

2017-19 Biennium Budget Decision Package

Agency: 082 - Public Disclosure Commission

Decision Package Code/Title: AM – Additional AGO Support

Budget Period: 2017-2019 Biennium

Budget Level: PL - Policy/Performance level

Agency Recommendation Summary Text: This request is to fund legal services for the Public Disclosure Commission (PDC) for the 2017-19 biennium. The PDC expended its entire 2015-17 biennial allocation in FY 2016 resulting in a significant shortfall for the biennium. The PDC anticipates that upcoming biennial legal needs will continue at the elevated levels experienced in the 2015-17 biennium. This is based on the expectation of continued emergence of complex legal issues, ballot initiatives, Citizen Action Complaints, and ongoing regular legal needs for the PDC which is now more reliant on the AGO than in the past due to prior internal staffing reductions.

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

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2021
Fund 001-1	\$236,000	\$236,000	\$236,000	\$236,000
Total Cost	\$236,000	\$236,000	\$236,000	\$236,000
Staffing	FY 2018	FY 2019	FY 2020	FY 2021
FTEs	0.0	0.0	0.0	0.0
Revenue	FY 2018	FY 2019	FY 2020	FY 2021
N/A	0	0	0	0
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
Obj. E	\$236,000	\$236,000	\$236,000	\$236,000

Package Description

The increased level of funding is necessary for the Public Disclosure Commission (PDC) and the Attorney General's Office (AGO) to perform their statutory responsibilities under RCW 42.17A to enforce the state's campaign finance disclosure laws. PDC's legal work consumed more than its entire 2015-17 biennial allocation in FY2016 resulting in a significant shortfall for the biennium. The PDC's 2015-17 biennial legal services allocation is \$399,315. The AGO has requested a supplemental appropriation of \$478,000 to cover its 2015-17 shortfall. This shortfall is expected to continue into the 2017-19 biennium and into future biennia.

The increased costs can be attributed to three main trends. First, the PDC has engaged, and will likely continue to be engaged, in complex litigation. A major contributor to the 2016-17 deficits was the Grocery Manufacturer's Association (GMA) case. The state alleged that GMA had intentionally concealed the identity of donors in an initiative campaign. The case required significant legal

resources in 2015-17 as the parties completed discovery and brought dispositive motions. Through those motions, the Court has already concluded that the Defendants violated state law. This case is currently scheduled to go to trial in August 2016 regarding the amount of penalties, attorneys' fees and costs owed to the State. Regardless of the ruling, an appeal of this case is likely, and legal costs are assumed to continue to accrue into the 2017-19 biennium. While the State may eventually recover penalties, costs and attorney's fees and thus recoup the expenses back to the State Treasurer, the timing and amount of that recovery is uncertain at this time.

In addition to the GMA case, other significant campaign finance litigation regarding initiative funding is likely. The number of initiatives has increased significantly, and the amount of money coming into initiative campaigns is in the millions of dollars for each campaign. Currently, for the 2016 general election, the following initiatives will be on the ballot and have raised the following amounts of money as of mid-August:

Initiative	Contributions as of 8/2016
Alliance for Gun Responsibility (I-1491)	\$3,009,626
Prevent Fraud and Protect Seniors (I-1501)	\$1,204,954
Carbon WA (I-732)	\$1,067,528
Integrity WA; Campaign finance (I-1464)	\$1,787,739
Raise Up WA; Minimum wage (I-1433)	\$2,249,739
Amend Constitution; Overrule Citizens United (I-735)	\$466,833

Initiatives are well-financed, and include significant amount of out-of-state money. Initiatives will continue to generate complaints about campaign finance and disclosure. In addition, initiative sponsor Tim Eyman and his Voters Want More Choices group are the subject of several complaints under investigation at the AGO.

Second, the PDC has experienced a reduction in their internal legal resources. Prior to 2014, the PDC had an internal General Counsel who prepared materials for the Commission, tracked trends in campaign finance laws, and reviewed potential rule making and legislative proposals. During that time, the Executive Director was also an attorney. After the General Counsel took a position at the AGO, the PDC reviewed the job responsibilities and salary level, and decided that it could not offer a competitive salary for the experience needed for their General Counsel position. Instead, the PDC planned to use the AGO for all legal service needs. Currently, the PDC Executive Director (hired in October 2015) is the only attorney on staff at the PDC. The PDC has increased its use of legal services (advice and litigation) from the Government Compliance and Enforcement Division of the AGO. The current Commission members have also requested additional legal briefing and memos from the attorney assigned to work with them on enforcement matters (the PDC staff and Executive Director are screened from the Commission on enforcement matters).

Although relying on the AGO for all legal advice needs has caused the PDC's legal services costs to increase, it is more cost-effective to use the AGO for legal work than to hire a PDC General Counsel. The Assistant Attorney General (AAG) that advises the Commission has over 25 years of experience at the AGO; a comparably experienced General Counsel would cost the PDC at least \$150,000-180,000 in salary and benefits every year.

Third, the PDC has been experiencing increased volume and complexity of Campaign Finance Complaint Lawsuits: The PDC receives approximately 125 complaints each year, and one category of complaints has increased significantly. Citizen Action Complaints, filed pursuant to RCW

42.17A.765(4), allow citizens to file lawsuits if they bring the issue to the Attorney General and the state does not commence an action. These complaints require the PDC and the AGO to work quickly to assess legal issues and make decisions about campaign finance violations. If a citizen files a lawsuit, and if the citizen is successful, the state can be liable for the attorney fees and other expenses. Advocacy groups have been using the Citizen Action option to influence the campaign issues that the state investigates, and the state has filed more campaign finance lawsuits as a result. This pattern is unlikely to change.

In addition to an increase in the amount of litigation, the complexity of the cases has also increased. In recent complaints, the allegations of abuse include accounting issues and moving money from one campaign to another—issues that require specialized investigative and forensic skills to assess. Also, the PDC and AGO are experiencing a continuing trend in Constitutional challenges to the state’s limits on campaign contributions and campaign advertising (First Amendment issues). That trend has been observed in other states with similar campaign finance/advertising laws and is expected to continue.

Based on the rapid depletion of the PDC’s legal services budget in FY 2016, along with an increased need for additional resources, the PDC anticipates that it will need funding for 2.5 AAG FTEs and 1.25 Legal Assistant FTEs to cover the agency’s legal work. This would equate to an increase in legal services equal to an additional 1.9 FTEs, or \$286,000 per year in additional allotment for legal services in the PDC budget.

This request is supported by the Attorney General, and the PDC understands that this budget request is a priority the Attorney General.

Relationship to the PDC Strategic Plan: The PDC Strategic Plan has several sections regarding how to work effectively with the AGO on enforcement hearings, litigation, and Citizen Action Complaints, and a specific action item to work on the budget for legal services:

Goal II. The PDC will provide effective and impartial enforcement of disclosure laws and will help the regulated community comply

A. The Customer Service and Enforcement Divisions will develop and use processes that enhance compliance and enforcement activities

II.A.4 Continue discussions/meeting with AGO regarding process for citizen action letters

II.A.5 Develop proposals for changing the citizen action process for the 2017 legislative package

Goal III. The PDC will use best practices in order to ensure fair and professional regulation, investigations, and enforcement actions

C. The Enforcement Division will develop and maintain systems to ensure the Commission is prepared for timely and organized hearings

III.C.2 Work with AGO regarding what information should be provided to Commissioners at what time so that they can appropriately prepare for hearings

III.C.3 Review the timing and process of PDC hearings, including use of requests for hearing, pre-hearing conferences for scheduling, and briefing schedules

III.C.5 Continue discussion regarding budget and AGO resources

The PDC contact for this request is Evelyn Fielding Lopez, Executive Director, and she can be reached at 360-664-2735, or at evelyn.lopez@pdc.wa.gov

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

All costs have been calculated by the Attorney General’s office based on anticipated usage for future workload.

FTE	FY2018	FY2019	FY2020	FY2021	Ongoing ? Y / N
AAG	1.1	1.1	1.1	1.1	Yes
LA	0.55	0.55	0.55	0.55	Yes
Management Analyst	0.25	0.25	0.25	0.25	Yes

Note: Agency administration support FTEs are included in the tables above, using a Management Analyst 5 as a representative classification.

Costs and FTE are assumed to be ongoing into future biennia. The cost estimates are based on the expectation that future legal needs will continue at elevated levels experienced in the 2015-17 biennium. Drivers of the increased legal services needs are the continued emergence of complex legal issues, ballot initiatives, Citizen Action Complaints, and ongoing regular legal needs for the PDC who is now more reliant on the AGO than in the past due to prior internal staffing reductions.

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

Additional funding will provide the PDC the expenditure authority needed for the additional support of the AG Government Compliance and Enforcement (GCE) division. With this funding the PDC and the AG will have the necessary resources to represent the state and the PDC in more matters concerning public disclosure violations as defined by Washington State law.

Funding this request will provide sufficient legal services to act on violations to state law. Not funding this request will result in slower response times and the provision of appropriate attention to each case. In addition, some violations may not be prosecuted if the PDC does not have funding to have the AG file a legal action in campaign finance violations.

Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

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

Goal II. The PDC will provide effective and impartial enforcement of disclosure laws and will help the regulated community comply

Goal III. The PDC will use best practices in order to ensure fair and professional regulation, investigations, and enforcement actions

This request will allow the AGO to provide the necessary legal services for PDC to continue its activities regarding campaign finance regulation, including effective enforcement of the laws. The public has authorized a robust and open campaign finance disclosure system, but the PDC cannot fulfill this mandate unless it has funding for the AG legal actions that result from complaints and investigations. Funding this request will also safeguard the state’s resources by allowing the AGO to bring lawsuits which might otherwise be brought by private citizens and result in the state having to pay private legal fees which will likely exceed the expense incurred if the AGO were to handle the lawsuit.

Performance Measure detail:

This does not contribute to a PDC performance Measure.

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

The citizens of Washington, candidates for elective office, lobbyists, contributors to public elections, the PDC and the AGO will be affected by this request. Without sufficient funding, Washington’s campaign funding laws cannot be enforced, nor can PDC obtain the necessary legal services to address issues regarding filing, disclosure and other aspects of such laws.

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

Impact(s) To:		Identify / Explanation
Regional/County impacts?	Yes	Identify: Counties, schools, and taxing districts are required to follow state laws prohibiting use of public funds and resources for political activity; those laws are enforced by the PDC, and occasionally through lawsuits by the AGO
Other local gov’t impacts?	Yes	Identify: Cities and municipal taxing districts are required to follow state laws prohibiting use of public funds and resources for political activity; those laws are enforced by the PDC, and occasionally through lawsuits by the AGO
Tribal gov’t impacts?	No	Identify:

Other state agency impacts?	Yes	Identify: AG's Office
Responds to specific task force, report, mandate or exec order?	Yes	Identify: The state's broad Public Disclosure Act requires disclosure of campaign finance information and lobbyist information; those mandates are enforced by the PDC and by legal actions commenced by the AGO
Does request contain a compensation change?	No	Identify:
Does request require a change to a collective bargaining agreement?	No	Identify:
Facility/workplace needs or impacts?	No	Identify:
Capital Budget Impacts?	No	Identify:
Is change required to existing statutes, rules or contracts?	No	Identify:
Is the request related to or a result of litigation?	Yes	Identify lawsuit (please consult with Attorney General's Office): This is related, in part, to extraordinary costs of the Grocery Manufacturers case and other campaign finance litigation.
Is the request related to Puget Sound recovery?	No	If yes, see budget instructions Section 14.4 for additional instructions
Identify other important connections		

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

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

The alternative to obtaining additional funding for PDC legal services is that the PDC will not be able to obtain legal advice or representation from the AGO. As a result, the PDC will not be able to enforce the state's campaign finance laws. There are no available resources within the AGO to provide these services.

What are the consequences of not funding this request?

If this request is not adopted, the PDC will not have the necessary resources to pay for legal services. Without these services, the PDC and the AGO will be unable to carry out the core function of enforcing the state’s campaign laws. In addition, the lack of legal service funding will result in financial loss to the state as the state will be found liable for attorney fees and costs for private lawsuits which otherwise would be brought by the AGO on behalf of the PDC. Because private attorneys frequently charge more than the costs of the AGO, these lawsuits will result in greater public expenditure than if funding is provided for the AGO to handle the litigation.

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

If this package is not funded, it will require the PDC to divert existing funding to cover legal services, or to cease requesting needed legal assistance. If advice is not provided, it increases the risk of uninformed and potentially costly decisions, and may increase the risk of challenges to PDC actions. Any funds diverted will result in a reduction or delay in the legal representation in the enforcement area. Reduction in legal representation attorney time will result in a delay in responding to enforcement advice, and the scheduling for administrative proceedings before the PDC. This may cause cases to become unenforceable because they will have not been charged within the five year statute of limitations under the law. Additionally, it will cause a lack of public confidence in those working on campaigns who may be violating the law without repercussions.

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

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

No 

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

2017-19 Biennium Budget Decision Package

Agency: 082 – Public Disclosure Commission

Decision Package Code/Title: AN – IT Investment FTE

Budget Period: 2017-2019 Biennium (BDS)

Budget Level: PL - Policy/performance level (BDS)

Agency Recommendation Summary Text: The Public Disclosure Commission (PDC) is requesting one FTE for the IT position that was hired with the ongoing IT investment funding PDC received during the 15-17 biennium.

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

Operating Expenditures	FY 2018	FY 2019	FY 2020	FY 2021
None	0	0	0	0
Total Cost	0	0	0	0
Staffing	FY 2018	FY 2019	FY 2020	FY 2021
FTEs	1.0	1.0	1.0	1.0
Revenue	FY 2018	FY 2019	FY 2020	FY 2021
None	0	0	0	0
Object of Expenditure	FY 2018	FY 2019	FY 2020	FY 2021
None	0	0	0	0

Package Description

During the 15-17 biennium the PDC received IT investment funding from the legislature. This funding led to hiring an Information Technology Specialist 5 position within the agency. This position is currently using the vacant FTE of the Communication Consultant 2. The agency plans to fill the Communication Consultant 2 position in the future and the agency requires one more FTE as to not overspend the FTE authority of the agency.

Please contact Chad Johnson, 360-407-8130, chad.johnson@des.wa.gov for additional information regarding this request.

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

This is not an expansion or alteration of a current program.

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

The agency is already has the funding for the position and is requesting the FTE only for one position.

Decision Package Justification and Impacts

What specific performance outcomes does the agency expect?

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

By using this FTE the ITS 5 will be planned in the allotments. Currently positions are being held vacant to account for this position.

Performance Measure detail:

This will not contribute to one performance measure.

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

There will be impacts to requests and stakeholders from delayed responses from the Communication Consultant 2 position because of the vacancy that is being held. When the additional FTE is granted the agency can then hire for the Communication Consultant 2 position which should increase response time from the agency for public inquiries.

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

Impact(s) To:		Identify / Explanation
Regional/County impacts?	No	Identify:
Other local gov't impacts?	No	Identify:
Tribal gov't impacts?	No	Identify:
Other state agency impacts?	No	Identify:
Responds to specific task force, report, mandate or exec order?	No	Identify:
Does request contain a compensation change?	No	Identify:
Does request require a change to a collective bargaining agreement?	No	Identify:
Facility/workplace needs or impacts?	No	Identify:
Capital Budget Impacts?	No	Identify:
Is change required to existing statutes, rules or contracts?	No	Identify:
Is the request related to or a result of litigation?	No	Identify lawsuit (please consult with Attorney General's Office):
Is the request related to Puget Sound recovery?	No	If yes, see budget instructions Section 14.4 for additional instructions
Identify other important connections		

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

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

The agency has kept positions vacant to accommodate the additional IT FTE which has created a backlog of responses to agency inquiries. This is not a viable option. Since the funding is already within the PDC the agency determined that requesting the FTE to accommodate the newly funded position.

What are the consequences of not funding this request?

The consequence of not funding this request is that the PDC may expend more FTEs than allocated to the agency.

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

The agency cannot address the issue within its current appropriation. The appropriation does not include the FTE for the ITS 5 position and would create a disparity between the allotments and actual expended FTEs.

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

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

No 

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