

ANALYSIS

Item 14: Public Defense Commission Executive Branch Transition

Analyst: John Borden

Request: Allocate \$1,051,401 General Fund from the special purpose appropriation made to the Emergency Board for the transition of the Public Defense Commission to the executive branch of government and authorize the establishment of two permanent positions (0.76 FTE) for information technology support, two limited duration positions (1.00 FTE) for the preauthorization of contractor expenses, and three limited duration positions (1.38 FTE) for accounts payable activities.

Analysis: The Public Defense Commission (PDC) is requesting an allocation of \$1,051,401 General Fund from the special purpose appropriation (SPA) made to the Emergency Board for the transition of the Public Defense Commission to the executive branch of government and establishment of two permanent full-time information technology support positions (0.76 FTE) with a start date of October 1, 2024; two limited duration Program Analyst 1 positions (1.00 FTE) with a start date of July 1, 2024; and three limited duration Accounting Technician 3 positions (1.38 FTE) with a start date of August 1, 2024. The 2025-27 biennial cost is estimated to be \$725,145 General Fund and two positions (2.00 FTE) for the information technology support positions, as the other five positions are limited duration and therefore would not continue into the 2025-27 biennium, if approved by the Emergency Board.

Accounts Payable/Preauthorized Expenses

PDC has seen a growth in the volume of accounts payable for routine expenses. The primary type of expense is for private hourly rate attorney services not billed under a provider contract (e.g., Temporary Hourly Increase Program). The secondary types of expenses include discovery, interpreter services, records, telephone charges, photocopying and scanning, facsimile charges, routine mileage and parking, postage, service of process, and the payment of lay witness and mileage. Routine expenses are managed by the Accounts Payable Section in the Administrative Services Division.

Preauthorized expenses include "reasonable and necessary" non-attorney public defense-related trial and appellate representation case costs for financially eligible defendants, including transcriptionists, investigators, interpreters, mitigators, social workers, psychologists, polygraph examiners, and forensic experts, such as firearm experts, arson experts, deoxyribonucleic acid (DNA) experts, and medical experts that fall outside regular, routine case-mandated expenses. The pre-approval of an expense is managed by a Preauthorized Expense Unit in the Administrative Services Division. If the preauthorization request is approved in part or denied, a written explanation is provided. The attorney can then appeal the agency's decision to the presiding judge of the circuit court in which the preauthorized expenses arose.

PDC has experienced a degradation of the time to review and pay contractor and vendor invoices. Contractors and vendors have raised concerns about timely payment to the Commission over the course of the biennium, as their business entity must cashflow expenses until the receipt of payment. The extent and duration of the problem is unclear from the agency's request letter; however, the agency targets a 45-day payment schedule.

Although historically statutorily exempt from state procurement law, PDC still remains responsible for maintaining reasonable conformity with such law. The Oregon Accounting Manual defines prompt payment for executive branch agencies under the control of the Governor as: (a) for private vendors providing goods and services, payment will be made within 45 days; and (b) for contractors performing public contracts, payments will be made within 30 days. Under either private or public contracts, if not paid timely, interest is paid on the amount due (Oregon Accounting Manual 15.40.00). PDC does pay interest on late payments, when requested.

PDC has experienced difficulty meeting the 45-day target. PDC's Remediation Plan Report notes that the agency has only recently been able to make payments under 45 days (42 days) after being up to 49 days (September 2024 Emergency Board Item #5). The Commission enacted an Emergency Invoicing Process (404.050.002) on June 21, 2024 for invoices past 35 days of their intake date and added temporary staffing for both the Accounts Payable Section and Preauthorized Expense Unit that are detailed as part of this request. The Commission has also convened a workgroup to help resolve the untimely payment issue.

Timely and accurate payment is a fundamental business practice for an agency such as PDC that predominately fulfills the agency's mission by contracting with nonprofit public defender offices, consortia of attorneys or law firms, private law firms, or individual attorneys for legal services. Timely and accurate payment is conducive to a contractor's willingness to do business with PDC. PDC's most current "Public Defense Payment Policy and Procedures" was published September 1, 2019; however, portions of the policy have recently been updated as separate standalone policies or are in the process of being updated. The current policy makes no mention of prompt payments dates related to the payment of vendor invoice.

PDC has requested \$779,468 General Fund to address accounts payable and preauthorized expense workload. Requested funding supports costs already incurred by the agency for temporary positions (\$199,542) and establishment of five limited duration positions (\$579,926). Three Accounting Technician 3 positions are requested to process accounts payable, and two Program Analyst 1 positions are requested to process requests for the preauthorization of expenses made by contractors.

PDC's most current budget execution report for the 2023-25 biennium (as of July 31, 2024), which includes both actual expenditures to-date as well as projected expenditures for the remainder of the biennium, assumes \$34 million in General Fund savings for the biennium, of which \$4.6 million in the Administrative Services Division. In other words, PDC has within the agency, program, and General Fund appropriation sufficient budgetary authority to fund the accounts payable and preauthorized expenses request on a one-time basis through the remainder of the biennium. The only required Emergency Board action would be the authorization of the positions and FTE. The Legislative Fiscal Office is recommending establishment of the positions supported with these savings.

Information Technology Section

PDC has requested \$271,933 General Fund to establish two information technology services positions based on a gap analysis of services currently provided to the agency by the Oregon Judicial Department (OJD) and those that will be provided by the Department of Administrative Services (DAS). One permanent full-time Manager 3 (0.38 FTE) is requested for a Chief Data Officer responsible for data management and one permanent full-time Information Technology Specialist 3 (0.38 FTE) is requested for an Information Technology Systems Auditor responsible for security activities. The 2025-27 biennial cost is estimated to be \$725,145 General Fund and two positions (2.00 FTE).

The appropriate resourcing of PDC's Information Technology Section is viewed as a critical priority, with previous resourcing being provided by the 2023 and 2024 Legislatures as well as the Emergency Board in May 2024. However, with PDC's transition to the executive branch, and the removal of the agency's statutory exemptions from state information technology law (operative January 1, 2025), means that PDC will fall under the purview of the DAS - Chief Information Office - Cyber Security Services. The executive branch is pursuing a consolidated approach when it comes to security positions, with the preference that such positions be placed with DAS rather than within an agency. In addition, PDC has an existing Systems Architect that could be utilities to interface with DAS on agency security issues. LFO is not recommending establishment of the Information Technology Specialist 3 (Information Technology System Auditor) position.

As noted previously, PDC has sufficient General Fund savings in the Administrative Services Division to fund the Manager 3 (Chief Data Officer) position in the current biennium. LFO is recommending that the position be established as limited duration supported with these savings. The long-term need for this position can be reassessed after PDC has transitioned to the executive branch and procurement of the Financial Case Management System has been completed.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board authorize the establishment of one limited duration position (0.38 FTE) for a Chief Data Officer; two limited duration positions (1.00 FTE) for preauthorization of contractor expenses; and three limited duration positions (1.38 FTE) for accounts payable activities for the Public Defense Commission, Administrative Services Division.

Request: Allocate \$1.1 million from the Special Purpose Appropriation made to the Emergency Board for the Executive Branch Transition to establish two permanent, full-time Information Technology management positions (0.76 full-time equivalent) and five limited duration Program Analysts and Accounts Payable positions (2.38 full-time equivalent).

Recommendation: The Oregon Public Defense Commission is not under Executive Branch budgetary authority.

Discussion: The Oregon Public Defense Commission (OPDC) has identified the need for additional staffing to handle increased workloads and ensure a smooth transition to the Executive Branch. This includes positions in Accounts Payable, Preauthorized Expenses, and Information Technology Services.

The request aims to backfill and continue temporary staff, add limited duration positions, and address gaps identified through a gap analysis. This will help OPDC remain efficient and meet their 45 days-to-payment requirements.

One position in this request is for an IT Systems Auditor, which has only recently been presented to DAS Enterprise Information Services (EIS). That office could not justify this ask at the time because the Legislature has already funded a system architect position at OPDC, which has not been contributing to the Financial Case Management System project but could readily provide OPDC with the coverage required. DAS EIS recommends for Executive Branch agencies, which OPDC will become on January 1, 2025, to minimize operational costs and mitigate risks; the Department should make full use of DAS IT enterprise services whenever feasible, allowing sufficient lead time for a smooth transition.

The cost for the requested positions is \$1,051,401 for the current biennium and will have a \$997,078 budgetary impact in the 2025-2027 biennium for the permanent positions.

Legal Reference: Allocation of \$1,051,401 from the Special Purpose Appropriation made to the Emergency Board by chapter 605, section 113(1), Oregon Laws 2023, to supplement the appropriation made by chapter 481, section 1(9), Oregon Laws 2023, for Oregon Public Defense Commission, Administrative Services Division for the 2023-25 biennium.



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August 26, 2024

Senate President Rob Wagner, Co-Chair
House Speaker Julie Fahey, Co-Chair
Joint Emergency Board
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Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

The Oregon Public Defense Commission (OPDC) requests funding and position authority for one Manager 3 (0.38 FTE) and one Information Technology Services 3 (0.38 FTE), three limited-duration Accounting Tech 3 (LF, 1.38 FTE) and two Program Analyst 1 (LF, 1.00 FTE) for the Administrative Services Division. The estimated cost of this request is \$1,051,401 million from the Executive Branch Transfer Special Purpose Appropriation (SPA).

Agency Action

Accounts Payable and Preauthorized Expenses Staffing

OPDC requests \$779,468 from the Executive Branch Transition Special Purpose Appropriation to fund the backfill and continue temporary staff brought on for Accounts Payable and Preauthorized Expenses.

To mitigate the increasing need for services due to the unrepresented persons crisis, the commission made a series of policy moves that have increased the number of hourly providers, increased the complexity of each bill, and increased the frequency of payment. The commission has instructed the agency to approve requested services and work in an expeditious manner and to pay invoices in an expedient manner as well. To accomplish this, the agency has added additional staff above what they are currently budgeted for. The agency has made several temporary hires in lieu of future available positions and requests limited-duration positions to continue accommodating the increased workload.

These positions have allowed OPDC to remain under the 45 days-to-payment requirement and will allow OPDC to remain within that timeframe as they transition to the executive branch. Remaining

within 45 days is an essential part of not just entering the Executive branch as a well-functioning agency,

Requesting backfill funding for the following:

- Added one Accounting Tech 3, Accounts Payable processor position as a state temporary employee to fill a future recruitment that would be made available July 1, 2024, total cost of \$89,313 for August 2023 – June 2024.
- Added one Program Analyst 2, PAE Approver position as a state temporary employee to fill a future recruitment that would be made available July 1, 2024, total cost \$22,468 for March 2024 – June 2024.
- Have paid DePaul Industries (DPI) \$87,761 this biennium to add temporary staff to handle increased workload.

Requesting future ongoing funding for the following:

- Requesting 3 Accounting Tech 3, Accounts Payable processor positions in a limited duration capacity for 11 months, August 2024-June 2025 at a cost of \$306,354. (adding 3 positions (LF), 1.38 FTE)
- Requesting 2 Program Analyst 1, PAE intake positions in a limited duration capacity for 12 months, July 2024 – June 2025 at a cost of \$273,572. (adding 2 positions (LF), 1.00 FTE)

Gap Analysis Positions

OPDC also requests \$271,933 from the Executive Branch Transition Special Purpose Appropriation for two positions identified through the gap analysis.

Through a gap analysis based on the legislatively requested agency remediation plan, the agency has determined the need for various positions that will help with the smooth transition of OPDC into the executive branch. Crucial to the success of the agency's transition is the staffing support needs for the Information Technology Services transition. The Commission recently hired a Chief Information Officer (CIO) with numerous years of experience working with the Department of Administrative Services Enterprise Services to lead the commission's IT systems transition to the Executive Branch of government. The CIO has been working with DAS EIS and the agency human resources staff to do a needs assessment on existing staff, in addition to working with OJD ETSD to begin identifying needs while working through the transition plans.

The 2024 Legislature provided four essential positions as a start to moving the transition forward. However, additional positions will still be needed as the transition moves forward. The agency signaled that it would return in a future Emergency Boards to request the additional positions.

OPDC is requesting the addition of two additional Information Technology Services positions that are required to ensure the agency has the necessary staffing to address the move to the executive branch. An additional \$271,933 in General Fund will fund two positions for a combined 0.76 FTE.

These positions were identified through a gap analysis of what services the Oregon Judicial Department is currently providing vs. what services will be provided by the Oregon Department of Administrative Services (DAS). This request directly ties to the remediation issue of evaluating the current IT structure and identifying needs. These positions will have an estimated 2025-2027 roll-up cost of \$997,078 General Fund (2 positions and 2.00 FTE).

The positions include:

1. Manager 3 (1 position, 0.38 FTE) The responsibilities of a Chief Data Officer include overseeing the collection, management, and storage of data across the organization. Responsible for developing data storage strategy and policies, ensuring the security, preservation, and legal compliance of data. Maintaining a myriad of disparate data systems, including provider registries, contract management systems, payment systems, and case management systems. Additional responsibilities include the oversight of data retention, data classification, and data sharing. This position was identified as a need in response to the issue “Evaluate current data security and independence.” (Chief Data Officer)
2. ITS3 (1 position, 0.38 FTE) An IT Systems Auditor is responsible for conducting audits of malware and virus prevention systems, server event logs, and backup systems to ensure compliance with security policies. They regularly review server logs, intrusion detection logs, and network traffic logs for unusual or suspicious activity. They prepare reports on security breaches, including the extent of damage and recommendations for preventing future incidents. They review and manage end-user accounts, permissions, and access rights to ensure they align with security protocols. Additionally, they work closely with Enterprise Information Services and Cyber Security Services to ensure compliance and reporting requirements are met.

Action Requested

The Oregon Public Defense Commission (OPDC) requests funding and position authority for one Manager 3 (0.38 FTE), one Information Technology Services 3 (0.38 FTE), three limited duration positions for Accounts Payable (1.38 FTE) and two limited duration positions for the Preauthorized Expense Unit (1.00 FTE) within the Administrative Services Division. OPDC requests \$271,933 for permanent staff and \$779,468 for limited-duration staff. The estimated cost of this request is \$1,051,401 million from the Executive Branch Transfer Special Purpose Appropriation (SPA).

Legislation Affected

Oregon Laws 2023, Chapter 481, section 1(9) - \$1,051,401

Oregon Laws 2023, Chapter 605, section 113(1) - (\$1,051,401)

Sincerely,



Jessica Kampfe
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Zack Gehringer, Policy and Budget Analyst, CFO