

HB 5041

Public Defense Services Commission

House Bill 5041 is the budget bill for the Public Defense Services Commission. The Commission is the Judicial Branch agency responsible for establishing and maintaining the public defense system in Oregon. The Commission provides constitutionally- and statutorily-mandated representation in circuit, appellate, and juvenile courts; to individuals eligible for these services by reason of financial inability to pay.

The Public Safety Subcommittee approved a total budget of \$253.2 million, including \$248.7 million General Fund and \$4.5 million Other Funds. The budget includes authorization for 76 positions (75.79 FTE). In addition, the Subcommittee approved a supplemental \$4.4 million General Fund appropriation for the agency's 2011-13 biennium budget, to fully fund public defense costs incurred in the current biennium.

The approved budget supports the level of public defense costs projected for the 2013-15 biennium, and includes an additional \$2.1 million for compensation increases for public defenders, hourly-paid attorneys, and hourly-paid investigators.

The Public Safety Subcommittee recommends House Bill 5041 be amended and reported out do pass, as amended.

**77th OREGON LEGISLATIVE ASSEMBLY – 2013 Session
BUDGET REPORT AND MEASURE SUMMARY**

JOINT COMMITTEE ON WAYS AND MEANS

MEASURE: HB 5041-A

Carrier – House: Rep. Williamson

Carrier – Senate: Sen. Winters

Action: Do Pass as Amended and be Printed A-Engrossed

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: Kay Erickson, Department of Administrative Services

Reviewed By: Steve Bender, Legislative Fiscal Office

Meeting Date: June 19, 2013

Agency

Public Defense Services Commission

Biennium

2013-15

2011-13

Budget Summary*

	2011-13 Legislatively Approved Budget ⁽¹⁾	2013-15 Current Service Level	2013-15 Committee Recommendation	Committee Change from 2011-13 Leg. Approved	
				\$ Change	% Change
General Fund	\$ 224,541,855	\$ 251,420,300	\$ 248,696,165	\$ 24,154,310	10.8%
Other Funds	\$ 3,830,055	\$ 3,218,844	\$ 4,467,042	\$ 636,987	16.6%
Total	\$ 228,371,910	\$ 254,639,144	\$ 253,163,207	\$ 24,791,297	10.9%

Position Summary

Authorized Positions	76	76	76	0
Full-time Equivalent (FTE) positions	75.40	75.79	75.79	0.39

⁽¹⁾ Includes adjustments through December 2012

* Excludes Capital Construction expenditures

2011-13 Supplemental Budget

	2011-13 Legislatively Approved Budget ⁽¹⁾	2013-15 Current Service Level	2013-15 Committee Recommendation	Committee Change from 2011-13 Leg. Approved	
				\$ Change	% Change
General Fund	\$ 224,541,855	\$ 0	\$ 228,941,855	\$ 4,400,000	2.0%

Summary of Revenue Changes

The Public Defense Services Commission is primarily supported by General Fund. Other Funds come from the Application/Contribution Program. Judges have the authority to order individuals who apply for court-appointed counsel to pay the administrative costs of determining their eligibility and a “contribution amount” toward the anticipated public defense cost of the case. Judicial Branch Verification Specialists assist the courts in determining whether a person must pay these costs. These fees and contributions are deposited in the Public Defense Services Account and are used to fund the operating expenses of the Application/Contribution Program. In 2013-15, the Commission expects this account to generate about \$4.4 million. This funding is primarily used to support verification specialist positions both in the courts and in the Commission’s office.

Summary of Public Safety Subcommittee Action

The Public Defense Services Commission is the Judicial Branch agency responsible for establishing and maintaining a public defense system in Oregon. It is an independent body that governs the Office of Public Defense Services. The Chief Justice of the Oregon Supreme Court appoints the seven Commission members. The agency has two main divisions. The Appellate Division provides constitutionally- and statutorily-mandated representation in the appellate courts to those who are eligible for these services. The Contract and Business Services Division administers all of the public defense services contracts, and provides administrative support to the staff in the Appellate Division. The Professional Services Account, 92.8 percent of the Commission's total budget, funds legal representation, primarily for cases in trial courts or juvenile courts, for those eligible for public defense services.

The Subcommittee approved a budget of \$248,696,165 General Fund, \$253,163,207 total funds, and 76 positions (75.79 FTE). The approved total funds budget is 10.9 percent higher than the 2011-13 Legislatively Approved Budget as of December 2012, and 0.6 percent lower than the 2013-15 Current Service Level budget.

Appellate Division

This division is the defense counterpart to the Appellate Division of the Oregon Department of Justice. It provides statutorily- and constitutionally-mandated appellate representation to financially eligible individuals in misdemeanor and felony appeals, inmates requesting judicial review of decisions by the Board of Parole and Post-Prison Supervision, and parents in juvenile dependency and termination of parental rights appeals. The majority of this division's representation occurs in the Oregon Court of Appeals and the Oregon Supreme Court.

The Subcommittee took the following actions to adjust the Appellate Division's budget:

- Approved package 092: PERS Taxation Policy, reducing General Fund by \$36,514. This package reflects the policy change in SB 822 that eliminates the increased retirement benefits resulting from Oregon income taxation of payments if the person receiving payments does not pay Oregon income tax on those benefits and is not an Oregon resident. This change reduces state employer contribution rates by approximately 0.30 percent.
- Approved package 093: Other PERS Adjustments, reducing General Fund by \$291,768. This package reflects the policy change in SB 822 that modifies the cost-of-living adjustment under the Public Employees Retirement System. This change reduces state employer contribution rates by approximately 2.2 percent.

An administrative action by the PERS Board, as directed by a budget note in the SB 822 budget report, will reduce state employer contribution rates by up to an additional 1.9 percent. However, no employer rate is reduced below its 2011-13 biennium rate.

Professional Services Account

This division pays the cost of legal representation in misdemeanor and felony cases for financially eligible persons. It also covers the cost for financially eligible persons who are facing involuntary civil commitment proceedings; contempt; probation violation; juvenile court matters involving allegations of delinquency and child abuse or neglect; and other limited civil proceedings. This representation is required by the United States Constitution, the Oregon Constitution, or by Oregon statutes.

The Commission contracts with public defense service providers, who then provide services directly to clients. Expenditures included in the Professional Services Account program area include the payments to these public defense services providers. The expenditures do not otherwise support the operating costs of the agency or of its employees.

The Subcommittee took several actions affecting the Professional Services Account budget:

- Approved \$2,135,433 General Fund for Package 102: Public Defense Provider Compensation. The agency requested \$4,862,411 General Fund to increase compensation paid to public defender contractors, hourly-paid attorneys, and hourly-paid investigators. The request was based on the funds necessary to reduce the average salary differential between public defender salaries and district attorney salaries by one-third, to increase the payment to hourly-paid attorneys from \$45 to \$53 per hour (and from 60 to \$72 per hour for death penalty cases), and to increase the payment to hourly-paid investigators from \$28 to \$30 per hour (and from \$39 to \$41 per hour for death penalty cases). No portion of these funds would be distributed to agency employees.

The Public Safety Subcommittee approved \$2,135,433 General Fund to increase compensation paid to public defender contractors, hourly-paid attorneys, and hourly-paid investigators. The Subcommittee instructed the agency to:

- allocate \$1,679,261 to reduce the average salary differential between public defender salaries and district attorney salaries,
 - allocate \$134,341 to increase the compensation rates for hourly-paid attorneys, and
 - allocate \$321,831 to increase the compensation rates for hourly-paid investigators.
- Approved Package 810: LFO Analyst Adjustment. This package includes two components:
 - 1) Reduces General Fund for Professional Services by \$3,200,000, to eliminate funding included in the current service level for expenses that will not be paid until after the 2013-15 biennium is over. This reduction does not reduce the amount of funds available to the Commission to pay expenses during the 2013-15 biennium itself. The following budget note, relating to this action, was approved:

Budget Note

The Subcommittee reduced General Fund for Professional Services by \$3,200,000 General Fund to eliminate funding in the current service level for expenses that would not be paid until after the 2013-15 biennium ends. The appropriation amount approved in the 2013-15 biennium budget for Professional Services shall be utilized solely for expenses incurred and paid during the 2013-15 biennium.

This is a one-time adjustment to discontinue the historic practice of funding expenses to be paid in the following biennium as part of the current service level of the active biennium. This adjustment moves the agency to a cash basis of accounting for recording expenses and allows the agency to spend its full 2013-15 biennium appropriation amount during the twenty-four months of the 2013-15 biennium.

2) Reduces General Fund by \$1,260,000, and increase the Other Funds expenditure limitation by \$1,260,000, to allow additional expenditures of revenues from the Application/Contribution Program (ACP) to support the public defense system. The ending balance of ACP funds, after including this Other Funds expenditure limitation increase, is projected to be approximately \$500,000, which is equal to approximately 2.7 months of expenditures.

Contract and Business Services

This division administers the public defense contracts that provide legal representation for financially eligible persons, and processes requests and payments for non-contract fees and expenses. In addition, the division provides administrative support for the agency as a whole.

The Public Safety Subcommittee approved the following adjustments to the Contract and Business Services division budget:

- Package 092: PERS Taxation Policy, reducing General Fund by \$7,929 and Other Funds by \$1,313. This package reflects the policy change in SB 822 that eliminates the increased retirement benefits resulting from Oregon income taxation of payments if the person receiving payments does not pay Oregon income tax on those benefits and is not an Oregon resident. This change reduces state employer contribution rates by approximately 0.30 percent.
- Package 093: Other PERS Adjustments, reducing General Fund by \$63,357 and Other Funds by \$10,489. This package reflects the policy change in SB 822 that modifies the cost-of-living adjustment under the Public Employees Retirement System. This change reduces state employer contribution rates by approximately 2.2 percent.

An administrative action by the PERS Board, as directed by a budget note in the SB 822 budget report, will reduce state employer contribution rates by up to an additional 1.9 percent. However, no employer rate is reduced below its 2011-13 biennium rate.

- Approved Package 810: LFO Analyst Adjustment. This package affects revenues only. It increases Other Funds Transfer Out – Intrafund by \$1,260,000. This is a transfer of Application/Contribution Program revenues to fund the additional expenditures approved in package 810 in the Professional Services Account. The Subcommittee also approved an Other Funds Beginning Balance Adjustment of \$149,245 to reflect an updated projection.

2011-13 Supplemental Budget

The Public Safety Subcommittee approved an increase of \$4,400,000 in the 2011-13 biennium General Fund appropriation for trial-level public defense for projected costs of 2011-13 biennium services that will be paid during the 2013-15 biennium.

Summary of Performance Measure Action

See attached Legislatively Adopted 2013-15 Key Performance Measures form. The Public Safety Subcommittee approved the Key Performance Measures (KPMs) and targets. It directed the Commission to review its KPMs and to report to the Legislative Assembly during the 2014 Session on the outcome of this review and on any proposed revisions to its KPMs that would better measure the effectiveness and efficiency of the agency's programs.

DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION

HB 5041-A

Public Defense Services Commission
 Kay Erickson -- 503-378-4588

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
2011-13 Legislatively Approved Budget at Dec 2012 *	\$ 224,541,855	\$ 0	\$ 3,830,055	\$ 0	\$ 0	\$ 0	\$ 228,371,910	76	75.40
2013-15 ORBITS printed Current Service Level (CSL)*	\$ 251,420,300	\$ 0	\$ 3,218,844	\$ 0	\$ 0	\$ 0	\$ 254,639,144	76	75.79
SUBCOMMITTEE ADJUSTMENTS (from CSL)									
SCR 001 - Appellate Division									
Package 092: PERS Taxation Policy									
Personal Services	\$ (36,514)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ (36,514)	0	0.00
Package 093: Other PERS Adjustments									
Personal Services	\$ (291,768)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ (291,768)	0	0.00
SCR 002 - Professional Services Account									
Package 102: Public Defense Provider Compensation									
Services and Supplies (Professional Services)	\$ 2,135,433	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 2,135,433		
Package 810: LFO Analyst Adjustments									
Services and Supplies (Professional Services)	\$ (4,460,000)	\$ 0	\$ 1,260,000	\$ 0	\$ 0	\$ 0	\$ (3,200,000)		
SCR 004 - Contract & Business Services Division									
Package 092: PERS Taxation Policy									
Personal Services	\$ (7,929)	\$ 0	\$ (1,313)	\$ 0	\$ 0	\$ 0	\$ (9,242)	0	0.00
Package 093: Other PERS Adjustments									
Personal Services	\$ (63,357)	\$ 0	\$ (10,489)	\$ 0	\$ 0	\$ 0	\$ (73,846)	0	0.00
TOTAL ADJUSTMENTS	\$ (2,724,135)	\$ 0	\$ 1,248,198	\$ 0	\$ 0	\$ 0	\$ (1,475,937)	0	0.00
SUBCOMMITTEE RECOMMENDATION *	\$ 248,696,165	\$ 0	\$ 4,467,042	\$ 0	\$ 0	\$ 0	\$ 253,163,207	76	75.79
% Change from 2011-13 Leg Approved Budget	10.8%	0.0%	16.6%	0.0%	0.0%	0.0%	10.9%		
% Change from 2013-15 Current Service Level	-1.1%	0.0%	38.8%	0.0%	0.0%	0.0%	-0.6%		
*Excludes Capital Construction Expenditures									

2011-13 APPROPRIATION

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
SCR 002 - Professional Services Account									
Services and Supplies (Professional Services)	\$ 4,400,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 4,400,000		
TOTAL ADJUSTMENTS	\$ 4,400,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 4,400,000	0	0.00

Legislatively Approved 2013-2015 Key Performance Measures

Agency: PUBLIC DEFENSE SERVICES COMMISSION

Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

Legislatively Proposed KPMs	Customer Service Category	Agency Request	Most Current Result	Target 2014	Target 2015
1 - APPELLATE CASE PROCESSING - Median number of days to file opening brief.		Approved KPM	234.00	210.00	210.00
2 - CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	Accuracy	Approved KPM	93.70	95.00	95.00
2 - CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	Availability of Information	Approved KPM	93.10	95.00	95.00
2 - CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	Expertise	Approved KPM	95.50	95.00	95.00
2 - CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	Helpfulness	Approved KPM	94.40	95.00	95.00
2 - CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	Overall	Approved KPM	95.20	95.00	95.00
2 - CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	Timeliness	Approved KPM	97.60	95.00	95.00
3 - BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.		Approved KPM	100.00	100.00	100.00

LFO Recommendation:

Approve Key Performance Measures (KPMs) and Key Performance Measure targets. Direct the Commission to review its Key Performance Measures, and to report to the Legislative Assembly during the 2014 Session on the outcome of this review and on any proposed revisions to its KPMs that would better measure the effectiveness and efficiency of the agency's programs.

Sub-Committee Action:

Approved the Legislative Fiscal Office recommendation.

**PROPOSED AMENDMENTS TO
HOUSE BILL 5041**

1 In line 8 of the printed bill, delete “\$15,286,177” and insert “\$14,567,347”.

2 In line 9, delete “\$241,863,137” and insert “\$230,857,922”.

3 In line 11, delete “\$3,354,813” and insert “\$3,270,896”.

4 In line 18, delete “\$2,722,500” and insert “\$3,982,500”.

5 In line 20, delete “\$498,435” and insert “\$484,542”.

6 Delete lines 21 through 23 and insert:

7 **“SECTION 3. Notwithstanding any other provision of law, the**
8 **General Fund appropriation made to the Public Defense Services**
9 **Commission by section 1 (2), chapter 636, Oregon Laws 2011, for the**
10 **biennium beginning July 1, 2011, is increased by \$4,400,000 for the**
11 **Public Defense Services Account for trial-level public defense.**

12 **“SECTION 4. This 2013 Act being necessary for the immediate**
13 **preservation of the public peace, health and safety, an emergency is**
14 **declared to exist, and this 2013 Act takes effect on its passage.”.**