

REPORT

from the

**STUDY COMMITTEE ON DES CONTRACT CASE MANAGEMENT
AND RELATED LIABILITY**

MEMBERS

**Representative Weiers, Cochair
Representative Wong
Representative Aguirre
Mr. Jack Cotter
Mr. Phil Bayne**

**Senator Huppenthal, Cochair
Senator Richardson
Senator Henderson
Mr. Darwin Cox**

October 2, 1995

Mission Statement

The Study Committee on DES Contract Case Management and Related Liability was established by Laws of 1995, First Special Session, Ch. 1. Portion of Section 6 states:

It is the intent of the legislature that the chairmen of the house and senate health and welfare appropriations subcommittees, two legislators and one provider selected each by the president of the senate and the speaker of the house of representatives, and the department of economic security director or designee study the issue of contract case management and related liability and report their recommendations to the appointing authorities and the joint legislative budget committee by October 1, 1995.

Committee Activity

The committee held two meetings to take testimony, discuss the issues and make recommendations. Minutes from the two meetings are attached.

STUDY COMMITTEE ON DES CONTRACT CASE
MANAGEMENT AND RELATED LIABILITY

RECOMMENDATIONS:

The committee recommends that a task force be appointed by the Speaker of the House and the President of the Senate to make recommendations regarding the following:

1. The process and time frame for privatizing the following functions now performed by DES:
 - * case management
 - * parent aides
 - * foster care licensing/supervision/recruitment/training
 - * adoption licensing/supervision/recruitment/training
 - * school liaison
 - * volunteer services
2. Budget and personnel issues related to the transfer of these services to the private sector
3. The placement of licensing and contracting responsibilities under separate centralized agencies
4. Liability issue related to contracted services

The task force should submit their recommendations to the appointing authorities and the Joint Legislative Budget Committee no later than December 31, 1995.

This report is respectfully submitted by the following members:



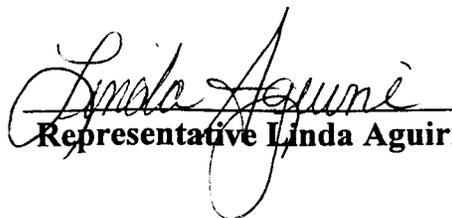
Senator John Huppenthal
Co-chairman



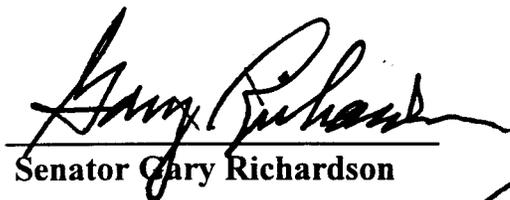
Representative James Weiers
Co-chairman



Senator James Henderson, Jr.



Representative Linda Aguirre



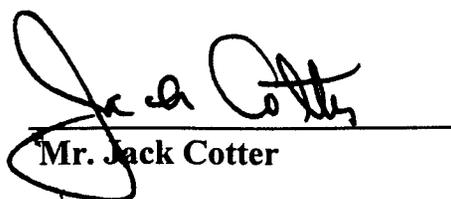
Senator Gary Richardson



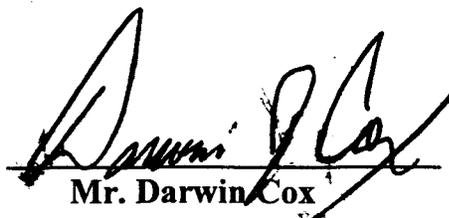
Representative Barry Wong



Mr. Phil Bayne



Mr. Jack Cotter



Mr. Darwin Cox

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ARIZONA STATE LEGISLATURE
Forty-second Legislature - First Regular Session

STUDY COMMITTEE ON DES CONTRACT CASE MANAGEMENT

Minutes of Interim Meeting
Wednesday September 6, 1995
Senate Hearing Room 3 - 1:30 p.m.

(Tape 1, Side A)

The meeting was called to order at 1:37 p.m. by Cochairman John Huppenthal and attendance was noted by the secretary.

Members Present

Phil Bayne	Senator Henderson	Representative Wong
Jack Cotter	Senator Richardson	Representative Weiers, Cochairman
Darwin Cox	Representative Aguirre	Senator Huppenthal, Cochairman

Members Absent

None

Speakers Present

Bill McCullough, Appropriations Committee Analyst, Arizona State Senate
Rene Rebillot, Assistant Attorney General and Unit Chief in the Economic Security Section,
Arizona Attorney General's Office
Maria Hoffman, Executive Director, Arizona Council of Centers for Children and
Adults (ACCCA)
Margaret Cawley, Senior Fiscal Analyst, Joint Legislative Budget Committee (JLBC)

Guest List (Attachment 1)

Bill McCullough, Appropriations Committee Analyst, Arizona State Senate, reviewed the Committee's charge to study the issue of contract case management and related liability, with a report due by October 1st. He reported a total expenditure of \$55 million for services for abused or neglected children for in-home and out-of-home services.

Cochairman Huppenthal asked Members of the Committee to introduce themselves.

STUDY COMMITTEE ON DES
CONTRACT CASE MANAGEMENT
9/6/95

Responding to an inquiry by Mr. Wong in regard to the establishment of this Study Committee, Cochairman Weiers explained that the Committee has been asked to investigate continuing problems at Child Protective Services (CPS) and to evaluate possible privatization.

Cochairman Huppenthal added that key issues to investigate include measures of quality, contract, and liability.

Senator Richardson outlined his understanding that the Committee's charge is to examine the issue of contract case management with private providers that contract with Arizona Department of Economic Security (DES), in order to find out if private providers are doing a better job than the state.

Darwin Cox, Director of the Phoenix Division of the Casey Family Program, said the national private foundation has provided \$4 million of trust fund money for long-term foster care services for children in Arizona. He noted that he was an administrator of children's services at DES for many years and said he believes the issue may be one of a shift in the direction of public policy.

Phil Bayne, Assistant Director, Division of Children and Family Services (DCFS), Arizona Department of Economic Security (DES), stressed that his concern is with the liability issue. He said that, while he is supportive of privatization, liability issues and relationships with government should take precedence.

Presentation

Mr. Bayne made available the following materials (Attachment 2) in order to acquaint Members with the issue under review:

- a chronology of contract staff conversion and related liability issues;
- a March 10, 1994 letter from Catholic Family and Community Services (CFCS) to DCFS;
- a DCFS August 25, 1995 report; and
- a budget decision packet.

Mr. Bayne called attention to the March 10, 1994 letter which raises the concerns of CFCS and Catholic Community Services of Tucson (CCS) over liability issues arising from contracts with the state to provide services to children and families, and two subsequent lawsuits. He reviewed the timeline document which delineates the Administration for Children, Youth and Families (ACYF) contract conversion process since the March 1994 CFCS letter, and explained the contract staff conversion process. He responded to questions to clarify the problem raised and pointed out that the state has been liable for unemployment if a person working under contract for the state is laid off.

Rene Rebillot, Assistant Attorney General and Unit Chief in the Economic Security Section, Arizona Attorney General's Office, addressed the liability issue, and said the real problem is one

of control and responsibility. She noted that the contracts she has seen require providers to carry insurance and to indemnify the state, but if a contractor employee is supervised by a DES employee, a potential liability situation arises which is handled on a case by case basis.

Mr. Weiers asked why contractor employees need to be supervised by the state if they are capable of performing the work under the contract.

Mr. Bayne explained that supervisors assign cases and review work, and DES is seeking to resolve the clouded liability issue raised when staff are employees of another agency. He described the jobs performed by case managers in assessing the problems of a family and arranging for services.

Senator Huppenthal asked if it would be preferable to turn over the whole case to a private agency.

Mr. Bayne said it would be possible to do so if the courts and the responsible parties agree, but pointed out that more money would be needed in the contract for the agencies to assume the liability.

Mr. Weiers suggested that DES manpower could be reduced by transferring responsibility to the private agencies, resulting in a reallocation of the funds.

Mr. Bayne cautioned that it might be difficult to meet the ongoing need during transition.

Mr. Cox asked if private agency supervision will increase or decrease DES liability.

Ms. Rebillot opined that liability would probably be reduced if supervision is in one place.

Senator Huppenthal pointed out that a jury might hold the state liable because it would be viewed as the "deep pocket."

Mr. Wong commented that since the state desires to move toward increased privatization and minimized liability, the question becomes one of structuring the contracts to substantially limit the state's liability, bearing in mind that it is unlikely that all liability can be eliminated. He proposed that the private agencies could be required to report on a regular basis.

Mr. Bayne acknowledged that DCFS would be happy to consider a proposal of the kind referred to by Mr. Wong, and pointed out that DCFS now contracts for many services.

Jack Cotter, Chief Executive Officer, Catholic Community Services of Southern Arizona (CCS), said CCS is a private sector agency committed to community based programming for the well-being of children and families. He pointed out that the CCS contract indemnity was total until June of 1990. For the last five years, however, the shared responsibilities are clearly spelled out in the contract.

Maria Hoffman, Executive Director, Arizona Council of Centers for Children and Adults (ACCCA) distributed a position paper (Attachment 3) setting out her remarks on contractual relationships between DES and the private sector in Arizona. She stressed that the issue is one of public policy, which private agencies have attempted to resolve directly with DES, and they are in no way "out to get" DES. Ms. Hoffman highlighted the fact that the conversion of employees from a private organization to DES is being driven by the liability issue. She submitted that, just as the state has been able to resolve liability problems involving private companies in road building, so should it be able to settle the problems that have arisen between DES and private provider agencies. She reviewed her position paper and responded to questions.

(Tape 1, Side B)

Ms. Hoffman stressed that it is important that Committee Members understand why the private agencies have come forward to request a solution to the problem.

Mr. Cox observed that it was his experience as a state employee that the Catholic Services agency provided better quality services than DES, and saved the state money. He noted that the Council on Accreditation sets much higher standards than does the state, and expressed concern over the self-regulation performed at DES.

Ms. Hoffman called attention to "Attachment A" appended to her position paper (Attachment 3) illustrating employee cost survey results, and argued that private agencies are more results oriented and more cost effective. She called attention to numerous executive directors of community based organizations present at the meeting, pledged to work to resolve the issue, and concluded by making three recommendations:

1. DES should set licensing standards for non-residential services;
2. Use of outcome measures, as requested by ACCCA for the past twelve years;
3. Develop performance based contracts.

Senator Huppenthal paraphrased Ms. Hoffman's recommendation that, because liability might be expected to decrease with increased privatization, the liability aspects should be managed as a budgetary issue rather than as a point of service issue. Ms. Hoffman concurred with Senator Huppenthal's summary of her position.

Mr. Bayne said his recommendation on the liability problem would be to complete the conversion of staff, given that available resources do not allow resolution at this time. For the future, however, it would be desirable to pursue enhancements in the contracts to ensure better performance standards. He added that DES is interested in pursuing the privatization potential where possible.

Mr. Cox suggested that DES could take the dollars involved in supervising private agency employees to convert to *below the line* dollars and add to the contracts.

Margaret Cawley, Senior Fiscal Analyst, Joint Legislative Budget Committee (JLBC), pointed out that DES had requested to move money to the operating budget for more full-time equivalents (FTE's), but did not receive approval.

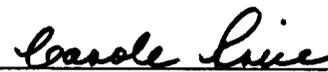
Mr. Bayne contended that a decision packet was submitted in regard to the transfer of money from *below the line* to *above the line* to cover the staff. The conversion was subsequently frozen and staff that had moved to state positions remain on staff, with an option to return to the contractors. He added that the agency is attempting to further reduce staff and suggested alternative ways to handle the problem by increasing *above the line* dollars or funding the liability in the contracts as suggested. He said DES would like to boost contracts so that supervision is paid by the private agencies.

Mr. Cotter pointed out that the contracts are capped, and highlighted the need to resolve the liability issue in order to better serve families and children. He submitted that a change in public policy may be the driving force behind the decisions being made.

Mr. Bayne submitted that resources will be available to relieve the liability problem if DES recommendations are adopted.

Cochairman Huppenthal questioned whether the real issue is budgetary and organizational, rather than one of liability. He opined that a solution will hinge on the apparent consensus that private sector resources should increase in order to achieve higher quality services with less total liability, and requested that legislative staff further research the budgetary issues before a report can be made.

Without objection, the meeting adjourned at 3:04 p.m.



Carole Price, Committee Secretary

(Original minutes with attachments and tape on file in the Office of the Chief Clerk. Copy of minutes on file with the Secretary of the Senate.)

ARIZONA STATE LEGISLATURE
Forty-second Legislature - First Regular Session

**STUDY COMMITTEE ON DES CONTRACT CASE MANAGEMENT
AND RELATED LIABILITY**

Minutes of Meeting
Wednesday, September 27, 1995
House Hearing Room 2 - 3:30 p.m.

(Tape 1, Side A)

The meeting was called to order at 3:41 p.m. by Cochairman Huppenthal and attendance was noted by the secretary.

Members Present

Phil Bayne	Senator Richardson
Jack Cotter	Mr. Wong
Darwin Cox	Senator Huppenthal, Cochairman
Senator Henderson	Mr. Weiers, Cochairman

Members Absent

Mrs. Aguirre

Speakers Present

Pat Chumbley, House Majority Research Analyst
Marge Cawley, Fiscal Analyst, Joint Legislative Budget Committee (JLBC)

Pat Chumbley, House Majority Research Analyst, reviewed a handout of recommendations for possible adoption by the committee (Attachment 1).

Mr. Bayne pointed out that with the exception of some areas of case management, the items listed in Item #1 are currently contracted out.

STUDY COMM. ON DES CONTRACT
CASE MGMT. & RELATED LIABILITY
SEPTEMBER 27, 1995

Mr. Cox referred to Item #3, and asked if this references only contracting licensing that the Department of Economic Security (DES) provides or if it includes health and juvenile corrections.

Mr. Weiers replied that this applies to the health aspects from DES and not to juvenile corrections, and Ms. Chumbley agreed with his statement.

Mr. Cotter noted that the principal issue leading to this forum was the question of whether or not contracted services are going to continue in the private sector, and if so, there is a liability issue associated with that. He asked if the recommendations assume that the conversion of present contract employees into DES will no longer be possible.

Mr. Weiers answered that he believes the intent is to stop conversion of present contract employees into DES but the task force should be the body to do that.

Mr. Cox stated that there are two contracts involving conversion of employees still in question. He asked if the committee will be making a recommendation as to whether or not DES will be able to maintain its status quo in regard to these contracts or if they have to redo them in a manner which will put the positions back out to private agencies.

Senator Huppenthal asked Cochairman Weiers if another item should be added to this recommendation or if he is comfortable proceeding and dealing with that issue with the task force. Mr. Weiers asked Ms. Chumbley her opinion.

Ms. Chumbley perceived that this a policy decision and she cannot advise him on it.

Marge Cawley, Fiscal Analyst, Joint Legislative Budget Committee (JLBC), stated that the providers would like to have something done this year, and the task force is too far off for the specific predicament that they are in. She said she is not sure the situation has been explained to the committee members clearly enough for a decision to be made; it probably should be discussed. She agreed with Ms. Chumbley that it is a policy decision which should be made by the committee.

Mr. Bayne stated that in the two contracts an employee of the provider was trained, working, and being supervised on state premises; the issue of liability in this instance is what needs to be addressed.

Mr. Weiers asked what additional money is involved in these two situations.

Mr. Cotter said that there are three existing contracts which are additionally insured in order to protect the providers, at a total cost of \$23,000. He said he would like to see some resolution to this problem because the providers have to pay this amount.

Discussion followed among the members concerning the issue.

Mr. Wong asked why DES does not hire its own employees rather than utilizing individuals from the providers.

Mr. Bayne said that is a good point and one of the concerns he has because of exposure to liability. He said at this point, DES is looking at how it can contract more specifically for services rather than individuals. In the meantime, the current issue exists and the liability issue needs to be resolved.

Mr. Wong suggested that this practice be stopped immediately. He spoke in support of the recommendations but submitted that another item be added requiring resolution of the liability issue. He asked if a time frame for the task force to conclude its work has been established.

Cochairman Huppenthal stated that a termination date can be added to the recommendations.

Mr. Wong recommended that a termination date of no later than 60 days be set. He asked the length of the contracts.

Mr. Cotter answered that the contracts run either through the close of the fiscal year or December 31, 1995, depending on the recommendations of this committee.

Mr. Bayne explained that a parent aide works with parents to develop better parenting skills. A school liaison works between Child Protective Services (CPS) and the school to update them on activities; generally this involves cases which have not required foster care but it could go on to involve children in foster care. He said volunteer services cover a range of items, such as providing supplemental services for children, working with parents in the home or in the DES office, supplementing agencies, and recruiting, training, or supervising volunteers.

Mr. Cotter indicated that the recommendations before the committee take precedence over the particular issue that his contracting agency has. He said, hopefully, in addressing these recommendations, the other problems will be resolved.

The members agreed that the liability issue should be addressed by the task force and discussion followed concerning a termination date.

Mr. Weiers moved, seconded by Mr. Wong, that the committee add to its recommendations a termination date of December 31, 1995, and the task force be directed to resolve the liability issue. The motion carried.

Without objection, the meeting adjourned at 4:20 p.m.



Linda Taylor, Committee Secretary

(Attachment and tape are on file in the Office of the Chief Clerk).

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STUDY COMM. ON DES CONTRACT
CASE MGMT. & RELATED LIABILITY
4 SEPTEMBER 27, 1995