

MEMORANDUM

DATE: September 29, 2016
TO: Interested Parties
FROM: Perry Zielak, Fiscal Analyst
RE: Legal Services Funds

This memo provides information related to the Legal Service fund within the Department of Technology, Management, and Budget (DTMB) and Lawsuit Settlement Proceeds fund within the Attorney General's budget related to the Flint declaration of emergency.

Legal Services/Litigation Fund – DTMB

The Legal Services Fund, which is also called the Litigation Fund in certain fiscal years, was created beginning with the FY 2013-14 budget. The fund was designed to provide support for major litigation involving the Governor and Attorney General in their official capacity, and to secure outside legal advice on major statewide issues not unique to a single agency. Expenditure from the fund is managed by DTMB.

DTMB is required by boilerplate to issue a report by April 1 itemizing expenditures made from the fund by case, purpose, and department involved. There are no further boilerplate restrictions or guidelines concerning the fund.

**Legal Services/Litigation Fund Appropriations
by Fiscal Year, GF/GP Funds**

FY 2013-14	\$2,000,000
FY 2014-15*	2,000,000
FY 2015-16**	12,000,000
FY 2016-17	5,000,000
Total	\$21,000,000

* Original appropriation for FY 2014-15 was \$4.0 million, reduced by \$2.0 million under Executive Order 2015-5.

** Original appropriation was \$1.0 million, increased by \$11.0 million in 2016 PA 268 supplemental.

Litigation Fund expenditures made in FY 2014-15 of \$3.7 million originated from two sources: the \$2.0 million GF/GP allocated for FY 2014-15 and work project funds from FY 2013-14.

The following table lists Litigation Fund expenditures made in FY 2014-15.

Litigation Funds Expenditures – FY 2014-15

DeBoer v Snyder	\$1,800,000
Bassett v Snyder	950,000
Detroit Chapter 9 Bankruptcy	668,900
State's Retirement System	222,600
Retired Detroit Police Settlement	90,000
Total	\$3,731,500

* \$1.6 million of expenditure is from FY 2013-14 work project account.

A total of \$2.75 million was spent on defense fees and reimbursement of plaintiff legal fees related to the DeBoer and Bassett decisions. The two cases challenged the state’s ban on same sex marriages and the ban on providing insurance coverage and benefits to domestic partners. Additionally \$758,000 was spent on fees and settlements related to the Detroit Chapter 9 bankruptcy case. Finally, \$222,600 was expended on attorney fees related to the defense of Michigan’s retirement system.

Similar to FY 2014-15, Legal Services Fund expenditures made in FY 2015-16 of \$1.5 million originated from two sources: the \$12.0 million GF/GP appropriation for FY 2015-16 and work project funds from FY 2014-15. The following table shows Legal Services Fund expenditures made as of September 1, 2016 in FY 2015-16.

Legal Services Funds Expenditures – FY 2015-16	
Flint Water: Warner Norcross & Judd	\$894,513
Flint Water: Barris Sott Denn & Driker	473,325
Detroit Bankruptcy: Dickinson Wright	80,348
Detroit Bankruptcy: Lambert Leser Isackson	14,185
Education Litigation: Dykema Gossett	<u>6,116</u>
Total	\$1,468,487

* \$262,601 of expenditure is from FY 2014-15 work project account.

As of September 1, 2016 almost \$1.4 million has been spent in FY 2015-16 on legal fees associated with the Flint drinking water declaration of emergency. Nearly \$100,000 has been expended on legal services related to the Detroit bankruptcy case.

In addition, there was over \$262,000 in legal fees connected to the Detroit Bankruptcy and the Flint drinking water emergency expended from work project funds from FY 2014-15.

Lawsuit Settlement Proceeds Fund – Attorney General

The Attorney General is newly allowed the use of lawsuit settlement proceeds: \$1.3 million for FY 2015-16 and \$2.6 million for FY 2016-17. The funds are unobligated general funds that would be considered restricted funds when captured by the Attorney General. This results in a net decrease of anticipated general fund revenue for the state of \$3.9 million over the two years.

Associated boilerplate language in the FY 2016-17 budget (2016 PA 268) would impose a cap of \$2.6 million in FY 2016-17 and specify that the funds are to be used for all associated expenses related to the declaration of emergency due to drinking water contamination. The funds will also be used to pay for the Special Council conducting an independent investigation of the Flint situation.

Lawsuit Settlement Proceeds Fund Appropriations by Fiscal Year	
FY 2015-16	\$1,300,000
FY 2016-17	<u>2,600,000</u>
Total	\$3,900,000

Litigation Expense Reimbursement – Attorney General

In addition, the Attorney General is allowed to capture \$500,000 of legal monetary funds awarded to the state (unobligated general funds) for litigation expense reimbursement under current budgetary guidelines. Sec. 308 of 2015 PA 84 lists the conditions the funds may be used for:

The funds may be expended for the payment of court judgments, settlements, arbitration awards or other administrative and litigation decisions, attorney fees, and litigation costs, assessed against the office of the Governor, the Department of the Attorney General, the Governor, or the *Attorney General* when acting in an official capacity as the named party in litigation against the state.

The FY 2016-17 Executive Recommendation proposed lifting both the capture and carry forward caps to \$1.5 million. The enacted FY 2016-17 Appropriations bill (2016 PA 268) raises the caps to \$1.0 million. The department notes that the cap increase is not related to Flint expenses, but a reflection on the changing reality of the caseload of litigation against the state. The increased costs are attributed to case file discovery, expert witnesses, and potential settlements in rulings against the state. The increased cap would allow for these additional costs to be covered under restricted funding, instead of using other fund sources or GF/GP funding.

State Defense Costs – Attorney General

The FY 2016-17 Attorney General budget includes a \$3.0 million GF/GP appropriation for state defense costs. The costs stem from the pending lawsuits against the Department of Health and Human Services (DHHS) and the Department of Environmental Quality (DEQ) for the Flint Water Emergency and the outbreak of Legionnaires’ disease. The department notes the costs include experts, discovery and additional staffing. There are no boilerplate guidelines or restrictions for this appropriation under the enacted budget.

Total Legal Appropriations – Attorney General and DTMB

The following table shows total legal appropriations as described in this memo from the Attorney General and DTMB. Over \$25 million (\$20 million GF/GP) has been allocated between FYs 2015-16 and 2016-17 for legal costs. It is estimated that a majority of the expenditures will be related to the Flint drinking water declaration of emergency considering the numerous lawsuits that have already been filed or will be filed against the Governor, Attorney General, the State and state agencies. Additional appropriations may be requested in the future.

Total Legal Appropriations		
	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Legal Services Fund	\$12,000,000	\$5,000,000
Lawsuit Settlement Proceeds Fund	1,300,000	2,600,000
Litigation Expense Reimbursement	500,000	1,000,000
State Defense Costs	0	3,000,000
Total	\$13,800,000	\$11,600,000