

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE
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HOUSE OF
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RUSSELL K. PEARCE
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STEPHEN TULLY

JOINT LEGISLATIVE BUDGET COMMITTEE

Tuesday, May 2, 2006

8:00 a.m.

Senate Appropriations Room 109

MEETING NOTICE

- Call to Order
- [Approval of Minutes of March 28, 2006.](#)
- DIRECTOR'S REPORT (if necessary).
- EXECUTIVE SESSION - Arizona Department of Administration, Risk Management Services - Consideration of Proposed Settlements under Rule 14.
- 1. [ATTORNEY GENERAL - Review of Allocation of Settlement Monies.](#)
- 2. [DEPARTMENT OF CORRECTIONS - Consider Approval of Requested Transfer of Appropriations.](#)
- 3. [DEPARTMENT OF ECONOMIC SECURITY - Consider Review of Transfer of Appropriations and Update on Ekloff v. Rodgers Litigation.](#)

The Chairman reserves the right to set the order of the agenda.

04/26/06

People with disabilities may request accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Requests for accommodations must be made with 72 hours prior notice. If you require accommodations, please contact the JLBC Office at (602) 926-5491.

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MINUTES OF THE MEETING

JOINT LEGISLATIVE BUDGET COMMITTEE

March 28, 2006

The Chairman called the meeting to order at 8:07 a.m., Tuesday, March 28, 2006, in Senate Appropriations Room 109. The following were present:

Members: Representative Boone, Vice-Chairman Senator Burns, Chairman
 Representative Biggs Senator Arzberger
 Representative Burton Cahill Senator Cannell
 Representative Gorman Senator Garcia
 Representative Pearce Senator Harper
 Representative Tully Senator Martin
 Senator Waring

Absent: Representative Huffman Senator Bee
 Representative Lopez

APPROVAL OF MINUTES

Hearing no objections from the members of the Committee to the minutes of February 28, 2006, Senator Burns stated the minutes would stand as presented.

ARIZONA DEPARTMENT OF CORRECTIONS – Consider Approval and/or Review of Transfer of Appropriations.

Mr. Lorenzo Martinez, JLBC Staff, explained a request by the Arizona Department of Corrections (ADC) to transfer \$16 million from the Private Prison Per Diem line item into the All Other Operating Expenditures line item to fund increased health care costs. The Committee has at least the following 3 options:

- Provide the transfer of \$16 million as requested by the department, however that would leave no funding in that Line Item to pay for private prison contracts beginning in April and through the end of the fiscal year.
- Pro rate the \$16 million transfer among 3 line items-Private Prison Line Item, Personal Services and Employee Related Expenditures. This option would require Committee approval as opposed to review because of the department's current budget structure.
- Transfer what is available in the Private Prison Line Item. Although the memo indicates \$4 million is available, the department has stated only \$3 million is available.

Senator Garcia asked if the shortfall is \$16 million or will it be closer to \$10 million.

Mr. Martinez stated that the JLBC Staff believes there is a shortfall in the Other Operating amount of approximately \$9.2 million. We have had discussions with the department for the last month to show them our analysis. They have responded

with additional information and those discussions are continuing. The department has requested a total supplemental for FY 2006 of almost \$27 million.

Senator Burns understood that transferring \$16 million out of the Private Prison line would deplete that line and the department would be short of funding after April. He asked why that would be a proposal.

Ms. Dora Schriro, Director, Arizona Department of Corrections, responded that because they are going to be short in all areas before the end of the year, they looked for an account which had sufficient funds to transfer. They looked to propose the fewest number of transfers possible so as to continue to track the money carefully. As she testified last month, they are going to be completely out of money early in May, so they are continuing to encourage conversations about the supplemental. She explained that the April billings do not arrive until May and, by then, they hoped there would be a supplemental, otherwise they would be having trouble in all categories, not only the Private Prison category.

Senator Burns pointed out that if you are going to be short in these other categories, why wouldn't we be talking more about a supplemental relative to the areas where you are short as opposed to transferring money out of one line and creating a shortage in another line.

Ms. Schriro explained that the areas where they have identified as shortages, was the underfunding of inmate healthcare and the utilization of overtime spending shortages. They identified the shortages to the budget in the past and also in letters as early as July 21.

Representative Pearce stated that does not change the shortfall. All you are doing is shifting where that shortfall is going to be. He asked why this line item was chosen and was there any thought given about other places to shift money.

Ms. Schriro stated that when she made the proposal to JLBC it was because it was the one category that had sufficient monies at this point and because the nature of the billing would not need to draw monies beyond those which would be left until May when the April billings came due.

Representative Pearce stated that one of the problems we have is the tracking of the department's health care expenditures. He asked if it would more helpful to have a more detailed budget structure that includes line items for health care, so the Committee could be more aware of potential shortfalls.

Ms. Schriro said it would be useful to better delineate all of the costs associated with health care, on the other hand, an individual line item might necessitate more meetings such as this, if it is not adequately funded.

Senator Harper supported transferring the \$3 million that is not encumbered and that we need to think seriously about a supplemental appropriation. He explained that he toured the Lewis Prison and believes the department is understaffed and overpopulated with inmates. He believes we need to think seriously about expanding our prisons before our 3 strikes referendum goes into law. He also stated that he disagreed with the study that came out from MAXIMUS or was guided by MAXIMUS, that the private prisons were more expensive. We need to do something right now to ease overcrowding in our prisons and make sure that we retain our Corrections Officers.

Representative Pearce stated that the department has had the ability to solve most of those problems and has refused to go forward. Public safety is a number 1 issue and we need to make sure our prisons are staffed properly, and make sure our folks are paid properly.

Mr. Tully asked if Director Schriro had any opinion regarding the 3 options provided by the JLBC Staff.

Ms. Schriro stated their recommendation would be as they suggested in the letter, that they need the \$16 million from the Private Prison line because it is a line that has adequate money to meet bills for the immediate future. You can move comparable amounts of money from many more lines, but she thinks that it simply makes it more difficult to trace. To move less money is going to result in the need for additional action by this Committee.

Representative Tully asked what the difference is between shifting the same amount of money from 3 different accounts as opposed to 1 if it is the same amount of money.

Ms. Schriro stated that they are not all quite the same amount of money, option 3 is less. The difference is in option 2, which recommends taking a considerable amount of money from Personal Services. They continue to draw down on Personal Services to pay their officers and to continue to cover those posts. This an absolutely critical funding source that they need to have uninterrupted.

Representative Tully asked how fast the department anticipates running out of money in Personal Services if we transferred the \$10 million as in recommendation option 2.

Ms. Schriro answered that she did not know and would have to get that information.

Senator Burns believed in the past Ms. Schriro has stated that she does not necessarily consider private prisons as a viable option to addressing our prison situation. He asked if that was correct.

Ms. Schriro stated that, except as a last resort, privatizing incarceration is ill-advised as a policy matter because punishment is a core governmental function and she believes that the state has operated its facilities more efficiently than the private prisons.

Senator Burns indicated that if we were to short the Private Prison line he thinks that the effort to get that line restored might be a little less energetic than the effort to get the actual restoring of the Medical lines that are the real shortage.

Senator Burns expressed his concern with getting information out of the agency, as well as how we address this issue. He believed it would be better addressing the shortages where the shortages are and not shifting money out of some line that might be a little bit difficult to get restored.

Senator Cannell stated that it seems the base problem is that we are underfunding the ADC and supported giving the department a supplemental.

Discussion ensued on the issue of private prisons and the MAXIMUS report.

Representative Boone moved, to transfer \$3 million from the Private Prison line and that we address the health care shortage issue on its own.

Senator Arzberger asked if the health care issue would be addressed today.

Senator Burns stated that we are not prepared to address it today. We need to have some analysis from JLBC Staff and it will be addressed later.

The motion carried.

ARIZONA DEPARTMENT OF CORRECTIONS – Report on Public-Private Bed Cost Comparison.

Mr. Martinez stated that this item is a report on a recent public-private cost comparison that was conducted by ADC. The department contracted with a consulting firm (MAXIMUS) to evaluate the methodology the department uses for its statutorily-required public-private bed cost comparisons. MAXIMUS observed that the current methodology does not enable the accurate comparison of department costs to private costs. As a result, MAXIMUS recommended some adjustments to the department's methodology to create a more accurate comparison.

The department applied some of the adjustments and came up with their estimate that the average daily per capita private bed costs was approximately \$5.60 higher than the public beds. This preliminary analysis was for level 2 beds. MAXIMUS reviewed the department's cost comparison and stated it reasonably presents the difference between public and private costs. However they also noted that additional adjustments were still necessary and these adjustments were related to items such as asset depreciation, as well as other-state agency support, such as Department of Administration, and similar types of other adjustments. MAXIMUS did a cursory review of these additional adjustments and estimated that it would impact the \$5.60 gap by less than \$2.

Another item noted by MAXIMUS was that part of the adjustments need to reflect capital costs. While asset depreciation was taken into account on the state side, it is not clear that the full capital costs associated with the private per diem costs is fully accounted for. Finally, MAXIMUS also suggested that the department release a detailed explanation of their methodology. JLBC Staff does not believe it can do an in-depth analysis of these comparisons until that detail is available.

Senator Cannell asked if he was correct that this compared level 2 beds only.

Mr. Martinez referred Senator Cannell to Exhibit A in the JLBC Agenda book which indicates these are level 2 comparisons.

In response to Representative Gorman, Mr. Martinez stated that the department hired MAXIMUS to evaluate their per capita cost report. That is a report the department produces annually to translate their budget into a per bed per diem cost. When MAXIMUS evaluated it, they said the methodology is okay for translating their budget into a per diem cost, however when they use those amounts to compare to private per diem costs, they need to make some adjustments because both sides do not necessarily have the same type of cost factors.

Senator Arzberger seemed to remember from prior discussions that there was a question comparing per diem costs between private prisons and state prisons. The private prisons did not include the medical expenses for the prisoners. She was not sure if that was in-house medical expenses or transportation medical expenses, but there was a large item that was not included in the comparison between the two and yet the state was responsible for it. She asked if MAXIMUS took that into consideration.

Mr. Martinez explained that the calculations were done by ADC and that analysis was reviewed by MAXIMUS. After MAXIMUS' review they noted that there were some items that were still not accounted for, one of which was some of the health care issues. In certain circumstances the private prison pays for certain health care costs. When they exceed a certain amount, in general, the department then is responsible for paying those high health care costs. Part of that \$2 adjustment that MAXIMUS did a cursory review on included some of those adjustments.

Representative Pearce mentioned that the actual public-private comparison consists only of 6 to 8 pages of charts. MAXIMUS recommended that ADC publish a detailed methodology of its comparison. He asked the department when they expect to release a full detailed report as recommended by MAXIMUS.

Ms. Schriro stated that the department sought the services of MAXIMUS through the competitive bid to evaluate the per capita report and also the method by which we respond to several legislative directives. Those are specifically that every 5 years retroactively we are to make an assessment to ascertain whether the state accrued a savings by virtue of retaining and utilizing private prison beds by comparing actual costs of state expenditures for public beds versus state expenditures for private beds. To that end, they provided MAXIMUS with their per capita report which had been their basis for making that comparison. In turn, MAXIMUS made an evaluation and recommendation specific to the preparation of the per capita report and it also went on to observe that the per capita report would be applied to the determination of that statutory mandate. The report in and of itself was insufficient to make the comparison of costs for spending for public and private beds and so MAXIMUS proposed the methodology for the public versus private cost comparison report. In both of those instances, it has recommended that the department prepare technical manuals that would delineate the actual methods by which they implement their recommendations.

MAXIMUS also evaluated an old methodology developed by the Governor's Office of Excellence and previous administrations to make the prospective comparison, that is, when the state is contemplating further expansion of beds and wants to consider public as well as private. MAXIMUS has recommended that there be a manual prepared to implement those recommendations. The department has adopted all of MAXIMUS' recommendations including the preparation of manuals. The department is currently preparing the manuals specific to the per capita report and to the state versus private. By the end of the day she should have an idea as to when they think those might be done. They have not yet developed the other manual because they have not had the opportunity yet to make a prospective comparison under the new set of recommendations.

Representative Pearce stated that MAXIMUS recommended that public costs be adjusted for non-ADC state agency support costs and depreciation costs. The department asked MAXIMUS to prepare preliminary estimates of those costs, which MAXIMUS admits was based on a cursory review. He asked why would the department release a public-private comparison prior to having fully completed the background work on those adjustments.

Ms. Schriro indicated in their response to MAXIMUS in a number of instances they could adopt their recommendations because the data was available, so they could go back and disaggregate it and apply those recommendations for the FY 2003-2004 comparison. In several instances, it was not possible to go back and disaggregate the data because it was not collected in a format that would work for making the recommendations.

Representative Pearce expressed concerns with the report not properly dealing with capital and benefit packages. Nationally private prisons save 15% to 20% and he believes that is the case in the state of Arizona too.

Ms. Schriro responded that MAXIMUS did identify inclusion of our benefit package and those monies that are appropriated to the department that represents state spending for benefits, including retirement. They are all included in state costs.

Further discussion occurred on whether all relevant costs have been accounted for.

Representative Pearce stated that MAXIMUS offered the suggested revisions in your methodology and asked if it was true that the actual public-private comparison was done by ADC itself.

Ms. Schriro answered yes and that it was reviewed by MAXIMUS. MAXIMUS provided letters that referenced each of the years of analysis (FY 2003 and 2004) and it indicated in those letters that the department had made correct applications of their recommendations

There was discussion by Representative Pearce and Director Schriro as to whether ADC disobeyed the law with regard to prior directives to privatize the female inmate population.

Representative Boone asked for clarification on page 3 of the MAXIMUS report. It states, "Although in our opinion the Cost Report presents reasonable cost analysis, it does not enable the accurate comparison of ADC operated prison costs to private prison costs." It further states, "In order to provide information in which a valid cost comparison could be made in response to A.R.S. § 41-1609.01 (L), a separate, distinct report should be developed that includes all costs, and appropriately allocates costs to both ADC and private prisons and/or excludes costs not borne by both ADC and private prisons." In other words until that report is done and includes all of those appropriate cost comparisons, no accurate comparison can be made. His clarification was when Representative Pearce asked you a question in terms of when that would be ready, you said you did not have a date.

Ms. Schriro stated no. She believed what she heard Representative Pearce ask was when was the documentation going to be ready, which amplifies the preparation of the report that we have submitted. If that is not the question then she misunderstood.

Representative Boone stated that it seems by the findings in the MAXIMUS report that an accurate comparison cannot be made based upon what they reviewed and you prepared. In order to do an accurate comparison to include certain costs, that a separate report needs to be done. His concern is that he would hope that it would be a priority of ADC to get that done, because if MAXIMUS is saying they cannot do a valid comparison now with the data that they reviewed that you have, it seems that should be a high priority to get that done.

Ms. Schriro agreed and it is completed and that is what was submitted. She indicated to Representative Boone that what he was reading is their critique of the operating per capita cost report. For a number of years this agency had relied on that per capita report to be the basis for the public versus private comparison. MAXIMUS said that while it should be incorporated that was not an adequate method for comparison. She referred Representative Boone to page 4 of the MAXIMUS report under "Recommendations Related to Development of a State Versus Private Prison Cost Comparison."

Representative Boone asked if that has been completed and is MAXIMUS in agreement that all those costs were appropriated in that also.

Ms. Schriro answered yes and stated that MAXIMUS reviewed their application of their recommendations which are attached to their FY 2003 and 2004 comparison. There are 2 letters from MAXIMUS, one attached to each of those comparisons, reviewing their application of their recommendations. As mentioned previously in a response to a question by Representative Pearce, there are several recommendations that cannot be reconstructed historically, so those recommendations are adopted, but they can only be incorporated beginning in FY 2007.

Representative Boone stated that we would not have an accurate comparison until FY 2007 and asked if that was correct.

Ms. Schriro believes you have a reasonable representation. MAXIMUS has estimated that when those 4 remaining recommendations are adopted it will raise state costs no greater or less than \$2 as JLBC Staff also reported and that is why when they presented the material in their summary, they demonstrated the range so as never to overestimate the savings. They provided the range based on the actual and then adjusted for the no greater than the \$2 difference in cost.

Senator Garcia asked if anyone was present from MAXIMUS.

Mr. Joel Nolan, Vice President, MAXIMUS introduced himself as the author of the MAXIMUS report.

Senator Garcia asked if the department made an accurate portrayal in the discussions it had with MAXIMUS, in terms of developing a good source of data.

Mr. Nolan stated that he believed so. He stated that he is a certified government financial manager for about 30 years and one of the first steps he did was go back and look at the cost report to ascertain if the information was based on auditable records. He identified that all the costs that were in the current cost report was in their total cost and were traced back to auditable records and then the financial report. He did find out that the methods they were using to present those numbers were not an accurate representation of what was going on and that was when he started with the cost report. Yes, they did have all the numbers in there. He said he can trace all the numbers back.

Getting to the definition of trying to see whether or not we are actually comparing apples to apples, Senator Garcia said you have made some recommendations to the department. He asked if the department has been cooperating with MAXIMUS.

Mr. Nolan stated that so far they have been very cooperative. The issue with some of the items is they have not tracked these costs in a format that I feel like should be tracked. They need to track health costs and inmate transportation costs. Before they have just been capturing costs at a facility level. They need to break each facility down into a different type of cost. Whether they do that on a budget level or not, they need to track it for reporting purposes so we can more accurately see what is going on.

Senator Garcia stated that there have been some discussions about benefits, specifically retirement benefits that have not been included in those calculations. He asked if they were included.

Mr. Nolan said that in all of the numbers that he reviewed related to the cost report and, subsequently, the comparison that the department had done, all benefit numbers were in those numbers. What was not in those numbers were the costs that were being incurred on their behalf by an outside agency.

Senator Garcia asked what was meant by the benefits that were incurred outside of the agency.

Mr. Nolan referred to the Department of Administration accounting services and financial reporting services. There are several departments that are contributing to those costs and they can vary from year to year. The state prepares a report every year that identifies how much of those costs go to each agency and those are the costs he was referring to.

He clarified that the cost report was only presenting what the agency is occurring in their own budget. It was not taking these other costs, plus it had some errors in the way it was being presented which he recommended fixing. The second thing was the state is saying that every 5 years the department needs to do a cost comparison of the actual costs to what was actually paid. The department has done that. He keeps hearing questions as to whether that is a good comparison. It still has some inherent problems when you are comparing actual to actual because you are dealing with a different period in time. We are comparing the cost to run a facility that was built 30 years ago to a cost of a facility that was built 5 or 3 years or even 1 year ago. To meet the state's requirement, we felt they needed to compare actual to actual, which is what they gave me to review. What he has not heard discussed here, was that in the third part of their report, it said, you really need to be comparing apples to apples. Instead of \$2 in depreciation, which is what we may have currently, a new facility may be closer to \$7 or \$8. By the same token, in our historical costs we have a lot of old facilities which have a lot of maintenance costs, so in order to do a real comparison we need to back out all of those costs. If you are always basing it on historical costs you are never going to have a complete apples to apples comparison.

Representative Burton Cahill stated that with regard to prison construction, when a private prison is built, how do we finance a private prison and who is responsible if the contract with that corporation is terminated.

Mr. Nolan stated that in his experience with other states, in some cases they are financed through a county or a city and so the city is issuing bonds and the method they are using to pay those bonds is a revenue stream that comes from the per diem that the city pays. If for some reason the state were to cancel a contract and that enterprise was no longer going to pay the amount for the bond, then they would default, and in most states it would fall back to the state.

Representative Burton Cahill believes we should have our lawyers look at this. She asked if the Committee could have the JLBC Staff look at this to see where we stand as far as the liability.

Senator Burns said yes.

Senator Cannell asked if there was a reason we looked at level 2 prisons rather than the various levels. It seems like there would be a difference.

Ms. Schriro said that in FY 2003 and 2004, the only beds they had contracts for were level 2 male beds and that was the basis for comparison. In FY 2005, their contracting expanded to include level 3 beds and so the comparison will be broader for 2005 data. In 2006 it will continue to be levels 2 and 3. In a partial response to Representative Burton Cahill's question, the private prisons are financed by tax-free government bonds. If the state was to cancel the contract, the private prisons would be liable.

The meeting adjourned at 9:20 a.m.

Respectfully submitted:

Amanda Ruiz, Secretary

Richard Stavneak, Director

Senator Robert Burns, Chairman

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DATE: April 25, 2006

TO: Senator Bob Burns, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Leah Ruggieri, Fiscal Analyst

SUBJECT: Attorney General – Review of Allocation of Settlement Monies

Request

Pursuant to a footnote in the General Appropriation Act, the Office of the Attorney General (AG) has notified the Committee of the allocation of monies received from the Ameriquest and Smart Advertising Solutions LLC (SAS) consent judgments.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plan from the Ameriquest and SAS consent judgments. The allocation plan is consistent with A.R.S. § 44-1531.01, which relates to the distribution of monies recovered as a result of enforcing consumer protection or consumer fraud statutes.

Analysis

The General Appropriation Act contains a footnote that requires JLBC review of the allocation or expenditure plan for settlement monies over \$100,000 received by the AG or any other person on behalf of the State of Arizona, and it specifies that the AG shall not allocate or expend these monies until the JLBC reviews the allocations or expenditures. Settlements that are deposited in the General Fund pursuant to statute do not require JLBC review. The AG recently settled 2 cases that will result in the receipt of settlement monies over \$100,000. These cases are described below.

(Continued)

Ameriquest Mortgage Company Consent Judgment

The judgment is the result of the claims filed by the state that Ameriquest Mortgage Company and affiliated entities violated the Arizona Consumer Fraud Act and Arizona banking laws by engaging in deceptive acts and practices in making residential mortgage loans to Arizona consumers between 1999 and 2005. Forty-nine other state attorneys general and financial regulators have also entered into substantially the same consent judgment with Ameriquest. In March 2006, the AG settled the claims against Ameriquest for approximately \$5.9 million. Of this amount, approximately \$5 million will provide restitution to eligible consumers, to be administered by a third party nationwide. Ameriquest will also pay the Attorney General \$865,000 in costs and fees, to be deposited into the Consumer Fraud Revolving Fund. Ameriquest will additionally pay the Department of Financial Institutions \$35,000 in costs and fees.

The Consumer Fraud Revolving Fund finances consumer fraud education and the investigative and enforcement operation of the Consumer Fraud Division. In FY 2000 through FY 2005, the fund received an average of \$1.1 million in each fiscal year. In addition to this average, which excludes large settlements, the fund received \$2.8 million from a settlement with Qwest in FY 2004 and FY 2005 as well as \$550,000 from a settlement with Household in FY 2004. Through the third quarter of FY 2006, \$2.3 million has been deposited into the Fund. This total includes the amount received from the Ameriquest settlement as well as \$1 million from the final installment of the Qwest settlement.

Smart Advertising Solutions LLC Consent Judgment

The judgment against SAS is the result of an investigation by the Attorney General that was prompted by several consumer complaints. When advertising and selling home based business opportunities to consumers, SAS made various earning claims that were deceptive and misleading. In some cases, SAS misrepresented the effectiveness of advertising sold to customers to support their home based businesses once they were established. SAS has sold business opportunities and advertising to thousands of consumers nationwide. The AG entered into a Consent Judgment with SAS in April 2006 that would require SAS to pay civil penalties totaling \$225,000 and costs and fees totaling \$25,000, both of which will be deposited into the Consumer Fraud Revolving Fund. These amounts will be paid in 8 quarterly installments of \$31,250 scheduled to begin in April 2006 and end in January 2008.

RS/LR:ar



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Rene Rebillot
Consumer Protection &
Advocacy Section

March 30, 2006



The Honorable Ken Bennett
President of the Senate
1700 West Washington
Phoenix, Arizona 85007

The Honorable James P. Weiers
Speaker of the House
1700 West Washington
Phoenix, Arizona 85007

The Honorable Robert L. Burns
Chairman, Joint Legislative Budget Committee
1700 West Washington
Phoenix, Arizona 85007

Re: *State v. Ameriquest Mortgage Co. et al.*

Dear Gentlemen:

This Office has entered into a Consent Judgment with Ameriquest Mortgage Company ("Ameriquest") and affiliated entities. Forty-nine other state attorneys general and financial regulators have entered into substantially the same Consent Judgment. A copy of the Consent Judgment is enclosed. The Consent Judgment will settle claims by the State that Ameriquest has violated the Arizona Consumer Fraud Act and Arizona banking laws by engaging in deceptive acts and practices in making residential mortgage loans to Arizona consumers between 1999 and 2005.

The Consent Judgment provides broad injunctive terms that are intended to substantially reform the way Ameriquest sells its mortgage loan products to consumers in Arizona and nationwide. The judgment also provides for an outside monitor to insure compliance with the injunction. In addition to injunctive relief, the Consent Judgment provides for a nationwide restitution program, administered by a third party to pay eligible consumers. Ameriquest made about 14,000 loans to Arizona residents during this time, and we believe that eligible Arizona consumers will receive about \$5 million in restitution.

Hon. Ken Bennett
Hon. James P. Weiers
Hon. Robert L. Burns
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The Consent Judgment will also require Amerquest to pay the Attorney General \$865,000 in costs and fees, to be deposited into the Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01. Amerquest will also pay the Department of Financial Institutions \$35,000 in costs and fees.

Our notification to you of this settlement is made without prejudice to our Office's longstanding position that it is not under any legal obligation to provide notices of settlements to the Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

Please call me at (602) 542-7701 if you have any questions regarding this matter.

Sincerely,



Rene J. Rebillot
Chief Counsel
Consumer Protection & Advocacy Section
Telephone: (602) 542-7701
Fax: (602) 542-4377

Enclosure

cc: The Honorable Linda Aguirre
The Honorable Phil Lopes
Mr. Richard Stavneak
Ms. Leah Ruggieri
Mr. Timothy Nelson
Mr. Richard Travis
Mr. John Stevens



Terry Goddard
Attorney General

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April 19, 2006

The Honorable Ken Bennett
President of the Senate
1700 West Washington
Phoenix, Arizona 85007

The Honorable James P. Weiers
Speaker of the House
1700 West Washington
Phoenix, Arizona 85007

The Honorable Robert L. Burns
Chairman, Joint Legislative Budget Committee
1700 West Washington
Phoenix, Arizona 85007



Re: *In re State of Arizona v. Smart Advertising Solutions LLC*

Dear Gentlemen:

On April 13, 2006 the Attorney General obtained a Consent Judgment against Smart Advertising Solutions LLC ("SAS") and its principals, Bill Fautsch and Thomas Kelly. The judgment against SAS was the result of an investigation by the Attorney General that was prompted by several consumer complaints. Essentially, SAS advertised and sold home based business opportunities to consumers and in the process of doing so made various earnings claims that were deceptive and misleading. SAS also sold consumers advertising to support their home based businesses once they were established, and in some cases misrepresented the effectiveness of this advertising. SAS sold its business opportunities and advertising to thousands of consumers throughout the country.

The terms of the Consent Judgment require SAS to comply with the Arizona Consumer Fraud Act. SAS is also specifically prohibited from making representations regarding the amount of money that consumers can earn from their use of SAS's products and services unless SAS can document a representative number of its customers who have earned the represented amounts. SAS is also

Hon. Ken Bennett
Hon. James P. Weiers
Hon. Robert L. Burns
April 19, 2006
Page 2

prohibited from making deceptive representations regarding the efficacy of its advertising sold to consumers to support their established businesses.

The Consent Judgment also requires SAS to pay the Attorney General civil penalties in the amount of \$225,000.00 as well as costs and fees in the amount of \$25,000.00. The amounts described above are to be paid to this office in eight quarterly installments through January 1, 2008. The civil penalties and costs and fees will be placed in the Consumer Revolving Fund.

Our notification to you of this settlement is made without prejudice to this office's long standing position that it is not under any legal obligation to provide notices of settlements to the Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

Please call me at (602) 542-7701 if you have any questions regarding this matter.

Sincerely,



Rene Rebillot
Section Chief Counsel
Consumer Protection and Advocacy Section

RJR

Enclosure: Consent Judgment

cc: The Honorable Linda Aguirre
The Honorable Phil Lopes
Mr. Richard Stavneak
Ms. Leah Ruggieri
Mr. Timothy Nelson
Mr. Richard Travis
Mr. John Stevens

STATE OF ARIZONA

Joint Legislative Budget Committee

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STEPHEN TULLY

DATE: April 27, 2006

TO: Senator Bob Burns, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Kevin Bates, Fiscal Analyst
Lorenzo Martinez, Assistant Director

SUBJECT: Department of Corrections - Consider Approval of Requested Transfer of Appropriations

Request

The Arizona Department of Corrections (ADC) requests Committee approval to transfer \$4 million from the Personal Services and Employee Related Expenditures (ERE) line items to the Overtime/Compensatory Time Special Line Item (SLI).

The department requests the transfer, reporting that the additional funding is needed to continue to pay cash overtime through the end of FY 2006 and to make partial payment to employees with compensatory leave balances owed to them.

ADC also requests Committee approval to transfer any available amounts from the Personal Services and ERE line items at the end of the fiscal year to the Overtime/Compensatory Time SLI to pay for any remaining compensatory time liabilities.

Because ADC has a modified lump sum budget, A.R.S. § 35-173 requires Committee approval of transfers to or from the Personal Services and ERE line items. Laws 2006, Chapter 286 also requires that any transfer to or from the amounts appropriated for the Overtime/Compensatory Time SLI shall require Committee review.

Recommendation

The JLBC Staff recommends that the Committee approve the agency request to transfer \$4 million from Personal Services and ERE to the Overtime/Compensatory Time SLI. The JLBC Staff further recommends deferring any action concerning a year-end transfer for compensatory time costs until the June meeting.

(Continued)

Analysis

ADC has reported revising earlier projections of overtime and compensatory time levels. According to department estimates, the total amount required will be \$41 million instead of the previous estimate of \$37 million. The JLBC Staff current estimate of the amount is \$36.7 million.

The current appropriation for the Overtime/Compensatory Time SLI is \$30.2 million. This amount includes \$12 million that ADC transferred to the SLI from Personal Services and ERE following Committee approval on February 28, 2006. The requested transfer would increase the total amount in this SLI to \$34.2 million. Since the amount is still below the \$36.7 million estimate, JLBC Staff recommends approval of the transfer request.

ADC did not provide a breakdown of the \$4 million between Personal Services and ERE. Using a marginal ERE rate of 15.7%, JLBC Staff has estimated the transfer to consist of \$3.4 million from Personal Services and \$627,000 from ERE. *Table 1* below shows the current appropriations within these line items and the balance following the proposed transfer.

<u>Line Item</u>	<u>Original Appropriation</u>	<u>JLBC (2/28) Transfers</u>	<u>Proposed Transfers</u>	<u>Revised Appropriation</u>
Personal Services	349,318,600	(9,000,000)	(3,373,000)	336,945,600
ERE	134,830,700	(3,000,000)	(627,000)	131,203,700
Overtime/Compensatory Time	18,227,700	12,000,000	4,000,000	34,227,700

This transfer would leave \$336.9 million in the Personal Services line, which is \$1.7 million below the estimated year-end need for FY 2006. The transfer also would leave \$131.2 million in ERE, which is \$627,000 below the estimated year-end need for FY 2006. Although the transfer will reduce Personal Services and ERE funding below the year-end estimate, the line items will still have sufficient funding until about mid-June. The Governor and legislative leadership are currently discussing supplemental funding for the department. The supplemental would address the year-end shortfalls.

Regarding the department's request of a future transfer, JLBC Staff recommends deferring this transfer until the June JLBC meeting. In the meantime, JLBC Staff will work with ADC to receive additional information regarding compensatory time.

RS/KB:ar

Arizona Department of Corrections



JANET NAPOLITANO
GOVERNOR

1801 WEST JEFFERSON
PHOENIX, ARIZONA 85007



DORA B. SCHRIRO
DIRECTOR



April 19, 2006

The Honorable Robert Burns
Chair, Joint Legislative Budget Committee
Arizona Legislature
1700 West Washington
Phoenix, Arizona 85007

The Honorable Tom Boone
Chair, Joint Legislative Budget Committee
Arizona Legislature
1700 West Washington
Phoenix, Arizona 85007

Gentlemen:

The purpose of this letter is to request placement on the agenda of the next meeting of the Joint Legislative Budget Committee to consider a transfer of funds in the amount of \$4 million from the Personal Services and Employer Related Expenditures appropriations to the special line for Overtime/Compensatory Time to enable the Department to continue to pay cash overtime through the end of the fiscal year and to make partial payment to employees with compensatory leave balances.

The Department has revised earlier projections of cash overtime and compensatory time expenditures for fiscal year 2006 from \$37 million to \$41 million, partly due to the recently implemented pay increase. The \$4 million transfer would bring the appropriation in the Overtime/Compensatory Time special line item to \$34,227,700.

The Department would also like the Committee to consider an additional transfer from the personal services and employer related appropriation to the Overtime/Compensatory Time special line to take place at the end of June to utilize all available funding to pay the compensatory time liability. The amount of this transfer is currently unknown and would be determined by the Department in late June. Because of the tightness of the budget, it would not be prudent to transfer more than is absolutely necessary. If a Committee

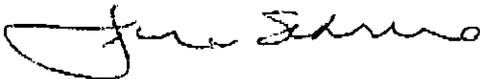
The Honorable Robert Burns
The Honorable Tom Boone
April 19, 2006
Page 2

meeting is not planned for late June, the Department requests the authority to cover overtime/compensation time expenditures with the remaining personal services appropriation.

None of the appropriation transfers requested by the Department this year precludes the need for a supplemental appropriation to complete the payment of compensatory time to employees at year end.

I appreciate your consideration and timely action.

Sincerely,



Dora Schiro

cc: The Honorable Janet Napolitano, Governor
The Honorable Ken Bennett, President, Arizona State Senate
The Honorable James Weiers, Speaker, Arizona House of Representatives

STATE OF ARIZONA

Joint Legislative Budget Committee

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SENATE

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STEPHEN TULLY

DATE: April 27, 2006

TO: Senator Bob Burns, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Russell Frandsen, Fiscal Analyst

SUBJECT: Department of Economic Security – Consider Review of Transfer of Appropriations and Update on *Ekloff v. Rodgers* Litigation

Request

Pursuant to a FY 2006 General Appropriation Act footnote, the Department of Economic Security (DES) is required to have fund transfers out of the state-only Developmental Disabilities cost center reviewed by the Joint Legislative Budget Committee. DES is planning to move \$1.2 million General Fund (GF) and \$2.5 million state-only Long Term Care System Fund (LTCSF) monies from the state-only Arizona Training Program at Coolidge (ATP-C) budget to the Title XIX Long Term Care (LTC) ATP-C budget. DES has not requested this transfer, but as explained below, the existing footnote suggests that Committee review is necessary.

Summary

The JLBC Staff recommends that the Committee give a favorable review of the request. The proposed transfer is consistent with previous legislative intent that DES make clients at ATP-C Title XIX eligible.

Analysis

This fund transfer comes before the Committee for review because the FY 2006 General Appropriation Act includes the following footnote:

“It is the intent of the Legislature that any available surplus monies for developmental disability programs be applied toward the waiting list, unless there are insufficient monies to annualize these costs in the subsequent year. The children’s waiting list shall receive first priority. The amount appropriated for Developmental Disabilities shall be used to provide for services for non-Title XIX eligible clients. The amount shall not be used for other purposes, unless a transfer of monies is reviewed by the Joint Legislative Budget Committee.”

(Continued)

The department has not requested a committee review. This may be because the footnote is associated with the Home and Community Based Services line item in the FY 2006 Appropriations Report. The General Appropriation Act makes no distinction between line items; as a result, the footnote should apply to all state-only DD line items, including the ATP-C line item.

Laws 2003, Chapter 265, Section 7 (the FY 2004 Health and Welfare Budget Reconciliation Bill) required all ATP-C clients to modify their trust holdings to become Title XIX eligible. This law required ATP-C clients to use their assets to pay for their residential service unless they spent down assets to become eligible for Title XIX, or they created a Medicaid Qualifying Trust and placed assets in that trust. A Medicaid Qualifying Trust provides money to clients for the purchase of incidental living expenses not provided by the state; upon death, however, the assets remaining in the trust revert to the state, rather than the family or guardian.

By October 2004, all 39 former state-only clients had become Title XIX eligible, resulting in the shift of their costs from the state-only ATP-C line item to the LTC ATP-C line item. Because all clients are now Title XIX eligible, DES plans to transfer \$1.2 million General Fund from the state-only ATP-C line to the LTC ATP-C line in order to draw down \$2.5 million federal Title XIX dollars. The state's Long Term Care System Fund in the state-only line item consisted of trust fund revenues from clients during the Title XIX eligibility conversion process. As all clients are now Title XIX eligible, there will not be significant ongoing revenues into the LTCSF. The complete details of the fund transfer can be seen in *Table 1*:

DES Fund Transfers	Transfer From	Transfer To
State-only ATP-C General Fund	\$(1,200,000)	
State-only ATP-C LTCSF	\$(2,544,300)	
LTC ATP-C General Fund		\$1,200,000
LTC ATP-C Federal Title XIX		\$2,544,300

The DES budget adopted by the Appropriations Committee includes a shift of General Fund resources for FY 2007. Applying the surplus monies toward the waiting list would reduce the total funding for the combined ATP-C budgets. Additionally, if these surplus monies were applied to the waiting list in FY 2006, these costs could not be annualized in FY 2007 because these same monies are not available in FY 2007.

Incontinence Brief Lawsuit, *Eklhoff v. Rodgers*

Arizona's Medicaid policy has been to only pay for incontinence briefs once a child had developed skin breakdown, sores or infection. In June 2005, a class action lawsuit was filed to force Arizona to cover incontinence briefs as a preventative measure. On March 3rd, 2006 the United States District Court for the District of Arizona ruled:

- (1) federal Medicaid law requires Arizona to supply preventive incontinence briefs to children under 21 with disabilities and that
- (2) the state must reimburse Plaintiff parents for their out-of-pocket expense in buying the incontinence briefs themselves.

Subsequent to the March 3rd ruling, AHCCCS appealed the decision to the United States Court of Appeals for the Ninth Circuit and requested a stay order until the appeal process was complete. A stay order on April 14th, 2006 was issued which allowed AHCCCS to not provide briefs for 60 days until June 14th, 2006. The stay order also clarified several points of the incontinence brief ruling, noting that a prescription from physician is required to obtain briefs and only the physician can limit the number of

briefs. Retroactive liability for the state goes back to June 25, 2005 and is limited to: (1) individuals who had a prescription, (2) were denied reimbursement by the state and (3) can prove they paid for briefs.

The Governor's Office of Strategic Planning and Budgeting (OSPB) sent a letter on April 20, 2006 estimating FY 2007 incontinence brief costs at \$13.6 million Total Fund (\$4.5 million General Fund) statewide with 9,300 clients qualifying for briefs. OSPB estimated that FY 2006 costs, excluding retroactive reimbursement, would be approximately 33% of FY 2007 costs because the state would be required to provide incontinence briefs for all eligible clients from March 3 to June 30, 2006. OSPB states that neither AHCCCS or DES would need a supplemental appropriation, but DES would need an increase in expenditure authority.

JLBC Staff is currently analyzing OSPB's cost estimates.

RS/RF:ar
Attachment



MAR 31 2006

ARIZONA DEPARTMENT OF ECONOMIC SECURITY
1717 W. Jefferson - P.O. Box 6123 - Phoenix, AZ 85005

Janet Napolitano
Governor

David A. Berns
Director

MAR 30 2006

Mr. Gary Yaquinto, Director
Governor's Office of Strategic
Planning and Budgeting
1700 West Washington, Room 500
Phoenix, Arizona 85007

Dear Mr. Yaquinto:

The Department of Economic Security (DES) requests a transfer of \$1,200,000 General Fund (GF) from the Division of Developmental Disabilities (DDD) State Only Arizona Training Program at Coolidge (ATPC) Special Line Item and \$3,744,300 Long Term Care Expenditure Authority to the DDD/Long Term Care (LTC) ATPC Special Line Item. This transfer is necessary to fund shortfalls in the LTC ATPC program.

Line Item	Funding	Gaining	Losing
DDD/DD AZ Training Program at Coolidge	General Fund		1,200,000
DDD/AZ Training Program at Coolidge	SFLTC		2,544,300
DDD/LTC AZ Training Program at Coolidge	General Fund	1,200,000	
DDD/LTC AZ Training Program at Coolidge	Total Authority	2,544,300	

Please contact Stephen Pawlowski, Administrator, Financial Services Administration, Office of the Director, at (602) 542-3786 if you have any questions or need any additional information.

Sincerely,


David A. Berns

DB:sm

Attachments

c:

C. Hall	OSPB	S. Shepherd	JLBC
P. Ferreira	GAO	R. Frandsen	JLBC ✓



Janet Napolitano
Governor

**GOVERNOR'S OFFICE OF
STRATEGIC PLANNING AND BUDGETING**
1700 West Washington, Suite 500, Phoenix, Arizona 85007
(602) 542-5381 • FAX: (602) 542-0868

Gary M. Yaquinto
Director

April 20, 2006

The Honorable Tom Boone
Chairman, Appropriations Committee (B)
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007



Dear Representative Boone:

On March 3, 2006, the United States District Court for the District of Arizona ruled against the Arizona Health Care Cost Containment System (AHCCCS) in the case of Ekloff vs. Rodgers. Plaintiffs in the case argued that the state Medicaid program must pay for prescribed incontinence briefs for Medicaid-eligible individuals under 21 years of age. The state policy has been to pay for incontinence briefs when a child has a skin breakdown that could become infected, but plaintiffs argued that federal law requires that the state also pay for incontinence briefs as a preventative measure.

The Court granted summary judgment for the plaintiffs. The judge wrote that congressional intent and federal law that governs the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) provisions of Medicaid require that Arizona pay for incontinence briefs for preventative purposes.

Paying for incontinence briefs will add costs to the operations of programs in two state agencies: AHCCCS' Acute Care, KidsCare, and Elderly and Physically Disabled (EPD) programs and the Department of Economic Security's (DES) Arizona Long Term Care System - Division of Developmental Disabilities (DDD) program.

AHCCCS is seeking clarification to determine what steps will be necessary to reimburse class members back to June 2005 as was stipulated by the Court's order. It is estimated that each eligible child will require eight incontinence briefs per day at an average cost of \$0.50 per brief. At \$4 per day, the annual cost per member is \$1,460. Federal Title XIX funding will cover approximately two-thirds of the cost; the state will be responsible for the remaining total.

Using national estimates of the incidence of incontinence, AHCCCS estimates that 2,800 individuals in its Acute Care and KidsCare health plans and 500 disabled youth in the

The Honorable Tom Boone

April 20, 2006

Page Two

EPD program need incontinence briefs. The annual cost of providing briefs to these individuals is approximately \$4.8 million. Assuming that the effective date of the decision is March 3, the cost for the four months in fiscal year 2006 is about \$1.6 million. In terms of an acute care budget of nearly \$4 billion, AHCCCS is not anticipating that capitation rates will be adjusted in the current fiscal year and AHCCCS will not need supplemental funding for this issue. The cost of adding incontinence briefs to the service package will be included when AHCCCS' capitation rates are adjusted in October 2006.

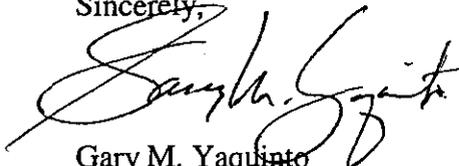
Children enrolled in the Children's Rehabilitative Services (CRS) or DDD programs are more likely than the general population to have medical needs that lead to incontinence. It is estimated that about 1,500 children in CRS with conditions such as neurofibromatosis, cerebral palsy, and congenital anomalies need incontinence briefs.

CRS-enrolled children are also enrolled in an AHCCCS health plan and the acute care plans will be providing the benefit to this population. Thus the approximately \$2.2 million annual cost of their incontinence briefs will be included when AHCCCS' capitation rates are adjusted. AHCCCS will not need supplemental funding in fiscal year 2006 to pay for four months of incontinence briefs for the CRS population.

Almost 4,500 children in the DDD program need incontinence briefs. These children have epilepsy or cerebral palsy or they may be in wheelchairs. This number of children is almost as great as the total number of children impacted in both AHCCCS and CRS. Since the DDD budget is much smaller than AHCCCS', it is unable to absorb the costs as easily. Annually, incontinence briefs are anticipated to cost almost \$6.6 million. For the last four months of fiscal year 2006, the cost is around \$2.0 million. DES needs a supplemental appropriation to cover this expense; however, new General Fund dollars are not necessary. If DDD's expenditure authority is increased by \$2.0 million, it could spend previously appropriated General Fund and Title XIX dollars that are available. As is the case for AHCCCS the fiscal year 2007 cost will be reflected in the DDD capitation rate which is scheduled to be adjusted on July 1, 2006.

I look forward to working with you to ensure that state agencies have the resources necessary to comply with this new mandate. My staff will be happy to provide additional detail to the JLBC staff. If you have any questions, please contact me at (602) 542-5381.

Sincerely,



Gary M. Yaquinto
Director

- c: Richard Stavneak, Director, Joint Legislative Budget Committee
- David Berns, Director, Department of Economic Security
- Susan Gerard, Director, Department of Health Services
- Anthony Rodgers, Director, AHCCCS