

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5370 SB	<b>Title:</b> Nongovernment parties/claims	<b>Agency:</b> 100-Office of Attorney General
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## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

ACCOUNT	FY 2016	FY 2017	2015-17	2017-19	2019-21
General Fund-Federal 001-2	57,828	57,828	115,656	115,656	115,656
Legal Services Revolving Account-State 405-1	1,887,006	2,029,039	3,916,045	4,058,078	4,058,078
<b>Total \$</b>	1,944,834	2,086,867	4,031,701	4,173,734	4,173,734

### Estimated Expenditures from:

	FY 2016	FY 2017	2015-17	2017-19	2019-21
FTE Staff Years	14.5	15.6	15.1	15.6	15.6
<b>Account</b>					
General Fund-Federal 001-2	57,828	57,828	115,656	115,656	115,656
Medicaid Fraud Penalty Account-State 19A-1	19,274	19,274	38,548	38,548	38,548
Legal Services Revolving Account-State 405-1	1,887,006	2,029,039	3,916,045	4,058,078	4,058,078
<b>Total \$</b>	1,964,108	2,106,141	4,070,249	4,212,282	4,212,282

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

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

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## Part II: Narrative Explanation

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

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

Section 1 amends RCW 4.84.010. The statute is amended to add “unless otherwise specified in law” to the first paragraph, which currently states the general rule that attorneys’ fees are left to the agreement of the parties. It also adds a new paragraph (2). This paragraph allows a nongovernmental party in any court, including on judicial review of administrative decisions, in a claim or counterclaim to move for an interim award of attorney’s fees. If the nongovernmental party proves beyond a reasonable doubt that a government party knowingly acted contrary to law, the court is mandated to order the government party to pay costs and fees sufficient to finance the claim against the government party. The paragraph deems the order of interim fees to be an appealable final order. The paragraph defines government party to include the state and all its agencies, as well as counties, cities, special districts, municipal corporations and their agencies.

Client agencies are assumed to be:

DOH - Department of Health

AGR - Department of Agriculture

COM - Department of Commerce

WSP - Washington State Patrol

LCB - Liquor Control Board

DOR - Department of Revenue

DFI - Department of Financial Institutions

ESD - Employment Security Department

DOL - Department of Licensing

ENV – Environment & Land Use Hearings Office

DSHS - Department of Social and Health Services

HCA - Health Care Authority

DEL - Department of Early Learning

LNI - Labor and Industries

DES - Department of Enterprise Services Office of Risk Management

OTH - Other Agencies

AGO Divisions:

AHD – Agriculture and Health

COR – Corrections

GCE – Government Compliance and Enforcement

LAL – Licensing and Administrative Law

MFCU - Medicaid Fraud Control Unit

REV - Revenue

RSD – Regional Services

SHO – Social & Health

SPO – Spokane

TAC – Tacoma

TOR - Torts

In order to provide legal services the Attorney General’s Office (AGO) estimates a workload impact of:

FY2016: 9.68 Assistant Attorney General (AAG) and 4.84 Legal Assistant (LA), at \$1,964,108.

FY2017 and each FY thereafter: 10.38 AAG, 5.19 LA, at \$2,106,141.

This bill is assumed effective 90 days after the end of the 2015 legislative session.

## **II. B - Cash receipts Impact**

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

Funds are assumed to be appropriated Legal Service Revolving Account dollars. Legal services costs incurred by the AGO will be billed through the revolving fund to the client agency.

The AGO will bill the following clients for legal services rendered:

### **Client**

DOH	FY 2016 and each FY thereafter, \$79,132
AGR	FY 2016 and each FY thereafter, \$10,145
COR	FY 2016, \$142,033 FY 2017 and each FY thereafter, \$284,066
WSP	FY 2016 and each FY thereafter, \$60,871
DOR	FY 2016 and each FY thereafter, \$113,628
LCB	FY 2016 and each FY thereafter, \$34,494
DFI	FY 2016 and each FY thereafter, \$6,087
ESD	FY 2016 and each FY thereafter, \$332,763
DOL	FY 2016 and each FY thereafter, \$555,956
ENV	FY 2016 and each FY thereafter, \$50,726
DSHS	FY 2016 and each FY thereafter, \$152,177
HCA	FY 2016 and each FY thereafter, \$4,058
DEL	FY 2016 and each FY thereafter, \$6,087
LNI	FY 2016 and each FY thereafter, \$6,087
DES	FY 2016 and each FY thereafter, \$320,588
OTH	FY 2016 and each FY thereafter, \$12,174

TOTAL FY 2016 \$1,887,006 FY 2017 and thereafter, \$2,029,039

Please note that these cash receipts represent the AGO authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agencies' fiscal note. Appropriation authority is necessary in the AGO budget.

### **Other Funds**

The Medicaid Fraud Control Unit (MFCU) activities are estimated at \$77,102. The program grant is 75% 001-2 General Fund – Federal (GF-F) and 25% 19A-1 Medicaid Fraud Penalty Account (MFPA). The GF-F amount is \$57,828 and the state match amount is \$19,274. The state match funds are not included in the Cash Receipts table, as there is no anticipated increase in MFCU recoveries resulting from the proposed legislation.

GF-F FY 2016 and each FY thereafter, \$57,828

There is no client agency to bill for MFCU legal services.

## **II. C - Expenditures**

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

Assumptions for the AGO Agriculture and Health Division's (AHD) Legal Services:

1. We assume we will bill DOH, AGR, COM, and Department of Archaeology and Historic Preservation DAHP for legal services based on the enactment of this bill.
2. AHD averages about 220 administrative cases per year, mostly representing DOH. Approximately 10% of those cases result in a petition for judicial review (about 20 cases). We assume that the attorney fees would be requested in half of all cases (approximately 50% = 10 cases) and that the fee request would take about 20 hours of attorney time (10 cases x 20 hours = 200 additional attorney hours).
3. We assume that if this bill passes, we will see an increase in petitions. It is difficult to estimate the increase. We estimate that the potential availability of fees would result in a 25% increase in petitions for judicial review (5 more cases). We estimate that each of these cases take about 80 hours (5 x 80 = 400 additional attorney hours).
4. We assume a total increase workload for DOH of 600 hours rounding to 0.3 AAG and 0.2 LA at a cost of \$66,958 in FY2016 and in each FY thereafter.
5. We assume any impact to COM and DAHP is too speculative to accurately estimate and is likely very low. The COM and DAHP workload increases will not be significant and will be managed within existing resources.
6. AHD averages about 1 administrative case every biennium for our other clients; AGR, COM, and DAHP. AGR has the greatest workload of the three remaining clients.
7. We assume that if this bill passes, we will see a small increase in litigation for AGR. It is extremely difficult to estimate the increase. We estimate that the potential availability of fees would result in an increase of one additional administrative case per biennium and one additional in petition for judicial review each biennium. We estimate that each case and petition would take about 80 hours (approximately 0.05 AAG FTE per year).
8. We assume a total increase workload for AGR of 80 hours, 0.05 AAG and 0.03 LA at a cost of \$10,145 in FY2016 and in each FY thereafter.
9. For both DOH and AGR – the majority of judicial review matters are heard in Thurston County so we are not estimating measurable direct costs (e.g. travel, etc.).

Assumptions for the AGO Corrections (COR) Legal Services for DOC:

1. We assume we will bill DOC for legal services based on the enactment of this bill.
2. The bill does not restrict interim fee requests to represented parties and, therefore we expect pro se litigants to seek interim fees as a means to fund and attract counsel (inmates would be particularly inclined to do this).
3. Given the litigious nature of the population we litigate against, we would expect to see requests for interim fees in 40-50% or more of our state cases (Note – we believe this is conservative, in that inmate litigants will see

no disincentive to seeking interim fees).

4. Responding to interim fee requests before the trial court, or Court of Appeals (COA) in the case of Personal Restraint Petitions (PRP), would require, in effect, a preliminary ruling on the merits (albeit, with a different standard), making these significant motions that require a defense effort akin to a response to a dispositive motion or request for preliminary injunctive relief.
5. For our civil rights and Public Records Act (PRA) matters, we estimate an average of 30 hours of AAG legal services for each request for interim attorney fees beginning in FY2016 and in each FY thereafter. Legal services are to respond to a motion for award of interim attorney's fees.
6. For Personal Restraint Petitions (typically involving prison disciplinary decisions or sentence/release calculations), we estimate an average of 10 hours of AAG legal services for each request for interim attorney fees beginning in FY2016 and in each FY thereafter. Legal services are to respond to a motion for award of interim attorney's fees.
7. Of the cases in which we would expect requests for interim attorney's fees, we estimate 25% of the trial court rulings would be appealed.
8. Appeals of interim fee denials / awards would, conservatively, average 40 hours of AAG legal services beginning in FY2016 and in each FY thereafter.
9. We assume there will be approximately 50% of the permanent workload impact during the first year of the new law, as litigants learn about the opportunity to request interim fees and initiate their fee requests the workload will increase.
10. In Summary:
  - A. Of the 50 state court civil rights matters we average per FY (based on calendar year 2014 data), we assume interim fee requests for 25 of these, resulting in 750 hours of AAG legal services.  
FY 16 (50 civil rights matters x 0.25 x 30 hours each = 375 AAG hours)  
FY 17 (50 civil rights matters x 0.50 x 30 hours each = 750 AAG hours)
  - B. Of the approximately 80 PRPs we handle each FY, we assume interim fee requests in 30, resulting in 300 hours of AAG legal services.  
FY 16 (80 PRPs x 0.187 x 10 hours each = 150 AAG hours)  
FY 17 (80 PRPs x 0.375 x 10 hours each = 300 AAG hours)
  - C. Of the 45 PRA cases we defend annually, we assume interim fee requests in 23, resulting in 690 hours of AAG legal services.  
FY 16 (45 PRAs x 0.25 x 30 hours each = 345 AAG hours)  
FY 17 (45 PRAs x 0.50 x 30 hours each = 690 AAG hours)
  - D. We assume appellate workload for all cases is 780 hours of AAG legal services.  
FY 16 (39 total cases x 0.25 x 40 hours = 390 AAG hours)  
FY 17 (78 total cases x 0.25 x 40 hours = 780 AAG hours)

Total estimated impact FY16 1,260 AAG hours 0.7 AAG and 0.35 LA at \$142,033. In FY17 and each FY

thereafter, 2,520 AAG hours 1.4 AAG and 0.70 LA at \$284,066.

Assumptions for the AGO Government Compliance and Enforcement (GCE) Legal Services for WSP, DOH, LCB, DFI, and All Other Client Agencies:

1. To assess the impact of HB 1205, the GCE looked at the types and number of state court cases handled over the past 4 years in which an interim fee award proposal reasonably could be raised. The main types of cases are judicial reviews, public records, program, and WSP impounds.
2. For three of the four categories of cases identified (judicial reviews, public records and program cases), our assumptions were based on an average number of cases over a four year period across all represented agencies. The fourth category of cases (WSP impounds) was based on the number of cases in 2014. Although we can fairly assume the number of cases will remain consistent in all four categories going forward we are uncertain the distribution of cases by client will remain the same except for the WSP cases.
3. In summary, the total anticipated increase of 830 hours attorney time, the following hours can be attributed to and would be billed to the these specific client agencies for litigation costs.
4. GCE legal services for the WSP:
  - A. We assume a net increase of 20 cases we will have to attend and litigate at the district court level as a result of attorney fee requests.
  - B. We assume 15 hours attorney time per case, which result in 300 attorney hours.
  - C. We assume 10 cases will result in appeals to superior court involving the attorney fee issue.
  - D. We assume an increase of 20 hours for each appeal with this issue, which results in an additional 200 attorney hours.
  - E. Total increase of attorney hours for this client is 500.
  - F. FY16 and each FY thereafter, 0.30 AAG and 0.15 LA at 60,871.
5. GCE legal services for the DOH:
  - A. We assume between 8 and 9 judicial reviews per year.
  - B. We assume interim attorney fees will be raised in 5 cases.
  - C. We assume 15 hours additional attorney time to address the fees issue, which results in 75 hours increase attorney time.
  - D. We assume the issue will be raised in 2 appeals per year. We assume an increase of 20 hours attorney time to address this issue, which is an increase of 40 hours.
  - E. We anticipate a total increase of 115 hours for this client.
  - F. FY16 and each FY thereafter, 0.06 AAG and 0.30 LA at \$12,174.
6. GCE legal services for the LCB:
  - A. We assume between 5 judicial reviews per year.
  - B. We assume interim attorney fees will be raised in 3 cases.
  - C. We assume 15 hours additional attorney time to address the fees issue, which results in 45 hours increase attorney time.
  - D. We assume the issue will be raised in 1 appeal per year. We assume an increase of 20 hours attorney time to address this issue, which is an increase of 20 hours.
  - E. We anticipate a total increase of 65 hours for this client.
  - F. FY16 and each FY thereafter, 0.04 AAG and 0.02 LA at \$8,116.

7. GCE legal services for the DFI:
  - A. We assume 3 judicial reviews per year.
  - B. We assume interim attorney fees will be raised in 2 cases.
  - C. We assume 15 hours additional attorney time to address the fees issue, which results in 30 hours increase attorney time.
  - D. We assume the issue will be raised in 1 appeal per year. We assume an increase of 20 hours attorney time to address this issue, which is an increase of 20 hours.
  - E. We anticipate a total increase of 50 hours for this client.
  - F. FY16 and each FY thereafter, 0.03 AAG and 0.02 LA at \$6,087.
8. GCE legal services for All Other Client Agencies:
  - A. We assume the attorney fee issue will be raised in an additional 7 cases per year spread across our remaining clients. These cases are anticipated to include judicial reviews, public records and program cases.
  - B. Although we anticipate the number of cases likely will remain consistent in future years, we cannot predict which clients will generate the cases (as we represent a total of 19 clients).
  - C. We assume the attorney fee issue will arise in 4 cases. We assume an additional 15 hours attorney time per case, for a total increase of 60 hours.
  - D. We assume 2 of the cases will result in this issue being raised on appeal. We assume an additional 20 hours for each appeal, for a total of 40 hours.
  - E. We anticipate a total increase of 100 additional hours across all other clients.
  - F. FY16 and each FY thereafter, 0.06 AAG and 0.03 LA at \$12,174.

Assumptions for the AGO Licensing & Administrative Law (LAL) Legal Services:

1. LAL's cases opened in the superior court, over the last ten years, average 585 cases per year. In the last ten years, appeals to the court of appeals and the state supreme court have averaged 58 per year. Most of these cases derive from our clients' statutory duties to protect the public by (1) to denying, suspending, revoking, and/or cancelling a driving privilege (2) to license and regulate professions, businesses, and occupations; and (3) to protect state funds intended for the benefit of persons who become unemployed through no fault of their own.
2. There is no reason to anticipate these numbers will drop. To the contrary, we are likely to see an increase in the number of cases at all levels, since a litigant can appeal a superior court order denying interim fees, and there will an incentive by litigants and their attorneys, to use the cost of litigation and appeal as a sword to prevent our clients from exercising in accordance with law their statutory duties.
3. LAL's case count at superior court continues at approximately the same rate: 585 cases per year.
4. In one half of those cases, a non-government party files a motion for an interim fees award. To defend each such motion, AAG will expend average of 15 hours (meeting with client, gathering records, preparing response, travel time, oral argument).
5. In one half of the superior court cases in which such motion is filed, appeals will be filed. In the appeals, AAGs will expend an average of 20 hours per appeal.
6. For legal services to the Employment Security Department: 1,737 new cases filed in superior court over 10 years = 174 cases (rounded) each year.  $174 \text{ cases} / 2 = 87$  cases in which a non-government party files a motion for an interim fees award. To defend each such motion, AAG will expend average of 15 hours (meeting with client, gathering records, preparing response, travel time, oral argument). Appeals will be filed in one half of

those superior court cases in which interim fees were sought. In these appeals, AAGs will expend an average of 20 hours per appeal.

In Summary:

- A. We will receive motions on 50% of cases filed in superior court ( $174 \times 0.50 = 87$  cases)
- B. Each case will require an average of 15 AAG hours. ( $87 \times 15 = 1305$  AAG hours)
- C. 50%, or 44 (rounded up) cases will be appealed each fiscal year.
- D. Each appeal will require an average of 20 AAG hours. ( $44 \times 20 = 880$  AAG hours)
- E. Total AAG hours = 2,185
- F. FY16 and each FY thereafter, 1.2 AAG and 0.6 LA at \$245,514.

7. Department of Licensing: 3671 new cases filed in superior court over 10 years = 367 cases (rounded) each year.  $367 \text{ cases} / 2 = 184$  cases (rounded) in which a non-government party files a motion for an interim fees award. To defend each such motion, AAG will expend average of 15 hours (meeting with client, gathering records, preparing response, travel time, oral argument). Appeals will be filed in one half of those superior court cases in which interim fees were sought. In these appeals, AAGs will expend an average of 20 hours per appeal.

In Summary:

- A. We will receive motions on 50% of cases filed in superior court ( $367 \times 0.50 = 184$  cases)
- B. Each case will require an average of 15 AAG hours. ( $184 \times 15 = 2760$  AAG hours)
- C. 50%, or 92 cases will be appealed each fiscal year.
- D. Each appeal will require an average of 20 AAG hours. ( $92 \times 20 = 1840$  AAG hours)
- E. Total AAG hours = 4,600
- F. FY16 and each FY thereafter, 2.56 AAG and 1.28 LA at \$519,434.

8. Environmental and Land Use Hearings Office (Growth Management, Shorelines, and Pollution Control Hearings Boards): 326 new cases filed in superior court over 10 years = 33 cases (rounded) each year.  $33 \text{ cases} / 2 = 17$  cases (rounded) in which a non-government party files a motion for an interim fees award. To defend each such motion, AAG will expend average of 15 hours (meeting with client, gathering records, preparing response, travel time, oral argument). Appeals will be filed in one half of those superior court cases in which interim fees were sought. In these appeals, AAGs will expend an average of 20 hours per appeal.

In Summary:

- A. We will receive motions on 50% of cases filed in superior court ( $33 \times 0.50 = 17$  cases)
- B. Each case will require an average of 15 AAG hours. ( $17 \times 15 = 255$  AAG hours)
- C. 50%, or 9 (rounded up) cases will be appealed each fiscal year.
- D. Each appeal will require an average of 20 AAG hours. ( $9 \times 20 = 180$  AAG hours)
- E. Total AAG hours = 435
- F. FY16 and each FY thereafter, 0.25 AAG and 0.13 LA at \$50,726.

9. Liquor Control Board: 170 new cases filed in superior court over 10 years = 17 cases each year.  $17 \text{ cases} / 2 = 9$  cases (rounded) in which a non-government party files a motion for an interim fees award. To defend each such motion, AAG will expend average of 15 hours (meeting with client, gathering records, preparing response, travel time, oral argument). Appeals will be filed in one half of those superior court cases in which interim fees were sought. In these appeals, AAGs will expend an average of 20 hours per appeal.



In Summary:

- A. We will receive motions on 50% of cases filed in superior court ( $17 \times 0.50 = 9$  cases)
- B. Each case will require an average of 15 AAG hours. ( $9 \times 15 = 135$  AAG hours)
- C. 50%, or 5 (rounded up) cases will be appealed each fiscal year.
- D. Each appeal will require an average of 20 AAG hours. ( $5 \times 20 = 100$  AAG hours)
- E. Total AAG hours = 235
- F. FY16 and each FY thereafter, 0.13 AAG and 0.07 LA at \$26,378.

Assumptions for the AGO Medicaid Fraud Control Unit (MFCU) Legal Services:

1. HB 1205 has the potential to impact MFCU's False Claims Act (FCA), criminal investigative and litigation activity and civil rights actions generated by such activity.
2. MFCU currently resolves 15 to 20 FCA cases a year and conducts a similar number of FCA investigations. In the investigations leading up to those resolutions, we use civil investigative demands (CIDs), which are potent pre-filing investigative tools. MFCU also prosecutes 15 to 20 criminal cases per year and investigates around 60 criminal referrals.
3. From the last 12 month's experience, there have been 8 cases where MFCU might have expected to see the use of aggressive (counter) litigation tactics such as those proposed in HB 1205. The Unit's work is expanding so we estimate the number of such actions to be up to 10 to 12 per year as we fully engage our mission. The division estimates that each FCA/Civil Rights, criminal HB 1205 related case would take 40 AAG hours to respond to effectively through motion practice and that 3 to 5 would be appealed with an additional 40 AAG hours in order to respond.
4. The bill does not restrict interim fee requests to represented parties and, therefore we expect pro se litigants to seek interim fees as a means to fund and attract counsel (inmates would be particularly inclined to this)
5. Given the litigious nature of the targets we litigate against, we would expect to see requests for interim fees in 30% or more of our state FCA matters based on investigation and litigation push back in 2014. The criminal cases we file already have a right to defense counsel so that should not add costs unless the motion comes during a pre-filing investigation phase.
6. Responding to interim fee requests before the trial court would require, in effect, a preliminary ruling on the merits (albeit, with a different standard), making these significant motions that require a defense effort akin to a response to a dispositive motion or request for preliminary injunctive relief.
7. The estimate does not include the opportunity costs resulting from fewer Medicaid fraud recoveries due to diversion of staff time to address complications seen and unforeseen due to HB 1205 concerns/actions.

In Summary:

- A. We will receive motions on 30% of cases ( $40 \times 0.30 = 12$  cases)
- B. Each case will require an average of 40 AAG hours. ( $12 \times 40 = 480$  AAG hours)
- C. 42%, or 5 cases will be appealed each fiscal year.
- D. Each appeal will require an average of 40 AAG hours. ( $5 \times 40 = 200$  AAG hours)
- E. Total AAG hours = 680
- F. FY16 and each FY thereafter, 0.38 AAG and 0.19 LA at \$77,102.

Assumptions for the AGO Revenue Division (REV) Legal Services for DOR:

The Revenue Division receives about 40 new appeals/actions each year that are filed in the Board of Tax Appeals and the Thurston County Superior Court. The division estimates a request for interim attorney's fees would be filed in about 50% of cases and each case will require 40 AAG hours. The 40 hour estimate takes into account that Revenue actions typically raise complex issues which factors into the amount of time necessary to effectively respond to a claim that DOR has knowingly acted contrary to law. Also, some of the order will be appealed since orders on interim attorneys' fees will be final orders that may be appealed. The division estimates 25% of the orders will be appealed and each appeal will require at least 40 AAG hours.

In Summary:

- A. We will receive motions on 50% of cases filed in superior court ( $40 \times 0.50 = 20$  cases)
- B. Each case will require an average of 40 AAG hours. ( $20 \times 40 = 800$  AAG hours)
- C. 25%, or 5 cases will be appealed each fiscal year.
- D. Each appeal will require an average of 40 AAG hours. ( $5 \times 40 = 200$  AAG hours)
- E. Total AAG hours = 1,000
- F. FY16 and each FY thereafter, 0.56 AAG and 0.28 LA at \$113,628.

Assumptions for the AGO Regional Services Division (RSD) Legal Services:

- 1. We assume we will bill DSHS, ESD and DEL for legal services based on the enactment of this bill.
- 2. This request is a conservative projection of new work associated with the enactment of this bill. Unlike many of the larger counties, most or all of the counties RSD work with lack any scheduling order upon filing a Superior Court case. As a result, it is not unusual for RSD to have these cases filed, but never prosecuted by the filing party. Ultimately, many are dismissed for want of prosecution.
- 3. Type of cases: The interim fee could be requested in any review of a case to the superior court. (Decisions of the Board of Industrial Insurance Appeals, reviews of CAPTA founded findings or FHAs, and LAL cases). That number averages 136 cases per year.
- 4. Percentage of cases: We would not be surprised to see a request for fees in all of our cases with the exception of LNI worker's comp appeals (where counsel is paid according to a formula). Of the cases in which we would expect requests for interim attorney's fees, we estimate that 40% of the trial court rulings will be appealed. We assume that appeals of interim fee denials / awards would, conservatively, require 40 hours of attorney time to handle, on average.
- 5. RSD legal services for DSHS:
  - A. We assume we will receive motions on 33% more judicial review cases involving public benefits and child support determinations cases. Based on the average number of applicable Superior Court cases, this comes to 15 cases per FY. We assume each case will average 10 hours of AAG time for response, totaling 150 hours.
  - B. We assume, based on best estimate, that 40% of decisions will be appealed, for total of 6 cases per FY. We assume that each appeal will require average of 40 hours AAG time, for total of 240 AAG hours per FY.
  - C. In Summary:
    - 1. We will receive motions on 15 cases.
    - 2. Each case will require an average of 10 AAG hours ( $15 \times 10 = 150$  AAG hours)

3. 40%, or 6, cases will be appealed each fiscal year.
4. Each appeal will require an average of 40 AAG hours ( $6 \times 40 = 240$  AAG hours)
5. Total AAG hours = 390
6. FY16 and each FY thereafter, 0.22 AAG and 0.11 LA at \$44,639.

6. RSD legal services for ESD:

A. We assume we will receive motions on 33% more judicial review of unemployment benefit determination cases. Based on the average number of applicable Superior Court cases, this comes to 10 cases per FY. We assume each case will average 10 hours of AAG time for response, totaling 100 hours.

B. We assume, based on best estimate, that 40% of decisions will be appealed, for total of 4 cases per FY. We assume that each appeal will require average of 40 hours AAG time, for total of 160 AAG hours per FY.

C. In Summary:

1. We will receive motions on 10 cases.
2. Each case will require an average of 10 AAG hours ( $10 \times 10 = 100$  AAG hours)
3. 40%, or 4, cases will be appealed each fiscal year.
4. Each appeal will require an average of 40 AAG hours ( $4 \times 40 = 160$  AAG hours)
5. Total estimate AAG hours = 260 or .15 AAG FTE for FY 2016 and each FY thereafter.
6. FY16 and each FY thereafter, 0.14 AAG and 0.07 LA at \$28,407.

Assumptions for the AGO Social Health Services - Olympia (SHO) Legal Services for DSHS and HCA:

1. SHO represents both the Department of Social and Health Services and the Health Care Authority. In order to assess potential fiscal impact on the division, the division focused on petitions for judicial review, complex program litigation cases, and Public Records Act cases. Estimates are based only on past case filing history. These are likely conservative estimates since the scope of the bill is so broad there may be other categories of cases that the division handles that will be impacted.

2. Based on recent history, we estimate that there will be 45 judicial review cases, 6 complex program litigation cases, and 19 Public Records Act cases a year that could be impacted by this process. Of those 70 cases, 4 will be for HCA and 66 will be for DSHS. We estimated that in half of the cases, a non-government party would file a motion for an interim fees award for a total of 33 cases for DSHS, and 2 for HCA. For each of these cases we assumed 15 hours of attorney work related directly to defending against the motion (meeting with the client(s), gathering documents, drafting/editing a response, arguing the motion). We also estimated that, following a hearing on the initial motion, half of those parties would appeal, which would take another 8 hours of lawyer time to respond.

3. SHO legal services for DSHS:

A. We assume 66 cases per fiscal year. These cases are anticipated to include judicial reviews, complex program litigation, and public records.

B. We assume that in 33 cases a non-government party would file a motion for an interim fees award. ( $66 \times 0.50 = 33$  cases)

C. We assume an additional 15 hours attorney time per case, for a total increase of 495 AAG hours. ( $33 \times 15 = 495$  AAG hours)

D. We assume 17 of the cases will appeal. We assume an additional 8 hours for each appeal, for a total of 136 AAG hours. ( $17 \times 8 = 136$  AAG hours )

E. We anticipate a total increase of 631 AAG hours.

F. FY16 and each FY thereafter, 0.35 AAG and 0.18 LA at \$71,016.

4. SHO legal services for HCA:

A. We assume 4 cases per fiscal year. These cases are anticipated to include judicial reviews, complex program litigation, and public records.

B. We assume that in 2 cases a non-government party would file a motion for an interim fees award.  
( $4 \times 0.50 = 2$  cases)

C. We assume an additional 15 hours attorney time per case, for a total increase of 495 AAG hours.  
( $2 \times 15 = 30$  AAG hours)

D. We assume 1 of the cases will appeal. We assume an additional 8 hours for each appeal, for a total of 136 AAG hours. ( $1 \times 8 = 8$  AAG hours)

E. We anticipate a total increase of 38 AAG hours.

F. FY16 and each FY thereafter, 0.02 AAG and 0.01 LA at \$4,058.

Assumptions for the AGO Spokane Division (SPO) Legal Services:

1. We assume we will bill DSHS, ESD and DOL for legal services based on the enactment of this bill.

2. Type of cases: The interim fee could be requested in any review of a case to the superior court. (Decisions of the Board of Industrial Insurance Appeals, reviews of CAPTA (Child Abuse Prevention and Treatment Act) findings, Fair Hearing Appeals regarding public benefits and child support, and appeals from revocation of drivers' licenses or denial of unemployment compensation).

3. We do not anticipate a request for fees in L&I cases, where attorneys are paid according to a formula. Deducting L&I appeals brings the average number of Spokane cases appealed to superior court in which interim fees might be requested to 52.

4. While we would not be surprised to see requests for fees in all 52 appealed cases, we conservatively assume that an award of interim fees will be requested in 50% of those cases (26).

A. Based upon the average number of appeals to superior court, 13 of these cases will be DSHS matters, the remaining 39 will be ESD and DOL matters.

B. We assume we will receive motions for an interim award of fees in 50% of the cases appealed.

C. We assume that an AAG will expend, an average, 10 hours per case to respond to a motion for interim fees.

D. We assume that 40% of the trial court rulings on motions for attorneys' fees, or 10 cases, will be appealed each fiscal year.

E. Each appeal will require an average of 40 AAG hours.

5. Legal services for DSHS cases (CAPTA, Fair Hearing Appeals) :

A. 50% of 13 cases, or 6.5 rounded to 7, will seek interim fees.

B. Hours expended responding to motions for interim fees: 70 ( $7 \times 10 = 70$  AAG hours)

C. Number of appeals sought from the trial court's ruling on the motion for attorney's fees: 3 ( $40\% \times 7 = 2.8$  rounded to 3).

D. Hours expended on appeals: 120 ( $3 \times 40 = 120$  AAG hours)

E. Total 190 AAG hours

F. FY16 and each FY thereafter, 0.11 AAG and 0.06 LA at \$22,319.

6. DOL cases (driver's license revocation appeals):

A. Interim fees will be sought in 50% of 10 cases (5).

- B. Hours expended on responding to motions for interim fees: 50 ( $5 \times 10 = 50$  AAG hours)
  - C. Number of appeals sought from the trial court's ruling on the motion for attorney's fees: 2 ( $5 \times 0.40 = 2$ ).
  - D. Hours expended on appeals: 80 ( $40 \times 2 = 80$  AAG hours)
  - E. Total 130 AAG hours
  - F. FY16 and each FY thereafter, 0.07 AAG and 0.04 LA at \$14,203.
7. ESD cases (unemployment benefit appeals):
- A. 50% of 29 cases, or 14.5, rounded to 15, will seek interim fees.
  - B. Hours expended on responding to motions for interim fees: 145.5 ( $15 \times 10 = 150$  AAG hours)
  - C. Number of appeals sought from the trial court's ruling on the motion for attorney's fees: 6 ( $15 \times 0.40 = 6$ ).
  - D. Hours expended on appeals: 240 ( $6 \times 40 = 240$  AAG hours)
  - E. Total 390 AAG hours
  - F. FY16 and each FY thereafter, 0.22 AAG and 0.11 LA at \$44,639.

#### Assumptions for the AGO Tacoma Division (TAC) Legal Services:

1. We assume we will bill DSHS, ESD, DEL, DOL, and LNI for legal services based on the enactment of this bill.
2. Types of cases: The interim fee could be requested in any review of a case to the superior court. Reviews of CAPTA (Child Abuse Prevention and Treatment Act) founded findings or Fair Hearing Appeals (FHA), ESD, DEL, DOL, and LNI (non-workers' comp) cases. LNI workers' comp cases are not included in this response as fees in those are paid according to a statutory formula. Thus, the number of cases assumed averages 64 cases per year.
3. Percentage of cases: We would not be surprised if a request for fees is made in all of our cases above. Conservatively speaking, we will assume that the request would be made in 33% of the total cases. Of the cases in which would expect requests for interim attorney's fees, we estimate that 40% of the trial court rulings will be appealed.
4. While some cases may be more complex and require significantly more time to brief and prepare, we are assuming an average of 10 hours per case to respond to a motion for interim fees.
5. We assume that 40% appeals of interim fee denials/awards would, conservatively, require an average of 40 hours of attorney time to handle.
6. TAC legal services for DSHS:  
We assume we will receive motions on 33% of the CAPTA findings founded appeals and FHA's. Based on the average number of applicable superior court cases (10 cases were appealed in FY 14), this is rounded up to 4 cases per FY. We assume each case will average 10 hours of AAG time for response, totalling 40 hours. We assume that 40% of those decisions will be appealed, and that each appeal will require an average of 40 hours of AAG time, this is rounded up for a total of 2 case or 80 AAG hours per FY.

#### Summary:

- A. We will receive motions on 33% of CAPTA and FHAs. ( $10 \times 0.33 = 4$  cases)
- B. Each case will require an average of 10 AAG hours. ( $4 \times 10 = 40$  AAG hours)

- C. 40%, or 2, cases will be appealed each fiscal year.
- D. Each appeal will require an average of 40 AAG hours. ( $2 \times 40 = 80$  AAG hours)
- E. Total AAG hours = 120
- F. FY16 and each FY thereafter, 0.07 AAG and 0.04 LA at \$14,203.

7. TAC legal services for ESD:

We assume we will receive motions on 33% of the ESD appeals. Based on the average number of applicable superior court cases (17 cases in FY 14), this comes to 6 cases per FY (rounded up from 5.61 cases). We assume each case will average 10 hours of AAG time for response, totalling 60 hours. We assume that 40% of those decisions will be appealed, and that each appeal will require an average of 40 hours of AAG time, for a total of 3 cases (rounded up from 2.4) and 120 AAG hours per FY.

Summary:

- A. We will receive motions on 33% of ESD appeals. ( $17 \times 0.33 = 6$  cases)
- B. Each case will require an average of 10 AAG hours. ( $6 \times 10 = 60$  AAG hours)
- C. 40%, or 3, cases will be appealed each fiscal year.
- D. Each appeal will require an average of 40 AAG hours. ( $3 \times 40 = 120$  AAG hours)
- E. Total AAG hours = 180
- F. FY16 and each FY thereafter, 0.07 AAG and 0.04 LA at \$14,203.

8. TAC legal services for DEL:

We assume we will receive motions on 33% of our DEL appeals. Based on the average number of applicable superior court cases (6 cases in FY 14), this comes to 2 cases per FY. We assume each case will average 10 hours of AAG time for response, totalling 20 hours. We assume that 40% of those decisions will be appealed, and that each appeal will require an average of 40 hours of AAG time, for a total of 60 AAG hours per FY and negligible FTE.

Summary:

- A. We will receive motions on 33% of DEL appeals. ( $6 \times 0.33 = 2$  cases)
- B. Each case will require an average of 10 AAG hours. ( $2 \times 10 = 20$  AAG hours)
- C. 40%, or 1, cases will be appealed each fiscal year.
- D. Each appeal will require an average of 40 AAG hours. ( $1 \times 40 = 40$  AAG hours)
- E. Total AAG hours = 60
- F. FY16 and each FY thereafter, 0.03 AAG and 0.02 LA at \$6,087.

9. AC legal services for DOL cases:

We assume we will receive motions on 33% of our DOL appeals. Based on the average number of applicable superior court cases (25 in FY 14), this comes to 8 (rounded down from 8.25) cases per FY. We assume each case will average 10 hours of AAG time for response, totalling 80 hours. We assume that 40% of those decisions will be appealed, and that each appeal will require an average of 40 hours of AAG time, for a total of 3 appeals (rounded down from 3.2) and 120 AAG hours per FY.

Summary:

- A. We will receive motions on 33% of DOL appeals. ( $25 \times 0.33 = 8$  cases)
- B. Each case will require an average of 10 AAG hours. ( $8 \times 10 = 80$  AAG hours)
- C. 40%, or 3, cases will be appealed each fiscal year.
- D. Each appeal will require an average of 40 AAG hours. ( $3 \times 40 = 120$  AAG hours)

E. Total AAG hours = 200

F. FY16 and each FY thereafter, 0.11 AAG and 0.06 LA at \$22,319.

10. TAC legal services for L&I (non-workers' comp) cases:

We assume we will receive motions on 33% of our L&I (non-workers' comp) appeals. Based on the average number of applicable superior court cases (6 in FY 14), this comes to 2 cases per FY. We assume each case will average 10 hours of AAG time for response, totalling 20 hours. We assume that 40% of those decisions will be appealed, and that each appeal will require an average of 40 hours of AAG time, for a total of 1 appeal and 40 AAG hours per FY.

Summary:

A. We will receive motions on 33% of L&I appeals. ( $6 \times 0.33 = 2$  cases)

B. Each case will require an average of 10 AAG hours. ( $2 \times 10 = 20$  AAG hours)

C. 40%, or 1, cases will be appealed each fiscal year.

D. Each appeal will require an average of 40 AAG hours. ( $1 \times 40 = 40$  AAG hours)

E. Total AAG hours = 60

F. FY16 and each FY thereafter, 0.03 AAG and 0.02 LA at \$6,087.

Assumptions for the AGO Torts Division for legal services billed to the Risk Management Office of DES.

1. We assume the number of tort cases susceptible to interim fee request at 416. This estimate takes into account the average number of cases per year, for the last three years, that were susceptible to an interim fees request, but were not already subject to an award of attorney's fees. This estimate does not include cases that do not readily fit into a request for interim attorney fees such as dignitary torts.

2. We assume that a request for interim attorney fees would be made in 30%, or 124 of those cases.

3. We assume an average of 18 hours of attorney time as necessary to respond to an interim the request.

4. We assume that 10% of the cases where interim attorney fees were either denied or awarded went up on appeal, and each appeal took an average of 50 hours of attorney time.

5. Conservatively assuming that a plaintiff prevails in only 10% of the cases where interim attorney fees were requested, that would be 12.4 cases. The median award of attorney's fees in tort cases over the last three years is \$195,972. Accordingly, depending on the timing of when the interim attorney fee is assessed the anticipated tort payout for attorney fees could be as high as \$2,420,052 per year. These costs are not included in this summary tables above.

6. In Summary:

A. We assume that of the 416 cases 30% will result in interim attorney's fees requests.

( $416 \times 0.30 = 124$  interim attorney's fee requests)

B. We assume that each of the 124 interim attorney's fees request will require 18 AAG hours to respond. ( $124 \times 18 = 2,232$  AAG hours)

C. We assume that 10% of interim attorney's fee requests denials or awards will be appealed. Each appeal will require 50 AAG hours. ( $124 \times 0.10 \times 50 = 620$  AAG hours)

D. We estimate the combined total AAG hours for Torts to defend interim attorney fees request at 2,852 AAG hours per fiscal year.

E. FY16 and each FY thereafter, 1.58 AAG and 0.79 LA at \$320,588.

## Part III: Expenditure Detail

### III. A - Expenditures by Object Or Purpose

	FY 2016	FY 2017	2015-17	2017-19	2019-21
FTE Staff Years	14.5	15.6	15.1	15.6	15.6
A-Salaries and Wages	1,071,641	1,149,136	2,220,777	2,298,272	2,298,272
B-Employee Benefits	333,497	357,612	691,109	715,224	715,224
C-Professional Service Contracts					
E-Goods and Other Services	471,850	552,683	1,024,533	1,105,366	1,105,366
G-Travel	14,520	15,570	30,090	31,140	31,140
J-Capital Outlays	72,600	31,140	103,740	62,280	62,280
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total:</b>	\$1,964,108	\$2,106,141	\$4,070,249	\$4,212,282	\$4,212,282

**III. B - Detail:** List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2016	FY 2017	2015-17	2017-19	2019-21
Assistant Attorney General	90,972	9.7	10.4	10.0	10.4	10.4
Legal Assistant II	42,588	4.8	5.2	5.0	5.2	5.2
<b>Total FTE's</b>	133,560	14.5	15.6	15.1	15.6	15.6

### III. C - Expenditures By Program (optional)

Program	FY 2016	FY 2017	2015-17	2017-19	2019-21
Agriculture and Health Division (AHD)	77,103	77,103	154,206	154,206	154,206
Corrections (COR)	142,033	284,066	426,099	568,132	568,132
Government Compliance and Enforcement (GCI)	99,422	99,422	198,844	198,844	198,844
Licensing and Administrative Law (LAL)	842,052	842,052	1,684,104	1,684,104	1,684,104
Medicaid Fraud Control Unit (MFC)	77,102	77,102	154,204	154,204	154,204
Revenue (REV)	113,628	113,628	227,256	227,256	227,256
Regional Services (RSD)	73,046	73,046	146,092	146,092	146,092
Social and Health Services (SHO)	75,074	75,074	150,148	150,148	150,148
Spokane (SPO)	81,161	81,161	162,322	162,322	162,322
Tacoma (TAC)	62,899	62,899	125,798	125,798	125,798
Torts (TOR)	320,588	320,588	641,176	641,176	641,176
<b>Total \$</b>	1,964,108	2,106,141	4,070,249	4,212,282	4,212,282

## Part IV: Capital Budget Impact

NONE

## Part V: New Rule Making Required

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

NONE.