

2017 Supplemental Budget Decision Package

Agency: Department of Labor & Industries

Decision Package Code/Title: M2-LA, Complex WISHA Litigation

Budget Period: 2017 Supplemental Budget

Budget Level: Maintenance

Agency Recommendation Summary Text:

The Department of Labor & Industries (L&I) is seeking \$750,000 to reimburse the Attorney General's Office (AGO) for the expenses incurred in providing additional legal services for complex litigation under the Washington Industrial Safety and Health Act (WISHA).

Fiscal Summary: *Decision package total dollar and FTE cost/savings by year, by fund, for 4 years. Additional fiscal details are required below.*

Operating Expenditures	FY 2016	FY 2017		
608-1: Accident Fund	\$0	\$638,000		
609-1: Med Aid Fund	\$0	\$112,000		
XXX-X: Fund				
Total Cost	\$0	\$750,000		
Staffing	FY 2018	FY 2019		
FTEs	0.0	0.0		
Revenue	FY 2018	FY 2019		
Fund	\$0	\$0		
Fund				
Object of Expenditure	FY 2018	FY 2019		
E-Goods & Services	\$0	\$750,000		
Total	\$0	\$750,000		

Package Description

L&I faces the emerging need to prosecute its civil penalties in worker-safety litigation against national law firms mounting massive discovery, motions, sanctions, and expert witnesses and against multi-attorney national teams before the Board of Industrial Insurance Appeals and Washington courts. The cases require extensive travel outside Washington, frequent appeals to Superior and appellate courts to develop case law, as well as a group of efficient and expert case-dedicated AAGs and paralegals who focus only on these larger cases to counter emerging defense practices.

Several factors have converged to create the ongoing need for this specialized team. Many employers now consider it cost-effective to retain expensive, out-of-state law firms to appeal and defend against WISHA citations. This is because WISHA citations carry greater consequences than in the past due to court rulings that have had the effect of requiring property owners to consider the safety records of contractors and a presidential executive order for bidding on federal contracts, which now requires federal agencies to consider bidders' (and their sub-contractors') worker safety and health violations.

L&I tracks two measurements that reflect an increase in complex litigation; Process Safety Management (PSM), which is employers with facilities that store and use large amounts of certain types of highly hazardous chemicals, and Willful Violations. Since Fiscal Year 2010, PSM inspection appeals have gone from 60 percent of total inspections to 85 percent in Fiscal Year 2016, while Willful Violations have gone from 80 percent to 91.7 percent during the same time frame.

PSM Inspections Issued by State FY*				
Ever Appealed	No	Yes	Total Inspections	Percent of PSM Inspections Appealed
2010	6	9	15	60.0%
2011	8	5	13	38.5%
2012	4	5	9	55.6%
2013	6	11	17	64.7%
2014	12	8	20	40.0%
2015	15	10	25	40.0%
2016	3	17	20	85.0%
Total	81	83	164	

Inspections with an Issue Date in time frame with an Optval of "PSM" or where WAC 296-67 was cited

Inspections with Willful Violations Issued by State FY*

Ever Appealed	No	Yes	Total	Percent of High Penalty Inspections Appealed
2010	1	4	5	80.0%
2011	1	8	9	88.9%
2012	2	8	10	80.0%
2013	0	8	8	100.0%
2014	1	9	10	90.0%
2015	7	18	25	72.0%
2016	1	11	12	91.7%
Total	13	66	79	

**Inspections with an Issue Date in the time frame where a willful (W, WG, WS) violation was cited*

Further, the construction boom in the Puget Sound area, especially in King County, which is fueled by strong economic growth and a growing population, has resulted in large-scale, expensive projects with complex safety issues. Appeals of these citations have become increasingly complex, and this trend is expected to continue. Hearings that previously lasted only one or two days are now lasting two weeks. This is especially true if the citation arises out of a fatality or serious injury. The Tesoro hearings, arising out of the deaths of seven workers, have become the longest WISHA hearings ever, and further hearings are anticipated.

L&I entered into an interagency agreement with the AGO during the 2015-17 biennium to address complex litigation associated with the refinery litigation stemming from citations to refinery owners, primarily Tesoro, under WISHA. These cases are outside of the standard services provided and appropriated by the Legislature. The total amount of the agreement is \$976,000.

The AGO has identified additional WISHA-related legal issues that will require added legal support outside of the current interagency agreement for the 2015-17 biennium, including Aerocell, Kiewit, Seattle Tunnel Partners, Seattle Bulk Shipping and Alaska Airlines.

L&I was able to make some one-time spending adjustments to accommodate the current interagency agreement, but cannot continue to short-change other agency efforts to accommodate the additional legal expenses.

Base budget: If the proposal is an expansion or alteration of a current program or service, provide information on the resources now devoted to the program or service. *Please include annual expenditures and FTEs by fund and activity (or provide working models or backup materials containing this information).*
 \$0 – The agency made one-time spending adjustments to accommodate this need.

Decision Package expenditure, FTE, revenue assumptions, calculations and details: *Agencies must clearly articulate the workload or policy assumptions used in calculating expenditure and revenue changes proposed.*

It is estimated an additional \$750,000 will be required in the 2015-17 Biennium to cover costs for:

- It is assumed the current interagency agreement will be depleted by November/December.
- 1.0 additional Assistant Attorney General FTE, for a total of 3.5 Assistant Attorney General FTE, from December 2016 – June 2017.
- 2.0 additional Paralegal FTE, for a total of 4.0 Paralegal FTE, from December 2016 – June 2017.
- \$130,000 for litigation-related costs, as follows:
 - \$90,000 for expert-witness fees
 - \$30,000 for travel costs
 - \$10,000 for other litigation costs

Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

Describe and quantify the specific performance outcomes the agency expects as a result of this funding change.

The ability to fully defend WISHA-related citations affecting the safety of workers.

Performance measure detail:

The performance measures L&I reports to Results Washington will not be affected.

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

Washington’s workers (and employers) benefit from having safe workplaces. L&I needs to be able to fully defend its WISHA-related citations to hold employers accountable for violations and to ensure that safety hazards are corrected.

What are other important connections or effects related to this proposal? *Please complete the following table and provide detailed explanations or information below:*

Effect(s) to:		Identify / Explanation
Regional/county effects?	No	Identify:
Other local gov’t effects?	No	Identify:
Tribal gov’t effects?	No	Identify:
Other state agency effects?	Yes	Identify: L&I will enter into an interagency agreement outside of the base services provided.
Responds to specific task force, report, mandate or exec order?	No	Identify:
Does request contain a compensation change?	No	Identify:
Does request require a change to a collective bargaining agreement?	No	Identify:
Facility/workplace needs or impacts?	No	Identify:
Capital budget effects?	No	Identify:

Is change required to existing statutes, rules or contracts?	No	Identify:
Is the request related to or a result of litigation?	No	Identify lawsuit (please consult with Attorney General's Office):
Is the request related to Puget Sound recovery?	No	If yes, see budget instructions Section 14.4 for additional instructions
Identify other important connections		

Please provide a detailed discussion of connections/effects identified above.

The current assumption is to extend the current interagency agreement through the end of the 2015-17 biennium. However, if this program is needed on an ongoing basis, continued funding should become part of the standard services funded through the Central Service Model.

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

L&I assumed this to be a one-time expenditure for Fiscal Year 2016 and made a one-time adjustment to current spending to accommodate the additional legal expenses. L&I cannot sustain this method long-term, as the need for complex litigation is continuing to increase.

What are the consequences of not funding this request?

L&I will have to reduce spending in other areas to accommodate this need. This will include reducing/delaying services to customers.

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

During Fiscal Year 2016, L&I re-prioritized spending to accommodate an \$976,000 interagency agreement. At the time, the department assumed this to be a one-time issue. Cases leading to complex litigation continue to increase, and L&I cannot continue to absorb this as a continued program.

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

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

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.)

2017 Supplemental Budget Decision Package

Agency: Department of Labor & Industries

Decision Package Code/Title: M2-MF, Relocate Field Offices

Budget Period: 2017 Supplemental Budget

Budget Level: Maintenance

Agency Recommendation Summary Text:

The Department of Labor & Industries (L&I) is requesting \$743,000 to relocate two field offices. The Bremerton and Port Angeles facilities would be relocated due to poor maintenance, safety concerns and other problems the landlords are unwilling to address. This proposal also includes additional capacity to plan and implement the office moves as well as Modern Workplace features throughout L&I facilities.

Fiscal Summary: Decision package total dollar and FTE cost/savings by year, by fund, for 4 years. Additional fiscal details are required below.

Operating Expenditures	FY 2016	FY 2017		
608-1: Accident Fund	\$0	\$372,000		
609-1: Med Aid Fund	\$0	\$371,000		
Total Cost	\$0	\$743,000		
Staffing	FY 2018	FY 2019		
FTEs	0.0	0.0		
Revenue	FY 2018	FY 2019		
Fund	\$0	\$0		
Object of Expenditure	FY 2018	FY 2019		
E-Goods & Services	\$0	\$743,000		
Total	\$0	\$743,000		

Package Description

L&I proposes to relocate its field offices in Bremerton and Port Angeles because the current locations have become unsatisfactory due to the condition of the buildings, accessibility issues and safety concerns. In addition to improving conditions for employees and customers, the relocations would give L&I an opportunity to make progress toward implementing the type of flexible, modern work space envisioned in the Governor’s executive order on “Building a Modern Work Environment.” Here are more details about the problems with each location.

Bremerton, \$455,000 ~ The field office occupies two stories of a seven-story building. The building is about 70 years old, and the landlord has allowed it to fall into disrepair, with no plans for improvements. The building fell into foreclosure and was scheduled to be sold at auction in mid-August. Documented problems include:

- Poor ventilation, high temperatures in the summer, ant infestations, lighting issues, flooring tripping hazards, plumbing problems, cracked windows, doors not locking correctly, building odors, elevator malfunctions, homeless people and broken glass in the parking garage, rocks falling from the building façade (and a large crack found in the façade), plus other security concerns.

The building owner doesn’t respond in a timely manner. E.g., the elevator was fixed only after an inspector threatened to red-tag it; and the only attempt to fix the HVAC made the problem worse.

- There's a steep incline to access the parking lots 1½ blocks away, and staff and customers have slipped and fallen in icy weather. Even in good weather, the distance and the steep grade can be challenging for injured workers and other customers and staff with disabilities.
- The two-story space is used inefficiently. The OFM Facilities Oversight Group has identified the Bremerton office as a good candidate for relocation to improve space efficiency.

The Bremerton lease expired in March 2016 and has been on a month-to-month lease since then.

Port Angeles, \$288,000 ~ Safety is the biggest concern at this site. The building is located adjacent to a bar and near a homeless camp, both of which create hygiene and safety problems for customers and staff. Documented problems include:

- Bar patrons' aggressive dogs, bar fights, drunk drivers in the parking lot, drinking and drug use in the parking lot, stolen or vandalized motor-pool cars, a building break-in, dog and human excrement in the parking lot, broken beer bottles, vomit, motorcycles being ridden on the sidewalk immediately outside the front door, gang graffiti on the building, air quality in the building, etc.
- L&I has tried placing cones on the sidewalk by the front door in an attempt to create a safe zone for people entering and exiting the building.

The landlord has not responded to repeated requests to clean up or improve the safety of the premises.

The Port Angeles lease was recently extended through April 2017. In addition to providing a safer environment, L&I will look for a location that improves customer access and allows for better use of space than the current location.

The department anticipates these moves will occur in the Spring of 2017, February/March.

Base Budget: If the proposal is an expansion or alteration of a current program or service, provide information on the resources now devoted to the program or service. *Please include annual expenditures and FTEs by fund and activity (or provide working models or backup materials containing this information).*

- Most of this decision package is composed of one-time costs.
- Leases for the current Bremerton and Port Angeles offices currently total \$228,000 per year. Leases for the replacement facilities will comply with limits established by OFM.

Decision package expenditure, FTE and revenue assumptions, calculations and details: *Agencies must clearly articulate the workload or policy assumptions used in calculating expenditure and revenue changes proposed.*

The majority of the relocation costs for each office move are:

Bremerton

- \$120,000 for tenant improvements
- \$180,000 for new furniture
- \$77,000 for IT infrastructure
- Other costs include DES fees, moving vendor and supplies, building security and Access Systems.

Port Angeles

- \$48,000 for tenant improvements
- \$82,600 for new furniture
- \$65,000 for IT infrastructure
- Other costs include DES fees, moving vendor and supplies, building security and Access Systems.

Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

Describe and quantify the specific performance outcomes the agency expects as a result of this funding change.

- Improved satisfaction for customers and staff, as measured by surveys.
- Better space-use efficiency, as defined by the Department of Enterprise Services.
- L&I Goal 3: Make it easy to do business with L&I.
- Progress toward implementing the Governor’s executive order on “Building a Modern Work Environment.”

Performance measure detail:

The performance measures L&I reports to Results Washington will not be affected.

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

Customers and employees of the field offices would experience safer conditions both outside and inside the facilities, as well as better access to parking. The moves also create an opportunity for L&I to implement better customer-service layouts and the type of modern workspace envisioned in the governor’s executive order on modern work environments.

What are other important connections or effects related to this proposal? *Please complete the following table and provide detailed explanations or information below:*

Effect(s) to:		Identify / Explanation
Regional/County effects?	Yes	Identify: There could be a perceived loss of service if field offices are relocated to another town – even if the distance isn’t far. The moves will need to be clearly communicated to customers to minimize confusion about how and where to get L&I service.
Other local gov’t effects?	No	Identify:
Tribal gov’t effects?	No	Identify:
Other state agency effects?	No	Identify:
Responds to specific task force, report, mandate or exec order?	No	Identify:
Does request contain a compensation change?	No	Identify:
Does request require a change to a collective bargaining agreement?	No	Identify:
Facility/workplace needs or effects?	Yes	Identify: We’re working with DES to find suitable space for serving the public and conducting work – within the below-market rates approved by OFM. The office relocations will create opportunities to improve the efficiency and flexibility of how L&I uses the work space.
Capital budget effects?	No	Identify:
Is change required to existing statutes, rules or contracts?	No	Identify: The Bremerton office is now on a month-to-month lease and Port Angeles expires April 2017.

Is the request related to or a result of litigation?	No	Identify lawsuit (please consult with Attorney General's Office):
Is the request related to Puget Sound recovery?	No	If yes, see budget instructions Section 14.4 for additional instructions
Identify other important connections		

Please provide a detailed discussion of connections/effects identified above.

- The Bremerton and Port Angeles offices will likely be moved to other towns in their broader communities/regions. This is driven largely by the need to find acceptable space within price limits set by OFM – which are below the average market rate in the area. In the case of the Port Angeles office, the fact that electrical permits for projects within the city limits are issued by the City of Port Angeles, not by L&I, provides some additional justification for relocating elsewhere in the county to be closer to that segment of customers.

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

For Bremerton and Port Angeles, the building owners have been unwilling to make essential improvements – despite repeated requests. Relocation is necessary to resolve the problems we’re experiencing. As an added bonus, relocation provides an opportunity to improve the work-flow design, efficiency and flexibility of the work spaces.

What are the consequences of not funding this request?

Customers and L&I employees would continue to be subjected to poor office conditions, accessibility barriers and safety issues. Also, L&I is unlikely to make much progress toward the Governor’s goal of “Building a Modern Work Environment.”

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

After extensive review and consideration, L&I is unable to afford the costs of the office relocations within its existing appropriation. The agency has already imposed an array of spending reductions or delays in the current biennium in order to launch its Business Transformation initiative, and is not able to dig deeper to accommodate the office relocations as well.

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

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

No 

Yes. Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.)

2017 Supplemental Budget Decision Package

PLACEHOLDER

Agency: Department of Labor & Industries

Decision Package Code/Title: M2-9F, Federal Funding Adjustment

Budget Period: 2017 Supplemental Budget

Budget Level: Maintenance

Agency Recommendation Summary Text:

The Department of Labor & Industries (L&I) will be receiving funds for the Apprenticeship Expansion Grant from the federal Department of Labor. This package is a placeholder until further information is available.

Fiscal Summary: *Decision package total dollar and FTE cost/savings by year, by fund, for 4 years. Additional fiscal details are required below.*

Operating Expenditures	FY 2016	FY 2017		
608-2: Accident Fund-Fed	\$0	\$0		
609-2: Med Aid Fund-Fed	\$0	\$0		
Total Cost	\$0	\$0		
Staffing	FY 2018	FY 2019		
FTEs	0.0	0.0		
Revenue	FY 2018	FY 2019		
608-2 Accident Fund-Fed	\$0	\$0		
609-2 Med Aid Fund-Fed	\$0	\$0		
Total Revenue	\$0	\$0		
Object of Expenditure	FY 2018	FY 2019		
A-Salary & Wages	\$0	\$0		
B-Employee Benefits	\$0	\$0		
C-Contracts	\$0	\$0		
E-Goods & Services	\$0	\$0		
G-Travel	\$0	\$0		
N-Grants	\$0	\$0		
Total	\$0	\$0		

Package Description

L&I will be receiving funds associated with the Apprenticeship Expansion Grant from the federal Department of Labor. The funding details have not been determined as of the time of the budget submittal.

The grant is to fund an effort, Project RAISE, to coordinate state agency resources, recruit new employers and advance Registered Apprenticeship opportunities for disadvantaged populations.

Base Budget: If the proposal is an expansion or alteration of a current program or service, provide information on the resources now devoted to the program or service.

There is not a base budget for this award.

Decision Package expenditure, FTE and revenue assumptions, calculations and details: *Agencies must clearly articulate the workload or policy assumptions used in calculating expenditure and revenue changes proposed.*

This federal grant will be administered by the Department of Labor and Industries Apprenticeship Program with federal funds received from the U.S. Department of Labor. Therefore, the Accident Fund (608-Federal) and Medical Aid Fund (609-Federal) are affected.

Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

Describe and quantify the specific performance outcomes the agency expects as a result of this funding change.

This federal Department of Labor grant is intended to:

- Increase industry demand and access for unrepresented populations for Registered Apprenticeship in the rural health care networks of the Community and Migrant Health Care centers of Washington.
- In partnership with the Aerospace Joint Apprenticeship Committee, develop a high school-based manufacturing program at select schools throughout Washington.
- Allow the State Board for Community and Technical Colleges to catalyze its ten Centers of Excellence to assist in developing sectoral approaches to apprenticeship expansion in the state.
- Establish a community organizing and education campaign around Registered Apprenticeship as a viable workforce and career development option.

Performance Measure detail (Results Washington)

A clear connection with Goal 1 World-class Education, 1.3: increase annual attainment of certificates, apprenticeships and degrees.

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

The desired outcomes of these federal grants are to allow workers and employers in the state to benefit by developing a more highly skilled workforce by expanding the use of apprenticeship programs.

What are other important connections or impacts related to this proposal? *Please complete the following table and provide detailed explanations or information below:*

Impact(s) To:		Identify / Explanation
Regional/County impacts?	No	Identify: TBD
Other local gov't impacts?	No	Identify: TBD
Tribal gov't impacts?	No	Identify: TBD
Other state agency impacts?	No	Identify: TBD
Responds to specific task force, report, mandate or exec order?	No	Identify: TBD
Does request contain a compensation change?	No	Identify:

Does request require a change to a collective bargaining agreement?	No	Identify:
Facility/workplace needs or impacts?	No	Identify:
Capital Budget Impacts?	No	Identify:
Is change required to existing statutes, rules or contracts?	No	Identify:
Is the request related to or a result of litigation?	No	Identify lawsuit (please consult with Attorney General's Office):
Is the request related to Puget Sound recovery?	No	If yes, see budget instructions Section 14.4 for additional instructions
Identify other important connections		

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

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

The Department of Labor and Industries Apprenticeship budget will lack the resources to undertake the desired outcomes of this grant. This federal grant was pursued with the intention of improving the qualified work force in the state, which benefits the labor force and employers.

What are the consequences of not funding this request?

Funding is necessary to comply with the terms of the performance agreement of this federal Department of Labor grant.

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

L&I does not have sufficient state appropriation to undertake the goals this federal grant intends to accomplish. However, appropriation is still necessary to spend the federal funds associated with these grants.

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

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

No 

Yes Continue to IT Addendum below and follow the directions on the bottom of the addendum to meet requirements for OCIO review.)