

Analysis

Item 42: Department of Justice

Intra-Agency Charges

Analyst: John Borden

Request: Increase the Other Funds expenditure limitation by \$2,493,909 and transfer \$196,115 General Fund from the Civil Enforcement program to the Criminal Justice program and transfer \$500,000 in Other Funds expenditure limitation from the Crime Victims Services program to the Civil Enforcement program to intra-agency charges to fund the Administration program.

Analysis: The Department of Justice (DOJ) is requesting a budget adjustment to fund intra-agency charges necessary to support the agency's Administration program.

For DOJ, an intra-agency charge is an overhead charge to an operating program to fund agency-wide administration. Operating programs reflect the charge as an expense from which the proceeds are then transferred to the Administration program as a revenue source. An intra-agency charge aligns with operating program funding. For DOJ on an agency-wide basis, intra-agency charge originates as General (11%), Other and General Fund as Other Funds (65%), or Federal Funds (24%); however, once expensed at the program-level, the Administration program expends the funds as Other Funds. While this method leads to the double-budgeting of an expense, first at the program-level, and then at the administration-level, the approach is preferable to what would otherwise be a less transparent method of revenue transfers.

The Administration program includes the Office of the Attorney General, or the executive management of the agency, and administrative services that provide centralized operational support services for most of the agency and includes fiscal services, information services, facility operations, and human resources. The Administration program's budget totals \$36 million (113 positions/109.68 FTE), of which \$35.7 million is supported by intra-agency charges and the remainder General Fund.

DOJ's intra-agency charge budget is based upon each operating program's actual rather than budgeted personal services expenditures, including a prior-period reconciliation adjustment. The agency-wide amount charged each program averages 12.7%. Due to the large amount of federal funding within the agency, the intra-agency charge must be certified on an annual basis as a federally-approved cost allocation plan.

DOJ's budgeted intra-agency line-item charges within each program are insufficient to support the Administration program's legislatively approved expenditures due to an oversight in the 2017-19 budget development process, which also happened to occur during the 2013-15 budget cycle (see *Emergency Board Item #26 in September 2014*). Operating program budgets failed to fully account for expenditure changes in the Administration program. Going forward, DOJ will seek to align intra-agency charges with Administration program expenditures at each cycle of the budget process, beginning with the 2019-21 agency request budget.

For this request, DOJ has calculated an intra-agency shortfall of \$5.3 million. Of this amount, DOJ can absorb \$2.8 million by using one-time budgetary savings. DOJ is requesting the balance of \$2.5

million in Other Funds expenditure limitation for four operating programs (Appellate, Civil Enforcement, General Counsel, and Trial). The request also includes a transfer of \$196,115 in one-time General Fund savings from the Civil Enforcement program to the Criminal Justice program as well as a transfer of \$500,000 in excess Other Funds expenditure limitation from the Crime Victims Services program to the Civil Enforcement program to support the payment of the intra-agency charge for those programs.

The Division of Child Support's intra-agency charge shortfall is part of a separate request (*see Emergency Board Item #39 - Division of Child Support Shortfalls*). The DCS intra-agency shortfall totals \$1.1 million total funds and an additional \$374,269 General Fund allocation is being requested from the Emergency Board.

There is no change to the Administration program expenditure limitation. DOJ identified the amount of the intra-agency shortfall based on actual personal service costs, projected total biennial program(s) expenditures using one fiscal year of actual expenditures, and one projected year of expenditures, and then offset the request with projected excess General, Other, and Federal Funds savings. The request appears to be isolated to funding only the intra-agency charge shortfall, rather than some other unbudgeted operating program expense. DOJ's request letter, and expenditure projections, show five of eight programs operating in excess of budgeted personal service costs. The only two programs projected to be operating in surplus are the Division of Child Support and the Child Support Enforcement Automated System information technology project.

This request, if approved, will have no net revenue impact to the agency overall. The agency's primary source of Other Funds revenue, the hourly billable rate charged for legal services, will remain unchanged at \$182 per hour, per DOJ. In fact, the Legal Services Fund ending balance should also remain unchanged as the \$182 hourly rate was calculated to produce sufficient revenue to fund the Legal Services portion of the Administration program's expenses.

Legislative Fiscal Office Recommendation: Increase the Other Funds expenditure limitation by \$2,493,909, transfer \$196,115 General Fund from the Civil Enforcement program to the Criminal Justice program, and transfer \$500,000 Other Funds expenditure limitation from the Crime Victims Services program to the Civil Enforcement program to intra-agency charges to fund the Administration program.

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Department of Justice
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Request: The Department of Justice (DOJ) is requesting to transfer \$196,115 General Fund from the Civil Enforcement Division (CE) to the Criminal Justice (CJ) Division; transfer \$500,000 Other Funds expenditure limitation from Crime Victims' Service Division (CVSD) to the CE; and, request an increase of \$2,493,909 Other Funds expenditure limitation for four other agency divisions, to pay their intra-agency obligations to DOJ, Division of Administration.

Recommendation: Approve the request.

Discussion: The DOJ has determined several of their divisions are not appropriately budgeted to meet their intra-agency obligations to their Administration Division, and requesting to rebalance several of their appropriations. The Administration Division provides all of the administrative services to all of the agency's divisions. The Administration Division is funded predominately by an approved intra-agency cost allocation model. The model is based on a percentage of the Administration Division actual Personal Services expenditures and full-time equivalent (FTE). The increase in cost in Administration services coincides with the policy packages approved in the 2017-19 Legislative Adopted Budget. At the time of the adopted budget, the agency's corresponding divisions were not equally compensated in either General Fund or Other Funds expenditure limitation to account for the Administration Division's approved budget. The Department is attributing the following major factors to the imbalance between Administration and Criminal Justice, Civil Enforcement, Crime Victims' Services, Appellate, General Counsel, and Trial divisions:

- The accumulated difference in inflation between Personal Services costs and Service and Supplies costs from the divisions' budget, is an attributing factor to the imbalance in General Fund and Other Fund expenditure limitation.
- Higher than budgeted Personal Services expenditures due to an increased use of leave and retirement leave balance cash outs. These factors also generate overtime expenditures to cover the assignments for employees on leave or who retired.
- Overtime costs associated with the need for increased resource capacity to manage existing caseloads due to division vacancies.
- Special litigation cases, contesting actions taken by the federal government, which creates over-time or the hiring of additional legal staff to assist with these cases.

Appellate Division: The Appellate Division is requesting a \$507,367 Other Funds expenditure limitation increase to cover their intra-agency obligations to the Administration Division. The Appellate Division represents the state in all cases that are appealed to the State and Federal appellate courts.

The Appellate Division has temporarily maintained a vacancy factor greater than five percent for non-management attorney positions to manage this shortfall. The Division is indicating without the expenditure limitation increase, the courts would potentially see reverse criminal convictions; would curtail the number of state's appeal cases where trial court erred, which would potentially jeopardize a criminal prosecution; and would reduce staff's abilities to provide legal advice to prosecutors about avoiding mistakes when prosecuting cases.

Criminal Justice Division: Criminal Justice is projecting a \$196,115 General Fund (GF) shortfall to cover their portion of projected intra-agency cost to the Administration Division. The request would be fulfilled with a General Fund transfer from the Civil Enforcement Division. Civil Enforcement is projecting a sufficient amount of excess General Fund in their Civil Rights unit to transfer to Criminal Justice to offset the shortfall for this biennium.

Criminal Justice provides investigative, trail, training and legal support to Oregon's District Attorneys and law enforcement agencies. Criminal Justice is temporarily holding positions open to accommodate the shortfall.

The Department is indicating the failure to resolve the shortfall, will impact their ability to prosecute or support criminal cases such as homicide, sexual assault, and child abuse. The cost allocation model used impacts Criminal Justice's General Fund portion of the budget because of the number of positions, which are funded 100 percent by General Fund.

Civil Enforcement Division: Civil Enforcement is requesting \$856,936 Other Funds expenditure limitation increase to cover their portion of projected intra-agency cost to the Administration Division.

Criminal Enforcement works with the Division of Child Support to establish and enforce child support orders, represent the Department of Human Services (DHS) Child Welfare program, enforce consumer protection laws, regulates charities, investigate and prosecute Medicaid fraud, take legal action to recover or protect state's interest in money and in real or personal property.

The Division is keeping positions vacant (legal and support staff positions) to fund their shortfall, which will impact the caseloads and timely response on cases within the Child Advocacy, Civil Recovery and Medicaid Fraud units.

General Counsel Division: General Counsel is requesting a \$1,185,059 Other Funds expenditure limitation increase to cover their intra-agency obligations to the Administration Division. General Counsel provides legal assistance to agencies drafting contracts, making rules, enforcing laws, and operating within the law.

Without the limitation increase, General Counsel will have to continue holding vacancies in their Business Transaction section, which is impacting their ability to review contracts in a timely manner.

Trial Division: Trial Division is requesting a \$444,547 Other Funds expenditure limitation increase to cover their intra-agency obligations to the Administration Division and cover overtime costs due to vacancies. The Trial Division, in concert with the Appellate Division, work in state and federal appellate courts. Trial defends the State, its agencies, its officials and its policies in state and federal trial courts.

The Trial Division is facing a capacity issue beyond the five percent vacancy factor for the current biennium. Legal support staff has been working weekends to accommodate some of the capacity issues. Two predominate capacity issues impacting the division are related to the following:

- The Special Litigation unit is overseeing the 11 cases Oregon has filed or joined contesting action taken by the federal government, which has added to the Trial Division's capacity.

- Civil Litigation is starting to see condemnation cases associated with the transportation package approved from the 2017 Session.

Legal References:

Transfer of \$196,115 General Fund appropriation made by chapter 576, section 1, Oregon Laws 2017, for the 2017-19 biennium as Follows:

<u>Subsection</u>	<u>Amount</u>
(3) Criminal Justice Division	\$+ 196,115
(2) Civil Enforcement Division	\$- 196,115

Transfer of \$500,000 Other Funds expenditure limitation made by chapter 576, section 2, Oregon Laws 2017, for the 2017-19 biennium as follows:

(3) Civil Enforcement Division	\$+ 500,000
(5) Crime Victims' Services Division	\$- 500,000

Increase Other Funds expenditure limitations established by Chapter 576, Section 2, Oregon Laws 2017, for the Department of Justice by \$2,493,909 for the 2017-19 biennium as follows:

(2) Appellate	\$+ 507,367
(3) Civil Enforcement Division	\$+ 356,936
(6) General Counsel Division	\$+ 1,185,059
(7) Trial Division	\$+ 444,547



DEPARTMENT OF JUSTICE

August 21, 2018

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Department of Justice (DOJ) respectfully requests a rebalance of its General Fund appropriations and its Other Funds expenditure limitations, as well as additional Other Funds expenditure limitation, to align budgeted amounts with actual and projected expenditures on Intra-Agency Charges.

Intra-Agency Charges are paid by DOJ divisions to fund the department's Administration Division. The charges are calculated using a model that receives annual federal review and approval. The charges are levied as an annually adjusted percentage of actual Personal Services expenditures within the paying divisions. The misalignment of budgeted and actual Intra-Agency Charge expenditures results largely from two sources: (1) historical differences in standard inflation between Personal Services, which comprise about 70% of the Administration Division's expenses, and Services and Supplies, which includes the expenditure limitation for Intra-Agency Charges in the divisions that pay for the Administration Division's costs; and (2) policy packages approved in the 2017-19 Legislatively Adopted Budget for the Administration Division without complementary budget increases in the remaining divisions to pay for these packages.

DOJ's comparison of budgeted Intra-Agency Charge expenditure limitation and the most recent projected Intra-Agency Charge expenditures for the 2017-19 biennium, which include actual expenditures through June 2018, show the following Intra-Agency Charge budget shortfalls by division:

General Fund Need for Intra-Agency Charges	
Division	Shortfall
Criminal Justice Division	\$196,115

Other Funds Expenditure Limitation Needs For Intra-Agency Charges	
Division	Shortfall
Appellate Division	\$507,367
Civil Enforcement Division	856,936
General Counsel Division	1,185,059
Trial Division	444,547
Total Other Funds limitation	\$2,993,909

Agency Action

In addition to holding vacancies to meet the five percent vacancy savings built into the budget, four of the Department of Justice’s six Legal Divisions (Administration, Appellate, Criminal Justice, and Trial) saw substantial increases in their employees’ use of protected leave, primarily OFLA/FMLA, over the past year. This has added to their challenge in keeping their expenditures within their budgets while also accomplishing the workload and generating billing revenue for the Legal Fund, from which the Legal Divisions’ expenditures are paid.

The following five sections identify the divisions and programs affected by the Intra-Agency Charge expenditure limitation misalignment. These are followed by a section further explaining the Intra-Agency Charge and a section proposing to transfer \$500,000 of existing Other Funds expenditure limitation to help resolve the problem.

Appellate Division. This division represents the State in all cases that are appealed to State and Federal appellate courts and in which the State is either a party or determines that it has a significant legal interest.

The division’s shortfall in Other Funds expenditure limitation for Intra-Agency Charges is projected to be \$547,430. This shortfall results primarily from the accumulated difference in inflation between Personal Services and Services and Supplies as well as the budgeted addition of expenditure limitation in the Administration Division without matching expenditure limitation in the divisions paying for that expense through Intra-Agency Charges. Savings elsewhere in the division reduce the needed Other Funds expenditure limitation to \$507,367.

During the 2015-17 biennium, the division had a shortfall of about \$374,557 in expenditure limitation for Intra-Agency Charges, but it opted to cover the shortfall by holding positions vacant in lieu of making a request during the September 2016 meeting of the Emergency Board.

Because of the deficit in the Intra-Agency Charge line, the division has had to keep an excessive number of vacancies open for prolonged periods—much more than the 5% vacancy savings that the budget assumed. For a significant part of this year, roughly 15% of our non-manager attorney positions in this division were vacant. Those vacancies hampered our ability to complete all of our cases without significantly reducing the quality of the work produced. To avoid the adverse consequences, we recently filled some of those vacancies, but that has exacerbated the shortfall.

Without additional limitations, we may need to reduce our staffing again. That would force us to resort to drastic measure like waiving appearance in some cases and filing briefs in outline form in others, both of which increase the likelihood that the courts reverse criminal convictions even when they should not. We also would have to curtail the number of state's appeals in cases where the trial court erred in a way that jeopardizes a criminal prosecution and would have to curtail the amount of advice we could provide to prosecutors to help them avoid mistakes.

Criminal Justice Division. This division provides investigative, trial, training, and legal support to Oregon's District Attorneys and law enforcement agencies.

The division's shortfall in General Fund for Intra-Agency Charges is projected to be \$395,555. This shortfall results primarily from the accumulated difference in inflation between Personal Services and Services and Supplies as well as the budgeted addition of expenditure limitation in the Administration Division without matching expenditure limitation in the divisions paying for that expense through Intra-Agency Charges. Also, higher-than-budgeted Personal Services expenditures projected for the remainder of the biennium and usage-based adjustments to the division's Intra-Agency Charge assessment add to the need for additional expenditure limitation for Intra-Agency Charges. Savings elsewhere in the division reduce the needed Other Funds expenditure limitation to \$196,115.

If the budget shortfall in Intra-Agency Charges is not corrected, the Division will need to hold vacant a Senior Assistant Attorney General Position. This will limit the number of cases the Division can prosecute and support, which specifically includes cases involving crimes such as homicide, sexual assault, and child abuse. Our assistance in those cases ranges from assuming full prosecutorial responsibilities to providing technical assistance. Oregon's rural counties, who most often ask for our assistance in those cases, will be disproportionately impacted by the shortfall.

Civil Enforcement Division. This division helps the department's Division of Child Support (DCS) establish and enforce child support orders, represents the Department of Human Services (DHS) Child Welfare Program to help protect abused and neglected children, enforces consumer protection laws, regulates charities, investigates and prosecutes Medicaid fraud, and takes legal action to recover or protect the state's interest in money and in real or personal property.

The division's shortfall in expenditure limitation for Intra-Agency Charges is projected to be \$1,358,469 Other Funds. This shortfall results primarily from the accumulated difference in inflation between Personal Services and Services and Supplies as well as the budgeted addition of expenditure limitation in the Administration Division without matching expenditure limitation in the divisions paying for that expense through Intra-Agency Charges. Also, higher-than-budgeted Personal Services expenditures projected for the remainder of the biennium and usage-based adjustments to the division's Intra-Agency Charge assessment add to the need for additional expenditure limitation for Intra-Agency Charges. Savings elsewhere in the division reduce the needed Other Funds expenditure limitation to \$856,936.

This is the second biennium the division has needed an adjustment for its Intra-Agency Charges. During the 2015-17 biennium, the division requested and received \$1,013,899 additional Other Funds limitation for Intra-Agency Charges from the meeting September 2016 of the Emergency Board.

If the division is not able to obtain this additional limitation, it will have to further delay filling attorney and support staff vacancies in the Child Advocacy Section, Civil Recovery Section, and the Medicaid Fraud Unit.

The Child Advocacy Section helps protect abused, neglected and abandoned children by providing court representation and comprehensive legal advice to DHS Child Welfare Program. This section's legal work includes assisting DHS in achieving safe and permanent placements for children, including return to parents where appropriate, adoption, termination of parental rights and guardianships. This reduction would put vulnerable children at risk of injury or death if they were forced to remain in an abusive family situation because of a lack of DOJ staffing. This reduction would also put at risk the rollout of full legal representation for DHS caseworkers statewide.

For the Civil Recovery Section, it would reduce the ability of section attorneys to provide legal services to DCS related to the collection of child support. This reduction in staffing would affect the state's poorest families by decreasing the amount of child support funds coming to them. It would increase the state's welfare payments to make up for the reduction. This reduction would also put at risk the significant funds returned to state agencies and programs as a result of the section's work in litigating, reducing to money judgment and collecting money in a wide variety of cases in which the state has an interest (e.g. bankruptcy, contract disputes, cost recovery actions).

The Medicaid Fraud Unit deters, investigates and prosecutes fraud by Medicaid providers, as well as physical and financial abuse of residents in Medicaid-funded facilities. Without this additional limitation, the federal funds Oregon receives for this program would be put at risk, as well as reduces the ability of the section to combat fraud in the Medicaid arena, and potentially leave individuals vulnerable due to fraud and abuse. The work of the Medicaid Fraud Unit is mandated by federal law in order for the State to continue to receive valuable Medicaid Funds.

General Counsel Division. This division provides legal assistance to agencies in drafting contracts, making rules, enforcing laws, and operating within the law.

The division's shortfall in Other Funds expenditure limitation for Intra-Agency Charges is projected to be \$1,427,088. This shortfall results primarily from the accumulated difference in inflation between Personal Services and Services and Supplies as well as the budgeted addition of expenditure limitation in the Administration Division without matching expenditure limitation in the divisions paying for that expense through Intra-Agency Charges. Also, higher-than-budgeted Personal Services expenditures projected for the remainder of the biennium and usage-based adjustments to the division's Intra-Agency Charge assessment add to the need for additional expenditure limitation for Intra-Agency Charges. Savings elsewhere in the division reduce the needed Other Funds expenditure limitation to \$1,185,059.

This is the second biennium the division has needed an adjustment for its Intra-Agency Charges. During the 2015-17 biennium, the division requested and received \$1,537,701 additional Other Funds limitation for Intra-Agency Charges from the September 2016 meeting of the Emergency Board.

If the reduction in limitation resulting from the Intra-Agency Charge is not corrected, it will at least delay – and in some cases prevent – recruitment of attorneys to fill several critical positions, including two or three of the four limited duration (LD) positions the division obtained in the 2018 legislative session. Existing vacancies in the Business Transactions Section already frustrate our ability to perform timely legal sufficiency review of contracts, and continued inability to fill those positions will require us to prioritize only the most critical contracts at the expense of timely review of other important but less essential contracts.

Two of the unfilled LD positions are dedicated in whole or in part to work on contracts and issues arising out of the 2017 transportation package. Contracts for transportation infrastructure construction and other economic development projects often are on expedited schedules, requiring immediate attention to legal issues. Other options would include exempting additional classes of contracts from the legal review requirement, increasing the risk that some contracts will not effectively express the intent of the parties, include sufficient protections or remedies for the state, or fail to comply with statutory requirements, making contract disputes more likely, or engaging outside counsel to perform legal sufficiency review at two to four times the cost of division attorneys. The third LD position is

intended to satisfy client requests to supplement representation of DHS and OHA, to enable them to better protect the vulnerable populations they serve.

Trial Division. In concert with the Appellate Division's work in state and federal appellate courts, the Trial Division defends the State of Oregon, its agencies, its officials, and its policies in state and federal trial courts.

The division's shortfall in Other Funds expenditure limitation for Intra-Agency Charges is projected to be \$444,547. This shortfall results primarily from the accumulated difference in inflation between Personal Services and Services and Supplies as well as the budgeted addition of expenditure limitation in the Administration Division without matching expenditure limitation in the divisions paying for that expense through Intra-Agency Charges. Also, higher-than-budgeted Personal Services expenditures projected for the remainder of the biennium and usage-based adjustments to the division's Intra-Agency Charge assessment add to the need for additional expenditure limitation for Intra-Agency Charges. There are no savings elsewhere in the division to offset the shortfall indicated above.

This is the second biennium the division has needed an adjustment for its Intra-Agency Charges. During the 2015-17 biennium, the division requested and received \$531,116 additional Other Funds limitation for Intra-Agency Charges for the same reasons from the Emergency Board at its September 2016 meeting.

The Trial Division is working over capacity resulting from the enforced 5% vacancy savings. The division is currently down one attorney, 1 investigator, 2 paralegals, 1 support staff manager, 3 legal secretaries and 3 office specialist positions. Current staff has made up for the shortfall by working hours in excess of expectations: Attorneys +485 hours, Managing attorneys +461 hours, Paralegals +108 hours. (In both the attorney and paralegal category, this is despite substantial protected leave for some employees. The absences due to that leave have resulted in much higher workloads for the remaining employees.) The division has had to incur extra costs due to overtime for paralegals and legal secretaries, because our vacancies do not allow us to spread the work over the number of staffers we need. Support staff have worked five Saturdays in a row in order to catch up on backlogged work. Lawyers are also taking on tasks that could have been handled by paralegals, due to the paralegal vacancies. Continuing at the current rate, and without an increase in the limitation budget, we anticipate the following:

Our Special Litigation Unit (SLU) is currently overseeing 11 cases in which Oregon has filed or joined contesting actions taken by the federal government. These cases which are often in the news involve a variety of subjects ranging from immigration and naturalization to funding of the Affordable Care Act, use of lands within Oregon designated as a national monuments and the permitting of instructions to manufacture 3-D guns. The handling of these matters was not contemplated at the time the current budget was built and have absorbed a great deal of time that otherwise would be spent on other litigation. Many of the cases remain in their initial stages but may enter active litigation at any time. When they do, the work on those cases will tax the

section's resources well beyond capacity. DOJ will have to contract with private law firms to represent the state in these matters. The billing rates for private attorneys and their staff are in the order of double (or more) of what DOJ lawyers bill.

The current work load in the Civil Litigation Section (CLS) had been manageable to date due to a dramatic decrease in condemnation cases caused when the legislature did not approve a transportation package prior to the 2017 legislative session. The 2.5 AAG FTE that ordinarily are working condemnation cases have been re-tasked to handle other tort and civil rights litigation helping to keep the section afloat. However, the 2017 legislature did pass a transportation package and CLS is starting to experience a significant influx of condemnation cases that will start a ramp up of condemnation work over the next six to 18 months to levels three times higher than historical averages. Our condemnation caseload over the past several years is as follows: 2012 – 36 cases; 2013 – 111, 2014 – 22, 2015 – 62, 2016 – 45, 2017 – 36, 2018 – 56. In consultation with ODOT, we anticipate receiving 150 cases in 2019, 155 in 2020 and 160 in 2021. That also means the 2.5 FTE of tort and civil rights work those lawyers are currently handling will have to be spread out among the remaining attorneys in the section whose caseloads are already at capacity. Part of that capacity problem in the CLS section also stems from the lawsuit filed by the Estate of Lavoy Finicum and the companion lawsuit filed by Ryan Bundy. We anticipate those two cases will take 1.5 to 2 full FTE attorneys, 1 full FTE paralegal and .5 to 1 full investigator over the next two years or more. The caseloads that otherwise would have been assigned to these positions will also have to be spread out among the remaining section attorneys. We forecast that CLS needs 2 -3 additional attorneys and an additional paralegal to handle the current caseload once the condemnation work increases and the Finicum case that was just filed in January moves into active litigation. That staffing increase also will necessitate the need to hire at least one additional legal secretary to support the added attorneys.

Under our current expenditure limitation, we do not have, and cannot hire, the attorney and support staff we need in order to manage an increase in our cases. If staffing increases do not occur, DOJ likely will have to contract with private law firms to handle the overflow of cases coming into the section, particular any major litigation.

The Trial Division also has a lot of equipment that ought to be replaced. This includes printers that don't work anymore, iPads that aren't supported and can't be used with our network, and many computers that will need updating to work with the new Legal Tools software. These are not being replaced, to the detriment of the division's efficient work, because we're too worried about not having enough expenditure limitation.

Further Explanation of Intra-Agency Charges. DOJ pays for costs in its Administration Division almost entirely with Intra-Agency Charges assessed on its other divisions. DOJ calculates these charges as percentages of the divisions' actual Personal Services expenditures. The percentages are calculated to raise the revenue needed to pay the Administration Division's costs. Those costs are dominated by Personal Services costs, which historically have risen faster

than inflation for Services and Supplies. The budgets for Intra-Agency Charges receive the standard inflation adjustment, thereby falling short of the projected expenditures on Intra-Agency Charges.

In addition, the 2017-19 Legislatively Adopted Budget included \$3.1 million Other Funds expenditure limitation in the Administration Division in Policy Option Package 101, which added \$2.7 million for rebaselining of IT costs, and Policy Option Packages 102 and 112, which added \$420K for budget and accounting staff. The funding for this work comes from Intra-Agency Charges in divisions served by the additional expenditures in the Administration Division. Although the 2017-19 biennium budget increased the expenditure limitation within the Administration Division for these packages, the budget did not increase the budgets of DOJ's other divisions affected by the packages' budgeted activities.

Finally, DOJ annually adjusts each division's assessment of Intra-Agency Charges to reflect changing levels of use of administrative services as measured by several factors. When a division's assessment (calculated as a percent of Personal Services) increases from the level used in developing the biennial budget, the division can fall short of expenditure limitation for Intra-Agency Charges. This problem will be mitigated in the future by using a historically reasonable percentage of Personal Services for the projected Intra-Agency Charge when adjusting the associated expenditure limitation during budget development, rather than relying solely on standard inflation for the adjustment to Intra-Agency Charge expenditure limitation.

Over the past three biennia (from 11-13 LAB to 17-19 LAB), the Administration Division Other Funds expenditure limitation has increased approximately 52% due to inflation and Policy Option Packages while the budget for Intra-Agency Charges has only increased approximately 15%. Thus, the budget did not accommodate the paying divisions' additional expenditures through higher Intra-Agency Charges. This has resulted in several DOJ divisions having insufficient budget for their Intra-Agency Charge expenditures.

Because this mismatch between budgeted and actual expenditures for Intra-Agency Charges is an ongoing structural problem with serious negative impacts on the Department's operations, the Department plans to propose a Policy Option Package for the 2019-21 biennium, and all future biennia, to prevent the mismatch in the future. In the current biennium, the Department needs Emergency Board action to correct the mismatch.

Available General Fund and Other Funds expenditure limitation. DOJ has identified \$196,115 General Fund in the Civil Enforcement Division that is available to offset the shortfall in the Criminal Justice Division. Also, DOJ has identified \$500,000 of available Other Funds expenditure limitation in the Crime Victims' Services Division that can help offset the request for additional Other Funds expenditure limitation in one of the four divisions with Other Funds expenditure limitation shortages. This available limitation is the result of careful management by the division and a reduction in the number and dollar value

of claims for Crime Victims Compensation payments as the Affordable Care Act has increased coverage to many Oregonians.

Action Requested

To fully offset the requested General Fund appropriation increase, the Department of Justice respectfully requests the Emergency Board to make a one-time transfer of available General Fund appropriation as shown in the table below:

Transfer of General Fund Appropriation	
Division	General Fund
Criminal Justice Division	\$+196,115
Civil Enforcement Division	\$-196,115

To help offset the requested Other Funds expenditure limitation increases, the Department of Justice respectfully requests the Emergency Board to make a one-time transfer of available Other Funds expenditure limitation as shown in the table below:

Transfer of Other Funds Expenditure Limitation	
Division	Other Funds
Civil Enforcement Division	\$+500,000
Crime Victims' Services Division	\$-500,000

In addition to the above transfers, the Department of Justice respectfully requests the Emergency Board to increase Other Funds expenditure limitations as shown in the following table:

Other Funds Expenditure Limitation Needs For Intra-Agency Charges	
Division	Shortfall
Appellate Division	\$ 507,367
Civil Enforcement Division	356,936
General Counsel Division	1,185,059
Trial Division	444,547
Total	\$2,493,909

Legislation Affected

Transfer of \$196,115 General Fund appropriation made by chapter 576, section 1, Oregon Laws 2017, for the 2017-19 biennium as follows:

<u>Subsection</u>	<u>Amount</u>
(3) Civil Enforcement Division	\$-196,115
(5) Criminal Justice Division	+\$196,115

Transfer of \$500,000 Other Funds expenditure limitation made by chapter 576, section 2, Oregon Laws 2017, for the 2017-19 biennium as follows:

<u>Subsection</u>	<u>Amount</u>
(3) Civil Enforcement Division	+\$500,000
(5) Crime Victims' Services Division	\$-500,000

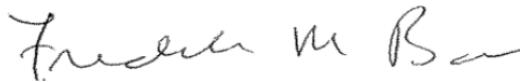
Increase the Other Funds expenditure limitation established by chapter 576, section 2(2), Oregon Laws 2017, for the Department of Justice, Appellate Division, by \$507,367 for the 2017-19 biennium.

Increase the Other Funds expenditure limitation established by chapter 576, section 2(3), Oregon Laws 2017, for the Department of Justice, Civil Enforcement Division, by \$356,936 for the 2017-19 biennium.

Increase the Other Funds expenditure limitation established by chapter 576, section 2(6), Oregon Laws 2017, for the Department of Justice, General Counsel Division, by \$1,185,059 for the 2017-19 biennium.

Increase the Other Funds expenditure limitation established by chapter 576, section 2(7), Oregon Laws 2017, for the Department of Justice, Trial Division, by \$444,547 for the 2017-19 biennium.

Sincerely,



FREDERICK M. BOSS
Deputy Attorney General

c: Ellen F. Rosenblum
Benjamin Gutman
Lisa Udland
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Steve Wolf
Steve Lippold
Art Ayre
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