

JUDICIAL COUNCIL
BUDGET AND PLANNING SESSION

Minutes
August 21, 2020
Matheson Courthouse
Meeting held through Webex
8:30 a.m. – 1:00 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Brian Cannell
Hon. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. Michelle Heward
Justice Deno Himonas
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Brook Sessions
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Excused:

Hon. Augustus Chin

Guests:

Commissioner Catherine Conklin, Second District Court
Phil Dean, State Budget Director and Chief Economist
Hon. Diana Hagen, Court of Appeals
Hon. Hruby-Mills, Third District Court
Kristina King, OLRGC
Ken Matthews, CCJJ

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Geoff Fattah
Kim Free
Alisha Johnson
Tom Langhorne
Larissa Lee
Bart Olsen
Jim Peters
Clayson Quigley
Nini Rich
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Keisa Williams
Jeni Wood

Guests (cont.):

Hon. David Mortensen, Court of Appeals
Hon. Richard Mrazik, Third District Court
Nate Talley, GOMB Budget & Policy Manager
Chris Williams, OLRGC

1. WELCOME: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant welcomed new Council members, Judge David Connors and Judge Michelle Heward. Chief Justice Durrant conducted the Oath of Office with Judge Connors and Judge Heward during the New Judicial Council Orientation prior to this meeting. Judge Connors and Judge Heward will both serve on the Policy & Planning Committee.

2. OVERVIEW: (Judge Mary T. Noonan)

Judge Mary T. Noonan provided an explanation of the process for budget requests and the duties of the Judicial Council.

At the end of this fiscal year the court returned funds from the General Fund (\$560,500) and Contracts and Leases General Fund (\$459,100). The EOCJ approved returning the funds to the Judiciary and approved \$1.5M to fill 25 of the 50 vacant JA positions.

Annually, the Judiciary submits requests to the Legislative Fiscal Analyst Office (LFA) for ongoing and one-time funding for new initiatives. Before these requests are submitted to the LFA, the Judicial Council reviews the requests and determines if they should go forward through the legislative process. The final prioritized list is called the Annual Budget Plan. This year's preliminary Annual Budget Plan contains eight requests totaling approximately \$2,100,000 ongoing and \$220,000 in onetime funds. It has been previously reviewed and prioritized by the Budget and Fiscal Management Committee for discussion and approval by the Judicial Council. Requests that are approved by Judicial Council to forward to the Legislature will be addressed in the 2021 General Session. If approved by the legislature, the requests will then be added to the FY2022 budget.

The requests approved for advancement to the Legislature will fall into one of the following two categories:

a) Judicial Priorities/Building Blocks—Items requested that the Judicial Council elects to pursue through the legislative appropriations process. Building block requests are submitted to the Legislature and to the Governor.

b) Legislative Fiscal Note—Items requested by a Board or Committee that the Judicial Council elects to pursue through legislation and an accompanying fiscal note (i.e. the addition of a new Judge requires legislation and, therefore, cannot be submitted via a building block and would be required to go through the legislative fiscal note process).

Clayson Quigley reviewed court filings.

Supreme Court

Supreme Court filings have increased 1% over the past year.

Court of Appeals

Court of Appeals filings have increased 1% over the past year.

District Courts

Overall, district court filings are down 3% since last year. Property rights have decreased by 12%. General Civil cases have decreased by 15%. Torts increased by 9% over the past year and Probate cases have increased by 1%. Average age of pending cases has increased significantly and jury trials have decreased significantly due to the pandemic.

Juvenile Courts

There has been a 10% increase in filings over the past year. Juvenile court referrals have decreased by 12% last year and continue to decrease this year in nearly every category (felony, misdemeanor, infractions, and status). Child welfare cases have increased by 55% this year, a

significant increase for child welfare proceedings. Delinquency cases have increased 10%. Judge Brook Sessions felt that due to the increase in domestic violence cases, the child welfare cases are increasing.

Justice Courts

Justice courts overall case filings have decreased by 9% over the past year. The average age of pending cases has seen a significant increase. Appeals have decreased in justice courts over the past year from 972 to 761.

3. UTAH ECONOMIC OUTLOOK: (Phil Dean and Nate Talley)

Chief Justice Durrant welcomed Phil Dean, State Budget Director and Chief Economist and Nate Talley, Budget and Policy Manager, from the Governor's Office of Management and Budget. The economy is fluid with lots of caveats, however, the State Budget office views the coming budget cycle with cautious optimism. The State Budget office will be taking additional time to review future trends as they don't want to be soliciting budget additions and then shortly thereafter ask for budget cuts. The national gross domestic product has seen a massive decline over the second quarter. Mr. Dean expects the third quarter US GDP may see significant improvement. Utah's economy is in the recovery mode.

Mr. Talley reviewed national unemployment insurance claims history and noted the sum of the national initial weekly claims since week ending March 14, 2020 through August 15, 2020 was approximately 53 million claims (33% of pre-pandemic workforce). For Utah during the same time period there were approximately 200,000 initial claims (12% of the pre-pandemic workforce). Utah continuing unemployment claims have also been considerably better than the national average, with the US unemployment rate in mid-August at approximately 10% while Utah is at 4.5% which is the lowest in the nation. Initial claims have been declining over the past several weeks. Utah labor force participation is almost back at pre-pandemic levels and is about 5% points above the national average of labor force participation. In July 2020 year over year job growth in Utah was -1.8% whereas the national average was -7.7%.

Mr. Dean stated traffic counts, which identify traffic on Utah roads, saw a significant decline in March, with slowly increasing and now is nearly normal.

Federal Funding - Utah

\$11.5 Billion in estimated federal support as of June 2020 (excluding \$2.7 Billion in maximum eligible Municipal Liquidity Facility)

- \$5.2 Billion Paycheck Protection Program awards
- \$1.25 Billion Coronavirus Relief Fund (\$935 Million to state, \$315 Million to Salt Lake and Utah Counties)
- \$900 Million other CARES Act funding to state and local governments
- \$2.5-2.8 Billion IRS economic impact payments to households
- \$900 Million in federal pandemic unemployment compensation, pandemic unemployment assistance and federal pandemic extensions

Utah ranks number 1 for population increase from 2010-2019.

Public Programs - Utah

- Medicaid – Utah enrollment has increased significantly over the past year
- SNAP Utah Supplemental Nutrition Assistance Program has decreased over the past year, an unexpected result and may be due to the pandemic impacting how people are accessing food

COVID-19 Public Health Indicators - Utah

- Utah has among the lowest case fatality rates at .8% of those with a COVID-19 diagnosis, nationally the percentage is about 3% at the present time and trending downward.
- Daily Case Counts have continued to decline since mid-July, consistent with nationwide averages.
- Daily ICU Referrals remains well below the 85% of ICU beds capacity level – with COVID-19 referrals being a minority of ICU utilization.

	FY 2020		
Source	Post 2020 Session Revenue Projection	June 15, 2020 Revenue Projection Revision	Difference One-Time
General Fund	2,816,738	2,790,753	-25,985
Education Fund	5,177,225	4,339,971	-837,254
<i>Final Payments Timing</i>		770,000	770,000
Total GF/EF	7,993,963	7,900,724	-93,239

	FY 2021		
	Post 2020 Session Revenue Projection	June 15, 2020 Revenue Projection Revision	Difference Ongoing
	2,933,354	2,826,819	-106,535
	5,483,056	5,602,294	119,238
		-770,000	-770,000
	8,416,410	7,659,113	-757,297

The tables above adjust revenues for the change in Federal tax receipts (which the state followed) from April 15 to July 15. This changed pushed \$770M into FY 2021 from FY 2020 and the table above pulls this revenue back to FY 2020 and takes it out of FY 2021. After making this adjustment, the forecasted decline in state revenues due to the pandemic was a \$93M reduction for FY 2020 and a \$757M decrease for FY 2021. This explains the need for the budget cuts adopted by the legislature.

FY 2020 ended up coming in \$100M higher than the June 15, 2020 Projection – which gives strength to the optimistic outlook that additional budget cuts for FY 2021 will not be necessary. If additional federal funds are forthcoming, the risk to further budget cuts decline even further. Mr. Dean believed this was not a true recession, it was a health driven recession. There will be a new process for budget requests, more information to follow.

Fifth Special Session Budget Changes

- \$100 Million in rainy day funds to address one-time shortfalls
- K-12 WPU increase lowered to 1.8% from the previously appropriated 6% level for a reduction of almost \$290 Million in ongoing funding

- Total education of \$6.9 Million in one-time and \$126.5 Million ongoing to post-secondary education (excluding buildings)
- Nearly \$40 Million in General Fund reductions for state employee salary increases
- Repeal of \$11 Million in ongoing funding for a new 30 bed forensic hospital unit at the Utah State Hospital and various services for people with disabilities, child and family services, and services for individuals with mental health and substance abuse issues.
- \$5 million in ongoing funding reductions for affordable housing, which represents 50% of the new funding appropriated during the 2020 General Session

Sales Tax Revenues

- The General Fund Portion of state sales tax collections are preliminarily estimated to have grown by 7.2% overall in Fiscal Year 2020, above the revised General Fund sales tax estimate of 5.7%.
- Individual income tax collections are preliminarily estimated to have shrunk by 7.6% in Fiscal Year 2020, significantly impacted by the income tax filing deadline extension from April 15, 2020 to July 15, 2020. This is more favorable than the Consensus projection of a 9.3% reduction.
- Initial revenue estimates suggest a moderate FY 2021 year-end revenue surplus of about \$70 million relative to revised Consensus numbers. This initial estimate will be adjusted as final accounting closeout occurs.

Chief Justice Durrant thanked Mr. Dean and Mr. Talley.

4. BUDGET AND FISCAL MANAGEMENT PRIORITIZATION: (Judge Mark May, Heidi Anderson, Shane Bahr, Commissioner Michelle Blomquist, Commissioner Michelle Tack, Commissioner Catherine Conklin, Nini Rich, Geoff Fattah, Judge Elizabeth Hruby-Mills, Judge Richard Mrazik, Keisa Williams, Larissa Lee, Karl Sweeney, Judge Diana Hagen, Tom Langhorne, and Kim Free)

Chief Justice Durrant welcomed the presenters. Judge May explained the process for requesting funding. Factors in ranking items include 1) How essential is this request to accomplish the mission of the Courts, and 2) Does the Expenditure provides a good return on investment. Only one submission receives the highest rating for each criteria. Criteria #1 receives a double weight. The submissions are shown ranked in point order, highest to lowest. Judge Kara Pettit explained the definition of mission critical and noted that when making their decisions on these budget requests, the Budget and Fiscal Management Committee was explained the definitions of the factors and understood their meaning.

IT Infrastructure and Development. Heidi Anderson

\$1,452,000 ongoing funds

To improve access to justice in Utah by improving the Courts' information technology infrastructure and development through upgrading outdated hardware/software, ensuring on-going funding for critical security software and adding additional development staff. Since COVID began, the courts have conducted 34,347 meetings, hearings, and trainings including 260,388 Webex participants. There are 473 Webex hosts that have produced 1,634,000 minutes.

Commissioner Salary Parity. Shane Bahr, Commissioner Michelle Blomquist, Commissioner Michelle Tack, Commissioner Catherine Conklin

\$92,500 ongoing funds

This award would restore commissioners' salaries to the previous standard of 90% of District/Juvenile Court judge salary, which would promote both retention and recruitment of qualified commissioners. Currently commissioners earn 84.5% of a District/Juvenile Court judge salary. Since this reduction, turnover has reached 50%. Judge David Connors felt respect was an important factor with commissioners. Commissioner Conklin said the morale among commissioners is a real issue and has impacted retention as wages in the private sector are higher. Justice Deno Himonas questioned whether this is the right time to request raises for one group when other staff raises are frozen.

Child Welfare Mediator. Nini Rich

\$55,000 ongoing funds

To improve access to justice in Utah by providing ongoing funding to replace one-time funding for a half-time child welfare mediator in the Child Welfare Mediation Program serving Juvenile Court Dependency cases.

Automate Records Indexing Creation. Judge David Mortensen, Larissa Lee

\$210,000 one-time funds

To automate the process for creating an index for the appellate record on appeal. The employees currently spend several hours manually putting together each index. The goal with automating record pagination is to reduce this time to zero. Contractors would be hired to create this program in-house. This program will make the judges and clerk's jobs easier to search documents, resulting in cost savings now and moving forward. Larissa Lee said this is a prerequisite for e-filing, however, even without e-filing; this would save court personnel around 3,000 hours of time every year. Judge Connors questioned if this was an IT request and if so, should be included with their requests. Judge Noonan said bundled packages sent to the Legislature for funding are broken down to include exactly what is asked. Judge Shaughnessy stated nothing would prevent the Council from prioritizing requests and perhaps the courts should include this request with the IT request. Judge Kate Appleby favored the approach outlined by Judge Connors and Judge Shaughnessy. Judge Appleby recommended the Council agree that the IT requests (inclusive of this request) should be prioritized at #1.

Public Outreach and Education Coordinator. Geoff Fattah, Judge Elizabeth Hruby-Mills, Judge Richard Mrazik

\$100,000 ongoing funds

The Standing Committee on Judicial Outreach is requesting 1 FTE to provide much-needed support for public outreach and education in all corners of Utah's communities. This need has been amplified due to the COVID-19 pandemic and its future impact in years to come. Karl Sweeney noted there are not enough ongoing turnover savings funds to self-fund this request with ongoing money for FY 2021. Mr. Sweeney recommended increasing the request to \$120,000 since the current request for \$6,000 in office expenses (which was proposed before the Office of Fairness and Accountability was created) should be increased to \$26,000 to be adequate; this would leave \$94,000 for salary and benefits.

Manual PSA NCIC Calculations. Keisa Williams

\$220,550 ongoing funds

Significantly increase PSA auto-calculations to include arrested individuals with out-of-state criminal history. Currently, 30% of all criminal case hearings have out-of-state criminal records but due to the lack of NCIC information being included, the PSA given to judges for those cases is absent this information. Keisa Williams explained how the results of PSAs are sent to the courts and that PSAs currently are not programmed to generate when someone has a “hit” (meaning a criminal record) from another state.

Grants Coordinator. Larissa Lee, Karl Sweeney

\$91,400 ongoing funds

The Administrative Office of the Courts (AOC) requests funding for one FTE to obtain and manage grants throughout all court departments. This position will help increase grant funding in a time of widespread budget cuts and provide much-needed support for employees with existing grant responsibilities. Justice Himonas said we are leaving millions of dollars on the table just based on the limited work we have done so far, at almost no cost to the Courts. Justice Himonas was willing to also support the use of one-time funds to see what could be accomplished. Judge Shaughnessy asked Mr. Sweeney about court policies when it comes to applying for grants and wondered if the policies should be reviewed if they haven’t been in a while. Judge Shaughnessy believed this request may be premature before reviewing what policies and limitations existed on funding court needs through grants. Ms. Lee noted the Finance Department accounting manual contains a section on grants with links to the grant rules and statutes. Justice Himonas said they’ve been scrupulously following the policies. Ms. Lee gave a reference to the policies in the Court’s accounting manual. Judge Shaughnessy clarified that he did not mean the Court’s policies were not being followed but that the policies ought to be reviewed to ensure they are consistent with best practices, for example, not hiring FTEs with grant money. Ms. Lee said the courts have \$1.4 million in grants and hiring this coordinator would boost the Court’s governance and compliance processes.

Judge Shaughnessy wasn’t sure if this position was oversight of current grants or would be charged with requesting new grants. Justice Himonas said the position would meet both objectives of grant writing and management. Judge Pullan felt at some point the Council has to decide what parts of their operations they are comfortable with funding through grant money. Rob Rice asked if this was a normal position in other courts. Ms. Lee said many other courts hold this position. Judge Appleby asked whether the courts have explored opportunities with partnering with other entities to leverage the expenses. Judge Noonan noted grants are subject to annual reviews. Justice Himonas noted each of the grants have been reviewed and recommended by the Legislature (Executive Appropriations Committee) if needed.

Judicial Administration Certificate Program (“JACP”). Judge Diana Hagen, Tom Langhorne, Kim Free

\$50,000 ongoing funds + \$10,000 one-time funds

The express intent of this program is to strengthen courts’ organizational management and leadership by providing consistent education in core areas of responsibility. The Westminster JACP is a unique, comprehensive curriculum designed to bring rigor and standing

to the profession of judicial administration. The program is dedicated to the advancement of the missions, mandates, and purposes of Utah's courts.

Chief Justice Durrant thanked the presenters.

Motion: Judge Appleby moved to approve the IT Infrastructure and Development request for \$1,452,000 and include the Automate Records Indexing Creation of \$210,000 for a total of \$1,662,000 (ongoing funds of \$1,452,000 and one-time funds of \$210,000) and prioritize in the first position. Judge Shaughnessy seconded the motion, and it passed with Judge Pettit dissenting to adding the Automate Records Indexing Creation with this request.

Judge Shaughnessy said the Council must be very careful when prioritizing these items. Judge Pullan acknowledged that the IT requests are proximate to the courts ability to provide equal justice under the law and are short-term in focus, however given the current environment, the Public Outreach Coordinator position, which is more long-term focused, should also be considered a top priority. Judge Pullan recommended that as the Council prioritizes items that fulfill the Court's mission, that it consider long term not just short term needs. Chief Justice Durrant was interested in more information on the Grant Coordinator position. Justice Himonas agreed with Judge Pullan and recommended that for the future the Budget and Fiscal Management Committee ensure both long term and short term components of the Court's mission be emphasized in the prioritization process. Justice Himonas clarified that he is not aware of any grant compliance issues but in hiring a Grant Coordinator wants to increase the levels of assurance for all aspects of compliance for current and future grants. Justice Himonas wasn't sure this would need to be an ongoing funded position as many grants pay for someone to administer the grant. Judge Shaughnessy agreed that at some point in the future it may be wise to fill a Grant Coordinator position, however, at this point, the Council may not have a firm understanding of what is fiscally appropriate and what is prudent. Judge Shaughnessy believed this item should be deferred or processed through alternate funding. Judge Brook Sessions thought the position could be used to manage the current grants then make a decision later on whether to seek more grants using the Grant Coordinator role.

Judge Pettit said the Public Outreach Coordinator was a high priority, however, the Budget and Fiscal Management Committee felt the Legislature-funded items that were rescinded should be the highest priority for this coming year, with the Public Outreach Coordinator next in line. The Grant Coordinator position hits a home run as to return on investment, but because we are able to administer and search for new grants with existing personnel, it garnered a lower number on the "essential" factor. Judge Connors thought the Council should consider the items addressed last year and consider the message sent to commissioners if the Council did not support them this year. Judge Connors noted these are all great programs and that the first three items prioritized by the Budget and Fiscal Management Committee in their recommendations should remain as they are. Judge Michelle Heward thanked the Council for the thoughtful discussions and concurred with Judge Connors on the ranking. Judge Heward felt the Child Welfare Mediator position was critical. Judge Heward felt that returning to school may result in an increase in child welfare and neglect cases therefore the Child Welfare Mediator position funding is critical. Judge Pettit reviewed the Board of District Court Judges and the Board of Juvenile Court Judges requests ranking. Judge May reviewed the Board of Appellate Court

Judges ranking. Judge Appleby noted the Board of Appellate Court Judges did not have an opportunity to meet and discuss the rankings. Judge Farr wondered how the courts went from creating budget cut scenarios that included furloughs and layoffs to two months later the Council is now considering raises.

Mr. Sweeney recommended that the Judicial Council fund the Child Welfare Mediator position with Court-generated future ongoing turnover savings (expected in late FY 2021) and the Grants Coordinator position with carryforward FY 2020 one-time funds instead of asking the legislature for funds. This would enable the Judicial Council to rank the 4 remaining items (IT having been previously agreed as #1). Mr. Sweeney will bring these two requests and return to the Council to address them with internal funding requests at a later date.

5. FINALIZE JUDICIAL COUNCIL PRIORITIES: (Judge Mark May)

Chief Justice Durrant welcomed Judge Mark May.

Judicial Council members, by motion and vote, assign any requests not advanced as a Judicial Priority/Building Block or Legislative Fiscal Note into one of the following two categories:

a) Deferral or Alternative Funding

i. Deferral – Items which are removed from consideration for general fund money in the 2021 General Session and will be brought back to the Council in the spring or summer of 2021 for reconsideration of funding through (1) submission as a 2022 General Session Judicial Priority, (2) FY 2021 year-end surplus funds (1x funds), (3) carryforward funds into FY 2022 (1x funds) or (3) ongoing turnover savings (ongoing funds generally used for personnel matters).

ii. Alternative funding—Items requested for which funding may be available from sources other than the Legislature including grants and items (2), (3) or (4) above.

b) Elimination – Items requested that the Judicial Council elects not to pursue during the 2021 Legislative session are removed from consideration for general fund money and will not be automatically considered again.

Fiscal notes are attached to legislation. Building blocks do not require statute to advance.

The Committee completed the prioritized list. The results of the voting are as follows:

Ranked	Amount	Ongoing or One-time	Item
1	\$1,452,000	Ongoing	IT Infrastructure and Development
	\$210,000	One-time	(Included with IT request) Automate Records Indexing Creation
2	\$100,000	Ongoing	Public Outreach and Education Coordinator
3	\$220,550	Ongoing	Manual PSA NCIC Calculations
4	\$92,500	Ongoing	Commissioner Salary Parity
5	\$50,000	Ongoing	Judicial Administration Certificate Program
	\$10,000	One-time	Judicial Administration Certificate Program

The total request for ongoing funds is \$1,915,050 and for one-time funds is \$220,000.

Chief Justice Durrant thanked Judge May.

Mr. Sweeney reminded the Council that deferred items are not sent to the Legislature. Judge Appleby requested Judge Noonan inform the Judiciary of the results of today's meeting.

Motion: Justice Himonas moved to approve the list as prioritized as listed above and send the entire list to the Legislature. Judge Farr seconded the motion, and it passed unanimously.

6. ADJOURN

The meeting adjourned at 12:59 p.m.