

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

AUG 22 '22 AM 9:53 RCVD

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33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

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JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 18, 2022

The Honorable Karen Umberger, Chairman
Fiscal Committee of the General Court
State House
Concord, New Hampshire 03301

His Excellency, Governor Christopher T. Sununu
And the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 7:12, authorize the Department of Justice (DOJ) to accept and expend a sum, not to exceed \$7,897,067, in general litigation expenses incurred in the defense of the State and the prosecution of criminal laws effective with the approvals of the Fiscal Committee and the Governor and Executive Council through June 30, 2023. 100% General Funds.

These funds are to be budgeted in account #02-20-20-200010-2601 entitled "Attorney General" as follows:

Class & Object	Class Title	FY 2023 Current Adjusted Authorized	Requested Action	FY 2023 Revised Adjusted Authorized
Expenditures				
010-500100	PERSONAL SERVICES PERM CLASS	\$444,755	\$0	\$444,755
011-500126	PERSONAL SERVICES UNCLASSIFI	\$148,464	\$0	\$148,464
012-500128	PERSONAL SERVICES UNCLASSIFI	\$141,792	\$0	\$141,792
013-500132	PERSONAL SERVICES UNCLASSIFI	\$102,159	\$0	\$102,159
014-500134	PERSONAL SERVICES UNCLASSIFI	\$37,500	\$0	\$37,500
015-500137	PERSONAL SERVICES UNCLASSIFI	\$117,304	\$0	\$117,304
017-500147	FT EMPLOYEES SPECIAL PAYMENT	\$6,000	\$0	\$6,000
018-500106	OVERTIME	\$8,000	\$0	\$8,000
020-500200	CURRENT EXPENSES	\$52,139	\$0	\$52,139

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022-500255	RENTS-LEASES OTHER THAN STAT	\$3,500	\$0	\$3,500
024-500225	MAINT OTHER THAN BUILD-GRN	\$2,200	\$0	\$2,200
026-500251	ORGANIZATIONAL DUES	\$35,000	\$0	\$35,000
027-582703	TRANSFERS TO DOIT	\$62,302	\$0	\$62,302
030-500301	EQUIPMENT NEW REPLACEMENT	\$2,949	\$0	\$2,949
037-500174	TECHNOLOGY-HARDWARE	\$3,196	\$0	\$3,196
038-500175	TECHNOLOGY-SOFTWARE	\$1,500	\$0	\$1,500
039-500188	TELECOMMUNICATIONS	\$18,500	\$0	\$18,500
040-501587	INDIRECT COSTS	\$43,133	\$0	\$43,133
042-500620	ADDITIONAL FRINGE BENEFITS	\$8,496	\$0	\$8,496
049-584995	TRANSFER TO OTHER STATE AGEN	\$5,593	\$0	\$5,593
057-500531	BOOKS PERIODICALS SUBSCRIPTI	\$98,484	\$0	\$98,484
060-500601	BENEFITS	\$432,686	\$0	\$432,686
066-500543	EMPLOYEE TRAINING	\$1,000	\$0	\$1,000
070-500704	IN STATE TRAVEL REIMBURSEMEN	\$3,050	\$0	\$3,050
073-500580	GRANTS NON FEDERAL	\$643,932	\$0	\$643,932
080-500713	OUT OF STATE TRAVEL REIMB	\$7,200	\$0	\$7,200
089-501543	TRANSFER TO DAS MAINTENANCE FUND	\$3,934	\$0	\$3,934
233-500769	LITIGATION EXPENSE	\$357,025	\$7,897,067	\$8,254,092
	Total:	\$2,791,792	\$7,897,067	\$10,688,859
Revenue				
001-484981	TRANSFERS FROM OTHER AGENCIES	\$133,049	\$0	\$133,049
009-407079	AGENCY INCOME	\$276,004	\$0	\$276,004
00S-000010	GENERAL FUNDS	\$2,382,739	\$7,897,067	\$10,279,806
	Total:	\$2,791,792	\$7,897,067	\$10,688,859

EXPLANATION

RSA 7:12 provides a means to fund expenses incurred by DOJ in the prosecution of crimes and the defense of the State. The expenses span a range of litigation-related costs. In the current biennium, DOJ was appropriated a sum of \$350,000 for these expenses. This appropriation has been nearly exhausted.

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At this juncture, DOJ estimates it will need an additional \$7,897,067 for on-going legal expenses through June 30, 2023. The majority of this request is based on the funding needs of the Criminal Bureau and the Civil Bureau due to the number of particularly complex and labor-intensive cases that we currently have in these bureaus. Set forth below is a discussion of the specific, ongoing needs of the litigation fund.

Expenses Relating to the Criminal Bureau

DOJ estimates that the Criminal Bureau will require approximately \$2,303,400 for investigations and prosecutions of crimes for the balance of Fiscal Year 2023. The vast majority of this request, \$2,200,000, relates to DOJ's investigation and prosecution of alleged crimes at the former Youth Development Center. Over the past 40 months, this has evolved into a complex and multi-faceted investigation. This investigation, as well as the criminal cases that stem from it, involves a very large volume of documents and decades of records. The present request includes funds we anticipate needing to help review, store, and manage those documents. As the investigation has proceeded, and as we get closer to trials for indicted defendants, the number of documents requiring review has steadily increased and has far eclipsed the number of documents anticipated at the beginning of the investigation. This has resulted in additional costs.

In addition to the investigation, the Department is also now preparing for scheduled criminal trials, five of which are scheduled to occur in calendar year 2023. While two of these trials are scheduled beyond the end of the current fiscal year, much of the trial prep, document review, and discovery production will occur during the current fiscal year. The approaching trials have increased our anticipated expenses.

The DOJ received ARPA funding for four part-time attorneys, one legal assistant, and one paralegal to assist with this investigation and prosecution. Two of the attorney positions, along with the legal assistant and paralegal position, have been filled. A third attorney who had accepted an offer withdrew shortly before her start date. Thus, the Department continues to recruit for two additional attorneys. We are still hopeful that filling these two attorney positions will enable us to reduce, as least to some extent, the need for outside counsel.

The balance of the request for the Criminal Justice Bureau involves lab testing, crime-scene evaluation, depositions, expert review, and other work for pending prosecutions of homicides, illegal drug-related cases and other criminal investigations.

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Expenses Relating to the Civil Bureau

DOJ estimates that the Civil Bureau will require approximately \$4,525,000 for defense of claims brought against the State and associated expenses for the balance of Fiscal Year 2023. This is an annual expense that is much higher than normal, but it stems from the fact that the Department is currently handling a larger, more complex civil litigation load than at any time in recent memory, including an unusually high number of complex and high-profile cases.

The *Amanda D., et al. v. Hassan, et al.* case resulted in a 2014 settlement agreement relating to the community mental health system. There are ongoing expenses relating to legal fees for plaintiffs' counsel, as well as fees for the court-retained expert reviewer. DOJ estimates that for Fiscal Year 2023, these expenses will total \$170,000.

Another complex case with a significant anticipated expense is *Contoocook Valley School District v. State of New Hampshire*. This is an education funding case in which eighteen school districts and two individuals have sued the State. These plaintiffs assert that the amount per pupil that the State pays public schools to cover the cost of an adequate education is too low and in violation of Part II, Article 83 of the New Hampshire Constitution as interpreted by the New Hampshire Supreme Court. The case is currently in the discovery phase, and trial is currently scheduled for April of 2023. We anticipate that this case will cost approximately \$1,000,000 for document discovery, depositions and experts for the balance of Fiscal Year 2023.

The Civil Bureau also expects to incur approximately \$1,600,000 in expenses for litigation and other activities related to the former Youth Development Center. This includes litigation of civil cases brought against the State by former residents of the State's Youth Development Center who allege they were sexually or physically abused while there. This also includes the provision of assistance to the Department of Health and Human Services in providing documents to the Criminal Justice Bureau in connection with the YDC criminal investigation. As mentioned, this investigation includes the review of large amounts of documents, and the Civil Bureau assists DHHS with reviewing these documents to ensure that the State maintains confidentiality for former YDC residents who are not involved in the criminal investigation at this time. This requires extensive and careful reviews, and outside counsel is periodically engaged to assist in these efforts.

The Civil Bureau, in conjunction with the Election Law Unit, is also handling two separate redistricting cases that involve challenges to the new State House map, the new State Senate map, and the new Executive Council map. The DOJ expects to incur approximately

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\$100,000 in expenses for these cases in this fiscal year for multiple experts, depositions, and data retention.

In addition to the above, the Civil Bureau is defending the Department of Health and Services in two major federal court civil cases that survived motions to dismiss in the Fall of 2021. The first case is *Stephanie Price, et al. v. Commissioner of the New Hampshire Department of Health and Human Services, et al.* This case is a putative class action and involves a challenge to DHHS' administration of the New Hampshire Choices for Independence Program lead by three individuals with disabilities who are enrolled in the program and on behalf of others who are similarly situated. The second case is *G.K., by their next friend, Katherine Cooper, et al. v. Sununu, et al.* This case, another putative class action, was brought by four children with mental disabilities who are in the state foster care system who, on behalf of themselves and others who are similarly situated, are challenging the State's compliance with case planning requirements under the Adoption Assistance and Child Welfare Act of 1980, the integration mandate in Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Both of these cases are extremely complex, involve substantial discovery, and are very labor intensive and time consuming. The DOJ expects to incur approximately \$1,375,000 in expenses in this fiscal year to defend these cases.

The Civil Bureau expects to incur other expenses estimated at \$380,000 in defense of the state.

The remaining funding requests are for Administration, to maintain the case management system, and the Consumer Protection Bureau, the Environmental Protection Bureau, the Transportation and Construction Bureau and the Charitable Trust Unit for costs associated with depositions, experts and document storage. The anticipated expenses for these four functions are \$1,068,667.

Please let me know if you have any questions regarding this request. Your consideration is greatly appreciated.

Respectfully submitted,



John M. Formella
Attorney General