or the Supreme Court, and present arguments concerning the validity of the conviction or the sentence. The appellate defender program provides both of these services.

Montana law provides that if the district judge or the supreme court determines that a hearing should be held in a case, that court at that time must appoint an attorney to continue throughout the case. Before 1991, all of these court appointments were done on an ad hoc basis where the state of Montana would pay each appointed attorney to do this work, essentially on an hour-by-hour or a contract basis. In 1991, the appellate defender program was created and charged with providing legal representation in these cases when circumstances make it difficult for the court to permit the original attorney to continue. The appointment of the appellate defender program attorney is at substantially less cost than what would be paid to a private attorney or the public defender on an hourly basis. The appellate defender program represents only people who cannot afford an attorney, and that decision is made by the court.

Since the appellate defender program began in 1992, the caseload has steadily risen, and all indications are that it will continue to grow. The work unit, which is a standard of objective measurement devised by national organization of appellate defenders, has reached its maximum recommended capacity in the Montana appellate defender program. The recommendation is for no more than 25 work units per year per attorney. As of January 19, 1995, the appellate defender program already had a total of 21 work units, and the estimated work unit total will put the program far above the recommended caseload. If the workload becomes too large, the appellate defender program will have to turn away cases, which will force the courts to appoint outside

attorneys at a considerably higher hourly rate, anywhere from \$40-\$45 an hour on up.

The appellate defender program has been funded since 1991 at \$100,000 per year from district court criminal reimbursement funds. The program was set up as a pilot project in 1991, then made an ongoing entity in the 1993 session. With the increase in crime rates and the increase in the number of criminals in the system, the caseload is going to continue to rise. The budget proposal requests another full-time attorney and a part time secretary. With another full-time attorney, the appellate defender program can double its workload and double the savings brought to the state.

Ms. Perrigo commented that this program would be easy to budget in HB 2, upon passage of SB 83, if it were for the traditional \$100,000. But, because of the request for the additional FTE and funds, the committee will need to decide at what level it wants to budget the program in HB 2. The funds are available because the appellate defender program gets fully funded from the district court criminal reimbursement fund before that money is used elsewhere.

REP. QUILICI clarified with **Ms. Perrigo** that the district court criminal reimbursement money was general fund.

CHAIRMAN GRADY asked if there is currently enough money in the district court criminal reimbursement fund. **Ms. Perrigo** answered that the supreme court administrator said in the past two years there have been more funds deposited than there have been reimbursement requests. Consequently, some of those unspent funds were reappropriated to the supreme court to do some automation and in the second year those extra funds were given out as grants. All of these funds are in addition to the funds that support the appellate defender program.

CHAIRMAN GRADY asked what the budget is for the additional FTE being requested. **Ms. Perrigo** answered that the appellate defender program is requesting 4.0 FTE each year of the 1997 biennium and \$205,032 in FY96, \$205,229 in FY97. Currently the program has 2.0 FTE and \$100,000 a year.

CHAIRMAN GRADY requested figures comparing the cost of using contracted attorneys to the cost of the appellate defender program. **Mr. Hooks** responded that the appellate defender program doesn't take on every appeal, but just those cases where the judge thinks its appropriate for the program to be involved. In most criminal appeals in Montana, the attorney who was originally appointed continues throughout the appeal. An attorney has to be appointed for defendants who cannot afford it, either through the appellate defenders program or by private attorneys charging \$40 and more an hour.

CHAIRMAN GRADY asked if private attorneys appointed by the courts are paid from the district court criminal reimbursement fund.

Mr. Hooks replied that the private attorneys, as well as the appellate defender program, are all paid from the district court criminal reimbursement fund. The proposal for additional FTE would be funded by district court criminal reimbursement funds also, but would provide a cost savings over using those same funds for private attorneys.

REP. QUILICI asked for an explanation of the funding for the district court reimbursement fund. **Ms. Perrigo** explained that 7% of the 2% light vehicle tax is transmitted to the state for district court criminal reimbursement.

CHAIRMAN GRADY asked if the money to fund the additional FTE could be shifted from somewhere else in the Department of Administration budget. **Lois Menzies, Director, Department of Administration** explained that the appellate defender program is an administratively attached agency, similar to the relationship of the Public Employees Retirement System (PERS) and the Teachers' Retirement System (TRS) to the Department of Administration. The Department of Administration doesn't have control of the budget. There is a commission for the appellate defender program that controls the budget.

{Tape: 1; Side: B; Approx. Counter: 1393; Comment: Continue on Tape 2; Side A}

Ms. Perrigo said that there is not a separate account for district court criminal reimbursement funds. If the subcommittee approved this program budget for HB 2, the appropriation would come from general fund because the light vehicle tax revenue goes into the general fund. The Judiciary keeps very close track of how much comes in versus how much is given out, and they do not reimburse any more than is available.

REP. FELAND asked why the program isn't in the Judiciary. **Ms. Perrigo** answered that there is a potential conflict of interest because the appellate defender is representing people who are taking their cases to those justices.

CHAIRMAN GRADY said it appears that if the budget is doubled there may not be enough money to cover the costs and it may require general fund money to cover the appellate defender cost.

Mr. Gengler said if the appellate defenders budget goes up, there's just that much less for other district court criminal reimbursements, so the bottom line always stays the same.

HEARING ON DEPARTMENT OF ADMINISTRATION

{Tape: 2; Side: A; Approx. Counter: 137}

Ms. Menzies gave an overview of the Department of Administration (DofA) The DofA provides the infrastructure for the state of Montana. The mission of the DofA is to deliver superior and

responsive services while maximizing effectiveness and minimizing costs. The Department's customers include the state agencies, local governments, retirees, and the general public. By providing centralized services, the department saves the state money and frees state agencies to focus on their own individual mission. Centralized services promotes uniformity and when it's important for the state to behave as a single company the Department has the authority to approve or disapprove directions that individual agencies take. An example is the purchase of computer software that is compatible throughout all agencies. Another example is the classification of jobs through the State Personnel Division.

The DofA services include:

- Setting the accounting policy for the state and provide banking services to the treasury.
- Directing construction, repair and maintenance of the 3000+ buildings the state owns.
- Operating a mail room, which includes both interagency mail and outside mail.
- Maintaining over 1 million square feet of office space in the capital complex.
- Providing information technology services which include voice, video and data services.
- Administering nine pension plans, the two largest of which are the PERS and TRS.
- Setting personnel policy and negotiating collective bargaining agreements - about 55% of the state work force is unionized.
- Offering customized employee training.
- Operating a self-insured health plan which includes both medical and dental coverage.
- Coordinating the states printing needs.
- Operating an office supply store, and a surplus property program - both federal and state.
- Operating a centralized purchasing program.
- Managing a property and casualty insurance plan which attempts to cover the risks that the state's exposed to, and operating a risk management program to reduce risks and losses and defending the state in tort actions and handling tax appeals.
- Administering attached agencies such as PERS and TRS.

CHAIRMAN GRADY asked why defending state tort claims isn't in Judiciary. **Ms. Menzies** said the program has traditionally been with the DofA as part of the Risk Management and Tort Defense Division. This combination makes good sense as far as minimizing risk and defending the state against lawsuits that might occur. There has been some discussion about whether defending state tort claims should go over to the Attorney General's office. It is the DofA's opinion that it most appropriately belongs somewhere within the Executive Branch because it is so strategic to what the Executive Branch does.

CHAIRMAN GRADY asked why the State Tax Appeal Board (STAB) isn't attached to the Department of Revenue. **Ms. Menzies** answered that it needs to be independent because Department of Revenue petitions go before the Board. Oftentimes the appeals are on decisions made by the Department of Revenue.

Ms. Menzies explained that the DofA doesn't have a direct line of authority over the attached agencies, except in staffing considerations. All of the department functions are divided into 10 different divisions, which for the most part, are independent of each other without much crossover, especially in funding.

The 1997 biennium budget proposal is for 344 FTE; 34% of these FTE are in the Information Services Division (ISD). Five divisions have less than 20 employees: STAB, TRS, Risk Management, PERS, and Architecture and Engineering. The total budget for the biennium is \$94 million. The largest budget departments are ISD at 39%, Procurement and Printing at 22% and General Services with 15%. The Department has six funding sources, 86% of which comes from propriety funds. There is about 8% general fund money and \$1.1 million of that is personal services contingency money.

The personal services contingency money is being presented as a new proposal. It is a fund of \$4 million for the biennium, which can be allocated by the budget office to those agencies who cannot make their vacancy savings reductions. This was done in the 1995 biennium with around \$2.4 million. This is not money that is available for the DofA for its operations except that the department, like any other agency, could petition the budget office to receive a portion of those funds. The department requested no assistance from that fund in FY94 and doesn't anticipate needing it in FY95.

The Department's 1995 budget is roughly \$7 million general fund. The present law budget for the 1997 biennium is about \$6.5 million, which is an 8.2% decrease from the 1995 biennium. New proposal requests from the general fund are about \$927,000. The total of present law and new proposals is \$7.4 million, of which \$1.1 million is for the personal services contingency fund. Removing the \$1.1 million from the total leaves a 10.6% decrease for the department from the 1995 biennium.

CHAIRMAN GRADY asked if the personal services contingency is for all agencies. **Mr. Gengler** answered this fund is just for the executive branch agencies. The legislative and judicial branches have their own personal services contingency funds. The mechanics of the budgeting process causes this personal services contingency fund to fall under the new proposals request, but in reality it is a continued program from the 1995 biennium.

Ms. Menzies said that the Department of Administration is asking for \$4 million over the biennium for personal services

contingency funds, whereas in 1995 biennium the fund is \$3.6 million.

If the personal services contingency request is not considered part of the Department's budget, the total FY96/97 general fund request is \$90 million, which is a very small total increase in comparison to the 1995 biennium total general fund budget of \$89.8 million.

Ms. Menzies explained to the committee that the Department of Administration had to repay the federal government \$1.5 million in FY94 from the general fund and various internal service fund accounts (which are accounts that support programs that charge other agencies for services), for what the feds determined were "excess fund balances." The federal government only allows the department to charge federal programs the actual cost of services provided. The excess balances accumulated from 1986 to 1992 because of a difference in interpretation of how to account for equipment. The federal government includes equipment in the fund balance, while the state of Montana was not including equipment in the fund balance. The federal government has acknowledged that there was no wrongdoing on the part of the state, it was simply a case of different interpretations. The general fund contributed about \$145,000 in the repayment because the department had twice transferred (in fiscal 1992) excess funds from internal service fund accounts into the general fund.

This will continue to be a problem, and the department is trying to be more diligent in monitoring those funds. The department is also considering doing somewhat of a lobbying effort with the federal government to explain that this is an unreasonable interpretation, and that they will be the losers if they have to purchase these services outside of state government.

REP. QUILICI commented that in addition to the excess fund balance, some internal service fund accounts had accumulated a negative excess fund balance. **Ms. Menzies** responded that the most obvious undercollection is in the pension plans, which are not collecting enough from the federal government to reflect the services the department provides. The federal government doesn't give credit for undercollection because the programs are considered distinct, and undercollections in one can't be used to offset overcollections in another. Another problem with charging federal agencies more in the pension plans is that the increase would have to be applied across the board, so general fund and state special revenue fund expenditures would also go up.

Ms. Menzies said the Department of Administration is requesting additional FTE for the Architecture and Engineering Division (A&E). This is in response to the Long Range Building Program request for almost \$19 million. This request is not in the Executive Budget because of timing. The final figures on the Long Range Building Program are not done until November, so the department did not know to anticipate a building program to the

magnitude of \$19 million at the time the operation budget was being built. The funding source for the addition is cigarette tax revenues, which are projected to have a surplus of roughly \$290,000. A&E is requesting an additional \$262,000. The Governor supports this increase because the bottom line is that A&E can't deliver a program this size with current staff.

{Tape: 2; Side: A; Approx. Counter: 1450; Comment: Continue on Tape 2; Side B}

Ms. Menzies updated the subcommittee on progress made since the last biennium in the Long Range Building Program. All of the major bonded programs approved in 1991 and 1992 are now in the construction phases. About 450 employees took advantage of the retirement incentive program, which allowed agencies flexibility to restructure and eliminate positions and become more efficient in their work. In addition to the Department of Labor mailroom consolidation, all of the Helena area mailrooms were consolidated. Central mail went to an automated barcoding system, which to date has saved more than \$165,000. The transfer of payroll functions was completed successfully. The Risk Management/Tort Defense Division developed a manual for state employees on how to set up workplace safety programs. The state bulletin board program has grown, with user-friendly software and increased agency downloading. Policy level people throughout state government worked together to produce a strategic planning program in the area of information technology, which is in large sum responsible for the new proposals being requested.

REP. FELAND asked how many of the early retirees have been hired back on a consultant basis. **Ms. Menzies** answered that of the 617 actual retirees, 447 were in due to the early retirement incentive and 27% of the those have been hired back.

HEARING ON DEPARTMENT OF ADMINISTRATION
PUBLIC EMPLOYEES RETIREMENT BOARD

{Tape: 2; Side: B; Approx. Counter: 121}

Linda King, Administrator, Public Employees Retirement System, presented an overview of the Public Employees Retirement System (PERS). **EXHIBIT 6** PERS is an administratively attached agency to the Department of Administration, so it has a separate budget. The PERS board is constitutionally given the fiduciary responsibility for statewide and local public retirement systems, and it is this budget that is considered separately. The PERS staff are employees of the Department of Administration.

The PERS Board constitutional responsibility as fiduciaries is new, having been passed as Constitutional Amendment 25 in the November 1994 elections. It is an important principle to Montana's public that the systems be managed responsibly on an actuarially sound basis. The constitution now requires actuarial funding levels for all the public systems and makes the

board the sole responsible entity in setting what those actuarial assumptions and standards are. In addition, the PERS board is given the administrative authority for the eight retirement systems in state statute.

Government pension plans have to meet a number of federal requirements in order to have what is called "qualified plan status." One of PERS' present law base issues identified by the LFA has to do with sizeable computer modifications because of federal requirements. It's important that PERS maintain the qualified plan status so contributions made to the system are tax-deferred and individual members of the system (which is just over 40,000 people), do not have to pay taxes to the federal government on the benefits that they are earning each year but have not received. Losing the qualified plan status would not only impact individuals but also impact the state because of its fiduciary responsibility for maintaining this tax-deferred status.

The PERS Board also is responsible for administering the federal/state Social Security agreement. When Social Security was first formed, public employees were not eligible for coverage because the federal government could not tax state and local governments. The federal Social Security law was changed so that the federal government could enter into coverage agreements for state and local employees with a contract with the state. Since 1987, the state no longer collects Social Security contributions, the IRS does. But the PERS Board is still responsible for some unresolved issues from 1984, 1985 and 1986, where the Social Security Administration is maintaining that they can retroactively get rid of a modification to its contract with Montana, which means Montana owes somewhere around \$45 million. Montana maintains that the modification is correct and the state owes nothing, but if the modification is in fact incorrect the amount owed is closer to \$2.5 million. When this issue is settled, the PERS Board will no longer have responsibilities in Social Security areas.

The PERS Division is the staff that works for the Department of Administration and is assigned to serve as the professional, technical, administrative and clerical support that the PERS board needs to accomplish its responsibilities. The PERS Board is a six member public board composed of three active members of the retirement systems, one retired and two representatives of the public at large. The PERS Board rules on petitions of individuals, it determines whether individuals are eligible for disability retirements, it approves service and regular retirements, it proposes legislation and it proposes the budget. But the actual work and support that the PERS Board needs in terms of expertise is carried out by the staff and paid consultants. The paid consultants are actuarial and medical consultants. If these consultants were hired on staff it would probably cost four to five times as much.

The responsibilities for collection and reporting information are accomplished with 19.5 FTE. There are 21.0 FTE budgeted but the agency has been reorganized during the past fiscal year and only 19.5 FTE are being requested for the next biennium. A main reason for this reduction in staff is the rewriting of the active member computer system for which the last legislature provided up-front funds.

PERS administered the retirement incentive program. Of the total 736 total retirees, 437 were additional retirements over what is normally anticipated. While the retirement incentive program didn't save dramatic dollars, it did allow the agencies to reorganize without laying off people and to flatten the structure of the agencies so that the upcoming biennium budget requests show some FTE eliminations and reductions. There will be less upper and middle level managers, and the staff that are being kept will be at a lower cost to provide more of the work force.

The funding level PERS is asking for is a reduction of 7% in staff FTE levels. The new program requests are an 11% net increase in spending authority, due primarily to the large system development changes necessary to meet federal requirements to maintain qualified plan status. There are also increasing legal fees and court costs, with several issues before the court right now. Travel costs have increased because three of the board members live in the far eastern part of the state. A rent increase is necessary to increase the amount PERS pays for the building to the fair market value for rental property.

The major new proposal is for sending electronic benefit statements to persons who are receiving their monthly retirement benefits electronically. It saves the state and the retirement systems a great deal of money by doing the electronic transfers. The problem with the electronic transfer is that advisements are not sent if there is a change in benefits. By implementing a program of mailing out these advices when the net benefit changes, it will provide a better service and help convince more people to choose electronic benefit deposits. The new proposal for lap top personal computers, which is less than \$3,000, will allow the staff to travel around the state to provide pre-retirement seminars and other informational presentations with on-the-spot estimates and benefit calculations.

ADJOURNMENT

Adjournment: 11:30 AM

Ed Grady

ED GRADY, CHAIRMAN

Rosa Fields

ROSA FIELDS, Secretary

EG/rf

DATE 1-19-95
 HB Dept. of Administration

General Government Subcommittee

Agency Action Recap

(Does not include reductions associated with deflationary adjustments to computer processing and long distance charges.)

Program	Fiscal 1994		Fiscal 1996		Fiscal 1997		LEGISLATIVE ACTION		OVER/(UNDER) BASE		OVER/(UNDER) EXECUTIVE BUDGET	
	Base Budget	Executive Budget	Executive Budget	Executive Budget	Executive Budget	Executive Budget	Fiscal 1996	Fiscal 1997	Fiscal 1996	Fiscal 1997	Fiscal 1996	Fiscal 1997
Combined Agency FTE	776.64	742.89	742.89	742.89	742.89	736.39	736.39	736.39	(40.25)	(40.25)	(6.50)	(6.50)
EXPENDITURES												
Judiciary	5,892,617	6,404,090	6,377,968	6,377,968	6,373,465	6,405,389	6,373,465	6,373,465	512,772	480,848	1,299	(4,503)
Comm. of Political Practices	126,627	152,581	147,220	147,220	236,026	254,037	236,026	236,026	127,410	109,399	101,456	88,806
Revenue	22,766,883	24,119,108	24,119,532	24,119,532	23,909,162	23,909,924	23,909,162	23,909,162				
Total Expenditures	<u>28,786,127</u>	<u>30,675,779</u>	<u>30,644,720</u>	<u>30,644,720</u>	<u>30,518,653</u>	<u>30,569,350</u>	<u>30,518,653</u>	<u>30,518,653</u>	<u>640,182</u>	<u>590,247</u>	<u>102,755</u>	<u>84,303</u>
FUNDING												
General Fund	25,998,266	28,280,635	28,292,420	28,292,420	28,315,587	28,332,679	28,315,587	28,315,587	2,334,413	2,317,321	52,044	23,167
State Special Revenue Funds	1,288,232	1,421,390	1,411,355	1,411,355	1,262,121	1,262,917	1,262,121	1,262,121	(25,315)	(26,111)	(158,473)	(149,234)
Federal Funds	196,692	342,383	342,406	342,406	342,406	342,383	342,406	342,406	145,691	145,714	0	0
Proprietary Funds	1,302,937	631,371	598,539	598,539	598,539	631,371	598,539	598,539	(671,566)	(704,398)	0	0
Total Funds	<u>28,786,127</u>	<u>30,675,779</u>	<u>30,644,720</u>	<u>30,644,720</u>	<u>30,518,653</u>	<u>30,569,350</u>	<u>30,518,653</u>	<u>30,518,653</u>	<u>1,783,223</u>	<u>1,732,526</u>	<u>(106,429)</u>	<u>(126,067)</u>

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January 18, 1995
Language Approved By Subcommittee

NOTE: This language is may be modified in accordance with legislative council editing standards.

Regarding Fixed Costs

(To go in each fixed cost generating agency narrative.)

"The (agency) shall develop and submit a cost recovery plan for (service) to the office of budget and program planning and the legislative fiscal analyst by June 1, 1996 for development of the 1999 biennium present law base. The office of budget and program planning shall, in consultation with the legislative fiscal analyst, develop guidelines for the form and content of agency cost recovery plans by May 1, 1996. The (agency) must develop its cost recovery plan and provide supporting documentation as specified in these guidelines. Agency cost recovery plans must include projected revenues and expenses by line of service and the projected fiscal year-end working capital balances for each applicable accounting entity, unless exempted in office of budget and program planning guidelines."

NOTE: Agencies and services are: a) State Auditor - warrant writing services; b) Legislative Auditor - audit costs; c) Department of Fish, Wildlife, and Parks - capitol complex grounds maintenance; d) Department of Transportation - motor pool rental rates; and e) Department of Administration - payroll services, information services division services, mail messenger services, publications and graphics services, insurance premiums, general services rent, and state funds cost allocation plan.

Department of Revenue

"Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor merchandising operation are appropriated to the department, not to exceed \$57,164,000 in fiscal 1996 and \$58,267,000 in fiscal 1997. During the 1997 biennium, the division shall attempt to return at least 10 percent of net sales to the general fund. Net sales are gross sales less discounts and all taxes collected. The division shall limit biennial operational expenses of the liquor merchandising system to not more than 15 percent of the net sales. For purposes of this expense limitation, operational expenses include all merchandising expenses, including depreciation, plus department overhead allocable to the merchandising system, but do not include product costs and freight charges."

NOTE: The upper limit included in the language is a bit less than 10 percent due to rounding. The actual 10 percent above budget figure is \$57,164,492 in fiscal 1996 and \$58,267,220 in fiscal 1997.

"During the 1997 biennium, the department is encouraged to research and to implement, if possible, new electronic technologies such as increased use of electronic filing for all tax returns, computer imaging, integration of statewide appraisal systems with statewide geographic information systems, connection to the information super highway, and any other emerging systems for the purpose of developing more efficient, cost and effective ways of processing tax data."

"The department is appropriated in the 1997 biennium revenues deposited in the property valuation improvement fund. In the 1997 biennium, the department is authorized to borrow up to \$50,000 from the general fund for the property valuation improvement fund. The department must repay the loan by the end of the 1997 biennium, with interest equal to rates earned by the short-term investment pool."

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EXHIBIT 3
 DATE 1-19-95
 HB Dept of Administration

Revenue
 Subcommittee Action

Program	Fiscal 1994		Fiscal 1996		Fiscal 1997		LEGISLATIVE ACTION		OVER/(UNDER) BASE		OVER/(UNDER) EXECUTIVE BUDGET	
	Base Budget	Executive Budget	Fiscal 1996	Fiscal 1997	Fiscal 1996	Fiscal 1997	Fiscal 1996	Fiscal 1997				
Agency FTE	684.14	648.39	648.39	648.39	640.89	640.89	640.89	640.89	(43.25)	(43.25)	(7.5)	(7.5)
EXPENDITURES												
Director's Office	1,011,042	1,150,885	1,045,588	1,045,588	1,150,885	1,045,588	1,150,885	1,045,588	139,843	34,546	0	0
Operations Division	2,328,138	2,603,753	2,457,124	2,477,324	2,668,573	2,477,324	2,668,573	2,477,324	340,435	149,186	64,820	20,200
Liquor Division	576,296	520,608	522,617	522,617	520,608	522,617	520,608	522,617	(55,688)	(53,679)	0	0
Income Tax	4,602,370	5,108,227	5,093,878	4,877,708	4,863,623	4,877,708	4,863,623	4,877,708	261,253	275,338	(244,604)	(216,170)
Corporation Tax	1,526,607	1,632,146	1,643,170	1,643,170	1,632,146	1,643,170	1,632,146	1,643,170	105,589	116,563	0	0
Property Valuation	12,722,430	13,103,489	13,357,155	13,342,755	13,074,089	13,342,755	13,074,089	13,342,755	351,659	620,325	(29,400)	(14,400)
Total Expenditures	22,766,883	24,119,108	24,119,532	24,119,532	23,909,924	23,909,162	23,909,924	23,909,162	1,143,041	1,142,279	(209,184)	(210,370)
FUNDING												
General Fund	20,520,178	22,343,806	22,391,686	22,335,843	22,303,073	22,335,843	22,303,073	22,335,843	1,782,895	1,815,665	(40,733)	(55,843)
State Special Revenue Funds	747,076	911,548	896,901	742,374	743,097	742,374	743,097	742,374	(3,979)	(4,702)	(168,451)	(154,527)
Federal Funds	196,692	232,383	232,406	232,406	232,383	232,406	232,383	232,406	35,691	35,714	0	0
Proprietary Funds	1,302,937	631,371	598,539	598,539	631,371	598,539	631,371	598,539	(671,566)	(704,398)	0	0
Total Funds	22,766,883	24,119,108	24,119,532	24,119,532	23,909,924	23,909,162	23,909,924	23,909,162	1,143,041	1,142,279	(209,184)	(210,370)

EXECUTIVE BUDGET NEW PROPOSALS
Income Tax Division
Reflecting Contracted Services Approach
and LFA Funding Split Issue

2. Electronic Data/Fund Transfer (EDI/EFT)

	FTE	Fiscal 96	FTE	Fiscal 97
	.0		.0	
Contracted Services/Operating		\$51,642		\$51,721
Total		<u>\$51,642</u>		<u>\$51,721</u>
Funding				
General Fund @ 55%		\$28,403		\$28,447
State Special (OFLT) @ 45%		<u>23,239</u>		<u>23,274</u>
Total		<u>\$51,642</u>		<u>\$51,721</u>

3. EDI/EFT Programmer

	FTE	Fiscal 96	FTE	Fiscal 97
	.0		.0	
Contracted Servies/Operating		\$36,532		\$36,654
Equipment		<u>9,044</u>		<u>2,400</u>
Total		<u>\$45,576</u>		<u>\$39,054</u>
Revised Funding				
General Fund @ 55%		\$25,067		\$21,480
State Special @ 45%		<u>20,509</u>		<u>17,574</u>
Total		<u>\$45,576</u>		<u>\$39,054</u>

General Fund savings vs. original fund split

\$22,683

\$11,716 = \$34,399

OFFICE OF THE APPELLATE DEFENDER

WILLIAM F. HOOKS
APPELLATE DEFENDER
Suite 103
208 North Montana

MARC RACICOT, GOVERNOR



STATE OF MONTANA

Mailing Address: PO Box 200145, Helena, MT 59620-0145

(406) 449-4122

MONTANA APPELLATE DEFENDER OFFICE

ANNUAL REVIEW 1992 - PRESENT

APPELLATE DEFENDER
COMMISSION

Daniel Donovan, Attorney
Great Falls

Michael J. Reardon, Attorney
Victor

Hon. Dorothy McCarter
District Court Judge
Helena

Tom McElwain
Butte

Mark Parker, Attorney
Billings

Lawyers in criminal cases are necessities, not luxuries.

Gideon v. Wainwright
372 U.S. 335, 344 (1963).

Introduction

The Montana Appellate Defender Office was established by the 1991 Legislature and charged with the task of providing legal representation for indigent persons who challenged their criminal convictions. The goal was to provide effective, cost-efficient legal representation from one office, rather than by the previous method of appointing private attorneys to represent indigent defendants.

In 1993, the Legislature removed "sunset" language from the initial enactment, and thereby made the Appellate Defender Office a permanent statutory office. Proponents of this legislation included the Attorney General, the Montana County Attorneys' Association, the Montana Association of Counties, and the Supreme Court.

This legislation also created the Appellate Defender Commission, a five-member board comprised of a District Court judge, three attorneys, and a lay member, all appointed by the governor. The Commission is responsible for oversight of the Appellate Defender office, and is working to draft standards for trial and appellate attorneys.

The Montana Appellate Defender Office is staffed by one attorney and one paralegal. We opened our doors in Spring, 1992, and since then we have represented indigent persons, by court appointment, on appeals to the state Supreme Court and in post-conviction challenges in the district courts and the Supreme Court.

I. AN INDIGENT'S RIGHT TO APPOINTED COUNSEL ON APPEAL

A defendant in a criminal case may appeal from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant. §46-20-104, MCA (1993). On appeal, the person is entitled to representation by an attorney.

A. A Constitutional Requirement

An indigent person convicted of a crime has a constitutional right to the effective assistance of counsel on a first appeal as of right, according to a long line of cases from both the Montana Supreme Court and the United States Supreme Court.

[T]here can be no equal justice where the kind of an appeal a man enjoys 'depends on the amount of money he has.'

Douglas v. California, 372 U.S. 353, 355 (1963).

A first appeal as of right ... is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.

Evetts v. Lucey, 469 U.S. 387, 396 (1985)

A direct appeal is a critical stage of a criminal prosecution for which defendant is entitled to assistance of counsel.

State v. Black, 245 Mont. 39, 43, 790 P.2d 530, 532 (1990).

B. American Bar Association Standards

Standard 21-3.2. Counsel on appeal.

(a) At the first level of appeal, every convicted defendant, appellant or appellee, should have assistance of counsel. For persons without means to obtain adequate legal representation, counsel should be assigned unless the right to counsel is explicitly waived. Assigned counsel should be compensated from public funds.

II. AN INDIGENT'S RIGHT TO APPOINTED COUNSEL IN POST-CONVICTION PROCEEDINGS

A. Montana Statutory Law

§46-21-201, MCA (1993)

If the court determines that a hearing is required on a petition for post-conviction relief, or if the interests of justice require, the court "shall appoint counsel for a petitioner who qualifies for the appointment of counsel under Title 46, chapter 8, part 1."

§46-8-104, MCA (1993)

Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any post conviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

B. American Bar Association Standards

Standard 22-4.3

(a) Counsel should be provided for applicants unable to afford adequate representation. For such applicants confined in prison, legal assistance should be available in the first instance through services provided to inmates of the institution. Such services should extend to representation in judicial proceedings. If, for any reason, applicants are proceeding without counsel, an attorney should be appointed for those unable to afford to retain their own attorneys. When private attorneys are appointed to represent applicants, their services should be compensated from public funds.

III. DUTIES OF THE MONTANA APPELLATE DEFENDER OFFICE

In the face of circumstances which preclude appointed counsel's continued representation of an indigent defendant, the district courts and the Supreme Court may turn to the Montana Appellate Defender Office.

We are charged by statute with assuming responsibility for appeals and post-conviction proceedings on behalf of indigent defendants after conviction in state district court when

(a) the defendant alleges that trial counsel rendered ineffective assistance of counsel;

(b) a trial judge or supreme court justice finds further representation by trial counsel would not serve the interests of justice; or

(c) the appellate defender agrees to assist in or assume responsibility for the appeal.

To date, the appellate defender office has resolved approximately 66 appeals and 21 post-conviction cases. More than 50% of the overall caseload is assigned on the basis of a claim or contention that the conviction was the result of ineffective assistance of counsel. New counsel must be appointed, for an attorney whose representation has been questioned by the client cannot continue to represent the client. To do so may pose an impermissible conflict.

Many other appointments have been made after the district court chose to appoint new counsel for financial reasons or because local counsel was not available.

IV. NATIONAL STANDARDS FOR PERFORMANCE OF APPELLATE DEFENDER OFFICES - HOW WE MEASURE UP

The American Bar Association has promulgated a series of standards, some of which apply to the provision of appellate defense services. These standards appear in the American Bar Association Standards for Criminal Justice.

The National Legal Aid and Defender Association (NLADA) developed Standards and Evaluation Design for Appellate Defender Offices. The Standards were prepared under a contract with the Administrator of the Courts of the State of Washington, and are based in part on an evaluation of the appellate division of the Seattle/King County Public Defender. The standards have been reviewed to the extent applicable.

A. Funding - American Bar Association Standards

Standard 5-1.5. Funding.

Government has the responsibility to provide adequate funding for legal representation of all eligible persons, ... The determination of which level of government will fund defender organizations and assigned-counsel programs depends upon whichever is the most efficient and practical method to best achieve adequate funding and independent representation. Under no circumstances should the funding power interfere with or retaliate against professional judgments made in the proper discharge of defense services.

The appellate defender office and commission was initially given a budget of \$100,000. Funds are made available from the District Court Reimbursement Fund. In fiscal year 1993, we expended 86% of our budget. In 1993, as part of the legislation which removed the sunset language, the budget amount was deleted. For fiscal year 1994, we expended slightly more than \$96,000, or 96% of the amount previously provided. As of December 31, 1994, for which the most current budget information is available, our costs and expenses were approximately 3% higher than they were at that time a year before.

B. Case Load - American Bar Association Standards

Standard 4-1.3. Delays; Punctuality; Workload

(e) Defense counsel should not carry a workload that, by reasons of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations ...

1. Appeals

A current trend is to develop standards based on "work units" which reflect the case load and time requirements based on the nature and extent of the appeal. By this measure, an appellate attorney should complete between 20 and 22 work units annually. The number of work units are determined by assigning a numerical value to a case, based on criteria such as the number of pages of transcript, the type of issue raised in brief, the type of brief, whether the case is a death penalty case, etc. This method removes any subjectivity from the assessment.

As Table 1 shows, we have reached the maximum recommended case load in each year of existence. We reached the maximum case load recommendation in 1992, our first year, even though we did not begin accepting case appointments until April and May. In 1994 we significantly exceeded the maximum recommended case load.

As of January 16, 1995, we have 19 appeals pending, and the work to be done in these cases will constitute an estimated 24 work units. This estimate does not include cases in which we will be appointed during the rest of 1995.

If crime rates continue to rise, more police, prosecutors, and judges may be necessary, as more persons charged with crimes will enter the system. More defense attorneys will also be required in order to fulfill the constitutional mandate of effective representation by counsel.

2. Post conviction proceedings

State law governing post-conviction proceedings varies according to the jurisdiction, and thus a uniform "case weighing" system that takes into account all the variables is not possible. Our work unit assessment does not include any post-conviction work.

A post-conviction case is initiated by filing a petition and legal brief, in which the petitioner alleges reasons why his/her constitutional rights were violated. Often, a trial-like hearing is held before the judge, during which the petitioner is afforded an opportunity to call witnesses and present evidence in support of these allegations. If a hearing is to be held, the court shall appoint an attorney if the petitioner cannot afford to retain counsel.

Post-conviction cases require a significant amount of investigation into the facts. These cases often require many hours of preparation for the hearing. Travel is involved, as the case is generally heard in the district court in which the conviction was obtained. The costs involved in presenting a post-conviction case can be significant. Further, the hearings often last two days or more.

Two recent post-conviction hearings demonstrate the costs and logistical problems inherent in these cases. In one, we had to bear a witness's round-trip travel costs from Warm Springs to Lewistown, which included a night's lodging and over 570 miles. In another, we had to provide for similar costs of a professional who had to travel from Glendive to Deer Lodge.

It is our policy to bear the costs of investigation, travel, lodging, witnesses, document production, etc. from our budget, without making a request that the district court provide funding or reimbursement.

Table B demonstrates that the post-conviction case load is increasing. We have 9 pending post-conviction cases. As with appeals, court appointments in this type of proceeding will reflect the overall crime rate, and I anticipate the appointments will continue to increase.

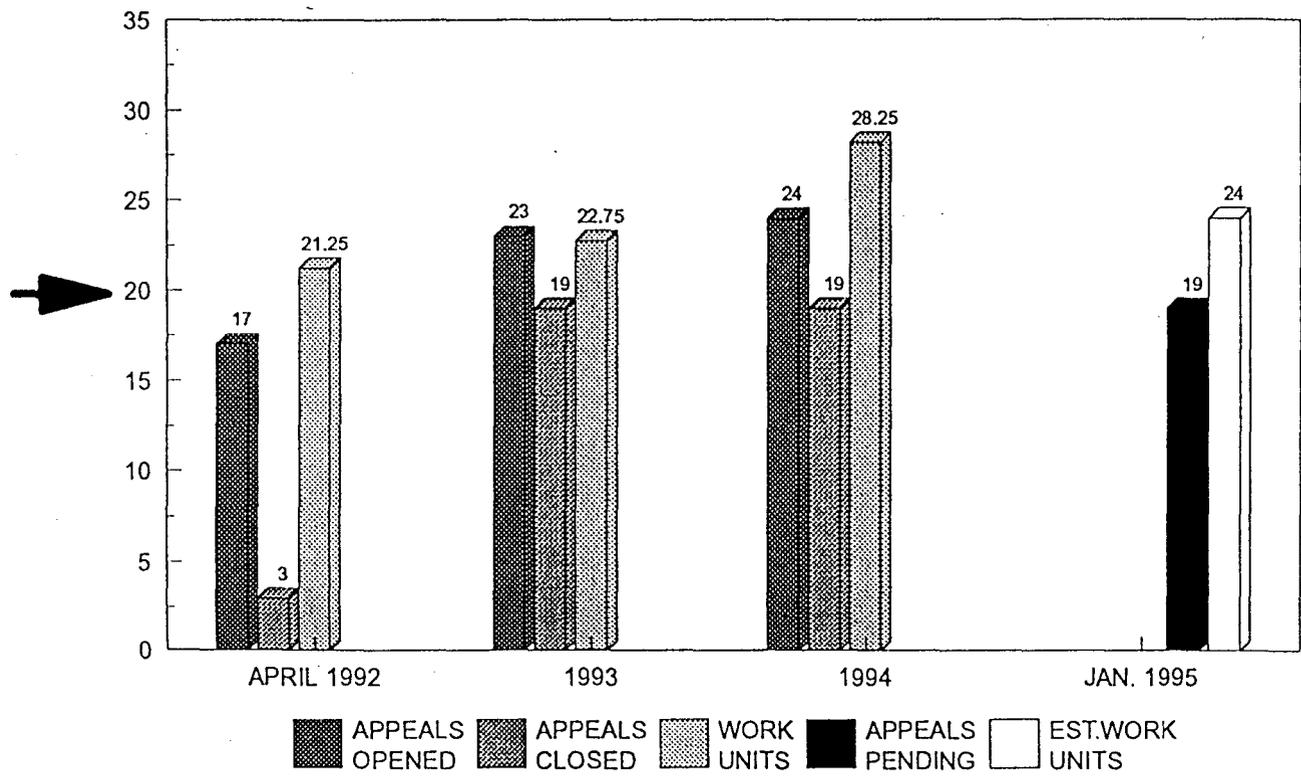
Summary

The Montana Appellate Defender office provides efficient, cost-effective legal representation of indigent defendants, consistent with the purpose for which the office was established. Our focus on appeals and post-conviction cases permits a familiarity and experience with identifying issues and assessing merit, and the assertion of meritorious issues. Necessary costs and expenses, including those of travel to district courts, witness expenses, travel to Montana State Prison, and litigation expenses are borne whenever possible by the office budget, and not the district courts.

I believe we effectively and efficiently represent our clients, at less cost than the state would be required to pay to the private defense sector. Additional staff would permit the Montana Appellate Defender office to assume responsibility for more appeals and post-conviction cases, also at less cost.

by William F. Hooks
Montana Appellate Defender

INCREASE IN COURT APPOINTMENTS AND TIME REQUIREMENTS FOR APPEALS TO THE MONTANA SUPREME COURT 1992-PRESENT



* a "work unit" is a numerical value given to an appeal based on the type of brief, the number of transcript pages, the issue raised, and the court in which the brief is filed.

TABLE 1

COURT APPOINTMENTS IN POST-CONVICTION RELIEF CASES IN DISTRICT COURTS AND THE MONTANA SUPREME COURT 1992-PRESENT

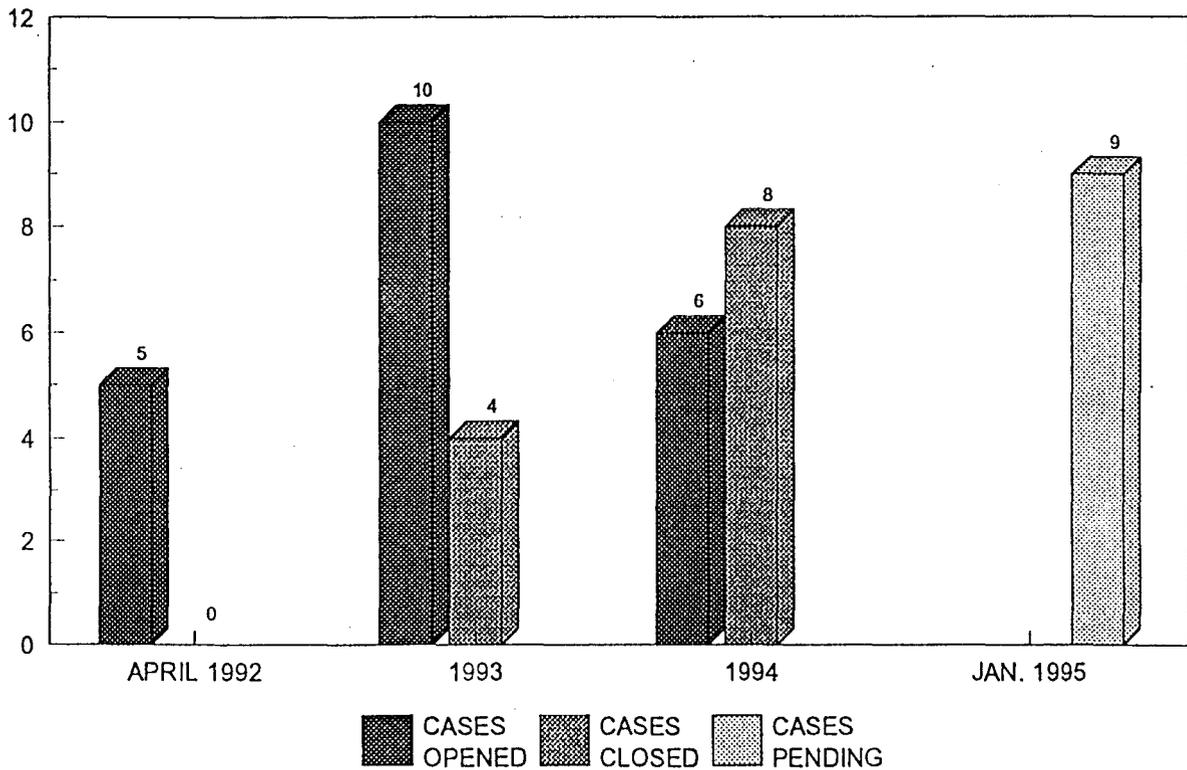


TABLE 2

EXHIBIT 6
DATE 1-19-95
HB Dept. of Administration

PUBLIC EMPLOYEES' RETIREMENT DIVISION

Department of Administration

January 1995

PUBLIC EMPLOYEES' RETIREMENT BOARD

MISSION

As Constitutionally designated fiduciaries of eight state and local government public retirement systems, the Public Employees' Retirement Board is dedicated to efficiently and equitably administering those systems on an actuarially sound basis, providing broad retirement coverage to public employee members and their beneficiaries in the event of death, disability or retirement as prescribed by the legislature. The Public Employees' Retirement Division is dedicated to providing the professional, technical and clerical support necessary to accomplish this mission and to administer the State-Federal Social Security Agreement.

STATUTORY AUTHORIZATION

The Montana Constitution gives the Public Employees' Retirement Board broad fiduciary responsibilities for setting the actuarial assumptions and standards by which the pension trust funds must be funded. The Board is given administrative authority over eight statutorily distinct retirement systems in Title 19, chapters 2, 3, 5, 6, 7, 8, 9, 13, and 17, MCA.

Governmental retirement plans also must meet the provisions of Internal Revenue Code, Section 401(a) and Section 415, in order to remain exempt from federal tax on contributions and on benefits as they accrue. The retirement plans must also comply with the age discrimination prohibitions in the federal ADEA, Section 4.

The Board is given responsibility for the Federal/State Social Security Coverage Agreement in Title 19, Chapter 1, MCA and must comply with federal law 42 U.S.C. Section 418.

PUBLIC EMPLOYEES' RETIREMENT DIVISION

The staff of the Public Employees' Retirement Division are employed by the Department of Administration to serve as the administrative staff of the Public Employees' Retirement Board. This state agency accounts for over \$1.5 Billion held in trust for the eight public pension plans administered by the Board, with over \$216 Million in annual revenues and \$101 Million in annual expenses. With monthly retirement, disability and death benefits paid to over 14,000 recipients, this agency processes a monthly benefit payroll for more persons than the state's central payroll system. Annual benefit payments exceed \$91 Million.

GOALS AND OBJECTIVES

1. Review actual experience of the retirement systems and recommend adoption of actuarial assumptions used to value the benefits promised by the public pension plans to assure sufficient funding of the trust funds in the most cost effective manner possible. Conduct biennial actuarial reviews of the systems and report on the funding status of those systems and recommend necessary statutory changes to the Board, the administration, the legislature, and the public.

2. Maintain accurate, up-to-date information on the 29,000 contributing members in order to provide data needed for actuarial valuations and in order to properly pay benefits to members upon retirement or termination.
3. Provide accurate and timely payment of monthly benefits to over 14,000 retired members and their beneficiaries and refunds of member contributions and interest.
4. Provide accurate and timely information to 39,000 active members and 14,000 retirees of the eight retirement systems and to employers, the administration, legislators, and the courts.
5. Provide trained, professional staff support to the Public Employees' Retirement Board ensuring complete, timely and accurate information so board members can make informed decisions.
6. Maintain accurate financial records of the retirement system funds and prepare required accounting reports and records.
7. Evaluate, review and approve disability retirement benefits for members who are permanently and totally disabled.
8. Maintain and improve administrative procedures to ensure prompt and accurate resolution of eligibility questions, legislative changes or contested cases.
9. Complete audit responsibilities for the years 1984, 1985, and 1986 for administering the State-Federal Social Security Agreement. Continue to work towards a fair and economical resolution of the 1988 assessment from the Social Security Administration.

The Operations Bureau (8.5 FTE)

- * Collects, verifies and deposits employer and employee contributions to the retirement systems based on monthly membership payroll reports of the service and salaries of almost 29,000 active members from over 450 reporting employers into 7 separate retirement systems
- * Maintains individual membership accounts for active, inactive, and retired members; prepares annual statements of accounts for active members
- * Accounts for and reports on the financial condition for over \$1.5 Billion deposited in the pension trust funds
- * Pays administrative claims and tracks the agency's administrative operating budget
- * Refunds and accounts for payments of contributions and interest to terminating members in excess of \$8.7 Million per year on a semi-monthly basis.
- * Payment, withholding and reporting of monthly benefits to retirees and their survivors
- * Develops and maintains the agency's computerized accounting systems and the personal computer network and applications.

The Benefits Bureau (6 FTE)

- * Counsels members about the cost and advisability of purchasing various types of service in the retirement systems
- * Works with employers to obtain certifications of past service of members
- * Counsels members considering retirement about their retirement options
- * Counsels beneficiaries of their options for receiving death benefits
- * Collects required employer and physicians reports to document members' requests for disability retirements; in conjunction with medical consultants, assesses the current medical status of new applicants for and current recipients of disability retirement benefits and recommends Board action on those claims
- * Determines initial eligibility for and calculates both estimated and finalized amounts of retirement, disability, and survivorship benefits
- * Offers a series of 2-day preretirement planning seminars each year, in conjunction with the state's Professional Development Center, for members who anticipate retirement within the next five years
- * Travels across the state for informational presentations to groups of employees at their request or in conjunction with programs sponsored by employers or other groups

Administrator/Administrative Support Unit (1 FTE/4 FTE)

- * Designs and implements retirement programs, drafting proposed legislation, administrative rules and board policies for new and modified programs and to implement federal requirements for the retirement systems
- * Monitors legislative and judicial impacts of actions at the national level and in other states for potential impacts on the management of Montana's public systems
- * Provides professional, technical and clerical support to the Public Employees' Retirement Board in setting agendas for and conducting monthly and special meetings; prepares minutes of meetings
- * Administers the state's payroll and personnel functions for the agency
- * Presents expert testimony at legislative hearings regarding public pension systems and the policy and fiscal impacts of legislative proposals; lobbies on behalf of the Administration and/or the Public Employees' Retirement Board on retirement related legislative proposals
- * Reports on the status and effects of previous legislative enactments
- * Updates and publishes information handbooks for the seven retirement systems and distributes to employers and employee members as changes occur in retirement benefits

- * Publishes and distributes annual newsletters to active and retired members to keep them informed of changes on the state and federal level which can impact their retirement benefits
- * Negotiates and administers contracts for services with actuarial, medical and legal consultants to the Board; works with actuaries to assess the current status of the retirement systems and the potential impacts of benefit enhancements or other legislative proposals
- * Reviews proposed Family Law Orders, which allocate retirement benefits upon divorce of retirement system members, for compliance with state law; implements those divisions and payments of benefits according to the provisions of the accepted orders

Legislative Information During the Legislature or in the interim, we are available at your request to answer questions about the impact of proposed legislation to the retirement systems, state and local government budgets, retirees, and active members. Our 1994 annual financial report is being printed and will be provided to you and 1994 biennial actuarial reports of the retirement systems are always available for your information.

Major Activities Since 1993 Legislature.

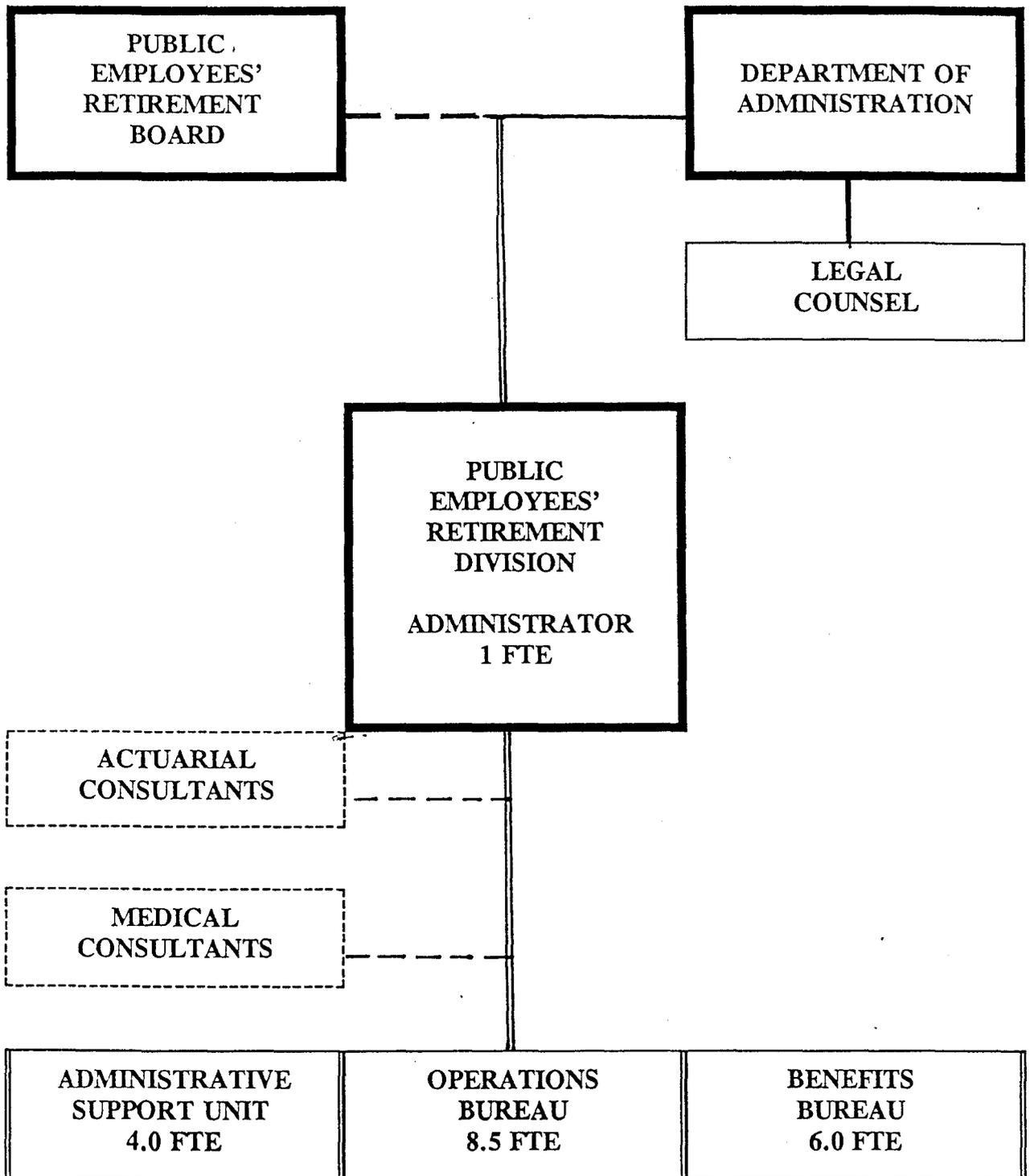
Retirement Incentive Program. During the interim since the 1993 Legislature, the agency has implemented the state's Retirement Incentive Program during which time a total of 736 state and university employees and 182 local government employees retired with increased benefits. The incentive program resulted in the retirement of 437 additional state and university employees, allowing the administration to consolidate and reorganize governmental services with minimal reductions in force. A report on the effects of this program on state and university agencies is being completed and will be distributed to legislators before the end of the current session.

Active Member Computerized Accounting System. Over four years' effort culminated with the transfer of our "active member" payroll and service reporting over to a newly completed on-line data base system. This system provides more detailed and accurate information on active members' service and salary and enables service purchase contracts to be calculated and accounted for. Employer reporting requirements have been simplified in many instances, especially for those which opt to take advantage of the various computerized reporting options now available. Membership service and salary information provided to the systems' actuary is more complete and reliable, resulting in the most accurate actuarial valuations possible. Finally, the additional information available on this new system has allowed the agency to dramatically improve the information provided to members on their annual statements of account.

Guaranteed Annual Benefit Adjustments. Also during the interim, the agency has researched and developed a means of stabilizing the purchasing power of fixed public retirement benefits in the most cost-effective manner possible. The GABA legislative proposal, submitted at the request of the Governor and contained in the executive budget proposal, utilizes funding swaps, systems savings, employer and employee contributions, and investment earnings, in conjunction with the minimal benefit adjustments already provided in law, to guarantee a minimum 2% annual increase for all benefits which have been paid for at least 36 months. This proposal provides the necessary guarantees for retirement income while reducing taxpayer costs over 75% from the previous costs associated with biennial ad hoc benefit adjustments.

PUBLIC EMPLOYEES' RETIREMENT DIVISION

(19.5 FTE*)



* While currently budgeted for 21 FTE, a reorganization of the agency during FY 1995 has resulted in 1.5 FTE remaining vacant. The executive budget request proposes permanently reducing agency FTE to the current 19.5 FTE as shown in this organizational chart.

Administrative Funding and Staff Levels.

This work is accomplished by a staff of 21 permanent FTE (with 2 FTE currently vacant) and within a total budget which is only 1% of the anticipated investment earnings on the pension trust funds each year.

In order to secure necessary professional actuarial and medical services in the most cost-effective manner possible, the agency contracts with private corporations and professionals for these services. The total budget for these services is \$53,748 in FY 96 and \$70,635 in FY 97. The alternative of hiring professional actuarial and medical staff would increase agency expenditures for these services more than 400%.

The Board's total budget request, covering both existing and new programs during the next biennium, proposes a 7% reduction in staff (from 21 to 19.5 FTE) and an 11.5% net increase in spending authority, due primarily to large systems development charges necessitated by the need to significantly modify our computerized accounting system for active member accounts due to federal requirements; increasing legal fees and court costs; increased travel expenses for Board members living in the far eastern part of the state; and rent increases based on fair market value of rental property.

PUBLIC EMPLOYEES' RETIREMENT BOARD

NEW PROPOSALS

1. EBT Mail Statements. \$15,200 (FY 1996) \$10,100 (FY 1997)

Because the electronic fund deposit mechanism is a speedy, safe, and cost-effective method of depositing monthly retirement benefits, the Board wants to encourage benefit recipients to choose this method of receiving their monthly benefits. However, many members do not opt for this payment method because they currently do not receive any detail from their banks or the retirement systems which explain the gross benefit, amounts withheld for state and federal taxes and group insurance premiums.

In order to provide the information retirees need, the Board's highest priority new program proposes to provide mail advices to retirees who have their monthly benefits deposited through electronic fund transfers. These advices would be mailed to benefit recipients when the net amount of their monthly benefit deposit changes due to a change in gross benefits or a change in tax withholding tables or insurance premiums withheld.

In order to implement this program, computer program changes must be made to retiree data based computer system, and then advices will be printed and mailed to individual retirees each time there is a change in their gross or net benefits. From previous experience, we have determined that this will occur an average of 4 times each year for each retiree on electronic deposit. The budget for this proposal includes \$5,100 in computer programming costs in FY 96 and \$10,100 per year for printing and mailing of approximately 31,600 advices each year.

2. Lap Top Personal Computer. \$ 2,971 (FY 1996)

PERD staff members travel across the state to present retirement seminars and informational sessions for members of the various retirement systems. Providing staff outside the PERD offices with direct access to the new active member computer system with its capacity for providing direct access to member's detailed account information and for calculating the costs of purchasing various type of service credit, will save staff time and effort while providing members with better and faster counselling outside of Helena.

The Board proposes to purchase a lap top computer, modem, and a portable printer to be used by agency staff in counselling members outside Helena. This proposal can be fully implemented at a cost of only \$2,971 (FY 96).

3. Personal Services Reduction. (\$50,765) (FY 1996) (\$50,944) (FY 1997)

Due to staff efficiencies realized over the past year, primarily provided by the new active member computer system through time saved by no longer requiring manual calculations and checking of costs of purchasing various types of service, the agency has reorganized and eliminated the need for 1.5 FTE. The FTE's proposed for elimination are a full-time grade 17 administrative officer (the former assistant administrator position) and .5 FTE grade 9 pay benefit technician.

The savings generated by this proposal would be \$50,765 in FY 96 and \$50,944 in FY 97.