

Analysis

Item 6: Judicial Department

Supplemental Operating Funds

Analyst: Steve Bender

Request: Increase the 2017-19 biennium General Fund appropriation for Operations by \$5,300,000.

Recommendation: Defer action on the request to the 2018 legislative session.

Analysis: The General Fund in the 2017-19 biennium legislatively adopted budget for the Judicial Department's (OJD) operations includes approximately \$21.7 million of General Fund reductions from the calculated current service level. After excluding the reductions that were offset by corresponding reductions in charges from other state agencies, \$19.5 million of General Fund reductions remain, equal to approximately 6.2% of the current service level.

The General Fund operations appropriation supports the ongoing costs of the state's circuit courts, Tax Court, appellate courts, and the central administrative functions of the Office of State Court Administrator. OJD has taken a number of actions to reduce expenditures to the budgeted level. The financial impacts of these actions have reduced biennial expenditures by over \$11 million, but have also affected judicial functions and services. The actions taken to date to achieve this expenditure reduction have included imposing hiring delays on vacant positions of 120 days, implementing hiring freezes for certain courts and divisions, and reducing equipment replacement expenditures, non-essential travel, and judge and employee training.

Although OJD has not implemented layoffs or required furloughs, the hiring delays and freezes have increased position vacancies and reduced the available number of active employees. This has, in turn, resulted in service reductions that include case processing delays, reductions in support for family law litigants and mediation services, reduced public service hours, and reductions in courtroom hours that have resulted in hearing and trial scheduling delays.

The \$11 million of reductions implemented to date are not enough to sufficiently limit expenditures, however. OJD is not requesting any funds to restore the reductions implemented to date, however, the Department is requesting additional General Fund to avoid further service reductions. OJD proposes utilizing the prior-biennium General Fund carryforward retained by the Department under law to partially fund avoidance of additional reductions. This would still leave resources \$5.3 million below what are needed. Any General Fund allocated to operations for state employee compensation plan changes would reduce the amount required to avoid additional reductions on a dollar-for-dollar basis.

The Legislative Fiscal Office recommends deferral of the request to the 2018 legislative session, when updated information on the amount of state resources will be available.

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Oregon Judicial Department
McDonald

Request: Appropriate \$5.3 million from the General Fund to mitigate employee layoffs and significant reductions in public service during the second year of the 2017-19 biennium.

Recommendation: The Oregon Judicial Department is not under executive budgetary authority.

Discussion: The 2017-19 Legislatively Adopted Budget for the Oregon Judicial Department (OJD) reduced the agency's General Fund by 4.3 percent, or 19.7 million, from Current Service Level as part of statewide reductions. The agency reports, although cuts were applied across the majority of OJD appropriations, the reduction to the General Fund Operations appropriation has been the most challenging. This appropriation pays for all court operations costs, except for judicial compensation, and the budget is comprised of 89 percent Personal Services, primarily court staff. The remaining 11 percent is Services and Supplies, primarily State Government Service Charges, Attorney General fees and facilities rent and maintenance. Because the Operations General Fund appropriation is predominantly Personal Services, the agency reports that measures such as holding higher vacancy rates, implementing furloughs, reducing courthouse service hours, laying off staff and/or implementing full-day court closures must be considered during the second year of the biennium in order to meet the General Fund reduction.

OJD Actions:

The agency has implemented reduction measures including 6.5 percent budget reductions for all court operating budgets, hiring freezes for courts unable to meet the 6.5 percent target (with exceptions for critical positions), postponing hiring, eliminating all equipment lifecycle replacements, barring non-essential travel and freezing most training for judges and employees. The agency reports these actions have resulted in reducing service hours in eight courts, eliminating and reducing family law programs in eight courts, reducing or eliminating treatment or specialty court programs in three courts, mediation services in one court, court-based collections in one court and indigent defense verification in two courts. OJD is not requesting funding to reverse these existing reductions, but the request is to avoid deeper reductions.

Remaining Shortfall:

The Judicial Department projects the current measures listed above will meet 62 percent of the budget reductions. The gap can be closed further by utilizing some of the General Fund rollover balance. The agency plans to apply approximately \$2.8 million in rollover funds and projects the remaining gap to be \$5.3 million. A secondary source of funding, which may be available to address the remaining gap would be any 'Salary Pot' funds distributed in February, however, this amount is unknown at this time.

If the Legislature is unable to appropriate supplemental funding during the 2018 session, OJD reports they will start their additional reduction efforts in March of 2018, including layoffs and/or furloughs. Depending on position and salary level, this may mean a reduction of 50 to 80 employees, which would then reduce court hours and service levels.

Legal Reference: Appropriate \$5.3 million from the General Fund to supplement the appropriation made by chapter 575, section 1(2), Oregon Laws 2017, for the Oregon Judicial Department, Operations, for the 2017-19 biennium.



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

December 7, 2017
(SENT BY EMAIL)

The Honorable Senator Richard Devlin, Co-Chair
The Honorable Representative Nancy Nathanson, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Re: Request for Supplemental Appropriation to the 2017-2019 Legislatively Adopted Budget
for the Oregon Judicial Department (Amended to Add Legal Reference)

Dear Co-Chairpersons:

Nature of Request

The Oregon Judicial Department (OJD) requests an additional General Fund appropriation of \$5.3 million to the Department's 2017-19 Legislatively Adopted Budget (LAB) in order to avoid significant employee layoffs, furloughs, required court closures, and other significant public service reductions during the second year of the 2017-19 biennium.

Background

General Fund support for the OJD budget in the 2017-19 biennium was significantly reduced in many of the line-item appropriations that support a range of services provided through the court system. The Department has taken a series of management actions to meet these reductions, but faces drastic reductions if required to meet the full 6.8 percent General Fund reduction in its operations appropriation. The 2017-19 LAB specified a level of reductions, but for the most part did not specify where cuts should occur. And although the legislature applied reductions across most line items in the OJD budget, the most significant and problematic reductions are to the General Fund Operations Appropriation, which funds OJD's core services.

These reductions already have resulted in additional court and administrative service reductions, OJD enforcing a significantly higher staffing vacancy rate, and additional reductions in courthouse public service hours in the first year of the biennium.

Without new supplemental funds, OJD anticipates some combination of staff layoffs, mandatory furlough days, and/or full-day court closures in the second year of the biennium.

Although OJD is using staff attrition and enforcing a high vacancy rate to generate savings, that alone will not be sufficient to provide the additional personal services savings needed by the end of the biennium. OJD therefore requests additional funds to avert the disruptive and damaging effects to the public and other two branches of state government from an underfunded state court system.

OJD Operations Appropriation

The OJD budget for the 2017-19 biennium contains 21 separate appropriations and limitations. Many of the appropriations and limitations are direct pass-through accounts where General Funds or filing fee revenues are provided to outside entities, primarily counties. Other appropriations or limitations are constrained to fund specific activities such as debt service, payments to third parties for successful collections activities, payments for mandated interpreter services for Oregonians serving on juries, and state matching funds to counties replacing unsafe courthouses.

The largest appropriation for OJD is the Operations Appropriation, which pays for Trial Court Operations, Appellate and Tax Court Operations, centralized administrative operations, and payment for department-wide expenses. This appropriation pays for all court operational costs except for judicial compensation, which is contained in a separate appropriation.

Four general observations help explain the severity of the reduction in this appropriation. First, OJD is operating with almost 10 percent fewer staff than in 2009-11 – these reductions were taken from a branch of government already weakened by previous reductions. Second, nearly 90 percent of the appropriation funds personal services – primarily staff in courts. Third, those staff work with judges to provide OJD's core services – adjudicating offenses, resolving family disputes, overseeing children in foster care, ensuring government entities act within their lawful authority, and generally providing timely resolution of disputes for Oregonians under the rule of law. Finally, OJD is subject to many statutory mandates that limit areas of potential savings – these include mandated locations and statutory timelines for many types of cases and processes within those cases.

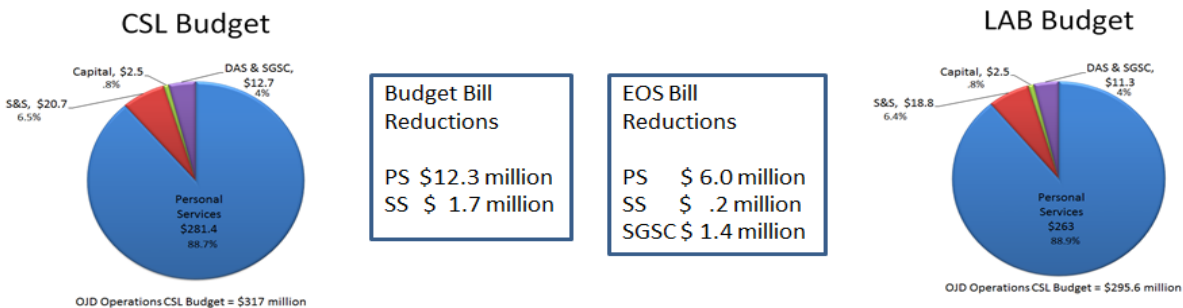
Oregon statutes require the location and operation of circuit courts in every county, so OJD generally cannot close locations to generate significant personnel-cost savings. This means courts struggle to keep courtrooms minimally staffed for mandatory criminal and juvenile proceedings and to enter judgments that record and finalize judicial decisions. This has meant reducing other public services and availability, and increasing delays in other case types that don't have statutory timelines.

For perspective, OJD's Current Service Level budget request for 2017-19 Operations appropriation was approximately \$317 million. In the 2017-19 appropriation, 88.7% of the costs are for personal services. Of the remaining 11.3% of the budget, approximately one-third is

paid back to state government through state government service charges, Attorney General charges, or rent and upkeep for DAS-owned buildings. As with prior biennia, the services-and-supplies budget was insufficient to cover those costs, so vacancy savings also must be used to cover this budget gap.

During the 2017 legislative session, additions and subtractions were made to the OJD budget overall, but significant cuts were made to the Operations Appropriation. The first set of cuts in HB 5013 removed more than \$14 million (approximately 4.4 percent and 13 positions/11.21 FTE). The final set of cuts included in HB 5006 reduced the appropriation by an additional \$7.6 million (approximately 2.5 percent of the remaining budget), for a total of a 6.8 percent reduction.

OJD Operations Appropriation



OJD Actions

In the months since the 2017 legislative session adjourned, the Chief Justice and State Court Administrator have implemented multiple statewide cost-saving measures to attempt to meet the Department's LAB. These measures were implemented in the first month of the biennium to:

- Impose across-the-board 6.5% budgetary reductions for all court and division operating budgets.
- Freeze hiring in courts and divisions that cannot otherwise meet their 6.5% reduction target, with exceptions for critical positions approved through the Office of the State Court Administrator.
- Postpone hiring for an additional 120 days in courts and divisions that have met the 6.5% reduction target in order to generate funds for hiring critical positions.
- Eliminate all equipment lifecycle replacements, allowing only critical replacements that are due to equipment failure.
- Eliminate non-essential travel.
- Eliminate almost all training for judges and employees.

As of November, OJD has increased its vacant General Fund positions to 92, but has not yet authorized layoffs or required furloughs. The reductions taken to date have resulted in reducing public service hours in at least eight courts, eliminating and/or reducing programs in family law (also approximately eight courts), and reducing or eliminating treatment or specialty court programs (three courts), mediation services (one court), court-based collections (one court), and indigent defense verification (two courts).

There also are similarly severe impacts to service levels and programs provided by divisions in the State Court Administrator's office that support court operations, especially training services and the department's audit function. OJD is not requesting funding to reverse these existing reductions, but needs additional funding to avoid deeper reductions. OJD would, however, welcome further discussion on how to reverse these current cost-cutting measures and the resulting impacts.

Future Actions

Efforts to reduce spending have resulted in slowed personnel spending compared to the prior biennium, however higher PERS costs and flexible benefit rates are affecting the results. OJD projects that the current measures listed above will meet 62 percent of the budget reductions, leaving \$8.1 million in additional reductions needed to meet the current LAB budget.

Some of these reductions can be met using projected 2015-17 General Fund rollover balances. Both the legislative and judicial branches can retain unspent appropriation balances from the prior biennium General Funds pursuant to ORS 293.195. After using some of the rollover to fill shortfalls within the original appropriation, OJD will apply approximately \$2.8 million from rollover funds leaving a projected \$5.3 million gap between reduction actions taken and the LAB funding level.

A second supplemental source to address the remaining gap will be any funds distributed to OJD from the 'salary pot'. That amount is not known at this time.

While continuing current cost-saving measures may close some of that gap, if the legislature is unable to appropriate supplemental funding during the 2018 legislative session, then OJD will be required to implement layoffs and/or furloughs to meet that target. This will mean a reduction starting in March 2018 of between 50 to 80 employees, depending on position and salary levels. These additional layoffs, on top of existing vacant positions, will have a profound impact on the Department's ability to provide service to Oregonians and meet the constitutional requirement that "justice shall be administered, openly and without purchase, completely and without delay." Courts will have to further reduce operating hours and the number of trials they can perform, reduce hours for public-service counters and telephone support, and reduce court services such as family law services and treatment/specialty courts. Centralized services will be reduced, including information technology support and human resources support.

While OJD acknowledges the difficult budgetary position facing the State of Oregon in the 2017-19 biennium, the Department requests that sufficient funds be allocated to avoid significant

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personnel reductions and to continue in its mission to provide fair and accessible justice services that protect the rights of individuals, preserve community welfare, and inspire public confidence.

Action Requested

The Oregon Judicial Department requests that the Legislative Assembly appropriate during the 2018 legislative session an additional \$5.3 million General Fund to avoid layoffs, furloughs, or closing courts to the public.

Legislation Affected

Legal Reference: Increase the General Fund appropriation established by chapter 575, Section 1(2), Oregon Laws 2017, for the Oregon Judicial Department by \$5,300,000 for the 2017-19 biennium.

Sincerely,

A handwritten signature in blue ink, appearing to read "B.C. Miller".

Bruce C. Miller
Acting State Court Administrator

BCM:PL:ma/17eBCM017ma (amended)

ec: Chief Justice Thomas A. Balmer
Steve Bender, Principal Legislative Analyst, LFO
Michelle Lisper, Policy and Budget Analyst, CFO-BAM
David Moon, Director of BFSD, OJD