

Recommendation Summary

Budget Period: 2015-17

Version: N2 - 145 2015-17 Final 2016 Sup

Budget Level Criteria: ALL

Dollars in Thousands		Agency Priority	Annual Avg FTEs	General Fund State	Other Funds	Total Funds
CB - Current Biennium						
00	Current Biennium Base	0	0.0	126,206	53,238	179,444
SubTotal CB			0.0	126,206	53,238	179,444
Cumulative Total Thru CB			0.0	126,206	53,238	179,444
M2 - Inflation and Other Rate Changes						
9T	Transfers	0	0.0	9,846	4,994	14,840
QA	Permanency and Safety for Children	0	0.0	576	126	702
QB	USDOL vs. DSHS	0	0.0	558	122	680
SubTotal M2			0.0	10,980	5,242	16,222
Cumulative Total Thru M2			0.0	137,186	58,480	195,666
Total Proposed Budget			0.0	137,186	58,480	195,666

Department of Social and Health Services

DP Code/Title: M2-9T Transfers
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

Recommendation Summary Text:

DSHS requests the shift of FTEs and funding among programs in the 2015 17 Biennial Budget. This transfer will align FTEs and funds with the programs where the costs are incurred. The net impact is zero.

Fiscal Detail:

<u>Operating Expenditures</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
001-1 General Fund - Basic Account-State	4,923,000	4,923,000	9,846,000
001-2 General Fund - Basic Account-Federal	2,497,000	2,497,000	4,994,000
Total Cost	7,420,000	7,420,000	14,840,000

Staffing

Package Description:

DSHS requests internal transfers among several program budgets resulting in a net zero funding change for the department. This request aligns program appropriations with planned expenditures. DSHS requests the following adjustments for the 2015 17 Biennial Budget:

Fleet Rate Reduction

(Program 145 to Programs 010, 020, 030, 040, 050, 060, 070, 100 and 110):

The 2015 17 Biennial Budget included a reduction in funding for Fleet Services. This reduction was placed in the PTOA (Program 145) budget. Fleet Costs are charged to each program using the Fleet Services. The reduction needs to be transferred from PTOA to the affected programs.

Office of the Chief Information Officer (OCIO)

(Programs 010, 020, 030, 040, 050, 060, 070, 100, 110 and 135 to Program 145):

OCIO monthly costs are currently being distributed to all the programs. The 2015 17 Biennial Budget included a reduction for the OCIO costs that was placed in the PTOA budget. When reviewing the reduction and process for the monthly payment, it was determined that the funding should be transferred from all programs to PTOA (Program 145). This is a payment to another state agency so it should reside in the PTOA budget and expenditures.

WaTech

(Programs 010, 020, 030, 040, 050, 060, 070, 100, 110 and 135 to Program 145):

WaTech monthly costs are currently being distributed to all the programs. The 2015 17 Biennial Budget included some adjustments to the WaTech funding that was placed in the PTOA budget. When reviewing the adjustments, as well a change in the monthly invoice process from WaTech, it was determined that the funding should be transferred from all programs to PTOA (Program 145) for Security Gateway, Enterprise Security, Secure File & State Data Network, and HRMS Production Support. This is a payment to another state agency so it should reside in the PTOA budget and expenditures.

ISSD Reorganization

(Programs 010, 020, 030, 040, 050, 060, 070, 100, 110, 135 and 150):

ISSD has reorganized resulting in a transfer of FTEs from ISSD to Admin for the Technology Services Division. This transfer results in a change in the amount of TZ that should be allocated in each program. TZ and other objects are adjusted in Admin and ISSD to reflect this change in ISSD.

These transfers will realign the funding with the DSHS programs to be charged.

Department of Social and Health Services

DP Code/Title: M2-9T Transfers
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

Agency Contact: Bill Jordan (360) 902 8183

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

These transfers will realign the funding with the DSHS programs that are charged for the services.

Performance Measure Detail

Agency Level

Activity: N073 Payment to Other Agencies

No measures linked to package

Incremental Changes

FY 1

FY 2

0.00

0.00

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

The budget request supports DSHS Goals: Health - Each individual and each community will be healthy, and Public Trust - Strong management practices will be used to ensure quality and efficiency.

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

This decision package supports the Results Washington goals to: Goal 5: Efficient, Effective & Accountable Government - Resource Stewardship - Ensure that funding is used responsibly, and Goal 5: Efficient, Effective & Accountable Government - Transparency and Accountability - Ensure efficiency, performance, and accountability to the public by providing transparency and accountability in state agency operations.

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?

The request transfers funding between programs so that the needs can be met within existing resources.

What are the consequences of adopting or not adopting this package?

These transfers will realign the funding with the DSHS programs that are charged for the services.

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

This request has no impact on the capital budget.

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

This request has no impact to existing statutes, rules or contracts.

Expenditure and revenue calculations and assumptions

See attachment AW M2 9T Transfers.xlsx.

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

The transfer is one-time, and then all costs associated with it will be ongoing and will carry-forward into future biennia.

Department of Social and Health Services

DP Code/Title: M2-9T Transfers
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

<u>Object Detail</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
E Goods\Other Services	7,420,000	7,420,000	14,840,000

DSHS Source Code Detail

Overall Funding		<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Fund 001-1, General Fund - Basic Account-State				
<u>Sources</u>	<u>Title</u>			
0011	General Fund State	4,923,000	4,923,000	9,846,000
<i>Total for Fund 001-1</i>		4,923,000	4,923,000	9,846,000
Fund 001-2, General Fund - Basic Account-Federal				
<u>Sources</u>	<u>Title</u>			
FLIV	Fed Entered as Lidded (various%s)	2,497,000	2,497,000	4,994,000
<i>Total for Fund 001-2</i>		2,497,000	2,497,000	4,994,000
Total Overall Funding		7,420,000	7,420,000	14,840,000

**2016 Supplemental Budget
AW M2-9T Transfers**

Program	FTEs			FY 2016										FY 2017										2015-17 Biennium									
	FY16	FY17	Total	A	B	E	ED	G	J	P	TZ	Total	A	B	E	ED	G	J	P	TZ	Total	A	B	E	ED	G	J	P	TZ	Total			
110 Administration & Supporting Services																																	
1. ISSD Compensation Adjustments			0.0		(236,000)						(232,000)	(468,000)		(524,000)							(481,000)	(1,005,000)	0	(760,000)	0	0	0	0	0	(713,000)	(1,473,000)		
2. Communications Manager	0.4	0.4	0.4	32,000	10,000						42,000	42,000	33,000	11,000							44,000	44,000	65,000	21,000	0	0	0	0	0	0	86,000		
6. ALTA to ADMIN - Board of Appeals	1.5	1.5	1.5	116,000	43,000	8,000					2,000	169,000	116,000	44,000	8,000						2,000	170,000	232,000	87,000	16,000	0	0	0	0	4,000	339,000		
7. Fleet Program Rate Reduction			0.0					(6,000)			(6,000)	(6,000)					(6,000)				(6,000)	(6,000)	0	0	0	0	(12,000)	0	0	0	(12,000)		
8. OCIO Funding Transfer			0.0			(33,000)					(33,000)	(33,000)			(33,000)						(33,000)	(33,000)	0	0	(66,000)	0	0	0	0	0	(66,000)		
9. WaTech Funding Transfer			0.0			(161,000)					(156,000)	(156,000)			(161,000)						(156,000)	(156,000)	0	0	(322,000)	0	0	0	0	0	(312,000)		
10. ISSD Reorganization	55.8	55.8	55.8	4,142,000	1,324,000	1,070,000			310,000		(3,244,000)	3,602,000	4,509,000	1,516,000	759,000			310,000			(3,380,000)	3,714,000	8,651,000	2,840,000	1,829,000	0	0	620,000	0	(6,624,000)	7,316,000		
110 Total	57.7	57.7	57.7	4,290,000	1,141,000	884,000	0	(6,000)	310,000	0	(3,469,000)	3,150,000	4,658,000	1,047,000	573,000	0	(6,000)	310,000	0	(3,854,000)	2,728,000	8,948,000	2,188,000	1,457,000	0	(12,000)	620,000	0	(7,323,000)	5,878,000			
135 Special Commitment Center																																	
1. ISSD Compensation Adjustments			0.0								7,000	7,000									15,000	15,000	0	0	0	0	0	0	0	22,000	22,000		
8. OCIO Funding Transfer			0.0			(2,000)					(2,000)	(2,000)			(2,000)						(2,000)	(2,000)	0	0	(4,000)	0	0	0	0	0	(4,000)		
9. WaTech Funding Transfer			0.0			(104,000)					3,000	(101,000)			(104,000)						3,000	(101,000)	0	0	(208,000)	0	0	0	0	6,000	(202,000)		
10. ISSD Reorganization			0.0								(73,000)	(73,000)									(73,000)	(73,000)	0	0	0	0	0	0	0	(146,000)	(146,000)		
135 Total	0.0	0.0	0.0	0	0	(106,000)	0	0	0	0	(63,000)	(169,000)	0	0	(106,000)	0	0	0	0	(55,000)	(161,000)	0	0	(212,000)	0	0	0	0	(118,000)	(330,000)			
145 Payments to Other Agencies																																	
7. Fleet Program Rate Reduction			0.0			133,000			0			133,000			133,000			0				133,000	0	0	266,000	0	0	0	0	0	266,000		
8. OCIO Funding Transfer			0.0			327,000						327,000			327,000							327,000	0	0	654,000	0	0	0	0	0	654,000		
9. WaTech Funding Transfer			0.0			6,960,000						6,960,000			6,960,000							6,960,000	0	0	13,920,000	0	0	0	0	0	13,920,000		
145 Total	0.0	0.0	0.0	0	0	7,420,000	0	0	0	0	0	7,420,000	0	0	7,420,000	0	0	0	0	0	0	7,420,000	0	0	14,840,000	0	0	0	0	0	14,840,000		
150 Information System Services Division																																	
1. ISSD Compensation Adjustments			0.0		236,000						(236,000)	0		524,000							(524,000)	0	0	760,000	0	0	0	0	0	(760,000)	0		
9. WaTech Funding Transfer			0.0			232,000					(232,000)	0			232,000						(232,000)	0	0	0	464,000	0	0	0	0	0	(464,000)		
10. ISSD Reorganization	(55.8)	(55.8)	(55.8)	(4,142,000)	(1,324,000)	(1,070,000)	0	0	(310,000)	0	6,846,000	0	(4,509,000)	(1,516,000)	(759,000)	0	0	(310,000)	0	0	7,094,000	0	(8,651,000)	(2,840,000)	(1,829,000)	0	0	(620,000)	0	13,940,000	0		
150 Total	(55.8)	(55.8)	(55.8)	(4,142,000)	(1,088,000)	(838,000)	0	0	(310,000)	0	6,378,000	0	(4,509,000)	(992,000)	(527,000)	0	0	(310,000)	0	0	6,338,000	0	(8,651,000)	(2,080,000)	(1,365,000)	0	0	(620,000)	0	12,716,000	0		
160 Consolidated Field Services																																	
160 Total	0.0	0.0	0.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Agency-Wide Total:	0	0	0.0	0	0	266,000	0	(266,000)	0	0	0	0	0	0	266,000	0	(266,000)	0	0	0	0	0	0	0	532,000	0	(532,000)	0	0	0	0		

NOTES:

- Information System Services Division (ISSD) compensation adjustments from Administration & Supporting Services (Admin). Item adjusts object TZ costs. No Carry Forward Level (CFL) adjustment needed for the 2017-19 Biennial budget.
- Children's Administration transfer of Communications Manager funding (40%) to Administration and Supporting Services.
- Transfer Compensation Impact Model (CIM) funding from Mental Health Division to Developmental Disabilities Administration for Consolidated Support Services (CSS). All CSS positions were included in the Mental Health Division when the CIM file was created.
- Transfer FTEs and Funding from Developmental Disability Administration (DDA) to Aging and Long-Term Support Administration (ALTA) for IFS / Basic+ / CFCC / Mandatory Workload Step / IT staff and Program Staff.
- Transfer FTEs and Funding from Category 2000 to Category 1000 within the Developmental Disabilities Administration (DDA). Three (3) Nursing Care Consultants from Category 2000 to Category 1000 and One (1) Training position from Category 1000 to Category 2000.
- Transfer FTEs and Funding from Aging and Long-Term Support Administration (ALTA) to Administration and Supporting Services (ADMIN) for the Board of Appeals. This adjustment is needed because of a previous transfer to the Health Care Authority that should have come out of ALTA instead of ADMIN. No CFL Adjustment needed for the 2017-19 Biennial budget.
- Transfer the Fleet Program Rate Reduction from Payments to Other Agencies (PTOA) to all other DSHS Programs.
- Transfer the costs of the Office of the Chief Information Officer (OCIO) from the DSHS Programs to PTOA.
- Transfer the costs for WaTech from DSHS Programs to PTOA.
- ISSD has been reorganized, with a portion of the staff being transferred to Admin. This results in a change of TZ funding at the program level.

Department of Social and Health Services

DP Code/Title: M2-QA Permanency and Safety for Children
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

Recommendation Summary Text:

The Department of Social and Health Services (DSHS), Payment to Other Agencies program, requests \$702,000 (include \$30,000 for direct litigation costs) to meet ongoing caseload demands to represent the state in court on termination of parental rights and dependency matters in order to achieve stable, safe, and permanent homes for children. By funding this request, DSHS expects its performance of the timely filing of termination petitions to be positively impacted.

Fiscal Detail:

<u>Operating Expenditures</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
001-1 General Fund - Basic Account-State	0	576,000	576,000
001-2 General Fund - Basic Account-Federal	0	126,000	126,000
Total Cost	0	702,000	702,000

Staffing

Package Description:

Problem:

As dependency matters and termination petition referrals have increased, DSHS' funding for legal services has been reduced over time, even with the Attorney General's Office (AGO) having received temporary funds for permanency work.

DSHS further requests that this funding, along with the permanency initiative funding that was appropriated for FY2016 and the first half of FY2017 be made part of the base funding to provide ongoing legal services to DSHS in parental termination and dependency matters.

Funding this decision package will enable DSHS to meet the caseload demands related to achieving stable, safe, and permanent homes for children. Specifically, ongoing funding support will be used to sustain the necessary legal and support AGO positions, and to file parental termination cases in a timely manner, while also timely and effectively handling increasing dependency matters.

In the 2013-15 biennium and for the first 18 months of this biennium, DSHS will pay the AGO to address what was then an expected spike in parental termination referrals from DSHS. However, there has been a sustained increase in termination petition referrals and dependency matters with no foreseeable decline in workload.

In 2011-13, the AGO received approximately 1,600 termination petition referrals each year (FY2011 - 1,599; FY2012 - 1,599; FY2013 - 1,602). In FY2014, referrals increased to 1,957 and remained at a high level in FY2015 with 1,877 referrals. DSHS has informed the AGO that during the first half of FY2016 it will have 1,065 termination petitions eligible for referral. This trend in yearly termination referrals to the AGO is now closer to 1,900 per year.

The volume of dependency matters has also risen, increasing from 3,820 in FY2012 to 4,630 in FY2015 (FY2013 3,940; FY2014 4,220). An increase in dependencies is an indicator of a future increase in termination petition referrals. When dependency petitions rise, the expectation is that termination petitions will also rise in the following 12 18 month period.

Additionally, dependency work generally begins in an emergent situation where the state needs to intervene quickly to protect a child. Throughout the dependency, there are mandatory reviews and can be extensive motions practice relating to services and visitation if the child is out of the home. A return home to a safe and stable household is another path to permanency in lieu termination of parental rights. As the dependency caseload increases, it bleeds available resources away from timely filing and concluding those cases that need to be handled as terminations, thereby delaying permanency for those children who will not be

Department of Social and Health Services

DP Code/Title: M2-QA Permanency and Safety for Children
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

able to return home. Delays in filing termination petitions also places the state at risk for being out of compliance with the federal Adoption and Safe Families Act and losing federal funding.

Solution:

Increase DSHS permanency funding will result in the AGO improving the number of termination petitions filed within 45 days. As shown with past permanency funding, the AGO having additional staff has resulted in eliminating almost all of the backlog of termination petition referrals waiting to be drafted and filed. It also allowed significant improvement under the AGO's 45 day filing performance measure. In FY2013, the AGO had dropped from 91% to 79% in the number of termination petitions filed within 45 days. With the added positions funded in previous budget requests, FY2015 performance has increased to 91% - a 12 point improvement. This was accomplished even as dependency matters significantly increased.

Agency Contact: Don Petrich 360-902-7831
Program Contact: David Hilberg 360-902-7641

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

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.

DSHS has committed to improve its performance of achieving timely permanency for foster children. 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 as well as various contested motion hearings.

DSHS expects the AGO's performance of the timely filing of termination petitions to be positively impacted by this request. DSHS performance outcomes that may be impacted are those related to timely permanency for foster children. If DSHS' backlog of termination cases is resolved and termination petitions can be filed timely going forward, this is likely to free more foster children for permanency through adoption which could also decrease DSHS' case worker caseloads and further enable these workers to accomplish other work in a timely manner.

Performance Measure Detail

Agency Level

Activity: N073 Payment to Other Agencies

No measures linked to package

Incremental Changes

<u>FY 1</u>	<u>FY 2</u>
0.00	0.00

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

Protect abused and neglected children, which includes timely filing of termination petition referrals within the AGO's performance measure of 45 days. Additionally, the courts and AGO have a performance measure of requiring that dependencies be established within 75 days.

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

This decision package supports the following Result Washington Goals:

Goal 4: Healthy and Safe Communities Protection and Prevention.

Department of Social and Health Services

DP Code/Title: M2-QA Permanency and Safety for Children
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

- 2.1 Decrease the rate of children with founded allegations of child abuse and/or neglect from 4.52 to 4.10 by 06/30/2015.
- 2.1b Decrease percentage of children in Division of Children and Family Services out-of-home placement 5 years or more from 5.7% to 5.5% by 06/30/2015.

Goal 5: Effective, Efficient and Accountable Government Customer Satisfaction and Confidence

- 1.1 Increase/maintain customer service satisfaction with accuracy, timeliness, and respectfulness.
- 1.3 Increase/maintain timely delivery for state services.

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

The AGO supports this request. The important goal of the DSHS Children's Administration of achieving permanency for children will not be realized if the AGO cannot sustain sufficient staff resources to file and process termination petitions in a timely manner. Delays in these cases will include impacts to defense counsel caseloads, as indigent parents are entitled to court appointed counsel in termination proceedings. Additionally, when permanency is not achieved and dependency cases continue, the court and defense counsel resources are impacted by their involvement in review hearings twice a year as well as other motion hearings.

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

DSHS has previously examined whether it could use Children's Administration Program funds to pay for an interagency agreement to cover the costs of having adequate legal services funding, but they are unable to identify funds which could be committed to this purpose. In addition, using an interagency agreement to fund ongoing core legal work is not desirable or stable for budget planning and developing and retaining expertise to handle the work.

What are the consequences of adopting or not adopting this package?

Not funding this request will result in a lack of funding necessary to align legal services and staffing levels with the increase in referrals from DSHS leading once again to the development of a severe case backlog in the AGO and delay in filings. It will cause delay in children moving in a timely fashion from higher-cost foster care to permanency. It will also increase the risk of loss of 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

Expenditures are based on AGO calculations, requirements and following assumptions:

- DSHS will be billed for legal services provided by AGO staff across the state.
- \$30,000 in FY2017 direct litigation costs are needed for expert witnesses, travel and court costs

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

These costs are ongoing and will carry forward into future biennial.

Department of Social and Health Services

**DP Code/Title: M2-QA Permanency and Safety for Children
 Program Level - 145 Payment to Other Agencies**

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

<u>Object Detail</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
E Goods\Other Services	0	702,000	702,000

DSHS Source Code Detail

Overall Funding		<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Fund 001-1, General Fund - Basic Account-State				
<u>Sources</u>	<u>Title</u>			
0011	General Fund State	0	576,000	576,000
<i>Total for Fund 001-1</i>		0	576,000	576,000
Fund 001-2, General Fund - Basic Account-Federal				
<u>Sources</u>	<u>Title</u>			
FLIV	Fed Entered as Lidded (various%s)	0	126,000	126,000
<i>Total for Fund 001-2</i>		0	126,000	126,000
Total Overall Funding		0	702,000	702,000

Department of Social and Health Services

DP Code/Title: M2-QB USDOL vs. DSHS
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

Recommendation Summary Text:

The Department of Social and Health Services (DSHS), Payments to Other Agencies program, requests \$680,000 to provide ongoing legal services for the Attorney General's Office (AGO) in order to continue litigation for the United States Department of Labor (USDOL) versus DSHS. By funding this request, DSHS is expected to avoid potential liability to the state of Washington in excess of \$100 million. Of the total request, \$445,000 is for direct litigation and the remainder for ongoing legal services for the AGO Labor and Personnel Division.

Fiscal Detail:

<u>Operating Expenditures</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
001-1 General Fund - Basic Account-State	0	558,000	558,000
001-2 General Fund - Basic Account-Federal	0	122,000	122,000
Total Cost	0	680,000	680,000

Staffing

Package Description:

Problem:

The USDOL filed this enforcement action against DSHS in 2008 for alleged violations of the overtime and recordkeeping requirements of the Fair Labor Standards Act (FLSA). In April 2010, Judge Benjamin Settle of US District Court for the Western District of Washington granted summary judgment to DSHS, ruling that the social workers are exempt from the overtime requirements of the FLSA. However, in August 2011, the Ninth Circuit reversed the District Court's granting of summary judgment and remanded for trial. DSHS' petition for rehearing was denied in 2012 and the case returned to the District Court, but the USDOL filed a Petition for Writ of Mandamus in the Ninth Circuit regarding a discovery issue. The Ninth Circuit granted the writ of mandamus in April 2014 and denied DSHS' petition for rehearing in July 2014.

On August 26, 2015, Judge Settle held a status conference with the parties and ordered a thirty day bench trial to take place from October 4, 2016 through November 23, 2016. USDOL indicated during the status conference that they believe that there are continuing violations of FLSA and that they intend to amend their complaint, which may necessitate further discovery in FY 2016 and FY 2017.

During the status conference, Judge Settle ordered the parties to file dispositive motions by October 2, 2015. Judge Settle also indicated that he may hold a hearing in FY 2016 in advance of the trial on a very discrete aspect of the case, which would require testimony from expert witnesses and the USDOL investigators.

Solution:

The Legislature provided funding for litigation costs for this case of \$751,000 for FY 2016. This funding is likely sufficient to file the dispositive motions, discovery, and any pre-trial hearings in FY 2016. This additional request is for funding to support motions in advance of trial, trial preparations, expert consultants, trial costs, and post-trial motions and appeals in FY 2017. This is a specialized area of the law, and defending this case will require legal work by an AAG with expertise in wage & hour law and a Special Assistant Attorney General (SAAG) with expertise in defending enforcement actions by the USDOL.

Agency Contact: Don Petrich 360-902-7831

Program Contact: David Hilberg 360-902-7641

Department of Social and Health Services

DP Code/Title: M2-QB USDOL vs. DSHS
Program Level - 145 Payment to Other Agencies

Budget Period: 2015-17 Version: N2 145 2015-17 Final 2016 Sup

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This request funds the continued defense in this major dispute which will determine if social workers are owed additional wages for uncompensated overtime work performed in violation 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, including discovery, filing dispositive motions, taking and defending depositions, interviewing and preparing potential witnesses for trial and conducting the trial. The AGO is working to protect DSHS and the citizens of the state from exposure to liability that could exceed \$100-million.

Performance Measure Detail

Agency Level

Activity: N073 Payment to Other Agencies

No measures linked to package

Incremental Changes

FY 1

FY 2

0.00

0.00

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

Provide sound financial responsibility by litigating with USDOL to enter into a settlement agreement with DSHS, which will save the state of Washington millions of dollars.

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

This decision package provides essential support to the following Results Washington Goals:

Goal 4: Healthy and Safe Communities - Fostering the health of Washingtonians for a healthy start to a safe and supported future.

Goal 5: Efficient, Effective & Accountable Government - Customer Satisfaction and Confidence - 1.1 Increase customer services.

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

The AGO has no option but to defend this lawsuit. Settlement is always a possibility, but settlement talks have not been successful. USDOL's last settlement demand was made on April 20, 2010, for the sum of \$15,000,000, which the state was not in a financial position to accept. After the settlement conference, the state prevailed on summary judgment. The judgment was reversed on appeal and USDOL indicated that any settlement amount will now exceed \$15,000,000. OFM's position has continued to be that the state cannot afford these proposed settlement levels.

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

It is important to note that this request is for a continuation of litigation that has been going on since 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 defend the state.

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

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defense. There is no alternative source of funding.

What are the consequences of adopting or not adopting this package?

Not funding this request will limit resources necessary to defend the state from an adverse judgment with potential exposure as high as \$100 million. A lack of funding will result in an inability to support motions to narrow and limit issues, and to fund a robust defense in trial.

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

None.

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

None.

Expenditure and revenue calculations and assumptions

Of the total request \$445,000 is SAAG costs based upon 1,000 hours of services at an average of \$404.95 per hour. The remainder of the request is for on-going legal services that include expert witness fees and expenses, exhibit preparation and their duplication for the plaintiffs and the court, and for the daily transcripts prepared by the court reporter.

Approved funding of legal services identified in this request will be provided by the AGO Labor and Personnel Division.

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

At present, this case has been scheduled for trial on October 4, 2016. Costs in this request are for the purpose of trying this lawsuit. Regardless of the outcome of the trial, there will likely be another appeal to the Ninth Circuit and additional funds will be needed for future appeals.

<u>Object Detail</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
E Goods\Other Services	0	680,000	680,000

DSHS Source Code Detail

Overall Funding	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Fund 001-1, General Fund - Basic Account-State			
<u>Sources</u> <u>Title</u>			
0011 General Fund State	0	558,000	558,000
<i>Total for Fund 001-1</i>	0	558,000	558,000
Fund 001-2, General Fund - Basic Account-Federal			
<u>Sources</u> <u>Title</u>			
FLIV Fed Entered as Lidded (various%s)	0	122,000	122,000
<i>Total for Fund 001-2</i>	0	122,000	122,000
Total Overall Funding	0	680,000	680,000