



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

Room 110 Capitol Building \* P.O. Box 201711 \* Helena, MT 59620-1711 \* (406) 444-2986 \* FAX (406) 444-3036

Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: June 17, 2004  
TO: Legislative Finance Committee  
FROM: Greg DeWitt, Senior Fiscal Analyst  
RE: Supplemental Appropriation for Appellate Defender

The executive has recommended a supplemental appropriation to move up to \$3,000 general fund authority from fiscal 2005 to fiscal 2004. According to 17-7-301, MCA, the proposal and required plan to reduce fiscal 2005 expenditure to within legislative appropriations for the 2005 biennium have been submitted to the Legislative Fiscal Analyst for review. The full justification and expenditure reduction plan are attached in the June 16, 2004, letter for the state budget director.

### Legislative Fiscal Division Analysis

Upon the Legislative Fiscal Analyst review, the following concerns are raised:

- The justification quantifies two unplanned expenditures during fiscal 2004 as: 1) a high-cost court case in Lake County resulted in investigator charges of \$2,631 and 2) moving expenses of \$1,625. Of these unplanned expense, the moving expenses would not stand up to a test as an unplanned emergency as required in statute as a condition required for a supplemental appropriation and were, in fact, discretionary and avoidable. However, the costs associated with the court case nearly equal the amount of the proposed supplemental appropriation. Expenditures associated with the Lake County court case and the non-quantified costs attributed, in the full justification, to caseload factors of district court assumption that may not have been anticipated by the 2003 legislature to the level of the proposed supplemental appropriation.
- The plan to reduce fiscal 2005 expenditures calls for reducing costs for legal reference materials, subscriptions, and dues and for foregoing alternate pay plan salary increases for 2.00 FTE that were authorized by the legislature for fiscal 2005. An examination of Appellate Defender expenditures indicates that nearly 90 percent of expenditures are either for personal services or for fixed costs of the office. The remaining 10 percent of expenditures are caseload dependent or somewhat discretionary. The plan calls for reducing expenditures in the only available discretionary areas of the budget and will necessitate the office petition the courts so no new cases are assigned to the office. As new cases are assigned to the office, the Appellate Defender must file briefs with the court to request the cases be assigned elsewhere. This action requires expending office resources and is no guarantee that the case is not assigned to the office.

## Committee Actions

The committee cannot approve or disapprove the supplemental appropriation request for the Appellate Defender. According to statute, committee actions are limited to raising issue with the legality of the request and concerns with the plan for reducing fiscal 2005 expenditures. As such, the committee has two options for this request:

1. Report to the Governor regarding committee concerns with the legality of the request and plan for reducing fiscal 2005 expenditures
2. Not report to the Governor on this request

If the committee chooses to not report, the Governor cannot approve the request until 90 days after the request was submitted to the committee. In this case, the supplemental appropriation could not be approved until the middle of September or well past the end of the fiscal year closing period. The Appellate Defender would need to either live within fiscal 2004 appropriations or put off paying bills until fiscal 2005. If the committee reports, the Governor would weigh committee concerns when deciding to approve the request.

## Committee Options

Regarding the \$3,000 general fund supplemental appropriation request for the Appellate Defender, the committee options are:

- o Report to the Governor, stating the committee has no concerns with the approval of the supplemental appropriation
- o Report to the Governor, stating any concerns the committee has with the legality of the supplemental appropriation and/or the viability of the expenditure reduction plan
- o Do not report to the Governor

cc: File copy  
Clayton Schenck, Legislative Fiscal Analyst  
Chuck Swysgood, Budget Director  
Chad Wright, Appellate Defender

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