

Allocations from the Contingency & Emergency Account

Report to the Joint Legislative Commission
On Governmental Operations

Office of State Budget and Management

November 17-18, 2009

Reporting Allocations from the Contingency & Emergency Account

A report on allotments from the Contingency and Emergency Account that have been approved since the November 6, 2008 meeting of the Joint Legislative Commission on Governmental Operations as required by G.S. § 143C-4-4.

1) Legal Services for State of North Carolina v. Tennessee Valley Authority ---- \$1,340,343

As provided under G.S. 147-17 and on the advice of the Department of Justice, the firms of the Ayres Group and the Resolution Law Group, P.C., two firms with specialized expertise, have been engaged to assist the Attorney General's Office.

A federal judge has concluded that pollution released into the air by power plants controlled by the Tennessee Valley Authority (TVA) is causing significant negative impacts on air quality in North Carolina. Litigation against TVA has been necessary to force a reduction of these emissions and protect the citizens of this State from the effects of this pollution. Because of the specialized nature of air quality litigation, TVA's resources, and the possibility that out-of-state lawsuits will be required, the Attorney General's Office has concluded that it is impracticable for their office to effectively represent the State in this litigation without the assistance of private legal counsel.

The litigation resulted in a favorable decision in the United States District Court for the Western District of North Carolina. As a result, the TVA has been ordered to significantly reduce emissions at four plants near North Carolina which will result in benefits for North Carolinians' health, environment and economy. The TVA has appealed the decision.

The Council of State has previously approved allotments from the C&E fund totaling \$2,001,439 for legal fees pertaining to this case. The Council of State approved a \$1,120,682 request at their November 4, 2008 meeting, a \$115,890 request at their December 2, 2008 meeting, and a \$103,771 request at their October 6, 2009 meeting.

2) Legal Services for South Carolina, v. North Carolina ---- \$641,094.

South Carolina filed suit against North Carolina in the United States Supreme Court claiming that North Carolina is taking more than its equitable share of the water from the Catawba River. South Carolina's allegations extend to all uses of water in the Catawba River by North Carolina. A final judgment against North Carolina could require the State to provide a minimum volume of water to South Carolina, thus limiting North Carolina's share for municipal supply, recreation, and economic development. As provided under the advice of the Department of Justice, the services of several firms providing engineering and other expert witness services, legal discovery, imaging, record transcription, document management, paralegal and court reporting, and other services were retained to assist the State in the case of South Carolina, v. North Carolina. This is ongoing litigation initiated in 2008.

The Council of State had previously approved allotments from the C&E fund totaling \$23,895 for legal fees pertaining to this case. The Council of State approved a \$9,529 request at their November 4, 2008 meeting, a \$265,039 request at their December 2, 2008 meeting, a \$215,142 request at their February 3, 2009 meeting, a \$34,521 request at their June 2, 2009 meeting, and a \$116,863 request at their October 6, 2009 meeting.

3) Legal services of Alston & Bird, LLP, in reference to a criminal case. ---- \$30,000.

As provided under G.S. 147-17, the Department of Justice engaged the Alston & Bird, LLP firm of Charlotte in February 2008, for legal services to review whether criminal charges are warranted in a criminal matter. The final charge for their services is \$30,000. This request was approved by the Council of State at their November 4, 2008 meeting.

4) United States District Court Award - North Carolina Right to Life, Inc. v. Leake (E.D.N.C. No. 5:99-CV-798 (BO)) ----- \$823,421.12

A request for payment from the Contingency and Emergency Fund was received from the N. C. Department of Justice for costs awarded to plaintiffs by order file stamped January 14, 2009, and signed by the Honorable Terrence W. Boyle, United State District Court Judge in the Eastern District, for attorneys' fees and expenses in connection with the case of North Carolina Right to Life, Inc. v. Leake.

This award is the final action in a case filed in 1999 challenging the constitutionality of several key provisions of North Carolina's campaign finance laws. During the course of the litigation, the case went to the United States Supreme Court once and to the Fourth Circuit Court of Appeals twice. The Fourth Circuit ultimately ruled against the State on all issues. The General Assembly codified the Fourth Circuit's ruling in Session Law 2008-150, §6, thus mooting the case and any further litigation.

The source of funds is determined by G.S. § 143C-4-4; approval of the Council of State is not required. The request was processed by OSBM on March 26, 2009.

5) Line of Duty Death Benefits - G.S. 143, Article 12A.----- \$70,000

A request for payment from the Contingency and Emergency Fund was received from the N. C. Department of State Treasurer for the fund for death benefits awarded to the surviving spouses or children of law enforcement officers, firefighters, rescue squad workers, or senior Civil Air Patrol members killed in the line of duty.

For FY 2008-09, \$725,000 was appropriated to the Line of Duty Death Benefit fund for law enforcement officers, firemen, rescue squad workers and senior Civil Air Patrol members (budget code 13412, fund 1432). As of March 16, 2009, this fund had a remaining balance of \$60,000 with additional payments of \$130,000 committed through the end of the fiscal year. This represents a known shortfall of \$70,000.

The source of funds is determined by G.S. § 143-166.4. , approval of the Council of State is not required. The request was processed by OSBM on March 26, 2009.

6) Reward for Information Leading to the Arrest and Conviction of the Person or Persons Responsible for the murders of Tasha Michelle Lopez and Raylynn Chelten ---- \$10,000..

On June 8, 1993, the bodies of Tasha Michelle Lopez, age 17, and Raylynn Chelten, age 15, were found shot to death in an open lot in Charlotte, North Carolina.

On September 1, 1993, Governor James B. Hunt, Jr. issued a proclamation offering a reward of up to \$10,000 for information leading to the arrest and conviction of the person or persons responsible for the murders of Tasha Michelle Lopez and Raylynn Chelten. After an intensive investigation by the Charlotte Police Department, Antwan Sanders, Myron Burris, and Robert Friday were arrested and each

was charged with two counts of First Degree Murder, two counts of First Degree Kidnapping, two counts of Sexual Assault, and two counts of Armed Robbery. Myron Burris and Robert Friday entered pleas of guilty to numerous felony charges including four counts of murder, multiple counts of kidnapping, sexual assaults, and robberies. Antwan Sanders was convicted of First Degree Murder, one count of Sexual Offense on a Minor, and two counts of Kidnapping. The three defendants were sentenced to numerous years of incarceration, plus a combined seven life sentences.

The State Bureau of Investigation along with the Chief of Police of the Charlotte-Mecklenburg Police Department and the Mecklenburg County District Attorney's office, recommended that the State reward money in the amount of \$10,000 be paid to one or more confidential informants.

The Council of State approved this request at their May 5, 2009 meeting.

7) Legal services in reference to the case James Alan Gell v. Town of Aulander, et al. ---- \$181,432.

James Alan Gell, a former death row inmate, has initiated civil action in Federal Court seeking monetary damages against numerous defendants allegedly wrongfully involved in his incarceration, including current State Bureau of Investigation agent Dwight Ransome. The cases against three current or former employees of the Attorney General's Office have been dismissed. Litigation has concluded against agent Ransome. The Attorney General's Office has concluded that the allegations against this employee involve actions within the scope of his official duties, but recommended that private counsel be engaged to defend him because of conflicts of interest. As provided under G.S. 147-17 and on the advice of the Department of Justice, the firm of Chesnutt, Clemmons, Peacock & Long, P.A. has been retained to represent Dwight Ransome. Final settlement of this case has been reached.

The Council of State has previously approved allotments totaling \$157,147 for legal fees pertaining to this case. The Council of State approved a \$181,432 request at their June 2, 2009 meeting.

8) Legal Services for Alabama, et al. v. North Carolina. ---- \$32,015.

As provided under G.S. 147-17 and on the advice of the Department of Justice, the services of former Solicitor General Walter Dellinger of O'Melveny & Myers LLP were retained to represent the State in the case of Alabama, et al. v. North Carolina. These services supplemented extensive legal work provided by full time Department of Justice attorneys.

This lawsuit was filed as a result of North Carolina's decision to withdraw from membership in the Southeast Interstate Low-Level Radioactive Waste Management Compact. This is ongoing litigation initiated in 1999 related to the development and permitting of a North Carolina low level radioactive waste site that would support nuclear waste disposals from eight southeastern states. The US Supreme Court appointed a Special Master in 2004 to review legal claims and proceedings by the southeastern states.

The Council of State has approved allotments from the C&E fund totaling \$256,917 for legal fees pertaining to this case. The Council of State approved a \$32,015 request at their October 6, 2009 meeting.