

Allocations from the Contingency & Emergency Account

Report to the Joint Legislative Commission
On Governmental Operations

Office of State Budget and Management

January 19-20, 2010

Reporting Allocations from the Contingency & Emergency Account

A report on allotments from the Contingency and Emergency Account that have been approved since the November 17-18, 2009 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 ---- \$122,989

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 \$3,341,782 for legal fees pertaining to this case. The Council of State approved a \$122,989 request at their December 1, 2009 meeting.

2) Legal Services for South Carolina, v. North Carolina ---- \$146,736.

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 \$665,468 for legal fees pertaining to this case. The Council of State approved a \$146,736 request at their December 1, 2009 meeting.