

FY2009 SUPPLEMENTAL
BUDGET PROPOSAL

OFFICE OF THE
ATTORNEY GENERAL





Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

October 17, 2008

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

Dear  Victor

Enclosed is the Attorney General's Office 2009 Supplemental Budget Request. In acknowledgement of the current economic climate, we have ongoing review of all our operations. This request is limited to critical agency litigation needs. Working within these constraints, we will continue to provide the best possible legal services for our clients and the citizens of the State of Washington.

The requests in this budget are all litigation related needs before the State of Washington. They include:

- Boldt-Culverts Case Continuation
- *Moore et. al. vs. Health Care Authority* Litigation
- Elections and Voting Rights Litigation
- U.S. Department of Labor Overtime Litigation
- *Stormans et. al. vs. Department of Health* Litigation
- Medicaid Fraud Control Unit Budget

If you have any questions about this budget request, please contact Mike Bigelow, Chief of Staff, at (360) 664-9081. Thank you for your assistance and continued cooperation.

Sincerely,


ROB MCKENNA
Attorney General

RMM
Enclosure

cc: Mike Bigelow, Chief of Staff, Attorney General's Office
Michelle Underwood, Director, Financial Services Division, Attorney General's Office



FY2009 SUPPLEMENTAL
BUDGET PROPOSAL

SECTION A

OVERVIEW



AGO MISSION, VISION AND VALUES

AGO MISSION

AS AN INDEPENDENT CONSTITUTIONAL OFFICE, AND LEGAL COUNSEL TO STATE GOVERNMENT, WE SERVE THE CITIZENS OF WASHINGTON WITH THE HIGHEST STANDARDS OF EXCELLENCE, ETHICS AND EFFECTIVENESS.

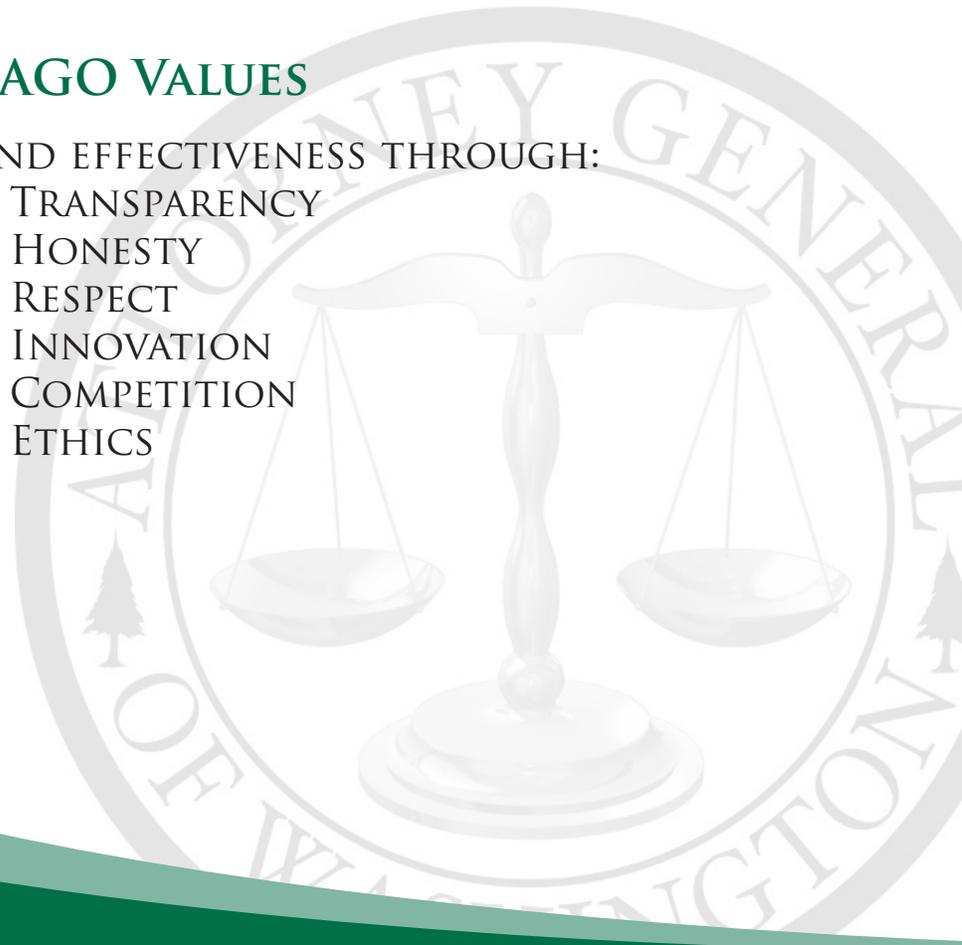
AGO VISION

FOR THE OFFICE OF THE ATTORNEY GENERAL TO BE RECOGNIZED AS THE BEST PUBLIC LAW OFFICE IN THE UNITED STATES.

AGO VALUES

EXCELLENCE AND EFFECTIVENESS THROUGH:

- › TRANSPARENCY
- › HONESTY
- › RESPECT
- › INNOVATION
- › COMPETITION
- › ETHICS



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SECTION B

RECOMMENDATION
SUMMARY



State of Washington
Recommendation Summary

Agency: 100 Office of Attorney General

2:14:35PM
 10/15/2008

Dollars in Thousands	FY2 FTEs	General Fund State	Other Funds	Total Funds
2007-09 Current Biennium Total				
Total Carry Forward Level				
Percent Change from Current Biennium				
Carry Forward plus Workload Changes				
Percent Change from Current Biennium				
M2 AA Boldt-Culverts Case Litigation	6.0		975	975
M2 AB Moore et al v HCA Litigation	4.0		1,246	1,246
M2 AC US Dep of Labor Overtime Litigation			84	84
M2 AD Stormans et al v DOH Litigation	2.0		328	328
M2 AE Election & Voting Rights Litigation	0.3		150	150
M2 AG Medicaid Fraud Unit Workload		61	282	343
Total Maintenance Level	12.3	61	3,065	3,126
Percent Change from Current Biennium				
Subtotal - Performance Level Changes	0.0			
2007-09 Total Proposed Budget	12.3	61	3,065	3,126
Percent Change from Current Biennium				

M2 AA Boldt-Culverts Case Litigation

The Office of the Attorney General (AGO) requests \$975,000 and 6.0 FTEs in FY2009 to fund legal services for settlement negotiations already undertaken this fiscal year and for anticipated litigation concerning the remedy phase of United States v. Washington, Subproceeding 01-1 (also known as the Culverts or Boldt Phase 2 case).

M2 AB Moore et al v HCA Litigation

The Office of the Attorney General (AGO) requests \$1,246,000 and 4.0 FTEs in FY2009 to fund continuing legal services related to a major class action lawsuit against the Health Care Authority (HCA) entitled Moore, et al v. Health Care Authority.

M2 AC US Dep of Labor Overtime Litigation

The Office of the Attorney General (AGO) requests \$84,000 to fund legal services in response to United States Department of Labor (US DOL) enforcement actions. The potential exposure to the State of Washington can be up to \$65,000,000 dollars - the Department of Social and Health Services (DSHS) estimated exposure is \$40 million dollars and the Department of Corrections (DOC) estimated exposure is \$25 million dollars. There is also the potential for prejudgment interest.

M2 AD Stormans et al v DOH Litigation

The Office of the Attorney General (AGO) requests \$328,000 and 2.0 FTEs in FY2009 to fund legal services for the Department of Health (DOH) for defense in the Stormans, Inc., et al. v. Mary Selecky, et al. lawsuit. This case is scheduled for a ten day trial in the Western District Court in April 2009, and a portion of the case is currently pending before the Ninth Circuit Court of Appeals.

M2 AE Election & Voting Rights Litigation

The Office of the Attorney General (AGO) requests \$150,000 and 0.3 FTEs in FY2009 to fund legal services for the Office of the Secretary of State (SEC) for litigation costs for major lawsuits: State v. State Republican Party, Republican Party v. Reed, Republican Party v. Logan and Washington State Grange v. Washington State Republican Party (all Initiative 872 appeal cases with interchangeable names depending on the level of litigation). It also provides one-time funds for the SEC and the Department of Corrections (COR) to reimburse the AGO for costs associated with voting rights for felon litigation.

M2 AG Medicaid Fraud Unit Workload

The Office of the Attorney General (AGO) requests \$342,966 for the Medical Fraud Control Unit (MFCU) for Federal Fiscal Year (FFY) 2009. This request will align the state appropriated authority with the FFY09 grant award requested.

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BUDGET PROPOSAL

SECTION C

DECISION
PACKAGES



State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AA Boldt-Culverts Case Litigation
Budget Period: 2007-09
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$975,000 and 6.0 FTEs in FY2009 to fund legal services for settlement negotiations already undertaken this fiscal year and for anticipated litigation concerning the remedy phase of United States v. Washington, Subproceeding 01-1 (also known as the Culverts or Boldt Phase 2 case).

Fiscal Detail

Operating Expenditures	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		975,000	975,000
Total Cost		975,000	975,000

Staffing	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2 FTEs</u>
FTEs	.0	6.0	6.0

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		975,000	975,000
Total Revenue			975,000	975,000

Package Description:

This request is for \$975,000 and 3.0 Assistant Attorneys General (AAGs), 2.0 Paralegals (PLs), and 1.0 Legal Assistant (LA) in FY2009.

In January 2001, Indian Tribes with treaty fishing rights in Western Washington, along with the United States, filed an action in which they asked the federal district 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 that 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.

It is not possible to provide legal services for this case by reprioritizing within existing client agency budgets without significant adverse impacts on five state agencies. This would require the reduction or elimination of legal services from their already-constrained budgets, increase the likelihood of other legal issues arising in other programs, and increase the potential for accelerated capital costs for culvert replacement.

On August 22, 2007, the court granted summary judgment in the plaintiffs' favor. The court held that 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 that the state currently owns and operates culverts violating this duty. The court did not order a remedy. Instead, it held that issue over for trial.

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The parties agreed to try to negotiate a settlement of the remedy phase of the case. Following an extensive effort, including the use of a court-appointed mediator, the parties were unable to reach agreement and asked the court to set a trial date on the remedy. We anticipate the trial will be set sometime between May and October 2009. This case can potentially lead to a multi-billion dollar expenditure for corrective construction state-wide.

Funding this request will enable the state to prepare for trial, and effectively defend the state's interests.

The FY2008 funding was split among the five affected agencies based on culvert ownership, agency involvement with regulatory issues, and agency missions. It is assumed this request will be distributed to the participating affected agencies using the same percentages:

- 45% Department of Transportation (WSDOT)
- 35% Department of Natural Resources (DNR)
- 13% Department of Fish and Wildlife (WDFW)
- 5% Department of Ecology (DOE)
- 2% Parks and Recreation Commission (Parks)

In 2008, the legislature appropriated \$351,000 and the total expenditures were \$276,762. The remainder of the appropriation lapsed on June 30, 2008.

This case has significant financial ramifications for state agencies (WSDOT, WDFW, DNR, Parks, and DOE) as well as the taxpayers. Current estimates are that the cost to repair all deficient State culverts involved in the case will exceed \$3 billion. High quality legal representation is necessary to ensure that a reasonable solution is achieved. There are more than thirty attorneys representing the Tribes in this matter.

The AGO subject matter expert for this request is Sarian Scott, (360) 586-2104.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The desired result of this request is to reach a reasonable cost-effective resolution to the Boldt Case, and to ensure that the state is well-positioned for appeal. With possible repercussions totalling in the multi-billion dollar amounts, the funding of an effective legal team in FY2009 is imperative to control expenses in the future.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

Incremental Changes

No measures submitted for package

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan-"Provide efficient and effective representation to our client agencies."

The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions. This request is critical to the programs and activities of five state agencies (WSDOT, DNR, WDFW, State Parks, and DOE).

Does this decision package provide essential support to one of the Governor's priorities?

Yes, this request addresses three of the Governor's priorities: One Washington (recognizing our diverse heritage), Building a Safe and Efficient Transportation System, and Concern for Our Environment.

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Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

This request makes a key contribution to a number of state-wide Priorities of Government results including: Improving State-wide Mobility, Improving the Quality of Washington's Natural Resources, and Improving Cultural and Recreational Opportunities.

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

The AGO received \$885,000 in the 2001-2003 biennium to begin trial work. Trial work began with extensive motion practice and the completion of two rounds of written discovery. A total of \$379,000 was expended for motion preparations and document production. The remaining appropriation amount lapsed.

The AGO received \$863,000 in the 2003-2005 biennium to continue trial work. Expenditures were lower than anticipated due to our focus on settlement negotiations through August 2004. Expenditures were \$281,734 through June 2005. The remaining appropriation amount lapsed.

The AGO received \$941,000 for the 2005-2007 biennium to continue trial work, and expended \$478,068 through June 2007. The remaining appropriation amount lapsed.

The legislature appropriated \$351,000 for FY2008 to continue the case, but did not appropriate any funds for FY2009. Total expenditures for FY2008 were \$276,762. Funding is needed in FY2009 to litigate the remedy phase of the litigation, to cover costs already incurred in the settlement negotiations, and to cover any appellate work on the case. Funding this phase of the litigation will help ensure that the remedy imposed by the court is reasonable, and to ensure the state's rights are protected at the trial court level and in any appeal.

The AGO and client agencies conducted extensive settlement negotiations, including court-ordered mediation. Those negotiations did not result in a settlement of the litigation, and the parties have asked the court to set a date for a trial on the remedy. Therefore, the AGO requests legal services funding to adequately defend the state's interest during the remedy phase of the case, and during any appeal.

What alternatives were explored by the agency, and why was this alternative chosen?

The agencies involved and the AGO believe there is no feasible option to the proposed budget request due to higher cost, increased risk, and the undesirable precedent of the state not actively protecting the legal interests of taxpayers. Without this funding the options are:

- * Do not contest the remedy requested by the Tribes, and face a potential judgment requiring expenditure of billions of dollars over a five-year period.
- * Require AGO staff currently providing legal services for other activities and programs in these five agencies to handle the remedy and appellate phases of the case. This would result in a variety of legal complications in the other agency programs, with the likely effect of additional legal issues and litigation in the future that could have been avoided. It would also not avoid costs associated with litigating the remedy phase of the case, including expert costs, and any appeals.

What are the consequences of not funding this package?

The State of Washington will be at risk of accepting liability for a multi-billion dollar settlement, or entering into litigation ill-prepared. The legal services budgets of the responsible state agencies (WSDOT, DNR, WDFW, State Parks, and DOE) would be over-extended with the result that legal services for other needs would not receive the attention they also require.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and revenue calculations and assumptions

None.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

All appropriations for this matter are considered one-time costs. Costs will continue until the case is finally resolved.

It is estimated that there is a high probability that this case will go to trial. Court dates are projected between May and October 2009. The scope and legal services costs of this significant case are far beyond the capability of the AGO to address with existing staff through reprioritizing workload.

<u>Object Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
A Salaries And Wages		446,863	446,863
B Employee Benefits		125,122	125,122
C Personal Service Contracts		150,000	150,000
E Goods And Services		221,015	221,015
G Travel		30,000	30,000
J Capital Outlays		2,000	2,000
Total Objects		975,000	975,000

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AB Moore et al v HCA Litigation
Budget Period: 2007-09
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$1,246,000 and 4.0 FTEs in FY2009 to fund continuing legal services related to a major class action lawsuit against the Health Care Authority (HCA) entitled Moore, et al v. Health Care Authority.

Fiscal Detail

Operating Expenditures	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		1,246,000	1,246,000
Total Cost		1,246,000	1,246,000

Staffing	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2 FTEs</u>
FTEs	.0	4.0	4.0

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		1,246,000	1,246,000
Total Revenue			1,246,000	1,246,000

Package Description:

This request is for \$1,246,000, 2.2 Assistant Attorney Generals (AAGs) and 1.8 Paralegals (PLs) associated with legal expenses in the Moore, et al v. Health Care Authority case. Contract costs of a Special Assistant Attorney General (SAAG) experienced in class actions and employment law, on-going contract costs for data analysis experts, and other support costs are assumed.

Work on Moore v. Health Care Authority began when it was filed in July 2006 by Bendich, Stobaugh & Strong, PC, a firm with substantial experience and success in prosecuting class actions for employee benefits. The state collected and analyzed payroll data from a number of discrete payroll systems to determine the range of potential liability. It also produced large payroll data sets and voluminous collections of other documents to plaintiffs. Through FY2008, legal services and document preparation for this case have totalled \$1,410,729 (including \$747,558 directs).

Filed in the King County Superior Court, this class action is seeking damages from the state related to health care benefits for part-time employees in many state agencies and institutions. The desired outcome of the lawsuit is to reach equitable resolution to the lawsuit with minimal financial impact to the state.

HCA is the primary named defendant, but the claims are based on the role of other state agencies and institutions as employers. Many state agencies and institutions are obliged and have identified and preserved documents. This includes electronic data and documents which have been provided to plaintiffs' attorneys. HCA is the named defendant because of its role as the administrator for the provision of health care benefits to all state employees. This is the case even though legal services are being broadly provided too many agencies and institutions.

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A small portion of this request (0.2 AAG out of the 2.2 AAGs requested) relates to legal advice associated with HCA's rulemaking and the defense of a separate case brought by the plaintiffs in this case concerning the disclosure of public records.

The AGO subject matter expert for this request is Sarian Scott, 360-586-2104.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The desired result of this request is to reach a cost-effective resolution to this case and to avoid further litigation. With possible repercussions totaling in the multi-million dollar amounts, the funding of an effective legal team in FY2009 is imperative to reduce expenses in the future.

The case may not settle, however. Consequently, in this request we project expenditures based on an assumption that the case will be tried. In addition to attorney time and paralegal time through the end of FY2009, this assumption requires funding of \$200,000 for expert witness fees, deposition charges and direct costs.

Many state agencies and institutions received litigation hold notices and requests for data and documents related to this lawsuit. There is no funding included in this request to defray the costs of document preservation experienced by affected state agencies. The affected agencies will be expected to manage those costs within their own budgets.

The outcome of the action will affect how decisions are made regarding when part-time state employees are eligible for state-paid insurance benefits and likely will have significant fiscal impacts.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

Incremental Changes

No measures submitted for package

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan-"Provide efficient and effective representation to our client agencies."

The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions.

This request is critical in order to respond to the broad class action lawsuit with major implications for many state agencies and institutions.

Does this decision package provide essential support to one of the Governor's priorities?

Yes, this case is directly relevant to the Governor's Priority of Holding Government Accountable, and the element of that priority titled "The Right Employees in the Right Jobs".

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Yes, this request ties directly to POG #10, Strengthen Government's Ability to Achieve Results Efficiently and Effectively. Employee recruitment and retention is a specific aspect of the POG.

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

Once the class in this lawsuit was certified in June 2007, it became clear that legal costs to continue this case to its resolution will be significant.

This case has involved massive document production, extensive, complex data analysis, and extraordinary expenses related to issues surrounding the class certification. Drafting motions, responses to motions, and other pleadings, and participation in oral argument have taken substantial time

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of AGO legal staff and of the SAAGs.

The enormous expense associated with defending this matter far exceeds the limited legal services funding available to the HCA. This requirement is taxing funding which is needed to provide other legal services in support of HCA programs and activities.

What alternatives were explored by the agency, and why was this alternative chosen?

This case must be defended vigorously because of the large potential damages that might be awarded. There are no viable alternatives to defending this case. If all defense costs were to be contracted to private sector law firms, the costs would increase at least 100 percent.

What are the consequences of not funding this package?

If defense of the case is not adequately funded, the state may face court sanctions and will be affected by an adverse judgment, possibly including doubled damage awards and separate attorney fee awards.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

HCA will engage in rulemaking to clarify ambiguities in existing Washington Administrative Code (WAC) and policies regarding the eligibility of state employees for health care benefits.

An amendment to the Revised Code of Washington probably will be needed to fully implement the WAC changes, based on court rulings in the present action that restrict the rule making authority of HCA and also depending on policy choices to be made by the state regarding the issue.

Expenditure and revenue calculations and assumptions

None.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

The costs are one-time until the case is finally resolved through court action or settlement.

It is possible that the case may be concluded by the end of the 2007-2009 biennium, but complications or appeals could delay that final resolution.

<u>Object Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
A Salaries And Wages		318,052	318,052
B Employee Benefits		89,055	89,055
C Personal Service Contracts		705,865	705,865
E Goods And Services		78,314	78,314
G Travel		24,714	24,714
J Capital Outlays		30,000	30,000
Total Objects		1,246,000	1,246,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AC US Dep of Labor Overtime Litigation
Budget Period: 2007-09
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$84,000 to fund legal services in response to United States Department of Labor (US DOL) enforcement actions. The potential exposure to the State of Washington can be up to \$65,000,000 dollars - the Department of Social and Health Services (DSHS) estimated exposure is \$40 million dollars and the Department of Corrections (DOC) estimated exposure is \$25 million dollars. There is also the potential for prejudgment interest.

Fiscal Detail

Operating Expenditures	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		84,000	84,000
Total Cost		84,000	84,000

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		84,000	84,000
Total Revenue			84,000	84,000

Package Description:

This request is for \$84,000 to retain a Special Assistant Attorney General (SAAG) with expertise in the defense of US DOL enforcement actions. Resources to assist in representing the DOC and DSHS are also required. The legal defense provided by the SAAG is required to obtain an accurate understanding of workplace practices, and whether and how much uncompensated overtime may have been incurred.

The US DOL conducted audits at both DSHS and DOC to gauge their compliance with the Fair Labor Standards Act. The audit found noncompliance with the recordkeeping and overtime provisions of the law. The US DOL has filed an enforcement action against each agency in federal court. DOC liability is for 800 employees, and DSHS liability is for 1,200 employees.

The AGO needs to represent the agencies in these cases and this will involve a substantial amount of discovery as well as requiring significant legal resources.

The AGO subject matter expert for this request is Sarian Scott, 360-586-2104.

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Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The result of this request is to enable a SAAG to become involved in enforcement action against DOC and DSHS by the US DOL. This is necessary to provide consistent and quality representation to DOC and DSHS, and to help achieve timely and appropriate outcomes for the agencies in these cases.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

Incremental Changes

No measures submitted for package

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan-"Provide efficient and effective representation to our client agencies."

The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions.

Does this decision package provide essential support to one of the Governor's priorities?

Yes, the Governor's priority of holding state agencies accountable for delivering results - showing Washingtonians how their tax dollars are being spent and asking them if state government is successfully addressing their concerns.

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Yes, a state priority of government is to strengthen government's ability to achieve results efficiently and effectively.

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

This request is related to a legal matter and is supported by both DOC and DSHS.

What alternatives were explored by the agency, and why was this alternative chosen?

There is no option or alternative for funding this request. The AGO does not currently have this SAAG specialty on staff to meet the expected needs of the litigation, and the clients will benefit from the expertise offered by the SAAG.

What are the consequences of not funding this package?

The AGO will not be able to provide the best possible representation to the client agencies in cases that have potential liability of approximately \$65 million dollars.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

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None.

Expenditure and revenue calculations and assumptions

The trials in these cases are scheduled for late 2009 through 2010.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

Costs are expected to be ongoing and will need to be funded in the next biennium as well.

<u>Object Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
C Personal Service Contracts		84,000	84,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AD Stormans et al v DOH Litigation
Budget Period: 2007-09
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$328,000 and 2.0 FTEs in FY2009 to fund legal services for the Department of Health (DOH) for defense in the Stormans, Inc., et al. v. Mary Selecky, et al. lawsuit. This case is scheduled for a ten day trial in the Western District Court in April 2009, and a portion of the case is currently pending before the Ninth Circuit Court of Appeals.

Fiscal Detail

Operating Expenditures	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		328,000	328,000
Total Cost		328,000	328,000

Staffing	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2 FTEs</u>
FTEs	.0	2.0	2.0

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		328,000	328,000
Total Revenue			328,000	328,000

Package Description:

This request is for \$328,000 and 1.2 Assistant Attorney General (AAG), 0.3 Paralegal (PL), and 0.5 Office Assistant. In addition, there will be direct costs for depositions, court reporters, and expert witnesses estimated at \$20,000.

This lawsuit is challenging the Board of Pharmacy's rules requiring pharmacies to comply with timely distribution of all lawful medications. This case is scheduled for a ten day trial in the Western District Court in April 2009, and a portion of the case is currently pending before the Ninth Circuit Court of Appeals.

This case has garnered national attention and a large number of organizations have filed amicus briefs, including members of Washington's legislature who have filed opposing briefs. Discovery is underway and is expected to be extensive.

The AGO subject matter expert for this request is Sarian Scott, 360-586-2104.

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Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The desired outcome of this decision package is the successful defense of the rules, so patients will have timely access to prescribed medications. It is an enforcement of existing statutes which will discourage pharmacies from deciding which guidelines they choose to follow. The impact on clients, citizens and services is uniformity in state-recognized pharmacies response to the needs of the public.

This is the defense costs in the lawsuit to defend the Board of Pharmacy's rules as described above. The lawsuit alleges that the rules violate the First Amendment Free Exercise of Religion, equal protection, due process and the Supremacy Clauses.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

Incremental Changes

No measures submitted for package

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan - "Provide efficient and effective representation to our client agencies."

The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions.

Does this decision package provide essential support to one of the Governor's priorities?

This budget request implements the governor's priority to take charge of our health. Her intent is for citizens to have increased access to high quality, affordable health care.

Roadblocks in acquiring medications are not in compliance with this intent.

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Yes, this decision package supports the state-wide Priority of Government to improve the health of Washingtonians.

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

This litigation arises from a rule-making process conducted over two years by the Board of Pharmacy in which there was extensive written and oral comment. There was considerable media attention as the controversy surrounding the rules focused on a specific medication, while the rules themselves address all medications for which timely access is crucial for the patients.

The Governor and many legislators submitted comments on the rules. A number of stakeholders expressed interest in the rules, including the Alliance Defense Fund, the Seattle Archdiocese, Planned Parenthood, Northwest Women's Law Center, and the Pharmacy Association. Those supporting the rule consider it important for access to health care. Those opposed to the rule view it as impeding the free exercise of their religious or moral beliefs.

What alternatives were explored by the agency, and why was this alternative chosen?

The Board weighed options before adopting the rules. Since the lawsuit was filed, the state defendants have been defending the rules.

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What are the consequences of not funding this package?

The Board of Pharmacy and DOH would not be able to fund the defense of this lawsuit and may need to take funds from other programs to defend the lawsuit. The latter choice could be problematic because there is a statutory requirement for the Board of Pharmacy to be self-funded.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and revenue calculations and assumptions

None.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

Costs may continue beyond FY2009 as an appeal may be filed in the Ninth Circuit and possibly the United States Supreme Court would be asked to accept certiori.

<u>Object Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
A Salaries And Wages		136,234	136,234
B Employee Benefits		38,146	38,146
C Personal Service Contracts		20,000	20,000
E Goods And Services		111,020	111,020
G Travel		7,600	7,600
J Capital Outlays		15,000	15,000
Total Objects		328,000	328,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AE Election & Voting Rights Litigation
Budget Period: 2007-09
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$150,000 and 0.3 FTEs in FY2009 to fund legal services for the Office of the Secretary of State (SEC) for litigation costs for major lawsuits: State v. State Republican Party, Republican Party v. Reed, Republican Party v. Logan and Washington State Grange v. Washington State Republican Party (all Initiative 872 appeal cases with interchangeable names depending on the level of litigation). It also provides one-time funds for the SEC and the Department of Corrections (COR) to reimburse the AGO for costs associated with voting rights for felon litigation.

Fiscal Detail

Operating Expenditures	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		150,000	150,000
Total Cost		150,000	150,000

Staffing	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2 FTEs</u>
FTEs	.0	.3	.3

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		150,000	150,000
Total Revenue			150,000	150,000

Package Description:

This request is for \$150,000 and 0.3 Assistant Attorney General (AAG) in FY2009 related to two significant lawsuits that involve the SEC.

Top Two Ballot lawsuits:

This litigation is over Initiative 872 which established a new primary election system known as the Top Two Primary. Initiative 872 passed in the 2004 General Election. The Washington State Republican Party, the Washington State Democratic Central Committee, and the Libertarian Party of Washington challenged the new primary system in 2005. The US District Court ruled in 2005 that the initiative is unconstitutional. That ruling was affirmed by the Ninth Circuit Court of Appeals in 2006. In March 2008, the US Supreme Court ruled in favor of the state in Washington State Grange v. Washington State Republican Party et al, and re-instated I-872. In October 2008, the Ninth Circuit resolved some of the issues in the states favor, and remanded others back to the District Court for additional review consideration. It is anticipated that state political parties will raise new issues to challenge I-872.

This request covers costs in FY2009 for legal expenses for continued review and determination, and for upcoming agreements. Preparation for this case will include attorney time, costs of oral argument preparation, and costs for travel.

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Because the issue in this case relates to civil rights, the prevailing party in the case may be able to recover attorney fees and costs. This request includes handling matters related to recovery of fees and costs. If the state does not prevail in this case, and the court determines that the state must pay attorney fees and costs to the plaintiffs, any award would be in addition to the funding amount in this budget request. In addition, the political parties' remaining claims would be litigated.

The client represented by the AGO in this case is the SEC.

Voting Rights Litigation

Funding is requested for continuing litigation-related expenses in the lawsuit filed by five convicted felons seeking to strike down the state's prohibition of convicted felons being allowed to vote.

The allegation is that the state criminal justice system is discriminatory and the plaintiffs are denied the right to vote on account of race. A summary judgement was entered by the federal district court in the state's favor on July 14, 2006. The plaintiffs have appealed this decision and we are currently awaiting a decision by the Ninth Circuit. We expect that following the decision there will be further expenses, either in the form of a cert petition to the U.S. Supreme Court, or in seeking a rehearing en banc in the Ninth Circuit.

Following that appeal, a petition for certiorari to the United States Supreme Court by the losing party is likely. Any expenses that arise for outside counsel, expert witnesses, document preparation or other costs are assumed to be paid by DOC or the SEC. The case is being aggressively litigated by national interest groups and is a "test case" with nation-wide implications. The plaintiffs are pursuing appeals aggressively, and expenses may continue beyond the end of the current biennium.

Pursuant to the Washington Constitution (Article VI, Section 3) and state statute (RCW 29A.08.520), convicted felons are not allowed to vote unless and until they have had their rights restored (There is a statutory method for doing so.) This challenge to felon disenfranchisement in Washington asserts that because a disproportionate percentage of felons are minorities, and felons are prohibited from voting, the denial of the vote to felons discriminates on the basis of race and therefore violates the federal Voting Rights Act. No court has ever found a state's felon disenfranchisement law in violation of the Voting Rights Act.

The clients represented by the AGO in this case are DOC and SEC. Each agency will be billed half of the legal service expenses actually incurred in this case by the AGO, which is estimated at \$75,000.

The AGO subject matter expert for this request is Sarian Scott, 360-586-2104.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The results of this request will enable the AGO to respond to upcoming litigation and arbitration to resolve the elections and voting rights cases. The goal is for defense attorneys to have sufficient time to work and maximize the opportunity for a favorable resolve.

This case has significant bearing on the election processes of Washington State as administered by the SEC, and the voting rights of inmates under the supervision of the DOC.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

Incremental Changes

No measures submitted for package

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1.0 of the AGO Strategic Plan-"Provide efficient and effective representation to our client agencies."

The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions. This request is critical to the responsibilities of the SEC and DOC.

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Does this decision package provide essential support to one of the Governor's priorities?

Yes, the governor addresses the priority of protecting our civil rights as a priority. These cases are based on constitutional and discriminatory rights.

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Yes, this request ties directly to POG #10, Strengthen Government's Ability to Achieve Results Efficiently and Effectively.

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

None.

What alternatives were explored by the agency, and why was this alternative chosen?

There is no alternative to responding to this lawsuit and any appeals in a prompt and adequate manner. Funding is not available within the legal services allocations of either the SEC or DOC to support these major lawsuits.

What are the consequences of not funding this package?

SEC and COR may need to reduce spending in other program areas to cover these legal service costs.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and revenue calculations and assumptions

None.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

The costs of legal defense will continue until all appeals are completed, which may require funding in the future.

<u>Object Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
A Salaries And Wages		25,020	25,020
B Employee Benefits		7,006	7,006
C Personal Service Contracts		76,905	76,905
E Goods And Services		37,319	37,319
G Travel		1,500	1,500
J Capital Outlays		2,250	2,250
Total Objects		150,000	150,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AG Medicaid Fraud Unit Workload
Budget Period: 2007-09
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$342,966 for the Medical Fraud Control Unit (MFCU) for Federal Fiscal Year (FFY) 2009. This request will align the state appropriated authority with the FFY09 grant award requested.

Fiscal Detail

Operating Expenditures	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
001-1 General Fund - Basic Account-State		60,795	60,795
001-2 General Fund - Basic Account-Federal		282,171	282,171
Total Cost		342,966	342,966

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
001 General Fund	0393 Health & Human Svc		282,171	282,171
Total Revenue			282,171	282,171

Package Description:

This request is for \$342,966 to increase the AGO MFCU budget for the FFY09 grant period (October 1, 2008 through June 30, 2009) that occurs in SFY2009. This request assumes 75% federal funding to 25% state match.

This money will fund the criminal investigation and prosecution of fraudulent activity by Medicaid providers and pharmaceutical companies. In the last four years MFCU has recovered over \$39 million in restitution and penalties. Of that amount, \$6.7 million was returned to the General Fund as penalties. In the 2008 calendar year to date, MFCU has recovered \$2.7 million in penalties for the General Fund.

The AGO submitted a FFY09 grant application on August 11, 2008, which requested more funds than currently appropriated. The additional funds will address the increasing technology demands created by more technologically sophisticated Medicaid providers and the increase in document production created by an increasing number of investigations and prosecutions.

The new technology requires a specific type of forensic technology training to enable the investigators to analyze data obtained through forensic computer seizures and to testify in court as to the evidence contained within the data. Also, to keep up with the increase in the number of cases MFCU is receiving, the MFCU must begin to export some of the document and data reproduction to outside sources.

The AGO subject matter expert for this request is Sarian Scott, 360-586-2104.

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Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

Funding will allow the MFCU to continue to conduct their responsibilities to citizens of the state, which include:

* Developing a program that emphasizes investigation and prosecution of long term care facilities housing Medicaid recipients by FY2009. This will protect the vulnerable adults living in these facilities along with the health care dollars spent on them.

* Developing and maintaining expertise in the investigation and prosecution of increasingly sophisticated technology, including the use of on site servers and electronic accounting, and health care file maintenance. As the health care offices use increasing technology, the MFCU must maintain the expertise to investigate, seize and analyze data maintained in this way. Such technology also requires the investigator to have additional expertise to testify at trials in a prosecution.

* Developing and maintaining expertise in the investigation and data analysis of pharmaceutical fraud by large corporations by FY2009. This is a growing area in which our investigators are increasingly involved with case investigation and data collection for nationwide global NAMFCU (National Association of Medicaid Fraud Control Unit) teams.

* Maintaining sufficient staff in the MFCU to assure that it meets the demands on the system as the number of providers and claimants grow with the aging of the population by FY2009. As staff is lost to outside employers, training and expertise that takes years to develop is lost.

* Increasing resources required for trial preparation to increase the number of cases prepared for trial. Also, to increase the penalties assessed against fraudulent providers.

* Increased investigation and prosecution, which will lead to more accountability for public health care providers and will protect taxpayer money by discouraging fraud at the outset.

Performance Measure Detail

Activity: A009 Investigation and Prosecution of Medicaid Fraud and Resident Abuse

Incremental Changes

No measures submitted for package

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request implements goal #1 of the AGO Strategic Plan-"Provide efficient and effective representation to our client agencies."

The AGO provides a broad range of legal services to over 230 state agencies to enable them to achieve their missions.

Does this decision package provide essential support to one of the Governor's priorities?

Yes, the Governor's priority to focus on performance by state agencies would include the responsibilities to the community that the MFCU perform.

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

Yes, the state's priority to improve the security of Washington's vulnerable citizens would include the responsibilities to the community that the MFCU perform.

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

MFCU receives referrals from the Department of Social and Health Services, the Department of Labor and Industries, the Department of Health, the Federal Office of the Inspector General, health care providers, health care staff and citizens, all of whom expect the MFCU to investigate and

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prosecute fraud in this system.

This money is related to all of the legal cases currently pending and those cases the MFCU expects to receive in FY2009.

The money is related to increasing efficiency, increasing the numbers of investigations and prosecutions and to increasing the focus on protecting taxpayer money and our vulnerable citizens.

What alternatives were explored by the agency, and why was this alternative chosen?

There are no alternatives. Not funding this request would be a disservice to citizens of the state of Washington. If the additional funds are not received, it will be a challenge for the MFCU to process the electronic data that is maintained by health care providers or present such evidence in court which will result in fewer recoveries.

Without this necessary funding, it will take the MFCU longer to process document intensive cases resulting in fewer cases processed in a year. This would also result in fewer recoveries.

What are the consequences of not funding this package?

The consequences of not funding are uncontested exploitation of the health care money and taxpayers.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and revenue calculations and assumptions

None.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

These costs are ongoing and will continue into the 2009-11 biennium as does the FFY09 grant period.

<u>Object Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
A Salaries And Wages		64,000	64,000
B Employee Benefits		10,000	10,000
E Goods And Services		185,966	185,966
G Travel		36,000	36,000
J Capital Outlays		47,000	47,000
Total Objects		342,966	342,966

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FY2009 SUPPLEMENTAL
BUDGET PROPOSAL

SECTION D

REVENUES



State of Washington

Summarized Revenue by Account and Source

Budget Period: 2007-09
 100 - Office of Attorney General
 2:36PM
 Agency Level
 03 - FY2009 Supplemental Request
 Supporting Text Included

10/15/2008
 Dollars in thousands

	Maintenance Level		Performance Level		Biennium Totals		Total
	FY2008	FY2009	FY2008	FY2009	FY2008	FY2009	
001 - General Fund							
AG - Medicaid Fraud Unit Workload		282					
Total - 0393 - Health & Human Svc - F		282				282	282
001 - General Fund - Federal		282				282	282
Total - 001 - General Fund		282				282	282
405 - Legal Serv Rev Acct							
AA - Boldt-Culverts Case Litigation		975					
AB - Moore et al v HCA Litigation		1,246					
AC - US Dep of Labor Overtime Litigation		84					
AD - Stormans et al v DOH Litigation		328					
AE - Election & Voting Rights Litigation		150					
Total - 0420 - Charges for Services - S		2,783				2,783	2,783
405 - Legal Serv Rev Acct - State		2,783				2,783	2,783
Total - 405 - Legal Serv Rev Acct		2,783				2,783	2,783
100 - Office of Attorney General - State		2,783				2,783	2,783
100 - Office of Attorney General - Federal		282				282	282
Total - 100 - Office of Attorney General		3,065				3,065	3,065

AA - Boldt-Culverts Case Litigation

The Office of the Attorney General (AGO) requests \$975,000 and 6.0 FTEs in FY2009 to fund legal services for settlement negotiations already undertaken this fiscal year and for anticipated litigation concerning the remedy phase of United States v. Washington, Subproceeding 01-1 (also known as the Culverts or Boldt Phase 2 case).

AB - Moore et al v HCA Litigation

The Office of the Attorney General (AGO) requests \$1,246,000 and 4.0 FTEs in FY2009 to fund continuing legal services related to a major class action lawsuit against the Health Care Authority (HCA) entitled Moore, et al v. Health Care Authority.

AC - US Dep of Labor Overtime Litigation

The Office of the Attorney General (AGO) requests \$84,000 to fund legal services in response to United States Department of Labor (US DOL) enforcement actions. The potential exposure to the State of Washington can be up to \$65,000,000 dollars - the Department of Social and Health Services (DSHS) estimated exposure is \$40 million dollars and the Department of Corrections (DOC) estimated exposure is \$25 million dollars. There is also the potential for prejudgment interest.

AD - Stormans et al v DOH Litigation

The Office of the Attorney General (AGO) requests \$328,000 and 2.0 FTEs in FY2009 to fund legal services for the Department of Health (DOH) for defense in the Stormans, Inc., et al. v. Mary Selecky, et al. lawsuit. This case is scheduled for a ten day trial in the Western District Court in April 2009, and a portion of the case is currently pending before the Ninth Circuit Court of Appeals.

AE - Election & Voting Rights Litigation

The Office of the Attorney General (AGO) requests \$150,000 and 0.3 FTEs in FY2009 to fund legal services for the Office of the Secretary of State (SEC) for litigation costs for major lawsuits: State v. State Republican Party, Republican Party v. Reed, Republican Party v. Logan and Washington State Grange v. Washington State Republican Party (all Initiative 872 appeal cases with interchangeable names depending on the level of litigation). It also provides one-time funds for the SEC and the Department of Corrections (COR) to reimburse the AGO for costs associated with voting rights for felon litigation.

AG - Medicaid Fraud Unit Workload

The Office of the Attorney General (AGO) requests \$342,966 for the Medical Fraud Control Unit (MFCU) for Federal Fiscal Year (FFY) 2009. This request will align the state appropriated authority with the FFY09 grant award requested.