

OFFICE OF THE
ATTORNEY GENERAL





Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

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

October 13, 2010

Mr. Marty Brown
Director, Office of Financial Management
P.O. Box 43113
Olympia, WA 98504-3113

Dear Mr. Brown:

Enclosed is the Fiscal Year 2011 Supplemental Budget Request from the Attorney General's Office (AGO), which addresses critical agency needs while taking into consideration the current economic climate. We will continue to provide the best possible legal services for our clients and the citizens of the State of Washington, while working within these constraints.

Our significant litigation requests, while not adjusting our existing performance measures, will allow us to mitigate risk to the state. The litigation-related requests shown below are for cases currently facing the State of Washington, with a potential liability to the state of over \$3.1 billion dollars. They include:

- *McCleary v. Washington* Litigation (\$3 billion)
- *US Department of Labor v. Department of Social & Health Services* (DSHS) Litigation (\$80 million)
- *Moore v. Health Care Authority* Litigation (\$50 million)
- Yucca Mountain Litigation
- *T.R. v. Dreyfus* Litigation (DSHS Children's Mental Health)
- Teck Cominco Metals Litigation
- Secretary of State Litigation

The remaining five requests in our budget are adjustments to client agencies' base legal services level and the Governor's General Fund -State (GFS) reduction. They include:

- Department of Early Learning Legal Services (IAA to base)
- DSHS Eastern State Hospital Legal Services (IAA to base)
- Supreme Court Legal Services
- Court of Appeals Legal Services
- Governor's General Fund State 6.287% across the board reduction

ATTORNEY GENERAL OF WASHINGTON

Marty Brown
October 13, 2010
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I have taken every step possible to limit and reduce costs within the AGO, and will continue to balance cost with legal services impact to the state. I take pride in the accomplishments of the AGO and am pleased with the recoveries we have pursued and been awarded in the courtroom for the consumers of the state, and for the state's budget.

If you have any questions about this budget request, please contact Randy Pepple, Chief of Staff, at (360) 586-5579.

Thank you for your assistance and continued cooperation.

Sincerely,

A handwritten signature in black ink that reads "Rob McKenna". The signature is written in a cursive, slightly slanted style.

ROB MCKENNA
Attorney General

RMM/tlt
Enclosure

cc: Randy Pepple, Chief of Staff, Attorney General's Office
Michelle Underwood, Financial Services Director, Attorney General's Office
Matthew Bridges, Budget Analyst, OFM

OFFICE OF THE ATTORNEY GENERAL

2011 Supplemental Budget

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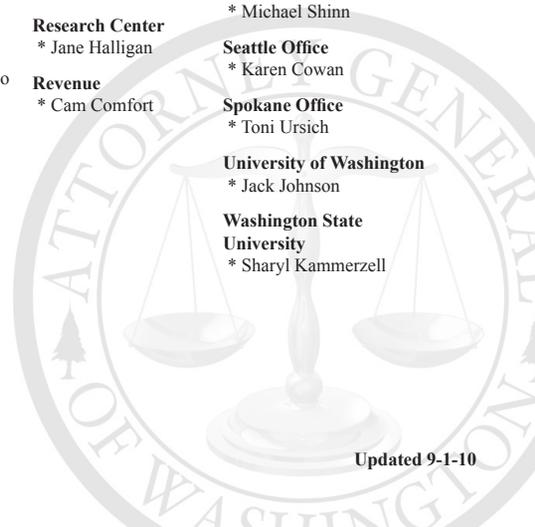
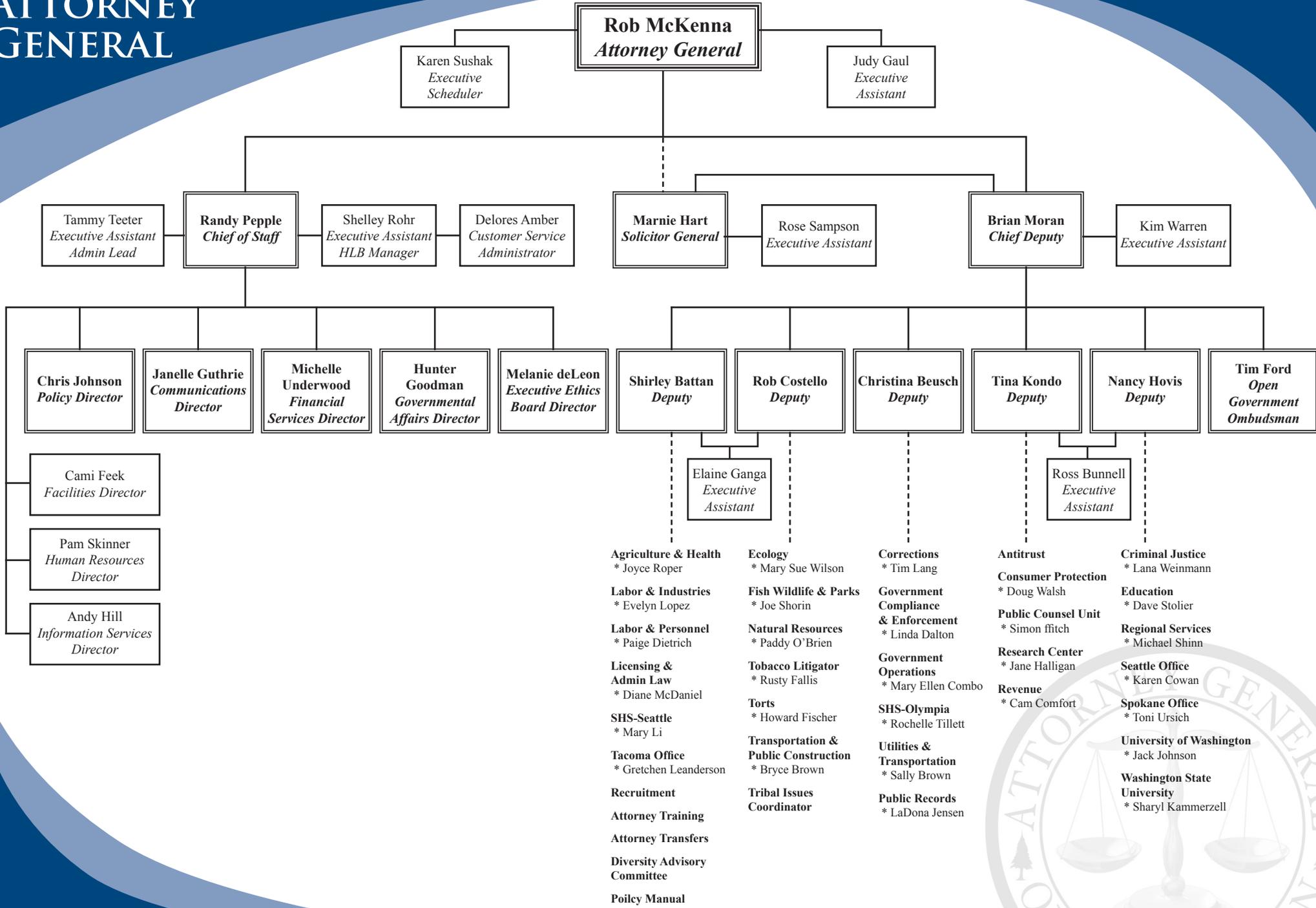
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TAB A

OVERVIEW



OFFICE OF THE ATTORNEY GENERAL



TAB B

RECOMMENDATION
SUMMARY



Recommendation Summary

(By Agency Priority)

Agency: 100 Office of Attorney General
Version: S7 2011 Supplemental Budget Request

12:27:13PM

10/11/2010

Dollars in Thousands

	FY2 FTEs	General Fund State	Other Funds	Total Funds
2009-11 Current Biennium Total				
Total Carry Forward Level				
Percent Change from Current Biennium				
Carry Forward plus Workload Changes				
Percent Change from Current Biennium				
M2 BA Moore v. HCA Litigation				
M2 BB TR v Dreyfus DSHS Litigation	3.4		709	709
M2 BD Secretary of State Litigation	0.6		95	95
M2 BE Teck Cominco Metals ECY Litigation			850	850
M2 BF Yucca Mountain ECY Litigation	1.0		128	128
M2 BG USDOL v DSHS Solis Litigation				
M2 BH McCleary v WA OSPI Litigation	1.3		155	155
M2 BI DSHS Eastern State Hospital Legal	0.8		98	98
M2 BJ Dept Early Learning Legal Services	5.5		682	682
M2 BK Supreme Court Legal Services	0.1		25	25
M2 BL Court of Appeals Legal Services			7	7
Total Maintenance Level	12.7		2,749	2,749
Percent Change from Current Biennium				
PL BR Governor Directed GFS Reduction	(4.5)	(368)		(368)
Subtotal - Performance Level Changes	(4.5)	(368)		(368)
2009-11 Total Proposed Budget	8.2	(368)	2,749	2,381
Percent Change from Current Biennium				

Recommendation Summary**(By Agency Priority)****Agency: 100**

12:27:13PM

Version: S7

10/11/2010

Dollars in Thousands

	FY2 FTEs	General Fund State	Other Funds	Total Funds
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M2 BA Moore v. HCA Litigation

The Office of the Attorney General (AGO) continues legal services in Fiscal Year (FY) 2011 in response to a major class action lawsuit against the Health Care Authority (HCA) entitled Moore et al. v. HCA. The potential liability to the State of Washington in an adverse judgment can exceed \$50,000,000.

M2 BB TR v Dreyfus DSHS Litigation

The Office of the Attorney General (AGO) requests \$709,000 and 3.4 FTEs in Fiscal Year (FY) 2011 to provide additional legal services to the Department of Social and Health Services (DSHS) associated with T.R. Dreyfus (Children's Mental Health Litigation).

M2 BD Secretary of State Litigation

The Office of the Attorney General (AGO) requests \$95,000 and 1.5 FTEs for five months in Fiscal Year (FY) 2011, including direct costs, to provide ongoing legal services for the Secretary of State (SEC) relating to election-related litigation, which includes Doe v. Reed, Eyman v. Reed, Washington State Republican Party et al. v. State, and Farrakhan v. Gregoire. An unfavorable result in the litigation will lead to invalidation of state laws.

M2 BE Teck Cominco Metals ECY Litigation

The Office of the Attorney General (AGO) requests \$850,000 in Fiscal Year (FY) 2011 to provide direct litigation costs for the Department of Ecology (ECY) and the Department of Natural Resources (DNR) relating to Teck Cominco Metals litigation.

M2 BF Yucca Mountain ECY Litigation

The Office of the Attorney General (AGO) requests \$128,000 and 1.0 FTE in Fiscal Year (FY) 2011 to provide ongoing legal services for the Department of Ecology (ECY) relating to Yucca Mountain litigation.

M2 BG USDOL v DSHS Solis Litigation

The Attorney General's Office (AGO) continues legal services in Fiscal Year (FY) 2011 in response to United States Department of Labor (USDOL) v. Washington Department of Social and Health Services (DSHS). The potential liability to the State of Washington in an adverse judgment will likely exceed \$80,000,000.

M2 BH McCleary v WA OSPI Litigation

The Office of the Attorney General (AGO) requests \$155,000 and 1.3 FTEs in Fiscal Year (FY) 2011 to provide ongoing legal services for the Office of Superintendent of Public Instruction's (OSPI) relating to McCleary v Washington litigation. The potential liability to the State of Washington in an adverse judgment can exceed \$3,000,000,000.

M2 BI DSHS Eastern State Hospital Legal

The Office of the Attorney General (AGO) requests \$98,000 and 0.8 FTEs for 11 months in Fiscal Year (FY) 2011 to provide ongoing legal services for the Department of Social and Health Services (DSHS) Eastern State Hospital (ESH) to provide the client with additional advice and representation.

M2 BJ Dept Early Learning Legal Services

The Office of the Attorney General (AGO) requests \$682,000 and 5.5 FTEs in Fiscal Year (FY) 2011 to provide ongoing legal services for the Department of Early Learning (DEL) relating to safety of children and legal advice concerning general government compliance issues. This request is to convert the DEL Inter Agency Agreement (IAA) to base, and has already been worked on with the Office of Financial Management.

Recommendation Summary

(By Agency Priority)

Agency: 100

12:27:13PM

Version: S7

10/11/2010

Dollars in Thousands

FY2 FTEs	General Fund State	Other Funds	Total Funds
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M2 BK Supreme Court Legal Services

The Office of the Attorney General (AGO) requests \$25,000 and 0.1 Assistant Attorney General (AAG) in Fiscal Year (FY) 2011 to provide ongoing legal services for the Supreme Court (SUP) .

M2 BL Court of Appeals Legal Services

The Office of the Attorney General (AGO) requests \$7,000 in Fiscal Year (FY) 2011 to provide ongoing legal services for the Court of Appeals (COA) .

PL BR Governor Directed GFS Reduction

The Office of the Attorney General (AGO) proposes a reduction of (\$368,000) in General Fund-State (GF-S) funding in Fiscal Year (FY) 2011 as directed by the Governor and the Office of Financial Management (OFM) in the Instructions for 2011 Supplemental Budget and Additional Submissions Related to the 2011-13, and Allotment Reduction Instructions for Across-the-Board Cuts Mandated by Executive Order 10-4.

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Recommendation Summary at Program Level

- Not Applicable -

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TAB C

DECISION
PACKAGES



State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BA Moore v. HCA Litigation
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) continues legal services in Fiscal Year (FY) 2011 in response to a major class action lawsuit against the Health Care Authority (HCA) entitled Moore et al. v. HCA. The potential liability to the State of Washington in an adverse judgment can exceed \$50,000,000.

Fiscal Detail

Operating Expenditures

Total

Total Cost

Package Description:

This case was filed in July 2006 by Bendich, Stobaugh & Strong, a firm that specializes in pursuing class action lawsuits against governmental entities for the entities' alleged failures to provide employees with various benefits, including health care benefits. In Moore, plaintiffs claim the State failed to provide statutorily mandated health benefits to non-fulltime employees who worked at least half time over certain periods of time.

The first three years of the case were spent responding to plaintiffs' massive discovery requests and litigating the issue of class certification, as well as the State's liability. As a result, large costs were incurred for data production and analysis of numerous payroll systems and other data related to the liability phase of the case. Through FY2010, legal services, document production and other direct costs have totalled \$2,801,782.

The trial court in a series of rulings in 2007 through the end of 2009 certified the class for liability purposes, found the State liable for failing to provide the required health care benefits and concluded a three year statute of limitations applied to plaintiffs' claims. The Court of Appeals rejected the State's attempt to appeal the ruling on the certification issue and is currently considering whether to grant review of the trial court's ruling on the applicable statute of limitations.

Moving forward into the damages phase of the case, the primary costs will continue to be those needed to litigate the case in the trial and appellate courts (Assistant Attorney General, Paralegal, Legal Assistant resources), as well as associated outside assistance (data collection and analysis regarding the damages phase discovery; expert damages analysis and testimony). Specifically, the State is currently in the process of responding to plaintiffs' damages phase discovery requests. Although not as onerous as the liability phase discovery requests, responding to these interrogatories and requests for production will still be time-consuming for AGO staff. Each

request requires the production of very large amounts of electronic data and necessitates the assistance of outside experts for production and analysis.

The State intends to oppose certification of the class for the damages phase. In addition to the extensive legal work necessary to defeat certification, this will require the assistance of a damages expert to analyze, prepare and provide testimony in support of the State's position on certification for damages.

Finally, if the trial court does certify the class for damages, the State will need to prepare and try this matter. Currently, no trial date has been set. However, given that over 30 state agencies are involved in this matter, in addition to HCA, as well as the complexity of the legal and factual issues involved (including, in particular, the double damages claim), the AGO anticipates a trial will be lengthy. The current AGO Moore litigation team will need to expand to meet the demands of a trial.

Based on all of this, workload impact in FY2011 is estimated at a cost of \$864,000. This funding level for HCA covers costs associated with AGO legal service billings anticipated in FY2011. \$540,000 of the \$864,000 is associated with direct litigation costs for this case. With respect to direct litigation costs, we will need discovery and database support to respond to plaintiff's damages phase discovery requests and expert witness assistance to work up, report and present the State's damage analysis, including depositions and trial, if necessary.

The estimate reflects our best assessment of the costs of both responding to damages phase discovery requests and conducting our own damages phase discovery, litigating class certification for damages and, if necessary, trying the case.

Although HCA is the primary named defendant because of its role as the administrator of benefits for state employees, plaintiffs' claims focus on the practice of over 30 state agencies as employers. HCA's budget for all legal services is inadequate to support the costs of this lawsuit.

The desired result of this request is to reach a cost-effective resolution to this case and to avoid further litigation. With possible repercussions totalling in multi million dollar amounts, the funding of an effective litigation team in FY2011 is imperative to reduce expense in the future.

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?

This request is for funding that is critical to the continued defense of this major litigation dispute. The outcome of this case will have major fiscal implications for the state.

The AGO will perform essential legal services to prevail in this litigation. The AGO is working to protect HCA, 30 other effected state agencies, and the taxpaying citizens of the state to exposure to liability of this a multi million dollar lawsuit.

Performance Measure Detail

Activity: **A010** **Legal Services to State Agencies**

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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.

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

This legal matter affects multiple state agencies and institutions, some 30 in number. These stakeholders include but are not limited to HCA, all state institutions of higher education including the University of Washington and Washington State University, as well as other state agencies that utilize non-fulltime employees (e.g., The Department of Social and Health Services, Washington State Department of Transportation, Department of Natural Resources, etc.). Defense of this case has broad stakeholder participation and approval.

It is also important to note that this request is for a continuation of ongoing litigation.

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

Early resolution of the case was attempted but was unsuccessful. The case must be defended vigorously because of the trial court's adverse rulings to date, and the large potential damages that might be awarded. There are no viable alternatives to defending the case.

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of not funding this package?

If not funded, the state faces a multi million dollar adverse judgment and major limitations upon the Governor's and Legislature's policy prerogatives regarding health care benefits for part-time employees.

Given the court's rulings establishing liability and a three year statute of limitations period (which is still in issue), we estimate our damages to be approximately \$28 million if plaintiffs prevail on their theory of damages. This figure is preliminary in nature and does not account for a potential award of double damages or prejudgment interest, nor for an award of attorney's fees and costs. The expected fiscal impact of this case is approximately \$50 million, and our outside exposure approaches \$70 million.

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

Of the \$864,000 needed by HCA in FY2011, \$540,000 in direct litigation costs is necessary for electronic data imaging, data and damage analysis, and expert testimony.

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

Costs are expected to be one time until the case is finally resolved through court action or settlement.

It is possible that the case can be concluded by the end of FY2013, but complications or appeals could delay the final resolution.

HCA supports this budget request and has a mirror request in their budget submittal.

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BB TR v Dreyfus DSHS Litigation
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$709,000 and 3.4 FTEs in Fiscal Year (FY) 2011 to provide additional legal services to the Department of Social and Health Services (DSHS) associated with T.R. Dreyfus (Children's Mental Health Litigation).

Fiscal Detail

Operating Expenditures		<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State			709,000	709,000
Total Cost			709,000	709,000
Staffing		<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2 FTEs</u>
FTEs		.0	3.4	3.4
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		709,000	709,000
Total Revenue			709,000	709,000

Package Description:

The AGO requests \$709,000 and 1.5 Assistant Attorney General (AAG), 1.0 Paralegal (PL), and 0.9 Legal Assistant (LA) in Fiscal Year (FY) 2011, which includes \$300,000 for direct litigation costs, to provide additional legal services to DSHS associated with T.R. v Dreyfus. Direct litigation costs are attributed for necessary expert witnesses and electronic document processing costs.

This funding is needed, above and beyond that needed to handle the regular volume of the DSHS legal work, in order to properly defend the state in T.R. v. Dreyfus, a class action lawsuit filed in federal court, seeking to "enforce the rights of Washington's Medicaid eligible children under the age of 21 with mental health needs, to receive the intensive home and community based mental health services necessary to correct or ameliorate their mental health conditions."

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?

This request is for funding that is critical to the continued defense of this class action lawsuit. The outcome of this case will have major fiscal implications for the state and could create a long-lasting precedent. The AGO will perform essential legal services to defend the state in this lawsuit. The AGO is working to protect the interests of DSHS and the taxpaying citizens of the state.

Performance Measure Detail

Activity: **A010** **Legal Services to State Agencies**

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

Agency has no option but to respond to an appeal, if filed.

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

Given the potential impact of adverse rulings in this case, there is no reasonable alternative than to vigorously defend the state.

There are no realistic statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense because it is based upon federal Medicaid law, and because the constraints on the state budget do not allow for the negotiated addition of enhanced programs with a very significant fiscal impact. There is no alternative source of income.

What are the consequences of not funding this package?

Failure to adequately fund this lawsuit will result in either an inability to adequately defend the state or an over expenditure of the DSHS legal services budget.

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

Out of the \$709,000 request in FY2011, direct litigation costs are for \$300,000 and is needed for the necessary expert witnesses and electronic document processing costs.

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

It is expected that this litigation will be not be substantially completed until the 2011-13 biennium, but it is not possible to predict how the litigation may be protracted by changes in the trial scheduling, appeals, monitored settlements, or other factors.

DSHS supports this budget request and has a mirror request in their budget submittal.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		226,298	226,298
B Employee Benefits		63,363	63,363
C Personal Service Contracts		300,000	300,000
E Goods And Services		100,852	100,852
G Travel		8,287	8,287
J Capital Outlays		10,200	10,200
Total Objects		709,000	709,000

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Agency: 100 Office of Attorney General
Decision Package Code/Title: BD Secretary of State Litigation
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$95,000 and 1.5 FTEs for five months in Fiscal Year (FY) 2011, including direct costs, to provide ongoing legal services for the Secretary of State (SEC) relating to election-related litigation, which includes Doe v. Reed, Eyman v. Reed, Washington State Republican Party et al. v. State, and Farrakhan v. Gregoire. An unfavorable result in the litigation will lead to invalidation of state laws.

Fiscal Detail

Operating Expenditures	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>	
405-1 Legal Services Revolving Account-State		95,000	95,000	
Total Cost		95,000	95,000	
Staffing	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2 FTEs</u>	
FTEs	.0	.6	.6	
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		95,000	95,000
Total Revenue			95,000	95,000

Package Description:

The AGO requests \$95,000 and 1.0 Assistant Attorney General (AAG) and 0.5 Legal Assistant (LA) for five months in FY2011, including direct costs, to provide ongoing legal services for the SEC relating to election-related litigation services. The services are time-critical litigation activities in several major cases:

- (1) Washington State Republican Party et al. v. State (constitutional challenge to the state's Top Two primary election system). This case currently is in trial preparation, discovery, and motion practice in the federal district court, following remand from the United States Supreme Court. The trial is set for November 2010 and is expected to take several days.
- (2) Doe v. Reed (challenge to disclosure of referendum signature petitions, including R-71 under the U.S. Constitution). This case currently is in trial preparation, discovery, and motion practice in the federal district court on remand from the United States Supreme Court. The trial or dispositive motions are anticipated for early 2011.
- (3) Eyman v. Reed (challenges under state constitution to disclosure of referendum and initiative signature petitions). This case now is in discovery and motion practice in the superior court, with a trial date in early spring 2011. These cases are in addition to other significant ongoing litigation and legal services to the SEC, including Farrakhan v. Gregoire, challenging Washington's felon disenfranchisement laws under the federal Voting Rights Act, as well as less time critical ongoing litigation involving SEC.

An unfavorable result in any of these cases would invalidate state law.

Additional information relating to these cases is provided below.

(1) Washington State Republican Party et al. v. State. This is federal court litigation of three political parties' "as applied" challenging the Top Two Primary. It follows the United States Supreme Court 2008 decision which upheld the Top Two Primary against the political parties' facial challenge that the primary violated their First Amendment freedom to associate for political purposes. The case is scheduled for trial in November of 2010. Regardless of the result at trial, appeal by the non prevailing party is likely.

(2) Doe v. Reed. This is federal court litigation of Plaintiffs' "as applied" challenge to disclosure of Referendum 71 signature petitions under the Public Records Act (PRA). Plaintiffs contend that disclosure violates their free speech and association rights under the First Amendment. Plaintiffs' "as applied" claim remains following the United States Supreme Court June 2010 decision rejecting Plaintiff's "facial" challenge to disclosure of signature petitions under the PRA. Regardless of the outcome at trial, appeal by one or more non prevailing parties is likely. An appeal would most likely be in January 2011 (FY2011). The appeal would likely be briefed in the 9th Circuit during FY2012 and the argument could spill over to FY2013.

(2) Eyman v. Reed. This is Doe v. Reed related state court litigation which is challenging disclosure of signature petitions under the PRA for several initiatives, and Referendum 71. Disclosure is challenged as violating the First Amendment and several provisions of the state constitution. The litigation was stayed pending the United States Supreme Court decision in Doe v. Reed. The litigation now will go forward in the superior court, and litigation at the appellate level likely will follow. An appeal to the Washington Supreme Court by the non prevailing party would likely occur in the spring of 2011 (FY2011) or early FY 2012 and be briefed and argued in FY2012. It is possible that the argument could stretch into FY2013.

(4) Farrakhan v. Gregoire. This litigation challenges Washington's felon disenfranchisement laws under the federal Voting Rights Act (Act). The suit contends that disenfranchisement of felons discriminates on the basis of race in violation of the Federal Act. The case presently is in the Ninth Circuit Court of Appeals for en banc rehearing, and is set for September 2010. Assuming that the en banc decision determines the merits of the case, it is anticipated that review in the United States Supreme Court would be sought by the non-prevailing party.

Each of these cases challenges the validity of laws enacted by the legislature or directly by the people relating to the integrity of Washington's election system. Each case thus seeks to challenge important existing public policy choices concerning Washington's election system and access to information relating to that system.

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?

This request is for funding that is critical to the continued defense of lawsuits challenging the integrity of Washington's election system. An unfavorable outcome in these cases would have major public policy implications for the state in the form of invalidating of state laws relating to the state's election system and access to government records.

The AGO will perform legal services essential to prevailing in these matters. The AGO is working to protect laws administered by SEC as well as to protect the citizens of the state in maintaining the election system and public records laws that they have enacted.

Performance Measure Detail

Activity: **A010** **Legal Services to State Agencies**

Outcome Measures

Incremental Changes

FY 2010

FY 2011

000030 PM0010 - The number of litigation cases open at the end of each
Fiscal Year.

0.00

0.00

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.

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

The AGO has no option but to respond to this litigation, and expected appeals. Each of these cases challenges the validity of one or more Washington laws. Defense of duly enacted state laws is not optional. Stakeholders concerned with open government, and stakeholders concerned with participation in elections and the lawmaking process, have expressed interest in these suits and have presented diverse points of view.

It is also important to note that this request is for a continuation of ongoing litigation.

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

Given the potential impact of adverse rulings in this case, there is no reasonable alternative to vigorously defending the validity of state laws.

The laws at issue represent the public policy of Washington on the subjects that they address and will continue to do so unless changed by the legislature or the people. Defending state laws is not optional.

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of not funding this package?

These cases are major and extraordinary pieces of litigation calling into question important state laws. The costs necessary to defend them accordingly are not costs incorporated into legal services allocations for SEC in the prior biennium. The requested funding is needed to provide the legal services that these cases 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?

There are no changes to existing statutes, rules, or contracts required with this request.

Expenditure and revenue calculations and assumptions

1.0 AAG for five months is 0.4 AAG in FY2011.
0.5 LA for five months is 0.2 LA in FY2011.

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

SEC supports this budget request and has a mirror request in their supplemental budget submittal. Costs of legal defense are considered one time requirements, but will continue until the cases are resolved. Litigation in these matters, including appeals that are likely regardless of trial outcome also will require additional funding in the 2011-2013 biennium.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		43,001	43,001
B Employee Benefits		12,040	12,040
C Personal Service Contracts		10,000	10,000
E Goods And Services		26,279	26,279
G Travel		1,880	1,880
J Capital Outlays		1,800	1,800
Total Objects		95,000	95,000

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BE Teck Cominco Metals ECY Litigation
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$850,000 in Fiscal Year (FY) 2011 to provide direct litigation costs for the Department of Ecology (ECY) and the Department of Natural Resources (DNR) relating to Teck Cominco Metals litigation.

Fiscal Detail

Operating Expenditures	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		850,000	850,000
Total Cost		850,000	850,000

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		850,000	850,000
Total Revenue			850,000	850,000

Package Description:

The AGO requests \$850,000 for direct litigation costs, to provide additional legal services associated with the Teck Cominco litigation. This litigation arises out of a Canadian company, Teck Cominco, and the contamination of the Columbia River and Lake Roosevelt. The State intervened in this citizen suit brought by the Confederated Tribes of the Colville Reservation (Colville Tribes) against Teck Cominco Metals, Ltd., to enforce a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) order issued by the Environmental Protection Agency that required investigation of contamination in the United States caused by discharges in Canada. The current trial phase of the lawsuit requires the plaintiffs prove Teck's liability under CERCLA.

The current attorney support for this case is managed in the base FTEs for the division, however, additional funding is required to support the numerous experts retained for this litigation.

The requested \$ 850,000 is to cover expert witness costs projected during FY2011. Funding is assumed to be paid by the AGO and billed to ECY through the legal services invoice.

The client agencies impacted in this lawsuit are the ECY and DNR, who are both named parties 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?

This request is for funding that is critical to the pursuit of compensation for injuries to natural resources and environmental contamination, both caused by pollution activities by Teck Cominco at its British Columbia facility. The outcome of this case will have major implications for the state.

The AGO will perform essential legal services to prevail in this lawsuit. The AGO is working to protect the taxpaying citizens of the state from injury to our natural resources, and from a liability for environmental clean-up.

Performance Measure Detail

Activity: **A010** **Legal Services to State Agencies**

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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.

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

Funding this lawsuit would be a continuation of the State's investment in an important case aimed at addressing a significantly contaminated site.

The Colville Tribes support this proposal.

This proposal is related to a legal matter but is not related to a task force, GMAP, or an audit recommendation.

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

Because of the significance of the pollution at issue here that has to date not been voluntarily addressed by the liable Canadian polluter, there is no reasonable alternative than to vigorously pursue this lawsuit.

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of not funding this package?

Without funding, we will have difficulty prosecuting this case. Trial on the liability phase of the case is presently scheduled for June 2011. During

the current fiscal year, the trial team is preparing for trial and will go to trial. Activities that require funding include: (1) costs of expert witnesses' work in trial preparation and trial testimony; (2) ongoing costs of managing electronic database (allows for management and production of thousands of case-related records); (3) travel costs (associated with discovery); (4) other litigation costs and expert witness 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?

No changes are required to existing statutes, rules, or contracts in order to implement this package.

Expenditure and revenue calculations and assumptions

\$850,000 is to cover direct litigation costs, including expert witness costs, projected during FY2011. All costs will be billed to ECY through the legal services invoice.

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

Costs are expected to be one time until the litigation phase of the case is finally resolved through court action or settlement.

It is possible that the case can be concluded by the end of FY2012, but complications or appeals could delay the final resolution.

ECY supports this budget request and has a mirror request in their budget submittal.

If the State is successful in proving liability under CERCLA, the state would be eligible to pursue its litigation costs from the defendant, Teck Cominco. Therefore, in future biennia, it is possible that the costs requested in this budget request will be recovered and returned to the state treasury.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
C Personal Service Contracts		834,000	834,000
G Travel		16,000	16,000
Total Objects		850,000	850,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BF Yucca Mountain ECY Litigation
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$128,000 and 1.0 FTE in Fiscal Year (FY) 2011 to provide ongoing legal services for the Department of Ecology (ECY) relating to Yucca Mountain litigation.

Fiscal Detail

Operating Expenditures	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>	
405-1 Legal Services Revolving Account-State		128,000	128,000	
Total Cost		128,000	128,000	
Staffing	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2 FTEs</u>	
FTEs	.0	1.0	1.0	
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		128,000	128,000
Total Revenue			128,000	128,000

Package Description:

The AGO requests \$128,000 and 0.6 Assistant Attorney General (AAG) and 0.4 Legal Assistant (LA) in FY2011 to provide ongoing legal services for ECY relating to two pieces of Yucca Mountain litigation.

Between 1944 and 1989, the US produced plutonium for use in nuclear weapons at the US Department of Energy's (DOE) Hanford Nuclear Reservation in the Tri Cities. Washington hosts and oversees the cleanup of nearly two thirds of the nation's defense related, high-level radioactive waste at Hanford.

Roughly 53 million gallons of nuclear waste is stored in 177 large underground tanks, of which 149 are 42 years beyond their expected 25 year design life. Of the 149 tanks, more than one third are known or suspected to be leaking, releasing roughly 1 million gallons of waste to Hanford's surrounding soils. Hanford lacks the storage capacity to retrieve the waste from these tanks until the waste treatment and disposal process is underway.

In 2002, Congress designated Yucca Mountain as the nation's sole current repository site for deep geologic disposal of high-level radioactive waste and spent nuclear fuel.

At that time, the US Secretary of Energy concluded that, "The amount and quality of research the DOE has invested, done by top flight people...is nothing short of staggering...I am convinced that the product of over 20 years, millions of hours, and four billion dollars of

this research provides a sound scientific basis for concluding the site can perform safely."

Congress then directed DOE to file a license application for the Yucca Mountain site with the Nuclear Regulatory Commission (NRC) and thereby commence a formal evaluation and licensing process overseen by the NRC.

With the expectation that Hanford's high level waste (HLW) would be finally disposed of at a deep geologic repository like the Yucca Mountain facility, Washington's \$12.3 billion Waste Treatment Plant (WTP) continues to be designed and constructed to meet standards specific to the Yucca Mountain facility. Design and engineering for the WTP is 78 percent complete and construction is 48 percent complete.

Early this year the United States Department of Energy announced its intention to abandon its pursuit of the Yucca Mountain facility license. Termination of the Yucca Mountain repository could result in the need to tear down and rebuild portions of the WTP to implement design and engineering changes necessary to meet another repository's waste acceptance criteria, resulting in significant costs and delays in Hanford's entire tank waste clean up mission.

The AGO intervened in the licensing proceeding pending before the NRC Atomic Safety and Licensing Board (ASLB) to oppose a motion by the DOE to withdraw its license application for the High-Level Waste repository at Yucca Mountain, Nevada.

We also filed an original action in the District of Columbia Circuit Court of Appeals against DOE seeking a court order prohibiting DOE from abandoning its pursuit of the Yucca Mountain license.

In June 2010, the State of Washington won an important victory in the litigation pending before the ASLB. The ASLB denied the DOE motion to withdraw "with prejudice" its license application for the Yucca Mountain radioactive waste repository, saying the agency lacked authority to withdraw the application under the law. Review of this decision is presently pending before the NRC.

Briefing in the related case pending before the D.C. Circuit Court of Appeals has been put on hold pending a decision from the NRC.

After the NRC rules, parties unhappy with the ruling are likely to appeal to Court of Appeals for D.C. Circuit and the same court is likely to set a new briefing schedule in the original actions.

The ongoing legal services expected to be associated with these proceedings include any additional briefing before the NRC, before the D.C. Court of Appeals, oral argument, and any subsequent appeal work.

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?

This request is for funding that is critical to the continued defense of this major dispute. The outcome of this case will have major fiscal implications for the state.

The AGO will perform essential legal services to prevail in this appeal.

Performance Measure Detail

Activity: A010		Legal Services to State Agencies		Incremental Changes	
		<u>FY 2010</u>		<u>FY 2011</u>	
	Outcome Measures				
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00		0.00	

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

The AGO has no option but to pursue this lawsuit.

It is also important to note that this request is for a continuation of ongoing litigation.

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

Given the potential impact of adverse rulings in this case, there is no reasonable alternative than to vigorously defend the state.

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of not funding this package?

Failure to adequately fund this legal challenge could result in greater contamination at Hanford, increased costs associated with Hanford clean up, and the continued threat of a massive contamination disaster due to archaic underground storage tanks which were deemed outdated in 1968.

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 are expected to be one time until the case is finally resolved through court action or settlement.

It is possible that the case can be concluded by the end of FY2013, but complications or appeals could delay the final resolution.

ECY supports this budget request and has a mirror request in their budget submittal.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		68,760	68,760
B Employee Benefits		19,253	19,253
E Goods And Services		31,517	31,517
G Travel		470	470
J Capital Outlays		8,000	8,000
Total Objects		128,000	128,000

Agency: 100 Office of Attorney General
Decision Package Code/Title: BG USDOL v DSHS Solis Litigation
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Attorney General's Office (AGO) continues legal services in Fiscal Year (FY) 2011 in response to United States Department of Labor (USDOL) v. Washington Department of Social and Health Services (DSHS). The potential liability to the State of Washington in an adverse judgment will likely exceed \$80,000,000.

Fiscal Detail

Operating Expenditures

Total

Total Cost

Package Description:

The AGO continues legal services in FY2011 in response to USDOL v. Washington DSHS. The potential liability to the State of Washington in an adverse judgment will likely exceed \$80,000,000.

This case was brought by the USDOL against DSHS for alleged violations of the overtime and recordkeeping requirements of Fair Labor Standards Act (FLSA). On April 26, 2010 Judge Benjamin Settle of US District Court for the Western District of Washington granted summary judgment to DSHS, ruling that the social workers are exempt from FLSA. The court entered judgment for DSHS on May 3, 2010. The potential liability claimed by the USDOL was \$80 million dollars, which included uncompensated overtime and double damages. Given the unique issue decided and attendant discovery issues, the USDOL may choose to appeal the case to the 9th Circuit Court of Appeals. The brief is on October 8, 2010 and the states response is due on November 8, 2010.

This is a specialized area of the law, and the underlying case has been handled by an AAG with expertise in wage & hour law, and a Special Assistant Attorney General (SAAG) with expertise in defending cases against the USDOL. The funds requested are for the purpose of defending an appeal.

Cost estimates:

- a) We assume 0.2 AAG and 0.1 PL for a two month period in FY2011.
- b) We assume direct litigation costs for 100 hours of SAAG time at \$350 an hour (plus costs), estimated at \$35,000.
- c) We assume \$2,000 will cover all out-of-state travel costs associated argument.
- d) We assume invoices to DSHS for this case will be \$43,000.

The client agency for this case is specific to DSHS.

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?

This request is for funding that is critical to the continued defense of this major labor dispute. The outcome of this case will have major fiscal implications for the state and could create a long-lasting precedent.

The AGO will perform essential legal services to prevail in this appeal. The AGO is working to protect DSHS and the taxpaying citizens of the state from exposure to liability that exceeds \$80 million.

Performance Measure Detail

Activity: **A010** **Legal Services to State Agencies**

Incremental Changes
FY 2010 **FY 2011**

Outcome Measures

000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00
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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.

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

Agency has no option but to respond to appeal.

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

Because of the potential impact of adverse rulings in this case, there is no reasonable alternative than to vigorously defend the state.

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of not funding this package?

If not funded, the state faces a multi-million dollar adverse judgement. Failure to adequately fund the legal defense exposes DSHS to this liability.

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

SAAG assistance is the primary direct cost projection. We also anticipate travel expenses in the unlikely event the case argument is set in San Francisco or Pasadena.

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

Costs are one time, and for the purpose of defending an appeal. As a result, the amount requested is limited to preparation of briefs and for oral argument, and travel. It is unknown whether there might be future costs. If we prevail in the 9th Circuit, the case may be over, or the USDOL may request certiorari in the US Supreme Court. If we are not successful, and the case is remanded to the District Court, we will be requesting funds for trial.

DSHS supports this budget request and has a mirror request in their budget submittal.

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BH McCleary v WA OSPI Litigation
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$155,000 and 1.3 FTEs in Fiscal Year (FY) 2011 to provide ongoing legal services for the Office of Superintendent of Public Instruction's (OSPI) relating to McCleary v Washington litigation. The potential liability to the State of Washington in an adverse judgment can exceed \$3,000,000,000.

Fiscal Detail

Operating Expenditures		<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>	
405-1	Legal Services Revolving Account-State		155,000	155,000	
Total Cost			155,000	155,000	
Staffing		<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2 FTEs</u>	
	FTEs	.0	1.3	1.3	
Revenue					
<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>	
405	Legal Serv Rev Acct	0420	Charges for Services	155,000	155,000
Total Revenue			155,000	155,000	

Package Description:

The AGO requests \$155,000 and 0.6 Assistant Attorney General (AAG), 0.3 Paralegal (PL), and 0.4 Legal Assistant (LA) in FY2011 to provide ongoing legal services for OSPI relating to McCleary v Washington litigation.

This funding request is for additional lawsuit-related expenses through June 30, 2011 related to the constitutional challenge to the adequacy of the State's basic education funding. In January 2010, a King County superior court issued an Order and Judgment ordering the State to study the actual costs of ensuring all children are provided the education required under article 9, section 1, as interpreted by the superior court. After consulting with the Governor's Office, legislative leadership and the Superintendent of OSPI, the AGO determined that the ruling was sufficiently ambiguous and capable of an extremely broad reading of the State's duty to necessitate filing an appeal directly to the State Supreme Court. The appeal was filed. However, the briefing schedule did not begin until the current FY (FY2011). The State filed its opening brief on August 20, 2010. Briefing will continue until November 2010. An oral argument before the Court is anticipated during FY2011.

This request will support the efforts already underway by State attorneys to ensure that the State's legal position is well-presented before the Court. There is no money funded to the AGO budget to support the McCleary case beyond June 30, 2010. The OSPI budget for legal services is inadequate to support the costs of this appeal.

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?

This request is for funding that is critical to the continued defense of this major education case. The outcome of the case will have major fiscal implications for the state and could create standards that would significantly limit the state's freedom to act in the area of basic education for years.

Performance Measure Detail

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
Activity: A010	Legal Services to State Agencies		
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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.

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

This is a legal case that the State has already committed to pursuing. We are unable to identify other impacts other than the ripple effect on all state funding priorities should the outcome remain adverse to the same degree.

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

The AGO consulted with key members of the legislative and executive branches in considering whether to pursue the appeal. Ultimately, it was deemed in the best interests of the State to have the State's highest court weigh in on the appropriate legal standard for judging whether the State is meeting its constitutional obligations.

What are the consequences of not funding this package?

If not funded, the state faces a multi-million dollar adverse judgment and major limitations upon the Governor's and Legislature's policy from October 8, 2009 which prerogatives regarding the method and level of funding for basic education.

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?

An adverse ruling could have implications for changing existing statutes implementing education finance reform.

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 to support taking this case through the Supreme Court argument are one-time costs. There is a possibility that the appeal could result in a remand to superior court for further proceedings. If that should occur, some costs would be incurred in FY2012.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		86,357	86,357
B Employee Benefits		24,180	24,180
E Goods And Services		39,418	39,418
G Travel		1,145	1,145
J Capital Outlays		3,900	3,900
Total Objects		155,000	155,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BI DSHS Eastern State Hospital Legal
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$98,000 and 0.8 FTEs for 11 months in Fiscal Year (FY) 2011 to provide ongoing legal services for the Department of Social and Health Services (DSHS) Eastern State Hospital (ESH) to provide the client with additional advice and representation.

Fiscal Detail

Operating Expenditures	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		98,000	98,000
Total Cost		98,000	98,000
Staffing	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2 FTEs</u>
FTEs	.0	.8	.8
Revenue			
<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>
405 Legal Serv Rev Acct	0420 Charges for Services		98,000
Total Revenue			98,000

Package Description:

The AGO requests \$98,000 and 0.5 Assistant Attorney General (AAG) and 0.3 Legal Assistant (LA) from August 2010 through June 2011 in FY2011 to provide ongoing legal services for ESH to provide the client with additional advice and representation.

ESH has the need for a full time AAG but is presently funded for only 0.5 AAG. This request is to increase the current AAG by an additional 0.5 AAG. The client impacted is DSHS.

As a point of comparison, three AAGs are assigned to Western State Hospital (WSH). ESH's capacity is approximately one third of WSH, which alone is some evidence that the client should have a full FTE. Additionally, ESH admits and discharges approximately the same number of patients each year (between 900 and 1,000 patients each year), and each of these admits/discharges gives rise to a potential need for legal advice, as well as trial representation.

A number of factors contribute to the need for the increase in AAG FTE, which include:

- a. Increase in the number of jury trial requests.
- b. Increase in the number of patients presenting co-occurring forensic and civil issues.
- c. Increase in the number of patients presenting other legal issues that require attorney review and client advice.
- d. New legislation affecting both civil and criminal commitments that requires interpretation and ongoing assistance with

implementation.

e. Client's need for immediate response and access to an AAG familiar with ongoing legal issues and cases.

f. Increase in the complexity of the legal matters arising.

This request is needed so that the client will have prompt access to legal assistance, and consequently be better able to manage its legal risk.

At the request of DSHS during FY2011, DSHS and the AGO entered an Inter Agency Agreement (IAA) for the additional 0.5 AAG FTE so that the client could obtain the additional services it requires at 1.0 AAG. This request is to make that increase a permanently funded increase.

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?

This request is for billing authority that is needed for essential legal services relating to advice and representation for ESH in legal matters.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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.

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

The AGO has no option but to provide legal services relating to ongoing need for legal service, including litigation support and providing ESH with advice and representation. The status of the state budget makes this biennium a difficult time to request an increase in any type of FTE. However, this modest increase is needed to help our client perform its duties to better manage risk, with, we hope, the ultimate cost of the FTE increase being lower than the cost to the state from tort claims and litigation.

This requested increase is not related to any individual legal matter, but rather to a need for increased access to AAG advice and representation due to more general trends, to include the increase in the complexity of matters being presented, and the increase in the number of jury trial requests. This request is not related to a task force, Government Management Accountability and Performance, or an audit recommendation. This small increase will, however, help ESH to better manage legal issues and risks by providing them with more AAG time. ESH has not had the legal representation one might expect given its size and the volume of patients it admits and discharges annually. This increase will rectify that, and bring its FTE allocation more in line with that of WSH.

It is also important to note that this request is for a continuation of ongoing legal services.

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

Given the increased complexity of matters being presented and the risks of failure to appropriately respond to those matters, as well as the risk of adverse rulings in some of these matters, there is no reasonable alternative other than to provide ESH with the legal advice it requires and to vigorously defend its decisions.

What are the consequences of not funding this package?

Not funding this request will place ESH in a situation where they will have to cut and prioritize legal services which have already been funded.

The client has an ongoing need for the additional legal assistance. Failure to fund this request will result in an increase in tort claims that may have been avoided had the client been able to more promptly receive legal advice.

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?

DSHS supports this budget request and has a mirror request in their budget submittal. Costs are assumed to be ongoing.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		52,433	52,433
B Employee Benefits		14,681	14,681
E Goods And Services		27,239	27,239
G Travel		1,867	1,867
J Capital Outlays		1,780	1,780
Total Objects		98,000	98,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BJ Dept Early Learning Legal Services
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$682,000 and 5.5 FTEs in Fiscal Year (FY) 2011 to provide ongoing legal services for the Department of Early Learning (DEL) relating to safety of children and legal advice concerning general government compliance issues. This request is to convert the DEL Inter Agency Agreement (IAA) to base, and has already been worked on with the Office of Financial Management.

Fiscal Detail

Operating Expenditures		<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405-1	Legal Services Revolving Account-State		682,000	682,000
Total Cost			682,000	682,000
Staffing		<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2 FTEs</u>
	FTEs	.0	5.5	5.5
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405	Legal Serv Rev Acct	0420 Charges for Services	682,000	682,000
Total Revenue			682,000	682,000

Package Description:

The AGO requests \$682,000 and 3.0 Assistant Attorney Generals (AAG), 0.5 Paralegal (PL), 1.0 Legal Assistant (LA), and 1.0 Office Assistant (OA) in FY2011 to provide ongoing legal services for DEL relating to the safety of children and legal advice concerning general government compliance issues. This request is to convert the DEL FY2011 IAA to base so that the billing authority in the Central Service Model is adjusted.

Since the creation of DEL, the agency has consistently required legal services that are more than double the agency's central service model legal services allocation. This makes it challenging for the AGO to budget and allocate resources to ensure DEL receives the most efficient legal services given we budget to not exceed the central service model DEL legal services allocation. This request is for the authority to bill at a level consistent with DEL's historical and foreseeable need for legal services.

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?

This request is for billing authority that is needed for essential legal services relating to the safety of children and legal advice concerning general government compliance issues.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

The AGO has no option but to provide legal services. This is relating to ongoing need for legal services including litigation support for DEL's role in ensuring the safety of children in childcare settings throughout the State and legal advice concerning general government compliance issues.

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

There is no reasonable alternative to providing legal services as required. There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense and preventive legal advice. There is no alternative source of income.

What are the consequences of not funding this package?

Not funding this request will result in the AGO Legal Service Revolving Fund account being unbalanced with DEL required legal services.

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

We considered FTE usage and billed amounts from FY2007 forward when comparing to Central Service Model legal services allocations to legal services needs by DEL. Usage billings and allocations by FY follow:

FY2007:

Average AAG Monthly Usage: 2.6
Average PL Monthly Usage: 0.1
Billed in FY2007: \$518,444
Allocation for FY2007: \$195,000

FY2008:

Average AAG Monthly Usage: 2.9
Average PL Monthly Usage: 0.6
Billed in FY2008: \$674,585
Allocation for FY2008: \$307,869

FY2009:

Average AAG Monthly Usage: 3.3
Average PL Monthly Usage: 0.5
Billed in FY2009: \$707,760
Allocation for FY2009: \$307,868

FY2010:

Average AAG Monthly Usage: 2.9
Average PL Monthly Usage: 0.4
Billed in FY2010: \$622,369
Allocation for FY2010: \$296,321

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

DEL supports this budget request. This request reflects an ongoing need for base legal services which should be reflected in the Central Service Model.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		364,008	364,008
B Employee Benefits		101,922	101,922
E Goods And Services		189,286	189,286
G Travel		10,284	10,284
J Capital Outlays		16,500	16,500
Total Objects		682,000	682,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BK Supreme Court Legal Services
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$25,000 and 0.1 Assistant Attorney General (AAG) in Fiscal Year (FY) 2011 to provide ongoing legal services for the Supreme Court (SUP) .

Fiscal Detail

Operating Expenditures	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>	
405-1 Legal Services Revolving Account-State		25,000	25,000	
Total Cost		25,000	25,000	
Staffing	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2 FTEs</u>	
FTEs	.0	.1	.1	
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		25,000	25,000
Total Revenue			25,000	25,000

Package Description:

The AGO requests \$25,000 and 0.1 AAG in FY2011 to provide ongoing legal services for SUP.

Based on legal services billing in FY2010, SUP exceeded the anticipated expenditures allowable in their legal services allocation of the Central Service Model. It is now anticipated that SUP requires \$25,000 in additional funding to sustain legal services in FY2011.

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?

This request provides SUP with an allocation necessary to receive adequate and vital legal services. If additional funding is not provided, they will need to cut other services to pay for attorney costs that are unavoidable.

AGO provides a broad range of legal services to more than 230 state agencies to enable them to achieve their respective missions.

Performance Measure Detail

Activity: **A010** **Legal Services to State Agencies**

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
	Outcome Measures		
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

SUP will need to cut other services to the citizens of the state of Washington in order to pay for adequate legal services.

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

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of these legal services. There is no alternative source of income.

What are the consequences of not funding this package?

Not funding this request will place the SUP in a situation where they will have to cut and prioritize legal services which have already been 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

Based on SUP's historical use of legal services, the AGO anticipated 2009-11 expenditures of \$34,622 (FY2010: \$17,069; FY2011: \$17,553).

In FY2010, SUP required \$42,534 in legal services costs. The FY2010 variance is \$25,465.

The AGO is requesting an additional \$25,000 in billing authority for SUP in FY2011.

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

It is anticipated that continued evaluations of funding, FTE utilization, and billings will occur. All costs are ongoing unless changes in legal services levels were warranted through changes in legislature or policy decision packages.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		12,714	12,714
B Employee Benefits		3,560	3,560
E Goods And Services		7,620	7,620
G Travel		581	581
J Capital Outlays		525	525
Total Objects		25,000	25,000

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State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: BL Court of Appeals Legal Services
Budget Period: 2009-11
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$7,000 in Fiscal Year (FY) 2011 to provide ongoing legal services for the Court of Appeals (COA) .

Fiscal Detail

Operating Expenditures	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State		7,000	7,000
Total Cost		7,000	7,000

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		7,000	7,000
Total Revenue			7,000	7,000

Package Description:

The AGO requests \$7,000 in FY2011 to provide ongoing legal services for COA. COA does not have any legal services allocation in 2009-11 in the Central Service Model.

Based on legal services billing in FY2010, COA has demonstrated that they have a sustained requirement for legal services provided by the AGO. It is anticipated that COA requires \$7,000 to cover thier legal services invoices.

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?

AGO provides a broad range of legal services to more than 230 state agencies to enable them to achieve their respective missions.

This request provides COA with an allocation necessary to receive adequate and vital legal services. If funding is not provided, they

will need to cut other base services to pay for attorney costs that are unavoidable.

Performance Measure Detail

Activity: **A010** **Legal Services to State Agencies**

		Incremental Changes	
		<u>FY 2010</u>	<u>FY 2011</u>
Outcome Measures			
000030	PM0010 - The number of litigation cases open at the end of each Fiscal Year.	0.00	0.00

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, this request supports the Governor's efforts relating to strengthening government's ability to achieve results efficiently and effectively. Providing legal services to state agencies is an element of providing data information, and analysis to support decision making.

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

Yes, in the 2009-11 biennial Priorities of Government Purchases, Legal Services to State Agencies is ranked #4 out of 248 categories.

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

COA will need to cut other services to the citizens of the state of Washington in order to pay for adequate legal services.

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

There are no statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of these legal services. There is no alternative source of income.

What are the consequences of not funding this package?

COA may need to cut other programs to cover costs. State-wide risk to agency operations for not seeking legal advice or litigation support is high.

Not funding this request will place the COA in a situation where they will have to cut and prioritize legal services which have already been 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

In FY2010, the AGO billed COA \$6,858 through legal services invoices.

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

It is anticipated that continued evaluations of funding, FTE utilization, and billings will occur. All costs are ongoing unless changes in legal services levels were warranted through changes in legislature or policy decision packages.

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		3,880	3,880
B Employee Benefits		1,086	1,086
E Goods And Services		2,034	2,034
Total Objects		7,000	7,000

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Agency: 100 Office of Attorney General
Decision Package Code/Title: BR Governor Directed GFS Reduction

Budget Period: 2009-11
Budget Level: PL - Performance Level

Recommendation Summary Text:

The Office of the Attorney General (AGO) proposes a reduction of (\$368,000) in General Fund-State (GF-S) funding in Fiscal Year (FY) 2011 as directed by the Governor and the Office of Financial Management (OFM) in the Instructions for 2011 Supplemental Budget and Additional Submissions Related to the 2011-13, and Allotment Reduction Instructions for Across-the-Board Cuts Mandated by Executive Order 10-4.

Fiscal Detail

Operating Expenditures	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
001-1 General Fund - Basic Account-State		(368,000)	(368,000)
Total Cost		(368,000)	(368,000)
 Staffing	 <u>FY 2010</u>	 <u>FY 2011</u>	 <u>FY2 FTEs</u>
FTEs	.0	-4.5	-4.5

Package Description:

The AGO proposes a reduction of (\$368,000) in FY2011 as directed by the Governor and OFM in the Instructions for 2011 Supplemental Budget and Additional Submissions Related to the 2011-13, and Allotment Reduction Instructions for Across-the-Board Cuts Mandated by Executive Order 10-4.

The AGO will make prioritized reductions in multiple GF-S programs to meet this 6.287 percent GF-S reduction. Detail on each programmatic reduction follows, in line with the formatting provided by OFM for the FY2011 supplemental budget reduction.

Name of Program or Service Being Reduced: Consumer Protection (CP)

Description of Reduction: This reduction will require that CP's responsibilities are achieved while not filling and abolishing current vacancies, which will pare down CP's litigation priorities to a bare minimum consistent with maintaining credible general deterrence to unfair and deceptive practices in the marketplace. CP will reduce or eliminate some managerial functions, staff support for legislative proposals, outreach to disadvantaged populations, and selected current litigation priorities. CP would lose some capacity to respond to spikes in workload resulting in longer wait times for responses.

Dollar Amount of GF-S Reduction: (\$146,625)

Description of Client Impact and/or Effect on Service Outcomes: CP is directly appropriated and we do not bill our legal services to client agencies. The impact in reducing this program is borne by the citizens of the State of Washington. We will bring fewer legal actions against potential violators

Agency: 100 Office of Attorney General
Decision Package Code/Title: BR Governor Directed GFS Reduction

of the state's CP laws and be less able to support legislative improvements to those laws. Our ability to be proactive in reaching citizens with questions about possible illegal business activity will be lessened, and response times to inquiries by those who proactively communicate with our office will be delayed.

Implementation Date: 10/01/2011

Name of Program or Service Being Reduced: Homicide Investigation Tracking System (HITS) Program

Description of Reduction: The statutory mandate of the AGO's HITS program work is to support law enforcement in bringing criminals to justice. We have targeted much of our reduction with information technology (IT) work that supports the HITS database. This database is the only statewide central repository for information relating to violent crimes against persons. Data from more than 10,200 murder investigations, more than 8,400 sexual assaults, and more than 72,500 other crimes have been collected by HITS and has been used to assist local law enforcement in criminal investigations. Typically, the HITS Unit will respond to over 1,000 requests for assistance or information each year.

Dollar Amount of GF-S Reduction: (\$182,375)

Description of Client Impact and/or Effect on Service Outcomes: HITS is directly appropriated, and we do not bill our legal services to client agencies. The impact in reducing this program will be our inability to provide anything more than maintenance-level work on the current HITS database. Technology upgrades and other improvements to the system will have to wait until the budget situation improves, and GF-S money can again be directed towards increased IT staffing for work on the database. The loss of three investigator positions and one data compiler position in the last two years due to the current and previous budget reductions means that serious crime data is not collected and entered into the HITS system in a timely manner, if at all, thereby negatively impacting the "linkage" and solving of crimes.

Implementation Date: 10/01/2011

Name of Program or Service Being Reduced: Criminal Litigation (CRI)

Description of Reduction: The primary function of our unit is to provide trial assistance to local prosecutors. CRI assures that where the county prosecutor has a conflict of interest or needs specialized expertise, there is a highly-skilled prosecutor to represent the state, resulting in greater public protection. This unit also assures that crimes of fraud involving state agencies are properly investigated and prosecuted so that the state agencies and other victims can recover their losses and other crimes are deterred. The following three cases are typical of the cases prosecuted by this unit: (1) State v. Michael Hecht (Pierce County): Pierce County Judge convicted of Patronizing a Prostitute and Felony Harassment, (2) State v. Martin Jones (Pacific County): Defendant is charged with shooting a Washington State Trooper in the head, and (3) State v. John Allen Booth and Ryan McCarthy (Lewis County): Co-defendants charged with two counts of aggravated murder and additional crimes. Reductions will severely limit the number of cases that we will be able to accept for prosecution.

Dollar Amount of GF-S Reduction: (\$39,000)

Description of Client Impact and/or Effect on Service Outcomes: Reductions will severely limit the number of cases that we will be able to accept for prosecution.

Implementation Date: 10/01/2011

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

Agency: **100 Office of Attorney General**
Decision Package Code/Title: **BR Governor Directed GFS Reduction**

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The AGO will face increased challenges in sustaining GF-S activities for CP, HITS, and CRI legal services.

Performance Measure Detail

Activity: **A003 Criminal Investigation and Prosecution**

Incremental Changes
FY 2010 **FY 2011**

Output Measures

000008	PM0003/CRI - This is a count of the number of requests for assistance and referrals to the unit from outside the AGO. The primary function of our unit is to provide trial and consulting assistance to local prosecutors.	0.00	0.00
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Activity: **A005 Enforcement of Consumer Protection Laws**

Incremental Changes
FY 2010 **FY 2011**

Output Measures

000014	PM0005/CPR- Recoveries. Consumer Protection mission is to provide a fair and non-deceptive marketplace through vigorous civil law enforcement. We promote general deterrence and compliance with the CPA by obtaining and collecting monetary judgments.	\$0.00	\$0.00
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Activity: **A007 Homicide Investigation Tracking System**

Incremental Changes
FY 2010 **FY 2011**

Outcome Measures

000021	PM0007/HITS - Access Requests. Our HITS team fields requests for information from our HITS database. We support Law Enforcement Agencies (LEAs) in the State of Washington upon request only and their access to the HITS database.	0.00	0.00
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Is this decision package essential to implement a strategy identified in the agency's strategic plan?

NA - Governor directed reduction.

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

NA - Governor directed reduction.

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

Agency: 100 Office of Attorney General
Decision Package Code/Title: BR Governor Directed GFS Reduction

NA - Governor directed reduction.

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

CP: CP is directly appropriated and we do not bill our legal services to client agencies. The impact in reducing this program is borne by the citizens of the State of Washington. We will bring fewer legal actions against potential violators of the state's CP laws and be less able to support legislative improvements to those laws. Our ability to be proactive in reaching citizens with questions about possible illegal business activity will be lessened, and response times to inquiries by those who proactively communicate with our office will be delayed.

HITS: HITS is directly appropriated, and we do not bill our legal services to client agencies. The impact in reducing this program will be our inability to provide anything more than maintenance-level work on the current HITS data base. Technology upgrades and other improvements to the system will have to wait until the budget situation improves, and GF-S money can again be directed towards increased IT staffing for work on the data base. The loss of three investigator positions and one data compiler position in the last two years due to the current and previous budget reductions means that serious crime data is not collected and entered into the HITS system in a timely manner, if at all, thereby negatively impacting the "linkage" and solving of crimes.

CRI: Reductions will severely limit the number of cases that we will be able to accept for prosecution.

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

We reviewed available options for making cuts in our GF-S appropriation, including eliminating entire programs to meet the reduction target, and determined that not filling and abolishing selected current vacancies was the most appropriate route for meeting the budget reduction requested by the Governor.

What are the consequences of not funding this package?

Not reducing GF-S funding will allow the AGO to sustain our ability to provide services to the consumers of the State of Washington and to law enforcement which depends on the HITS database.

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

See Attachment 1: "PL-BR Instructions for 2011 Supplemental Budget and Additional Submissions Related to the 2011-13.pdf", Attachment 2: "PL-BR Allotment Reduction Instructions for Across-the-Board Cuts Mandated by Executive Order 10-4.pdf", and Attachment 3: "2011 Attachment C Agency Plan.pdf".

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

Unknown.

State of Washington
Decision Package

FINAL

Agency: **100 Office of Attorney General**
Decision Package Code/Title: **BR Governor Directed GFS Reduction**

<u>Object Detail</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
A Salaries And Wages		(276,000)	(276,000)
B Employee Benefits		(92,000)	(92,000)
Total Objects		(368,000)	(368,000)

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STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

August 17, 2010

TO: Agency Directors

FROM: Marty Brown
Director

Handwritten signature of Marty Brown in blue ink.

**SUBJECT: INSTRUCTIONS FOR 2011 SUPPLEMENTAL BUDGET AND
ADDITIONAL SUBMISSIONS RELATED TO 2011-13**

As the Governor indicated in her remarks last Thursday, the state continues to experience the effects of a weaker-than-forecasted national economic recovery. General Fund-State revenue collections for the last two months have fallen short of initial estimates. In addition, while we've recently received good news about federal funds, the allocation for medical assistance was less than assumed in the existing budget.

Accordingly, the Governor has directed agencies to take the following actions:

- Prepare for General Fund-State (GF-S) across-the-board cut options in the range of 4 to 7 percent in anticipation of the possibility of allotment reductions starting October 1.
- Prepare GF-S budget reductions equal to \$500 million statewide that can, if necessary, be incorporated into the 2011 supplemental budget.
- Submit 10 percent GF-S reduction options for the 2011-13 budget.

The instructions below address each of these tasks.

Across-the-Board GF-S Allotment Reductions

Monthly revenue collections and other economic indicators are being carefully monitored for any changes that might affect the sustainability of the enacted 2009-11 budget. There are two more quarterly revenue updates prior to the Governor's Supplemental Budget release in December. Although the GF-S has a modest fund balance at present, it may be depleted by any revenue forecast drop in September or November. If events warrant immediate budget action, then the Governor will direct across-the-board reductions consistent with RCW 43.88.110(7). This means that each agency with GF-S appropriations will be instructed to reduce allotments of these appropriations by a certain percentage.

Agencies should prepare for this possibility by arriving at cut and saving options for the current fiscal year, and by preparing a list of the GF-S reductions that will be implemented. If allotment

reductions are imposed, the Office of Financial Management (OFM) will communicate specific instructions and request a list of the program actions that each agency is taking to achieve the reduction target. (No submittal is expected now.)

2011 Supplemental Budget for the 2009-11 Biennium

Supplemental budget requests are due to OFM by October 13. Only the following types of revisions to the existing 2009-11 budget will be considered:

- GF-S reductions that accomplish the Governor's directions for options equal to a \$500 million statewide reduction. This target translates to a 6 percent reduction of each agency's existing Fiscal Year 2011 GF-S appropriation, as listed in the attachment to this memorandum. It is assumed that any across-the-board GF-S cuts imposed would represent an early start to the reductions that will be included in the supplemental budget.
- Non-discretionary changes in legally-mandated caseload or workload. (All funds.)
- Necessary technical corrections to the currently enacted budget. (All funds.)
- Any additional federal or private/local funding expected to be received for the remainder of the biennium. Unless that funding has already been approved as part of the original legislative budget, or as an unanticipated receipt (for spending prior to March 2011), it needs to be made part of the supplemental budget request using expenditure authority types 2, 7 or 8 as appropriate. The unanticipated receipt process is suspended during the legislative session.

Proposed **operating** supplemental budget revisions should be submitted to OFM electronically through the Budget Development System (BDS). Justification narrative follows the decision package format described in Section 4 of OFM's 2009-11 Budget Instructions, which are available at <http://www.ofm.wa.gov/budget/instructions/operating/2009-11/sec4.pdf>.

Narrative descriptions should be as detailed as possible. Please make sure that the justification fully explains why any new costs cannot be absorbed within the agency's existing budget. Also describe any implications to program outcomes or clients, revenues (including fees), legislation, or federal rules, as well as any barriers that might complicate achievement of a reduction.

Because the Governor is asking for early legislative consideration of the 2011 supplemental, assume a February 1 start date for any reductions requiring legislative authority.

Some agencies have statutory authority to set program fees at a level sufficient to cover the costs of administering that program. Under Initiative 960 (RCW 43.135.055), such statutes do not authorize agencies to increase fees without prior, specific legislative approval. Agencies with legislative mandates for fee-supported programs, or other requests for new or revised fees, should document the specific fees using the *OFM Request for New or Increased Fees* form found at http://www.ofm.wa.gov/budget/documents/Fee_Request_Form.doc.

Agency Directors
August 17, 2010
Page 3 of 3

Because agency supplemental budget requests are distributed to OFM and legislative staff, we require submittal of five paper copies for most agencies, and seven copies for higher education and transportation agencies. These copies should include the Recommendation Summary Report from BDS, narrative decision package justification, a summarized revenue report from BDS for agencies submitting revenue changes, and the *Request for New or Increased Fees* document (if applicable).

Any **capital budget** revisions should be submitted to OFM using the Capital Budget System (CBS). The justification must follow the format described in Section 2.3 of OFM's 2009-11 Capital Budget Instructions found at <http://www.ofm.wa.gov/budget/instructions/capinst/09-19capinstr/0911capbudinstructions.pdf>. Please submit seven copies for distribution to OFM and legislative staff as described in Section 1.4 of the Capital Budget Instructions.

Proposals for the 2011 supplemental capital budget should be limited to technical corrections, emergent issues, or return of project savings.

Please transmit the specified number of copies by October 13 to:

Andrea Duane
Office of Financial Management
300 Insurance Building
P.O. Box 43113
Olympia, WA 98504-3113

Ten Percent GF-S Reduction Options for the 2011-13 Biennium

The Governor also is asking for GF-S reduction options for the 2011-13 biennial budget that agencies are working on now for submittal in early September. We are assuming a dollar target for reduction packages equating to 10 percent of your GF-S Maintenance Level number for 2011-13.

Reduction options should be submitted as decision packages through BDS. OFM will send out specific system instructions shortly. **Reduction packages are due to OFM by September 30.** Please send five copies of the reduction packages to Andrea Duane at the address above.

As you consider across-the-board cuts, supplemental budget options, and 2011-13 revisions, think in terms of where your agency will end up, not just how you meet each new target. The Governor is asking all agencies (not just those funded with GF-S) to prepare for a smaller and more efficient state budget that demands performance from every program. It is imperative that you approach your budget with these objectives in mind.

If you have any questions, please contact your assigned OFM budget analyst.

Attachment

cc: Agency Budget Officers

General Fund-State Reductions by Agency

General Fund - State, Dollars in Thousands

Assumes a 6% Reduction* for Fiscal Year 2011

	Enacted Budget <u>FY 2011</u>	<u>Exemptions</u>	<u>Balance</u>	<u>Target</u>
State of Washington Totals				
Legislative	77,350	-	77,350	(4,676)
Judicial	113,777	-	113,777	(6,878)
Governmental Operations	226,922	-	226,922	(13,717)
Human Services	5,594,143	-	5,594,143	(338,166)
Natural Resources and Recreation	174,240	-	174,240	(10,533)
Transportation	37,583	-	37,583	(2,272)
Public Schools	6,778,392	(6,199,790)	578,602	(34,976)
Higher Education	1,345,654	-	1,345,654	(81,345)
Other Education	43,038	-	43,038	(2,602)
All Other Expenditures and Appropriations	1,038,567	(958,174)	80,393	(4,860)
	15,429,666	(7,157,964)	8,271,702	(500,024)
Legislative and Judicial Agencies				
House of Representatives	32,146		32,146	(1,943)
Senate	25,631		25,631	(1,549)
Joint Legislative Audit and Review Committee	3,152		3,152	(191)
Legislative Evaluation and Accountability Program	1,916		1,916	(116)
Office of the State Actuary	20		20	(1)
Joint Legislative Systems Committee	8,506		8,506	(514)
Statute Law Committee	4,864		4,864	(294)
Redistricting Commission	1,115		1,115	(67)
Supreme Court	6,948		6,948	(420)
Law Library	1,659		1,659	(100)
Court of Appeals	15,969		15,969	(965)
Commission on Judicial Conduct	1,064		1,064	(64)
Administrative Office of the Courts	52,562		52,562	(3,177)
Office of Public Defense	24,591		24,591	(1,487)
Office of Civil Legal Aid	10,984		10,984	(664)
	191,127	-	191,127	(11,554)
Governmental Operations				
Office of the Governor	5,705		5,705	(345)
Office of Lieutenant Governor	765		765	(46)
Public Disclosure Commission	2,212		2,212	(134)
Office of the Secretary of State	14,949		14,949	(904)
Governor's Office of Indian Affairs	262		262	(16)
Commission on Asian Pacific American Affairs	236		236	(14)
Office of State Auditor	717		717	(43)
Commission on Salaries for Elected Officials	206		206	(12)
Office of Attorney General	5,848		5,848	(354)
Caseload Forecast Council	742		742	(45)
Department of Commerce	40,477		40,477	(2,447)
Economic and Revenue Forecast Council	772		772	(47)
Office of Financial Management	20,545		20,545	(1,242)
Commission on Hispanic Affairs	255		255	(15)
Commission on African-American Affairs	236		236	(14)
Department of Revenue	112,319		112,319	(6,790)
Board of Tax Appeals	1,318		1,318	(80)
Department of General Administration	3,963		3,963	(240)
Department of Information Services	1,080		1,080	(65)
Military Department	8,874		8,874	(536)
Public Employment Relations Commission	2,635		2,635	(159)
Department of Archaeology/Historic Preservation	1,382		1,382	(84)

* 6.045 percent of appropriations after the 2010 Supplemental Budget

	Enacted Budget FY 2011	Exemptions	Balance	Target
Growth Management Hearings Office	1,424		1,424	(86)
	226,922	-	226,922	(13,717)
Human Services Agencies				
Washington State Health Care Authority	156,811		156,811	(9,479)
Human Rights Commission	2,511		2,511	(152)
Criminal Justice Training Commission	17,843		17,843	(1,079)
Department of Labor and Industries	19,336		19,336	(1,169)
Indeterminate Sentence Review Board	1,864		1,864	(113)
Department of Social and Health Services	4,457,802		4,457,802	(269,474)
Home Care Quality Authority			-	-
Department of Health	81,735		81,735	(4,941)
Department of Veterans Affairs	9,200		9,200	(556)
Department of Corrections	838,650		838,650	(50,696)
Department of Services for the Blind	2,390		2,390	(144)
Sentencing Guidelines Commission	948		948	(57)
Employment Security Department	5,053		5,053	(305)
	5,594,143	-	5,594,143	(338,166)
Social and Health Service Programs				
Children's Administration	306,947		306,947	(18,555)
Juvenile Rehabilitation	97,761		97,761	(5,910)
Mental Health	407,704		407,704	(24,646)
Developmental Disabilities	405,163		405,163	(24,492)
Long Term Care	638,535		638,535	(38,599)
Economic Services Administration	581,459		581,459	(35,149)
Alcohol And Substance Abuse	82,393		82,393	(4,981)
Medical Assistance Payments	1,789,973		1,789,973	(108,204)
Vocational Rehabilitation	10,077		10,077	(609)
Administration and Supporting Services	29,407		29,407	(1,778)
Special Commitment Program	46,922		46,922	(2,836)
Payments to Other Agencies	61,461		61,461	(3,715)
	4,457,802	-	4,457,802	(269,474)
Natural Resource Agencies				
Columbia River Gorge Commission	440		440	(27)
Department of Ecology	52,725		52,725	(3,187)
State Parks and Recreation Commission	20,311		20,311	(1,228)
Recreation and Conservation Funding Board	1,480		1,480	(89)
Environmental Hearings Office	1,104		1,104	(67)
State Conservation Commission	7,247		7,247	(438)
Department of Fish and Wildlife	34,337		34,337	(2,076)
Puget Sound Partnership	2,864		2,864	(173)
Department of Natural Resources	37,513		37,513	(2,268)
Department of Agriculture	16,219		16,219	(980)
	174,240	-	174,240	(10,533)
Transportation Agencies				
Washington State Patrol	36,059		36,059	(2,180)
Department of Licensing	1,524		1,524	(92)
	37,583	-	37,583	(2,272)
K-12 Schools				
Office of the Superintendent	33,360	-	33,360	(2,017)
General Apportionment (Basic Education Only)	5,047,895	(5,047,895)	-	-
General Apportionment (K-4 enhancement)	108,860		108,860	(6,581)
General Apportionment (Summer Vocational)	2,385		2,385	(144)
General Apportionment (Extended Day skill centers)	485		485	(29)
Pupil Transportation (Basic Education Only)	295,855	(295,855)	-	-

	Enacted Budget FY 2011	Exemptions	Balance	Target
Pupil Transportation (Coordinators)	892		892	(54)
School Food Services	3,159		3,159	(191)
Special Education	650,856	(650,856)	-	-
Educational Service Districts	8,319		8,319	(503)
Levy Equalization	286,911		286,911	(17,344)
Institutional Education	19,006	(19,006)	-	-
Education of Highly Capable Students	9,188		9,188	(555)
Student Achievement Program	25,730		25,730	(1,555)
Education Reform	99,313		99,313	(6,003)
Education Reform (All Day Kindergarten)			-	-
Transitional Bilingual Instruction	77,672	(77,672)	-	-
Learning Assistance Program	110,312	(110,312)	-	-
Compensation Adjustments	(1,806)	1,806	-	-
Superintendent of Public Instruction	6,778,392	(6,199,790)	578,602	(34,976)
Higher Education				
Higher Education Coordinating Board	127,779		127,779	(7,724)
University of Washington	271,092		271,092	(16,388)
Washington State University	178,183		178,183	(10,771)
Eastern Washington University	36,666		36,666	(2,216)
Central Washington University	33,803		33,803	(2,043)
The Evergreen State College	18,505		18,505	(1,119)
Spokane Intercollegiate Research/Tech Institute	1,490		1,490	(90)
Western Washington University	48,391		48,391	(2,925)
Community and Technical College System	629,745		629,745	(38,068)
	1,345,654	-	1,345,654	(81,345)
Other Education				
State School For The Blind	5,985		5,985	(362)
Center for Childhood Deafness and Hearing Loss	8,782		8,782	(531)
Work Force Training/Education Coordinating Board	1,444		1,444	(87)
Department of Early Learning	21,241		21,241	(1,284)
Washington State Arts Commission	1,347		1,347	(81)
Washington State Historical Society	2,607		2,607	(158)
Eastern Washington State Historical Society	1,632		1,632	(99)
	43,038	-	43,038	(2,602)
Special Appropriation Agencies				
State Employee Compensation			-	-
Bond Retirement and Interest	923,414	(923,414)	-	-
Special Appropriations to the Governor	80,393		80,393	(4,860)
IT and Printing Function Allotment Reduction Savings	(31,500)	31,500	-	-
Contributions to Retirement Systems	66,260	(66,260)	-	-
	1,038,567	(958,174)	80,393	(4,860)



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

September 16, 2010

TO: Agency Directors
Statewide Elected Officials
Presidents of Higher Education Institutions
Boards and Commissions

FROM: Marty Brown
Director

A handwritten signature in blue ink that reads "Marty Brown".

SUBJECT: ALLOTMENT REDUCTION INSTRUCTIONS FOR ACROSS-THE-BOARD CUTS MANDATED BY EXECUTIVE ORDER 10-04

Background of Across-the-Board Cuts

The Legislature has enacted certain statutes that authorize the Governor to issue orders that have the effect of law; such orders may impose requirements on entities beyond those that report to the Governor. One such statute is RCW 43.88.110(7), which requires across-the-board reductions in allotments if the Governor projects a cash deficit in a particular fund. By operation of law, the across-the-board reductions in allotments apply to all branches of state government and to all agencies headed by elected officials.

While the Governor has the authority to issue this order, she does not have the discretion to alter the percentage reduction to be applied to the various allotments. The requirement that the reductions be made across-the-board is rooted in the constitutional separation of powers doctrine. Courts have held that it would be an unlawful delegation of legislative power if the Governor were allowed to make policy decisions about the relative importance of programs and activities that differ from those reflected in the budget enacted by the Legislature. The overall purpose of the statute authorizing uniform reductions in allotments is to preserve the priorities established by the Legislature. The reductions must preserve the array of priorities and apportionment of the funds in the Legislature's budget, until and unless the Legislature amends the budget.

Of course, the Legislature's authority is bounded by the federal and state constitutions, and the Governor gives precedence to the constitutional obligations as identified by the courts. When execution of a reduction in an allotment would withhold spending authority in a way that inevitably would violate the federal or state constitutions, the reduction will not be made.

Executive Order 10-04

Recent decreases in the state General Fund revenue forecast have resulted in the Governor issuing Executive Order 10-04 (Attachment A), which requires across-the-board reductions in spending authority for all agencies with General Fund-State (GF-S) appropriations. The purpose of this

action is to restrain state spending until a revised budget can be acted upon during the next session of the Legislature.

Under the authority of RCW 43.88.110(7), this order applies to all state boards, commissions, agencies, and other institutions, including those in the legislative and judicial branches, and those headed by separately elected officials.

Under court decisions, reductions in allotments that result in withholding funds for basic education, debt service payments, or pension contributions would violate constitutional obligations of the state. Therefore, no reductions will be made in allotments that are wholly for these purposes.

Agencies are to submit allotment amendments to the Office of Financial Management (OFM) that reflect the reductions identified in the attachment to this letter. The amounts were calculated by applying a percentage reduction to agency allotment authority for each GF-S appropriation in Fiscal Year 2011. **The 6.287 percent reduction must apply uniformly to each separate appropriation or allocation from the state General Fund. Agencies cannot shift reductions between appropriations.**

One question that has arisen is how the reductions apply to provisos where a portion of the allotted funds are provided solely for specified purposes. For those allotments subject to OFM review, we will require the same percentage reduction to the portion of allotments governed by provisos, unless the agency can demonstrate that (1) the legislative priorities and objectives will not be reordered or undercut by a greater reduction to this segment of the allotment; or (2) the language of the proviso and related statutes constitute a mandate to spend the full amount of the funds subject to the proviso, in which case there may be a basis for a lesser reduction to the funds governed by the proviso. The touchstone will be whether legislative priorities are preserved.

Attachment B displays the spending authority reductions that are to be placed in allotment reserve status. Agencies should submit these allotment amendments to OFM by October 15, 2010. Use the Packet Purpose Type "Governor's Cash Deficit Reduction" and include the corresponding revisions to cash disbursement estimates and, if applicable, revenue and cash receipts estimates. More detailed allotment instructions are posted at <http://ofm.wa.gov/budget/instructions/allotment.asp>.

As indicated in OFM's August 17 memorandum, agencies have already been instructed to develop a plan in anticipation of possible GF-S across-the-board reductions. That plan should be submitted as an attachment to the October 15 allotment submittal. At a minimum, the plan should detail which programs are being cut to achieve the 6.287 percent reduction, and how the reduction will impact clients and services. Attachment C provides a template for this information.

The August memorandum also directed agencies to provide 6 percent reduction options as part of their October 13 supplemental budget submittals. Since the across-the-board reductions imposed by Executive Order 10-04 are slightly higher, Attachment B should be considered the new target for the supplemental budget options. In some cases, the across-the-board reduction will simply represent

September 16, 2010

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early implementation of the options presented in the supplemental budget request. However, agencies may also need to consider supplemental budget options that better reflect service priorities.

Technical questions relating to the allotment submittal may be directed to your assigned OFM budget analyst. Please discuss any legal issues with the appropriate Assistant Attorney General for your agency and ask the Assistant Attorney General to contact Steve Dietrich at the Attorney General's Office, and Ro Marcus, Director of Legal Affairs at OFM, to ensure coordination of legal issues across state government.

These are challenging times for the citizens of our state and all of us. We appreciate the difficult choices you face as you select these across-the-board reductions. Please contact us if we can be of assistance.

Attachments

cc: Agency Budget Officers
OFM Budget Staff

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 · Olympia, Washington 98504- 0002 · (360) 753- 6780 · www.governor.wa.gov

EXECUTIVE ORDER 10-04

**ORDERING EXPENDITURE REDUCTIONS IN ALLOTMENTS OF
STATE GENERAL FUND APPROPRIATIONS**

WHEREAS, the national economic downturn continues and revenues have fallen short of projections; and

WHEREAS, the current official state economic and revenue forecast of general fund revenues is less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and

WHEREAS, the anticipated revenues combined with the beginning cash balance of the general fund are insufficient to meet anticipated expenditures from this fund for the remainder of the current fiscal period; and

WHEREAS, a revised official economic and revenue forecast will be submitted in September pursuant to chapter 82.33 RCW which will reflect greater downturns in estimated receipts and revenues; and

WHEREAS, state law authorizes and directs the Governor to implement across-the-board reductions of allotments of appropriations to avoid a projected cash deficit; and

WHEREAS, under state law, an across-the-board reduction in allotments necessitated by a cash deficit applies to all agencies of state government, including agencies of the legislative and judicial branches and agencies headed by elected officials; and

WHEREAS, funding necessary for basic education, debt service on state bonds, state pension contributions and certain other purposes cannot be withheld;

NOW, THEREFORE, I, Christine O. Gregoire, Governor of the state of Washington, pursuant to chapter 43.88 RCW do hereby order:

The allotment of each appropriation from the State General Fund will be reduced effective October 1, 2010, by an amount necessary to avoid a cash deficit in the State General Fund. The reductions in allotments shall be based on the September 2010 official state economic and

revenue forecast. The amount of the reduction in allotted spending authority shall be assigned to reserve status as provided in RCW 43.88.110.

The Director of the Office of Financial Management shall calculate the amount by which the aggregate of planned expenditures and disbursements charged to the General Fund will exceed the aggregate of estimated receipts credited to such fund in the current fiscal period, less the beginning cash balance. In making this calculation, the Director shall use the estimated receipts and revenues contained in the September 2010 official state economic and revenue forecast. The Director shall enter across-the-board revisions to the allotment of each appropriation from the State General Fund effective October 1, 2010, by the amount calculated under this order. The Director shall not withhold approval of spending authority necessary to satisfy constitutional obligations such as basic education, debt service on state bonds, and state pension contributions.

Signed and sealed with the official seal of the state of Washington on this 13th day of September 2010 at Olympia, Washington.

By:

/s/

Christine O. Gregoire
Governor

BY THE GOVERNOR:

/s/

Secretary of State

GF-S Reductions by Agency, Per Executive Order 10-04

General Fund - State, Dollars in Thousands
Assumes a 6.287% Reduction for Fiscal Year 2011

	Enacted Budget FY 2011	Funds That Can't Be Withheld	Balance	Reduction
State of Washington Totals				
Legislative	77,350	-	77,350	(4,863)
Judicial	113,777	-	113,777	(7,153)
Governmental Operations	226,922	-	226,922	(14,267)
Human Services	5,618,143	-	5,618,143	(353,213)
Natural Resources and Recreation	174,240	-	174,240	(10,954)
Transportation	37,583	-	37,583	(2,363)
Public Schools	6,778,392	(6,199,790)	578,602	(36,377)
Higher Education	1,345,654	-	1,345,654	(84,601)
Other Education	43,038	-	43,038	(2,706)
All Other Expenditures and Appropriations	1,046,067	(989,674)	56,393	(3,545)
	15,461,166	(7,189,464)	8,271,702	(520,042)
Legislative and Judicial Agencies				
House of Representatives	32,146		32,146	(2,021)
Senate	25,631		25,631	(1,611)
Joint Legislative Audit and Review Committee	3,152		3,152	(198)
Legislative Evaluation and Accountability Program	1,916		1,916	(120)
Office of the State Actuary	20		20	(1)
Joint Legislative Systems Committee	8,506		8,506	(535)
Statute Law Committee	4,864		4,864	(306)
Redistricting Commission	1,115		1,115	(70)
Supreme Court	6,948		6,948	(437)
Law Library	1,659		1,659	(104)
Court of Appeals	15,969		15,969	(1,004)
Commission on Judicial Conduct	1,064		1,064	(67)
Administrative Office of the Courts	52,562		52,562	(3,305)
Office of Public Defense	24,591		24,591	(1,546)
Office of Civil Legal Aid	10,984		10,984	(691)
	191,127	-	191,127	(12,016)
Governmental Operations				
Office of the Governor	5,705		5,705	(359)
Office of Lieutenant Governor	765		765	(48)
Public Disclosure Commission	2,212		2,212	(139)
Office of the Secretary of State	14,949		14,949	(940)
Governor's Office of Indian Affairs	262		262	(16)
Commission on Asian Pacific American Affairs	236		236	(15)
Office of State Auditor	717		717	(45)
Commission on Salaries for Elected Officials	206		206	(13)
Office of Attorney General	5,848		5,848	(368)
Caseload Forecast Council	742		742	(47)
Department of Commerce	40,477		40,477	(2,545)
Economic and Revenue Forecast Council	772		772	(49)
Office of Financial Management	20,545		20,545	(1,292)
Commission on Hispanic Affairs	255		255	(16)
Commission on African-American Affairs	236		236	(15)
Department of Revenue	112,319		112,319	(7,061)

GF-S Reductions by Agency, Per Executive Order 10-04

General Fund - State, Dollars in Thousands
Assumes a 6.287% Reduction for Fiscal Year 2011

	Enacted Budget FY 2011	Funds That Can't Be Withheld	Balance	Reduction
Board of Tax Appeals	1,318		1,318	(83)
Department of General Administration	3,963		3,963	(249)
Department of Information Services	1,080		1,080	(68)
Military Department	8,874		8,874	(558)
Public Employment Relations Commission	2,635		2,635	(166)
Department of Archaeology/Historic Preservation	1,382		1,382	(87)
Growth Management Hearings Office	1,424		1,424	(90)
	226,922	-	226,922	(14,267)
Human Services Agencies				
Washington State Health Care Authority	156,811		156,811	(9,859)
Human Rights Commission	2,511		2,511	(158)
Criminal Justice Training Commission	17,843		17,843	(1,122)
Department of Labor and Industries	19,336		19,336	(1,216)
Indeterminate Sentence Review Board	1,864		1,864	(117)
Department of Social and Health Services	4,457,802		4,457,802	(280,262)
Department of Health	81,735		81,735	(5,139)
Dept of Health--County Public Health Assistance	24,000		24,000	(1,509)
Department of Veterans Affairs	9,200		9,200	(578)
Department of Corrections	838,650		838,650	(52,726)
Department of Services for the Blind	2,390		2,390	(150)
Sentencing Guidelines Commission	948		948	(60)
Employment Security Department	5,053		5,053	(318)
	5,618,143	-	5,618,143	(353,213)
Natural Resource Agencies				
Columbia River Gorge Commission	440		440	(28)
Department of Ecology	52,725		52,725	(3,315)
State Parks and Recreation Commission	20,311		20,311	(1,277)
Recreation and Conservation Funding Board	1,480		1,480	(93)
Environmental Hearings Office	1,104		1,104	(69)
State Conservation Commission	7,247		7,247	(456)
Department of Fish and Wildlife	34,337		34,337	(2,159)
Puget Sound Partnership	2,864		2,864	(180)
Department of Natural Resources	37,513		37,513	(2,358)
Department of Agriculture	16,219		16,219	(1,020)
	174,240	-	174,240	(10,954)
Transportation Agencies				
Washington State Patrol	36,059		36,059	(2,267)
Department of Licensing	1,524		1,524	(96)
	37,583	-	37,583	(2,363)
K-12 Schools				
Office of the Superintendent	33,360	-	33,360	(2,097)
General Apportionment (Basic Education Only)	5,047,895	(5,047,895)	-	-
General Apportionment (K-4 enhancement)	108,860		108,860	(6,844)
General Apportionment (Summer Vocational Programs)	2,385		2,385	(150)
General Apportionment (Extended Day Skill Centers)	485		485	(30)

GF-S Reductions by Agency, Per Executive Order 10-04

General Fund - State, Dollars in Thousands
Assumes a 6.287% Reduction for Fiscal Year 2011

	Enacted Budget FY 2011	Funds That Can't Be Withheld	Balance	Reduction
Pupil Transportation (Basic Education Only)	295,855	(295,855)	-	-
Pupil Transportation (Coordinators)	892		892	(56)
School Food Services	3,159		3,159	(199)
Special Education	650,856	(650,856)	-	-
Educational Service Districts	8,319		8,319	(523)
Levy Equalization	286,911		286,911	(18,038)
Institutional Education	19,006	(19,006)	-	-
Education of Highly Capable Students	9,188		9,188	(578)
Student Achievement Program	25,730		25,730	(1,618)
Education Reform	99,313	-	99,313	(6,244)
Transitional Bilingual Instruction	77,672	(77,672)	-	-
Learning Assistance Program	110,312	(110,312)	-	-
Compensation Adjustments	(1,806)	1,806	-	-
Superintendent of Public Instruction	6,778,392	(6,199,790)	578,602	(36,377)
Higher Education				
Higher Education Coordinating Board	127,779		127,779	(8,033)
University of Washington	271,092		271,092	(17,044)
Washington State University	178,183		178,183	(11,202)
Eastern Washington University	36,666		36,666	(2,305)
Central Washington University	33,803		33,803	(2,125)
The Evergreen State College	18,505		18,505	(1,163)
Spokane Intercollegiate Research/Tech Institute	1,490		1,490	(94)
Western Washington University	48,391		48,391	(3,042)
Community and Technical College System	629,745		629,745	(39,592)
	1,345,654	-	1,345,654	(84,601)
Other Education				
State School For The Blind	5,985		5,985	(376)
Center for Childhood Deafness and Hearing Loss	8,782		8,782	(552)
Work Force Training/Education Coordinating Board	1,444		1,444	(91)
Department of Early Learning	21,241		21,241	(1,335)
Washington State Arts Commission	1,347		1,347	(85)
Washington State Historical Society	2,607		2,607	(164)
Eastern Washington State Historical Society	1,632		1,632	(103)
	43,038	-	43,038	(2,706)
Special Appropriation Agencies				
Bond Retirement and Interest	923,414	(923,414)	-	-
Special Appropriations to the Governor	56,393		56,393	(3,545)
Contributions to Retirement Systems	66,260	(66,260)	-	-
	1,046,067	(989,674)	56,393	(3,545)

Agency Plan for 6.287 Percent GF-S Allotment Reduction

Agency Name: _____

Name of Program or Service Being Reduced:

Description of Reduction:

Dollar Amount (GF-S reduction in thousands):

Description of Client Impact and/or Effect on Service Outcomes:

Implementation Date:

Name of Program or Service Being Reduced:

Description of Reduction:

Dollar Amount (GF-S reduction in thousands):

Description of Client Impact and/or Effect on Service Outcomes:

Implementation Date:

Name of Program or Service Being Reduced:

Description of Reduction:

Dollar Amount (GF-S reduction in thousands):

Description of Client Impact and/or Effect on Service Outcomes:

Implementation Date:

(Repeat as Needed)

Cash Deficit Reductions

In accordance with RCW 43.88.110(7), if the Governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the Governor can mandate across the board reductions in allotments in order to prevent a cash deficit.

Agencies must use a “**Governor’s Cash Deficit Reduction**” packet purpose type to carry out the provisions of the across the board expenditure reductions. Agencies are to use this type of allotment packet only when instructed by the Office of Financial Management. Once the requirements are finalized, OFM will issue separate instructions to state agencies.

Information Relating to TALS-AMR

In TALS AMR application, agencies must create an **Operating Governor’s Cash Deficit Reductions** packet. Four components are required for this adjustment: Expenditures, Cash Disbursements, Reserve, and the Agency Plan for Reduction. Agencies enter a negative allotment under the expenditure allotment detail, and a corresponding reduction in cash disbursements. An amount exactly matching the expenditure reduction is entered as a **positive** amount to reserve. Refer to the [GF-S Reduction Amounts by Agency](#) document.

The Agency Plan for 6.287 Percent GF-S Allotment Reduction must be included as a WORD attachment to the allotment packet. The template is available on the OFM website. Packets with missing plans will be automatically returned.

Refrain from using the Allotment Adjustment Bucket tool for this allotment packet. This tool should only be used in quarterly adjustment packets. Any reductions previously made prior to October should be reflected in FM16-October.

Critical Error FAQ

1.0.49.1 – Critical error

If the user receives this error, check that the amount in reserve is equal to the total Governor’s cash deficit reductions displayed on the expenditure authority schedule. The amounts will be compared by account, expenditure authority type, fiscal period, and EA character.

Additional Resources

For assistance in formulating the construction of your allotment packet, contact your assigned OFM budget analyst ([Budget contacts](#)).

For technical questions relating to submitting your allotment packet, contact the Budget Portfolio Helpdesk at 360.725.5278.

Agency Plan for 6.287 Percent GF-S Allotment Reduction

Agency Name: Attorney General's Office (100)

Name of Program or Service Being Reduced: Consumer Protection (CP)

Description of Reduction: This reduction will require that CP's responsibilities are achieved while not filling and abolishing current vacancies, which will pare down CP's litigation priorities to a bare minimum consistent with maintaining credible general deterrence to unfair and deceptive practices in the marketplace. CP will reduce or eliminate some managerial functions, staff support for legislative proposals, outreach to disadvantaged populations, and selected current litigation priorities. CP would lose some capacity to respond to spikes in workload resulting in longer wait times for responses.

Dollar Amount (GF-S reduction in thousands): (\$147)

Description of Client Impact and/or Effect on Service Outcomes: CP is directly appropriated and we do not bill our legal services to client agencies. The impact in reducing this program is borne by the citizens of the State of Washington. We will bring fewer legal actions against potential violators of the state's CP laws and be less able to support legislative improvements to those laws. Our ability to be proactive in reaching citizens with questions about possible illegal business activity will be lessened, and response times to inquiries by those who proactively communicate with our office will be delayed.

Implementation Date: 10/01/2011

Name of Program or Service Being Reduced: Homicide Investigation Tracking System (HITS) Program

Description of Reduction: The statutory mandate of the AGO's HITS program work is to support law enforcement in bringing criminals to justice. We have targeted much of our reduction with information technology (IT) work that supports the HITS database. This database is the only statewide central repository for information relating to violent crimes against persons. Data from more than 10,200 murder investigations, more than 8,400 sexual assaults, and more than 72,500 other crimes have been collected by HITS and has been used to assist local law enforcement in criminal investigations. Typically, the HITS Unit will respond to over 1,000 requests for assistance or information each year.

Dollar Amount (GF-S reduction in thousands): (\$182)

Description of Client Impact and/or Effect on Service Outcomes: HITS is directly appropriated, and we do not bill our legal services to client agencies. The impact in reducing this program will be our inability to provide anything more than maintenance-level work on the current HITS database. Technology upgrades and other improvements to the system will have to wait until the budget

Office of the Attorney General
2011 Supplemental Budget Request

situation improves, and GF-S money can again be directed towards increased IT staffing for work on the database. The loss of three investigator positions and one data compiler position in the last two years due to the current and previous budget reductions means that serious crime data is not collected and entered into the HITS system in a timely manner, if at all, thereby negatively impacting the "linkage" and solving of crimes.

Implementation Date: 10/01/2011

Name of Program or Service Being Reduced: Criminal Litigation (CRI)

Description of Reduction: The primary function of our unit is to provide trial assistance to local prosecutors. CRI assures that where the county prosecutor has a conflict of interest or needs specialized expertise, there is a highly-skilled prosecutor to represent the state, resulting in greater public protection. This unit also assures that crimes of fraud involving state agencies are properly investigated and prosecuted so that the state agencies and other victims can recover their losses and other crimes are deterred. The following three cases are typical of the cases prosecuted by this unit: (1) State v. Michael Hecht (Pierce County): Pierce County Judge convicted of Patronizing a Prostitute and Felony Harassment, (2) State v. Martin Jones (Pacific County): Defendant is charged with shooting a Washington State Trooper in the head, and (3) State v. John Allen Booth and Ryan McCarthy (Lewis County): Co-defendants charged with two counts of aggravated murder and additional crimes. Reductions will severely limit the number of cases that we will be able to accept for prosecution.

Dollar Amount (GF-S reduction in thousands): (\$39)

Description of Client Impact and/or Effect on Service Outcomes: Reductions will severely limit the number of cases that we will be able to accept for prosecution.

Implementation Date: 10/01/2011

TAB D

REVENUES



State of Washington

Summarized Revenue by Account and Source

Budget Period: 2009-11

10/11/2010

Dollars in thousands

12:29PM

100 - Office of Attorney General

Agency Level

S7 - 2011 Supplemental Budget Request

Supporting Text Excluded

	Maintenance Level		Performance Level		Biennium Totals		Total
	FY2010	FY2011	FY2010	FY2011	FY2010	FY2011	
405 - Legal Serv Rev Acct							
BB - TR v Dreyfus DSHS Litigation		709					
BD - Secretary of State Litigation		95					
BE - Teck Cominco Metals ECY Litigation		850					
BF - Yucca Mountain ECY Litigation		128					
BH - McCleary v WA OSPI Litigation		155					
BI - DSHS Eastern State Hospital Legal		98					
BJ - Dept Early Learning Legal Services		682					
BK - Supreme Court Legal Services		25					
BL - Court of Appeals Legal Services		7					
Total - 0420 - Charges for Services - S		2,749				2,749	2,749
405 - Legal Serv Rev Acct - State		2,749				2,749	2,749
Total - 405 - Legal Serv Rev Acct		2,749				2,749	2,749
100 - Office of Attorney General - State		2,749				2,749	2,749
Total - 100 - Office of Attorney General		2,749				2,749	2,749

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TAB E

FEES



Fees

- Not Applicable -

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