

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

January 7, 2013

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
State House
Concord, NH 03301

Her Excellency Governor Margaret Wood Hassan
And the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Pursuant to RSA 7:12, authorize the Department of Justice (DOJ) to accept and expend a sum not to exceed \$850,000 from funds not otherwise appropriated for the purpose of covering projected shortfalls in the general litigation expenses incurred in the defense of the State and the prosecution of criminal law effective with the approvals of the Fiscal Committee and the Governor and Council through June 30, 2013. 100% General Funds.

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

<u>Class</u>	<u>Description</u>	<u>Current Budget</u>	<u>Request</u>	<u>New Budget</u>
233-500769	Litigation Expense	\$950,000	\$850,000	\$1,800,000

EXPLANATION

The Department of Justice was originally appropriated a sum of \$350,000 for general litigation expenses for SFY 2013. Subsequently, an additional \$600,000 was approved by the Fiscal Committee on November 8, 2012, FIS 12-305, and approved by the Governor and Council on November 14, 2012, item #28. We currently have an available balance of \$102,377 with pending invoices totaling in excess of \$95,000.

Litigation costs are very difficult to forecast. This year, the Department has been faced with exceptionally complex and expensive legal challenges to the State's mental health system, Medicaid disproportionate share payment system, Medicaid Enhancement Tax, Medicaid Reimbursement System, and changes to the retirement system.

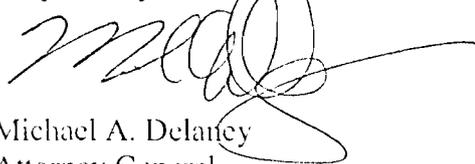
The increase in expenses stems in large part from the pending *Ellsworth* lawsuit challenging the constitutionality of the State's mental health system. That case has involved the compilation and processing of an unprecedented amount of electronic documents, at a substantial cost to the State. The State also needed to retain outside litigation counsel to assist in the defense of this case. To date, we have paid outside counsel over \$500,000 and anticipate that these costs will exceed an additional \$500,000 for the remainder of this fiscal year. In addition, the DOJ continues to incur litigation costs in the Criminal Bureau for cases that include the *Addison* appeal, and seven homicide cases – *Dueling*, *Packer*, *Webster*, *Petelis*, *Lacombe*, *Marchand* and *Watson* – each of which will require a minimum of an additional \$35,000 per case. Other on-going criminal cases will require the use of a translator and the hiring of a forensic nurse to review more than three years of medical records for an infant death. The Civil Bureau is anticipating that upcoming trials will cost a minimum of \$75,000.

This request also includes anticipated costs of the tobacco litigation. The State has filed suit against the tobacco companies that are signatories to the Tobacco Master Settlement Agreement (“MSA”) under which the defendants are required to make annual payments to all of the states including the State of New Hampshire. The annual payments received by New Hampshire since 2006 have been approximately \$5.0 million less than the required amount. The defendants claim that the State failed to diligently enforce the obligation of non-participating tobacco manufacturers (“NPMs”) to make escrow payments as required by RSA 541-C. The tobacco companies have identified thirty-five states they claim failed to diligently enforce their obligations under the MSA, including New Hampshire. Individual state hearings began in May 2012 and will continue through 2013. It is anticipated that New Hampshire's costs through the end of this Fiscal Year will not exceed \$50,000. If New Hampshire is found not to have diligently enforced its escrow statute in 2003, New Hampshire could lose up to its entire annual payment under the MSA.

Please let me know if you have any questions concerning this request.

Your consideration is greatly appreciated.

Respectfully submitted,



Michael A. Delaney
Attorney General