



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

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To the Co-Chairs and Ranking Members of the Joint Justice System Appropriations Subcommittee, the Director of the Legislative Services Agency and the Interim Director of the Department of Management:

This report is submitted pursuant to the Justice Systems Appropriations bill for FY10 (S.F. 475), which contains the following provision:

“c. The department [of justice] shall cooperate with the auditor of state in preparing a report detailing recommendations for reimbursement moneys, including recommendations for appropriating such reimbursement moneys. The auditor of state shall provide the report to the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system, the legislative services agency, and the department of management by December 15, 2009.”

The report was prepared with the assistance and cooperation of the Attorney General's Office.

Current System of Agency Reimbursements to the Attorney General's Office

The Attorney General's Office (Office) receives reimbursements from several sources - client agencies, internal funds and various grants. Based on the language of this provision, it appears the Legislature intended the report to focus on reimbursements from the Office's client agencies and whether client agency reimbursements should be discontinued in lieu of funds being appropriated directly to the Office from the General Fund.

A list of agency reimbursements to the Office is attached. Agency reimbursements for FY10 are expected to total approximately \$11.7 million, which is approximately 50% of the Office's total budget for FY10. The amount of agency reimbursements has increased over the last several years. The bulk of this increase is attributable to increased reimbursements from the Department of Human Services (DHS) for Office attorneys to fill vacancies in the Child Support Recovery Unit, which occurred after many county attorneys decided not to provide this service to DHS.

1. **Types of Reimbursement Agreements.** The Office has three basic types of agency reimbursement agreements. The first type of agreement is used primarily with large agencies, such as the Department of Human Services, the Department of Transportation and the Department of Revenue. Under these agreements, the Office and the agency cooperatively determine the number of attorneys necessary to perform needed services and the Office provides staff dedicated to the work of the agency. The Office periodically bills the agency for the costs to provide legal services to the agency. Billings include salaries and benefits paid and other costs, such as computers, travel and litigation. The agency then reimburses the Office for the costs billed, based on the documentation submitted with each billing.

The second type of agreement is used with mid-sized agencies, such as the Department of Public Safety, the Board of Regents and the Division of Banking. Under these agreements, the Office and the agency cooperatively determine the number of attorneys necessary to perform needed services and the Office assigns specific employees to an agency. The Office bills the agency for the salary and benefits of the assigned employees, and sometimes for other out-of-pocket expenses, in accordance with a contract negotiated between the Office and the agency. The agency reimburses the Office for the billed costs. Overhead costs of the Office are not billed to agencies under this type of agreement.

The third type of agreement is used with smaller agencies, such as the Department of Education, the Iowa Finance Authority and the Department of Elder Affairs. Under these so-called "flat-fee" agreements, agencies reimburse the Office for the salary and benefits of a portion of an attorney's (or several attorneys') time. The Office is reimbursed for out-of-pocket expenses in about one-half of these contracts but is not reimbursed for overhead costs under this type of agreement. Attorney time is based on reasonable estimates maintained on a quarterly basis and the agreements are modified annually to reflect changes in work load. For example, the reimbursement from the Underground Storage Tank (UST) Board will be reduced this fiscal year from approximately \$107,000 to approximately \$67,000 because the UST program is winding down and less Office staff time is needed. On the other hand, reimbursement from the Department of Public Health will increase approximately \$66,000 this fiscal year to account for one-half of an attorney FTE which will be dedicated to a new e-health initiative paid for by federal grants.

Beyond these reimbursement agreements, the Office often provides additional necessary legal services to agencies without reimbursement. An example is the Iowa Lottery and the Touchplay litigation. The Lottery annually reimburses the Office for one attorney FTE. However, when the Legislature terminated the Touchplay program and litigation ensued, the Office assigned several attorneys to handle the litigation, which lasted for more than two years. The Office did not bill the Lottery for this substantial amount of extra attorney time.

2. **Authority and Accountability.** The Office is granted explicit statutory authority to seek reimbursement from several agencies, including the following: (a) Department of Revenue - Iowa Code section 13.5 (b) Department of Human Services - Iowa Code section 13.6 (c) Department of Transportation - Iowa Code section 307.23 and (d) Department of Public Safety - Iowa Code section 80.1.

The Office is implicitly granted authority to seek agency reimbursements through the following provisions of law: (a) The Office's basic and, with few exceptions, exclusive authority and responsibility to prosecute and defend actions involving the state and state officers in court and other tribunals, (b) the Office's basic authority to enter into contracts and agreements and (c) the Office's authority to expend reimbursement money as annually authorized by the Legislature through appropriation language. For FY10, this is done pursuant to section 39 of HF 820, which states "Federal grants, receipts, and funds and other nonstate grant, receipts, and funds . . . are appropriated to the department of justice for the purposes set forth in the grants, receipts, or conditions accompanying the receipts of the funds . . ."

The Office is held accountable for this system of agency reimbursements in several ways. First, the Office has provided the Legislature with a list of its reimbursements (similar to the one attached) since at least 1995. Second, as discussed above, agency reimbursements are negotiated annually and all reimbursement agreements are approved by the head of the respective agency. Finally, the State Auditor's office annually audits the Office, has access to all of the Office's reimbursement agreements and carefully scrutinizes a number of agreements.

Alternatives to Current System of Agency Reimbursements to the Office

Several alternatives to the current system of agency reimbursements to the Office were discussed in preparing this report.

1. **Appropriate Reimbursement Money Directly to Office.** A question to be addressed in the report mandated by the Legislature is whether reimbursement money should be appropriated directly to the Office. While appropriating reimbursement money directly to the Office could give the Legislature greater control over Office finances, there are three main arguments against direct appropriation rather than continuing to allow the Office to receive reimbursement money:

First, a set General Fund appropriation does not give the Office, or its client agencies, the flexibility to adjust to changing workloads. Currently, the Office and agencies cooperate in gauging needs and making modifications, when necessary.

Second, there would be less transparency and accountability since the Office would receive a set appropriation, regardless of the amount of Office staff time dedicated to agencies or the current needs of agencies.

Third, the bulk of agency reimbursement money is not derived from the General Fund. Most reimbursement money is derived from federal funds, licensing fees and dedicated funds (such as the Road Use Tax Fund). One notable exception is the reimbursement from the Department of Revenue, which is derived from the General Fund appropriation to the Department. Replacing reimbursement money with a General Fund appropriation would result in a reduction of current General Fund monies available for other purposes.

2. **More Express Authority.** One alternative to the current system of reimbursement would be for the Legislature to authorize a reimbursement system for the Office similar to that used by the Auditor of State's Office. Under Iowa Code section 11.5B, the Auditor of State is specifically authorized to bill stated agencies and agencies receiving federal funds for services provided those agencies or the federal funds received by agencies.

If applied to the Office, the advantages of this system would include the following: (a) the Legislature, not the Office, would determine whether an agency should pay the Office for legal work and (b) named agencies would not be able to refuse to reimburse the Office for necessary legal work, thereby enhancing stability and certainty in budgeting from year-to-year.

The disadvantages of this system include the following: (a) If the Legislature did not include an agency on the list, there would be a strong presumption the Office could not seek an agency reimbursement, nor could an agency voluntarily agree to a reimbursement and (b) this system would lessen the flexibility to address changes in the legal needs of an agency. A relevant example was cited above concerning the Department of Public Health's new e-health initiative. If Public Health was not on the statutory list, there could be a question whether it could use new federal money for the initiative to pay for Office attorneys to provide legal services. Although this system would clarify which agencies are required to reimburse the Office, it does not address issues such as the amount of the reimbursement, selection of attorneys and control of legal representation. These matters are currently negotiated by the Office and agencies when agreements are annually prepared.

3. **Fee-for-Service.** Another system of reimbursement for the Office would be the model utilized by the Department of Administrative Services for the services it provides to state agencies. This system is basically a fee-for-service. The Office would be authorized to charge agencies for documented costs it incurred in providing required legal services to the agency (such as litigation). The Office would also be authorized to charge agencies for documented costs it incurred in providing legal services voluntarily requested by an agency.

The advantages of this system include the following: (a) The Office's reimbursement would be more directly tied to the actual services provided because the Office would need to better document time and resources expended and (b) agencies would have more flexibility to negotiate with the Office with respect to legal services which the Office is not required to perform.

The disadvantages of this system include the following: (a) Attorneys and others in the Office would be required to keep detailed time records which would increase administrative burdens, (b) agencies might not seek needed legal advice knowing "the meter would be running" and a bill for legal services would follow and (c) with respect to required legal services (such as litigation), agencies would have great uncertainty in budgeting. A relevant example was cited above with respect to the Lottery and the Touchplay litigation. Under a fee-for-service model, the Lottery would have incurred substantial and unbudgeted litigation costs

incurred by the Office over several fiscal years.

Recommendation

The current system of agency reimbursements for the Office is not perfect. On a yearly basis, there are probably some agencies which pay somewhat too much and some which pay somewhat too little. However, averaged over several years, the amount of agency reimbursements may be a fairly accurate reflection of the costs borne by the Office for the benefit of the reimbursing agencies. In addition, the Office and agencies annually negotiate agreements and make changes when necessary.

Considering the severe budget problems faced by the Office and all other agencies, this is not a particularly good time to implement major changes in how the Office is funded and how agencies will pay for legal services. Instead of advocating changes at this time, the Auditor of State believes the Attorney General's Office should be provided the opportunity to investigate alternatives to the current system of reimbursements and recommend a change if deemed appropriate. The Office of Auditor of State would be pleased to review those recommendations after they have been prepared.



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Auditor of State



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**ATTORNEY GENERAL REIMBURSEMENTS
 AGENCIES, FUNDS, BOARDS, INTERNAL FUNDS, GRANTS**

Agency Name	Actual 05	Actual 06	Actual 07	Actual 08	Actual 09	Budget 10
Transportation	1,066,529	909,880	919,369	988,794	1,133,688	1,188,773
Human Services	2,850,639	3,217,444	3,838,948	4,492,911	5,149,096	5,243,300
Public Health	118,092	122,247	168,274	281,091	381,494	348,752
Inspect & Appeals	310,978	152,706	167,298	434,854	497,632	478,493
Revenue	576,229	604,720	654,437	703,504	724,873	732,690
Public Safety	111,478	114,885	124,923	138,646	151,086	147,536
Banking	132,361	118,602	119,812	130,737	135,657	131,461
Insurance	227,792	237,370	228,854	245,324	263,220	183,871
Civil Rights	103,809	109,002	113,658	123,234	129,849	127,261
Alcoholic Bev Div	131,059	132,819	128,290	128,606	128,562	75,000
College Aid Comm	160,290	80,388	86,602	92,449	97,289	97,288
Treasurer (Uncl Prop)	12,000	12,000	12,000	12,000	12,000	12,000
Treasurer (TSA)	315,433	503,138	452,210	435,652	360,152	300,000
Treasurer (2nd Injury Fund)	50,000	50,000	50,000	150,000	150,000	150,000
Treasurer (I-Jobs)	-	-	-	-	13,384	-
Credit Union Div	25,000	25,000	25,000	25,000	25,000	25,000
Lottery	109,031	50,320	102,961	238,319	142,641	118,260
DAS/General Services	61,243	50,148	50,125	54,317	54,388	50,000
DAS/GS Vehicle	30,000	30,000	30,000	30,000	30,000	30,000
DAS/Personnel (Work Comp)	242,000	242,000	242,000	242,000	242,000	400,000
DAS/la Technology Dept	60,091	60,148	60,098	60,108	60,114	60,000
IA Comm Network	66,130	56,569	71,482	78,258	85,132	51,995
Racing & Gaming	20,431	20,725	20,376	20,286	20,696	20,000
Education	17,312	16,666	17,171	15,463	15,397	15,000
Economic Development	20,267	25,280	20,110	20,074	20,876	20,000
DED - Vision Iowa	15,272	15,039	15,637	15,283	15,404	15,000
Educ Examiners	50,152	22,103	21,169	25,074	26,633	25,000
Public Safety (HIDTA)	370,158	288,306	309,609	356,713	376,071	393,187
Judicial	3,250	-	-	-	-	-
Judicial - Ct Cost Refunds	4,314	3,281	3,763	3,886	3,606	4,000
la Workforce Development	-	-	-	-	36,885	30,000
Executive Council	200,000	-	-	-	-	-
Consumer Advocate	25,172	25,172	25,776	25,938	25,605	25,172
Secretary of State	-	2,818	2,712	-	-	-
Regents-UNI	20,000	20,000	20,000	20,000	20,000	20,000
Regents	266,887	263,753	367,056	372,995	468,192	360,538
Natural Resources	30,000	30,000	30,000	30,000	30,000	30,000
la Finance Authority	26,717	25,141	25,189	25,637	25,530	25,000
la National Guard	146,885	34,007	30,053	30,104	30,117	30,000
Emergency Management	15,000	16,950	15,323	30,000	30,000	30,000
Elder Affairs	-	-	-	20,281	20,785	20,000
IPTV	-	-	-	4,800	4,800	4,800
Vocational Rehab	-	-	-	-	-	40,000
OEI - Power Fund Board	-	-	-	-	-	25,000
Corrections-IFI & Other	25,556	170,995	27,445	984	-	-
Columbia University	-	-	34,954	51,525	49,981	20,660
Misc. Law Enforcement Receipts	33,055	38,499	39,184	44,728	49,947	25,500
Iowa County Atty Association	37,104	43,711	46,647	53,454	40,448	54,780
Total	8,087,717	7,941,830	8,718,516	10,253,027	11,278,229	11,185,317

Fund Name	Actual 05	Actual 06	Actual 07	Actual 08	Actual 09	Budget 10
Grain Indemnity Fund	60,000	60,000	60,000	60,000	72,600	72,600
Pesticide Fund	-	-	-	2,828	1,953	3,000
UST Fund	154,108	106,396	105,982	106,822	106,208	106,877
Total	214,108	166,396	165,982	169,650	180,760	182,477

Board Name	Actual 05	Actual 06	Actual 07	Actual 08	Actual 09	Budget 10
Commerce Boards	55,252	60,702	129,926	126,554	122,945	119,500
Medical Examiners	43,555	46,053	66,631	128,867	107,926	105,000
Pharmacy Examiners	64,250	64,506	65,188	64,552	64,679	63,170
Nursing Board	14,229	26,474	24,867	24,178	24,092	24,000
Dental Examiners	19,106	19,131	19,114	20,744	26,278	19,068
Fair Board	10,049	10,052	10,028	10,059	10,058	10,000
Electricians	-	-	-	-	-	20,000
Total	206,440	226,919	315,753	374,954	355,978	360,738

Internal Funds	Actual 05	Actual 06	Actual 07	Actual 08	Actual 09	Budget 10
Ia Cons Cred Fund	247,002	245,000	240,788	245,462	245,692	245,000
Elderly Iowan Fund	420,241	93,702	286,996	52,904	667,255	756,000
Consumer Ed Fund	534,073	597,138	907,038	829,073	1,136,556	1,254,784
Victim Comp Fund	171,556	178,418	156,331	64,892	162,974	167,877
Antitrust Fund	166,848	142,109	159,667	160,627	147,569	155,301
Environmental Fund	-	-	-	-	10,849	-
Mylan Funds	1,033	35,865	216,979	141,969	-	-
Salton/Cy Pres Funds	49,207	15,794	1,324	33	-	-
Forfeiture Fund	-	-	-	300,000	349,883	300,000
Total	1,589,959	1,308,026	1,969,121	1,794,961	2,720,778	2,878,962

Grants	Actual 05	Actual 06	Actual 07	Actual 08	Actual 09	Budget 10
Commerce-One Call	10,065	15,931	15,903	8,938	6,278	6,000
VAWA	72,000	73,000	75,000	68,650	69,370	76,099
DOJ Financial Crimes	59,931	-	-	-	-	-
Rural Domestic Violence	334,631	-	-	-	-	-
Child Advocacy	5,698	-	-	-	-	-
NHTSA Odometer	6,884	-	-	-	-	-
COPS Grant	209,120	194,410	10,838	-	-	-
Emergency Management CIPA	19,835	-	-	-	-	-
Sears Grant	12,577	-	-	-	-	-
Tobacco Enforcement	357	-	-	-	-	-
Tobacco Enf Calls	683	756	857	-	803	-
IA Co Atty Case Mgmt - CJIS	-	-	-	69,628	-	-
Gov's Traffic Safety Bureau	158,847	161,470	165,778	181,218	177,510	195,000
ODCP - Drug Grant	24,085	18,000	17,000	15,357	19,926	20,901
ODCP - Drug/Children Grant	104,991	107,298	81,284	115,707	116,199	3,267
Total	1,019,704	570,865	366,660	459,497	390,086	301,267

GRAND TOTAL	11,117,928	10,214,036	11,536,033	13,052,089	14,925,831	14,908,761
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