

OFFICE OF THE
ATTORNEY GENERAL





Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia, WA 98504-0100

October 9, 2017

David Schumacher, Director
Office of Financial Management
P.O. Box 43113
Olympia, WA 98504-3113

Dear Mr. Schumacher:

David -

Enclosed please find the 2018 Supplemental Budget Request from the Attorney General's Office (AGO) addressing critical office and litigation needs. We are mindful of the continuing limitations on state resources and continue to provide quality legal services for our clients and the residents of the state of Washington working within these constraints.

Our number one priority continues to be additional funding to address recruitment and retention issues for our attorneys serving state agency clients and the public. Assistant Attorney General (AAG) salaries remain significantly lower than those in other public sector law offices. Compounding this disparity, our public sector peers receive ongoing, periodic salary increments. The fact that we are behind, along with the inability to provide predictable increases, negatively impacts the ability to provide high quality, consistent legal services to the state of Washington. The AGO seeks funding so we can move to a salary system that allows for periodic increments like our public sector peers and to continue to address the salary disparity.

In addition to our AAG salary request, this 2018 Supplemental Budget request is limited to those needs that arise directly from new emergent issues including legislative mandates and health and safety concerns, significant litigation, caseload related and other workload increases, and one technical correction. The funding requested for these items will allow us to mitigate risk, protect tax dollars, and serve the legal needs of the state and its residents. These include:

- Funding to support the legal work associated with the new State Employees Benefits Board;
- Funding to defend the state and recover resources (e.g. Skagit River Bridge Collapse (*WSDOT v. Mullen Trucking*); Boldt/Culvert Case (*U.S. v. Washington Phase II*); *Madison et. al. v. OSPI*); and
- Funding to support increased workload (Ratepayer Advocacy, Eastern Washington University, Mental Health, Adult Protective Services-Everett).



ATTORNEY GENERAL OF WASHINGTON

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Our request also includes a package to move our Bellingham office and a technical package to bring our federal appropriation in line with the federal grant amount.

The AGO is requesting that the \$2 million revenue transfer in the 2017-19 omnibus operating budget from the New Motor Vehicle Arbitration Account (NMVAA) to the State General Fund be deleted as it could severely impact the financial health of the NMVAA and does not greatly enhance the fund balance of the General Fund. (SSB 5883-Treasurer's Transfers- Section 805).

The AGO greatly appreciates the funding provided in the 2017-19 biennial budget for Child Permanency and Child Welfare. This critical need has been one of the office's highest priorities for the past several years. The AGO requests that this funding be made ongoing and part of its base budget.

Finally, although the AGO has not submitted budget requests for the following items, it supports the additional efforts being pursued by its client agencies for the following:

- Funding requested by the Department of Revenue for direct litigation costs in the Tulalip litigation;
- Funding requested by the Office of Public Defense in a class action lawsuit on indigent juvenile criminal defendants (*Davison v. State*); and
- Funding requested by the Consolidated Technology Services (WaTech) for legal services provided by the Attorney General's Office specifically dedicated to issues concerning cybersecurity.

I look forward to working with you and your office in the coming months, and stand ready to provide information to assist you as you prepare the Governor's budget proposal. If you have questions about this budget request, please contact Chief Financial Officer Mark Melroy at (206) 402-7224.

Thank you for your continued assistance.

Sincerely,


BOB FERGUSON
Attorney General

Thanks!

RWF/jlg

Encl.

OFFICE OF THE ATTORNEY GENERAL
2018 Supplemental Budget Request
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TAB A

RECOMMENDATION
SUMMARY



Recommendation Summary

Agency: 100 Office of Attorney General

10:34:32AM

10/9/2017

Dollars in Thousands

	Annual Average FTEs	General Fund State	Other Funds	Total Funds
2017-19 Current Biennium Total				
Total Carry Forward Level				
Percent Change from Current Biennium				
M1 MK Adult Protective Services-Everett	1.8		470	470
M1 ML EWU Legal Services	1.8		470	470
M1 MM Boldt Litigation	1.3		406	406
M1 MN School Employees' Benefits Board	4.5		1,159	1,159
M1 MP Skagit River Bridge Litigation	4.3		1,113	1,113
M1 MQ Medicaid Fraud Technical Correction	1.0		1,976	1,976
Carry Forward plus Workload Changes	14.6		5,594	5,594
Percent Change from Current Biennium				
M2 MR Mental Health Services/Trueblood	3.5		940	940
M2 MS Bellingham Office Relocation		28	421	449
M2 MT Madison v. OSPI Litigation	1.8		582	582
Total Maintenance Level	19.9	28	7,537	7,565
Percent Change from Current Biennium				
PL LA AAG Recruitment and Retention		738	10,922	11,660
PL LB Ratepayer Advocacy	4.8		1,901	1,901
Subtotal - Performance Level Changes	4.8	738	12,823	13,561
2017-19 Total Proposed Budget	24.7	766	20,360	21,126
Percent Change from Current Biennium				

Recommendation Summary

Agency: 100

10:34:32AM

10/9/2017

Dollars in Thousands

Annual Average FTEs	General Fund State	Other Funds	Total Funds
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M1 MK Adult Protective Services-Everett

Litigation and legal services required by the Aging and Long-Term Support Administration (AL TSA) of the Washington Department of Social And Health Services (DSHS) have increased due to a marked increase in Adult Protective Services (APS) staffing. AL TSA has dramatically increased the number of investigators statewide, creating a workload increase in legal proceedings and client advice. The demand for legal services is expected to accelerate dramatically as investigators become fully trained. Given the aging Washington population, continued growth of AL TSA programs and a subsequent need for legal services is expected. AL TSA program expansion has not included increased funding for legal services despite the expected spike in demand for them. This request is to address the initial increase in workload, to ensure adequate legal support, and avoid delays in protection of a vulnerable population.

M1 ML EWU Legal Services

The need for legal services at Eastern Washington University (EWU) has grown along with the increasing complexity and litigiousness of the education environment. In addition, legal advice to EWU was restructured in response to Governor's Inslee's letter asking that legal work be performed by the AGO. Currently, the legal aspects of all of the EWU business, real estate, police, student services, public records, human resources, and executive functions at this growing university are handled by one AGO Assistant Attorney General (AAG). This decision package requests funding for additional AGO staff to support the legal work for EWU.

M1 MM Boldt Litigation

The AGO requests funds for legal services relating to U.S. v. Washington, Phase II of the Boldt Case (AKA the Culverts Case). This will enable the State to explore settlement of the litigation, prosecute its appeal to the U.S. Supreme Court if settlement efforts are not successful and implement the district court injunction that will continue to apply pending settlement or appeal. The estimated cost of fully implementing the district court's injunction exceeds \$2.5-billion. The District Court and Ninth Circuit opinions, if allowed to stand, would place the State at significant risk of future litigation and expense.

M1 MN School Employees' Benefits Board

The Attorney General's Office (AGO) seeks funding necessary to provide legal services for the newly created School Employees' Benefits Board (SEBB). Current staffing levels are insufficient to address this new work as current resources for the Health Care Authority (HCA) are already fully dedicated for other programs. Additional funding is necessary for the AGO to serve the new SEBB client and maintain adequate staffing for representation of existing clients.

M1 MP Skagit River Bridge Litigation

The Office of the Attorney General (AGO) requests funding to continue its efforts to recover more than \$17-million dollars expended by the Washington State Department of Transportation (WSDOT) and the federal government to replace a span of the Skagit River Bridge that collapsed after being struck by an over-height commercial truck on May 23, 2013. This matter is on appeal to the Court of Appeals, Division One, which may result in WSDOT facing liability that will require a longer trial, more experts, and additional discovery.

M1 MQ Medicaid Fraud Technical Correction

Recommendation Summary

Agency: 100

10:34:32AM

10/9/2017

Dollars in Thousands

Annual Average FTEs	General Fund State	Other Funds	Total Funds
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The Office of the Attorney General (AGO) requests a technical correction to increase the AGO's General Fund-Federal appropriation authority to be in alignment with the grant revenue available from the Office of the Inspector General at the Department of Health and Human Services. Included in the new grant amount is a routine increase over prior grants and funding for a new Data Analyst to implement data mining/analytics of Medicaid payment data which will enable the AGO to better detect complex fraud schemes.

M2 MR Mental Health Services/Trueblood

Trueblood v. DSHS and other significant mental health cases require the Office of the Attorney General (AGO) to devote substantial time to post-trial motions, appeals, and settlement and injunction implementation. Forensic and civil show cause hearings continue to increase at a rate that is significantly higher than anticipated in the AGO's 2017-19 biennial budget request. The Behavioral Health Administration's requests for legal advice have also increased over the last year. In short, the Mental Health legal team continues to be inadequately staffed for its increasing workload. The AGO is unable to prioritize important client requests for advice and to initiate discretionary, but important, legal cases.

M2 MS Bellingham Office Relocation

The Attorney General's Office (AGO) is seeking to relocate its Bellingham office to a safer, more desirable location. Undesirable health and safety issues have occurred and have become increasingly disruptive. Local corrective measures have not been effective. Moving to a safer location in Bellingham will provide a safe and secure workplace and reduce the risk of serious safety incidents.

M2 MT Madison v. OSPI Litigation

The American Civil Liberties Union (ACLU) filed a class action complaint against the Office of the Superintendent of Public Instruction (OSPI) on behalf of students who require special education services and reside in the Pasco or Yakima school districts. They seek to compel OSPI to exercise additional supervision and take action concerning alleged excessive disciplinary practices by the two school districts. The lawsuit posits two novel theories: that Article IX of the State Constitution guarantees a right to a particular level of instruction in the school setting, which OSPI must enforce; and that OSPI can be liable under Washington's Law Against Discrimination (WLAD) based on the actions of school districts. If successful, these theories could open the door to making the state a guarantor for every school district against any harm, educational or otherwise, to a student. OSPI's current legal services allocation is not sufficient to fund the defense of this lawsuit.

PL LA AAG Recruitment and Retention

The Office of the Attorney General (AGO) requests funding to raise inadequate Assistant Attorneys General (AAG) salaries to market levels. AAG salaries remain significantly lower than those in other public law offices. Compounding this disparity, the AGO's public peers receive ongoing, periodic salary increments. The fact that the AGO is behind, along with its inability to provide predictable increases, negatively impacts the ability to provide high quality, consistent legal services to Washington state. The AGO seeks funding to meet market rates and move to a salary system that allows for periodic increments similar to those of its public sector peers.

PL LB Ratepayer Advocacy

Recommendation Summary

Agency: 100

10:34:32AM

10/9/2017

Dollars in Thousands

Annual Average FTEs	General Fund State	Other Funds	Total Funds
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The Office of the Attorney General (AGO) requests additional funding for staff and expert witnesses for its Public Counsel Unit (PCU). Insufficient funding impedes PCU's ability to fully represent residential and small business utility customers in utility rate cases and other matters that are increasing in number and complexity. Without significant additional resources, millions of Washington ratepayers will be without the public advocate the legislature intended for them in matters of significant public importance.

TAB B

DECISION
PACKAGES



2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: MK-Adult Protective Services-Everett

Budget Period: 2018 Supplemental Budget Request

Budget Level: M1

1. Agency Recommendation Summary Text:

Litigation and legal services required by the Aging and Long-Term Support Administration (AL TSA) of the Washington Department of Social And Health Services (DSHS) have increased due to a marked increase in Adult Protective Services (APS) staffing. AL TSA has dramatically increased the number of investigators statewide, creating a workload increase in legal proceedings and client advice. The demand for legal services is expected to accelerate dramatically as investigators become fully trained. Given the aging Washington population, continued growth of AL TSA programs and a subsequent need for legal services is expected. AL TSA program expansion has not included increased funding for legal services despite the expected spike in demand for them. This request is to address the initial increase in workload, to ensure adequate legal support, and avoid delays in protection of a vulnerable population.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	233,240	236,771	238,229	238,229
Total Cost	233,240	236,771	238,229	238,229
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	1.75	1.75	1.75	1.75
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	233,240	236,771	238,229	238,229
Total Cost	233,240	236,771	238,229	238,229
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	141,561	145,863	147,264	147,264
Object B	48,876	50,622	50,907	50,907
Object C	-	-	-	-
Object E	38,478	37,974	37,746	37,746
Object G	1,700	1,700	1,700	1,700
Object J	2,625	613	613	613
Total Cost	233,240	236,771	238,229	238,229

3. Package Description:

The Attorney General's Office (AGO) provides client advice and litigation services to the programs of the DSHS Aging and Long-Term Support Administration (ALTSA) including the Residential Services Division and the Home and Community Services Division. ALTSA legal services require highly trained attorneys that are able to meet the varied practice areas needed by ALTSA programs. The legal services provided vary from the specialized area of guardianship and probate law in Superior Court to Administrative Law proceedings before the Office of Administrative Hearings.

Adult Protective Services Staff Increases 2013-2017

An increased workload for the AGO is attributed to the expansion of ALTSA programs without any additional funding allocation for legal services. Over the last two years, the ALTSA legal workload has steadily increased. Currently, demand for legal services in Snohomish County exceeds the legal resources available to perform timely necessary legal work. High caseloads and inadequate legal staffing result in delays of legal work and legal proceedings. An acute demand for additional legal services statewide has begun developing as ALTSA fills positions and trains added staff.

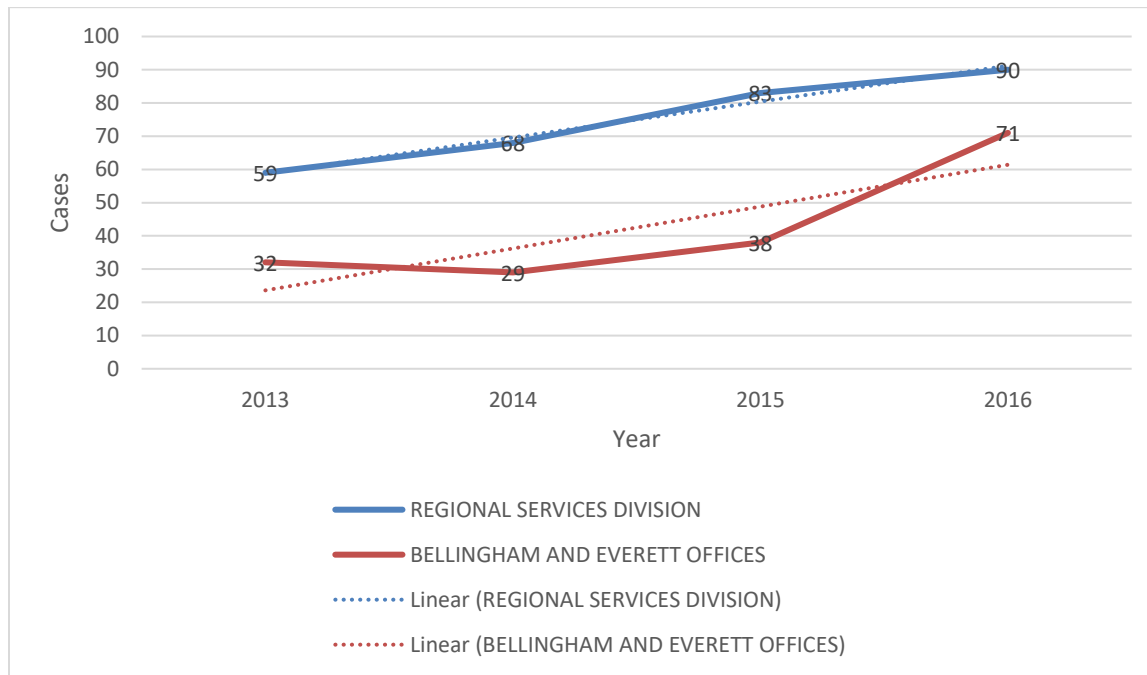
DSHS's Adult Protective Services staff have increased 169% since 2013, from 129 to 348 total staff, to address increases in the number of reports made to APS and in the number of investigations of abuse and neglect of vulnerable adults conducted by APS investigators. During this same period, no additional AAG FTEs have been added to meet the demand for legal services.

Adult Protective Services Caseload Increases

The nature of certain types of ALTSA litigation, such as guardianship fee dispute cases, require attorneys to appear in Superior Court on very short notice, sometimes as short as a two day notice. Guardianship cases have become highly contested, require thorough yet immediate preparation, and rulings tend to be favorable for the guardian and adverse to DSHS. As a result, workload on fee dispute litigation and appeals has also increased significantly.

The AGO has seven Regional Services Divisions (RSD) offices across the state. These offices provide local legal services for a variety of community needs. In the table below, the blue line identifies the collective RSD ALTSA cases. The red line compares this total to the RSD-Bellingham and Everett specific caseload which comprise one region within DSHS. As can be seen, the increase in workload is the most dramatic in the Bellingham and Everett offices, where it is critical to increase legal resources. The graph illustrates that the Bellingham and Everett offices handling ALTSA legal work are currently driving the upward trend in cases.

At present, the increase in workload is the most dramatic in the Bellingham and Everett offices, where it is critical to increase legal resources. The graph illustrates that the Bellingham and Everett offices handling ALTSA legal work are currently driving the upward trend in cases.



In the near future, the AGO may experience sharp caseload increases in other regions of the state, driven by the significant increases in APS staff without corresponding increases in AGO staff.

The following cases reflect current and continuing legal work:

- Guardianship and Vulnerable Adult Protective Orders;
- Regular advice to Adult Protective Services;
- Long-term care licensing cases;
- Guardianship Fee Disputes on behalf of Home and Community Services, Financial Services;
- Regular advice to Residential Care Services;
- Appellate work arising from guardianship fee cases, licensing, and APS cases;
- Judicial Reviews of Adult Protective Services findings of vulnerable adult abuse, neglect and financial exploitation.

Relationship to AGO Strategic Plan:

Goal 3 - Protect the People

2-1-3 - Protect vulnerable adults and combat elder abuse.

The AGO contact for this request is Brendan VanderVelde, Budget Director, 360-586-2104.

4. Base Budget:

The ALTSA workload is a sub-component of the legal services provided to DSHS, and is not separately identified within the overall Central Service Model allocation. Funds are not available to afford the addition of an AAG FTE and the associated support needed to accommodate the workload increase.

5. Decision Package expenditure, FTE and revenue assumptions, calculations and details

Fiscal Summary:

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	1.00	1.00	1.00	1.00	Yes
LA	0.50	0.50	0.50	0.50	Yes
MA4	0.25	0.25	0.25	0.25	Yes
TOTAL	1.75	1.75	1.75	1.75	

This request will add 1.0 AAG FTE and 0.5 Legal Assistant FTE to the AGO’s Regional Services Division in Everett. This will increase the number of trained staff needed to meet the legal needs of ALTSA programs.

Agency administration support FTEs are included in the tables above, using a Management Analyst 5 as a representative classification.

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

ALTSA’s work on behalf of vulnerable adults works toward achieving all three sub-parts of the Governor’s goal to ensure healthy and safe communities. Legal services provided to this division of DSHS is a critical component to successful outcomes.

Relationship to Results Washington:

Goal 4. Healthy and Safe Communities

Healthy People - Provide access to good medical care to improve people's lives

Safe People – Help keep people safe in their home, on their jobs and in their communities.

Supported People -- Help the most vulnerable people become independent and self-sufficient

Performance Measure detail:

Performance Measure 2539: Cases Open at End of Fiscal Year
Target: 25,000 open cases at the end of each FY, reported annually.
Key Divisions: Legal Services Divisions

7. Fully describe and quantify expected impacts on state residents and specific populations served.

These legal services are specifically directed at serving vulnerable adults through DSHS work including: pursuing guardianship and vulnerable adult protective orders; addressing legal issues and risks associated with Adult Protective Services cases; handling Residential Care Services long-term care licensing cases; providing representation in guardianship fee disputes on behalf of Home and Community Services and Financial Services; and providing representation in judicial reviews to defend Adult Protective Services findings of vulnerable adult abuse, neglect and financial exploitation. In addition, the legal services include appellate litigation arising from guardianship fee, licensing, and APS cases.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	NO	
Other local gov't impacts?	NO	
Tribal gov't impacts?	NO	
Other state agency impacts?	YES	DSHS is the client agency and will submit a budget request to coincide with this request.
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	

Facility/workplace needs or impacts?	NO	
Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	YES	The additional staff will be assigned to the Everett office of the AGO to address a variety of litigation described in the package.
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

The additional staff identified in this request will provide legal support in the form of advice and representation in litigation for DSHS’s AL TSA administration.

10. What alternatives were explored by the agency and why was this option chosen?

To date, attorneys have been covering the additional caseload but this is not sustainable. The increased demand for legal services along with inadequate staffing results in delays of either AL TSA work or Children’s Administration juvenile work. DSHS legal work assigned to this RSD-Everett is focused on protecting vulnerable populations. It is not discretionary policy work and inadequate legal support presents risk and delay for the vulnerable populations the state serves and results in increased Medicaid costs.

11. What are the consequences of not funding this request?

Not funding this request will result in a lack of necessary resources to provide sufficient legal services in response to the sustained increase in workload arising from AL TSA programs. Such a funding shortfall may reduce the ability of DSHS to seek guardianships or protection orders on behalf of vulnerable adult clients in need of protective services. A lack of increased funding may also result in significant challenges defending adequately against excess guardianship fees, which will increase DSHS’s Medicaid costs resulting from guardianship fees.

12. How has or can the agency address the issue or need in its current appropriation level?

The AGO is unable to address this issue if the current funding level is not increased and additional staff is not hired. The AGO does not have the resources within current appropriation levels to otherwise address the increase AL TSA workload.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

DSHS has requested an additional AAG FTE in order to meet additional demands for legal services. DSHS and the AGO have also put an Interagency Agreement in effect to meet the need for additional service as quickly as possible. However, the provision of these legal services cannot be sustained without additional ongoing funding.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No



Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	2,204	1,188	1,188	1,188
PC Hardware	2,013	1,050	1,050	1,050
Licensing	450	450	450	450
CTS Services	271	271	271	271
Total Cost	4,937	2,959	2,959	2,959

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

1. Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
2. Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
3. Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: ML-Eastern Washington University Legal Services

Budget Period: 2018 Supplemental Budget Request

Budget Level: M1

1. Agency Recommendation Summary Text:

The need for legal services at Eastern Washington University (EWU) has grown along with the increasing complexity and litigiousness of the education environment. In addition, legal advice to EWU was restructured in response to Governor's Inslee's letter asking that legal work be performed by the AGO. Currently, the legal aspects of all of the EWU business, real estate, police, student services, public records, human resources, and executive functions at this growing university are handled by one AGO Assistant Attorney General (AAG). This decision package requests funding for additional AGO staff to support the legal work for EWU.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	233,240	236,772	238,229	238,229
Total Cost	233,240	236,772	238,229	238,229
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	1.75	1.75	1.75	1.75
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	233,240	236,772	238,229	238,229
Total Cost	233,240	236,772	238,229	238,229
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	141,561	145,863	147,264	147,264
Object B	48,876	50,622	50,907	50,907
Object C	-	-	-	-
Object E	38,478	37,974	37,974	37,974
Object G	1,700	1,700	1,700	1,700
Object J	2,625	613	613	613
Total Cost	233,240	236,772	238,458	238,458

3. Package Description:

EWU has a need for additional legal services. Higher education law has become increasingly complex, and the stakes for failing to comply with federal regulations governing areas such as the privacy of medical records, sexual assaults on campus, and data privacy, have significantly increased EWU's need for legal advice and active participation in risk management. Failure to follow these federal regulations has resulted in hundreds of thousands of dollars in penalties for universities across the nation. Competent, quality legal advice regarding the requirements, methods for complying with the requirements, and defense to federal investigations significantly reduces risk for the university and the state as a whole. EWU enrollment has shown growth over time. In the fall of 2007, total undergraduate enrollment was 9,447. Enrollment remained above 11,200 throughout 2016.

There are three main causes of the increase in need for legal services. The first involves the way in which the university seeks legal advice. In the past, limited key personnel (e.g., the Human Resources Director and Vice Presidents) were authorized to seek advice directly from the AGO. The vast majority of employees were required to submit requests for legal advice to the Associate to the President, who was a licensed attorney. The Associate to the President would answer the questions that were based on university policy and/or those questions for which the university had previously received legal advice from the AGO. The Associate to the President would frequently seek advice from the assigned AGO AAG, but remained the primary contact and advisor for EWU staff.

When the Associate to the President retired in June, 2016, the University restructured the way legal advice requests are processed. This was largely motivated by Governor Inslee's letter to state agencies asking that legal work be performed, as required by statute, by the AGO. All requests for legal advice are now sent directly to the one EWU assigned AAG in the AGO's Spokane Division, per the President's direction. The retirement or departure of additional key personnel at EWU also resulted in an increased workload for the assigned attorney.

The restructuring ensured that the University is provided consistent, competent, quality and privileged legal advice. However, it has led to a significant increase in the need for legal services from the AGO. The AGO is now reviewing all public records requests and proposed responses to ensure the application of proper redactions. The assigned attorney now independently handles all complaints filed with external agencies against EWU and its personnel, including actively implementing preservation and collection efforts. This includes preparing the EWU response to complaints filed with the Equal Employment Opportunity Commission (EEOC), the Office of Civil Rights (OCR) and the Human Rights Commission (HRC). These complaints can be a significant sources of cost exposure; exposure that is minimized when a skilled attorney drafts the response to the external agency.

Neither EWU nor the AGO made a request for additional resources as part of the 2017-

2019 biennial budget submittal as EWU was waiting to see how the legal workload would be impacted by the change in EWU's structure. Both agencies have now had the opportunity to assess that impact and believe that the potential adverse impacts to EWU and the state are too significant to delay this funding request for the next biennium. The legal work generated at EWU is imminent and too great for a single attorney to handle. Additional legal services are required to enable the AGO to provide timely, quality advice to all parts of campus.

The second major cause of the increased need for legal services revolves around real estate transactions. EWU is no longer using the Department of Enterprise Services (DES) to work on its real estate transactions. It is instead asking the assigned AGO attorney to review all real estate transactions. This change has resulted in a significant growth in the assigned attorney's workload.

The third area that caused some increase in workload is the Court of Appeals decision in *Arishi v. Washington State University*, 196 Wn. App 878 (2016). This case held that Washington State University was required to offer a full adjudicative hearing to a student who was facing possible expulsion after he was charged with third degree rape and molestation of a 15-year-old girl. This case has been applied to student conduct proceedings at EWU (and other public institutions) whenever a student may face serious sanctions such as a suspension or expulsion.

Student conduct proceedings now allow students' attorneys to actively participate which has necessitated the presence of an AAG at all hearings. Since January 2016, an AAG has needed to participate in approximately 15 student conduct hearings. Additionally, at least two AAGs must advise the University on these contested proceedings. One represents the Student Conduct Director and Student Conduct Board, and the second is assigned to the appeal authority. Legal screens are erected to ensure that the attorneys performing the two separate functions do not discuss their portion of the case to ensure that the legal rights of all parties are protected. A single AAG cannot perform both functions.

Funding this request will enable EWU to better manage and limit risks, including those arising out of contract review and compliance; privacy of medical and student records; disability accommodation of both students and employees; general student concerns and issues; labor and employment matters; intellectual property concerns; federal regulatory issues; and the myriad of additional issues arising in higher education. Adding an attorney will result in lower end costs to the state since the client will obtain the benefit of high quality legal advice to inform its decision-making processes. Based upon the increase in attorney workload over the past year, a full attorney FTE is necessary to capably perform EWU's legal work.

The AGO expects this request will contribute to the achievement of two of the AGO's key Strategic Plan goals:

1. Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

Goal 3 – Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.

2. Priority – Empower our Employees

Goal 2 – Promote diversity, inclusiveness and equality throughout the organization to recruit and retain a high quality, highly skilled, and highly effective workforce.

Goal 5 – Promote the health, safety and well-being of all employees in the workplace.

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

There is no funding in the AGO’s base budget for the additional AAG and associated support requested in this package.

5. Decision Package expenditure, FTE and revenue assumptions, calculations and details Fiscal Summary:

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	1.00	1.00	1.00	1.00	Yes
LA	0.50	0.50	0.50	0.50	Yes
MA5	0.25	0.25	0.25	0.25	Yes
TOTAL	1.75	1.75	1.75	1.75	

This request will add 1.0 AAG and support staff to provide advice and assistance to EWU. Agency administration support FTEs are included in the table above, using a Management Analyst 5 as a representative classification.

6. Decision Package Justification and Impacts: What specific performance outcomes does the agency expect?

RESULTS WASHINGTON:

Goal 2: Prosperous Economy: We are supporting the mission to teach and educate students.

Goal 5: Contributing to an Effective, Efficient and Accountable Government

AGO PERFORMANCE MEASURE:

Performance Measure 2539: Cases Open at End of Fiscal Year
 Target: 25,000 open cases at the end of each FY, reported annually.
 Key Divisions: Legal Services Divisions

7. Fully describe and quantify expected impacts on state residents and specific populations served.

Additional legal services will enable EWU to provide services to its students and employees, while helping it appropriately reduce exposure to legal risks that may arise from its activities.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	NO	
Other local gov't impacts?	NO	
Tribal gov't impacts?	NO	
Other state agency impacts?	YES	There is an impact on the client, EWU. EWU supports this request for added legal assistance to enable it to better minimize risk.
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	
Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	NO	

Is the request related to or a result of litigation?	YES	The recent student conduct case involving WSU (discussed above and in section 9, below) has changed the way that EWU handles its student conduct proceedings.
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

The Court of Appeals decision in *Arishi v. Washington State University*, 196 Wn. App 878 (2016), has been construed to mean that students who are facing a serious sanction, including suspension or expulsion, are entitled to be represented by counsel at their conduct proceedings. Consequently, one attorney must represent the Student Conduct Director and Student Conduct Board, and a second AAG must be assigned to the appeal authority. When this occurs, the AGO must appoint separate counsel to advise the EWU Conduct Board, and screen that attorney from the prosecution function performed by the other assigned AAG.

Additionally, the AGO is now providing advice on key issues once handled primarily by EWU personnel. This includes reviewing all public records requests and proposed responses to ensure the application of proper redactions. Public records matters pose substantial risk to the institution, and therefore this change in process is one we support. However, the change to the workload is substantial. The assigned attorney also now independently handles all complaints filed with external agencies against EWU and its personnel. This includes preparing the EWU response to complaints filed with the EEOC, OCR, and the HRC. These complaints can be significant sources of cost exposure; exposure that is minimized when a skilled attorney drafts the response to the external agency.

Finally, EWU is no longer using the DES to work on its real estate transactions. It is instead asking its assigned attorney to review all real estate transactions. This change has resulted in a significant growth in the assigned attorney’s workload.

10. What alternatives were explored by the agency and why was this option chosen?

EWU is aware that its needs have increased dramatically, and is seeking additional funding for 1.0 AAG for legal services. Some EWU personnel have commented to the AGO’s Spokane Division Chief Counsel that they are concerned about the impact that their increased workload has had upon their one currently assigned AAG. EWU does not anticipate a decrease in the amount of legal work they are creating (they expect it to increase over time), and noted that a 1.0 AAG is the minimum they believe is needed.

11. What are the consequences of not funding this request?

Failure to fund this request will likely adversely affect both the client and the state. Necessary business, employment, and student decisions will be made by the university with or without access to timely legal review and advice. Those made without timely legal review carry significantly more legal exposure to the state in an increasingly complex and litigious educational environment. An inability to provide advice when it is required might result in the client entering poorly drafted written agreements/contracts, which can cost the client and state funds in the event that the other party to the contract breaches, or if the state is simply dissatisfied with the level of performance and would like to terminate the agreement. Attorney advice helps mitigate against such risks.

Attorneys who serve education clients are also often called upon to provide advice that helps ensure compliance with civil rights. It is not uncommon for our education attorneys to be asked to advise a client upon its ability to limit the exercise of First Amendment rights. Without the ability to provide such advice in a timely manner, the client's exposure to substantial damage awards is greatly increased. The AGO's education attorneys, including the one AAG assigned to serve EWU, advise on an array of personnel matters (its Labor and Personnel Division attorneys handle advice related to classified staff), including those related to faculty tenure and discipline of faculty and civil service exempt staff. Some of the largest Tort payouts are in the personnel arena; having capable attorneys available to provide timely advice in this area vastly reduces tort exposure. The same can be said of the advice that is provided on student conduct matters, where competing interests often exist.

In summary, without this added position, the client's ability to receive timely legal advice will be impacted, and its exposure to a higher dollar exposure caused by this risk will increase. As indicated above, funding this request helps the client provide responses to public records requests that are legally sufficient, and minimizes the likelihood of sanctions against the client for poor responses. Similarly, it helps ensure that responses to complaints filed with external agencies are appropriately handled and responded to (which, on occasion, means recognizing the existence of a problem and working with the client agency to correct it.).

Additionally, the AGO, including the Spokane office, is at risk of losing talented and experienced staff due to workload issues. Often these key staff not only serve the client but also provide legal advice on AGO wide issues, serve as appellate advisors, act as role models and serve as valuable members of AGO Committees.

12. How has or can the agency address the issue or need in its current appropriation level?


The AGO is submitting this request in recognition of the need and because the EWU client is seeking additional resources. Absent approval for the increase, EWU will be asked to continue paying for the added resources it consumes without receiving an appropriation for those services.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Not applicable.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	2,204	1,188	1,188	1,188
PC Hardware	2,013	1,050	1,050	1,050
Licensing	450	450	450	450
CTS Services	271	271	271	271
Total Cost	4,937	2,959	2,959	2,959

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

1. Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
2. Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
3. Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

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2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: MM-Boldt Litigation

Budget Period: 2018 Supplemental Budget Request

Budget Level: M1

1. Agency Recommendation Summary Text:

The AGO requests funds for legal services relating to U.S. v. Washington, Phase II of the Boldt Case (AKA the Culverts Case). This will enable the State to explore settlement of the litigation, prosecute its appeal to the U.S. Supreme Court if settlement efforts are not successful and implement the district court injunction that will continue to apply pending settlement or appeal. The estimated cost of fully implementing the district court's injunction exceeds \$2.5-billion. The District Court and Ninth Circuit opinions, if allowed to stand, would place the State at significant risk of future litigation and expense.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	358,388	47,354		
Total Cost	358,388	47,354	-	-
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	2.10	0.40		
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	358,388	47,354		
Total Cost	358,388	47,354	-	-
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	169,873	29,173		
Object B	58,651	10,125		
Object C	66,500	-		
Object E	46,174	7,593		
Object G	14,040	340		
Object J	3,150	123		
Total Cost	358,388	47,354	-	-

3. Package Description:

Background:

In January 2001, Indian Tribes with treaty fishing rights in Western Washington, along with the United States, filed a lawsuit asking a federal court to declare that the treaty "right of taking fish" "imposes a duty upon the State of Washington to refrain from diminishing, through the construction or maintenance of culverts under State-owned roads and highways, the number of fish that would otherwise return to or pass through the tribes' usual and accustomed fishing grounds and stations." They alleged the State has violated such a duty and asked the court to order the State to fix all its culverts within five years of judgment.

On August 22, 2007, the court granted summary judgment in the plaintiffs' favor. The court held the treaty right of taking fish requires the State to refrain from building or operating culverts under State-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for tribal harvest. The court declared the State currently owns and operates culverts violating this duty.

Following extensive but unsuccessful settlement efforts, the court conducted a trial on the remedy in October 2009 and heard closing arguments in June 2010. After trial, the AGO asked the court to reconsider its prior summary judgment against the State. On March 29, 2013, the court issued a 35-page written decision in which it reaffirmed its prior judgment against the State. The court simultaneously issued a Permanent Injunction Regarding Culvert Correction, in which it imposed an ambitious schedule for the State to remedy salmon barrier culverts under State-owned roads.

The injunction required state agencies, within six months, to prepare a list of known salmon barrier culverts existing as of the date of the injunction. It required the Washington State Department of Transportation (WSDOT) to remedy the barrier culverts on the list that would yield 200 linear meters of upstream habitat within 17 years, and to correct WSDOT's other barrier culverts on the list at the end of their useful lives. It required the Department of Natural Resources (DNR), Department of Fish and Wildlife (DFW), and Parks and Recreation (Parks) to correct all of their salmon barrier culverts on the list by October 31, 2016. It required all of the agencies to remedy newly discovered barriers within a reasonable period of time. It also imposed additional requirements for maintenance and for consultation with the Tribes. The estimated cost of the relief granted by the court exceeds \$2.5 billion dollars.

The State appealed the ruling to the Ninth Circuit Court of Appeals. The parties submitted appellate briefs between the fall of 2013 and spring of 2014. A three-judge panel of the Ninth Circuit heard oral argument in October 2015, and issued a decision on June 27, 2016. The Ninth Circuit panel affirmed the district court decision in all respects. Thereafter, the State petitioned the Ninth Circuit for rehearing or rehearing en banc (a case heard before all the judges of a court rather than by a panel selected from them). On March 27, 2017, the panel denied rehearing and amended its earlier opinion to further explain why it had ruled against the State. On May 19,

2017, the Ninth Circuit denied rehearing en banc. Nine judges on the Ninth Circuit vehemently dissented from the decision to deny rehearing en banc, and agreed with the arguments made by the State.

The Ninth Circuit opinion may result in significant State liability in other contexts. As nine dissenting judges of the Ninth Circuit pointed out, “Legal commentators have noted that plaintiffs could use the panel’s decision to demand the removal of dams and attack a host of other practices” that affect fish habitat, from farming to logging to construction.

Current:

On August 17, 2017, the State filed a Petition for Certiorari with the United States Supreme Court asking the US Supreme Court to review the case. The petition asserts that the Ninth Circuit made three significant errors: (1) it incorrectly held that the tribes’ right of taking fish at usual and accustomed grounds and stations in common with all citizens guaranteed the tribes that the number of fish would always be sufficient to provide them with a “moderate living;” (2) it improperly upheld the District Court’s dismissal of the State’s equitable defenses against the federal government, which directed the design of the culverts and then sued the State for alleged treaty violations that resulted; and (3) it erred in rejecting the State’s arguments that the District Court’s injunction violated federalism and comity principles by requiring Washington to replace hundreds of culverts, at the cost of several billion dollars, when many of the replacements would have no impact on salmon abundance or harvest.

Simultaneous with prosecuting its appeal, the State is working on two other fronts relating to this case. First, it is working diligently to comply with the injunction, the terms of which apply during the appeal. As long as the injunction remains in effect, State agencies will require legal services to implement it and work through any disputes that arise. Second, the State has reinitiated efforts to settle the case, an undertaking that will require significant resources.

It is critical that the State allocate sufficient resources to simultaneously implement the injunction, vigorously pursue the appeal to the U.S. Supreme Court, and explore settlement of the litigation altogether. It is not possible to provide legal services for this case by reprioritizing within existing client agency budgets without significant adverse impacts to other priority legal services.

This package supports the AGO’s 2017-19 Strategic Plan.

Priority 1 – Serve the State

Goal 1 - Deliver high quality, timely, and efficient legal services. This request supports the AGO Strategic Plan by ensuring the AGO has the resources needed to properly staff this case.

Goal 3 - Proactively engage in risk management efforts to reduce the State’s liability and improve outcomes for the public. This request supports the AGO Strategic Plan by seeking appellate review or settlement of a case that has significant cost implications for the State (with

an estimated price tag of \$2.5 billion to implement the injunction) and which could have significant precedential effect on the State.

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

This is a request for continued funding of the Boldt/Culverts case. There is no funding in the Attorney General’s Office (AGO) base budget for this case. Historically, funding has been provided for this case via a separate line item (recommendation summary) outside the Legal Services Revolving Fund (Fund 405) Central Service Model. The legislature funded \$232,000 to the AGO for the Boldt case in the 2013-15 biennium, and \$271,000 in the 2015-17 biennium.

**5. Decision Package expenditure, FTE and revenue assumptions, calculations and details
 Fiscal Summary:**

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	1.20	0.20			N
LA	0.60	0.10			N
MA5	0.30	0.05			N
TOTAL	2.10	0.35	0.00	0.00	

Workload assumptions:

Costs associated with the Supreme Court appeal will all be incurred in FY 2018. This is based on an assumption that briefing on the State’s certiorari petition will be completed by the end of the 2017 calendar year, and argument, if the petition is granted, would occur in the spring of 2018. This package assumes that any decision will be issued before June 30, 2018. Regardless of what that decision is (e.g., remand), there will be the need for additional legal services. However, estimating such costs at this time is too speculative. Consequently, this package assumes legal services for FY 2019 at the same level of historic implementation costs, but does not attempt to estimate costs for future biennia.

Approximately 1.0 FTE of the total FY 2018 AAG FTE costs are assumed to be needed for prosecuting the State’s appeal. The remaining FY 2018 FTEs are associated with implementing the injunction.

Agency administration support FTEs are included in the tables above, using a Management Analyst 5 as a representative classification.

This package includes \$78,500 in direct litigation costs in FY 2018. These costs are for travel (\$12,000) and moot court contract services (\$1,500) associated with oral argument. Direct costs

also include \$65,000 in Special Assistant Attorney General (SAAG) costs associated with efforts to explore/negotiate a settlement. A SAAG has been hired and work is underway. The SAAG costs all relate to settlement efforts and will be incurred in FY 2018. Direct costs associated with this case are considered one-time costs that will not be required beyond FY 2018.

The costs incurred by the AGO for this case will be paid out of the Legal Services Revolving Account (Fund 405). This account bills clients for the work done. There are four client agencies that will be billed. Based on historic and anticipated future legal services needs associated with the case, the AGO proposes billing the agencies using the following percentages:

58% WSDOT
30% DNR
10% WDFW
2% Parks

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

Implementation of the decision and injunction issued by the District Court and upheld by the Ninth Circuit will cost the State in excess of \$2.5-billion. Moreover, the decision creates a legal precedent that will most certainly expose the State to future litigation to enforce the treaty duty declared by the courts. This exposure is impossible to quantify, but it is significant. Funding this decision package will ensure the State's concerns with the decisions in the Culverts Case are skillfully presented to the U.S. Supreme Court. It will also enable the State to pursue settlement negotiations, in an effort to resolve the litigation in a manner that meets the needs of all parties.

Based on transportation funding constraints, losing this case has implications for the State's ability to execute the following Results Washington Goals:

Relationship to Results Washington:

Goal 2: Prosperous Economy - Sustainable, Efficient Infrastructure.

3.1 Maintain infrastructure assets at 2013 baseline levels. The district court decision will dilute staff resources and funding otherwise available for infrastructure maintenance.

3.2.b. Operate strategic corridors at 90% efficiency or higher through 2020. The district court decision will result in increased construction that will reduce efficiency of the transportation system.

Goal 3: Sustainable Energy & Clean Environment - Clean Transportation.

1.1 Reduce transportation related greenhouse gas emissions from 44.9 mmt/year (projected 2020) to 37.5 mmt/year (1990) by 2020. The district court decision will result in increased construction that will slow traffic and increase greenhouse gas emissions.

Performance Measure detail:

Performance Measure 2539: Cases Open at End of Fiscal Year
Target: 25,000 open cases at the end of each FY, reported annually.
Key Divisions: Legal Services Divisions

7. Fully describe and quantify expected impacts on state residents and specific populations served.

This request supports the AGO’s goal of providing efficient and effective legal support to the State. The District Court’s injunction applies to WSDOT, DNR, WDFW, and State Parks. State residents will be indirectly affected by the district court’s ruling as it will divert human resources and/or funding from other priorities undertaken by the agencies. Other state agencies, local governments, and others may be at risk of future litigation based on the precedent established by the District Court and Ninth Circuit in this case. Funding this request will enable the State to seek appellate review of the District Court’s decision, and to explore a settlement of the case acceptable to all parties.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	YES	Counties are at risk of future litigation based on the precedent in the district court and Ninth Circuit.
Other local gov’t impacts?	YES	Cities are at risk of future litigation based on the precedent in the district court and Ninth Circuit.
Tribal gov’t impacts?	YES	Tribes will be opposed to the State’s appeal in this case. The Tribes are adverse to the State in the litigation.
Other state agency impacts?	YES	The four agencies subject to the district court’s injunction are WSDOT, DNR, WDFW, and State Parks. Other agencies may be the target of future litigation by the Tribes, should the District Court and Ninth Circuit decisions remain in place.
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	

Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	
Capital Budget Impacts?	YES	This request does not include Capital Budget funding. However, the district court injunction requires the expenditure of funds appropriated through the Capital Budget.
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	YES	This request relates specifically to Phase II of <i>U.S. v. Washington</i> (AKA the Culverts Case).
Is the request related to Puget Sound recovery?	YES	The injunction issued by the district court prioritizes culvert replacement over other activities the State might take to restore salmon in the case area, which includes Puget Sound.
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

WSDOT, WDNR, WDFW, and/or Parks may submit decision packages for their share of the legal services costs identified in this package.

10. What alternatives were explored by the agency and why was this option chosen?

The State has explored not appealing this decision, but decided that such a course of action was not in the State’s overall interest. The State is pursuing potential settlement discussions; legal services costs associated with those efforts are included in this package.

11. What are the consequences of not funding this request?

Failure to fund this request will mean that the AGO does not have adequate resources to effectively pursue the appeal of the District Court and Ninth Circuit decisions. Those decisions will result in more than \$2.5-billion in expenditures for known State barrier culverts, and will put the State, local governments, and potentially other parties at significant risk of future litigation based on the precedent of the District Court’s and Ninth Circuit’s decision.

12. How has or can the agency address the issue or need in its current appropriation level?


The funds for this work were removed in carry forward. New funding for the Boldt/Culverts case was not included in the AGO's budget for the 2017-19 biennium.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Not Applicable.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	2,645	238		
PC Hardware	2,415	210		
Licensing	540	90		
CTS Services	325	54		
Total Cost	5,925	592	0	0

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

1. Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
2. Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
3. Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

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**2018 Supplemental Budget
Decision Package**

Agency: ATTORNEY GENERAL’S OFFICE

Decision Package Code/Title: MN-School Employees’ Benefits Board

Budget Period: 2018 Supplemental Budget Request

Budget Level: M1

1. Agency Recommendation Summary Text:

The Attorney General’s Office (AGO) seeks funding necessary to provide legal services for the newly created School Employees’ Benefits Board (SEBB). Current staffing levels are insufficient to address this new work as current resources for the Health Care Authority (HCA) are already fully dedicated for other programs. Additional funding is necessary for the AGO to serve the new SEBB client and maintain adequate staffing for representation of existing clients.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	575,192	583,972	587,692	587,692
Total Cost	575,192	583,972	587,692	587,692
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	4.50	4.50	4.50	4.50
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	575,192	583,972	587,692	587,692
Total Cost	575,192	583,972	587,692	587,692
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	347,418	357,966	361,428	361,428
Object B	122,268	126,684	127,398	127,398
Object C	-	-	-	-
Object E	93,956	92,947	92,491	92,491
Object G	4,800	4,800	4,800	4,800
Object J	6,750	1,575	1,575	1,575
Total Cost	575,192	583,972	587,692	587,692

3. Package Description:

In 2017, the legislature created the SEBB to design and administer school employees' benefits. The Governor appointed the Board in September 2017. The AGO expects legal work to increase immediately. Like the Public Employee Benefits Board (PEBB), SEBB will require client advice and litigation support from the AGO regarding a new self-insured plan, procurement of a third party administrator, procurement of managed care plans, and the creation of regulations and policies. The AGO may also be needed to represent the Board in lawsuits over disputes regarding benefit coverage and contractual procurements.

There are 295 distinct school districts in Washington, and this board will be creating a statewide program for all school employees. The SEBB program will be similar to the PEBB in size, and brings with it many legal complexities. These include benefit design, plan and product options, procurements, establishment of eligibility criteria, and legislative direction to assess potential purchasing in coordination with PEBB.

This request for funding of SEBB legal services is based upon the AGO's experience in two areas: general PEBB client advice and litigation, and defense of procurements for other HCA programs. Between June 2015 and June 2017, the routine legal work for the PEBB averaged 2.0 Assistant Attorney's General (AAG) FTEs that were strictly dedicated to advice and litigation, plus additional support from Paralegals (PL) for litigation. SEBB start-up legal work has already begun and will increase as the Board begins its work.

The AGO is anticipating that SEBB will be performing several new procurements, including for a disability benefit and a third party administrator. Based on experience with managed care procurements, litigation regarding health care procurement is document intensive, highly contested, and can span years. The cases are typically high exposure and complex litigation. For example:

- A single case with a managed care organization that challenged a procurement in the Medicaid program recently accounted for 1.63 AAG and 1.47 PL over less than 18 months.
- Class action litigation challenging the Uniform Medical Plan's medical policy for expensive Hepatitis C drugs accounted for 1.0 AAG and 0.26 PL over a 16-month period.
- Defense of class action litigation challenging the Uniform Medical Plan's implementation of coverage decisions made by the State's Health Technology Clinical Committee (HTCC) accounted for 0.54 AAG and 0.23 PL in Fiscal Year 2017. The work on this case is ongoing.

The AGO will also handle Administrative Procedure Act (APA) Judicial Reviews of employees challenging denials of benefits eligibility. The new SEBB program will likely result in some significant changes—arguably to the benefit or detriment of different groups of school employees—and may result in legal challenges. APA reviews are likely to increase as newly

created eligibility requirements are applied to a large group of people who are leaving school-district coverage and entering SEBB coverage.

Based upon our experience advising and representing the PEBB, the AGO assumes the work will require at least comparable staffing, and requests new FTE and funding for the legal services of 2.0 AAGs and 1.0 PL to support SEBB. HCA agrees that this level of legal service support is necessary.

AGO Strategic Plan:

Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

Goal 3 – Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

New SEBB workload will become a component of the legal services provided to HCA, and no funds are included in the base budget to cover the new work. The existing legal services allocation will not cover the FTEs necessary to accommodate the new workload increase.

**5. Decision Package expenditure, FTE and revenue assumptions, calculations and details
 Fiscal Summary:**

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	2.00	2.00	2.00	2.00	No
LA	1.00	1.00	1.00	1.00	No
PL	1.00	1.00	1.00	1.00	No
MA5	0.50	0.50	0.50	0.50	No
TOTAL	4.50	4.50	4.50	4.50	

This request will add staff to the AGO’s Social & Health Services’ Health Care Authority Section. This will increase the number of trained staff and enable the AGO to meet the legal needs of the new SEBB program.

Agency administration support FTEs are included in the tables above, using a Management Analyst 5 as a representative classification.

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

The AGO provides essential legal services to HCA in the form of advice and representation in court in order for HCA to fulfill its obligations. Additional funding is necessary for the AGO to serve the new SEBB client and maintain adequate staffing for representation of existing clients. Funding for additional staff will provide an adequate level of trained staff to meet the growth in demand for legal services.

Relationship to Results Washington:

Goal 5: Effective, Efficient and Accountable Government.

Sub-Topic: Customer Satisfaction and Confidence

This request provides for the costs of legal services for the new SEBB. It clarifies how designated state resources are to be spent, shows accountability and responsibility in spending, and offers transparency resulting in customer satisfaction and confidence in legal services provided.

Performance Measure detail:

Performance Measure 2539: Cases Open at End of Fiscal Year

Target: 25,000 open cases at the end of each FY, reported annually.

Key Divisions: Legal Services Divisions

7. Fully describe and quantify expected impacts on state residents and specific populations served.

This request will support the HCA and the SEBB as they develop a program to comply with state law, which will provide benefits to state school district employees.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	NO	
Other local gov't impacts?	NO	
Tribal gov't impacts?	NO	

Other state agency impacts?	YES	HCA is the client agency and will submit a budget request to coincide with this request.
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	
Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	NO	
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

HCA will submit a decision package requesting matching costs for new AGO SEBB legal services.

10. What alternatives were explored by the agency and why was this option chosen?

Attempting to perform this new work with existing resources is the other alternative explored. Using existing legal resources will adversely impact the timeliness of legal advice and litigation services to other existing programs within the HCA, specifically the Medicaid program and PEBB. The AGO is not be able to provide adequate legal services to the PEBB, the SEBB, and the Medicaid program within existing resources.

11. What are the consequences of not funding this request?

Without additional funding, legal services to both the SEBB and existing clients will be adversely impacted. Health care benefits design and the procurements necessary to implement them are complex legal transactions and often result in costly litigation and financial exposure to the state. Litigation over benefits often presents as a class action lawsuit with voluminous discovery obligations, and requires a full legal team to defend. If legal services are not increased, the risk of legal exposure will be significant.

12. How has or can the agency address the issue or need in its current appropriation level?

AGO staff whose current assignment is to advise PEBB and the Medicaid program are currently handling the emerging SEBB work. To date, this work has been limited to advice regarding technical corrections of the statute. In September 2017, individuals were appointed to the SEBB. Benefit design and procurement will soon begin. These complex transactions will require legal advice. The AGO's legal team for the HCA does not have the capacity to absorb this work as the team is fully occupied with regular advice and litigation involving both the PEBB and Medicaid programs.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

None.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No



Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	5,990	3,312	3,312	3,312
PC Hardware	5,175	2,700	2,700	2,700
Licensing	1,157	1,157	1,157	1,157
CTS Services	743	743	743	743
Total Cost	13,064	7,911	7,911	7,911

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

1. Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
2. Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
3. Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

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2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: MP-Skagit River Bridge Collapse Litigation

Budget Period: 2018 Supplemental Budget Request

Budget Level: M1

1. Agency Recommendation Summary Text:

The Office of the Attorney General (AGO) requests funding to continue its efforts to recover more than \$17-million dollars expended by the Washington State Department of Transportation (WSDOT) and the federal government to replace a span of the Skagit River Bridge that collapsed after being struck by an over-height commercial truck on May 23, 2013. This matter is on appeal to the Court of Appeals, Division One, which may result in WSDOT facing liability that will require a longer trial, more experts, and additional discovery.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA		1,112,729		
Total Cost	-	1,112,729	-	-
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs		8.5		
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA		1,112,729		
Total Cost	-	1,112,729	-	-
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A		682,812		
Object B		240,648		
Object C		-		
Object E		177,394		
Object G		8,900		
Object J		2,975		
Total Cost	-	1,112,729	-	-

3. Package Description:

The AGO requests funding to continue its efforts to recover more than \$17-million dollars expended by the WSDOT and the federal government to replace an entire span of the Skagit River Bridge that collapsed after being struck by an over-height commercial truck on May 23, 2013.

At least seven full time attorneys, whose clients are solely responsible for the collapse of the Skagit River Bridge, are defending this matter. The defendants collectively have over \$100-million in insurance coverage. Preeminent experts in the fields of engineering, metallurgy, and accident reconstruction support the WSDOT's recovery effort. An upcoming motion will require WSDOT to expend considerable expert costs in its recovery action. This trial is currently stayed pending the appeal and is initially estimated to take 16 days. WSDOT will present several experts who will need to respond to defenses of multiple experts from each of the four sets of defendants. If the Court of Appeals finds that WSDOT can be held liable, then the trial will be considerably longer, include six additional experts and additional discovery.

Background

This litigation arises from a May 23, 2013 incident in which a tractor/trailer combination hauling a large metal casing shed from Canada to Vancouver, Washington struck the Skagit River Bridge on Interstate 5. The combined height of the trailer and metal shed exceeded the legal limit prescribed by Washington law for vehicles that travel on public highways. Although the permit from WSDOT repeatedly warned the driver to ensure there was vertical height clearance across the bridges on his chosen route, the driver conducted no research. The bridge accommodated the height of the oversize load in the left south-bound lane, but was not built to accommodate the height of this vehicle combination in its right south-bound lane.

The driver hired a pilot car driver who had the responsibility to warn the truck driver of bridges with inadequate vertical clearance. The pilot car driver did not hear the vertical height pole on her car repeatedly bang against the sway braces of the bridge because she was having a phone conversation. The commercial truck driver drove his over-height vehicle in the right lane and struck the overhead structure causing a sudden collapse of the bridge.

Three people in two separate vehicles fell through the void created by the bridge's collapse into the Skagit River below. At least one additional vehicle was damaged by the bridge debris. More than \$17-million in state and federal dollars were spent removing the demolished bridge, rerouting traffic, and installing a temporary, then a permanent replacement.

WSDOT filed suit in Skagit County Superior Court against the truck driver, the company he worked for, the pilot car driver, and a second commercial truck driver who contributed to the extensive bridge damage. Early attempts at formal mediation all failed.

The Superior Court found as a matter of law on a motion for summary judgment that WSDOT

cannot be held liable. The case was appealed and is to be heard by the Court of Appeals, Division One.

This request supports the AGO Strategic Plan:

1. Priority – Serve the State
 - Goal 1 – Deliver high quality, timely, and efficient legal services.
 - Goal 3 – Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.

2. Priority – Protect the People
 - Goal 2 – Protect Washington’s environment and public health.
 - Goal 3 – Promote Good Government

3. Priority – Empower our Employees
 - Goal 4 – Ensure employees have the tools and work space they need to be efficient and effective.

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

There is no funding in the AGO’s base budget for costs included in this request. Liability issues remain to be litigated that may result in significant costs in Fiscal Year 2019 associated with an estimated 16-day trial. The current stay of the trial by the appellate court will mean that WSDOT will be completing appellate work according to a briefing schedule. The typical litigation costs, including travel, experts, and other pre-trial expenses, will likely not be incurred until FY 2019.

5. Decision Package expenditure, FTE and revenue assumptions, calculations and details Fiscal Summary:

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG		4.00			N
LA		2.00			N
PL		1.50			N
MA5		1.00			N
TOTAL	0	8.50	0	0	

The AGO is requesting 4.0 Assistant Attorneys General (AAG) and supporting staff. The AAG will be preparing, taking and defending depositions. AAGs and Paralegals (PL) will be

propounding and answering interrogatories, requests for production, and requests for admissions. The AAGs and PLs will be organizing, summarizing, and analyzing documents. The AAGs will be developing trial strategies and preparing for trial. The PLs will assist with all pretrial work. The Legal Assistants will be responsible for scheduling, calendaring, preparing documents, and filing documents.

Agency administration support FTEs are included in the table above, using a Management Analyst 5 as a representative classification

On behalf of WSDOT, the AGO has retained structural engineering experts to investigate, analyze and present the mechanism of the bridge collapse and the condition of the steel members of the bridge at the time of the collision. The AGO has also retained an accident reconstruction expert, highway and bridge design standards and practices engineering experts, and an expert to testify to the industry standards that all commercial truck drivers must satisfy. At least seven full time attorneys, whose clients are solely responsible for the collapse of the Skagit River Bridge, are defending this matter. The defendants collectively have over \$100-million in insurance coverage. Because two of the named defendants are Canadian, many of the depositions must be held in Calgary and/or Toronto. The experts are located throughout the country including Pennsylvania, Colorado, Montana, and California. These costs for experts, travel, and prosecuting the case will be relatively small until the appeal has concluded. The appeal timeframe is estimated to extend beyond FY 2018. Once the appeal has concluded, the costs for experts, travel, and discovery will resume to previous pre-trial levels of active litigation.

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

This requested funding is critical to the continued prosecution of WSDOT's claims. WSDOT hopes to recover more than \$17-million dollars from the defendants. The Governor signed the declaration of emergency that triggered and enabled the State to receive emergency federal assistance from the federal government. WSDOT has an obligation to pursue recovery in this lawsuit as a condition of its acceptance of emergency federal funding to effect the immediate replacement of the damaged bridge span.

Performance Measure detail:

Performance Measure 2539: Cases Open at End of Fiscal Year

Target: 25,000 open cases at the end of each FY, reported annually.

Key Divisions: Legal Services Divisions

Relationship to Results Washington:

1. Goal 2 – Prosperous Economy
 - a. Sustainable, Efficient Infrastructure: Based on current funding levels, maintain the percent of Washington infrastructure assets in satisfactory condition at 2013 baseline levels through 2020.

- 2. Goal 4 – Health and Safe Communities
 - a. Safe People
 - i. Traffic
 - 2.4: Decrease number of traffic related fatalities on all roads.
- 3. Goal 5 – Efficient, Effective, and Accountable Government

7. Fully describe and quantify expected impacts on state residents and specific populations served.

Recovered funds can be used by WSDOT for other transportation projects.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	NO	
Other local gov't impacts?	NO	
Tribal gov't impacts?	NO	
Other state agency impacts?	YES	The AGO will bill WSDOT for legal services rendered.
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	

Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	YES	Skagit River Bridge Collapse
Is the request related to Puget Sound recovery?	NO	
Identify other important connections		

9. Please provide a detailed discussion of connections/impacts identified above.

The AGO will bill WSDOT for legal services rendered.

10. What alternatives were explored by the agency and why was this option chosen?

WSDOT agreed to a two-day mediation in an attempt to resolve this case short of trial. Although none of the defendants disputed the amount of damages incurred replacing the collapsed bridge structure, defendants apparently will not pay the damages they caused unless compelled to do so by a jury.

11. What are the consequences of not funding this request?

Funding this request will ensure the State has the legal resources needed to proceed to trial to recover state and federal money. Not adequately funding this request will compromise the AGO's ability to prepare and try this case, and make it more difficult to recover over \$17-million in damages caused by the subject collision.

12. How has or can the agency address the issue or need in its current appropriation level?


The AGO is unable to sustain legal services for the Skagit River Bridge litigation within its current appropriation level.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Not applicable.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony		6,156		
PC Hardware		5,100		
Licensing		2,185		
CTS Services		1,385		
Total Cost	0	14,825	0	0

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

- Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
- Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
- Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: MQ-Medicaid Fraud Technical Correction

Budget Period: 2018 Supplemental Budget Request

Budget Level: M1

1. Agency Recommendation Summary Text:

The Office of the Attorney General (AGO) requests a technical correction to increase the AGO's General Fund-Federal appropriation authority to be in alignment with the grant revenue available from the Office of the Inspector General at the Department of Health and Human Services. Included in the new grant amount is a routine increase over prior grants and funding for a new Data Analyst to implement data mining/analytics of Medicaid payment data which will enable the AGO to better detect complex fraud schemes.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
001-2 General Fund-Federal	869,814	1,105,759	1,335,274	1,576,263
Total Cost	869,814	1,105,759	1,335,274	1,576,263
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	1.00	1.00	1.00	1.00
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
001-0393-DHHS/OIG	869,814	1,105,759	1,335,274	1,576,263
Total Cost	869,814	1,105,759	1,335,274	1,576,263
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	552,316	710,274	859,595	1,014,734
Object B	187,247	242,282	292,093	344,810
Object C	-	-	-	-
Object E	111,270	138,904	166,451	196,492
Object G	9,163	11,439	13,708	16,182
Object J	9,818	2,860	3,427	4,045
Total Cost	869,814	1,105,759	1,335,274	1,576,263

3. Package Description:

The AGO seeks appropriation for the full federal grant award amount made by the Office of Inspector General (OIG) of the Department of Health and Human Services. These are restricted funds that can only be used to cover the federal share of the AGO's Medicaid Fraud Control Unit (MFCU) operations and are not available for any other purpose. These funds help the MFCU to combat fraud and in turn recover substantial dollars to replenish the Medicaid Fraud Penalty Account (MFPA). Currently, the MFPA is relied on by the AGO/MFCU, Health Care Authority, and the Department of Social & Health Services.

MFCU receives an annual grant for 75% of its operating costs from the OIG at the start of each Federal Fiscal Year (FFY) (10/1 to 9/30). MFCU has routinely requested and been approved for a 5% annual increase in the federal grant amount. This permits funding of anticipated rising operational costs, i.e., health benefit cost increases, pension contribution increases, COLAs, position reallocations and to meet general inflationary investigative/litigation cost increases.

The federal FFY 2018 (10/1/2017-9/30/2018) grant award is \$4,424,344 (see Attachment A). The award for FFY 2019 is expected to be 5% larger at \$4,645,564. The attached chart (see Attachment B) details how the funds line up by quarter and delineates a variance of \$869,814 in State Fiscal Year (SFY) 2017 and \$1,105,759 in SFY 2018 for a total request of General Fund-Federal appropriation authority of \$ \$1,975,573 for the 2017-19 biennium.

As part of the 2018 federal grant, the U.S. Office of Inspector General (OIG) includes a new investigator/analyst to assist in data mining. Data mining is defined by the federal government as the practice of electronically sorting Medicaid or other relevant data, including but not limited to the use of statistical models and intelligent technologies, to uncover patterns and relationships within that data to identify aberrant utilization, billing, or other practices that are potentially fraudulent. Medicaid provider fraud is enormously complex¹. The use of data mining/analytics and a highly qualified forensic data analyst is key to detecting and prosecuting fraud, waste, abuse and neglect generated by the huge variety of Medicaid providers. This effort will result in more quality self-referrals and thus more investigations and resolutions supporting MFCU's mission to recover funds and deter fraud and abuse.

This request supports the AGO Strategic Plan:

Priority – Protect the People

Goal: 2-4-1 Combat Health Care Fraud: Ensure both specific and general deterrence of fraud in the Washington Medicaid system. Recover monies lost to fraud in the Medicaid system. Deter abuse and neglect of patients residing in Medicaid nursing and residential facilities. Share information and referrals among various divisions involved in health care delivery issues.

¹ For a detailed analysis of the complexity of medical fraud, see *Qui Tam Provisions and the Public Interest. An Empirical Analysis*, Vol. 104 Columbia Law Review 949 (Pages 81 to 86)

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

The base federal budget is \$6,969,000 in General Fund Federal (001-2). This request is to bring the funding up to the amount of the current 2017 and 2018 federal grants and the routine 5% increase in the 2019, 2020, and 2021 federal grants. Please see Attachment B.

**5. Decision Package expenditure, FTE and revenue assumptions, calculations and details
 Fiscal Summary:**

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
INV		1.00	1.00	1.00	Y
TOTAL	-	1.00	1.00	1.00	

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

The AGO would like to fully utilize federal funds to protect the public by investigating and prosecuting fraud and abuse and neglect cases. This additional funding will allow the unit to generate an increase in the quality and quantity of complex fraud referrals through data mining and increase capacity to review Medicaid pharmacy payment, inventory and prescription data to fulfil the Governor’s request of the AGO in the Governors Executive 16-09 addressing the Opioid Use Public Health Crisis. Executive Order 16-09 is linked here:
http://governor.wa.gov/sites/default/files/exe_order/eo_16-09.pdf

The funding will also allow MFCU to meet OIG performance standards, which is critical to maintaining a certification as a MFCU and maintaining federal funding both for the Unit and federal financial support for Medicaid. Having an OIG certified MFCU is a prerequisite for the federal funding of Medicaid.

Relationship to Results Washington: Our two proposals advance Results Washington goals of promoting:

- Goal 2 - Prosperous Economy
- Goal 4 - Healthy and Safe Communities
- Goal 5 - Effective, Efficient and Accountable Government.

Full funding of MFCU operations and its mission to detect and prosecute fraud thereby retaining and returning limited Medicaid dollars to efficiently fund the delivery of medical services and goods to Washington Medicaid low income clients. This results in more funding of honest and

productive Medicaid providers; saves tax dollars; improves client health outcomes and deters criminal activity on our communities.

Performance Measure 2538: Recoveries to the Medicaid System

Target: \$21,000,000 of biennial recoveries to the Medicaid System, reported annually.

FISCAL YEAR	FY 2010	FY 2011	FY 2012	FY 2013
Recoveries Ordered	\$15,328,712	\$27,125,224	\$15,174,442	\$44,176,950

FISCAL YEAR	FY 2014	FY 2015	FY 2016	FY 2017
Recoveries Ordered	\$24,421,188	\$7,963,780	\$52,231,255	\$2,207,233

7. Fully describe and quantify expected impacts on state residents and specific populations served.

Full funding of MFCU ensures civil and criminal law enforcement is brought to bear to deter provider fraud and prosecute abuse and neglect cases at Medicaid residential facilities. MFCU is revenue generating. No other state entity does this important work, which also complements HCA’s audit and administrative functions. In addition, the new FTE will increase MFCU data analyst staff by 20%. This will result in faster turnaround time of data analysis assignments and speed investigations and resolutions of both criminal and civil investigations. Based on the reported experience of the seven other state MFCUs that have added data mining authority to their Units, this FTE is assumed to generate up to two additional criminal filings and up to three additional civil case resolutions per fiscal year. The resource expenditures and outcomes will be closely monitored and reported as a condition of obtaining data mining authority from OIG. In addition, MFCU reports recovery and expenditure statistics in its annual False Claims Act report to the legislature on November 15 of each year per RCW 74.66.130 and to OIG annually in the Unit recertification process.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	YES	Increased MFCU capacity to detect and investigate complex fraud will have a positive impact at the regional and county level of government because it will deter fraud, waste and abuse in the Medicaid program operated by those entities. This is particularly true in the areas of mental/behavioral health and substance

		abuse services, which are largely implemented at the local level.
Other local gov't impacts?	YES	Increased MFCU capacity to detect and investigate fraud will positively impact local government by reducing the burden on local law enforcement to address criminal acts by fraudulent Medicaid providers and address abuse and neglect cases occurring at local Medicaid residential facilities (nursing and adult homes).
Tribal gov't impacts?	YES	While MFCU does not operate independently on Tribal land, it does regulate Medicaid providers that serve tribal members off tribal land. Improved MFCU operations create better efficiencies in service delivery in those situations. Should we detect fraud on tribal land, we can refer that fraud to OIG, which can follow up with MFCU assistance.
Other state agency impacts?	YES	Increased recoveries and deterrence directly impacts the HCA/DSHS and Medicaid program by reducing fraud, waste and abuse and recovering funds for the program, some of which fund both MFCU and HCA's program integrity activities.
Responds to specific task force, report, mandate or exec order?	YES	This "ask" will directly support the Governor's call to action by the AGO to address the opioid problem. The data mining, and increased sophistication and capacity of the Unit will be particularly effective in looking into drug diversion, "pill mills" and other harmful aspects leading to the dramatic increase in opioid addiction, abuse and overdose death. There are several established techniques for reviewing prescription practices, inventory control, etc. that will be applied by MFCU using this resource.
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	

Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	YES	The application for an OIG Data mining waiver has been submitted and will be approved in early 2018.
Is the request related to or a result of litigation?	NO	
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	YES	MFCU will undertake the necessary steps to coordinate with HCA to access needed payment and encounter data and avoid duplication. This is a requirement imposed by OIG as a condition of MFCU data mining.

9. Please provide a detailed discussion of connections/impacts identified above.

MFCU is networked across a wide variety of civil and criminal law enforcement agencies, regulators, Medicaid payors and stakeholders statewide. The Medicaid system is dependent on MFCU to provide the civil and criminal law enforcement component of program integrity in each state. This is recognized by the federal government and is a condition of financial support for Medicaid which operates pursuant to federal performance standards.

The requested FTE will aid in processing quality referrals from the various Medicaid partners across the state by serving the AGO MFCU investigative and litigation teams in addressing more complex and varied cases (including those involving opioid diversion and abuse and neglect of vulnerable adults at residential facilities) as well as generating self-referrals of complex fraud schemes, which is the life blood of MFCU’s mission to deter fraud abuse and neglect and recover funds lost to fraud.

10. What alternatives were explored by the agency and why was this option chosen?

The preferred option is to be able to fully utilize federal grant authority.

11. What are the consequences of not funding this request?

Washington State will not be able to take full advantage of federal funds. In addition, MFCU will have reduced capacity to detect fraud and will generate fewer quality law enforcement resolutions, less deterrence and lower recoveries. The MFCU will be challenged in its ability to

meet OIG performance standards for generating quality and quantity of referrals and case mix. This could put federal certification of the Unit at risk and thereby the federal financial support for Medicaid, which is conditioned on an OIG certified MFCU operating in WA³.

MFCU will be less able to meet AGO Strategic plan initiatives and be a participant in combating the opioid epidemic and health care fraud.

³ 42 USC Sec 1396 State Plan- (a) Contents A State plan for medical assistance must—(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1396b (q) of this title that effectively carries out the functions and requirements described in such section, **as determined in accordance with standards established by the Secretary,**” See footnote 3 (check number) for pertinent mandatory federal standards.

12. How has or can the agency address the issue or need in its current appropriation level?

MFCU would shift resources away from current operations, which includes the reassignment of a Senior Investigative Analyst to perform these expanded duties and initiatives. The diversion of existing staff would result in an opportunity cost against current legal analytical input, which is critical to virtually every MFCU assessment, investigative and litigation activity. It would strain workloads already at capacity, lengthen investigations and fail to address the strategic opportunity that the unit is trying to address.


13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Attachment A: OIG Notice of Award for 2018 FFY.

Attachment B: Medicaid Fraud Control Unit Budget Summary and Projection

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)


Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	1,581	936	936	936
PC Hardware	1,150	600	600	600
Licensing	257	257	257	257
CTS Services	201	201	201	201
Total Cost	3,189	1,994	1,994	1,994

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

- Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
- Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
- Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

<p>Grant/Document: 1801WA5050 Subaccount: MFCU18 Period of Performance: 10/1/2017 through 9/30/2018 CFDA: 93.775 Program Title: State Medicaid Fraud Control Unit Federal Award Description: Medicaid Fraud Control Units (MFCU) investigate and prosecute Medicaid fraud as well as patient abuse and neglect in health care facilities.</p>	 <p>U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF INSPECTOR GENERAL</p> <p>Notice of Grant Award Award Authority: Section 1902(a)(61), 1903(a)(6), 1903(b)(3) and 1903(q) of the Social Security Act</p>
<p>Financial Information CAN: D99MFC8 Appropriation: 75X0512 Object Class: 41058 EIN: 916001060A1 DUNS: 809100019 Program Income: Deduction</p>	<p>Grantee Information State of Washington Office of Attorney General Medicaid Fraud Control Unit 2425 Bristol Court SW PO Box 40114, Olympia, WA, 98504 Director: Douglas Walsh</p>

Award Information

<p>Personnel.....\$3,209,342 Fringe Benefits.....\$1,218,589 Travel.....\$133,116 Equipment.....\$0 Supplies.....\$42,200 Contractual.....\$255,500 Other.....\$593,153</p> <hr/> <p>Total Direct Costs.....\$5,451,900 Indirect Costs.....\$447,221 Indirect rate..... 10.10%</p> <p>Total Approved Budget..... \$5,899,121 75% Federal Share \$4,424,344 25% Non-Federal Share..... \$1,474,777</p>	<p>Federal funding will be obligated in quarterly amounts on the following schedule:</p> <table style="width:100%; border: none;"> <tr> <td style="width:70%;">1st Quarter, on October 1, 2017</td> <td style="text-align: right;">\$1,106,086</td> </tr> <tr> <td>2nd Quarter, on January 1, 2018</td> <td style="text-align: right;">\$1,106,086</td> </tr> <tr> <td>3rd Quarter, on April 1, 2018</td> <td style="text-align: right;">\$1,106,086</td> </tr> <tr> <td>4th Quarter, on July 1, 2018</td> <td style="text-align: right;">\$1,106,086</td> </tr> </table> <p>Matching requirement at end of grant period is 25% of Total Net Expenditures.</p> <p>Additional Action(s):</p>	1 st Quarter, on October 1, 2017	\$1,106,086	2 nd Quarter, on January 1, 2018	\$1,106,086	3 rd Quarter, on April 1, 2018	\$1,106,086	4 th Quarter, on July 1, 2018	\$1,106,086
1 st Quarter, on October 1, 2017	\$1,106,086								
2 nd Quarter, on January 1, 2018	\$1,106,086								
3 rd Quarter, on April 1, 2018	\$1,106,086								
4 th Quarter, on July 1, 2018	\$1,106,086								

Is this award R&D? No


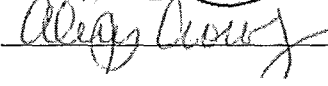
Remarks:
 General Terms and Conditions for this award are hereby included by reference and can be found [here](#).

Subaccount
 A Public Assistance (P) Account in the Division of Payment Management's (DPM) Payment Management System (PMS) has been created to provide separate accounting of federal funds per each document number. The subaccount code for this grant award is MFCU18.

Financial Reporting
 The SF-425 due dates for the grant period of this award are as follows:

- The first quarter report covers the period beginning 10/1/2017 and ending 12/31/2017 and is due by 1/30/2018.
- The second quarter report covers the period beginning 10/1/2017 and ending 3/31/2018 and is due by 4/30/2018.
- The third quarter report covers the period beginning 10/1/2017 and ending 6/30/2018 and is due by 7/30/2018.
- The fourth quarter report covers the period beginning 10/1/2017 and ending 9/30/2018 and is due by 10/30/2018.
- The final report is due by 12/29/2018.

Authorizing Officials and Contacts

Veronica Trevino, Budget Officer	 Date OCT - 1 2017
Alexis Crowley, Grants Management Officer <small>Senior Budget Program Analyst</small>	 Date OCT - 1 2017

STATE MEDICAID FRAUD CONTROL UNIT FISCAL YEAR 2018 GRANT CALENDAR

DATE	ITEM
October 30, 2017	Fourth quarter (July – September) Federal Financial Reports (SF-425) for Fiscal Year (FY) 2017 are due. Units have 30 days after the close of a quarter to submit this documentation of expenditures.
December 29, 2017	Final FY 2017 SF-425 reports are due. Units have 90 days after the close of the fiscal year to liquidate all FY 2017 obligations and submit final SF-425 reports. If necessary, extension requests must be submitted <i>prior</i> to this date.
January 30, 2018	SF-425 reports are due for first quarter FY 2018 (October – December).
March 19, 2018	Preliminary budget estimates will be sent this week to the Units for the next two fiscal years, FY 2019 (October 2018 - September 2019) and FY 2020 (October 2019 - September 2020).
April 30, 2018	SF-425 reports are due for second quarter FY 2018 (January – March).
May 4, 2018	Preliminary budget estimates are due.
May 7, 2018	Application Packages will be sent out this week to the Units with guidance for submitting detailed FY 2019 budget requests.
July 6, 2018	FY 2019 budget application requests are due.
July 30, 2018	SF-425 reports are due for third quarter FY 2018 (April – June).
October 1, 2018	FY 2019 grant funding period begins.
October 30, 2018	SF-425 reports are due for fourth quarter FY 2018 (July – September).
December 29, 2018	Final FY 2018 SF-425 reports are due.

Please submit Federal Financial Reports (SF-425) and preliminary budget estimates electronically to Alexis Crowley at alexis.crowley@oig.hhs.gov. Please submit budget request packages electronically to Kiteworks.

Medicaid Fraud Control Unit Budget Summary and Projection

New Grant beginning Oct 1, 2017				Assume 5% increase in grant			
SFY 2018				SFY 2019			
July-Sept 2017	Oct-Dec 2017	Jan-Mar 2018	Apr-June 2018	July-Sept 2018	Oct-Dec 2018	Jan-Mar 2019	Apr-June 2019
1,036,056	1,106,086	1,106,086	1,106,086	1,106,086	1,161,391	1,161,391	1,161,391
Total SFY 2018			4,354,314	Total SFY 2019			4,590,259
Half current approp			3,484,500	Half current approp			3,484,500
Variance SFY 2018			869,814	Variance SFY 2019			1,105,759

AGO Appropriation (SSB 5883 sec. 126)

Total 8,944,571

6,969,000 Current 2017-19 001-2 Appropriation

1,975,573 2018 Supplemental Incremental Request for 2017-19

8,944,573 Total 001-2 requested for this grant for 2017-19

October 1, 2017-Sept 30, 2018 4,424,344

Assume 5% increase in grant				Assume 5% increase in grant			
SFY 2020				SFY 2021			
July-Sept 2019	Oct-Dec 2019	Jan-Mar 2020	Apr-June 2020	July-Sept 2020	Oct-Dec 2020	Jan-Mar 2021	Apr-June 2021
1,161,391	1,219,461	1,219,461	1,219,461	1,219,461	1,280,434	1,280,434	1,280,434
Total SFY 2020			4,819,774	Total SFY 2021			5,060,763
Half current approp			3,484,500	Half current approp			3,484,500
Variance SFY 2020			1,335,274	Variance SFY 2021			1,576,263

6,969,000 Current 2017-19 001-2 Appropriation

2,911,537 2018 Supplemental Incremental Request for carry over to 2019-21

9,880,537 Total 001-2 requested for this grant for 2019-21

	Grant Amounts: % Increase		Appropriation Needed		
			SFY	Biennial	
FFY 2018	4,424,344		SFY 2018	4,354,314	
FFY 2019	4,645,564	1.0500	SFY 2019	4,590,259	8,944,573
FFY 2020	4,877,844	1.0500	SFY 2020	4,819,774	
FFY 2021	5,121,736	1.0500	SFY 2021	5,060,763	9,880,537

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2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: MR–Mental Health Services and Trueblood

Budget Period: 2018 Supplemental Budget Request

Budget Level: M2

1. Agency Recommendation Summary Text:

Trueblood v. DSHS and other significant mental health cases require the Office of the Attorney General (AGO) to devote substantial time to post-trial motions, appeals, and settlement and injunction implementation. Forensic and civil show cause hearings continue to increase at a rate that is significantly higher than anticipated in the AGO's 2017-19 biennial budget request. The Behavioral Health Administration's requests for legal advice have also increased over the last year. In short, the Mental Health legal team continues to be inadequately staffed for its increasing workload. The AGO is unable to prioritize important client requests for advice and to initiate discretionary, but important, legal cases.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	466,480	473,542	476,458	476,458
Total Cost	466,480	473,542	476,458	476,458
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	3.5	3.5	3.5	3.5
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	466,480	473,542	476,458	476,458
Total Cost	466,480	473,542	476,458	476,458
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	283,122	291,726	294,528	294,528
Object B	97,752	101,244	101,814	101,814
Object C	-	-	-	-
Object E	76,956	75,947	75,491	75,491
Object G	3,400	3,400	3,400	3,400
Object J	5,250	1,225	1,225	1,225
Total Cost	466,480	473,542	476,458	476,458

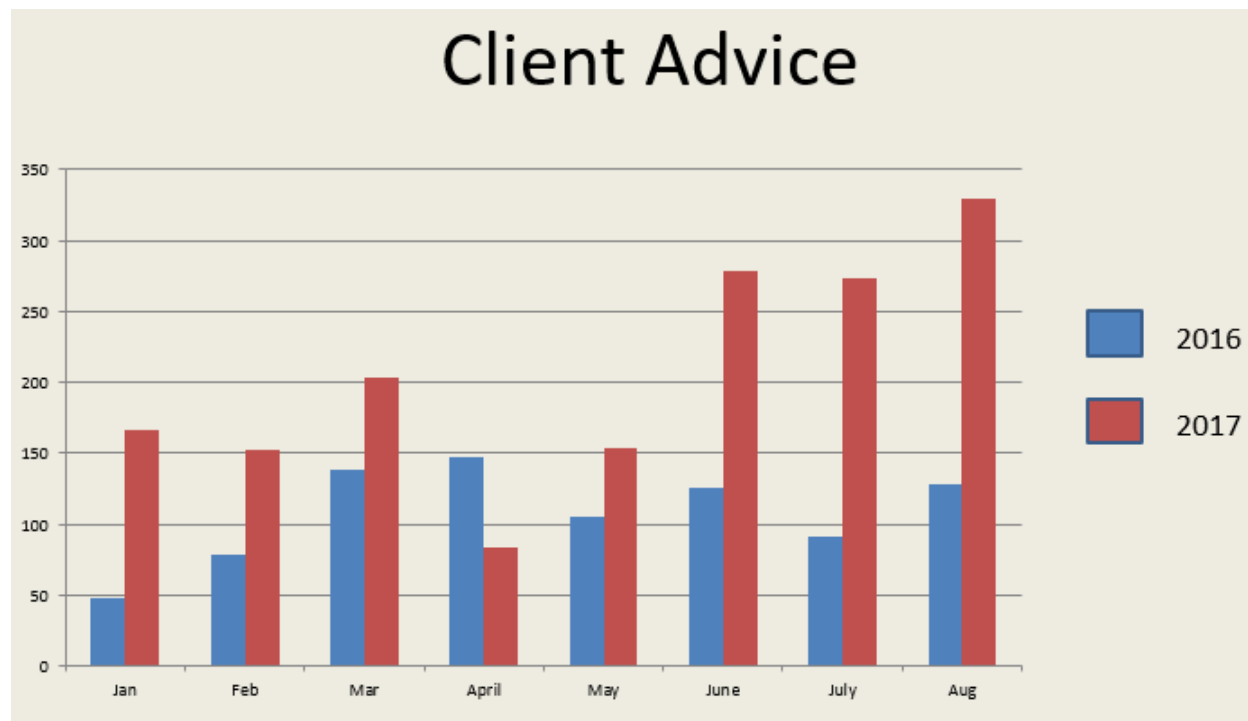
3. Package Description:

The AGO's Social and Health Services-Olympia (SHO) division (Mental Health Section) provides client advice and representation in litigation to the programs of the Department of Social and Health Services (DSHS) Behavioral Health Administration (BHA), Western State Hospital (WSH), Child Study and Treatment Center (CSTC), Special Commitment Center (SCC) and the Division of Vocational Rehabilitation (DVR). Representation of high-profile institutions, such as WSH and the SCC, and programs serving the criminally insane, criminal defendants found incompetent to stand trial, sexually violent predators and individuals committed to mental institutions, requires highly trained attorneys to provide effective, high quality legal services. The workload has steadily increased over the last three years and now exceeds the current staff's capacity.

In addition to the litigation demands, requests for legal advice from the Mental Health Team have also been increasing. The state behavioral health system is currently undergoing an extraordinary amount of change. Behavioral integration between mental health services and chemical dependency services is underway, as well as planning for integration of all community-based behavioral services under the Health Care Authority. There is an increasing demand for state hospital services for both civil and forensic patients in the face of limited capacity. Centers for Medicare and Medicaid Services (CMS) certification at Western State Hospital remains a critical issue. All of this drives time-sensitive and nuanced legal advice so that policy makers can consider risks when making difficult policy decisions.

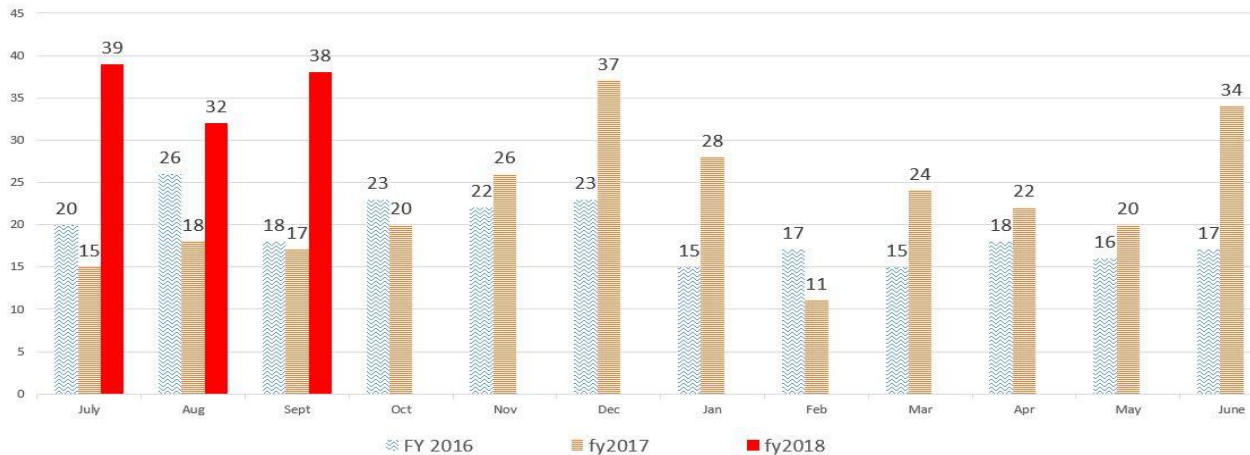
The Mental Health Team also provides legal advice to a number of DSHS programs, including the SCC, the BHA, WSH, CSTC, the Office of Forensic Mental Health Services, the DVR and the Division of Behavioral Health and Recovery. The team advises on broad range of subject matters. These include the DSHS Systems Improvement Agreement with the Centers for Medicare and Medicaid Services, changes to institutional policy, constitutional and statutory provision of care issues, statutory notice obligations, interpretation of court orders and subpoenas, the Public Records Act, and compliance with Health Insurance Portability and Accountability Act (HIPPA), 42 CFR Part 2, and the Washington Uniform Health Care Information Act (RCW 70.02). Generating this advice often involves considerable legal research, developing a thorough understanding of the relevant factual circumstances, and the drafting of a detailed advice memo.

Requests for mental health related legal advice are tracked and stored through a single mailbox. A simple count of exchanges by month clearly demonstrates the recent increase in advice.



The number of forensic and civil show cause hearings also continue to increase at a rate not anticipated when requesting funds for the 2017-19 biennium. These hearings result from motions filed by plaintiffs asking the court to require DSHS to appear in court to “show cause” of why it should not be found in contempt of court for failure to comply with the law. The issues at question typically relate to exceeding permissible wait times for competency evaluations, restoration, and failure to place individuals for long-term civil commitment beds at WSH in a timely manner. The hearings require defense in the form of legal briefing, travel for appearances in courts and counties all over the state, witness testimony, and often result in sanctions against DSHS. This work will continue—and may continue to increase—as long as the state’s mental health system does not have capacity to meet constitutional time periods.

Show Cause Cases



With the increase in civil and forensic show cause (contempt) hearings, other attorneys in the SHO division are also covering these hearings and the docket at WSH. These attorneys are diverted from their other important work, including public assistance, public records, revenue recovery, complex litigation, and appellate cases.

The following cases and issues reflect current legal work and are examples of anticipated future workloads:

- Trueblood and DRW v. DSHS, a federal class action concerning criminal defendants in jail awaiting competency services, continues to spawn multi-day hearings and, to date, five Ninth Circuit appeals. Federal court fines now exceed \$27 million, and the latest motions require almost the full-time attention of several staff. This case is very high profile, and presents significant financial and policy implications for the State;
- T.R. v. Quigley, a federal class action concerning severely mentally ill children in Washington State and requires support to the client during the ongoing settlement monitoring and implementation phase;
- R.R., et al. v. DSHS, a federal class action concerning treatment for disabled residents at the SCC, requires support to the client during the ongoing settlement monitoring and implementation phase;
- Ross v. Inslee, a federal case concerning services to those committed as not guilty by reason of insanity at Eastern and Western State Hospitals, requires support to the client during the ongoing settlement monitoring and implementation phase;
- Special Commitment Center Litigation: Attorneys assigned to the SCC have experienced an increase in litigation.

- In FY 2016, AAGs spent 3,331 hours on litigation related to the SCC; in FY 2017, AAGs spent 3,917 hours on the same type of litigation, an increase of nearly 600 hours and 18%. These matters include civil rights and public records litigation brought by SCC residents, regular §1983 actions, and a new series of lawsuits over water quality at the SCC.
- The SCC litigation team is now regularly required to appear across western Washington in the civil commitment cases of sexually violent predators related to the structure of, and financial responsibility for, sexually violent predators community placements. That work is also increasing. In FY 2016, AAGs appeared in 30 of these community placement cases; in FY 2017, AAGs appeared in 37 community placement cases, an increase of 23%.
- Guardianship petitions are initiated for the protection of alleged incapacitated adults, at the request of the WSH.

It is particularly difficult to quantify the legal work that is delayed or simply cannot be done due to prioritizing the escalating workloads described above. As examples, a single AAG assigned to the AGO Mental Health Section described the following impacts of an unmanageable workload:

- Guardianship cases are often prioritized below other more pressing matters. AAGs are often unable to pursue motions in the cases the AGO does file, even when there is a need to do so.
- Client advice that is not immediately time sensitive may drop in priority, even when the legal issue is significant. An example is a medication policy change for which WSH requested advice.
- An AAG could no longer participate in the Washington Interdisciplinary Network of Guardianship Stakeholders (WINGS) Committee due to workload. The committee was formed for the purpose of addressing long term challenges to medical treatment for hospitalized adults who lack a surrogate decision maker and are incapable of providing informed consent. This is a subject that regularly leads to client advice requests.
- AAG trainings for the ward staff at WSH were narrowed to trainings only for the leaders of treatments teams because AAGs did not have the capacity to provide more training.
- Civil show cause cases are increasing in complexity, and the AAG only has time to prepare a standard defense, rather than developing strategic new defenses based on the facts of the case presented.

The AGO SHO division has attempted to answer workload increases by temporarily diverting AAGs from other assignments, but this is a not a sustainable practice. The large volume of

mandatory litigation deadlines force section AAGs to deprioritize important client advice tasks, discretionary legal challenges requested by the client, and the filing of guardianship petitions. AAGs struggle to perform important internal functions, such as proper records management and case closing, training, and strategic litigation management resulting in the deprioritization of these tasks. This has resulted in staff frequently working excessive hours and through many weekends. The resulting stress and burnout increases the risk of turnover of the current, well-trained staff. The lack of sufficient resources also undermines capacity for proactive work to meet longer term risk management objectives.

Based upon current workloads and trends, the AGO requests 2.0 AAGs and associated support to adequately respond to DSHS’ legal needs.

AGO Strategic Plan:

Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

Goal 3 – Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

The Mental Health workload is a subcomponent of the legal services provided to DSHS, and is not separately identified within the overall Central Service Model allocation. The current allocation is insufficient to absorb the addition of 2.0 AAG FTEs and associated support to accommodate the workload increase.

The AGO requested and was funded \$456K in the 2017-19 biennial budget for Mental Health Workload Increase. As described above, this funding has not been sufficient to address the significant and continuing increases in litigation and advice needs of the Behavioral Support Administration.

**5. Decision Package expenditure, FTE and revenue assumptions, calculations and details
 Fiscal Summary:**

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	2.00	2.00	2.00	2.00	Y
LA	1.00	1.00	1.00	1.00	Y
MA5	0.50	0.50	0.50	0.50	Y
TOTAL	3.50	3.50	3.50	3.50	

This request will add 2.0 AAG FTE and 1.0 Legal Assistant FTE to the Mental Health Section. This will increase the number of trained staff needed to meet the legal needs of the DSHS Mental Health program.

Agency administration support FTEs are included in the table above, using a Management Analyst 5 as a representative classification

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

DSHS has statutory and constitutional obligations to provide mental health services and due process to individuals who are civilly committed or under the care of the state. The AGO provides essential legal services to DSHS in the form of advice and representation in court in order for DSHS to fulfill its obligations. The AGO is also mandated to represent DSHS in actions challenging the adequacy of the mental health programs it administers. The AGO is integral to the success of alternative methods to resolve litigation in a manner that serves individuals in need of mental health services and the state. Funding for additional attorneys will contribute to having an adequate number of trained staff to meet the mounting demand for legal services related to the state's strained and challenged mental health system.

Performance Measure detail:

Performance Measure 2539: Cases Open at End of Fiscal Year

Target: 25,000 open cases at the end of each FY, reported annually.

Key Divisions: Legal Services Divisions

Relationship to Results Washington:

1. Goal 4. Healthy and Safe Communities
 - a. Safe People – Help keep people safe in their home, on their jobs and in their communities.

7. Fully describe and quantify expected impacts on state residents and specific populations served.

This request supports DSHS in meeting legal obligations to provide timely forensic services to criminal defendants, avoiding the risk of dismissal of criminal charges, and to provide timely services to civilly-committed individuals. It supports the operations of WSH, the Child Study and Treatment Center, and the SCC, in meeting the extensive requirements of state and federal law in order to meet funding requirements and to provide services that meet the legal rights of those being served, as well as security to the public.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	NO	
Other local gov't impacts?	NO	
Tribal gov't impacts?	NO	
Other state agency impacts?	YES	DSHS is the client agency and will submit a budget request to coincide with this request.
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	
Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	YES	The additional staff will be assigned to the Mental Health Section and will work on those cases and similar cases identified in this request.
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

DSHS will submit a decision package requesting additional legal support for the Behavioral Health Administration.

10. What alternatives were explored by the agency and why was this option chosen?

The AGO SHO division has attempted to answer workload increases by temporarily diverting AAGs from other practice groups, but this is not a sustainable practice, since those attorneys also have full workloads. AAGs are often compelled to delay important client advice tasks, discretionary legal challenges requested by the client, and the filing of guardianship petitions, in order to meet the large volume of mandatory litigation deadlines. AAGs struggle to perform important internal functions, such as proper records management and case closing, training, and strategic litigation management. This has resulted in staff frequently working excessive hours and through many weekends. The resulting stress and burnout increases the risk of turnover of the current, well-trained staff.

The AGO and DSHS are in the process of entering into an Interagency Agreement which will provide a mechanism to create additional AAG positions in FY 2018. However, this is a stop-gap measure and is not a sustainable funding source for this ongoing type and level of work.

11. What are the consequences of not funding this request?

Not funding this request risks an increasing inability to meet DSHS's critical legal needs, and increased turnover of very highly skilled and experienced attorneys who are experts in this area of the law. Without this funding, the AGO is unable to prioritize important client requests for advice and to initiate discretionary, but important, legal cases.

12. How has or can the agency address the issue or need in its current appropriation level?


The AGO is unable to address this issue within its current appropriation and staff levels to meet demand, because it lacks the funding to hire the additional AAGs and support staff needed.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Not applicable.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	4,409	2,376	2,376	2,376
PC Hardware	4,025	2,100	2,100	2,100
Licensing	900	900	900	900
CTS Services	542	542	542	542
Total Cost	9,875	5,917	5,917	5,917

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

1. Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
2. Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
3. Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

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2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: MS-Bellingham Office Relocation

Budget Period: 2018 Supplemental Budget Request

Budget Level: M2

1. Agency Recommendation Summary Text:

The Attorney General's Office (AGO) is seeking to relocate its Bellingham office to a safer, more desirable location. Undesirable health and safety issues have occurred and have become increasingly disruptive. Local corrective measures have not been effective. Moving to a safer location in Bellingham will provide a safe and secure workplace and reduce the risk of serious safety incidents.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 001-1 GF-S	27,821	597	597	597
Fund 405 - LSRA	412,379	8,848	8,848	8,848
Total Cost	440,200	9,445	9,445	9,445
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	0	0	0	0
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	412,379	8,848	8,848	8,848
Total Cost	412,379	8,848	8,848	8,848
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object E	385,200	9,445	9,445	9,445
Object J	55,000			
Total Cost	440,200	9,445	9,445	9,445

3. Package Description:

The AGO's Bellingham Regional Services Office houses approximately 22 employees that perform a variety of work for the state and its citizens. The division provides legal services for many clients including Western Washington University, Whatcom Community College, Bellingham Technical College, Department of Labor and Industries, Department of Licensing,

Employment Security Department, Department of Early Learning and Department of Social and Health Services. This location also houses a Consumer Resources Center that provides consumer protection services for the public.

Increased health and safety issues at the current location date back to 2013. At that time, the AGO, along with Department of Enterprise Services (DES), approached the property owner, the City of Bellingham and law enforcement agencies about a substantial increase in the safety issues at the office related to individuals gathering and hanging out near the convenience store on the same block. AGO employees were impacted by drug activity and paraphernalia, utilization of the AGO's main office entry point as a shelter/restroom, and a general increase of crime in the area. At that time, there was a commitment by all involved to resolve this issue. Although the AGO was optimistic about this commitment and wanted to remain in the downtown core, when it came time to renew the lease in 2015, a clause was added to allow the AGO to vacate the building as early as September 2017 if issues persisted.

Despite many efforts on the part of the property owner, there has been no resolution. Not only have there been incidents that put our employees at risk, such as frequently having to remove individuals from the front office entrance in the morning, but also major crime incidents in the area have increased. Last spring there was a homicide next door to the AGO office. While the homicide occurred on a Sunday when employees were not at work, the next day a distraught individual who knew the victim entered the AGO office. Although this incident had no correlation to the work of the AGO office, because it was close, this individual expected the AGO to assist him in locating his friend. Because there are sometimes more pressing needs on law enforcement, issues of this type frequently have a significant delay in local police response. In this particular incident, the distraught individual loudly expressed grief in the lobby of the building for 20 minutes before AGO employees helped the individual to move on and away from the AGO workplace. Although local staff notified law enforcement immediately, they never responded.

While homicide is not a common occurrence, other issues are. In March, there were back-to-back fires in the entryway to the office. Both were contained and did not result in substantial damage, however, they had the potential to be very serious. Individuals sleep in the entryway of the office on a daily basis. Due to the historic nature of the building, the city will not allow the installation of a gate. To resolve this issue, the property owner hired a company to check and clean the entryway each morning. Despite this effort, AGO employees still frequently encounter impediments to entering the building early in the morning, or find garbage or other paraphernalia left in the building entrance.

The most recent issue at the Bellingham office occurred on July 31, 2017. The AGO received notice from Federal Express that they were removing the FedEx pick up box outside the building because it was being urinated in on a regular basis. This is just one of a myriad of issues that this office faces.

The requested funding will provide the means to relocate the Bellingham office and its employees to a safer, more professional location. The projected costs will cover funding for a new lease and for the design and build out of new space, as well as costs associated with the

move. Preliminary efforts and acquisition costs to move AGO operations from the current Bellingham facility to a new facility are assumed to begin in FY 2018. The AGO projects agency occupation on the new site effective July 1, 2018.

This request provides the opportunity to design an office space that meets the Governor's Executive Order 16-07, Building a Modern Work Environment.

AGO Strategic Plan: This request is in compliance and supports several key goals identified in the AGO's Strategic Plan.

Priority - Empower our Employees

Goal 4 – Ensure employees have the tools and work space they need to be efficient and effective.

Goal 5 – Promote the health, safety and well-being of all employees in the workplace.

The AGO contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

There is no funding in the AGO's base budget for costs included in this request. The AGO has been funded \$162,649 per FY for monthly lease and parking costs in the current biennium.

5. Decision Package expenditure, FTE and revenue assumptions, calculations and details Fiscal Summary:

Estimated one-time costs projected for FY 2018:

Description	Cost
A. DES Fees	\$26,200
B. Tenant Improvements (Construction)	\$324,000
C. IT Infrastructure	\$12,000
D. New Furniture Costs	\$55,000
E. Furniture Relocation Costs	\$5,000
F. Building Security and Access Systems	\$10,000
G. Moving Vendor and Supplies	\$8,000
Total	\$440,200

Assumptions:

A. DES Fees: Based on a 5-year lease plus tenant improvement charges at market value.

B. Tenant Improvements (Construction): Costs per square foot. Construction of workspaces to meet AGO needs.

C. IT Infrastructure: Installation of CAT-5 wiring, server and hubs in the building interior. The AGO assumes the necessary IT infrastructure to service the building itself is already in place.

D. New Furniture Costs: Assuming use of existing furniture to minimize new costs.

E. Furniture Relocation Costs: Existing wired cubicles require the original vendor to move them to retain the current furniture warranty.

F. Building Security and Access Systems: Installation of card reader, software and other related security measures.

G. Moving Vendor and Supplies: Assuming a local vendor will move all general agency contents.

FY 2019 and Beyond:

Lease Assumptions:

Current Lease is \$145,992 per FY or \$12,166 per month. Current office space is 8,111 square feet. (\$18 per square foot).

Projected Lease is \$168,324 per FY or \$14,027 per month. Projected office space is 6,474 square feet. (\$26 per square foot)

Increase in yearly Lease Cost is \$22,332 (\$168,324-\$145,992)

Parking Assumptions:

New parking cost is assumed to be \$3,770 based on the purchase of 5 spaces to meet non-discretionary parking needs: 2 for DES fleet vehicles; 3 for visitors and a cost per parking space of \$754. ($754 \times 5 = 3,770$).

Current Facility Parking Costs is \$16,657 for 21 spaces. This rate is a combination of costs from three vendors with different rates.

Decrease in yearly Parking Cost is \$-12,887 ($3,770 - 16,657$)

Net Lease and Parking Increase per fiscal year: \$9,445 (\$22,332-\$12,887)

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

Safe and secure space positively affects the AGO's ability to recruit and retain highly skilled employees. Without it, it is difficult to be an employer of choice. Specifically, employees that are content with their job and feel safe are more likely to stay. A significant contributor to the employee experience is the environment in which employees perform their job. If approved, this request provides an opportunity to create a healthy workplace with an environment, and tools, that support the work performed in a cost-effective and space-efficient way that promotes flexibility, collaboration, and productivity.

Space located in a more secure part of Bellingham also mitigates risk of harm to employees. Employee safety is a key tenant of the AGO risk management program.

Relationship to Results Washington:

Goal 5: Effective, Efficient and Accountable Government.

Sub-Topic: Customer Confidence

Performance Measure detail:

Performance Measure 2534: Direct Restitution Provided to Consumers through Litigation and Complaint Resolution

Target: \$11,000,000 returned to consumers through CPR litigation and informal complaint resolution and Lemon Law arbitrations per biennium, reported annually.

Key Divisions: Consumer Protection Division

Performance Measure 2539: Cases Open at End of Fiscal Year

Target: 25,000 open cases at the end of each FY, reported annually.

Key Divisions: Legal Services Divisions

7. Fully describe and quantify expected impacts on state residents and specific populations served.

Funding this request has an impact on the AGO's ability to recruit and retain employees to sustain current services and client support. Additionally, to continue to put employees in an unsafe environment adds stress and anxiety. While not specifically measurable, this stress most certainly affects productivity and morale, which can affect the AGO's ability to serve clients.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	NO	
Other local gov't impacts?	NO	
Tribal gov't impacts?	NO	
Other state agency impacts?	NO	
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	This request is for a relocation to a new office in the Bellingham metropolitan area. Facility remodeling and wiring costs are included in this request.
Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	NO	
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

Not applicable.

10. What alternatives were explored by the agency and why was this option chosen?

The AGO has attempted to resolve this issue by working with the property owner, city and local law enforcement. Unfortunately, despite actions taken by these organizations, there has not been an improvement in the safety of AGO employees.

11. What are the consequences of not funding this request?

Not funding this request will generate potential liability for the State from a lawsuit or action taken if an employee were to be injured or hurt due to the ongoing safety issues at this location. It also displays negative first impressions in recruitment and retention efforts as well as productivity and employee morale.

12. How has or can the agency address the issue or need in its current appropriation level?


Redirecting legal services funding from current and anticipated programs is not an option. Client agencies have been provided funding based on their historical needs. These needs do not include AGO office relocation costs or an increase in lease rates.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Attachment 1 : Modified Pre-Design

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.



State of Washington
MODIFIED PRE-DESIGN
 Last updated: June 2017

For Administrative Use: DES Project Number:

This form is to be completed for state agency, community college, board and commission requests for new leases, purchases, relocations or expansions. Complete all areas of this form as thoroughly as possible. For more [information](#), see the modified pre-design instructions located at [OFM | Modified pre-design](#). To check spelling and grammar select CTRL-S.

SECTION ONE - PROJECT SUMMARY

CONTACT INFORMATION

Agency Name: Attorney General's Office	Agency Number: 1000	Contact Person: Cami Feek
Phone Number: 360-586-4079	E-Mail Address: camif@atg.wa.gov	

REQUESTED PROJECT INFORMATION

Project Title (example: Relocation of Agency X Headquarters):
 Relocation of Bellingham Regional Services Office

Type of Action Requested: Obtain New Space Relocate Program Expand Existing Space Other

If other, specify:

Primary Space Type: 310 Office-General **Secondary Space Type:** Choose One

Type of Operation: Headquarters Regional Field Other

If other, specify:

Location Requested (City/County): Bellingham/Whatcom **Estimated Rentable Square Feet:** 6,474

Projected Annual Ongoing Cost: \$172,094 **Estimated One-Time Cost:** \$440,200

Requested Occupancy Date: 7/1/2018 **Lease term in years:** 5

Is a cancellation clause necessary? Yes No

If the agency requires a cancellation clause, describe terms and reason for cancellation clause:

CURRENT SITE INFORMATION

Street Address	City	Square Feet	Lease Number	Lease End Date	Ownership/Lease Status
103 East Holly Street, Suite 310	Bellingham	8,1111	SRL 14-0112	3/31/2020	Lease/Sublease from Private
					Choose One
					Choose One
					Choose One

If ownership/lease status is other, specify:

SECTION TWO - PROJECT REQUEST AND BUSINESS NEED

PROJECT REQUEST AND BUSINESS NEED

Describe the circumstances that created the need for this facilities project.

Increased health and safety issues at the current location date back to 2013. At that time, the AGO, along with Department of Enterprise Services(DES), approached the property owner, the city of Bellingham and law enforcement agencies about a substantial increase in the safety issues at the office, related to individuals gathering and hanging out near the convenience store on the same block. AGO employees were impacted by drug activity and paraphernalia, utilization of the AGO's main office entry point as a shelter/restroom, and a general increase of crime in the area. At that time, there was a commitment by all involved to resolve this issue. Although the AGO was optimistic about this commitment, and wanted to remain in the downtown core, when it came time to renew the lease in 2015, a clause was added to allow the AGO to vacate the building as early as September 2017 if issues persisted.

Despite many efforts on the part of the property owner, there has been no resolution. Not only have there been incidents that put our employees at risk, such as frequently having to remove individuals from the front office entrance in the morning, but also major crime incidents in the area have increased. Last spring there was a homicide next door to the AGO office. While the homicide occurred on a Sunday when employees were not at work, the next day a distraught individual who knew the victim entered the AGO office. Although this incident had no correlation to the work of the AGO office, because it was close, this individual expected the AGO to assist him in locating his friend. Because there are sometimes more pressing needs on law enforcement, issues of this type frequently have a significant delay in local police response. In this particular incident, the distraught individual ranted in the lobby of the building for 20 minutes before AGO employees persuaded the individual to leave. Although local staff notified law enforcement immediately, they never responded.

While homicide is not a common occurrence, other issues are. In March, there were back-to-back fires in the entryway to the office. Both were contained and did not result in substantial damage, however, they had the potential to be very serious. Individuals sleep in the entryway of the office on a daily basis. Due to the historic nature of the building, the city will not allow the installation of a gate. To resolve this issue, the property owner hired a company to check and clean the entryway each morning. Despite this effort, AGO employees still frequently encounter impediments to entering the building early in the morning, or find garbage or other paraphernalia left in the building entrance.

The most recent issue at the Bellingham office occurred on July 31, 2017. The AGO received notice from Federal Express that they were removing the FedEx pick up box outside the building because it was being urinated in on a regular basis. Not long after that, an attorney from the office sent an e-mail chronicling an incident in the parking lot that included reports of individuals fighting in that area. She contacted the parking owner and was told nothing can be done. In it she noted that we were lucky nobody from the office had been assaulted or robbed and indicated their safety and relocation should not have to wait until someone is actually hurt. Attached are several of the more relevant e-mail strings from employees reporting the major incidents.

In addition to the safety and security issues experienced by employees at this location, the office itself is in poor condition. The space is in dire need of updating, and as a result of long term occupancy, specifically the addition of staff over time the layout is inefficient. While this secondary to the safety issues, it is a consideration for relocation. The requested relocation will provide the means to relocate the Bellingham office and its employees to a safer, more professional location.

Provide a brief description of the preferred facilities solution.

The preference is to move office location outside of the downtown core, to a new leased facility that provides for employee safety and wellness as well as office design that promotes efficiency and collaboration.

Describe how the proposed project will affect agency operations. Include positive and negative impacts and any anticipated efficiencies.

There will primarily be positive impacts which include improved employee safety and wellness, improved morale, improved space efficiency, better quality office space and an opportunity to provide the ability for collaboration and team building.

The drawback to this project is that this office is currently within walking distance to court. To achieve the goal of improving employee safety the office needs to be located outside of the downtown core where there is close proximity to the court house.

List the programs affected.

Bellingham Regional Services and Consumer Protection.

Describe the functions of the agency in the proposed space.

The Attorney General's Bellingham Regional Services Office houses employees that perform a variety of work for the state, and citizens. Primary work involves providing excellent legal services to the division's clients, which include Western Washington University, Whatcom Community College, Bellingham Technical College, Department of Labor and Industries, Department of Licensing, Employment Security Department, Department of Early Learning and Department of Social and Health Services. This location also houses a unit that provides consumer protection services for the public, known as the Consumer Resources Center (CRC).

If the requested space has more users than today, describe the growth. Include a clear description of the assumptions made and identify the data source(s) used to forecast the growth.

This request does not one additional users than currently housed at this location. This is based on the workload needs articulated by the division management for functions housed in the Bellingham office.

WORKPLACE STRATEGY

Describe the process used to engage the employees in defining the proposed space so it aligns with the work being performed and supports a modern work environment, the agency's culture and work style preferences. Include information about when the employee work pattern assessment was completed and how (e.g. interviews, focus groups, additional surveys) leaders and employees were engaged.

An employee work pattern assessment was completed using the OFM survey tool. In addition, there were discussions with leadership and employees at this office to ensure work was clearly understood and space request matched those needs.

Describe how the agency incorporated modern work environment strategies and key planning considerations into this agency request (e.g. flexible space design, variety of settings, shared vs individual spaces).

This request reflects a move to a more modern approach to space. The transition in the legal field at large is much slower than other industries. Because we compete directly with the private sector the space requested reflects what the market offers legal professionals.

This request considers the kind of work setting needed for the type of work performed. Unlike other AGO offices, there isn't a one for one space allocation, and multiple employees don't have assigned space in the new office. There are shared spaces to be used by mobile workers, and collaborative space is built in to provide common areas to support interactive work.

Describe how the agency will optimize the use of available technology related to this request (e.g. deploying laptops, Wi-Fi, mobile hardware and software, cell phones or soft phones).

As with all AGO offices, the new space will include private and public Wi-fi. In addition, the agency deployed mobile devices, laptops and surfaces to mobile workers. 89% of Bellingham office employees have technology that enables mobility. The AGO also utilizes software that allows for soft phones, and cell phones are issued to employees based on degree of need for mobility.

SECTION THREE – FINANCIAL INFORMATION

CURRENT AND PROJECTED ONGOING COSTS

Provide the agency's approximate total expenditures for the current space(s), if applicable, and provide the approximate annual costs anticipated for the new space for a five-year period.

Expenditure Type	Current Approximate Annual Costs in Dollars	Projected Approximate Annual Costs in Dollars
Rent or Debt Services	\$145,992	\$168,324
Energy (Electricity, Natural Gas)	\$0	
Janitorial Services	\$0	
Utilities (Water, Sewer, & Garbage)	\$0	
Additional Parking	\$16,657	\$3,770
Other		
Total of All Annual Expenditures	\$162,649	\$172,094
Annual Cost Per Square Foot	\$20	\$26
Approximate Annual Change		\$9,445

If other ongoing costs are provided, specify:

ONGOING FUNDING SOURCES

The ongoing project expenses will be funded through:

Existing Facilities Funds Other Operating Funds Future Budget Request

What fund source(s) will be used for the on-going funding of this space?

If the expenses are expected to be absorbed, how?

NA

If the ongoing project expenses are funded through efficiencies, how?

NA

ONE-TIME PROJECT COST ESTIMATE

DESCRIPTION	COST
DES Fees	\$26,200
Tenant Improvements (Construction)	\$324,000

IT Infrastructure	\$12,000
New Furniture Costs	\$55,000
Furniture Relocation Costs	\$5,000
Building Security and Access Systems	\$10,000
Moving Vendor and Supplies	\$8,000
Other	
Total	\$440,200

Define any relevant assumptions used to develop the one-time costs for this project request.

- A. DES Fees: Based on a 5-year lease plus tenant improvement charges at market value.
- B. Tenant Improvements (Construction): Costs per square foot. Construction of workspaces to meet AGO needs.
- C. IT Infrastructure: Installation of CAT-5 wiring, server and hubs in the building interior. We assume the necessary IT infrastructure is already wired to the building to service the building itself is already in place.
- D. New Furniture Costs: Assuming use of existing furniture to minimize new costs.
- E. Furniture Relocation Costs: Existing wired cubicles require the original vendor to move them to sustain/retain the current furniture warranty.
- F. Building Security and Access Systems: Installation of card reader, software and other related security measures.
- G. Moving Vendor and Supplies: Assuming a local vendor will move all general agency contents.

ONE-TIME PROJECT FUNDING SOURCES

The one-time costs for this project will be funded through:

Existing Project Funds Other Operating Funds Future Budget Request

What fund source(s) will be used for the one-time project costs?

If the expenses are expected to be absorbed, how?

NA

If the one-time project expenses are funded through efficiencies, how?

NA

SECTION FOUR - ALTERNATIVES CONSIDERED

Provide a complete description of other alternatives considered and a summary of the advantages and disadvantages of these alternatives.

The alternative to moving is remaining in the same office location. This move request comes after several years of significant effort on the part of the property owner, the City of Bellingham and local law enforcement, DES and our office to resolve issues. Tactics taken include removing planters on the sidewalk so there is no place for sitting/hanging out, piping in classical music, adding video cameras, increasing patrols by the office, hiring a security company to sweep the area and move people along, hiring a company to remove transients from the entryway in the early morning hours and cleaning up after them. Despite all those efforts, we have exhausted options for safely remaining in this location. At this point the only advantage of the option to remain in place is the close proximity to the court house. The disadvantages, primarily risk to employee safety, but also poor space condition and lack of flexibility to modernize the office far outweigh any value of proximity to the court.

If this project is not in the current Six-Year Facilities Plan or is not consistent with the Plan, explain.

We have contemplated a move option in the last two Six-Year Plans due to safety considerations. Given the escalation in conditions in the location of the office, it's critical to relocate staff.

SECTION FIVE – AUTHORIZATIONS

I certify that the requested space is necessary, funds are available to implement this request and that all information is accurate based on the best available information. I acknowledge that my agency is required to report the results of the project to OFM once complete.

Agency Financial Manager Signature		Date:
Printed Name and Title		
Agency Director or Designee Signature		Date:
Printed Name and Title		

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2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: MT-Madison v. OSPI Litigation

Budget Period: 2018 Supplemental Budget Request

Budget Level: M2

1. Agency Recommendation Summary Text:

The American Civil Liberties Union (ACLU) filed a class action complaint against the Office of the Superintendent of Public Instruction (OSPI) on behalf of students who require special education services and reside in the Pasco or Yakima school districts. They seek to compel OSPI to exercise additional supervision and take action concerning alleged excessive disciplinary practices by the two school districts. The lawsuit posits two novel theories: that Article IX of the State Constitution guarantees a right to a particular level of instruction in the school setting, which OSPI must enforce; and that OSPI can be liable under Washington's Law Against Discrimination (WLAD) based on the actions of school districts. If successful, these theories could open the door to making the state a guarantor for every school district against any harm, educational or otherwise, to a student. OSPI's current legal services allocation is not sufficient to fund the defense of this lawsuit.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	269,286	312,794		
Total Cost	269,286	312,794	-	-
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	1.8	1.8		
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 405 - LSRA	269,286	312,794		
Total Cost	269,286	312,794	-	-
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	138,004	142,193		
Object B	48,822	50,591		
Object C	40,000	80,000		
Object E	37,771	37,401		
Object G	1,974	1,974		
Object J	2,715	635		
Total Cost	269,286	312,794	-	-

3. Package Description:

This request will fund a litigation team to defend the State. The Washington State Constitution, Article IX, Section 1, requires the State to make ample provision for the education of all children residing in the State. The plaintiffs are claiming that special education students have received discipline removing them from the classroom at a rate that is disproportionate to their non-special education peers. The plaintiffs claim that such disproportionate discipline is discriminatory and violates individual students' rights to an amply provided education.

Instead of going directly to the two school districts for relief, or naming the school districts as defendants to their WLAD claims, the plaintiffs claim the State has a duty to ensure such alleged disproportionate treatment does not occur. This theory expands the State's duty beyond what the courts have thus far set out as the State's duty in cases such as *McCleary v. State of Washington*. It also is a theory that expands the current understanding of OSPI's responsibilities related to the discipline of students. If successful, these theories could open the door to making the State a guarantor for every school district against any harm, educational or otherwise, to a student.

This request supports the AGO Strategic Plan.

1. Priority – Serve the State

Goal 1—Deliver high quality, timely, and efficient legal services.

Defense of this case entails delivery of quality, timely and efficient litigation services.

2. Priority – Protect the People

Goal 3—Promote Good Government

The intent of this case is to expand the supervisory role of OSPI well beyond the statutory powers of the office and dramatically alter the balance between state and local control of schools.

The Attorney General's Office (AGO) contact for this request is Brendan VanderVelde, Budget Director, and he can be reached at (360) 586-2104.

4. Base Budget:

There is no funding in the AGO base budget for costs included in this request. OSPI has a legal services allocation for routine legal services, which was not intended and will not be sufficient to pay for the defense of a class action lawsuit against the State. The AGO's Education Division (EDU), which serves OSPI, does not have the litigation support personnel to defend such a suit. Services of a litigation team must be procured from the Torts Division. The Department of Enterprise Service's (DES) Office of Risk Management has determined that this claim is not within the scope of claims that can be charged to the State's Self-Insurance Liability Account.

**5. Decision Package expenditure, FTE and revenue assumptions, calculations and details
 Fiscal Summary:**

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	0.75	0.75			No
LA	0.38	0.38			No
PL	0.50	0.50			No
MA5	0.18	0.18			No
TOTAL	1.81	1.81	0.0	0.0	

The AGO Torts division will require 0.5 Assistant Attorney General (AAG), 0.5 Paralegal (PL) and 0.25 Legal Assistant (LA3) in FY 2018 and FY 2019. These costs will be charged to OSPI by the AGO EDU division.

The AGO Education Division will require 0.25 AAG and 0.13 LA3 in FY 2018 and FY 2019.

Agency administration support FTEs are included in the tables above, using a Management Analyst 5 as a representative classification.

DIRECT LITIGATION COSTS:

A. Exhibit preparation and duplication, court reporter fees, and travel for up to 30 depositions:
 FY2018: \$10,000
 FY2019: \$20,000

B. Expert witnesses will likely require a contract of \$30,000 each to include depositions and testimony preparation:
 FY2018: \$30,000 (1 expert witness)
 FY2019: \$60,000 (2 expert witnesses)

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

Funding a litigation team to defend this class action will maximize the opportunity for the State to avoid new judicially-created causes of action that could have profound negative impacts on the structure of educational services in Washington State.

Relationship to Results Washington:

Goal 1: World-Class Education. The governance of education is carefully balanced between State and local agencies. A victory by the plaintiffs in this case could substantially

upset that balance and require some restructuring that would more likely than not be disruptive to the goal of world-class education.

Goal 5: Effective, Efficient & Accountable Government – Resource Stewardship. If the plaintiffs are successful in establishing new theories of state liability, such an outcome will open the door to draining additional state resources.

Performance Measure detail:

Performance Measure 2539: Cases Open at End of Fiscal Year

Target: 25,000 open cases at the end of each FY, reported annually.

Key Divisions: Legal Services Divisions

7. Fully describe and quantify expected impacts on state residents and specific populations served.

This request supports the defense against new legal theories that would potentially place liability on the State for the failure of certain units of local government—school districts—to perform their duties in non-discriminatory manner. It also could open the door to state liability for other alleged breaches of duty by school districts. If the plaintiffs prevail, this case has the potential to be used as precedent against the State for other claimed negative impacts on students as a failure to deliver constitutionally required education.

State residents currently have multiple avenues of redress for grievances against school districts. Specifically, under both state and federal law, special education students have a robust set of procedures available to challenge school district actions. Similarly, there are state law causes of action against school districts if they act in a discriminatory manner. Thus, a successful defense will not deprive individuals with a meritorious grievance of a remedy, because they have remedies against a school district. An unsuccessful defense will negatively impact citizens at large because it will generate a substantial disruption to, and possible loss of, local control of local school districts, as well as substantial uncertainty of the degree of judicially-required state level supervision of school districts.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	YES	Education service districts are regional educational service providers. A negative outcome of this case will likely impact the balance of state versus regional authority.
Other local gov't impacts?	YES	A negative outcome will largely authorize local grievants to avoid presenting their grievances to the school district where a resolution is most

		likely to occur. Instead, many will sue the State, with the local district likely to become a necessary party.
Tribal gov't impacts?	YES	A number of tribes operate tribal compact schools. ACLU's theory, if it prevails, will likely open the door to a re-ordering of the state-tribal school relationship.
Other state agency impacts?	YES	OSPI will have expanded constitutional duties without a corresponding statutory framework.
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	
Capital Budget Impacts?	Possibly	A ruling in favor of the plaintiffs may open the door to state liability for problems with school district capital facilities.
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	YES	Madison v. OSPI.
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

The AGO is anticipating that OSPI will submit a decision package for their share of the legal services costs identified in this package.

10. What alternatives were explored by the agency and why was this option chosen?

The State is bound to defend this litigation. The AGO is exploring settlement options.

11. What are the consequences of not funding this request?

Failing to fund this request will result in the AGO not being able to defend the lawsuit with the full team and effort that is required. This substantially increases the likelihood of an adverse decision and the negative impacts on the State of Washington.

12. How has or can the agency address the issue or need in its current appropriation level?


The AGO does not have capacity in its current appropriation level to strongly defend the State.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Not Applicable.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	2,442	1,358		
PC Hardware	2,082	1,086		
Licensing	465	465		
CTS Services	303	303		
Total Cost	5,292	3,213	0	0

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

1. Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
2. Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
3. Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

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2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: LA-Assistant Attorney General Recruitment and Retention

Budget Period: 2018 Supplemental Budget Request

Budget Level: PL

1. Agency Recommendation Summary Text:

The Office of the Attorney General (AGO) requests funding to raise inadequate Assistant Attorneys General (AAG) salaries to market levels. AAG salaries remain significantly lower than those in other public law offices. Compounding this disparity, the AGO's public peers receive ongoing, periodic salary increments. The fact that the AGO is behind, along with its inability to provide predictable increases, negatively impacts the ability to provide high quality, consistent legal services to Washington state. The AGO seeks funding to meet market rates and move to a salary system that allows for periodic increments similar to those of its public sector peers.

2. Fiscal Summary:

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2020
Fund 001-1 GF-S		737,805	737,805	737,805
Fund 001-2 GF-F		75,960	75,960	75,960
Fund 19A MFPA		25,320	25,320	25,320
Fund 111 PSRA		20,428	20,428	20,428
Fund 405 LSRA		10,702,171	10,702,171	10,702,171
Fund 424 ATRA		98,336	98,336	98,336
Total Cost	-	11,660,020	11,660,020	11,660,020
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs		0.00	0.00	0.00
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Fund 001-2 GF-F		75,960	75,960	75,960
Fund 405 - LSRA		10,702,171	10,702,171	10,702,171
Total Cost	-	10,778,131	10,778,131	10,778,131
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A		9,716,682	9,716,682	9,716,682
Object B		1,943,338	1,943,338	1,943,338
Total Cost	-	11,660,020	11,660,020	11,660,020

3. Package Description:

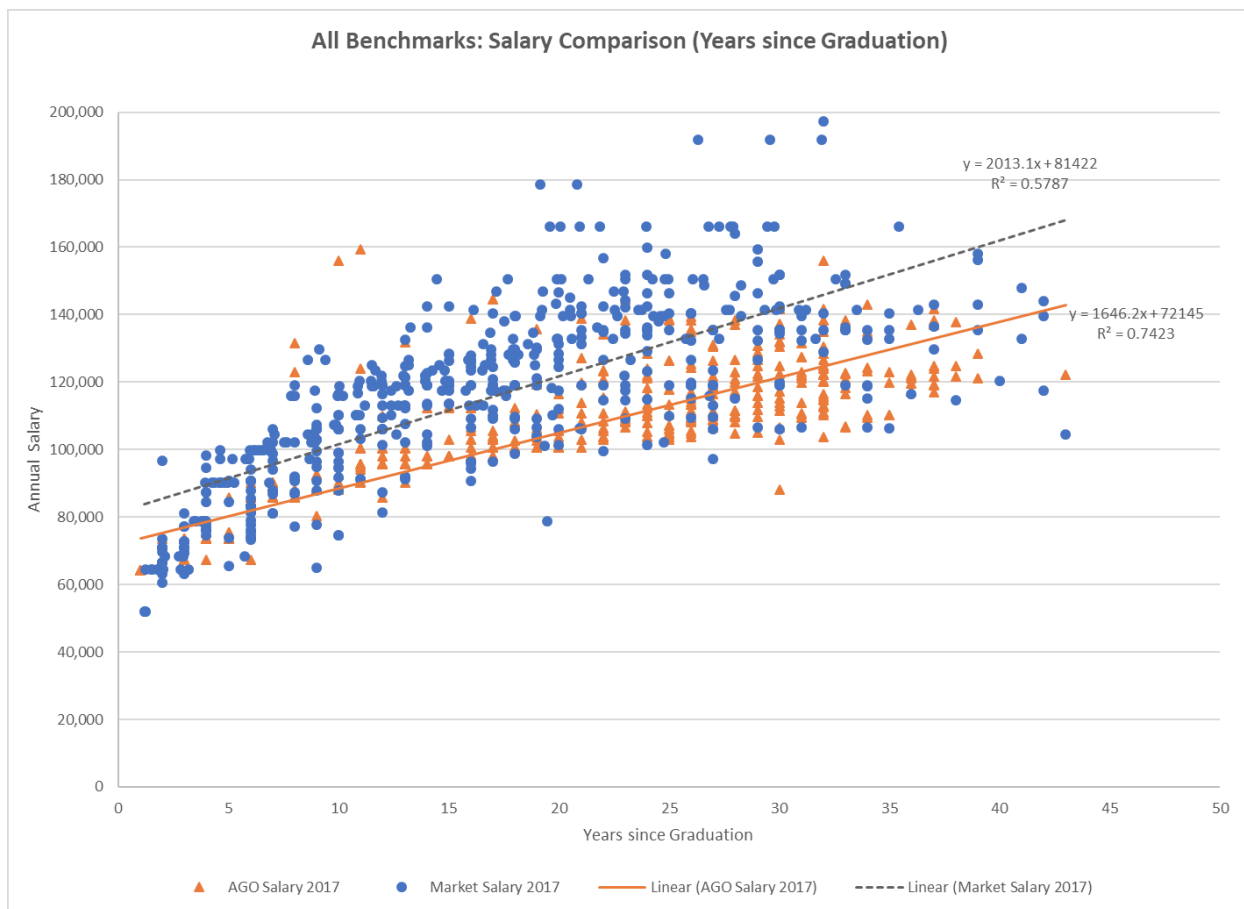
Brief description of the issue and background on the request:

The inability to offer a competitive salary has been a historic and ongoing problem for the AGO, plaguing the office with unnecessary turnover, a loss of talent and experience, challenges in recruitment, and excessive training costs and related inefficiencies. Each time the Legislature provides funding to support salaries, it positively affects AGO attorney retention. The AGO has managed its resources and worked to achieve efficiencies to turn internal savings into some modest increases, but those steps have not significantly closed the salary gap. A recent survey of our public sector peers shows that AAG's annual salaries are on average \$17,000 per year or 19% behind their peers.

Not only does the salary disparity impact the AGO's ability to recruit and retain attorneys, but so too does the inability to assure them of predictability in salary increases. Set salary schedules with periodic increment step increases are tools that state government has used for many years. See WAC 357-28-020 and 050. The vast majority of state agencies have established salary schedules that provide periodic salary progression in addition to cost-of-living adjustments. Salary schedules provide transparency and predictability of salary increases within an employee's salary range. In addition, other public sector law offices also have established salary schedules that provide employees predictable periodic salary progression. Due to lack of adequate funding, the AGO does not have the ability to offer the same transparency and predictability to its attorneys.

In 2016, in order to accurately understand and convey the scope of the salary problem, the AGO retained an independent consultant with expertise in salary surveys of public sector attorneys. The consultant found that moving AGO salaries to the public sector market would cost \$10,488,576 per fiscal year. This equated to an average salary deficit for each of our attorneys of \$18,304 per year. Including incremental benefit costs, the total would cost \$12,246,679 per fiscal year. In an effort to work toward the implementation of a sustainable compensation solution, the AGO provided targeted salary increases through internal savings. In the process of doing so, it moved attorneys into their respective benchmark based on years of experience and skill set. This has essentially aligned attorney salaries in a way that would facilitate the implementation of a salary schedule with increment increases.

In an effort to see what progress had been made, the AGO recently retained the same independent contractor to determine how the current AGO salaries compared to its public sector counterparts. According to the 2017 survey, in order to move AGO salaries to today's market salaries, based on years of completion since law school, it would need \$9,716,682 per fiscal year or about \$17,000 per year per attorney. With benefits, this cost rises to \$11,660,020 per fiscal year. The chart below depicts the disparity.



The survey also found that all but two of the entities surveyed have salary schedules that provide employees with predictable periodic increment increases based on longevity and performance.

The 2016 survey found that 95% of all AAGs were below market when salaries were compared by graduation year. The 2016 survey divided classes of attorneys into ten benchmarks based on experience and job duties and found that the greatest disparity was in three benchmark groups which comprised almost half (45%) of all AAGs. These groups include non-supervisory attorneys with 3-20 years of experience and are nearly \$22,000 per year or 27% behind their peers. With the 2% cost-of-living increase provided by the Legislature beginning July 1, 2017 and the minimal increases the AGO was able to fund based on savings, the 2017 survey reflects that these same groups are now \$17,000 per year or 19% behind their peers. While this reflects some narrowing of the gap, the AGO attorneys continue to lag behind their public sector peers. Without additional funding, the gap between AAG salaries and their public sector peers will continue to widen.

Drivers for funding – retention and recruitment remain two persistent areas of concern:

Retention:

The AGO continues to experience attrition driven by lower salaries and no established periodic increment increases. The AGO has used efficiency savings to raise salaries and thereby lower the turnover rate, but the office does not have the capacity to continue this practice and is still far behind competitive levels. With an average turnover of about 50 attorneys per fiscal year, or approximately one attorney per week, the turnover costs remain substantial. Providing the state legal services of the highest quality requires retention of experienced and dedicated attorneys. Providing a competitive salary with predictability is necessary to support retention.

Our attorneys handle complex, high profile cases, as well as provide significant client advice to our state agencies that effect the people of Washington State. Retaining experienced, high quality attorneys is essential to protecting the State and providing risk management to help prevent costly litigation. Turnover requires continual redevelopment of expertise in new staff. Turnover and loss of expertise also creates challenges in meeting client needs and sometimes results in the need to retain Special Assistant Attorneys General (SAAGs). SAAGs are private counsel and typically cost state agencies much more than AAGs.

Another effect is that the office often mentors and trains attorneys to serve as experts in a particular area, only to have them hired by another employer—often AGO clients—at much higher pay. For example, in June of 2015 the long-time HIPAA expert advisor to a client retired. Well in advance of his retirement, the AGO had planned for the transition by mentoring a successor to that role. Fifteen months later, in August of 2016, the client hired that AAG to serve as their Privacy Officer at a significantly higher salary.

Not only do clients often pay more, but they also offer periodic salary increases. In the last biennium, other state agencies hired 18 AAGs. A majority of those 18 AAGs received a salary increase with the average increase being 12.4%.

For example, the following agencies hired AAGs for internal positions in the last biennium at increased salaries:

Agency	AGO salary	New salary	Increase
Department of Licensing	\$77,748	\$92,004	\$14,256
Eastern Washington University	\$107,217	\$140,500	\$33,283
Department of Transportation	\$91,584	\$105,288	\$13,704
WA State Investment Board	\$116,940	\$125,000	\$8,060
Department of Financial Institutions	\$85,884	\$105,076	\$19,192
University of Washington	\$113,724	\$215,000	\$101,276

The value of competitive salaries and predictability in salary increases is a regular comment from attorneys and often cited in exit surveys as reasons they leave the AGO.

Recruitment:

Salary has inhibited recruitment of qualified attorneys in a few key ways. First, the AGO is aware that some candidates, including many of the office's own law clerks, do not apply because the AGO salaries will not support their law school debt load. Second, candidates withdraw from consideration once salary is discussed; and third, even if candidates are willing to accept a lower salary, the lack of predictable salary increases is an additional deterrent to moving forward.

In the 2015-17 biennium, 15 candidates withdrew from consideration once they became aware of the salary offer. In the first half of 2017 alone, five candidates withdrew due to the salary offer. The fact that the AGO does not offer periodic salary increments also hampered the recruitment effort. Additional funding will allow the AGO to offer a more competitive salary and to implement a periodic salary increment schedule similar to other state agencies. This will allow us to provide candidates some predictability of future salary progression, even if the initial starting salary is low.

Relationship to the AGO Strategic Plan:

Every aspect of the AGO's Strategic Plan is affected by this request.

1. Priority – Serve the State:

- a. Goal – Deliver high quality, timely, and efficient legal services.
- b. Goal – Improve internal efficiency and effectiveness through organizational alignment, technology solutions, and improved use of data.
- c. Goal – Proactively engage in risk management efforts to reduce the state's liability and improve outcomes for the public.

2. Priority – Protect the People:

- a. Goal – Defend civil rights and stand up for vulnerable Washingtonians.
- b. Goal – Protect Washington's environment and public health.
- c. Goal – Promote good government.
- d. Goal – Protect all Washington consumers.

3. Priority – Empower Our Employees:

- a. Enhance our commitment to being an employer of choice by recognizing, celebrating, and empowering AGO employees.
- b. Promote diversity, inclusiveness, and equity throughout the organization to recruit and retain a high quality, highly skilled, and highly effective workforce.
- c. Ensure employees have the skills and knowledge they need to be successful.
- d. Ensure employees have the tools and work space they need to be efficient and effective.
- e. Promote the health, safety, and well-being of all employees in the workplace.

The AGO contact for this request is Brendan VanderVelde, Budget Director, (360) 586-2104.

4. Base Budget:

There is no funding in the AGO's base budget for costs included in this request.

5. Decision Package expenditure, FTE and revenue assumptions, calculations and details Fiscal Summary:

An independent contractor was retained to analyse the market data. Information was obtained from the cities of Bellingham, Everett, Federal Way, Kennewick, Olympia, Seattle, Tacoma, Spokane, Vancouver, and Yakima; Benton, Clark, King, Kitsap, Pierce, Snohomish, Spokane, Thurston and Whatcom Counties; the Washington State Office of Public Defense; and the United States Attorney General and Public Defender's offices.

The contractor provided salary comparisons by benchmark and years since law school graduation, but not all public sector peers could provide data by both these categories. The results provided by the contractor were used as the basis for the total cost of the package. The AGO then apportioned the costs to the various funds, activities, and clients using current ratios and added in the cost of benefits.

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

The AGO objective is to ensure the state and the taxpayers are provided high quality legal services. To do so, the agency must recruit and retain talented, experienced attorneys with subject-matter expertise through offering sustainable, competitive salaries along with predictable and sustainable salary increases. The office's salary history demonstrates that when it provides salary increases, turnover decreases. As other public sector competitors continually increase salaries, if the AGO does not, it's turnover increases significantly and it loses talented attorneys and candidates. The AGO has been responsive to job seeker expectations by emphasizing greater work flexibility, training, career advancement opportunities, but it must enhance the compensation plan to retain manageable turnover.

Investing in the AGO is investing in the future of the State of Washington, both in risk management and in economic recovery. The state's AAGs provide guidance and counsel on high profile issues and innovative projects, defend the state in high risk/high exposure litigation, and protect the state's most vulnerable populations. In addition, the AGO provides a true return on investment: in FY 2016 the office recovered more than \$180 million dollars, including tobacco settlements, and recoveries in Antitrust, Consumer Protection, Medicaid Fraud, Bankruptcy and Collections and DSHS.

Relationship to Results Washington:

This request supports all five goals of Results Washington as the AGO attorneys work in all areas of state government.

Goal 1: World Class Education

AAGs provide advice and representation to all state educational entities, including the Department of Early Learning, the Office of the Superintendent of Public Instruction, Washington's community and technical colleges and its four-year universities. AAGs have represented the state's interests in challenging cases related to the funding of basic education. The AGO often loses attorneys to these clients, and this package will support retention of attorneys with expertise.

Goal 2: Prosperous Economy

AAGs represent the Department of Commerce, the Department of Revenue, and the Department of Labor and Industries, and AAGs in Labor & Personnel and our Education divisions advise and represent all state agencies and institutions of higher education with matters related to employee and labor issues.

Goal 3: Sustainable Energy and a Clean Environment

The AGO is involved in providing advice and representation to all key state agencies engaged in this work, including the Departments of Ecology, Fish and Wildlife, Parks, Natural Resources, Agriculture as well as the Utilities and Transportation Commission.

Goal 4: Healthy and Safe Communities

The AGO supports health and safety in the State. AAGs in the Medicaid Fraud Unit promote integrity in the Medicaid program, both in civil and criminal enforcement. The AGO criminal division attorneys prosecute crimes on behalf of county prosecutors and the Governor. The AGO sexually violent predator unit protects public safety by civilly prosecuting dangerous sexual offenders. AAGs represent the Washington State Patrol, the Department of Health, Health Care Authority, and the Department of Social and Health Services.

Goal 5: Effective, Efficient and Accountable Government

By reducing turnover, this request will result in the more efficient and effective provision of legal services by reducing dependence on outside counsel, reducing training costs, reducing recruitment costs, and retaining knowledge and expertise for our state agency clients.

Performance Measure detail:

This request supports all AGO activities and performance measures. The incremental impact is indeterminate.

7. Fully describe and quantify expected impacts on state residents and specific populations served.

The AGO objective is to ensure the State and the taxpayers are provided high quality legal services. To do so, the AGO must recruit and retain talented, experienced attorneys with subject-matter expertise through offering sustainable, competitive salaries along with predictable and sustainable salary increases.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	No	
Other local gov't impacts?	No	
Tribal gov't impacts?	No	
Other state agency impacts?	Yes	See attached distribution of costs by state agency.
Responds to specific task force, report, mandate or exec order?	No	
Does request contain a compensation change?	Yes	The package includes salary increases for assistant attorneys general to bring them to the market salary for public sector attorneys in Washington state and to allow for periodic increment increases.
Does request require a change to a collective bargaining agreement?	No	
Facility/workplace needs or impacts?	No	
Capital Budget Impacts?	No	

Is change required to existing statutes, rules or contracts?	No	
Is the request related to or a result of litigation?	No	
Is the request related to Puget Sound recovery?	No	
Identify other important connections	No	

9. Please provide a detailed discussion of connections/impacts identified above.

See Attachment 2 for cost impacts to client agencies.

10. What alternatives were explored by the agency and why was this option chosen?

The AGO has made every effort to utilize internal savings and efficiencies to make modest salary increases, and to offer other benefits that might attract or retain employees, such as offering flexible schedules, telecommuting, in-house CLE training, paid bar dues and exchange time for excessive hours. These benefits are attractive, but do not equate to a competitive salary and predictable increases for employees who are talented and marketable.

11. What are the consequences of not funding this request?

The AGO’s clients can expect that our staff will work to provide high quality legal services, but the AGO anticipates continued and increasing turnover, loss of expertise, delay in non-litigation services, and in some cases, the need to hire more expensive private counsel as Special Assistant Attorneys General. Increased turnover and loss of expertise in the AGO exposes the state to additional risk.

12. How has or can the agency address the issue or need in its current appropriation level?

Because the AGO primarily provides advice and defense to the state, the office’s work is driven by other state agency needs and responses to litigation. The AGO moves attorney resources to respond to vacancies as necessary, but uncompetitive salaries and lack of predictable salary progression result in higher attrition. Attorney attrition results in loss of expertise and experience, which results in delay and increases risk; drives up recruitment and training costs; increases the need to hire expensive outside counsel for state agencies, burdens managers, and

reduces efficiency when experienced attorneys that can handle greater caseloads leave—all costing the state significant resources.

The AGO has made every effort to utilize internal savings and efficiencies to make modest salary increases, and to offer other benefits that might attract or retain employees, such as offering flexible schedules, telecommuting, in house CLE training, paid bar dues and exchange time for excessive hours. These benefits are attractive, but do not equate to a competitive salary for employees who are talented and marketable.


13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Attachment 1: 2017 Pay Administration Survey Report

Attachment 2: LSRA Impact by Client

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

Washington State Attorney General's Office

Pay Administration Survey Report

Prepared by Gallagher Benefit
Services, Inc.
Phoenix, Arizona

September 28, 2017

STUDY BACKGROUND

Gallagher Benefit Services, Inc.'s Fox Lawson Group (FLG) was engaged by the Washington State Attorney General's Office (AGO) to conduct a pay administration and budget study of its attorney classifications. This report outlines the process and results of the custom survey and market pricing activities that were conducted.

Initial discussions were conducted with the AGO to document and confirm the AGO's current data needs. The resulting survey is a shortened and modified version of the 2016 survey because of the State's budget process calendar and short timeframe in which to collect data.

A draft survey document was developed by FLG, reviewed by AGO representatives and the final document was approved. (The survey document is found beginning on page 17.)

PUBLIC SECTOR SURVEY DATA SOURCES AND ANALYSIS

Salary data was collected on 7 levels of attorney jobs as shown below and their corresponding 2016 benchmark(s) from the 2016 survey:

	Level	Corresponding 2016 Benchmark
1	Entry Attorney	1. Entry Attorney
2	Staff Attorney (2 to 5 years)	2. Progressing Attorney
3	Staff Attorney (6 to 10 years)	3. Experienced Attorney
4	Staff Attorney (more than 10 years)	5. Senior Attorney 7. Distinguished Attorney
5	Supervising Attorney	4. Supervising Experienced Attorney 6. Supervising Senior Attorney
6	Managing Attorney	8. Division Chief 9. Deputy
7	Executive Attorney	10. Chief Deputy

The definitions of each are as follows:

Entry Attorney: Attorneys who have recently (0 to 1 year) graduated from law school.

Staff Attorney 2 to 5 years of experience: Attorneys with 2 to 5 years of experience who do not supervise other attorney staff.

Staff Attorney 6 to 10 years of experience: Attorneys with 6 to 10 years of experience who do not supervise other attorney staff.

Staff Attorney more than 10 years of experience: Attorneys with more than 10 years of experience who do not supervise other attorney staff.

Supervising Attorney: Attorneys who are first-level supervisors of other attorney staff.

Managing Attorney: Attorneys who are second-level supervisors (manage other supervisors) and manage a specific division of work.

Executive Attorney: Attorneys who report to the Elected/Appointed Official or Head of the legal organization and typically manage multiple and/or major divisions of the organization.

FLG attempted to collect market data on each of the benchmark jobs through the conduct of the customized survey. FLG contacted the surveyed organization if any questions occurred with the submitted survey information.

DATA CHARACTERISTICS AND ADJUSTMENT FACTORS

Market data were collected effective July 1, 2017.

n/a is shown when insufficient data was not available.

SURVEY ORGANIZATIONS

Twenty-five (25) organizations from the 2016 survey were provided with the survey document for completion. Multiple contacts by FLG and the AGO were made by email and telephone. 88% of the organizations sent the survey document actively participated in the survey. Organizations that did not participate are marked by an asterisk (*).

City of Bellevue*
City of Bellingham
City of Everett
City of Federal Way
City of Kennewick
City of Olympia
City of Seattle
City of Spokane
City of Tacoma
City of Vancouver
City of Yakima
Benton County
Clark County
King County
Kitsap County
Pierce County
Snohomish County
Spokane County
Thurston County
Whatcom County
State of Washington Public Defender's Office
United States Attorney General's Office
United States Public Defender's Office
State of Washington Senate*
State of Washington House of Representatives*

ORGANIZATIONAL DATA SUMMARY

Survey questions 1, 2, 3, 4 and 8:

Organizational Information	AGO	Market*
Average Number of Customers	7,290,000	911,095
Average Overall Organization Budget	\$139,189,000	\$601,068,323
Average Number of Full Time Attorneys	595	50
Average Number of Full Time Equivalents	1,289	1,995
Average Number of Attorney Titles	10	6.4
Organization Employee Turnover	10.9% All 9.0% Attorneys	8.1% All n/a Attorney

*Survey participants generally provided data for entire organization instead of the legal department only.

PAY PRACTICES SUMMARY

Survey question 5: Please provide the 2017 total percentage increase in *individual employee salaries* granted for the specified Attorney classifications. Please review the Attorney definitions below. If you cannot provide the information by attorney classification, please provide your organization's overall increases.

Employee Increase	AGO	Market Average	Market Median	Market Minimum	Market Maximum
Most recent Overall Employee increase %	5.2	3.0	2.3	0.0	7.4
Most recent Entry Attorney increase %	3.4	3.2	2.4	0.0	7.5
Most recent Staff Attorney (2 to 5 years) increase %	8.8	2.8	2.4	0.0	5.5
Most recent Staff Attorney (6 to 10 years) increase %	13.7	2.8	2.4	0.0	5.5
Most recent Staff Attorney (more than 10 years) increase %	5.1	2.3	2.3	0.0	4.2
Most recent Supervising Attorney increase %	1.8	2.7	2.4	0.0	5.5
Most recent Managing Attorney increase %	0.5	2.5	2.3	0.0	7.4
Most recent Executive Attorney increase %	0.0	2.6	2.4	0.0	5.5

Attachment 1: 2017 Pay Administration Survey Report

Survey question 6: If your organization provides a separate salary range adjustment where you increase the **salary ranges of your structure** by a fixed % (either in addition to or separate from increasing individual employee salaries), please provide the 2017 salary range adjustment granted for the Attorney classifications. If you cannot provide the information by attorney classification, please provide your organization's overall increase.

Employee Increase	AGO	Market Average	Market Median	Market Minimum	Market Maximum
Most recent Overall pay structure increase %	0	2.0	2.0	0.0	7.0
Most recent Entry Attorney pay structure increase %	0	2.0	2.1	0.0	5.1
Most recent Staff Attorney (2 to 5 years) pay structure increase %	0	1.7	2.0	0.0	4.0
Most recent Staff Attorney (6 to 10 years) pay structure increase %	0	1.7	2.0	0.0	4.0
Most recent Staff Attorney (more than 10 years) pay structure increase %	0	1.4	2.0	0.0	2.6
Most recent Supervising Attorney pay structure increase %	0	1.7	2.0	0.0	4.0
Most recent Managing Attorney pay structure increase %	0	1.8	2.1	0.0	4.0
Most recent Executive Attorney pay structure increase %	0	1.6	2.0	0.0	4.0

Attachment 1: 2017 Pay Administration Survey Report

Survey question 7: Please indicate the amount of average lump sum bonus that was paid in the most recent cycle, if any, to those attorneys within the specified attorney type below.

Insufficient data was obtained for all categories and only the percentage of organizations having the specific bonus plan is provided below.

Entry Attorney	AGO	% of Market
Lump-Sum Bonuses	Not Offered	0%
Team Incentives	Not Offered	0%
Skill-Based Pay	Not Offered	0%
Knowledge-Based Pay	Not Offered	0%
Performance Pay (Merit Pay)	Consideration	4%
Longevity	Not Offered	0%
Assignment Pay	Not Offered	4%
Other	Not Offered	4%

Attachment 1: 2017 Pay Administration Survey Report

Staff Attorney (2 to 5 years)	AGO	Market
Lump-Sum Bonuses	Not Offered	0%
Team Incentives	Not Offered	0%
Skill-Based Pay	Not Offered	0%
Knowledge-Based Pay	Not Offered	0%
Performance Pay (Merit Pay)	Consideration	8%
Longevity	Not Offered	0%
Assignment Pay	Not Offered	4%
Other	Not Offered	4%

Attachment 1: 2017 Pay Administration Survey Report

Staff Attorney (6 to 10 years)	AGO	Market
Lump-Sum Bonuses	Not Offered	4%
Team Incentives	Not Offered	0%
Skill-Based Pay	Not Offered	0%
Knowledge-Based Pay	Not Offered	0%
Performance Pay (Merit Pay)	Consideration	8%
Longevity	Not Offered	4%
Assignment Pay	Not Offered	4%
Other	New attorney hires with experience are provided with immediate PTO based on years of experience according to a specific schedule.	8%

Attachment 1: 2017 Pay Administration Survey Report

Staff Attorney (more than 10 years)	AGO	Market
Lump-Sum Bonuses	Not Offered	4%
Team Incentives	Not Offered	0%
Skill-Based Pay	Not Offered	0%
Knowledge-Based Pay	Not Offered	4%
Performance Pay (Merit Pay)	Consideration	4%
Longevity	Not Offered	8%
Assignment Pay	Not Offered	4%
Other	New attorney hires with experience are provided with immediate PTO based on years of experience according to a specific schedule.	4%

Attachment 1: 2017 Pay Administration Survey Rep

Supervising Attorney	AGO	Market
Lump-Sum Bonuses	Not Offered	4%
Team Incentives	Not Offered	0%
Skill-Based Pay	Not Offered	0%
Knowledge-Based Pay	Not Offered	0%
Performance Pay (Merit Pay)	Consideration	4%
Longevity	Not Offered	4%
Assignment Pay	Not Offered	4%
Other	New attorney hires with experience are provided with immediate PTO based on years of experience according to a specific schedule	4%

Attachment 1: 2017 Pay Administration Survey Report

Managing Attorney	AGO	Market
Lump-Sum Bonuses	Not Offered	4%
Team Incentives	Not Offered	0%
Skill-Based Pay	Not Offered	0%
Knowledge-Based Pay	Not Offered	0%
Performance Pay (Merit Pay)	Consideration	4%
Longevity	Not Offered	0%
Assignment Pay	Not Offered	4%
Other	New attorney hires with experience are provided with immediate PTO based on years of experience according to a specific schedule.	4%

Attachment 1: 2017 Pay Administration Survey Report

Executive Attorney	AGO	Market
Lump-Sum Bonuses	Not Offered	0%
Team Incentives	Not Offered	0%
Skill-Based Pay	Not Offered	0%
Knowledge-Based Pay	Not Offered	0%
Performance Pay (Merit Pay)	Consideration	4%
Longevity	Not Offered	4%
Assignment Pay	Not Offered	4%
Other	New attorney hires with experience are provided with immediate PTO based on years of experience according to a specific schedule.	4%

PUBLISHED SURVEY DATA RESEARCH

FLG also reviewed *WorldatWork's* 2016-2017 Salary Budget Survey for additional pay administration data such as salary budget and pay structure increase data. The data provided from this survey was collected in April of 2016 and is represented for Exempt Salaried employees.

All Industries	Salary Budget Increase 2016 Actual	Salary Budget Increase 2017 Planned
National	3.0%	3.1%
Western Region	3.1%	3.2%
Washington	3.1%	3.1%
Seattle	3.2%	3.2%

Public Administration	Salary Budget Increase 2016 Actual	Salary Budget Increase 2017 Planned
National	3.4%	3.1%
Western Region	3.1%	2.9%
Washington	2.4%	2.1%
Seattle	n/a	n/a

All Industries	Structure Increase 2016 Actual	Structure Increase 2017 Planned
National	2.0%	2.1%
Western Region	2.0%	2.1%
Washington	1.9%	2.0%
Seattle	2.0%	2.0%

Attachment 1: 2017 Pay Administration Survey Report

Public Administration	Structure Increase 2016 Actual	Structure Increase 2017 Planned
National	1.9%	2.0%
Western Region	2.1%	2.1%
Washington	2.0%	n/a
Seattle	n/a	n/a

APPENDIX: SURVEY DOCUMENT

The short survey includes pay practice and administration questions concerning the Attorney classifications within your organization.

Please do not PDF the files when returning the documents unless you complete as a hard copy document.

Please keep a copy of your completed data collection form to facilitate your organization's interpretation of survey results and as a guide for completing any future surveys.

As a show of appreciation for your participation, **you will receive a complimentary copy of the participant survey report.** We hope the results of this survey will also be beneficial for your organization.

Due to the State's budget process we are asking for a short completion time on your part:

Return completed form by August 18, 2017 to:

Annette Hoefler
4395 Flagstick Drive
Marion, IA 52302
Annette.Hoefler@ajg.com
Telephone: (319) 377-3771
Fax: (651) 234-0849

We appreciate your time and assistance in this survey. If you have any questions, or need assistance in completing the survey, please contact me at (319) 377-3771 or by email.

List of Prospective Survey Participants

City of Bellevue
City of Bellingham
City of Everett
City of Federal Way
City of Kennewick
City of Olympia
City of Seattle
City of Spokane
City of Tacoma
City of Vancouver
City of Yakima
Benton County
Clark County
King County
Kitsap County
Pierce County
Snohomish County
Spokane County
Thurston County
Whatcom County
State of Washington Public Defender's Office
United States Attorney General's Office
United States Public Defender's Office
State of Washington Senate
State of Washington House of Representatives

Attachment 1: 2017 Pay Administration Survey Report

Name of Organization:	
Address of Organization including City and Zip Code:	
Individual Completing Form:	
Job Title:	
Telephone:	
Email Address:	

1. How many total customers does your organization serve (e.g. number of citizens, the population of your city, county, district, etc.)?

Total Customers	
------------------------	--

2. What is your organization's annual operating budget for the current fiscal year?

Annual Operating Budget \$	
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3. What is the total number of full-time attorney employees in your organization?

Number of Full-Time Attorney Employees	
Number of Full-Time Organizational Employees	

4. What is the total number of Attorney classifications (job titles) within your organization?

Number of Job Classifications	
--------------------------------------	--

Attachment 1: 2017 Pay Administration Survey Report

Pay Practice Information: If your organization's budget is zero and/or pay is frozen, please indicate by entering "0" in the appropriate place.

5. Please provide the 2017 total percentage increase in **individual employee salaries** granted for the specified Attorney classifications. Please review the Attorney definitions below. If you cannot provide the information by attorney classification, please provide your organization's overall increases.

Entry Attorney: Attorneys who have recently (0 to 1 year) graduated from law school.

Staff Attorney 2 to 5 years of experience: Attorneys with 2 to 5 years of experience who do not supervise other attorney staff.

Staff Attorney 6 to 10 years of experience: Attorneys with 6 to 10 years of experience who do not supervise other attorney staff.

Staff Attorney more than 10 years of experience: Attorneys with more than 10 years of experience who do not supervise other attorney staff.

Supervising Attorney: Attorneys who are first-level supervisors of other attorney staff.

Managing Attorney: Attorneys who are second-level supervisors (manage other supervisors) and manage a specific division of work.

Executive Attorney: Attorneys who report to the Elected/Appointed Official or Head of the legal organization and typically manage multiple and/or major divisions of the organization.

Most recent Overall Employee increase %	
Most recent Entry Attorney increase %	
Most recent Staff Attorney (2 to 5 years) increase %	
Most recent Staff Attorney (6 to 10 years) increase %	
Most recent Staff Attorney (more than 10 years) increase %	
Most recent Supervising Attorney increase %	
Most recent Managing Attorney increase %	
Most recent Executive Attorney increase %	

6. If your organization provides a separate salary range adjustment where you increase the **salary ranges of your structure** by a fixed % (either in addition to or separate from increasing individual employee salaries), please provide the 2017 salary range adjustment granted for the Attorney classifications. If you cannot provide the information by attorney classification, please provide your organization's overall increase.

Most recent Overall pay structure increase %	
Most recent Entry Attorney pay structure increase %	
Most recent Staff Attorney (2 to 5 years) pay structure increase %	
Most recent Staff Attorney (6 to 10 years) pay structure increase %	
Most recent Staff Attorney (more than 10 years) pay structure increase %	
Most recent Supervising Attorney pay structure increase %	
Most recent Managing Attorney pay structure increase %	
Most recent Executive Attorney pay structure increase %	

Attachment 1: 2017 Pay Administration Survey Report

7. Please indicate the amount of average lump sum bonus that was paid in the most recent cycle, if any, to those attorneys within the specified attorney type below. Please indicate if the amount is in dollars or as a percentage.

Type of Bonus Plans	Amount of Bonus Entry Attorney
Lump-Sum Bonuses	
Team Incentives	
Skill-Based Pay	
Knowledge-Based Pay	
Performance Pay (Merit Pay)	
Longevity	
Assignment Pay	
Other (list)	

Type of Bonus Plans	Amount of Bonus Staff Attorney (2 to 5 years)
Lump-Sum Bonuses	
Team Incentives	
Skill-Based Pay	
Knowledge-Based Pay	
Performance Pay (Merit Pay)	
Longevity	
Assignment Pay	
Other (list)	

Type of Bonus Plans	Amount of Bonus Staff Attorney (6 to 10 years)
Lump-Sum Bonuses	
Team Incentives	
Skill-Based Pay	
Knowledge-Based Pay	
Performance Pay (Merit Pay)	
Longevity	
Assignment Pay	
Other (list)	

Type of Bonus Plans	Amount of Bonus Staff Attorney (More than 10 years)
Lump-Sum Bonuses	
Team Incentives	
Skill-Based Pay	
Knowledge-Based Pay	
Performance Pay (Merit Pay)	
Longevity	
Assignment Pay	
Other (list)	

Attachment 1: 2017 Pay Administration Survey Report

Type of Bonus Plans	Amount of Bonus Supervising Attorney
Lump-Sum Bonuses	
Team Incentives	
Skill-Based Pay	
Knowledge-Based Pay	
Performance Pay (Merit Pay)	
Longevity	
Assignment Pay	
Other (list)	

Type of Bonus Plans	Amount of Bonus Managing Attorney
Lump-Sum Bonuses	
Team Incentives	
Skill-Based Pay	
Knowledge-Based Pay	
Performance Pay (Merit Pay)	
Longevity	
Assignment Pay	
Other (list)	

Type of Bonus Plans	Amount of Bonus Executive Attorney
Lump-Sum Bonuses	
Team Incentives	
Skill-Based Pay	
Knowledge-Based Pay	
Performance Pay (Merit Pay)	
Longevity	
Assignment Pay	
Other (list)	

8. What is your organization's employee turnover rate for the last full calendar or fiscal year?

Turnover	%
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Salary Increase for Legal Services (Fund 405) for FY 2019

CLIENT AGENCY	FY 2019
011 House	100
012 Senate	179
014 JLARC	1,298
035 Actuary	885
038 Joint Leg Systems	96
040 Statute Law/Code Reviser	251
045 Supreme Court	2,557
048 Court of Appeals	1,654
050 Judicial Conduct	303
055 Admin-Courts	10,462
075 Governor	1,888
080 Lt.Gov	37
082 PDC	26,240
085 Sec State	32,228
090 Treasurer	23,599
095 Auditors	18,408
099 Comm - Salaries	79
101 Caseload	175
102 Financial Institutions	61,431
103 Commerce	29,547
105 OFM	22,178
107 HCA	163,368
110 Admin Hearings	7,597
116 Lottery	4,175
117 Gambling	20,280
118 Hispanic Affairs	64
120 Human Rights	16,317
124 DRS	94,645
126 SIB	37,747
140 Revenue	255,004
142 Tax Appeals	252
147 OMWBE	15,570
160 Insurance	39,227
163 CTS	3,492
165 Accountancy	4,367
179 DES	52,539
185 Horse Racing	3,196
190 Ind Ins.Appeals	4,347
195 Liquor Control	153,903
205 Pilotage	5,564
215 WA UTC	147,005
220 Volunteer Firefighters	1,697
225 WSP	71,638
227 CrimJ Training	18,014
228 Traffic Safety	1,780
235 L&I	1,946,565

ATTACHMENT 2 - LSRA Impact by Client

240 Licensing	197,583
245 Military	24,541
275 Pub Employ Relations	3,210
300 DSHS	3,243,367
303 Health	442,240
305 VA	4,803
310 DOC	434,216
315 Serv-Blind	710
340 Student Achievement Council	5,006
341 Law Enforcement & Fire Fighters	1,854
350 OSPI	53,168
351 School-Blind	337
353 School-Deaf	1,953
354 Workforce TECB	1,529
355 DHAP	5,148
357 DEL	60,193
359 Charter Schools Commission	12,494
360 UW	289,739
365 WSU	88,143
370 EWU	34,019
375 CWU	23,860
376 Evergreen	13,237
380 WWU	36,879
387 Arts	490
390 Historical Soc.	2,465
395 EWaHistorical	1,707
405 DOT	307,067
406 CRAB	420
407 TIB	199
410 Trans.Comm.	973
411 Freight Mobility Strategic Investment	119
460 Columbia River	273
461 Ecology	443,860
462 Pollution Liability	1,261
465 Parks	20,783
467 Outdoor Rec (IAC)	1,564
468 EnviroHear	3,216
471 Conservation	843
477 Fish&Wildlife (FWP See %)	164,817
478 Puget Sound Partnership	437
490 Nat.Resources	253,596
495 Agriculture	33,325
540 ESD	112,341
699 SBCTC	182,551
Tort - DES Office of Risj Management	889,687
	10,702,171

2018 Supplemental Budget Decision Package

FINAL

Agency: ATTORNEY GENERAL'S OFFICE

Decision Package Code/Title: LB-Ratepayer Advocacy

Budget Period: 2018 Supplemental Budget Request

Budget Level: PL

1. Agency Recommendation Summary Text:

The Office of the Attorney General (AGO) requests additional funding for staff and expert witnesses for its Public Counsel Unit (PCU). Insufficient funding impedes PCU's ability to fully represent residential and small business utility customers in utility rate cases and other matters that are increasing in number and complexity. Without significant additional resources, millions of Washington ratepayers will be without the public advocate the legislature intended for them in matters of significant public importance.

2. Fiscal Summary:

Operating	FY 2018	FY 2019	FY 2020	FY 2020
Fund 111 - PSRA	944,416	956,359	964,427	964,427
Total Cost	944,416	956,359	964,427	964,427
Staffing	FY 2018	FY 2019	FY 2020	FY 2020
FTEs	4.75	4.75	4.75	4.75
Revenue	FY 2018	FY 2019	FY 2020	FY 2020
Total Cost	0	0	0	0
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Object A	360,945	371,875.00	378,761	378,761
Object B	127,968	132,647.00	134,058	134,058
Object C	363,000	363,000	363,000	363,000
Object E	81,478	80,974.00	80,746	80,746
Object G	3,900	3,900.00	3,900	3,900
Object J	7,125	3,962.50	3,963	3,963
Total Cost	944,416	956,359	964,427	964,427

3. Package Description:

Background and Genesis of Need

The AGO Public Counsel unit (PCU) represents residential and small business customers of state-regulated, investor-owned utilities in proceedings before the Utilities and Transportation Commission (UTC), state courts, and the legislature. Regulated utilities provide essential services to millions of Washington residents across the state, making Public Counsel's work particularly relevant. PCU is facing increasing demands as regulated utility filings have proliferated in frequency and complexity. PCU has insufficient resources to fully represent Washington utility customers in proceedings in which increased rates, environmental issues, electrification of transportation, development of liquefied natural gas, closure of coal electric generation plants, changing utility business practices, and evolving regulatory framework are at issue.

The legislature directed the AGO to "represent and appear for the people of the state of Washington" in utility regulatory matters under Titles 80 and 81 RCW. (RCW 80.01.100; 80.04.510; 81.04.500). These include electricity, natural gas, and telecommunications rate cases, public utility regulation and related environmental issues so that captive ratepayers always have a public advocate to represent their interests. To carry out this function, the Attorney General established the Public Counsel Unit in 1983 and staffed it with two Assistant Attorney Generals (AAGs). While the attorney staff has not increased since 1983, the number and complexity of the cases has increased dramatically.

PCU is the only entity that can advocate effectively on behalf of residential and small business ratepayers who are captive customers of utilities. Industrial and commercial customers have the resources to advocate for their unique interests, which can be adverse to smaller scale users. Regulated utilities have considerable resources to advocate for rate increases and other regulatory outcomes favorable to their business interests. The UTC (or its staff) cannot effectively represent residential and small business customers because the UTC has the duty to balance all interests while regulating in the public interest and cannot advocate on behalf of ratepayers, regulated utilities, or other entities.

Expert witness costs for PCU litigation have steadily increased over time while their funding has remained flat. Expert witnesses play a crucial role in PCU's consumer advocacy. Both the frequency and complexity of cases have increased PCU's need for experts. In complex rate hearings, expert witnesses provide opinion, insight, and analysis that are crucial to effective advocacy on behalf of ratepayers and necessary for outcomes that balance the interests of captive ratepayers along with other interests. Because PCU's expert witness budget has remained essentially flat over the last decade, PCU has been unable to provide sufficient ratepayer advocacy. Current funding levels do not now and will not in the future provide sufficient funds to enable expert witnesses to support the litigation and policy proposals on behalf of ratepayers.

Washington invests less than comparable states in protecting the interests of captive utility customers. This request will bring Washington closer to parity with other states.

PCU is Smaller than Comparable State Offices

State	Population	Annual Budget	Staff		Expert funding (Annual)	Annual \$/resident
			Total	Attvs		
Washington	7.1 M	\$1,186,500	6.75	2	\$195,500	\$0.17
Massachusetts (AG)	6.7 M	\$2,500,000	25	19	\$500,000 (+\$150,000 per case*)	\$0.37
Arizona	6.7 M	\$1,335,000	8		\$148,000	\$0.20
Missouri	6.1 M	\$1,012,057	14	4	\$258,199	\$0.17
Maryland	6.0 M	\$4,000,000	19	10	\$1,400,000	\$0.67
Colorado	5.4 M	\$1,700,000	7	3**	[not available]	\$0.32
Oregon	4.0 M	\$900,000	5	2	Intervenor funding	\$0.23
Connecticut	3.6 M	\$2,342,433	14	5	\$250,000 per case*	\$0.65
Iowa (AG)	3.1 M	\$1,550,000	17	7	\$100,000	\$0.50
Montana	1.0 M	\$1,349,380	5.5	2	\$660,269	\$1.32

*Utility-funded. **Colorado Office of Consumer Counsel is separate from the AGO, and has 3 assigned AAGs.

Source Population Data: US Census Bureau, 2014 Population Estimate

Drivers of the request

Public Counsel’s workload has increased in volume and complexity. Regulated energy utilities are filing rate cases almost on an annual basis. For example, Avista filed rate cases in 1999, 2001, 2004, 2005, 2007, 2008, 2009, 2010, 2011, 2012, 2014, 2015, 2016, and 2017. Prior to 1999, Avista last rate cases were filed in 1990 for electric rates and in 1998 for gas rates. Similarly, Puget Sound Energy filed general rate cases in 2001, 2004, 2005 (power cost only), 2006, 2007, 2009, 2010 (gas only), 2011, 2014 (power cost only), and 2017. Prior to 2001, Puget Sound Energy’s last electric rate case was filed in 1992. Despite the increase in rate cases, Public Counsel’s funding has remained flat.

This proposal will help Public Counsel meet its broad responsibilities in representing utility customers in the following areas:

- a. Expansion of baseline regulatory work, including rate cases, major transactions, policy dockets (rulemakings and industrywide investigations), enforcement cases, ongoing compliance and regulatory review dockets. For example, Avista announced that it will be acquired by Hydro One, which will require UTC approval. This matter will have the potential to impact consumer rates. Other matters include natural gas hedging dockets, dockets to address decommissioning of coal-fired electric generation plants, and deferred accounting petitions.

- b. Not only are rate cases becoming more frequent, they are more complex. Regulated utilities are basing rate increase requests on new ratemaking mechanisms, such as expedited rate relief, rate plans, and infrastructure replacement programs. PCU requires additional resources to fully analyze and address these issues on behalf of ratepayers.
- c. Introduction of new utility business models that affect customer privacy and service reliability issues, including deployment of smart meters and the capabilities the meters provide, the impact of small scale renewable energy projects that allow customers the ability to generate electricity, and new business ventures unrelated to the provision of utility service.

Without increased funding, PCU is unable to meet its statutory obligation to appear before the UTC in these and all matters affecting ratepayers, leaving millions of Washingtonians without a public advocate in very significant matters of public importance.

Relationship with AGO Strategic Plan

This request supports the AGO Strategic Plan as follows:

Priority 2 - Protect the People

Goal 4 – Protect All Washington Consumers

2-4-3 Protect Washington Ratepayers: Vigorously represent the public interest in the full range of proceedings before the UTC. Advocate for additional resources from the legislature to ensure that the public interest is appropriately represented in these proceedings. Represent customers of Washington’s investor-owned utilities in proceedings to reduce carbon emissions through an orderly transition away from coal-fired electricity generation. Work to ensure customers have the benefit of environmental protections and reliable, affordable utility service.

This request supports 2-4-3 of the AGO’s Strategic Plan because additional funding will allow Public Counsel to adequately represent Washington consumers in utility proceedings and to address environmental issues presented in utility matters.

Goal 2 - Protect Washington’s Environment and Public Health

2-2-1 Protect the Environment and Public Health: Ensure the AGO continues to be a national leader in enforcing laws designed to protect our environment and the health of Washingtonians. Coordinate the AGO’s Natural Resource and Environmental Divisions and help harmonize legislative and policy efforts that support the office’s environmental work and goals, and to identify future environmental initiatives where enforcement gaps exist.

This request supports 2-2-1 of the AGO Strategic Plan because additional funding will allow Public Counsel to more broadly and thoroughly address environmental issues presented in regulatory matters. For example, issues related to coal-fired electric

generation plant are becoming more prevalent and frequent, requiring more expert consultation and testimony..

Goal 3 - Promote Good Government

2-3-5 Support Washington’s Infrastructure: Provide a full range of legal services to the state’s transportation and utility agencies, boards, and commissions.

This request supports 2-3-5 of the AGO Strategic Plan because additional funding will allow Public Counsel to provide the UTC with more evidence and better analysis, which will allow the UTC to have a complete record on which to base its decisions. This will benefit the public because it will ensure that the decision-makers have the information necessary to balance the competing interests at stake in regulatory matters.

The AGO contact for this request is Brendan VanderVelde, Budget Director, 360-586-2104.

4. Base Budget:

The PCU total funding level for the 2017-2019 Biennium is \$2,373,000 in the Public Service Revolving Account (Fund 111) and 6.75 FTEs.

5. Decision Package expenditure, FTE and revenue assumptions, calculations and details:

Fiscal Summary:

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	1.00	1.00	1.00	1.00	Yes
LA	0.50	0.50	0.50	0.50	Yes
PL	1.00	1.00	1.00	1.00	Yes
RA3	1.00	1.00	1.00	1.00	Yes
RA2	1.00	1.00	1.00	1.00	Yes
MA5	0.25	0.25	0.25	0.25	Yes
TOTAL	4.75	4.75	4.75	4.75	

The AGO requests 4.75 FTEs of additional staff consisting of one AAG, two Regulatory Analysts, one Paralegal, and legal support staff. Of the two Regulatory Analyst positions requested, one is requested at the RA2 level and one is requested at the RA3 level.

Agency administration support FTEs are included in the table above using a Management Analyst 5 as a representative classification.

The AGO requests an additional \$363,000 per fiscal year for expert witnesses.

Shortfall in expert witness funding:

\$1,117,000	Projected Biennial Need (See below)
<u>-\$391,000</u>	Less Existing Biennial Funding
\$726,000	Projected Biennial Need (\$363,000 per FY)

PCU will participate in at least nine significant cases over the next biennium. PCU’s work in the Puget Sound Energy and Avista general rate cases that were filed in 2017 will continue into the next fiscal year. Based the practice of energy companies to file general rate cases on an annual basis, PCU anticipates that Puget Sound Energy, Avista, Pacific Power and Light, and Cascade Natural Gas will each file a general rate case in 2018. Avista has announced that it is being acquired by Hydro One, which will be a significant case PCU anticipates will participate in a docket regarding energy company restructuring and at least one significant ratemaking policy docket. In each case, the office expects the regulated utility to present testimony from expert witnesses to support their requests. Other parties, including large customers and UTC staff, also will present expert witness testimony. Testimony from expert witnesses often sways the outcome of a regulatory proceeding and captive residential and small business ratepayers are entitled to the same quality of advocacy as the regulated companies and other parties. Additional funds are necessary for PCU to present an additional nine to ten expert witnesses in UTC dockets, allowing for an evidentiary record that fully includes the interests of residential and small business ratepayers.

The amount requested for expert witness costs excludes the existing funding available of approximately \$390,000. The request is for an increase in permanent funding for expert witnesses and is based on an ongoing projected need based on our recent experience and projected cases for the 2017-19 biennium:

\$ 67,000	2017 Puget Sound Energy General Rate Case (75% completed during the last biennium; 25% to be completed in 2017-19 biennium; contracts totaled approx. \$281,000)
\$ 200,000	2018 Puget Sound Energy General Rate Case
\$ 150,000	2017 Avista General Rate Case
\$ 100,000	2018 Avista General Rate Case
\$ 150,000	Avista Hydro One Acquisition
\$ 100,000	Pacific Power and Light General Rate Case
\$ 100,000	Cascade Natural Gas General Rate Case
\$ 150,000	Puget Sound Energy Acquisition or Corporation Reorganization
\$ 100,000	<u>Cost of Service Collaborative and Adjudication</u>
\$1,117,000	TOTAL

6. Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

PCU has a statutory duty to represent Washington ratepayers in utility proceedings. The additional funding requested will enable PCU to fulfill its duty to represent residential and small

business utility customers in more matters that ultimately impact the rates they pay and the quality of service they receive, such as regulatory proposals regarding new utility business models and proposals that would modify the regulatory framework. PCU estimates that the increased funding will result in an additional benefit to residential and small business customers totaling \$5,000,000 per Fiscal Year.

Relationship to Results Washington:

Goal 2 – Prosperous Economy - Helping to keep utility rates paid by residential and small business customers reasonable and affordable is a positive economic factor for family and business budgets).

Goal 3 – Sustainable Energy and a Clean Environment - Public Counsel will have an enhanced ability (1) to address environmental issues in utility matters, such as issues regarding coal-fired generation and closure of such plant, (2) to advocate for energy efficiency as a clean, low-cost resource, (3) to evaluate and comment on utility resource acquisition plans, and (4) to advocate for appropriate distributed energy policies that benefit customers (e.g., solar).

Goal 5 –Effective, Efficient and Accountable Government - Increasing resources for customer representation will contribute to the responsiveness and effectiveness of the state regulatory process in protecting customers and ensuring fair, just, reasonable, and sufficient rates, adequate service, and the pursuit of clean energy goals.

Performance Measure detail:

Performance Measure (2531): Consumer Utility Rate Savings

Target: \$40,000,000 of consumer utility rate savings or avoidance per biennium, reported annually.

7. Fully describe and quantify expected impacts on state residents and specific populations served.

PCU’s work directly affects millions of Washington residents and their essential services. For example, for energy companies alone:

Puget Sound Energy has over one million customers in Western Washington, primarily in the Puget Sound region;

Avista serves 600,000 customers in Eastern Washington;

Pacific Power & Light serves 126,000 customers in south-central Washington;

Cascade Natural Gas serves 250,000 customers throughout a non-contiguous service territory in Western and south-central Washington; and

NW Natural Gas serves 66,000 customers in Clark County and points along the Columbia River.

PCU represents the interests of these ratepayers and its work impacts the rates these consumers pay and the quality of service they receive.

PCU's advocacy has helped the UTC issue orders that have saved ratepayers millions of dollars annually. For example:

PCU's advocacy helped the UTC reach a decision to deny Avista's 2016 request to increase electric and natural gas rates by \$54 million annually.

PCU similarly advanced residential and small business customers' interests in the 2015 Cascade Natural Gas rate case. Cascade had requested a rate increase of \$10.5 million and the parties, including PCU, negotiated a settlement that increased rates by \$4 million. PCU had a large role in the settlement negotiations and this advocacy helped create ratepayer savings of \$6.5 million.

Another example arises from the 2012 Avista rate case. In that case, PCU's expert witness identified an error in Avista's calculations that increased overall rates by \$1 million (among other issues). Avista acknowledged this mistake during the case. This line-item savings was directly attributable to PCU's advocacy and ability to hire an expert.

Additionally, PCU brought the interests of ratepayers forward in an all-party settlement before the UTC that requires Microsoft to pay a one-time exit fee of approximately \$23.7-million upon leaving PSE's service and obtaining electricity directly from the market. The exit fee will be returned to PSE's remaining ratepayers, including residential and small business customers.

The additional funding requested will enable PCU to participate in more matters, address additional issues, and cover issues in more depth. This additional advocacy will generate added financial benefits for Washington ratepayers in addition to ensuring that consumer interests are taken into account during key policy determinations made by the UTC.

Utility rate cases are comprised of many issues and components, each of which may impact the ultimate decision on how much ratepayers will pay for their necessary service. Some issues, like the rate of return a company will be allowed to earn on its investment, will impact rates by millions of dollars. Due to funding constraints, PCU has not been able to address key issues in rate cases that significantly affect how much consumers pay for their essential services. For example, PCU has presented some cases without addressing the following issues:

Rate of return (investor profit) – PCU is not able to retain rate of return experts in all cases, even though this issue tends to be a primary driver in most rate cases.

Power costs – PCU cannot regularly retain experts to address power production costs, which is a large and complex issue in rate cases and substantially impacts rates.

Cost of service studies – PCU cannot retain experts in all cases to compile or review data necessary to determine how increased rates are allocated among residential, industrial, and commercial customers. This places residential and small business customers at a relative

disadvantage to industrial and commercial customers who consistently benefit from expert analysis and testimony to support their interests.

Utility expenses review (“revenue requirement”) – PCU is not able to retain experts in all cases to sufficiently review and address the broad range of issues impacting utility rates, such as taxes, labor costs, executive compensation, and insurance. Even though PCU often retains an expert to review revenue requirement, our funding constraints often require the expert to limit the review to the largest issues, even though smaller issues will also impact customers.

Additional staff will enable PCU to participate in more utility policy, resource and service provision planning initiatives, low-income assistance planning, and energy efficiency matters. Nearly every utility has advisory groups addressing these matters (integrated resource planning, energy efficiency stakeholder advisory groups, low-income assistance advisory groups), and PCU currently lacks the resources to work on these issues for all regulated utilities. Out of necessity, PCU has focused on advisory groups for Puget Sound Energy and Avista, but the other Washington utilities often receive a less thorough review and enjoy much less engagement. Engagement in the advisory groups is valuable because PCU becomes aware of utility proposals and plans and the utilities become aware of potential challenges through feedback. Because engagement typically results in better outcomes once issues are brought to the UTC for determination, PCU’s inability to fully engage with each of the regulated utilities hinders our ability to advocate on behalf of Washingtonians.

8. What are other important connections or impacts related to this proposal?

Impact(s) To:		Identify / Explanation
Regional/County impacts?	YES	Regional impact depends on the utility involved: Puget Sound Energy has over 1-million customers in Western Washington, primarily in the Puget Sound region; Avista serves 600,000 customers in Eastern Washington; Pacific Power & Light serves 126,000 in south-central Washington including Yakima and Walla Walla Counties; Cascade Natural Gas serves 250,000 customers in a non-contiguous service territory throughout Western and south-central Washington; and NW Natural Gas serves 66,000 customers in Clark County and points along the Columbia River.
Other local gov’t impacts?	NO	
Tribal gov’t impacts?	NO	

Other state agency impacts?	YES	This request impacts the UTC, which is the administrative agency for Fund 111 (Public Service Revolving Account).
Responds to specific task force, report, mandate or exec order?	NO	
Does request contain a compensation change?	NO	
Does request require a change to a collective bargaining agreement?	NO	
Facility/workplace needs or impacts?	NO	
Capital Budget Impacts?	NO	
Is change required to existing statutes, rules or contracts?	NO	
Is the request related to or a result of litigation?	NO	
Is the request related to Puget Sound recovery?	NO	
Identify other important connections	NO	

9. Please provide a detailed discussion of connections/impacts identified above.

This additional funding request is supported by Washington’s labor, environmental, and business communities. The following is the AGO’s current understanding of stakeholder positions:

UTC: Public Counsel is a statutory party to UTC proceedings as legal counsel representing residential and small business customer interests in the regulatory process. Public Counsel’s advocacy adds significant value to UTC regulatory proceedings by presenting legal and factual analysis and recommendations on behalf of captive residential and small business customers. Public Counsel is the only party that comprehensively brings the perspective and interests of these customers before the UTC and Public Counsel’s advocacy helps to ensure a balanced and comprehensive record on which the UTC can base its decision. While the UTC has been

concerned about the sufficiency of resources in the Public Service Revolving Account, Public Counsel is hopeful for general UTC support, or non-opposition.

The following organization supported similar funding requests in 2016 and 2017:

Washington State Labor Council (Labor / Middle-income Advocates)
Washington Environmental Council (Environmental)
Industrial Customers of NW Utilities (ICNU) (Industrial Customers)
Washington Retail Association (Business Community)
Washington State Heating, Ventilation & Air Conditioning Contractors Association (WA HVACCA) (Business Community)

The following organizations are expected to be supportive of, or not oppose, the request:

Northwest Industrial Gas Users (NWIUGU) (Industrial Customers)
The Energy Project (Consortium of Community Action Agencies) (Low-income Advocates)
Spokane Neighborhood Action Partners (SNAP; Community Action Agency) (Low-income Advocates)
Northwest Energy Coalition (Environmental)
Sierra Club (Environmental)

10. What alternatives were explored by the agency and why was this option chosen?

PCU explored using temporary or rotational staff from other AGO divisions. However, the PCU has a statutory obligation to appear for the public in utility regulatory matters. The subject matter is specialized and technical, and the increased volume of work has been, and is expected to continue to be, ongoing. As a result, temporary or rotational staff from other AGO divisions will not meet the need for additional staff. Additional resources are needed to hire staff to be trained in this specialized field.

The specialized subject matters involved in utility regulation include accounting, economics, finance, engineering, power costs, and rate spread/rate design. PCU must retain expert witnesses with sufficient training and experience to effectively advocate for residential and small business ratepayers. Additional funds are needed for the expert witnesses.

Funding for PCU comes solely from the Public Service Revolving Account (Fund 111), which is especially earmarked to pay for regulation of utility companies. Revenue into the fund comes from assessments on utility company revenues. The utilities collect the assessment from their customers in rates. PCU does not receive an appropriation of General Fund dollars.

11. What are the consequences of not funding this request?

PCU's workload has steadily increased in frequency and scope of issues. At the current funding levels, absent the requested FTEs and expert witness funds, PCU will be unable to adequately or effectively represent utility customers in all necessary cases and issues. The additional funding

will have a direct positive impact on PCU's ability to cover more issues, develop broader expertise, and participate in more matters, which in turn will have positive financial (e.g., rate savings) and policy benefits for customers.

Parties in utility cases present their evidence through experts in accounting, economics, financial analysis, engineering, and power cost analysis. Limited expert witness funding has increasingly meant that PCU is not able to evaluate or challenge the expert analysis presented by utilities and other parties. This means that residential and small business ratepayer interests are not fully addressed in rate cases and other regulatory matters. The additional expert witness funding will allow PCU to remedy that shortfall to adequately and effectively represent ratepayers, which will lead to better outcomes for Washington ratepayers.

12. How has or can the agency address the issue or need in its current appropriation level?


The AGO is unable to address these issues within the current appropriation level.

13. Other supporting materials: Please attach or reference any other supporting materials or information that will help analysts and policymakers understand and prioritize your request.

Not Applicable.

14. Information Technology

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.) Note: If the answer is yes, AGO Divisions should contact AGO ISD and AGO Budget. AGO ISD will coordinate with the OCIO as necessary.

IT Addendum

Part 1: Itemized IT Costs

Please itemize any IT-related costs, including hardware, software, services (including cloud-based services), contracts (including professional services, quality assurance, and independent verification and validation), or IT staff. Be as specific as you can. (See chapter 12.1 of the operating budget instructions for guidance on what counts as “IT-related costs”)

Information Technology Items in this DP	FY 2018	FY 2019	FY 2020	FY 2021
Telephony	5,447	2,796	2,796	2,796
PC Hardware	5,463	2,850	2,850	2,850
Licensing	1,221	1,221	1,221	1,221
CTS Services	658	658	658	658
Total Cost	12,788	7,525	7,525	7,525

Part 2: Identifying IT Projects

If the investment proposed in the decision package is the development or acquisition of an IT project/system, or is an enhancement to or modification of an existing IT project/system, it will also be reviewed and ranked by the OCIO as required by RCW 43.88.092. The answers to the three questions below will help OFM and the OCIO determine whether this decision package is, or enhances/modifies, an IT project:

- Does this decision package fund the development or acquisition of a new or enhanced software or hardware system or service? Yes No
- Does this decision package fund the acquisition or enhancements of any agency data centers? (See [OCIO Policy 184](#) for definition.) Yes No
- Does this decision package fund the continuation of a project that is, or will be, under OCIO oversight? (See [OCIO Policy 121](#).) Yes No

If you answered “yes” to any of these questions, you must complete a concept review with the OCIO before submitting your budget request. Refer to chapter 12.2 of the operating budget instructions for more information.

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TAB C

SUMMARIZED
REVENUE REPORT



State of Washington

Summarized Revenue by Account and Source

Budget Period: 2017-19
 Dollars in thousands
 100 - Office of Attorney General
 Agency Level
 18 - 2018 Supplemental Budget Request
 Supporting Text Excluded

10/9/2017
 10:35AM

	Maintenance Level		Performance Level		Biennium Totals		Total
	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	
001 - General Fund							
LA - AAG Recruitment and Retention				76			
MQ - Medicaid Fraud Technical Correction	870	1,106					
Total - 0393 - Health & Human Svc - F	870	1,106		76	870	1,182	2,052
001 - General Fund - Federal	870	1,106		76	870	1,182	2,052
Total - 001 - General Fund	870	1,106		76	870	1,182	2,052
405 - Legal Serv Rev Acct							
LA - AAG Recruitment and Retention				10,702			
MK - Adult Protective Services-Everett	233	237					
ML - EWU Legal Services	233	237					
MM - Boldt Litigation	358	47					
MN - School Employees' Benefits Board	575	584					
MP - Skagit River Bridge Litigation		1,113					
MR - Mental Health Services/Trueblood	466	474					
MS - Bellingham Office Relocation	412	9					
MT - Madison v. OSPI Litigation	269	313					
Total - 0420 - Charges for Services - S	2,546	3,014		10,702	2,546	13,716	16,262
405 - Legal Serv Rev Acct - State	2,546	3,014		10,702	2,546	13,716	16,262
Total - 405 - Legal Serv Rev Acct	2,546	3,014		10,702	2,546	13,716	16,262
100 - Office of Attorney General - State	2,546	3,014		10,702	2,546	13,716	16,262
100 - Office of Attorney General - Federal	870	1,106		76	870	1,182	2,052
Total - 100 - Office of Attorney General	3,416	4,120		10,778	3,416	14,898	18,314

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TAB D

NEW OR INCREASED
FEES



Request for New or Increased Fees

- Not Applicable -

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TAB E

OTHER REQUIRED
INFORMATION



2018 Supplemental Budget Request

ELECTRONIC SUBMITTAL CONFIRMATION FORM

Agency Number: 100

Agency Name: Attorney General's Office

Agencies are required to provide electronic access to each decision package in their budget request as part of the submittal process. Confirm Option 1 or 2 below:

Option 1: (Preferred)

- This agency posts all decision packages for our 2017–19 budget request to our public-facing website at the following URL:

URL: [http:// www.atg.wa.gov/Budget.aspx](http://www.atg.wa.gov/Budget.aspx)

Option 2:

- This agency does not post decision packages and has forwarded copies via e-mail to OFM.Budget@ofm.wa.gov.

These decision packages conform to our agency's ADA accessibility compliance standards.

Agency contact: Brendan VanderVelde, Budget Director

Contact phone: (360) 586-2104

Contact email: brendanV@atg.wa.gov

Date: 10/9/2017

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