



000317  
State of Minnesota  
Department of Finance

400 Centennial Building  
658 Cedar Street  
St. Paul, Minnesota 55155  
Voice: (651) 296-5900  
Fax: (651) 296-8685  
TTY: 1-800-627-3529

February 22, 2000

Representative Phil Krinkie  
Chair, House State Government Finance Committee  
365 State Office Building  
St. Paul, MN 55155

Senator Leonard Price  
Chair, Senate Governmental Operations Committee  
235 Capitol  
St. Paul, MN 55155

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Dear Representative Krinkie and Senator Price:

Attached is the joint report required by Laws 1999, Chapter 250, Article 1, Section 6 regarding the funding mechanism for legal services provided by the Office of the Attorney General. The report describes some of the issues with the current funding mechanism, and identifies areas where the Department of Finance and the Attorney General will continue to discuss and refine both the funding mechanism and the presentation of budget and financial data regarding legal services.

We look forward to working with you as you review and discuss the report.

Sincerely,

Pamela Wheelock  
Commissioner, Department of Finance

Michael Hatch  
Minnesota Attorney General

cc: Steven Bosacker  
Alan Gilbert  
Peggy Ingison

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## REPORT

This report is the result of the Laws of 1999, Chapter 250, Article 1, Section 6, which requires that the Attorney General and Commissioner of Finance continue to review the funding mechanism for legal services, a process that began in 1998. During the development of this report refinements were made to the funding mechanism that were designed to make the process more responsive to the needs of both the providers of legal services as well as for the consumers of those services. The current mechanism of providing legal services began as a pilot project in 1997 and was the result of a task force that sought to add more accountability to both the provision of and use of legal services.

The legislation asked that the report respond to the following specific items:

(1) Identify criteria that differentiate between a partner and a pooled agency;

*Partner Agency*

- Large agency (if other criteria met, it could be small agency or board)
- Unique funding source/significant amount of non-general fund dollars for legal services
- Fairly predictable need for legal services (not based on a recent change in law that generates more need)
- The Attorney General's Office (AGO), the agency, and the Department of Finance (DOF) all agree to partner status

*Pooled Agency*

- Small agency (if other criteria met it could be a large agency)
- All general fund legal services provided by the AGO

The AGO and DOF anticipate no changes to agency status regarding pooled or partner, but we agree to review the status of an agency that has a significant change in legal service needs that may warrant a change in status.

(2) Clarify whose responsibility it is to request funding for pooled agencies; the attorney general, the agency, or both;

It is the responsibility of the AGO to seek funding in its budget for the pooled agencies. On agreement between the agency and the AGO, pooled agencies may choose to assist the AGO in securing necessary funding. Based on an unexpected large increase in a pooled agency's need for legal services, the AGO may request the pooled agency to enter into an agreement to provide supplemental funding for legal services.

- (3) Determine what process the setting of the billing rate should follow before implementation;

As part of the biennial budget development process, agencies will be notified of the billing rate for attorney and legal assistants for each year of the biennium. This will help ensure that agencies are adequately able to plan for their legal services costs.

- (4) Establish a mechanism to ensure that legal services resources are allocated as intended by the legislature and a process to address situations where demand exceeds resources;

See general conclusions below

- (5) Determine if partner agencies should continue to have general fund dollars set aside in the attorney general's base; and
- (6) Determine what method is used to ascertain how much funding for legal services the attorney general has in its base for each agency.

The AGO feels it is important to its own budget stability and planning to retain in its budget the existing level of funding for partner agencies and DOF understands this interest. See also general conclusions below.

#### General Conclusions

The AGO and DOF recognize that the current funding mechanism is an attempt to balance the responsibility of the AGO to manage the legal resources of the state and the need to be responsive to the demands of state agencies and officials. We acknowledge the need for the AGO to maintain flexibility to manage costs and prioritize legal services among the pooled agencies to meet demands. We agree to continue exploring ways to improve the current structure or consider other changes.

Accordingly, we agree to work closely during the biennial budget development process to make the legal services budget information and implications more clear and understandable.

- We will identify and describe the presumed level of legal services overall and describe the expected level of services for pooled agencies;
- We will establish criteria to identify those situations where demand exceeds resources and propose options to address the unexpected contingencies;
- We will identify the base amount of partner agency funding that is included in the AGO base budget; and
- We will include information on the legal services provided to counties during the biennium and a projection for the upcoming biennium.