

OFFICE OF THE
ATTORNEY GENERAL





Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

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

October 4, 2013

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

Dear Mr. Schumacher:

Enclosed please find the 2014 Supplemental Budget Request from the Attorney General's Office (AGO) addressing critical agency and complex litigation needs. We are mindful of the continuing challenges of the current and projected economic climate. We will continue to provide the best possible legal services for our clients and the residents of the state of Washington working within these constraints.

Per our prior conversations, our number one priority continues to be additional funding to address recruitment and retention issues for our attorneys serving our state agency clients and the public. The agency has experienced significant turnover due to low salaries that are not competitive with our public sector peers. Retention has become a critical problem and is impacting our ability to provide efficient and effective legal services.

Between July of 2012 and July 2013, we lost 55 Assistant Attorneys General and Attorney Managers. Exit surveys for these valued staff clearly indicate that, despite a high degree of work satisfaction, salary levels are the primary motivating factor in leaving the AGO workforce. Attrition is particularly high in divisions where there is demand for attorneys who specialize in certain areas of practice. For example, since January of 2011, 30% of the Assistant Attorneys General representing the Department of Social and Health Services have left the AGO. We respectfully request consideration of this critical funding need to ensure we can continue to provide the highest quality legal services to the state.

In addition to our retention related request, we have limited our supplemental budget request to those needs that arise directly from significant litigation, legislative mandate, or direct client needs that affect our workload. The funding requested for these items will allow us to mitigate risk, protect tax dollars, and serve the legal needs of the state and its residents. These include:



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- *League of Women Voters v. Washington*
- *U.S. Department of Labor v. Department of Social and Health Services*
- *Skokomish v. Goldmark*
- Tobacco Master Settlement litigation funding
- Antitrust litigation funding
- Parental Termination cases
- Wrongful Imprisonment
- Investigation and Prosecution of Washington tax law violations

Our request includes a few technical corrections and infrastructure funding needed to allow us to comply with technology policy directives in order to increase our efficiency and reduce costs to the state of Washington. Our eDiscovery initiative is an automated software solution that will allow the AGO to quickly and automatically respond to document discovery and public records requests. The project is expected to provide significant near-term cost reductions and serve as a pilot example for agencies throughout the state in order to help address growing expenses related to this important governmental transparency function.

Finally, it is worth noting that we did not request funding for the *Culverts* case as we have the billing authority we need to cover the costs of this litigation for the biennium. However, we support our client agencies that choose to ask for additional funding that may be needed in their budget to cover the costs of this litigation.

If you have any questions about this budget request, please contact Mark Melroy, Chief Financial Officer at (360) 534-4981 or Mamie Marcuss, Chief of Staff, at (360) 586-0729. Thank you for your assistance and continued cooperation.

Sincerely,



BOB FERGUSON
Attorney General

BF/eg
Enclosures

cc: Mamie Marcuss, Chief of Staff
David Horn, Chief Deputy
Mark Melroy, Chief Financial Officer

OFFICE OF THE ATTORNEY GENERAL
2014 Supplemental Budget Request
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TAB A

RECOMMENDATION
SUMMARY REPORT



Recommendation Summary

(By Agency Priority)

Agency: **100 Office of Attorney General**

1:53:15PM

Version: **S1 2014 Supplemental**

10/3/2013

Dollars in Thousands

	Annual Average FTEs	General Fund State	Other Funds	Total Funds
2011-13 Current Biennium Total				
Total Carry Forward Level				
Percent Change from Current Biennium				
M1 AG Parental Termination Cases	13.5		4,163	4,163
M1 AT Tobacco Master Settlement		1,126		1,126
M1 AK USDOL Vs. DSHS Litigation	0.1		50	50
M1 AJ League of Women Voters v WA	0.3		83	83
M1 AH Skokomish v. Goldmark Litigation			125	125
Carry Forward plus Workload Changes	13.9	1,126	4,421	5,547
Percent Change from Current Biennium				
M2 AM Antitrust Funding Correction			528	528
M2 AI Wrongful Imprisonment funding.	0.5	462		462
M2 AR WA Tax Law Violations	1.5		390	390
Total Maintenance Level	15.9	1,588	5,339	6,927
Percent Change from Current Biennium				
PL AB Recruitment and Retention		358	6,880	7,238
PL AS Migration to CTS Shared Service		53	999	1,052
PL AN eDiscovery			1,096	1,096
Subtotal - Performance Level Changes		411	8,975	9,386
2013-15 Total Proposed Budget	15.9	1,999	14,314	16,313
Percent Change from Current Biennium				

Recommendation Summary

(By Agency Priority)

Agency: 100 Office of Attorney General
Version: S1 2014 Supplemental

1:53:15PM
 10/3/2013

Dollars in Thousands

Annual Average FTEs	General Fund State	Other Funds	Total Funds
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M1 AG Parental Termination Cases

The Attorney General's Office (AGO) requires resources to meet the current and future caseload demands related to the state's termination of parental rights cases that achieve stability, safety, and permanent homes for foster children. Specifically, we request funding to 1) reverse reductions in attorney positions serving the Department of Social and Health Services (DSHS) in order to keep up with current caseloads, and 2) provide requisite staffing to meet an emergent need for an oncoming spike in new parental termination cases over the next two years. To meet these needs, the AGO requires \$1,408,590 and 9.0 FTEs in Fiscal Year (FY) 2014 and \$2,754,224 and 18.0 FTEs in FY2015.

M1 AH Skokomish v. Goldmark Litigation

The Office of the Attorney General (AGO) requests \$75,000 in Fiscal Year (FY) 2014 and \$50,000 in FY2015 for expert witness contracts and associated litigation support relating to Skokomish v. Goldmark litigation. This federal litigation filed by the Skokomish Tribe concerns the scope of the privilege to hunt and gather on open and unclaimed lands reserved to the Tribe by the Point No Point Treaty. This case poses several potentially significant precedential issues relevant to construction of the hunting and gathering rights in this and other treaties negotiated by Territorial Governor Isaac Stevens in the mid-1850's. The funding is critical to hire expert witnesses in the case and to fund litigation discovery costs. The Department of Fish and Wildlife (DFW) is the client agency.

M1 AJ League of Women Voters v WA

The Office of the Attorney General (AGO) requests \$50,000 and 0.3 Assistant Attorney General (AAG) in FY2014, and \$33,000 and 0.2 AAG in FY2015 to provide new legal services for the AGO Education (EDU) division relating to League of Women Voters v. Washington State litigation. The Charter Schools Commission (CSC) is the anticipated client agency.

The plaintiffs have sought a declaration that the law is unconstitutional and an injunction ordering that implementation of the law stops.

M1 AK USDOL Vs. DSHS Litigation

The Office of the Attorney General (AGO) requests that the Fiscal Year (FY) 2014 FTE and funding allocation for United States Department of Labor (USDOL) v the Washington State Department of Social and Health Services (DSHS) litigation be moved to FY2015 (2.2 FTE and \$906,000). Additionally, \$50,000 and 0.2 FTEs in FY2014 is requested for current FY legal services. DSHS is the client agency.

The intended level of effort is: FY2014: 0.2 FTE and \$50,000; FY2015: 2.2 FTE and \$906,000.

The potential liability to the State of Washington in an adverse judgment could exceed \$100,000,000 as the USDOL maintains that damages continue to accrue.

M1 AT Tobacco Master Settlement

The Office of the Attorney General (AGO) requests \$1,126,000 in the 2013-15 biennium to provide on-going legal services for the AGO Tobacco (TOB) effort relating to the tobacco Master Settlement Agreement (MSA). The state benefits greatly from continued enforcement efforts of the AGO regarding non-participating manufacturers in the Tobacco Master Settlement.

An unfavourable result in the arbitration(s) could result in a reduction of more than \$100 million from a future MSA payment to the state, and potentially set a precedent that could result in payment reductions cumulatively exceeding a billion dollars for all years in dispute (calendar year 2004 and subsequent).

M2 AI Wrongful Imprisonment funding.

The Office of the Attorney General (AGO) requests \$462,000 and 0.5 FTEs in the 2013-15 biennium to provide new legal services for the AGO Criminal Litigation (CRI) division relating to wrongful convictions as enacted in 2013 ESHB 1341.

Recommendation Summary

(By Agency Priority)

Agency: 100 Office of Attorney General

1:53:15PM

Version: S1 2014 Supplemental

10/3/2013

Dollars in Thousands

Annual Average FTEs	General Fund State	Other Funds	Total Funds
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M2 AM Antitrust Funding Correction

The Office of the Attorney General (AGO) requests a technical correction to the Antitrust Revolving Account (ARA) Fiscal Year (FY) allotment split. The AGO requests that \$548,000 be moved from FY2015 to FY 2014. This will balance fiscal year funding to \$1,086,000 in FY2014 and \$1,002,000 in FY2015 in order to meet current Antitrust Division (ANT) expenditure levels.

Additionally, the AGO requests additional allotment from the ARA totalling \$478,000 in FY2014 and \$50,000 in FY2015 to cover direct litigation costs for pending cases.

M2 AR WA Tax Law Violations

The AGO has an existing enforcement unit that works with the DOR to investigate and prosecute individuals and businesses that collect sales tax from customers but fail to remit that collected sales tax to the DOR. That unit has been highly successful in generating increased compliance with remission of collected and unremitted sales tax through publicity received on cases prosecuted as well as direct deterrent impact within geographic areas or business sectors where compliance with the tax code has been an issue.

The Office of the Attorney General (AGO) requests \$195,000 and 1.0 Assistant Attorney General (AAG) and 0.5 Legal Assistant (LA2) in Fiscal Year (FY) 2014 and FY2015, to provide legal services for the AGO Criminal Justice Division (CRJ) to provide additional investigation and prosecution services for cases referred to the AGO by the Department of Revenue (DOR).

This request will increase the prosecution resources within the existing Economic Crimes Unit (ECU) and thereby increase the number of cases that can be dealt with on an on-going basis. Due to the success of the program, ECU is consistently receiving significantly more referrals from DOR than can be handled within existing resources. Delays in charging appropriate criminal cases undercut the deterrent impact of the program.

PL AB Recruitment and Retention

The Office of the Attorney General (AGO) requests \$7,237,924 in FY2015 to provide sustained legal services for AGO client agencies. To ensure high quality legal services for the state, the AGO must address significant attorney recruitment and retention problems and stabilize our attorney workforce by addressing low attorney salaries.

PL AN eDiscovery

The Attorney General's Office (AGO) is requesting \$968,600 in FY2014 and \$127,200 in FY2015 to purchase and maintain electronic discovery (eDiscovery) software in the 2013-15 biennium to aid in identification, preservation, collection and production of digital media in litigation and public records requests.

PL AS Migration to CTS Shared Service

The Office of the Attorney General (AGO) requests a technical correction of \$1,052,000 in the 2013-15 biennium to provide appropriate funding for Consolidated Technology Services (CTS) fees charged to this agency.

TAB B

DECISION
PACKAGES



Agency: 100 Office of Attorney General

Decision Package Code/Title: AG Parental Termination Cases

Budget Period: 2013-15

Budget Level: M1 - Mandatory Caseload and Enrollment Changes

Recommendation Summary Text:

The Attorney General's Office (AGO) requires resources to meet the current and future caseload demands related to the state's termination of parental rights cases that achieve stability, safety, and permanent homes for foster children. Specifically, we request funding to 1) reverse reductions in attorney positions serving the Department of Social and Health Services (DSHS) in order to keep up with current caseloads, and 2) provide requisite staffing to meet an emergent need for an oncoming spike in new parental termination cases over the next two years. To meet these needs, the AGO requires \$1,408,590 and 9.0 FTEs in Fiscal Year (FY) 2014 and \$2,754,224 and 18.0 FTEs in FY2015.

Fiscal Detail

Operating Expenditures		<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
405-1	Legal Services Revolving Account-State	1,408,590	2,754,224	4,162,814
Total Cost		1,408,590	2,754,224	4,162,814
Staffing		<u>FY 2014</u>	<u>FY 2015</u>	<u>Annual Average</u>
	FTEs	9.0	18.0	13.5
Revenue				
<u>Fund</u>	<u>Source</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
405	Legal Serv Rev Acct 0420 Charges for Services	1,408,590	2,754,224	4,162,814
Total Revenue		1,408,590	2,754,224	4,162,814

Package Description:

This request has two components. The first is to restore staffing levels of attorneys who represent DSHS in dependency and termination cases. The second is to respond to a permanency initiative by DSHS. Both issues impact the AGO's ability to provide timely representation in termination cases referred by DSHS.

It is important to note that retention is a critical issue impacting the AGO's ability to keep up with the termination caseload. Attrition for attorneys in AGO divisions representing DSHS has been high. Thirty percent (30%) of attorneys performing DSHS work have left that work since January of 2011. In addition to the chronic set of vacancies in the division, AGO caseload capacity has diminished as the agency has lost many of its most experienced attorneys. For example, in one regional office, only two of the six attorneys have more than nine months of experience. Less experienced attorneys need time and training before they are able to handle a full caseload. Retention will continue to be a problem until the AGO can offer salaries competitive with their public sector peers.

Restoration of Staffing Levels to handle current caseloads. The AGO requests \$572,926 and 3.0 FTEs in FY 2014, and \$1,145,906 and 6.0 FTEs in FY 2015 for this component of the request. In order to address the critical attorney recruitment and retention challenges noted above, it has been necessary for the AGO to actively hold vacancies in this division and redirect funding to be used for some very

Agency: 100 Office of Attorney General

Decision Package Code/Title: AG Parental Termination Cases

limited salary adjustments. The held vacancies are in line with the vacancies that are already occurring in the division due to retention challenges.

These vacancies have a negative impact on the AGO's ability to process termination referrals from DSHS in a timely manner and result in longer stays for children in the foster care system. The requested resources will enable the AGO to restore staffing levels and for timely processing of the regularly-anticipated number of termination referrals from DSHS.

DSHS Permanency Initiative. The AGO requests \$835,664 and 6.0 FTEs in FY 2014 and \$1,608,318 and 12.0 FTEs in FY 2015 to address an upcoming caseload spike. The 12.0 FTEs include 7.0 Assistant Attorney General (AAG), 3 Paralegals (PL), and 2 Legal Assistants (LA). DSHS is making a concentrated effort to achieve permanency for more foster children, which will result in a significant increase in the number of termination cases referred to the AGO. This permanency initiative is being undertaken to ensure compliance with federal laws requiring the timely permanency for children in foster care. In addition to reducing the amount of time children spend in foster care, this initiative is expected to save state resources by reducing the costs of foster care, provision of remedial services and visitation for families, and staff resources. This initiative will result in a significant increase in the number of cases referred to the AGO for termination of parental rights within the next six months, which typically requires discovery and a contested trial within the next year. The number of cases expected to be referred to the AGO is 1,248, which is greater than a 50% increase over the normal course of business. To process these cases in a timely manner and assure the state realizes the savings, we will need additional resources to meet this work load.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

Restoration of Staffing Levels. The AGO provides legal services to DSHS state-wide, with over three-quarters of the resources devoted to the Children's Administration. As noted above, due to major attorney recruitment and retention challenges caused by low salaries, there has been significant turnover of attorneys assigned to dependency and termination cases. With diminishing attorney experience and regular turnover, termination case backlogs have already developed and will worsen until the AGO can address its retention challenges. In addition, it is challenging to ensure appropriate representation of DSHS in these difficult cases when attorneys have minimal knowledge and experience. The stabilization of the attorney workforce representing DSHS will allow for the development of greater levels of expertise, greater ability to handle higher caseloads, and the ability to process termination referrals from DSHS in a timely manner.

DSHS Permanency Initiative. DSHS has identified a backlog of cases in which children have been in out-of-home care longer than 15 months without moving to permanency (i.e. adoption, guardianship, third-party custody, or return home). To move through this backlog, DSHS expects to refer 1,248 termination cases to the AGO between September 2013 and February 2014. The AGO will need additional staffing to handle these cases in a timely manner. Over the past four years, DSHS has referred an average of 815 termination cases to the AGO every six months, so this backlog represents an expected one-time increase of approximately 433 cases.

Under the federal Adoption and Safe Families Act, states must ensure timely permanency for foster children by filing a termination petition at least 15 months from when the child was removed from home, unless there is a compelling reason not to do so in individual cases. States that do not comply with this requirement may be financially penalized. As a result of the most recent federal audit of DSHS' compliance with federal child welfare laws, DSHS committed to improve its performance on achieving timely permanency for foster children.

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Decision Package Code/Title: AG Parental Termination Cases

When children do not achieve timely permanency and remain in foster care, there are ongoing costs to the state. DSHS costs include the continued expense of foster care and meeting the children's needs, as well as the expense of providing reunification services to families, family visitation, and staff resources to meet the children's needs. AGO costs include the cost of hearings at least twice a year, and various contested motions.

The AGO expects its performance on timely filing of termination petitions to be impacted by this request. In the last two years, due to the attorney retention challenges, AGO performance on timely filing of termination petitions dropped. In FY2011, the AGO filed 93% of cases within 45 days of receiving the referral from DSHS. In FY2013, the rate has dropped to 79% of cases being filed within this timeframe. DSHS performance outcomes that may be impacted are those related to timely permanency for foster children. If DSHS' backlog of termination cases is resolved, this is likely to free more foster children for permanency through adoption. If DSHS is able to achieve permanency for more foster children, this could also decrease DSHS' case worker caseload, and further enable these workers to accomplish other work in a timely manner.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</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 package supports Results Washington Goal 4: Healthy and Safe Communities - Healthy Youth and Adults, as well as Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

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

DSHS supports both components of this request.

If DSHS proceeds to termination on more cases, this will impact the courts by increasing the number of cases to be scheduled for termination trials. It will also impact defense counsel caseloads, as indigent parents are entitled to court-appointed counsel in

Agency: 100 Office of Attorney General

Decision Package Code/Title: AG Parental Termination Cases

termination proceedings. However, when permanency is not achieved and dependency cases continue, the court and defense counsel resources are impacted as well, as there are review hearings twice a year, and various other motions.

Finally, without additional resources to address the salary disparities between AGO attorneys and its public sector peers, we will continue to face significant turnover and retention issues. These retention challenges will make it difficult to achieve the intended results of this request.

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

Restoration of Staffing Levels. With respect to recruitment and retention, the AGO has reduced other costs in order to provide some very limited salary increases to stem the tide of attorneys leaving the agency. In addition, as discussed above, it will be necessary to actively maintain a limited number of vacancies in order to have funds to support this retention effort. The retention related vacancies do result in a reduced ability to keep up with the regularly-expected number of parental termination referrals from DSHS.

There are no statutory, regulatory, or other changes or negotiation possibilities that will reduce the costs of this legal work.

DSHS Permanency Initiative. DSHS examined whether it could use Children's Administration program funds to pay for an interagency agreement to cover the one-time costs of its permanency initiative, but they are unable to identify funds which could be committed to this purpose.

What are the consequences of not funding this package?

Restoration of Staffing Levels. Termination backlogs had already developed before implementation of any vacancy holds, due to the high level of staff turnover. If the planned vacancies are held, termination backlogs will worsen and permanency will be delayed for foster children. Delays to permanency exacerbate an already difficult situation for foster children and drive up the cost to the State foster care system.

DSHS Permanency Initiative. If resources are not provided to address the increase in referrals from DSHS, severe backlogs will develop. Children will remain unnecessarily in foster care, which is a higher cost to the state in terms of continued foster care. If additional resources are not secured to provide sufficient legal support, the State risks loss of significant federal funding due to non-compliance with federal law.

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

DSHS will be billed for legal services provided by AGO staff across the state.

It is anticipated the direct costs (experts, and other litigation costs) associated with the 433 additional cases, on top of the regular workload, will be in the 12-18 month timeframe from when the cases are referred to AGO. An unknown factor is whether the court system has the ability to absorb and schedule the necessary hearings.

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General

Decision Package Code/Title: AG Parental Termination Cases

Direct litigation costs for experts, filing fees, court reporters, and document copies are estimated to be an average of \$252 per case statewide. The total for the additional caseload will be approximately \$110,000.

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

Restoration of Staffing Levels. These costs are on-going and will carry forward into future biennia.

DSHS Permanency Initiative. This is a one-time initiative by DSHS to identify cases that need to proceed to a termination referral. It is estimated that the effort by DSHS to refer the cases over the next six months will take 18 to 24 months to clear through the legal system, from filing, to trial, and through any appeals. As a result, some portion of this caseload is expected to proceed into FY2016.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
A Salaries And Wages	798,759	1,597,518	2,396,277
B Employee Benefits	238,964	477,926	716,890
C Professional Svc Contracts	55,000	55,000	110,000
E Goods\Other Services	247,467	551,980	799,447
G Travel	14,900	29,800	44,700
J Capital Outlays	53,500	42,000	95,500
Total Objects	1,408,590	2,754,224	4,162,814

Agency: 100 Office of Attorney General
Decision Package Code/Title: AT Tobacco Master Settlement
Budget Period: 2013-15
Budget Level: M1 - Mandatory Caseload and Enrollment Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$1,126,000 in the 2013-15 biennium to provide on-going legal services for the AGO Tobacco (TOB) effort relating to the tobacco Master Settlement Agreement (MSA). The state benefits greatly from continued enforcement efforts of the AGO regarding non-participating manufacturers in the Tobacco Master Settlement.

An unfavourable result in the arbitration(s) could result in a reduction of more than \$100 million from a future MSA payment to the state, and potentially set a precedent that could result in payment reductions cumulatively exceeding a billion dollars for all years in dispute (calendar year 2004 and subsequent).

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
001-1 General Fund - Basic Account-State	563,000	563,000	1,126,000
Total Cost	563,000	563,000	1,126,000

Package Description:

The AGO requests \$563,000 in FY2014 and FY2015, which includes \$268,000 per FY for direct litigation costs. These resources will be used to prepare for the next Non-Participating Manufacturer (NPM) adjustment arbitration under the tobacco MSA (for sales year 2004), and for MSA public health enforcement.

Previous appropriations were for the arbitration of the 2003 NPM Adjustment dispute. The current request is for the arbitration of the 2004 NPM Adjustment dispute, for which preparations have already begun.

Over the last several biennia, TOB has been staffed with 1.0 AAG. Additional legal services have been provided by other AGO divisions, whose primary purpose is to represent other state agencies. This request is to allow TOB to sustain this practice.

The 2003 NPM Adjustment (i.e., the amount of money that the MSA tobacco companies were seeking in the form of reductions in payments that they make to the states) was approximately \$1.2 billion. Because Washington prevailed in its arbitration, it will not suffer a reduction in a future MSA payment based upon the 2003 dispute. Moreover, Washington will receive approximately \$14.8 million in funds that the tobacco companies pay into escrow, pending the completion of the arbitration; this money represents a portion of an annual MSA payment that Washington was owed but did not receive. Tobacco Settlement funds are contingent on on-going enforcement of non participating manufacturers. To the extent that funding does not continue for enforcement efforts, the State could

lose settlement funds for 2004 and subsequent years. These costs are on-going for years to come.

TOB spent \$536,000 in direct litigation costs in the 2011-13 biennium and projects approximately equal expenditure rates in the 2013-15 biennium. These costs provide the funding to purchase expert witness and consultant services, data and document management services, and direct hearing-related services such as videographer and court reporter services.

Step 18 of the 2013-15 Carry-Forward Levels (CFL) included a reduction of -\$720,000 from multi-State tobacco litigation resources. In 2011-13, this was addressed as a one-time reduction and not intended to make the CFL. Restoring these funds and removing them from future CFL will posture TOB for a greater level of success.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This funding request is critical to the continued defense of this major dispute, the essence of which, for the state, is sustaining its MSA entitlements. 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 the residents of the state from exposure to liability. The worst case scenario can cumulatively exceed a billion dollars for all years in dispute.

The results of this request will enable the AGO to prepare and present the strongest case possible and thereby maximize the opportunity for a favorable result in the arbitration. Washington State currently receives approximately \$150 million annually under the MSA.

Approximately 71% of this money, or roughly \$106 million each FY, is used by the legislature to fund various programs in state government.

The results of the arbitrations of on-going NPM Adjustment disputes have enormous financial implications for all MSA states such as Washington that have not settled their disputes with the participating manufacturers. Decisions in a given arbitration may set precedent for subsequent arbitrations. Thus, the ability to put on a strong case has both immediate and long-term financial implications for the state.

Performance Measure Detail

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

		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</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-"Serve the State - Provide Excellent, Independent, and Ethical legal advice and representation to our client the state of Washington." The AGO provides a broad range of legal services to over 200 state agencies to enable them to achieve their missions.

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Tobacco tax enforcement" supports the sub-priority to "Safeguard and manage public funds."

This package supports Results Washington Goal 4: Healthy and safe communities.

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government.

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

Defending state agencies, with the potential for an adverse judgment resulting in a loss of more than \$100 million per FY, is a key component in directly supporting the Priorities of Government in providing legal services to state agencies.

This request relates to the following Priority of Government: "Improve the health of Washingtonians." One of the economic rationales for the MSA is to require tobacco companies to internalize at least a portion of the external cost of the nation's tobacco addiction. To the extent that participating manufacturers are able to avoid making full annual MSA payments, they correspondingly avoid internalizing some of the costs of their products. Moreover, to the extent that the legislature may use MSA revenues to fund public health programs, this request similarly relates to improving the health of Washingtonians by seeking to maximize the amount of MSA revenue that Washington will receive.

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

An unfavourable result in the arbitration(s) could potentially result in a reduction of over \$100 million from future MSA payments and have similar implications for the remaining years in dispute (2004-2012).

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

Because of the potential impact of adverse rulings in these cases, there is no reasonable alternative to vigorously defending the state. Revenues generated will exceed the expenses by a monumental proportion.

What are the consequences of not funding this package?

Not funding this request would seriously compromise the state's ability to present a well-organized, persuasive case in the arbitration(s). The result will be a materially higher risk for an adverse decision, with potential dollar consequences in the hundreds of millions of dollars.

Tobacco Settlement funds are contingent on on-going enforcement of non participating manufacturers. To the extent that funding that does not continue for enforcement efforts, Washington State will lose settlement funds for 2004 and subsequent years. These costs are on-going for years to come.

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

Direct expenditures of approximately \$536,000 are expected. This includes expert witness and consultant services, data and document management services, and direct hearing-related services such as videographer and court reporter services.

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

Washington and the Participating Manufacturers have attempted to negotiate a settlement of the pending disputes that would alleviate the need for future NPM Adjustment arbitrations under the MSA. However, thus far those negotiations have been unsuccessful.

Thus, it is necessary to fund the continued staffing of the pending arbitration of the 2004 NPM Adjustment dispute.

These costs are on-going and will carry forward into future biennia.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
A Salaries And Wages	154,062	154,062	308,124
B Employee Benefits	44,898	44,898	89,796
C Professional Svc Contracts	268,000	268,000	536,000
E Goods\Other Services	83,115	89,365	172,480
G Travel	2,800	2,800	5,600
J Capital Outlays	10,125	3,875	14,000
Total Objects	563,000	563,000	1,126,000

Agency: 100 Office of Attorney General
Decision Package Code/Title: AK USDOL Vs. DSHS Litigation

Budget Period: 2013-15
Budget Level: M1 - Mandatory Caseload and Enrollment Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests that the Fiscal Year (FY) 2014 FTE and funding allocation for United States Department of Labor (USDOL) v the Washington State Department of Social and Health Services (DSHS) litigation be moved to FY2015 (2.2 FTE and \$906,000). Additionally, \$50,000 and 0.2 FTEs in FY2014 is requested for current FY legal services. DSHS is the client agency.

The intended level of effort is: FY2014: 0.2 FTE and \$50,000; FY2015: 2.2 FTE and \$906,000.

The potential liability to the State of Washington in an adverse judgment could exceed \$100,000,000 as the USDOL maintains that damages continue to accrue.

Fiscal Detail

Operating Expenditures		<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>	
405-1	Legal Services Revolving Account-State	(856,000)	906,000	50,000	
Total Cost		(856,000)	906,000	50,000	
Staffing		<u>FY 2014</u>	<u>FY 2015</u>	<u>Annual Average</u>	
	FTEs	-2.0	2.2	.1	
Revenue					
<u>Fund</u>	<u>Source</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>	
405	Legal Serv Rev Acct	0420 Charges for Services	(856,000)	906,000	50,000
Total Revenue		(856,000)	906,000	50,000	

Package Description:

The AGO requests that the FY2014 FTE and funding allocation for USDOL v DSHS litigation be moved to FY2015 (2.2 FTE and \$906,000). Additionally, \$50,000 and 0.2 FTEs in FY2014 is requested for current FY legal services.

This request includes \$10,000 in FY2014 for Special Assistant Attorney General (SAAG) advice.

The intended level of effort is: FY2014: 0.2 FTE and \$50,000; FY2015: 2.2 FTE and \$906,000.

In 2008, 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 social workers are exempt from FLSA. The court entered judgment for DSHS on May 3, 2010.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AK USDOL Vs. DSHS Litigation

The USDOL appealed the ruling to the Ninth Circuit Court of Appeals. In August 2011, the Ninth Circuit reversed the District Court's grant of summary judgment and remanded for trial. DSHS petitioned for rehearing in October 2011. The Court requested a response from USDOL, which was filed May 31, 2012. The Ninth Circuit denied the Petition for Rehearing and remanded the case to the District Court on September 28, 2012. The District Court set a new case schedule with the trial to occur in May 2014. However, USDOL filed a Petition for Writ of Mandamus in the Ninth Circuit in June 2013. The Ninth Circuit requested a response from DSHS in September 2013. Thus, until the Ninth Circuit rules on the Petition for Writ of Mandamus, no further proceedings will take place in the District Court. It is not likely that the Ninth Circuit will rule in FY2014.

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 SAAG with expertise in defending cases against the USDOL. The funds requested are for the purpose of defending an appeal.

The AGO contact for this request is Brendan VanderVelde, Budget Manager, and he can be reached at (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 over whether social workers are exempt from the overtime requirements of the FLSA. 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 litigation. The AGO is working to provide the most efficient and effective legal services for the citizens of the state in order to avoid liability exposure that could exceed \$100,000,000.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</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-"Serve the State - Provide excellent, independent and ethical legal advice and representation to our client, the state of Washington.." The AGO provides a broad range of legal services to over 200state agencies to enable them to achieve their missions.

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that

Agency: 100 Office of Attorney General

Decision Package Code/Title: AK USDOL Vs. DSHS Litigation

drives accountability and results for the people of Washington State.

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

Defending state agencies, with the potential for an adverse judgment in the amount of more than \$100,000,000, is a key component in directly supporting the Priorities of Government.

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively," includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

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

The AGO has no option but to continue to defend this lawsuit. Settlement is always a possibility, but settlement talks have so far been unsuccessful.

This case is limited to DSHS Children's Administration social workers.

It is important to note that this request is for a continuation of on-going litigation started in 2008.

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

Although settlement is always being explored as a possibility, the AGO has no choice but to defend this lawsuit. Given the potential impact on DSHS 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 the cost of the legal defense of this lawsuit could result in substantial liability to DSHS and the state of Washington.

Not funding this request will mean that the AGO and DSHS will have to cut and reprioritize 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

This request includes \$10,000 in FY2014 for SAAG advice.

State of Washington
Decision Package

FINAL

Agency: **100 Office of Attorney General**

Decision Package Code/Title: **AK USDOL Vs. DSHS Litigation**

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

Costs in this request are for the purpose of trying this lawsuit. Regardless of the outcome of the trial, there will be another appeal to the Ninth Circuit and additional funds will be needed for future appeals.

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

These costs are one-time and will not carry forward once the appeals are exhausted.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
A Salaries And Wages	(114,784)	132,396	17,612
B Employee Benefits	(39,756)	44,688	4,932
C Professional Svc Contracts	(700,000)	710,000	10,000
E Goods\Other Services	(335)	14,691	14,356
G Travel	300	1,100	1,400
J Capital Outlays	(1,425)	3,125	1,700
Total Objects	(856,000)	906,000	50,000

Agency: 100 Office of Attorney General
Decision Package Code/Title: AJ League of Women Voters v WA

Budget Period: 2013-15
Budget Level: M1 - Mandatory Caseload and Enrollment Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$50,000 and 0.3 Assistant Attorney General (AAG) in FY2014, and \$33,000 and 0.2 AAG in FY2015 to provide new legal services for the AGO Education (EDU) division relating to League of Women Voters v. Washington State litigation. The Charter Schools Commission (CSC) is the anticipated client agency.

The plaintiffs have sought a declaration that the law is unconstitutional and an injunction ordering that implementation of the law stops.

Fiscal Detail

Operating Expenditures		<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>	
405-1	Legal Services Revolving Account-State	50,000	33,000	83,000	
Total Cost		50,000	33,000	83,000	
Staffing		<u>FY 2014</u>	<u>FY 2015</u>	<u>Annual Average</u>	
	FTEs	.3	.2	.3	
Revenue					
<u>Fund</u>	<u>Source</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>	
405	Legal Serv Rev Acct	0420 Charges for Services	50,000	33,000	83,000
Total Revenue		50,000	33,000	83,000	

Package Description:

The AGO requests \$50,000 and 0.3 AAG in FY2014, and \$33,000 and 0.2 AAG in FY2015 to provide new legal services for the AGO EDU division relating to League of Women Voters v. Washington State litigation. This request includes \$1,000 per FY for direct litigation costs. This package is requested to support the defense of a lawsuit seeking to invalidate I-1240, the Charter School Legislation. I-1240 established a new state agency, CSC, and charged it, along with the State Board of Education, with implementing the Charter Schools Act.

The Charter Schools Act authorizes the establishment of a limited number of public charter schools in Washington. This lawsuit seeks to invalidate the law, shut down the CSC and prohibit any charter schools from operating. By the time the case is resolved, contracts will have been signed, schools may be operating and public resources will have been expended implementing the law.

A charter school is a school that is operated by a private non-profit organization. Schools must enter into a charter contract with CSC or with an authorizing school district in order to operate. The Charter Schools Act describes the rules that the school must adhere to and the performance expected. The State Board of Education and the CSC have been working to establish the infrastructure for the charter process. The first schools are expected to open in fall 2014.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AJ League of Women Voters v WA

This litigation is in the Superior Court in King County and it will be heard on November 22, 2013. The judge may rule from the bench or take some time to issue a written decision. Whichever side loses will seek direct review by the Supreme Court. A host of variables governs when appellate review is completed. The process for seeking direct Supreme Court review and filing briefs can take six months. The Supreme Court can decide to send the case to the Court of Appeals, substantially lengthening the process. After the briefing is completed, oral argument is placed on the court's calendar. The earliest anticipated argument date would be June 2014, with a decision before schools start in fall 2014. This is what the plaintiffs hope for. The longest projection for assignment to the court's calendar would take litigation past June 2015. The most likely scenario has the Supreme Court accepting direct review, but not hearing the case until the school's fall term of 2014 with a decision sometime between November 2014 and February 2015.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

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

This request is for funding that is critical to the continued defense of this major dispute, which is on a fast track to the Washington State Supreme Court. The outcome of this case has the potential to create a long-lasting precedent with significant downstream fiscal impacts on the State. If the plaintiffs' arguments are accepted by the Court, a significant disruption of educational governance in Washington beyond charter schools could ensue. There are implications to the existence of not just the State Board of Education and the Professional Educator Standards Board but to many popular educational programs including Running Start, alternative programs, Science, Technology, Engineering and Mathematics (STEM) Education, the University of Washington Academy, the new Tribal Compact legislation, governance of the Washington State School for the Blind and the Center for Childhood Deafness and Hearing Loss. The outcomes of this case could include significant constraints on the Legislature's policy discretion relating to the educational system from early learning through higher education. Finally, elements of this litigation impact the State's choice in how to fund various education programs and could impact the on-going remedial steps in *McCleary v. State*, which carries enormous fiscal implications.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</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-"Serve the State - Provide excellent, independent, and ethical legal advice and representation to our client, the state of Washington." The AGO provides a broad range of legal services to over 200 state agencies to enable them to achieve their missions.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AJ League of Women Voters v WA

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

Defending state agencies, with the potential for an adverse judgment, is a key component in directly supporting the Priorities of Government in providing legal services to state agencies.

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

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

This litigation was filed to invalidate enacted legislation (I-1240) and impose constraints on legislative discretion going forward. The State has no option but to respond to this litigation. There are potentially significant, negative downstream implications for the state as a whole if this case is not successfully defended.

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?

The AGO will be unable to support the cost and effort of necessary legal services to complete the defense of this litigation. Without adequate funding for this effort, Attorneys will have to perform this work using other billing sources.

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

Direct costs of \$1,000 per FY are needed to pay for court costs associated with preparing records and transmitting from the Superior Court to the Supreme Court, and travel costs.

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

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General
Decision Package Code/Title: AJ League of Women Voters v WA

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

These costs are one-time and will not carry forward.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
A Salaries And Wages	26,417	17,612	44,029
B Employee Benefits	7,397	4,932	12,329
C Professional Svc Contracts	1,000	1,000	2,000
E Goods\Other Services	12,336	8,556	20,892
G Travel	600	400	1,000
J Capital Outlays	2,250	500	2,750
Total Objects	50,000	33,000	83,000

Agency: 100 Office of Attorney General
Decision Package Code/Title: AH Skokomish v. Goldmark Litigation
Budget Period: 2013-15
Budget Level: M1 - Mandatory Caseload and Enrollment Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$75,000 in Fiscal Year (FY) 2014 and \$50,000 in FY2015 for expert witness contracts and associated litigation support relating to Skokomish v. Goldmark litigation. This federal litigation filed by the Skokomish Tribe concerns the scope of the privilege to hunt and gather on open and unclaimed lands reserved to the Tribe by the Point No Point Treaty. This case poses several potentially significant precedential issues relevant to construction of the hunting and gathering rights in this and other treaties negotiated by Territorial Governor Isaac Stevens in the mid-1850's. The funding is critical to hire expert witnesses in the case and to fund litigation discovery costs. The Department of Fish and Wildlife (DFW) is the client agency.

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
996-Z Estimated All Other Funds-Other	75,000	50,000	125,000
Total Cost	75,000	50,000	125,000

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services	75,000	50,000	125,000
Total Revenue		75,000	50,000	125,000

Package Description:

The AGO requests \$75,000 in FY2014 and \$50,000 in FY2015 to enable the AGO Fish and Wildlife division (FWP) to hire expert witnesses and fund discovery costs in the Skokomish v. Goldmark litigation.

The Skokomish Tribe filed this federal litigation against the Attorney General, the Commissioner of Public Lands, other Department of Natural Resources and Department of Fish and Wildlife officials, and six county prosecutors, alleging that they have unlawfully interfered with the privilege to hunt and gather on open and unclaimed lands reserved to the Tribe by the Point No Point Treaty. This case poses several potentially significant precedential issues relevant to construction of the hunting and gathering right in this and other treaties negotiated by Territorial Governor Isaac Stevens in the mid-1850's. Issues include the geographic scope of the treaty right; what lands (government and private) are subject to treaty hunting and gathering; the nature of the materials that may be gathered; if any allocation of those resources should be made as between the state and the tribes; and what regulatory authority the state and tribes have over such activities. The Skokomish Tribe seeks an injunction prohibiting the state and county officials from interfering with its alleged treaty rights.

Numerous other tribes are monitoring the case carefully and may either move to intervene in Skokomish v. Goldmark to pursue their

own claims, or may file separate litigation seeking to establish the scope of their treaty hunting and gathering rights. The funding in this request is critical in order to hire expert witnesses to defend the state's interests. Expert witnesses are critical to discern how the parties to the treaties would have understood its terms. The request covers anticipated costs for research and for testimony at trial, if needed. It will also fund discovery costs.

The AGO contact for this request is Brendan VanderVelde, Budget Manager, and he can be reached at (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 dispute. The outcome of this case will have implications for the state and could create a long-lasting precedent.

This request is submitted to secure funding for expert witness costs associated with the Skokomish v. Goldmark treaty hunting and gathering rights litigation. The funding is critical to the State's defense of this litigation, and to our ability to inform the court regarding the proper construction of the privilege of hunting and gathering reserved to the tribes in the Point No Point Treaty, and potentially other treaties implicating similar claims. The case presents significant issues of first impression, and will likely have significant precedential value.

Performance Measure Detail

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</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?

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

This package supports Results Washington Goal 3: Sustain energy and a clean environment - Healthy fish and wildlife. Depending on the outcome of the case, there could be serious implications to state's ability to manage wildlife and enforce wildlife protection laws.

This package also supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

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

The AGO has no option but to respond to this litigation. State, county, and potentially private landowners may be affected by the outcome of the case, which seeks to define where and what may be hunted and gathered. The counties will support this proposal, as

will private landowners whose interests may be adverse to the rights being asserted by the Skokomish Tribe. Funding in the 2014-15 biennium is critical to ensure that the AGO can hire experts to assist in defense of this 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 other than to vigorously defend the state. The AGO has attempted to negotiate a narrowed scope of litigation with the Skokomish Tribe, but that effort was unsuccessful. 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 fund this package will seriously jeopardize the State's defense of this litigation. Because the litigation raises significant precedential issues concerning the scope of the treaty right to hunt and gather as set forth in a 160-year old treaty, expert assistance is critical to interpreting the meaning of the treaty. Among other arguments, the Skokomish Tribe asserts the right to harvest 100% of all living things on those areas subject to its treaty right. The economic impact of that position, if sustained by the court, would be both staggering and unquantifiable.

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

This request is for \$125,000 (\$75,000 in FY2014 and \$50,000 in FY2015) for direct litigation costs. These costs will be incurred for expert witnesses and trial discovery costs.

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

These costs are one-time and will not carry forward.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
E Goods\Other Services	75,000	50,000	125,000

Agency: 100 Office of Attorney General
Decision Package Code/Title: AM Antitrust Funding Correction

Budget Period: 2013-15
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests a technical correction to the Antitrust Revolving Account (ARA) Fiscal Year (FY) allotment split. The AGO requests that \$548,000 be moved from FY2015 to FY 2014. This will balance fiscal year funding to \$1,086,000 in FY2014 and \$1,002,000 in FY2015 in order to meet current Antitrust Division (ANT) expenditure levels.

Additionally, the AGO requests additional allotment from the ARA totalling \$478,000 in FY2014 and \$50,000 in FY2015 to cover direct litigation costs for pending cases.

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
424-6 Anti-Trust Revolving Account-Non-Appropriated	1,026,000	(498,000)	528,000
Total Cost	1,026,000	(498,000)	528,000

Package Description:

The AGO requests a technical correction of the enacted ARA FY allotment disbursement, moving \$548,000 from FY2015 to FY2014. This will provide FY funding to \$1,086,000 in FY2014 and \$1,002,000 in FY2015 which is necessary in order to meet current expenditure levels.

Additionally, the AGO requests additional allotment authority in ARA of \$478,000 in FY2014 and \$50,000 in FY2015 to cover direct litigation costs for pending cases.

Request Summary:

FY2014: \$548,000 transferred from FY2015; \$478,000 of new allotment for direct litigation costs = \$1,026,000.

FY2015: \$-548,000 transferred to FY2014; \$50,000 of new allotment for direct litigation costs = \$-498,000

The end result for the ARA level of effort will be \$1,564,000 in FY2014 and \$1,052,000 in FY2015.

The current allotment is misaligned, providing for 25% of the money in FY1 and 75% of the money in FY2. This does not match the Antitrust (ANT) division's spending needs and leaves the division underfunded in FY1.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AM Antitrust Funding Correction

ANT needs additional funds to meet expenses related to on-going litigation. ANT is currently litigating two large multi-state cases (LCDs and CRTs) against multinational electronics manufacturers who are accused of participating in a global price-fixing conspiracy. Trial is set for January 2015 in the LCDs case, and the CRT case has not been set as of this date. The lawsuits both seek recoveries for state agencies and consumers who have been injured by the illegal activity, and expected recoveries are in the millions of dollars. Antitrust cases are extremely complex and expensive to pursue. The AGO is seeking adequate funding to cover direct litigation costs, which includes economic experts, deposition costs and discovery costs.

This litigation is being vigorously contested and it is expected that at least one defendant manufacturer will refuse to settle. The largest law firms in the country have been representing the defendants. The ANT effort has been sharing some expenses with other states with similar lawsuits, but the bulk of our expenses are Washington specific.

ANT legal services are self-funded through the ARA. The ARA is replenished when cases are successfully brought and attorneys' fees are awarded. ANT expects to replenish the ARA through case recoveries in 2013-15 through any settlements of the LCDs lawsuit. If we are successful at trial and the trial date does not change, we will recover money before July 2015.

The additional allotment of \$478,000 in FY2014 and \$50,000 in FY2015 will cover litigation related expenses.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This request provides ANT with appropriate funds for the two cases currently in litigation, one of which is set for trial in January 2015. If successful at trial, state agencies and consumers will recover millions of dollars. We will also recover millions of dollars in attorneys' fees, which will assist in refreshing the account.

If we are not adequately prepared for trial, we reduce the likelihood of recovering millions of dollars for consumers and we increase the likelihood that we will pay millions of dollars in attorney's fees to defendants who prevail at trial. State law currently says that if we lose at trial, we have to pay the other sides' attorneys' fees.

This request will increase the likelihood of prevailing at trial, recovering money for state agency clients, and will recover millions of dollars for injured consumers.

The realignment of funding between FY allows ANT to continue operations at its current level. This transfer does not have an impact on total biennial spending. However, it still leaves ANT underfunded for current litigation.

This request allows ANT to expend necessary funds to adequately litigate two large cases. Without the supplemental allotment, the cases will be underfunded and there is little likelihood of success at trial. If we are unsuccessful at trial, there will be two negative outcomes:

1. Consumers and state agencies that were injured by illegal activity will not be compensated for their harm;
2. ANT will have to pay defendants' attorneys' fees, as required by current law.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AM Antitrust Funding Correction

Either one of these outcomes will result in a loss of millions of dollars.

With the approval of this request, the chances of success at trial increase with a greater chance of monetary recovery for consumers and state agencies, and a greater chance of recovery of our attorneys' fees and costs. The defendants have already pled guilty to criminal charges and have been found liable for restitution in a separate case brought by a separate plaintiff. Each positive outcome would result in recoveries in the millions of dollars.

Performance Measure Detail

Activity: A004 Enforcement of Anti-Trust Laws

		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</u>
Output Measures			
000011	PM0004/ANT - Recoveries. We capture the efforts of AGO Antitrust staff who work to stop anticompetitive behavior and promote compliance with Antitrust laws. The measurement tells us the degree to which we recover monetary restitution for our consumers.	\$0.00	\$0.00

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

The AGO strategic plan has an element for enforcing state and federal laws to protect consumers, state agencies and businesses by holding accountable those who violate the laws of our state. Proper funding is necessary to allow ANT to execute its portion of the strategic plan.

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

A Priority of Government is to "Enhance the economic vitality of businesses and people". Providing consumer protection supports this priority.

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

The current purchase strategies under "Improve economic vitality of businesses and individuals" includes "Provides amenities and services" as a primary element of "Vibrant communities". Enforcement of antitrust laws protects economic vitality of businesses and consumers by ensuring that fair competition laws and laws against price-fixing are enforced.

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

The Attorney General (AG) is the primary enforcer of the state's antitrust laws. Proper funding is required to allow the AG to discharge his duties under the law.

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

ANT is completely self-funded from the ARA. An alternative funding source would be to request additional money from the state General Fund. The hope is that the ARA will be replenished upon a successful resolution of the cases, and that no General Fund money will be required.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AM Antitrust Funding Correction

What are the consequences of not funding this package?

If this litigation is underfunded, the likelihood of loss at trial increases. If the Division loses at trial there will be two significant, multimillion dollar impacts. First, consumers and state agencies will not recover millions of dollars at trial. Second, under current law, ANT will have to pay the defendants' attorneys' fees and costs, which would likely be millions of dollars.

If the allotment is not corrected, this litigation will be underfunded leading to inadequate preparation for trial. In turn, a loss at trial will result in no recovery for state agencies and a loss of millions of dollars. Additionally, if we lose at trial we will have to pay the defendants' costs and fees, which could be in the millions of dollars. Therefore, inadequate funding has a multimillion dollar impact for state agencies, consumers and the AGO.

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

The enacted 2013-15 biennial budget provides funding in the ARA, but it is disbursed and restricted incorrectly by FY.

ANT is requesting millions of dollars in damages and restitution at trial. The trial is currently set for January 2015. It is possible that some defendants will settle before trial, but that outcome is uncertain. Due to the size of the LCDs and CRTs cases and lack of resources to bring other matters, we are not anticipating filing other revenue generating cases during this biennium. Request Summary:

FY2014: \$548,000 transferred from FY2015; \$478,000 of new allotment for direct litigation costs = \$1,026,000.

FY2015: \$-548,000 transferred to FY2014; \$50,000 of new allotment for direct litigation costs = \$-498,000.

The end result for the ARA level of effort will be \$1,079,800 in FY2014 and \$1,052,000 in FY2015.

The additional allotment of \$478,000 in FY2014 will cover the following litigation related expenses:

A. Deposition expenses: \$27,000. This includes the cost of taking and defending depositions of key defendant witnesses and/or state agency purchaser witnesses. Because the defendants are foreign companies, it also includes the cost of translators.

B. Expert expenses: \$451,000. This includes the cost of the work by our experts to prepare reports and offer testimony on those reports. It also includes the cost of discovery of the defendants' experts and related work needed by our experts in response.

The additional allotment of \$50,000 in FY2015 will cover the following litigation related expenses:

A. Expert costs: \$25,000. This will cover continuing expert work preparing for trial and any settlement offers.

B. Mediation/trial costs: \$25,000. This includes mandatory King County mediation costs, cost of presenting and translating witness testimony, costs of transcripts and possible use of an outside vendor for litigation support.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AM Antitrust Funding Correction

Request Summary:

FY2014: \$548,000 transferred from FY2015; \$478,000 of new allotment for direct litigation costs = \$1,026,000.

FY2015: \$-548,000 transferred to FY2014; \$50,000 of new allotment for direct litigation costs = \$-498,000

The end result for the ARA level of effort will be \$1,079,800 in FY2014 and \$1,052,000 in FY2015.

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

The correction of the misalignment is considered on-going. In future biennia, the allocation between FY should be approximately equal.

The supplemental funding increase is only for the 2013-15 biennium. The cases in litigation are expected to resolve before the end of the biennium, although case delays are always possible.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
C Professional Svc Contracts	1,026,000	(498,000)	528,000

Agency: 100 Office of Attorney General
Decision Package Code/Title: AI Wrongful Imprisonment funding.

Budget Period: 2013-15
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$462,000 and 0.5 FTEs in the 2013-15 biennium to provide new legal services for the AGO Criminal Litigation (CRI) division relating to wrongful convictions as enacted in 2013 ESHB 1341.

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
001-1 General Fund - Basic Account-State	231,000	231,000	462,000
Total Cost	231,000	231,000	462,000
 Staffing	 <u>FY 2014</u>	 <u>FY 2015</u>	 <u>Annual Average</u>
FTEs	.5	.5	.5

Package Description:

The AGO requests \$231,000 and 0.5 Paralegal (PL) in FY2014 and FY2015 to provide new legal services for the AGO CRI division relating to wrongful convictions as enacted in 2013 ESHB 1341. This request is in addition to the 1.5 FTE and \$50,000 per FY funded in the 2013-15 enacted budget.

Section 6 of ESHB 1341 provides that upon the request of a claimant, the court shall refer the claimant to the Department of Corrections (DOC) or the Department of Social and Health Services (DSHS) for counselling on the ability to enter into a structured settlement agreement, and where to obtain free or low-cost legal and financial aid, if the claimant is not already represented. Section 6(11) provides that the claimant or the AGO may initiate or agree to a claim with a structured settlement. Section 6(12) provides details to ensure the claimant has an adequate understanding of a structured settlement agreement before it is approved by the court.

New legal services are required as a result of the enactment of ESHB 1341, and the AGO requires funding for the provision of these services. There is no client agency to bill for these services.

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

Narrative Justification and Impact Statement

Agency: **100 Office of Attorney General**

Decision Package Code/Title: **AI Wrongful Imprisonment funding.**

What specific performance outcomes does the agency expect?

This request is for funding that is critical to provide the new legal services required as a result of the enactment of ESHB 1341. The outcome of cases and claims filed under this new law will have major fiscal implications for the state and could create a long-lasting precedent for future cases and claims.

The AGO will perform essential legal services to review all cases and claims filed under the Wrongful Conviction Act and either approve settlements resulting in significant monetary awards, or litigate and defend against such monetary awards against the state, when appropriate. The AGO is working to protect the state and the residents of the state from exposure to liability that exceeds \$50,000 per year of the incarceration, plus other financial awards in every case and claim filed under this new law. The AGO fiscal note submitted for ESHB 1341 included assumptions estimating 15 cases to be brought forward, and this would cost the AGO at least \$457,192 in the initial biennium. The AGO has notice that 3 cases are in the works, and we are in line with the fiscal note cost estimates. A copy of the fiscal note is attached.

Performance Measure Detail

Activity: **A003 Criminal Investigation and Prosecution**

Incremental Changes

FY 2014 **FY 2015**

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

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

Incremental Changes

FY 2014 **FY 2015**

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-"Serve the State - Provide Excellent, Independent, and Ethical legal Advices and Representation to our Client, the State of Washington. " The AGO provides a broad range of legal services to over 200 state agencies to enable them to achieve their missions.

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington State.

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: AI Wrongful Imprisonment funding.

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

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

The AGO has no option but to provide legal services for wrongful conviction claims made against the state of Washington. These costs cannot be billed to client agencies and are appropriately State General Fund costs.

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

With the passage of ESSB 1341, the AGO does not have an alternative.

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?

Not funding this request means the AGO will have to cut and reprioritize legal services which have already been funded. Inadequate funding for legal services associated with the Wrongful Conviction Act will also result in inadequate representation of the state's interests and protection of the residents of the state from exposure to liability for underserving Wrongful Conviction Act claimants.

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

The enacted 2013-15 budget provides 1.5 FTE and \$50,000 per FY for wrongfully convicted claims. The supporting AGO fiscal note for this legislation provided indeterminate impact.

Updated AGO assumptions project a need of 1.0 Assistant Attorney General (AAG), 0.5 PL, and 0.5 Legal Assistant (LA2) at a cost of 231,000 per FY.

The balance of FTE and funding required for wrongful convictions included in this request is 0.5 PL and \$231,000 in FY2014 and in each FY thereafter.

Current AGO Assumptions for 1341 ESHB-PL:

1. Legal services associated with the enactment of this bill began on July 1, 2013.
2. We assume 1.0 AAG, 0.5 PL and 0.5 LA2 can adequately handle 15 cases per year.
3. We assume there will be direct litigation costs of litigation, including depositions, witness fees, travel, and potentially expert witness costs totalling \$50,000. These costs are not included in this request and are assumed to reflect the \$50,000 provided in the 2013-15

Agency: 100 Office of Attorney General
Decision Package Code/Title: AI Wrongful Imprisonment funding.

enacted biennial budget.

4. Three claims were reported to the AGO within the first few weeks of enactment of the bill. We assume at least 15 claims will be filed each year through FY2016. It is not possible to predict the number of claims that will be filed after that time, and we assume the results from litigation of cases in the first three years will heavily influence the number of future claims.

5. We assume the number of meritorious claims will be few. However, the number of claims asserted and the number of cases the AGO will have to defend is difficult to estimate, but may be significant. This may particularly be the case in the first several years of post-enactment when the courts will not have had the opportunity to interpret key provisions of the new law, and claimants may wrongly believe they have meritorious claims.

6. We assume that limiting claims to those involving "significant new exculpatory information" (i.e., consistent with actual innocence) is designed to reduce the number of successful claims. However, this legislation could still be read to allow claims based on new information supporting dismissal for legal error; not actual innocence due to the definition of "actually innocent" requiring a finding that the claimant did not engage in any illegal conduct alleged in the charging documents. While Address cases are specifically excluded, other cases reversed or dismissed based on a changed interpretation of the law, as occurred in the Address cases, could result in successful claims.

7. We assume the intermediate burden of proof required for successful claims of actual innocence, which is clear and convincing evidence, will render some claims subject to summary resolution, thereby reducing defense costs as to those claims.

8. Section 9 of ESHB 1341 authorizes claims for convictions reversed before the effective date of the law without limitation to time. We assume there will be a substantial number of claims filed initially, within the three year limitation period following enactment.

9. We assume there will be a sustained requirement of legal staff for future wrongful conviction claims and defense.

See the attachment in this request for the fiscal note that the AGO completed in the 2013 Legislative Session. Although the fiscal note was indeterminate, the costs and assumptions identified at that time do not differ greatly from costs and assumptions in this request.

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

These costs are on-going and will carry forward into future biennia.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
A Salaries And Wages	138,678	138,678	277,356
B Employee Benefits	42,133	42,133	84,266
E Goods\Other Services	39,289	44,289	83,578
G Travel	2,400	2,400	4,800
J Capital Outlays	8,500	3,500	12,000
Total Objects	231,000	231,000	462,000

Individual State Agency Fiscal Note

Bill Number: 1341 S HB PL	Title: Wrongful imprisonment	Agency: 100-Office of Attorney General
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost. Please see discussion.

Estimated Expenditures from:

Non-zero but indeterminate cost. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates,

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 04/24/2013
Agency Preparation: Gretchen Leanderson	Phone: 253-597-4434	Date: 04/26/2013
Agency Approval: Brendan VanderVelde	Phone: 360 586-2104	Date: 04/26/2013
OFM Review:	Phone:	Date:

Request # 13-026 F-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 6 is a new section that states that the evidentiary standard to prevail against the state is clear cogent and convincing. The section details the admissibility of evidence and provides that if a pardon or proclamation is issued to the claimant it must be certified by the officer having legal custody of the pardon or proclamation and affixed with the seal of the office of the governor or with the official certificate of the governor's office before it may be offered into evidence. The section also further details the monetary damages, reimbursement, restitution, attorney fees and other amounts to be awarded if the claimant prevails. Compensation for child support owed by the claimant shall come out of the award and be paid directly to the Department of Social and Health Services (DSHS). The section provides there shall be no punitive damages awarded. Upon finding the claimant was wrongfully convicted the court shall seal the claimant's record of conviction. Upon the request of claimant the court may order the claimant's record of conviction vacated, expunged or destroyed under court rules. Section 6(10) provides that upon the request of claimant, the court shall refer the claimant to the Department of Corrections (DOC) or the DSHS for counseling on the ability to enter into a structured settlement agreement and where to obtain free or low-cost legal and financial aid if claimant is not already represented. Section 6(11) provides that claimant or the Attorney General's Office (AGO) may initiate or agree to a claim with a structured settlement. Section 6(12) provides details to ensure the claimant has an adequate understanding of a structured settlement agreement before it is approved by the court.

Section 8 is a new section stating the legislative intent that the remedies and compensation under this chapter be the exclusive remedies under law. The claimant is required to sign a waiver as to other claims or causes of action if making a request for relief under this chapter. However, if a wrongfully convicted person elects not to pursue a claim for compensation under this chapter, they are not precluded from seeking relief through any other existing remedy.

Section 10 is a new section that provides that payments by the state under this chapter are to be paid from a liability account established under RCW 4.92.130.

Section 13 is a new section adding to the intent behind the liability account in RCW 4.92.130 to account for the addition of compensation awarded under Section 6 of this act and Section 13(9). It specifically provides that payment of compensation for a wrongful conviction awarded by a court under Section 6 does not constitute a finding that the wrongful conviction resulted from tortious conduct by the officers or employees of the state or political subdivisions, municipal corporations and quasi-municipal corporations of the state.

Section 15 provides that Sections 1 through 10 of this act constitutes a new chapter in Title 4.

This bill is assumed effective 90 days after the end of the 2013 legislative session.

This bill is assumed effective 90 days after the end of the 2013 legislative session.

II. B - Cash receipts Impact

Request # 13-026 F-1

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Indeterminate cash receipts.

These AGO activities are funded with General Fund-State dollars.

There is no client agency to bill for legal services.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Indeterminate expenditure impact.

Assumptions:

1. Legal services associated with the enactment of this bill are assumed to begin on July 1, 2013.
2. We assume 1.0 Assistant Attorney General (AAG) and 0.5 Paralegal (PL) can adequately handle 15 cases at one time. The cost of 1.0 AAG and 0.5 PL is \$229,271 for FY2014 and \$227,921 for FY 2015. Due to the preceding and the anticipated impact to the liability account under RCW 4.92.130, AGO fiscal impact will likely be over \$1-million in the first year.
3. An accurate determination of the number of claims likely to be filed if this bill is enacted into law is not possible. We assume at least 15 claims would be filed in the three years following enactment, and perhaps one to three each year thereafter.
4. We assume the number of meritorious claims will be few. However, the number of claims asserted and the number of cases the AGO will have to defend is difficult to estimate, but may be significant. This may particularly be the case in the first several years of post-enactment when the courts will not have had the opportunity to interpret key provisions of the new law, and claimants may wrongly believe they have meritorious claims.
5. We assume that limiting claims to those involving “significant new exculpatory information” (i.e., consistent with actual innocence) is designed to reduce the number of successful claims. However, this legislation could still be read to allow claims based on new information supporting dismissal for legal error; not actual innocence due to the definition of “actually innocent” requiring a finding that the claimant did not engage in any illegal conduct alleged in the charging documents. While Andress cases are specifically excluded, other cases reversed or dismissed based on a changed interpretation of the law as occurred in the Andress cases could result in successful claims.
6. We assume the intermediate burden of proof required for successful claims of actual innocence, which is clear and convincing evidence, will render some claims subject summary resolution, thereby reducing defense costs as to those claims.

7. Section 9 authorizes claims for convictions reversed before the effective date of the law without limitation to time. We assume there will be a substantial number of claims filed initially, within the three year limitation period following enactment.

8. We assume there will be a sustained requirement of legal staff for future wrongful conviction claims and defense.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

None.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AR WA Tax Law Violations

Budget Period: 2013-15
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The AGO has an existing enforcement unit that works with the DOR to investigate and prosecute individuals and businesses that collect sales tax from customers but fail to remit that collected sales tax to the DOR. That unit has been highly successful in generating increased compliance with remission of collected and unremitted sales tax through publicity received on cases prosecuted as well as direct deterrent impact within geographic areas or business sectors where compliance with the tax code has been an issue.

The Office of the Attorney General (AGO) requests \$195,000 and 1.0 Assistant Attorney General (AAG) and 0.5 Legal Assistant (LA2) in Fiscal Year (FY) 2014 and FY2015, to provide legal services for the AGO Criminal Justice Division (CRJ) to provide additional investigation and prosecution services for cases referred to the AGO by the Department of Revenue (DOR).

This request will increase the prosecution resources within the existing Economic Crimes Unit (ECU) and thereby increase the number of cases that can be dealt with on an on-going basis. Due to the success of the program, ECU is consistently receiving significantly more referrals from DOR than can be handled within existing resources. Delays in charging appropriate criminal cases undercut the deterrent impact of the program.

Fiscal Detail

Operating Expenditures		<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>	
405-1	Legal Services Revolving Account-State	195,000	195,000	390,000	
Total Cost		195,000	195,000	390,000	
Staffing		<u>FY 2014</u>	<u>FY 2015</u>	<u>Annual Average</u>	
	FTEs	1.5	1.5	1.5	
Revenue					
<u>Fund</u>	<u>Source</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>	
405	Legal Serv Rev Acct	0420 Charges for Services	195,000	195,000	390,000
Total Revenue		195,000	195,000	390,000	

Package Description:

The AGO requests \$195,000 and 1.0 AAG and 0.5 LA2 in FY2014 and FY2015, to provide legal services for CRJ to provide additional investigation and prosecution services for cases referred to the AGO by DOR.

CRJ's ECU has been productive for DOR. The prosecutions and timed media releases are a major tool to tackle the underground economy. DOR has requested additional funding for the permanent assignment of CRJ legal staff to allow all cases, appropriately identified, to be properly investigated and prosecuted, if warranted.

Agency: 100 Office of Attorney General

Decision Package Code/Title: AR WA Tax Law Violations

Many legitimate businesses in Washington State face unfair competition in the form of competitors from the underground economy. These businesses attempt to compete in an economic environment wherein some of their competitors have a nearly 10% lower margin due to the fact that those competitors collect sales tax from customers, but then keep those funds for their own use, instead of remitting them to the DOR as required by law. ECU seeks to level the playing field for businesses by assuring that all business entities abide by the same rules, and to assure that funds earmarked and collected for various State programs are not stolen for personal use.

The prosecution program seeks to address these concerns and accomplish these goals by actively prosecuting those individuals and businesses who violate Washington State's tax laws. The program furthers these goals by publicising those prosecutions to ensure a sentinel effect on other businesses - to get the word out that Washington State is monitoring compliance with its tax code and will take steps to assure that all businesses have an equal opportunity to thrive free from unfair competition from those who seek advantage by stealing funds earmarked for other government programs.

The program as currently funded has prosecuted cases all over the state touching upon a multitude of business areas. Both direct and empirical evidence reveals that the program's impact is not confined to just those individuals who are prosecuted, but rather a significant sentinel impact resonates from each case. DOR has reported that individuals who have not been complying with the tax laws have come forward and actively sought to bring themselves into compliance after reading about a prosecution under the program. Additionally, DOR has reported significant increases in compliance within notoriously underreporting business sectors following program prosecutions within those sectors. Thus, while the direct return on investment discussed above is notable, it does not begin to fully capture the true impact of the program. Further, even these direct and empirical examples of the positive impact of the program do not capture the support the program provides to legitimate businesses that now play on a fair and level playing field with their competitors and are complying with the tax laws.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The AGO will perform essential legal services to investigate and prosecute tax code offenders. The AGO is working to protect client agencies and the residents of the state from wrongdoing.

The new funding proposal would add 1.0 AAG and 0.5 LA2. The prosecution program as currently funded allows for 0.5 AAG, 1.0 Senior Investigator, and 0.5 LA2. This new funding level will increase the number of cases that can be reviewed, and if warranted, prosecuted. Under the current funding level, 64 individual cases have been processed by the program since 2006, and have recovered restitution awards totalling \$8,309,551. ECU is consistently receiving significantly more referrals from DOR than can be handled within existing resources which is causing delays in charging appropriate criminal cases, and undercutting the deterrent impact of the program.

Increasing the funding of this program will allow additional cases to be referred, as well as moving the current backlog of cases through the process in an improved timely manner. Based upon the program's past success, this will substantially increase the recovery of monies stolen from the General Fund, increase both general and industry specific compliance with existing tax laws and be a further public support for legitimate businesses.

Performance Measure Detail

Agency: 100 Office of Attorney General

Decision Package Code/Title: AR WA Tax Law Violations

Activity: A010 Legal Services to State Agencies

		Incremental Changes	
		FY 2014	FY 2015
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-"Serve the State - Provide excellent, independent and ethical legal advice and representation to our client, the state of Washington". The AGO provides a broad range of legal services to over 200 state agencies to enable them to achieve their missions.

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

The program also supports legitimate businesses in Washington State by levelling the playing field - ensuring that those who abide by the law are not penalized by having to compete against those who steal public money to unlawfully enhance their competitive position.

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington State.

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

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

This is a joint request from the AGO and the DOR to supplement an existing and effective program.

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 funding for this work.

What are the consequences of not funding this package?

Not funding this request means the AGO and DOR will have to forgo the adequate prosecution of those who steal money from the General Fund and unlawfully utilize that money to unfairly compete with legitimate law abiding businesses.

Also, a lack of enforcement will result in lower state General Funds which can be used for a myriad of purposes for the betterment of the state and state citizens.

Agency: 100 Office of Attorney General

Decision Package Code/Title: AR WA Tax Law Violations

Finally, the exclusion of this request from the 2014 budget will greatly reduce the overall return on investment of foreseeable settlements.

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

This request will allow for a greater enforcement effort, which in turn is expected to lead to greater compliance with existing tax laws, and significantly greater recoveries of unremitted sales tax to the DOR.

The current biennial allotment for the DOR ECU is \$442,527. Since 2006, the existing program has recovered restitution awards totalling \$8,309,551. This return on the state's investment does not fully account for the program's efficacy. The deterrent impact generated by these prosecutions also helps level the playing field for legitimate businesses attempting to compete against entities operating with an unfair advantage as part to of the underground economy.

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

DOR supports this funding request.

These costs are on-going and will carry forward into future biennia.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
A Salaries And Wages	109,350	109,350	218,700
B Employee Benefits	32,338	32,338	64,676
E Goods\Other Services	43,112	46,112	89,224
G Travel	2,200	2,200	4,400
J Capital Outlays	8,000	5,000	13,000
Total Objects	195,000	195,000	390,000

Agency: 100 Office of Attorney General

Decision Package Code/Title: AB Recruitment and Retention

Budget Period: 2013-15

Budget Level: PL - Performance Level

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$7,237,924 in FY2015 to provide sustained legal services for AGO client agencies. To ensure high quality legal services for the state, the AGO must address significant attorney recruitment and retention problems and stabilize our attorney workforce by addressing low attorney salaries.

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
001-1 General Fund - Basic Account-State		357,899	357,899
111-1 Public Service Revolving Account-State		24,052	24,052
19A-1 Medicaid Fraud Penalty Account-State		108,315	108,315
405-1 Legal Services Revolving Account-State		6,698,564	6,698,564
424-6 Anti-Trust Revolving Account-Non-Appropriated		49,094	49,094
Total Cost		7,237,924	7,237,924

Revenue

Fund	Source	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services		6,698,564	6,698,564
Total Revenue			6,698,564	6,698,564

Package Description:

The AGO requests \$7,237,924 in FY2015 to provide sustained legal services for the AGO client agencies.

The AGO seeks to address significant recruitment and retention problems related to the salaries of its Assistant Attorneys General (AAG). AAG salaries are significantly lower than our public sector peer law offices, including prosecuting attorneys offices and city attorney offices around the state. AAG salaries are also significantly lower than positions within our state agency clients that are often filled by AGO attorneys. These salary gaps have created a significant attorney recruitment and retention problem for the AGO. Currently, we are losing attorneys at the rate of more than one per week. This turnover generates significant training and recruitment costs, impacts our clients, and creates challenges for the continued provision of high quality legal services.

Historically, the AGO has provided salary increases to AAGs through special funding from the Legislature (with the exception of cost of living adjustments granted to all state employees). In 2013, the AGO determined the recruitment and retention challenges had reached a critical state. Following the expiration of the state employee salary freeze, the agency implemented internal spending reductions in order to reprioritize revenues towards closing a small portion of the salary gap with our public sector peers. Despite these

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Decision Package Code/Title: AB Recruitment and Retention

efforts, a substantial gap remains.

To stabilize turnover, the AGO seeks to close the gap with our peer public sector law offices around the state and also with our state agency clients who recruit our attorneys. This recruitment and retention funding request will serve to close the continued salary gap at each level of AAG experience. All client agencies will be positively impacted and benefitted.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

AAG salaries are low compared to our public sector peers. A 2011 Comparator Chart for County/City averages is attached (See Attachment 1). This information was obtained from 12 county and city human resource departments via requests for salary data and information about the placement and progression of the attorneys who work for those entities. A comparison was then made to average AAG salaries at various experience levels. AGO salaries were lower than all 12 of these agencies at every experience level.

In September 2013, following our modest salary adjustments, we sampled six of the 12 entities (all counties in which our AAGs heavily practice: King, Pierce, Kitsap, Spokane, Snohomish and Thurston) to determine how our adjusted salaries compare. The updated data shows continued gaps because (a) the modest increases described above closed the 2011 gaps by less than 30% on average and (b) many counties continued to provide salary increases after 2011.

To address the retention and recruitment challenges described below, we request funding sufficient to bring AAG salaries to the average of public sector law offices in the state.

Retention:

At the time of this submittal, AAG attrition annualized for 2013 is projected at 13%. This represents the loss of more than one AAG per week. Attrition is particularly high in some divisions where there is specialized demand for attorneys in certain areas of practice. For example, 30% of AAGs who represent the Department of Social and Health Services (DSHS) have left since January 2011. For the University of Washington Division, this number is 20%; for the Ecology Division, it is 29%; for the Government Compliance and Enforcement Division it is 42%. According to exit interviews, 71% of those who have left did so for salary reasons and/or ranked salary as poor. By comparison, attrition rates have doubled since 2008, which was the last time attorneys received salary increases (salary increase dollars were allocated by the Legislature in 2007, along with a COLA in 2008). At that time, 44% left for reasons related to salary and/or rated salary as poor.

Recruitment:

Recruitment problems have manifested in several ways. First, the quality of the applicant pool for entry level AAG positions has diminished and our career services contacts in the law schools tell us that salary is a factor. Second, we have particularly challenging recruitment issues when hiring experienced or specialized AAGs. As a result, over time, there has been some degree of "substitution" of inexperience for experience within our AAG ranks.

There is hard evidence that supports this. In July 2012, 90 attorneys were in the 0-6 year range. By September 2013, that number had grown to 107. This has workload, training, and client risk implications.

Finally, we have recently tracked applicant withdrawals at our final interview stage which is when salary offers are extended. We have seen 33 withdrawals at this stage between March 2010 and August 2013, as against 150 offers extended (22%). Our recruitment

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coordinator reports many more withdrawals at earlier stages in our process after informal salary inquiries, though these are not tracked.

The AGO will reduce high AAG turnover and increase the depth of AAG applicants and the hiring pool. It is expected that there will be favorable impacts on our state agency clients and Washington residents through: (1) a reduction in the need to repeatedly train new attorney staff; (2) preservation of institutional knowledge and experience and; (3) bolstering the depth of our AAG ranks necessary to take on complex cases and issues and ameliorate high dollar, high stakes legal matters.

The AGO plays a key role in the effective implementation and defense of the decisions of the Legislature, Governor, and state agencies. However, the Legal Services Revolving Account (LSRA) is approaching a tipping point whereby the resources provided are insufficient for the AGO to continue fulfilling its role to the detriment of clients and the public in which the AGO serves. No further internal cuts can be made without significantly impacting legal services.

The following are some examples of undesirable results we expect to reduce:

Social service program and budget cut litigation:

Over the past several years, the Governor and Legislature have proposed and adopted multiple cuts to various social service programs. Many of those cuts prompted immediate challenges and court litigation that are being defended by the AGO. The cumulative impact of these multiple cases on the state budget is millions of dollars a month, totalling well over \$100,000,000 in the course of a biennium.

Additionally, the AGO is defending lawsuits alleging that certain social service programs are legally inadequate, such as foster care reimbursement levels and mental health services for children. Tens of millions of dollars are at stake in those cases. Generally, there are six attorneys handling all of these cases at any given time. More experienced attorneys have retired. Senior AAGs who have gained the institutional knowledge of these programs have been actively considering employment elsewhere because of the lack of funding in the LSRA for compensation comparable to other public lawyers.

There will be a growing void in program knowledge and legal experience that the AGO will not be able to replace if it cannot provide salaries comparable to other public law offices. The success that the AGO has had in defending state programs and preserving state funding cannot continue if the AGO cannot retain its knowledgeable AAGs.

Medicaid and health care reform:

An AAG in the AGO with significant depth of knowledge in the Medicaid program and Medicaid law advises DSHS and the Health Care Authority on Medicaid reimbursement and compliance issues. This same AAG often briefs legislative staff on cases and legislation that may impact the budget. With the advent of health care reform, the importance of developing and retaining knowledge in this field is essential. This AAG, like other AAGs, makes substantially less than the average for his public sector peers. Other AAGs who are developing expertise in this area have a similar gap in compensation. It takes time to develop expertise in this complex area of law. If the AGO loses this expertise, the state may be forced to rely on more expensive private attorneys appointed as Special Assistant Attorneys General (SAAG).

Protecting children and achieving permanency:

The AGO has an essential role in protecting children, and there are approximately 100 AAGs across the state that handle child dependency and parental termination cases. These AAGs advocate for the best interest of the child in trial and appellate courts. They provide training to social workers and advice to the Children's Administration.

To illustrate the staffing challenges caused by retention issues, in one AGO office of six juvenile litigation attorneys, only two have more than one year of experience. The AAGs who have left this section have done so because of salary issues. Less experienced attorneys cannot handle the same caseload as the more experienced AAGs. Additionally, courts have expressed the view that having a single attorney on a child's case assists the system in providing better outcomes and in children reaching permanency sooner. A high turnover rate in representation is the antithesis to that goal. In short, turnover slows down the permanency system, driving up costs of

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foster care while children await permanency.

DSHS has federal obligations tied to federal funding to achieve permanency for children. This cannot be done without sufficient AAGs to handle the dependency and termination caseloads. Backlogs in termination cases are developing as DSHS refers more matters in order to comply with federal timeframes, and the AGO cannot retain a sufficient number of AAGs long enough to develop the expertise to handle the growing caseloads.

Mental illness and protecting the public:

The impact of mental illness on society has become an issue of great public concern, particularly as instances of crimes and gun violence have been linked to a perpetrator suffering a mental illness. AAGs are on the front lines of this public concern. They represent the state in civil commitment proceedings and advise the legislature and DSHS on the legal parameters of the state's authority in this arena. However, retention challenges are impacting this work as well. For example, in one of our offices, of the six AAGs that work on general mental health issues and litigation, three attorneys have less than two years' experience.

Financial soundness for institutions and state government and protection of investors:

The Office of the Insurance Commissioner, Department of Financial Institutions, Department of Retirement Services, State Investment Board, Department of Revenue and the State Treasurer all require legal counsel involving a sophisticated knowledge of highly complex financial and regulatory schemes. We continue to lose our experienced attorneys who are serving these clients. Many of these client agencies are funded by regulatory fees or trust funds and have asked the AGO why we cannot pay higher salaries in order to retain the expertise they need.

Criminal Justice:

The AGO's Sexually Violent Predator AAGs and criminal prosecutors who work in King, Pierce, and Thurston County, make substantially less than comparable attorneys in county prosecutor offices. As a result, the AGO has great difficulty recruiting for these positions, which are critical to protecting the public from criminals and sexually violent predators.

Torts Division:

AAGs in our Torts Division represent and defend the state in all lawsuits alleging tortious conduct by any state agency, official or employee. Over the last 20 years, Torts has managed an average active caseload of 546 cases ranging in value from tens of thousands of dollars to tens of millions of dollars per case. Trial experience and expertise is essential to the successful defense of these tort lawsuits. The AGO must be able to retain its trial lawyers long enough to train and develop the expertise necessary for AAGs to handle high-value, high-exposure cases. Because of the acute salary disparity with other public sector agencies, we are losing many of the mid-level experienced AAGs who are handling the biggest cases. The loss of these attorneys leaves a huge gap in our experience continuum and creates risk for tort pay-outs for the state.

SAAG costs:

The AGO works hard to develop internal expertise in order to provide legal services in a cost effective manner and minimize the use of Special Assistant Attorneys General (SAAG) (outside attorneys). Retention challenges have hampered our efforts. For example, an experienced AAG who had developed in-house expertise in immigration law specifically to reduce outside SAAG costs, left to work for a client agency. Since that time, outside SAAG costs for immigration work have increased by \$20,000 per month -- four times the average cost from when we had immigration AAG expertise in-house.

The following examples demonstrate the types of outcomes the state can expect to achieve by providing the AGO with the resources needed to recruit and retain high quality attorneys for the state:

Hanford:

The AGO recently won a case before the U.S. Court of Appeals in the District of Columbia, requiring the Nuclear Regulatory

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Commission to move forward with the licensing application to build the nuclear waste repository at Yucca Mountain. The ruling helps ensure that Washington will have a permanent disposal facility for the high-level radioactive waste at Hanford. This case was handled by an AAG with significant experience and expertise. Other AAGs are working to ensure the clean-up of the Hanford Nuclear Reservation proceeds in a timely manner consistent with the Tri-Party Agreement and Consent Decree in order to protect the residents of Central Washington and the integrity of the Columbia River. These efforts are possible only if the AGO continues its ability to retain attorneys with institutional knowledge and subject-matter experience.

Tobacco:

Recently, the AGO won a major arbitration decision, ensuring \$14.8 million in withheld tobacco settlement funds from 2003 will come to Washington State, and preventing these dollars from being withheld in perpetuity. Many states were involved in similar litigation with the parties of the Tobacco Master Settlement. Many states settled for less money or received an unfavorable judgment in the arbitration. Of those states that were successful, many relied on expensive outside counsel. Washington State was able to utilize talented AAGs to handle this litigation. Success in these complex, high-stakes legal efforts are only possible if the AGO has the ability to retain attorneys with institutional knowledge and subject-matter experience.

Performance Measure Detail

Activity: A001 Administrative Activity Incremental Changes

No measures submitted for package

Activity: A002 Civil Commitment of Sexually Violent Predators Incremental Changes

No measures submitted for package

Activity: A003 Criminal Investigation and Prosecution Incremental Changes

No measures submitted for package

Activity: A004 Enforcement of Anti-Trust Laws Incremental Changes

No measures submitted for package

Activity: A005 Consumer Protection Incremental Changes

No measures submitted for package

Activity: A006 Executive Ethics Board Incremental Changes

No measures submitted for package

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Activity: A007 Homicide Investigation Tracking System Incremental Changes

No measures submitted for package

Activity: A008 Investigation and Defense of Tort Lawsuits Incremental Changes

No measures submitted for package

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

No measures submitted for package

Activity: A010 Legal Services to State Agencies Incremental Changes

No measures submitted for package

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

This budget request implements goal No. 1 of the AGO Strategic Plan-"Serve the State - Provide excellent, independent and ethical legal advice and representation to our client, the state of Washington."

The AGO provides a broad range of legal services to over 200 state agencies to enable them to achieve their missions.

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

A Priority of Government is to "Strengthen government's ability to achieve results efficiently and effectively." "Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

Defending state agencies, with the potential for adverse judgments, is a key component in directly supporting the Priorities of Government through providing legal services to state agencies.

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making".

The effective legal services provided by AAGs significantly contribute to several of the successes of Statewide Results Areas identified as a priority for the Governor. AAGs civilly enforcing environmental crimes on behalf of the Department of Ecology and AAGs working on the clean-up of the Hanford Nuclear Reservation are among those in the AGO working to "Improve the quality of Washington's natural resources." AAGs in the Criminal Justice Division "Improve the safety of people and property." AAGs working to find permanency for abused and neglected children and AAGs investigating and prosecuting consumer fraud "Improve the security

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of Washington's vulnerable children and adults."

The AGO's ability to recruit and retain effective AAGs positively impacts nearly all of the missions of government.

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

None

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

In August 2013, the AGO implemented internal budget reductions to capture approximately \$5.6 million of LSRA revenue that was reprioritized internally to fund modest AAG salary increases. These reductions involve the elimination of some positions and aggressive vacancy management, with direct impacts on the AGO's ability to deliver timely legal services. As such, we are unable to repeat these one-time reductions in order to capture additional funds.

What are the consequences of not funding this package?

The AGO expects a continued high attorney turnover, loss of needed experience, and recruitment problems resulting in the costs and concerns discussed above.

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

This request is designed to close the salary gap with other public sector law firms in Washington State. Closing the gap will allow the AGO to recruit and retain well qualified candidates, thereby significantly increasing the capacity to provide high value legal services to the State.

The salary gap is defined as the difference between the average AAG salary and the average salary of a sampling of 12 public sector law firms in the state. The public sector law firms surveyed include a mix of cities and counties with attorneys who practice in the same locations as AGO offices.

The data for the 12 public sector law firms was taken in 2011. To update for 2013, we solicited recent salary information from our public sector counterparts in six counties in which the AGO heavily practice: (King, Pierce, Kitsap, Spokane, Snohomish and Thurston). Given the new data, the 2011 average salaries were adjusted to account for increases given in these six counties. Specifically, the average increase for attorneys in those counties since 2011 was determined to be about 2.4 percent, which further increased the salary gap with the AGO.

The final cost of closing the gap is therefore the difference between the AGO current average salaries and the updated public sector averages. This cost is about \$7,238,000 per Fiscal Year.

Agency: 100 Office of Attorney General

Decision Package Code/Title: AB Recruitment and Retention

Attachment 2 addresses client agency funding requirements which support this request.

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

These costs are on-going and will carry forward into future biennia.

The total anticipated carry forward levels should be \$7,238,000 per FY, totalling \$14,476,000.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
A Salaries And Wages		6,029,190	6,029,190
B Employee Benefits		1,208,734	1,208,734
Total Objects		7,237,924	7,237,924

**AGO 2014 Supplemental Budget Request
PL-AB – Recruiting and Retention, ATTACHMENT 1**

AGO/County-City Average Salary Comparisons

Org	Entry	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	20+
Clark	53,508		61,920		75,060						88,980					91,272						118,764
City of Everett	55,140	63,780	65,676	70,638									101,192								107,616	
King	56,331				84,928						96,391					105,175					111,915	
Kitsap	54,350				73,278						82,472											
City of Olympia											94,730	104,222										
Pierce	58,354				77,264						95,577					107,433						123,846
City of Seattle	65,579		68,014	68,014	78,281						91,245					96,930					104,127	
Snohomish County**	57,312				69,665						88,912					98,026						
City of Spokane	68,068				80,471						94,502											
Spokane County	53,088				63,928	67,202				78,063	82,060	86,262				88,930	98,271					
Thurston County	59,220				70,620						88,008					104,117			114,432			
City of Vancouver	59,700		62,268		69,960							99,420							99,420			99,420
County/City Average*	58,240				74,345						90,287					98,840					107,886	114,010
AGO Average*	52,500 (5,740/10% gap with benchmark)				55,658 (18,687/25% gap with benchmark)						68,546 (21,741/24% gap with benchmark)					79,384 (19,456/19% gap with benchmark)					92,154 (15,732/15% gap with benchmark)	99,542 (14,468/13% gap with benchmark)

*Represents an average within the experience range.

** Snohomish County gives different salaries for the same experience levels depending on criminal or civil assignment, and also based on merit. Numbers listed here are the lower salaries. (11/01/11)

2014 Supplemental Budget Request
PL-AB Recruitment and Retention

Cost By Client - Legal Services Revolving Fund Only

LSRF CLIENTS including Torts

Row Labels	FY 2014 Cost by Client	Biennial Cost by Client
011-House of Representatives	\$ 183	\$ 366
012-Senate, Washington State	\$ 61	\$ 122
014-Audit & Review Committee, Joint Legislative	\$ 267	\$ 534
035-State Actuary, Office of	\$ 874	\$ 1,749
038-Legislative Service Center	\$ 58	\$ 115
040-Code Reviser's Office	\$ 67	\$ 134
045-Supreme Court	\$ 5,618	\$ 11,236
048-Court of Appeals	\$ 854	\$ 1,707
050-Judicial Conduct, Commission on	\$ 381	\$ 761
055-Office of the Courts, Administrative	\$ 1,631	\$ 3,261
056-Public Defense, Office of	\$ 490	\$ 980
075-Governor's Office	\$ 1,653	\$ 3,306
080-Lt. Governor, Office of	\$ 25	\$ 51
082-Public Disclosure Commission	\$ 11,089	\$ 22,178
085-Sec of State, Office of	\$ 17,174	\$ 34,347
087-Asian American Affairs Commission	\$ 52	\$ 103
090-State Treasurer's Office	\$ 12,398	\$ 24,795
095-State Auditor's Office	\$ 17,133	\$ 34,266
099-Sal for Elected Officials, Wa Citizen's Comm on	\$ 138	\$ 275
102-Financial Institutions, Dept of	\$ 40,747	\$ 81,493
103-Commerce, Dept of	\$ 23,022	\$ 46,044
105-OFM	\$ 18,555	\$ 37,111
107-Health Care Authority	\$ 11,337	\$ 22,675
110-Administrative Hearings, Office of	\$ 2,507	\$ 5,014
116-Lottery Commission, Wa State	\$ 3,962	\$ 7,924
117-Gambling Commission, Wa State	\$ 14,553	\$ 29,105
118-Hispanic Affairs, Commission on	\$ 58	\$ 115
119-African-American Affairs, Commission on	\$ 61	\$ 122
120-Human Rights Commission	\$ 15,084	\$ 30,168
124-Retirement Systems, Dept of	\$ 43,620	\$ 87,240
126-State Investment Board	\$ 13,989	\$ 27,979
135-Innovate Washington	\$ 2,109	\$ 4,217
140-Revenue, Dept of	\$ 137,882	\$ 275,763
141-Economic Crimes Unit, Dept of Revenue	\$ 22,512	\$ 45,025
142-Tax Appeals, Board of	\$ 205	\$ 410
147-Minority/Women's Bus. Enterprises, Office of	\$ 2,131	\$ 4,262
160-Insurance Commissioner's Office	\$ 17,535	\$ 35,070
163-Consolidated Technology Services	\$ 3,851	\$ 7,702
165-Accountancy, State Board of	\$ 6,567	\$ 13,133
179-Department of Enterprise Services	\$ 36,139	\$ 72,278
185-Horse Racing Commission	\$ 2,819	\$ 5,638
190-Insurance Appeals Board, Industrial	\$ 2,583	\$ 5,166
195-Liquor Control Board	\$ 49,635	\$ 99,270
205-Pilotage Commissioners, Board of	\$ 3,743	\$ 7,485

2014 Supplemental Budget Request
PL-AB Recruitment and Retention

215-Utilities & Transportation Commission	\$ 89,119	\$ 178,239
220-Vol Firefighters, Board of	\$ 2,872	\$ 5,744
225-State Patrol, Washington	\$ 51,600	\$ 103,201
227-Criminal Justice Training Commission	\$ 13,184	\$ 26,368
228-Traffic Safety Commission, Wa	\$ 369	\$ 738
235-Labor & Industries	\$ 1,123,955	\$ 2,247,910
236-L&I - BCU	\$ 12,223	\$ 24,446
240-Licensing, Dept of	\$ 164,683	\$ 329,367
245-Military Department	\$ 12,848	\$ 25,697
275-Public Employment Relations Commission	\$ 2,172	\$ 4,343
300-Social & Health Services, Dept of	\$ 2,030,859	\$ 4,061,718
303-Health, Dept of	\$ 281,580	\$ 563,160
305-Veterans Affairs, Dept of	\$ 4,770	\$ 9,540
310-Corrections, Dept of	\$ 229,268	\$ 458,536
315-Serv for Blind, Dept of	\$ 424	\$ 847
340-Student Achievement Council	\$ 1,008	\$ 2,016
350-Superintendent of Public Instruction	\$ 50,261	\$ 100,522
351-Blind, School for the	\$ 2,365	\$ 4,730
353-Childhood Deafness and Hearing Loss, WA St Center	\$ 2,998	\$ 5,997
354-Workforce Training & Education Coord. Board	\$ 1,320	\$ 2,640
355-Archaeology and Historic Preservation, Office of	\$ 6,135	\$ 12,270
357-Dept of Early Learning	\$ 43,895	\$ 87,789
360-Univ of Washington	\$ 223,810	\$ 447,621
365-Wash St University	\$ 54,449	\$ 108,899
370-Eastern Washington University	\$ 22,137	\$ 44,275
375-Central Washington University	\$ 17,076	\$ 34,151
376-Evergreen State College	\$ 11,167	\$ 22,333
380-Western Washington University	\$ 18,259	\$ 36,519
387-Arts Commission, Wa State	\$ 1,923	\$ 3,846
390-Historical Society, Wa State	\$ 1,792	\$ 3,585
395-E Wa State Historical Society	\$ 138	\$ 275
405-Transportation, Dept of	\$ 256,114	\$ 512,227
406-County Road Administration Board	\$ 1,244	\$ 2,488
407-Trans Improvement Board	\$ 469	\$ 937
410-Transportation Commission	\$ 984	\$ 1,968
411-Freight Mobility Strategic Investment Board	\$ 332	\$ 665
461-Ecology, Dept of	\$ 349,234	\$ 698,467
462-Pollution Liability Insurance Agency	\$ 1,457	\$ 2,914
465-Parks and Recreation Commission	\$ 24,612	\$ 49,225
467-Recreation and Conservation Office	\$ 1,692	\$ 3,383
468-Environmental and Land Use Hearings Office	\$ 3,570	\$ 7,141
471-Conservation Commission, Wash St	\$ 3,092	\$ 6,184
477-Fish & Wildlife, Dept of	\$ 96,027	\$ 192,053
478-Puget Sound Partnership	\$ 1,644	\$ 3,288
490-Natural Resources, Dept of	\$ 156,465	\$ 312,931
495-Agriculture, Dept of	\$ 26,773	\$ 53,546
540-Employ Security Department	\$ 74,215	\$ 148,429
699-Comm & Tech Colleges, State Bd	\$ 111,590	\$ 223,181
Torts - DES Risk Management	\$ 565,042	\$ 1,130,083
Grand Total	\$ 6,698,564	\$ 13,397,128

Agency: **100 Office of Attorney General**
Decision Package Code/Title: **AS Migration to CTS Shared Service**

Budget Period: **2013-15**
Budget Level: **PL - Performance Level**

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests a technical correction of \$1,052,000 in the 2013-15 biennium to provide appropriate funding for Consolidated Technology Services (CTS) fees charged to this agency.

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
001-1 General Fund - Basic Account-State	26,424	26,424	52,848
12F-6 Man/Mobile Home Dispute Resolution-Non-Appropriated	666	666	1,332
154-1 New Motor Vehicle Arbitration Acct-State	733	733	1,466
19A-1 Medicaid Fraud Penalty Account-State	7,664	7,664	15,328
405-1 Legal Services Revolving Account-State	488,673	488,673	977,346
424-6 Anti-Trust Revolving Account-Non-Appropriated	1,840	1,840	3,680
Total Cost	526,000	526,000	1,052,000

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services	488,673	488,673	977,346
Total Revenue		488,673	488,673	977,346

Package Description:

The AGO requests \$526,000 in FY2014 and \$526,000 in FY2015 to provide requisite funding for CTS fees charged to this agency.

The AGO has taken steps to come into compliance with Governor's Directive 09-02 for consolidation of technological resources. In doing so, funding discrepancies now exist. There are three separate areas of funding needs to meet the directive:

1. Enacted budget item 92B - CTS Rate Reduction for disk-base and vault storage, Private Branch Exchange telephone services, and Virtual Private Network. The AGO received a reduction of (\$106,000) for this effort, yet we do not use these services nor have we paid for this in the past. This request will restore budget cuts taken in error. This funding was cut from account 405-1.
2. Enacted budget item 92J - CTS Central Service. The AGO received \$7,000 but the costs of Enterprise Reporting provided by Department of Enterprise Services (DES) are estimated to change from \$209,950 in the 2011-13 biennium to \$442,130 in 2013-15 biennium. The AGO assumed \$232,180. The shortage of funding is \$225,180. This funding is required in account 405-1.

Agency: 100 Office of Attorney General
Decision Package Code/Title: AS Migration to CTS Shared Service

3. CTS Electronic Mail File Storage - As directed by the Office of the Governor, the AGO is in the process of converting from an internally hosted electronic mail server and file storage to CTS hosted email service. In addition, in order to comply with the Office of the Chief Information Officer (OCIO) security standards, the AGO requires a secure email transport solution for all Category 3 and 4 data. This additional security solution is enabled by implementing the CTS secure email service offering. Although \$884,000 was requested in the enacted biennial budget, no funding was received to compensate for these services. Based on measured staff vault and mailbox sizes and associated costs to provision secure email, the AGO requires \$360,000 per FY for CTS mail services. Our cost estimate has been significantly reduced from our 2013-15 biennial budget request due to lean government practices of e-mail clean up.

The requested funding will enable the AGO to pay the contracted rates to CTS for Secure Email and Vault storage. Utilizing the Secure email service reduces the potential risk of protected data loss and potential liability to the state.

Not funding this request means the AGO will have to cut and reprioritize legal services which have been committed.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The AGO submits this request to receive funding that is appropriate to pay for services rendered, and will be billed to AGO by DES.

Use of secure email enhances our ability to align with OCIO security standards and protects Category 3 and 4 data transmitted via email not available in our existing environment. Current methods of transferring sensitive data are limited to physical encrypted media and physical transport which can be cumbersome, time consuming and increase risk of sensitive information falling into the wrong hands.

Secure email provides increased efficiency and is a faster method of sharing protected information which increases our ability to respond to client or agency partner needs. Secure email also enhances our service offerings to our clients to include features we do not currently have the ability to provide. The AGO is more confident that we can protect citizen data in a secure and reliable platform. Greater efficiency in exchanges of information removes obstacles to sharing necessary data, allowing for improved responsiveness to our state client agencies, Federal agency partners and citizens.

These changes will prevent the AGO from having to cut or reprioritize legal services.

Performance Measure Detail

Activity: A001 Administrative Activity

Incremental Changes

FY 2014

FY 2015

Outcome Measures

000001 PM0001/ADM - Percentage of Mandatory Training Completed.

0.00%

0.00%

Activity: A002 Civil Commitment of Sexually Violent Predators

Incremental Changes

FY 2014

FY 2015

Outcome Measures

Agency: 100 Office of Attorney General
Decision Package Code/Title: AS Migration to CTS Shared Service

000005	<p>PM0002/SVP - Percentage of SVP Cases Resulting in Commitment. The higher the commitment rate, the more successful the SVP unit is in civilly committing dangerous sexual predators and thereby protecting the public from these offenders.</p> <p>Activity: A003 Criminal Investigation and Prosecution</p> <p>Output Measures</p>	0.00%	0.00%
		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</u>
000008	<p>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.</p> <p>Activity: A004 Enforcement of Anti-Trust Laws</p> <p>Output Measures</p>	0.00	0.00
		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</u>
000011	<p>PM0004/ANT - Recoveries. We capture the efforts of AGO Antitrust staff who work to stop anticompetitive behavior and promote compliance with Antitrust laws. The measurement tells us the degree to which we recover monetary restitution for our consumers.</p> <p>Activity: A005 Consumer Protection</p> <p>Output Measures</p>	\$0.00	\$0.00
		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</u>
000014	<p>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.</p> <p>Activity: A006 Executive Ethics Board</p> <p>Output Measures</p>	\$0.00	\$0.00
		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</u>
000018	<p>PM0006/ETH - Average Number of Days to Complete an Ethics Investigation. By completing investigations within a reasonable period of time, the public will be better served and public trust and confidence in government will increase.</p> <p>Activity: A007 Homicide Investigation Tracking System</p> <p>Outcome Measures</p>	0.00	0.00
		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</u>
000021	<p>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.</p> <p>Activity: A008 Investigation and Defense of Tort Lawsuits</p> <p>Output Measures</p>	0.00	0.00
		Incremental Changes	
		<u>FY 2014</u>	<u>FY 2015</u>

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000024	PM0008/TORTS - The percentage of Torts lawsuits which, when closed in a fiscal year with a payout, were resolved using early or informal resolution processes.	0.00%	0.00%
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Activity: **A009 Investigation and Prosecution of Medicaid Fraud and Resident Abuse**

Incremental Changes

<u>FY 2014</u>	<u>FY 2015</u>
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Outcome Measures

000027	PM009/MFCU - Recoveries. The amount of money ordered recovered each fiscal year as a result of the work performed by the Medicaid Fraud Control Unit of the AGO.	\$0.00	\$0.00
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Activity: **A010 Legal Services to State Agencies**

Incremental Changes

<u>FY 2014</u>	<u>FY 2015</u>
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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-"Serve the State - Provide excellent, independent, and ethical legal advice and representation to our client, the state of Washington." Subsections of this goal include "Reviewing office structure and practices" as well as "Implementing improvements to critical administrative support systems". Even more specifically, the AGO strategic plan includes a goal to "Migrate to the State's hosted email service". Further, the migration helps address the goal to "proactively engage in risk management efforts to reduce client and agency risk" by modifying "the AGO public records process as a result of the email migration to CTS" (Goal 1-45-2)

The AGO provides a broad range of legal services to over 200 state agencies to enable them to achieve their missions.

The AGO strategic plan has an element for enforcing state and federal laws to protect consumers, state agencies and businesses by holding accountable those who violate the laws of our state.

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

This request provides direct essential support for the Governor's Priority of Government result area to "Strengthen government's ability to achieve results efficiently and effectively."

"Legal services to state agencies" supports the sub-priority to "Provide data and information and analyses to support decision-making."

"Technology acquisition services" supports the sub-priority to "Provide tools and resources to execute government functions."

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

The current purchase strategies under "Strengthen government's ability to achieve results efficiently and effectively" includes "Legal services to state agencies" as a primary element of "Provide data, information and analysis to support decision-making". Efficient email

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systems will increase AGO effectiveness in delivering services to our clients and the citizens of the state.

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

None.

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

Primarily, the directive is that all agencies migrate to the shared service, leaving few policy-based decisions.

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

We have considered using a hosted service by Microsoft and the State of Washington is exploring the use of online hosted e-mail, but that service is not yet available and is not an option in the current climate.

What are the consequences of not funding this package?

Not funding this request will place the AGO in a situation where we will have to cut and reprioritize 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

The AGO has limited control over the increase in contracted or technology related assets, and this request does not duplicate any funding proposed in any other decision packages within the 2014 Supplemental Budget request.

- 1. CTS Rate Reduction: Replacement of inappropriate budget cuts:

FY2014: \$53,000	FY2015: \$53,000	Bien: \$106,000
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 - 2. CTS Central Service. Requirement of non-allotted funding needs:

FY2014: \$113,000	FY2015: \$113,000	Bien: \$226,000
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 - 3. CTS Mail Services. Requirement of non-allotted funding needs:

FY2014: \$360,000	FY2015: \$360,000	Bien: \$720,000
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- TOTAL REQUEST:

FY2014: \$526,000	FY2015: \$526,000	Bien: \$1,052,000
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Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

State of Washington
Decision Package

FINAL

Agency: 100 Office of Attorney General

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These costs are on-going and will carry forward into future biennia.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
E Goods\Other Services	526,000	526,000	1,052,000

ATTACHMENT 1
2014 Supplemental Budget Request
PL-AS Migration to CTS Shared Services

AG0 SECTION	Vault Cost	Mailbox Cost	405			001			424			19A			154			12F		
			FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015		
ATG ADM Administration Total	\$216.94	\$1,053.50	15,245.24	15,245.24																
ATG AHD Agriculture and Health Total	\$161.45	\$279.30	5,289.00	5,289.00																
ATG ANT Antitrust Total	\$35.74	\$117.60								1,840.09										
ATG BCU Bankruptcy and Collections Total	\$9.31	\$88.20	1,170.14	1,170.14																
ATG COMA Complex Litigation Total	\$3.43	\$14.70	217.62	217.62																
ATG COR Corrections Division - Olympia Total	\$113.91	\$431.20	6,541.33	6,541.33																
ATG COR Spokane - Corrections Total	\$0.02	\$4.90	59.02	59.02																
ATG COR Spokane - MFCU Total	\$12.39	\$98.00																		
ATG CPR Consumer Protection - Seattle Total	\$232.78	\$1,572.90								21,668.11										
ATG CPR Consumer Protection, Spokane Total	\$0.60	\$14.70								183.60										
ATG CPR Tacoma - Consumer Protection Total	\$52.26	\$313.60								4,390.36										
ATG CRJ Criminal Justice - Seattle Total	\$241.97	\$460.60	8,430.90	8,430.90																
ATG CRJ Spokane - Criminal Justice Total	\$1.74	\$34.30	432.46	432.46																
ATG ECU Ecology Total	\$403.00	\$445.90	10,186.85	10,186.85																
ATG ECU Education Total	\$0.25	\$49.00	591.05	591.05																
ATG ECU Education - Olympia Total	\$68.15	\$142.10	2,523.01	2,523.01																
ATG EDU Education - Seattle Total	\$34.70	\$68.60	1,239.56	1,239.56																
ATG ETH Ethics Total	\$11.90	\$112.70	1,495.20	1,495.20																
ATG FIS Financial Services Total	\$84.46	\$328.30	4,953.11	4,953.11																
ATG FOS Facilities and Office Services Total	\$33.18	\$519.40	6,631.01	6,631.01																
ATG FWP Fish, Wildlife and Parks Total	\$151.68	\$254.80	4,877.78	4,877.78																
ATG GCE Government Compliance and Enforcement Total	\$182.33	\$426.30	7,303.62	7,303.62																
ATG GOV Government Operations Total	\$172.24	\$313.60	5,830.03	5,830.03																
ATG GSE General Services - Seattle Total	\$24.07	\$338.10	4,346.04	4,346.04																
ATG GSE Spokane - General Services Total	\$32.41	\$83.30	1,388.53	1,388.53																
ATG GSE Tacoma - General Services Total	\$19.08	\$186.20	2,463.37	2,463.37																
ATG HRO Human Resources - Olympia Total	\$124.32	\$289.10	4,961.09	4,961.09																
ATG HRO Human Resources - Seattle Total	\$22.42	\$29.40	621.80	621.80																
ATG ISD Information Services - Olympia Total	\$84.33	\$1,068.20	13,830.38	13,830.38																
ATG ISD Information Services - Seattle Total	\$0.36	\$4.90	63.17	63.17																
ATG ISD Information Services - Spokane Total	\$3.46	\$4.90	100.33	100.33																
ATG LAL Licensing & Administrative Law - Olympia Total	\$136.43	\$215.60	4,224.41	4,224.41																
ATG LAL Licensing & Administrative Law - Seattle Total	\$39.20	\$122.50	1,940.46	1,940.46																
ATG LEM Lemmon Law Total	\$17.00	\$44.10																		
ATG LNI Labor and Industries - Olympia Total	\$205.52	\$583.10	9,463.43	9,463.43																
ATG LNI Labor and Industries - Seattle Total	\$413.97	\$774.20	14,234.02	14,234.02																
ATG LNI Spokane - Labor and Industries Total	\$54.28	\$215.60	3,238.60	3,238.60																
ATG LNI Tacoma - Labor and Industries Total	\$120.18	\$220.50	4,088.20	4,088.20																
ATG LPD Labor and Personnel Total	\$326.48	\$406.70	8,798.13	8,798.13																
ATG MFC Corrections - MFCU Total	\$92.21	\$436.10																		
ATG MIHU Manufactured Housing Unit Total	\$16.27	\$39.20																		
ATG PAU Public Affairs Total	\$21.87	\$39.20	732.78	732.78																
ATG PCU Public Counsel Total	\$124.21	\$142.10	3,195.73	3,195.73																
ATG PRU Public Records - Olympia Total	\$24.59	\$68.60	1,118.24	1,118.24																
ATG RES Natural Resources Total	\$151.66	\$186.20	4,054.29	4,054.29																
ATG REV Revenue - Olympia Total	\$163.43	\$151.90	3,481.87	3,481.87																
ATG RSD Regional Services - Bellingham Total	\$3.55	\$215.60	2,629.80	2,629.80																
ATG RSD Regional Services - Bellingham CP Total	\$190.68	\$656.60	10,167.40	10,167.40																
ATG RSD Regional Services - Everett Total	\$102.20	\$269.50	4,460.45	4,460.45																
ATG RSD Regional Services - Kennewick Total	\$3.06	\$24.50	330.77	330.77																
ATG RSD Regional Services - Kennewick CP Total	\$25.94	\$63.70	1,075.68	1,075.68																
ATG RSD Regional Services - Port Angeles Total	\$135.93	\$220.50	4,277.16	4,277.16																
ATG RSD Regional Services - Vancouver Total																				

	Vault Cost	Mailbox Cost	405		001		424		19A		154		12F	
			FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015
AGO SECTION														
ATG RSD Regional Services - Vancouver CP Total	\$1,133	\$83.30	1,015.51	1,015.51										
ATG RSD Regional Services - Wenatchee Total	\$47.87	\$83.30	1,574.07	1,574.07										
ATG RSD Regional Services - Yakima Total	\$90.99	\$220.50	3,737.84	3,737.84										
ATG SGO Solicitor General Total	\$123.24	\$117.60	2,890.11	2,890.11										
ATG SHO Social and Health Services - Olympia Total	\$728.68	\$975.10	20,445.39	20,445.39										
ATG SHS Social & Health Tacoma Total	\$0.00	\$9.80	117.60	117.60										
ATG SHS Social and Health Services - Seattle Total	\$411.46	\$490.00	10,817.46	10,817.46										
ATG SHS Spokane - Social and Health Services Total	\$167.36	\$416.50	7,006.31	7,006.31										
ATG SHS Tacoma - Social and Health Services Total	\$166.16	\$377.30	6,521.58	6,521.58										
ATG SIS Spokane - Interdivisional Section Total	\$114.87	\$362.60	5,729.68	5,729.68										
ATG TOR Spokane - Torts Total	\$147.64	\$279.30	5,123.24	5,123.24										
ATG TOR Tacoma - Torts Total	\$152.26	\$98.00	3,003.09	3,003.09										
ATG TOR Torts - Olympia Total	\$646.92	\$1,024.10	20,052.28	20,052.28										
ATG TOR Torts - Seattle Total	\$613.02	\$588.00	14,412.19	14,412.19										
ATG TPC Transportation and Public Construction Total	\$415.83	\$362.60	9,341.21	9,341.21										
ATG TRC Research Center Total	\$18.46	\$88.20	1,279.92	1,279.92										
ATG UW University of Washington Total	\$61.26	\$259.70	3,851.49	3,851.49										
ATG UTC Utilities and Transportation Commission Total	\$17.09	\$58.80	850.66	850.66										
ATG WSU Washington State University Total	\$3.25	\$98.00	1,214.97	1,214.97										
Training Room Total	\$0.00	\$186.20	2,234.40	2,234.40										
Wellness Game Total	\$0.00	\$4.90	58.80	58.80										
Total	\$8,562.52	\$20,996.50												
FM GRAND TOTAL	\$29,955.02													
FY GRAND TOTAL	\$ - 359,508.21		\$322,362.85	\$322,362.85	\$26,242.07	\$26,242.07	\$1,840.09	\$1,840.09	\$7,664.43	\$7,664.43	\$733.19	\$733.19	\$665.58	\$665.58
BIEN GRAND TOTAL	\$ - 719,016.00	TRUE	\$644,725.70	\$644,725.70	\$52,484.14	\$52,484.14	\$3,680.18	\$3,680.18	\$15,328.86	\$15,328.86	\$1,466.37	\$1,466.37	\$1,331.16	\$1,331.16

Agency: **100 Office of Attorney General**

Decision Package Code/Title: **AN eDiscovery**

Budget Period: **2013-15**

Budget Level: **PL - Performance Level**

Recommendation Summary Text:

The Attorney General's Office (AGO) is requesting \$968,600 in FY2014 and \$127,200 in FY2015 to purchase and maintain electronic discovery (eDiscovery) software in the 2013-15 biennium to aid in identification, preservation, collection and production of digital media in litigation and public records requests.

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
405-1 Legal Services Revolving Account-State	968,600	127,200	1,095,800
Total Cost	968,600	127,200	1,095,800

Revenue

<u>Fund</u>	<u>Source</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
405 Legal Serv Rev Acct	0420 Charges for Services	968,600	127,200	1,095,800
Total Revenue		968,600	127,200	1,095,800

Package Description:

The AGO is requesting \$968,600 in FY2014 and \$127,200 in FY2015 to purchase and maintain electronic discovery (eDiscovery) software in the 2013-15 Biennium to aid in identification, preservation, collection and production of digital media in litigation and public records requests.

In an effort to provide efficient and lean operations and legal services, the AGO needs automated eDiscovery software. This investment will assist with the ever increasing volume of electronic discovery and public records requests. Currently, AGO staff spend significant time on processes that software can accomplish in minutes. Acquiring eDiscovery software to aid in searching, sorting and producing information to the public will save the AGO time, increase discovery and public records response efficiency, and reduce risks of missing responsive records.

Other state and federal entities are turning to automated systems to reduce the staff time spent on responding to public records requests. Use of eDiscovery software will also allow the AGO to advise other Washington state agencies in how to respond in the best way to the ever-increasing number of public records requests. The AGO is a leader in the development of effective public records processes.

In January 2013, the AGO released a Request for Proposal (RFP) to explore acquisition of an eDiscovery solution. From March through August 2013, a group of sixteen AGO employees conducted proof of concept evaluations of five eDiscovery vendors who submitted

Agency: 100 Office of Attorney General

Decision Package Code/Title: AN eDiscovery

responses to the RFP. Each vendor's software was installed in our environment and evaluated for one month. An Apparent Successful Vendor (ASV) has been selected. This ASV's eDiscovery software has the best combination of management qualifications, technical proposal, price, product functionality and usability, and will fit with the AGO's current processes. This software has been installed and tested in our environment and our agency is ready to implement the solution, once funding is received.

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

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

The AGO has approximately twenty terabytes of litigation data that continues to grow rapidly. The amount of time to review documents and data for responsiveness and privilege has increased from weeks to months and staff overtime is on the rise to meet court imposed deadlines. In addition to litigation, the AGO receives over 600 public records requests per year. For each public records request, each of our six systems must be searched separately, and depending on the request, documents are exported differently. The AGO does not have automated software to collect, process, analyse or manage AGO records.

Acquiring this eDiscovery software will provide the AGO with the ability to (1) search, gather and manage data from all existing data sources with one tool in a forensically sound manner; (2) issue legal holds for public records and litigation requests in a defensible manner; (3) reduce the amount of time AGO staff spend searching for public records allowing staff to spend more time on legal work; (4) increase efficiencies in the review process by culling data to more manageable levels; and (5) reduce litigation costs for client agencies by reducing the number of cases handled by external vendors.

This LEAN government investment will pay for itself many times over in savings and staff time.

The AGO currently uses the internal Mail and Document Services (MDS) division and an external vendor pool to process client's discovery data received for litigation cases.

In July 2009, the AGO established an external vendor pool. From November 2009 to December 2012, the AGO paid \$1,833,153 to these external vendors to process litigation data.

From July 2010 to June 2012, MDS billed approximately \$307,248 to the requesting divisions for discovery services, which was billed back to client agencies.

The Transportation and Public Construction (TPC) division had four cases where the Washington State Department of Transportation directly paid \$559,006 to process litigation data. This client agency has two new cases with anticipated eDiscovery costs of \$650,000.

A strategic goal of the AGO is to reduce the time staff spend on processes eDiscovery software will accomplish in minutes. Acquiring this software will strengthen the AGO's ability to efficiently and effectively provide accurate responses to public records requests, and comply with federal rules of evidence requirements in litigation.

With the Washington State Supreme Court ruling of O'Neill v. City of Shoreline, the complexity of public records requests continues to increase. Requests for metadata are on the rise and result in hours of additional work in the collection and production phase of the request. Staff must manually capture metadata for each record with screen captures. With this software, metadata can be automatically extracted in minutes.

Efficiency will increase by utilizing in-house eDiscovery software. The AGO will save time, increase discovery and public records

Agency: 100 Office of Attorney General

Decision Package Code/Title: AN eDiscovery

response efficiency, and reduce risks of missing responsive records.

eDiscovery software will positively impact all client agencies by reducing the costs paid to vendors for processing discovery for litigation cases. This software will have the ability to cull data sets down to a manageable amount that needs to be reviewed, thus reducing billing costs to client agencies. It will also search records more effectively, reducing the risk of missing responsive records.

Acquiring software and hardware to aid in searching, sorting and providing information to external requesters will save the AGO time, increase discovery and public records response efficiency, and reduce risks of missing responsive records. Citizens will receive the results of their public records requests quicker.

Over the last few months, the AGO has received numerous inquiries from other state agencies regarding our eDiscovery procurement efforts and how to automate their own public records process in the best way. This system will be used as a model for other Washington State agencies and will allow the AGO to advise agencies in how to respond effectively to the state's increasing number of public records requests.

Use of this software will also reduce the number of cases handled by external vendors, and has the potential to save client agencies on outside vendor costs.

Performance Measure Detail

Activity: A001 Administrative Activity Incremental Changes

No measures submitted for package

Activity: A002 Civil Commitment of Sexually Violent Predators Incremental Changes

No measures submitted for package

Activity: A003 Criminal Investigation and Prosecution Incremental Changes

No measures submitted for package

Activity: A004 Enforcement of Anti-Trust Laws Incremental Changes

No measures submitted for package

Activity: A005 Consumer Protection Incremental Changes

No measures submitted for package

Activity: A006 Executive Ethics Board Incremental Changes

Agency: 100 Office of Attorney General
Decision Package Code/Title: AN eDiscovery

No measures submitted for package

Activity: A007 Homicide Investigation Tracking System

Incremental Changes

No measures submitted for package

Activity: A008 Investigation and Defense of Tort Lawsuits

Incremental Changes

No measures submitted for package

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

Incremental Changes

No measures submitted for package

Activity: A010 Legal Services to State Agencies

Incremental Changes

No measures submitted for package

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

This budget request implements the following goals in the 2013-2015 AGO Strategic Plan; Serve the state - Provide excellent, independent and ethical legal advice and representation to our client, the state of Washington:

ATG Goal 1-4-1 of our agency's strategic plan: Proactively engage in risk management efforts to reduce client and agency risk, electronic discovery improvements and efficiencies.

ATG Goal 1-4-2: Public Records improvements and efficiencies. Modify the AGO public records process ... and the potential acquisition of a records production software tool to make the accurate production of records more efficient for AGO staff and the public.

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

This request supports the Governor's Priority of Government by improving state government efficiency in the following ways:

Improving adequacy of tools and resources to execute government functions and improvement in employee satisfaction with tools and resources needed to do their jobs - Use of this eDiscovery software will provide end users with tools to complete discovery and public records processing in less time than traditional/manual methods.

Safeguarding public funds and provide data, information and analysis to support decision-making - Use of this eDiscovery software will increase efficiency by decreasing the amount of time attorneys and staff spend reviewing large amounts of electronic data for responsiveness and privileged information. Risk management will become more efficient and effective by increasing our ability to manage documents and provide supporting evidence in cases.

Strengthening the decision support system - By using an automated eDiscovery tool, AGO staff will be able to utilize their time developing litigation strategies; thus, freeing Attorneys to spend more time on legal advice and litigation services. This effort will

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increase AGO accountability to our clients and citizens of the State.

Enhancing public participation and government accountability - eDiscovery software will enhance the AGO's ability to efficiently and effectively provide accurate responses to public records requests. Greater efficiency will result in quicker response times and an overall increase in the public's trust in the AGO, our client agencies, and the state of Washington.

This package supports Results Washington Goal 5: Effective, Efficient and Accountable Government - Fostering a Lean culture that drives accountability and results for the people of Washington.

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

Purchase of eDiscovery software will aid in reducing risk, increasing legal services efficiency, and promoting open government by responding quicker to public records requests.

By contributing to the Priorities of Government, this software purchase is rated a high priority by the AGO as it will help the AGO deliver better legal services to other agencies, improve the adequacy of tools staff use, and provide a higher standard of government accountability by providing responses to public records requests faster.

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

The AGO continues to look for savings in time and cost to provide more efficient services. However, the volume of electronic data is growing rapidly. Our caseloads and public records requests are increasing and additional tools are needed to maximize staffing efficiencies. We need a tool to help manage the ever-increasing volume of electronic data.

Stakeholders support the AGO's purchase of an eDiscovery tool. This software will aid in many future document intensive cases and public records requests.

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

The AGO released a RFP in January 2013 to acquire an eDiscovery solution. From March through August 2013, a group of sixteen AGO employees conducted proof of concept evaluations of five eDiscovery vendors who submitted responses to the RFP. Each vendor's solution was installed in our environment and evaluated for one month. In August 2013, an ASV was selected. This ASV was chosen based upon a combination of management qualifications, technical proposal, price, product functionality and usability.

What are the consequences of not funding this package?

The volume of electronic data is increasing and if this request is not funded, the AGO will continue to:

1. Process data through vendors which is becoming increasingly expensive and requires clients to pay increased litigation costs;
2. Risk of missing statutory and/or court-imposed discovery deadlines due to the amount of data needing search and the manual process currently being used;
3. Manually search and review records, taking valuable time away from core legal duties;
4. Risk of a sanction and/or court fine from missing a responsive record to a public records request;
5. Increase litigation for a non-ability to produce efficiently and timely requested metadata for public records requests; and

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6. Manage litigation holds manually, increasing spoliation of evidence risks that could result in sanctions and fines.

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

The AGO has limited control over the increase in growth of electronic data. This request does not duplicate any funding proposed in any other decision packages within the 2014 supplemental budget request.

The AGO will need to purchase two (2) physical servers, two (2) virtual servers, and forty-eight (48) terabytes of storage to implement and operate proprietary software and to maintain the eDiscovery solution. Total costs are provided below.

FY 2014 One Time Costs:

- 714,400 Software
- 254,200 Hardware:
 - Two NetApp Storage Shelf w/ 24 2-TB drives, \$50,000 each.
 - Two Cisco UCS Blade Server, \$25,000 each
 - Four VMWare Licensing, \$8,800 each
 - Four Veeam Data Replication and Backup Software, \$1,000 each
 - Two 40-TB Backup Storage, \$12,500 each
 - Four TrendMicro Antivirus/Malware Software, \$700 each
 - Two Microsoft Windows Server Datacenter Edition, \$3,100 each
 - One Microsoft SQL Server License, \$1,000
 - Two HP Servers, \$15,000 each

FY2015 On-going Costs:

- 110,700 Software Maintenance
- 16,500 Hardware Maintenance Recurring Costs

FY2016 On-going Costs:

- 116,235 Software Maintenance
- 16,500 Hardware Maintenance

FY2017 On-going Costs:

- 122,047 Software Maintenance
- 16,500 Hardware Maintenance

FY2018 On-going Costs:

- 128,149 Software Maintenance
- 16,500 Hardware Maintenance

State of Washington
Decision Package

FINAL

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

Costs are assumed to be on-going and have inflation cost considerations each FY.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
E Goods\Other Services	968,600	127,200	1,095,800

TAB C

SUMMARIZED
REVENUE REPORT



State of Washington

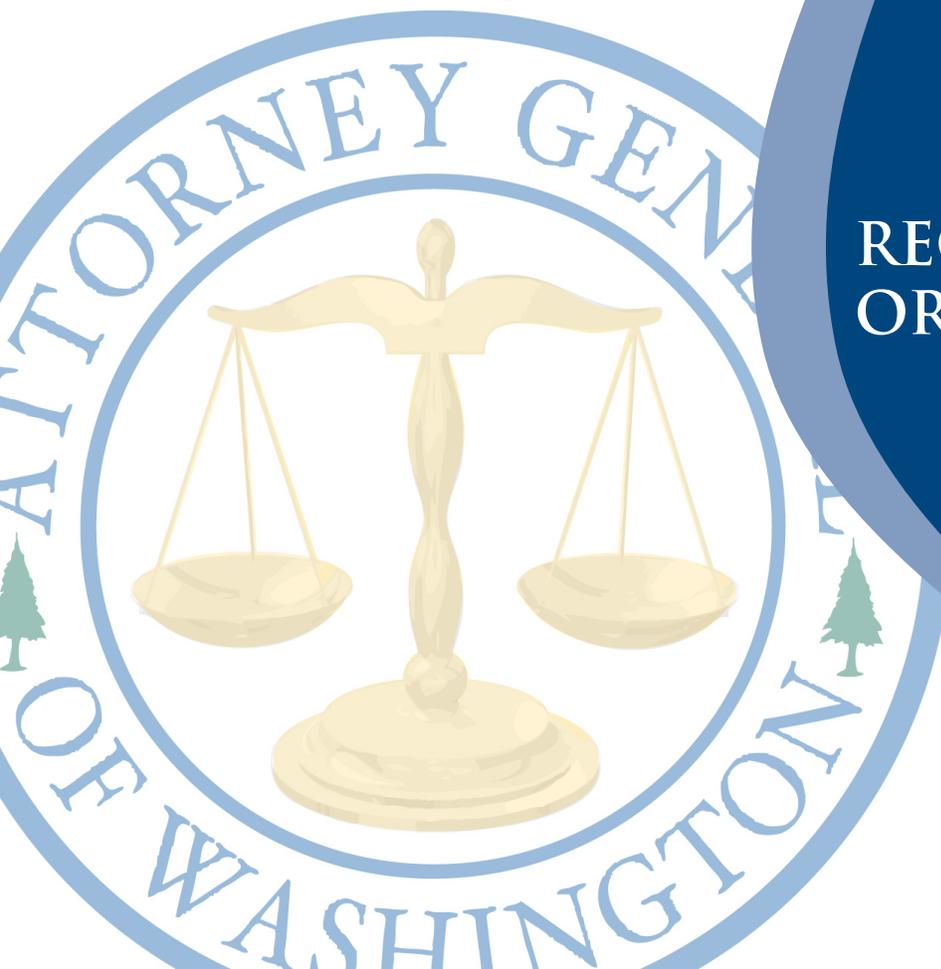
Summarized Revenue by Account and Source

	Maintenance Level		Performance Level		Biennium Totals		Total
	FY2014	FY2015	FY2014	FY2015	FY2014	FY2015	
405 - Legal Serv Rev Acct							
AB - Recruitment and Retention				6,699			
AG - Parental Termination Cases	1,409	2,754					
AH - Skokomish v. Goldmark Litigation	75	50					
AJ - League of Women Voters v WA	50	33					
AK - USDOL Vs. DSHS Litigation	(856)	906					
AN - eDiscovery			969				
AR - WA Tax Law Violations	195	195					
AS - Migration to CTS Shared Service			489				
Total - 0420 - Charges for Services - S	873	3,938	1,458	7,315	2,331	11,253	13,584
405 - Legal Serv Rev Acct - State	873	3,938	1,458	7,315	2,331	11,253	13,584
Total - 405 - Legal Serv Rev Acct	873	3,938	1,458	7,315	2,331	11,253	13,584
100 - Office of Attorney General - State	873	3,938	1,458	7,315	2,331	11,253	13,584
Total - 100 - Office of Attorney General	873	3,938	1,458	7,315	2,331	11,253	13,584

Budget Period: 2013-15
 Dollars in thousands
 100 - Office of Attorney General
 Agency Level
 S1 - 2014 Supplemental
 Supporting Text Excluded

TAB D

REQUEST FOR NEW
OR INCREASED FEES



Request for New or Increased Fees

- Not Applicable -