

C91H00
Office of People's Counsel

Operating Budget Data

(\$ in Thousands)

	<u>FY 08</u> <u>Actual</u>	<u>FY 09</u> <u>Working</u>	<u>FY 10</u> <u>Allowance</u>	<u>FY 09-10</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
Special Fund	\$3,024	\$2,849	\$2,791	-\$58	-2.0%
Contingent & Back of Bill Reductions	0	0	-8	-8	
Adjusted Special Fund	\$3,024	\$2,849	\$2,783	-\$66	-2.3%
Adjusted Grand Total	\$3,024	\$2,849	\$2,783	-\$66	-2.3%

- The fiscal 2010 allowance for the Office of People's Counsel (OPC) decreases by \$66,041, or 2.3%, in special funds after including a reduction for deferred compensation match contingent on the passage of legislation.
- A contingent across-the-board reduction in the OPC budget reduces \$7,999 in special funds to delete the deferred compensation match.

Personnel Data

	<u>FY 08</u> <u>Actual</u>	<u>FY 09</u> <u>Working</u>	<u>FY 10</u> <u>Allowance</u>	<u>FY 09-10</u> <u>Change</u>
Regular Positions	19.00	19.00	19.00	0.00
Contractual FTEs	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Personnel	19.00	19.00	19.00	0.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.38	2.00%
Positions and Percentage Vacant as of 12/31/08	0.00	0.00%

- OPC had no vacant positions as of December 31, 2008. OPC must keep 0.38 positions vacant to meet the turnover expectancy of 2%. At the current vacancy level, it appears OPC will have difficulty meeting the turnover expectancy.

Note: Numbers may not sum to total due to rounding.

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Analysis in Brief

Major Trends

OPC Increased Case Participation in Fiscal 2008: After an overall decrease in the number of cases that OPC participated in between fiscal 2006 and 2007, the number of cases it participated in increased in fiscal 2008. However, OPC expects the overall number of cases to decrease in fiscal 2009.

The Percent of Complaints and Terminations Successfully Resolved Decreased Substantially Between Fiscal 2007 and 2008: The percent of complaints and terminations successfully resolved decreased to 23.5% in fiscal 2008. Despite this, OPC anticipates increasing this percent through fiscal 2010 to 46.7%.

Issues

Constellation Energy Group Transactions: In September 2008, Constellation Energy Group (Constellation) and MidAmerican Energy Holdings Company (MidAmerican) announced a merger agreement. In December 2008, Constellation and MidAmerican announced the termination of this agreement. Constellation proposed instead to enter into a transaction with EDF Development Inc. OPC has participated in both cases docketed by the Public Service Commission (PSC) to examine these transactions.

Status of Terminations and Arrearages: As required under Section 11 of Chapter 5 of the 2006 special session, PSC has submitted several reports to the General Assembly examining residential termination notices, terminations, reconnections, and arrearages of electric and gas utilities. The most recent report of PSC regarding these issues indicates worsening trends. PSC has recently docketed a case to examine issues related to arrearages and utility policies regarding these in which it named OPC a party.

Recommended Actions

1. Concur with Governor’s allowance.

Updates

Report on Employee Compensation: Budget bill language in the fiscal 2008 budget bill required OPC to submit a report on its independent salary authority and its fiscal 2006 overexpenditure. OPC submitted this report in August 2007. This report reviewed the legislative history of its independent salary setting authority, the positions included in this authority, the process for submitting changes to the salary plan, a justification for the continuation of its independent salary setting authority, and how the fiscal 2006 overexpenditure was absorbed by the agency.

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Office of People's Counsel

Operating Budget Analysis

Program Description

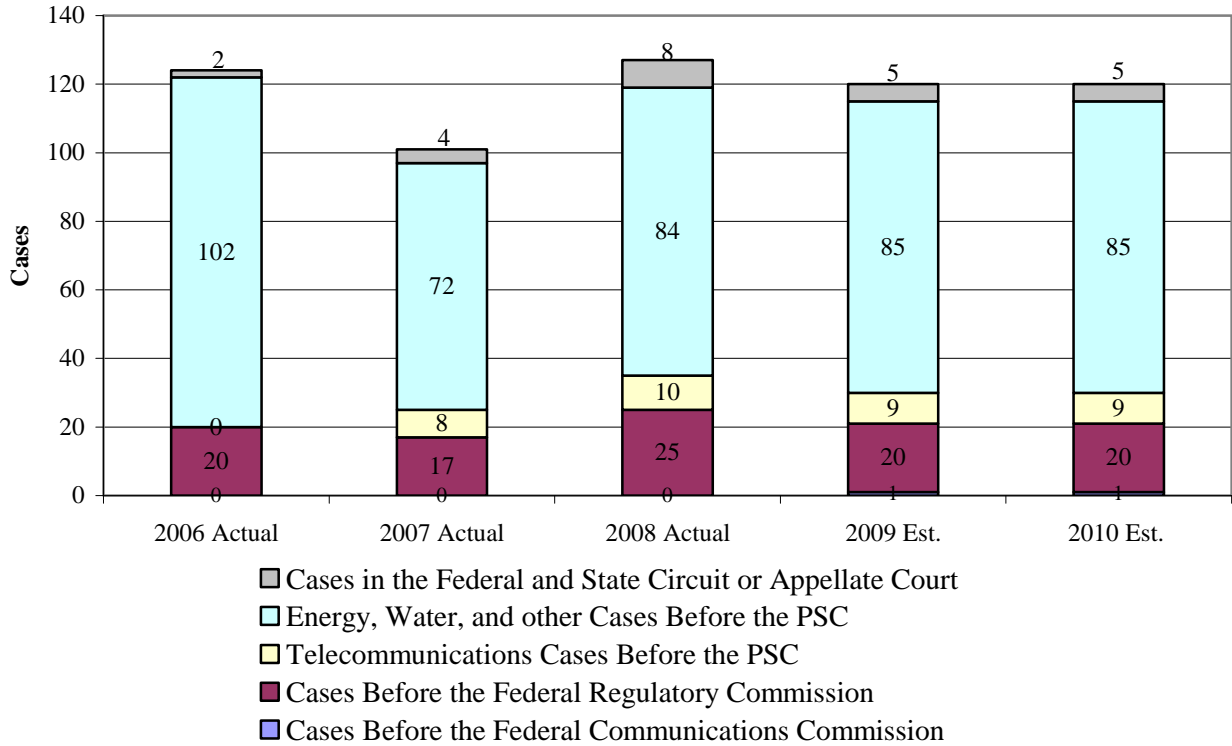
The Office of People's Counsel (OPC) represents the interests of residential users of gas, electricity, telephones, water, and sewer before the Public Service Commission (PSC), various federal agencies, and the courts. OPC monitors the development of competitive markets in gas, electric, and telephone service. In addition, OPC acts as a resource by providing education, referrals, and training. OPC has two key goals. First, OPC seeks to advocate for safe, reliable, and fairly priced utility services in the areas of energy, telecommunications, and other regulated utility services for residential customers. The second key goal is to educate residential ratepayers about those issues impacting their utility service.

Performance Analysis: Managing for Results

Exhibit 1 provides information on the number of cases in which OPC participates. OPC indicates that the number of cases fluctuates year-to-year based on several factors including statutory mandates, interest in topics by regulatory agencies, and economic conditions. The data for fiscal 2006 through 2008 reflects this yearly fluctuation. In fiscal 2008, the number of cases in which OPC participated increased in each area except cases before the Federal Communications Commission. The largest numerical increase occurred in the number of energy, water, and other cases before the PSC, from 72 to 84.

As shown in **Exhibit 2**, the percent of consumer complaints and terminations successfully resolved decreased between fiscal 2007 and 2008, from 72.2 to 23.5%. A complaint or termination successfully resolved is defined by various outcomes, including termination being avoided, a customer being returned to service, and a service problem being fixed. This list is not exhaustive. OPC anticipates performance in this area will increase in fiscal 2009 and 2010 to 46.7%. Despite the expected increase in performance, the fiscal 2010 estimate remains well below the fiscal 2006 and 2007 actual level of performance. **OPC should comment on the cause of the decreased performance in fiscal 2008 and the relatively low estimates for future performance given the recent history of performance in this area.**

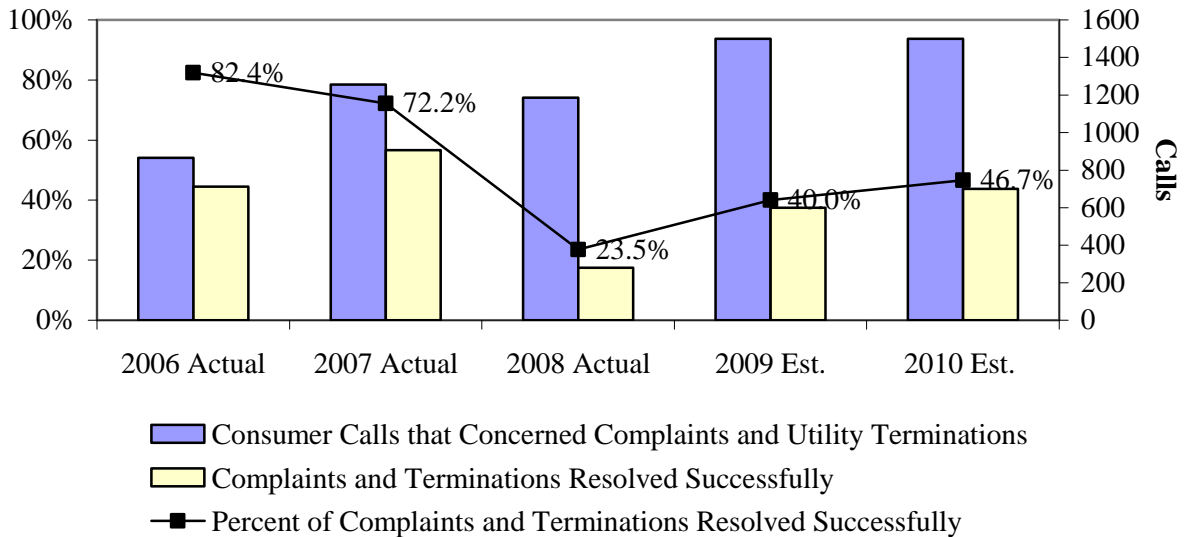
Exhibit 1
OPC – Case Participation
Fiscal 2006-2010



OPC: Office of the People’s Counsel

Source: Office of People’s Counsel; Department of Legislative Services

**Exhibit 2
Complaints and Terminations Successfully Resolved
Fiscal 2006-2010**



Source: Office of People’s Counsel; Department of Legislative Services

Fiscal 2009 Actions

Impact of Cost Containment

The fiscal 2009 appropriation of OPC decreased by \$10,487 in special funds as a result of Board of Public Works cost containment actions taken in June 2008 to reduce health insurance funding.

Proposed Budget

As shown in **Exhibit 3**, the fiscal 2010 allowance decreases the special fund appropriation of OPC by \$66,041, or 2.3%, including the reduction in deferred compensation match contingent on the passage of legislation. The major changes in the fiscal 2010 allowance occur in the area of consultant services, contractual services, library supplies, and subscriptions.

Exhibit 3
Proposed Budget
Office of People's Counsel
(\$ in Thousands)

How Much It Grows:	<u>Special</u> <u>Fund</u>	<u>Total</u>
2009 Working Appropriation	\$2,849	\$2,849
2010 Allowance	<u>2,791</u>	<u>2,791</u>
Amount Change	-\$58	-\$58
Percent Change	-2.0%	-2.0%
Contingent Reductions	-\$8	-\$8
Adjusted Change	-\$66	-\$66
Adjusted Percent Change	-2.3%	-2.3%
Where It Goes:		
Personnel Expenses		
Employee and retiree health insurance pay-as-you-go costs		\$41
Retirement contribution		19
Turnover expectancy from 1.96 to 2%		-1
Deferred compensation including reduction contingent on legislation.....		-8
Regular earnings to reflect the filling of a vacancy at a lower salary level		-9
Adjustments in fiscal 2009 and 2010 to account for vacant positions		-10
Other Post Employment Benefits’ unfunded liability		-38
Other fringe benefit adjustments.....		1
Other Changes		
Subscriptions and association dues to reflect historical spending.....		15
Library supplies primarily for contract with Westlaw for legal research		13
Contracts for information technology support and equipment repairs which were not budgeted in fiscal 2009		12
Travel to reflect training, public hearings, and increased activity at federal level.....		6
Rent		4
Statewide cost allocation.....		-2
Bookbinding to reflect costs associated with in-house copying and web site distribution ...		-3
Communications		-4
Consultant services used for technical assistance and as expert witnesses		-102
Other		-1
Total		-\$66

Note: Numbers may not sum to total due to rounding.

Impact of Cost Containment

The fiscal 2010 allowance contains a decrease of approximately \$8,000 as a result of the across-the-board contingent reduction for deferred compensation match.

Consultant Services

The largest change in the fiscal 2010 allowance, a decrease of \$101,925, occurs in the area of consultant services, which would provide OPC with \$588,933 for this purpose in fiscal 2010. These services are used for technical assistance and as expert witnesses in various regulatory proceedings.

OPC spent \$707,970 for consultant services in fiscal 2006, approximately \$1.03 million in fiscal 2007, and approximately \$1.17 million in fiscal 2008. The fiscal 2009 appropriation for these services is \$690,858, which is less than the actual amount spent in the three previous fiscal years.

Additional funding for consultant services has been provided to OPC by budget amendment in the three most recent fiscal years. For example, in fiscal 2007, OPC received an additional \$500,000 in funding for consultant services due to Chapter 5 of the 2006 special session. In fiscal 2008, OPC received an additional \$650,000 through a budget amendment for consultant services. In fiscal 2009, an additional \$50,000 was provided to OPC as a result of Chapter 131 of 2008, the EmPower Maryland Energy Efficiency Act of 2008.

OPC indicates it can be difficult to predict in advance the amount of funding required for consultant services because it is often dependent on actions of utilities, regulatory agencies, and the General Assembly. As a result, the funding needs in this area are better understood during the fiscal year. OPC reports that in the event that additional funding is required, it will take action during the fiscal year.

Issues

1. Constellation Energy Group Transactions

In September 2008, the Constellation Energy Group (Constellation) and the Mid American Energy Holdings Company (MidAmerican) reached a merger agreement. As part of this agreement, Constellation received a \$1.0 billion infusion of cash from MidAmerican, occurring on September 22, 2008. If approved, MidAmerican would have purchased all of the shares of Constellation for \$26.50/share, at a cost of \$4.7 billion. On October 17, 2008, an application was filed with PSC as required under Section 6-105 of the Public Utility Companies article by Constellation, MidAmerican, and the Baltimore Gas and Electric (BGE) Holdings.¹

On December 17, 2008, Constellation announced the termination of its agreement with MidAmerican.² Also, on this date Constellation and MidAmerican withdrew the application filed on October 17, 2008. This termination came with several costs to Constellation including a termination fee (\$175 million), repayment of the cash infusion and 14% interest, provision of 20 million shares of Constellation stock (a 9.99% share), and an additional \$418 million in cash. Constellation proposed instead to enter into an agreement with EDF Development Inc. (EDF) under which EDF would acquire a 49.99% interest in Constellation’s nuclear generation business for \$4.5 billion and provide a \$1.0 billion cash investment, along with several other promises and options.³

PSC docketed Case No. 9160 to examine the proposed transaction between Constellation and MidAmerican. Following the announcement of the termination of this agreement, PSC closed Case No. 9160. However, it opened Case No. 9173 under which it intends to examine the impact of the terminated transaction on BGE and the proposed transaction between Constellation and EDF to determine if it has jurisdiction to examine the agreement.

OPC Actions

OPC has been involved in both cases initiated to investigate issues surrounding the Constellation transactions. On October 24, 2008, OPC provided notice that it would participate in Case No. 9160 as a party. OPC indicates it had retained consultants to be used in this case prior to its closure. This case was still in discovery stages when the termination of the agreement was announced, and as a result little formal activity had occurred. OPC reports it had intended to file testimony in January 2009.

¹ Section 6-105 of the Public Utilities Company Article describes when PSC is required to review an acquisition or influence over a public utility, the documentation that PSC must review, and the criteria by which the transaction should be judged.

² See Constellation Energy and MidAmerican Energy Holdings Company (2008, December 17). *Constellation Energy and MidAmerican Energy Holdings Company Jointly Terminate Merger Agreement*. Press Release.

³ See Constellation Energy and EDF (2008, December 17). *Constellation Energy and EDF Group Enter Definitive Investment Agreement*. Press Release.

OPC filed a request for PSC to either initiate a second phase to Case No. 9160 or to open a second case to investigate whether PSC has jurisdiction to examine the transaction and presented a list of issues to begin to address this issue. OPC also filed a request for an investigation into the protection of BGE from activities of its parent company and related issues of vulnerability to any financial problems of Constellation. On the date these were filed, PSC opened the case to examine the terminated transaction and whether it has jurisdiction in the new transaction. PSC later responded to the specific requests of OPC by indicating that these issues are part of the intended investigation in Case No. 9173. This case is also still in its early stages with oral arguments not expected until March 27, 2009.

OPC should comment, to the extent possible, on its role in the cases examining the Constellation transactions.

2. Status of Terminations and Arrearages

Section 11 of Chapter 5 of the 2006 special session required PSC to study the impacts of rising fuel prices on residential customers. PSC was to do this by collecting on a monthly basis from both gas and electric companies (1) the number of residential turnoff notices; (2) the number residential customer turnoffs; (3) the number of residential reconnections; and (4) the gross amount of residential customer arrearages. PSC formally ordered the utilities to report this information under Case No. 9074 in August 2006.

As required by this legislation, PSC has submitted reports examining the information reported by utilities. The most recent report was issued in November 2008 covering the time period from October 2006 through September 2008. The report showed generally worsening trends in all areas examined, both statewide and for individual utilities, including a 43.7% increase in statewide average gross arrearages for the period October 2007 to September 2008 compared to the same time period the year before.

Recent Action

On January 30, 2009, PSC opened a proceeding (Case No. 9175) to examine the extent of current and projected arrearages as well as the policies of utilities related to assistance to customers with arrearages, collections, and turnoffs. PSC indicated that the Office of External Relations has recently observed an increase in customer complaints and other inquiries and activity relating to increasing utility bills. PSC also noted the increasing number of customers seeking assistance through the Electric Universal Service Program in recent years. PSC also expected the rising level of arrearages to affect actions taken by utilities related to customers with arrearages.

PSC named OPC as one of the parties to the case, along with its own technical staff, the utilities, and an invitation to the Department of Human Resources, Office of Home Energy Programs. A hearing is expected to occur in this matter on February 26, 2009.

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On February 10, 2009, PSC issued an additional notice in this case which extended the scope to include the extent and cause of complaints related to higher than normal energy bills. PSC indicated in this notice that following the original notice there has been a further increase in the number of complaints about higher than normal energy bills.

OPC should comment on whether it has seen evidence of the trends that led to the initiation of this proceeding and actions it has taken, or intends to take, regarding issues of termination and arrearages for residential customers.

Recommended Actions

1. Concur with Governor’s allowance.

Updates

1. Report on Employee Compensation

In fiscal 2006, OPC had an overexpenditure due to personnel actions. As a result, the General Assembly added budget bill language during the 2007 session requiring a report on OPC’s independent salary authority and how OPC intended to pay for the overexpenditure from fiscal 2006. On August 1, 2007, OPC submitted a report in response to this language. This update summarizes the response of OPC.

Legislative History of Independent Salary Setting Authority

As part of Chapter 347 of 1996, the State Personnel Management System Reform, several positions in OPC were designated as special appointments. These positions include the Deputy People’s Counsel and Assistant People’s Counsel.

Several years later, as part of Chapter 647 in 2000, the People’s Counsel was provided with independent salary authority for the positions of Deputy People’s Counsel; the attorneys in management service or those that are special appointments; and all positions in management, professional, and technical classifications unique to OPC. In the fiscal 2010 allowance this affects 52.6% of OPC’s authorized positions.

This independent salary authority was provided to both OPC and PSC due to difficulties experienced by these agencies in attracting and retaining staff because of the competition with the electric and telecommunication industries, private law firms representing utilities and other customers, and other government agencies.

The initial salary plan was submitted and approved in November 2000, with changes made to reflect that salary plan in 2001. Changes, other than cost-of-living adjustments (COLA), were not made for the first several years. Beginning in late 2003 additional changes to the salary plan were made including grade changes, salary adjustments, reclassifications, and promotions.

Process for Submitting Changes to Salary Plan

The People’s Counsel is required to submit to the Department of Budget and Management (DBM) changes to the salary plan for positions subject to the independent authority that involve adjustments to salary ranges beyond routine reclassifications, promotions, and general salary increases 45 days prior to when the changes become effective. The changes that need to be reported include new or abolished classes, changes in grades, changes to salary guidelines, or new salary schedules or ranges. The Secretary of DBM must respond to the proposal at least 15 days before the salary changes would become effective. For routine reclassifications, promotions, and general salary increases for positions subject to the independent authority, DBM is not required to approve the changes. However, OPC submits forms to DBM to allow for the necessary changes in the personnel system.

For changes among those positions not subject to the independent authority, like other agencies, People’s Counsel has been delegated authority by the Secretary of DBM to reclassify some positions, defined in the salary plan, without DBM’s approval.

Justification for Continued Independent Salary Setting Authority

OPC argued that recent experience has emphasized the importance of having effective advocates in various proceedings. OPC further argued the independent authority allows them to attract and retain staff that has the expertise necessary for these positions.

Fiscal 2006 Overexpenditure

OPC also discussed personnel changes made in fiscal 2006 that resulted in the overexpenditure including new hires, salary upgrades that were in the appropriate salary range, a reclassification, and a new position. However, OPC indicates that the problems leading to the overexpenditure have been addressed.

OPC indicated that of the fiscal 2006 overexpenditure approximately \$41,459 was paid from the fiscal 2007 appropriation, and the remaining approximately \$78,998 was paid from a released encumbrance from 2003 which was still available for OPC use. None of the overexpenditure was remaining at the time of the writing of the report.

Current and Prior Year Budgets

Current and Prior Year Budgets Office of the People’s Counsel (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2008					
Legislative Appropriation	\$0	\$2,716	\$0	\$0	\$2,716
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	682	0	0	682
Cost Containment	0	0	0	0	0
Reversions and Cancellations	0	-373	0	0	-373
Actual Expenditures	\$0	\$3,024	\$0	\$0	\$3,024
Fiscal 2009					
Legislative Appropriation	\$0	\$2,778	\$0	\$0	\$2,778
Cost Containment	0	-10	0	0	-10
Budget Amendments	0	82	0	0	82
Working Appropriation	\$0	\$2,849	\$0	\$0	\$2,849

Note: Numbers may not sum to total due to rounding.

Fiscal 2008

The special fund appropriation of OPC increased over the fiscal 2008 legislative appropriation by \$681,881. The majority of this increase (\$650,000) was for legal services support for cases in which OPC must participate. The remaining increase was the result of employee cost-of-living adjustments (COLAs). OPC cancelled approximately \$373,162 of the special fund appropriation related to legal services support and partial year vacancies.

Fiscal 2009

The special fund appropriation of OPC has increased by \$71,561 in fiscal 2009. The increase was the result of Chapter 131 of 2008, the EmPower Maryland Energy Efficiency Act of 2008, which provided \$50,000 to OPC for consultant services, and employee COLAs. These increases were partially offset by a decrease of \$10,487 in cost containment actions primarily in the area of salaries and wages.

Audit Findings

Audit Period for Last Audit:	May 4, 2005 – January 6, 2008
Issue Date:	April 2008
Number of Findings:	1
Number of Repeat Findings:	0
% of Repeat Findings:	0%
Rating: (if applicable)	n/a

Finding 1: OPC did not always follow State procurement regulations for consulting services contracts, and certain payments were not adequately supported.

**Object/Fund Difference Report
Office of People's Counsel**

<u>Object/Fund</u>	<u>FY08 Actual</u>	<u>FY09 Working Appropriation</u>	<u>FY10 Allowance</u>	<u>FY09 - FY10 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	19.00	19.00	19.00	0	0%
Total Positions	19.00	19.00	19.00	0	0%
Objects					
01 Salaries and Wages	\$ 1,586,292	\$ 1,931,616	\$ 1,935,307	\$ 3,691	0.2%
02 Technical and Spec. Fees	1,168,328	690,858	588,933	-101,925	-14.8%
03 Communication	49,206	35,166	30,956	-4,210	-12.0%
04 Travel	15,335	6,402	12,500	6,098	95.3%
07 Motor Vehicles	15,660	11,800	11,800	0	0%
08 Contractual Services	28,636	16,858	26,300	9,442	56.0%
09 Supplies and Materials	39,128	37,928	50,000	12,072	31.8%
12 Grants, Subsidies, and Contributions	0	7,017	5,000	-2,017	-28.7%
13 Fixed Charges	121,801	111,578	130,385	18,807	16.9%
Total Objects	\$ 3,024,386	\$ 2,849,223	\$ 2,791,181	-\$ 58,042	-2.0%
Funds					
03 Special Fund	\$ 3,024,386	\$ 2,849,223	\$ 2,791,181	-\$ 58,042	-2.0%
Total Funds	\$ 3,024,386	\$ 2,849,223	\$ 2,791,181	-\$ 58,042	-2.0%

Note: The fiscal 2009 appropriation does not include deficiencies. The fiscal 2010 allowance does not include contingent reductions.