

Justification Review

May 2000

Report No. 99-53

Legal Affairs Provides Valuable Legal Services, But Accountability Needs to Be Strengthened

at a glance

- The Department of Legal Affairs did not meet the majority of its performance-based program budgeting standards, and the measures generally do not assess agency effectiveness.
- The department wins most of its court cases, but settlement agreements are not always monetarily favorable to the state.
- Judges and state agencies express general satisfaction with attorney work, but agencies complain about a lack of responsiveness.
- Department accountability is limited by the Office of the Inspector General's lack of oversight and by inadequate department billing practices.

Purpose

This report presents the results of our program evaluation and justification review of the Department of Legal Affairs. State law directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct justification reviews of each program during its second year of operating under a performance-based program budget.¹ This justification review evaluates program performance and accountability and provides recommendations for improvement.

¹ Chapter 94-249, *Laws of Florida* (see Appendix A for statutory requirements).

Background

Program Description

The Department of Legal Affairs, also known as the Office of the Attorney General, provides civil representation and legal services on behalf of the state. It also assists crime victims and law enforcement agencies and, through the Office of Statewide Prosecution, investigates and prosecutes criminal offenses that extend across multiple jurisdictions.

An elected Attorney General leads the department. The Florida State Constitution designates the Attorney General as the state's chief legal officer and a member of the Florida Cabinet.² Duties of the Attorney General include attending to all suits or prosecutions in which the state may be a party, acting as co-counsel in death penalty proceedings, and giving official opinions and legal advice in writing on any question of law.

The department has divided its activities into three performance-based budgeting programs.

- The **Civil Representation and Legal Services Program** litigates on behalf of the state and investigates and prosecutes antitrust, Medicaid fraud, and consumer fraud cases. Lawyers in this section defend the state on issues

² Article IV, Section 4, Florida Constitution.

involving state employment, eminent domain, civil rights, tort, inmate lawsuits, and disputes over financial matters.³ Lawyers also provide legal advice to regulatory boards and represent the state in appellate cases.

In addition, staff on behalf of the Attorney General provide mediation services and issue legal opinions interpreting Florida law. Lawyers mediate public records disputes between citizens and government and administer the Lemon Law Arbitration Program which provides arbitration for citizens having new car warranty disputes with automobile manufacturers. For Fiscal Year 1999-2000, this program had 752.5 total full-time equivalent (FTE) positions, 336.5 (45%) of which were attorney positions. In Fiscal Year 1998-99, staff opened 42,038 legal cases.

- The **Criminal Justice and Victim Support Services Program** provides advocacy and financial compensation for victims of violent crime. Grant monies from the state's Crime Victims Compensation Trust Fund and the federal Victims of Crime Act assistance grants are used to provide financial assistance to victims of violent crime and to the service providers who help victims cope with effects of crimes. This program also provides training, refers victims to local service providers, and provides victim advocates statewide. For Fiscal Year 1999-2000, the program was allocated a total of 75 FTEs. Program advocates served 176,303 victims in Fiscal Year 1998-99.
- The **Office of Statewide Prosecution** investigates and prosecutes organized criminal activity that extends over two or more judicial circuits. Working with local, state, and federal law enforcement agencies, the office pursues the goal of interrupting organized criminal activity at its highest levels. Crimes investigated include kidnapping, narcotics violations, racketeering, and computer crimes. During Fiscal Year 1999-2000, this

office had 58 FTEs, 37 of which were attorney positions. In Fiscal Year 1998-99, the office filed 52 cases and successfully prosecuted 325 defendants.

Accomplishments

The Attorney General's Office has attained some noteworthy accomplishments.

- The office was a leader in the states' efforts to recover taxpayers' costs in providing medical treatment to smokers who developed cancer and other diseases from smoking. These efforts were key to Florida's 1997 case against tobacco companies from which the state is scheduled to receive \$13 billion.
- Since 1988, the Attorney General's Lemon Law Arbitration Program has secured \$187 million in cash refunds and vehicle replacements for 7,800 consumers.
- The Attorney General has been an advocate for crime victims. Services for victims include the Address Confidentiality Program, which helps domestic violence victims relocate away from their abusers; the Seniors vs. Crime Program, which is designed to reduce crimes against the elderly; and the Child Victim Rapid Response Program, which provides services to child victims in the public schools.
- In Fiscal Year 1998-99, the Office of Statewide Prosecution achieved convictions of 92% of all defendants prosecuted and obtained \$27 million in assessed fines, penalties, and restitution orders.

Program Funding

As shown in Exhibit 1, the Legislature funds the Department of Legal Affairs with a combination of general revenue and trust funds.

General revenue funds (\$32.6 million) account for 27% of the department's total funding for Fiscal Year 1999-2000 and support 450 positions. Trust fund appropriations are \$88.1 million and account for the remaining 73% of the department's total appropriation. The largest category of trust fund dollars (\$54.9 million) is for the Criminal Justice and Victim Support Services Program.

³ Tort cases are those in which the state has been accused of a wrongful act that has resulted in the injury of another.

Exhibit 1
Trust Funds Account for 73% of the Department's
Total Fiscal Year 1999-2000 Appropriation

Funding Source	Fiscal Year 1999-2000	FTE ¹
General Revenue	\$ 32,633,358	450.0
Trust Funds	88,184,203	569.5
Total	\$120,817,561	1,019.5

¹ FTE figure includes 121 positions for administration and 13 positions for the Elections Commission.

Source: Department of Legal Affairs.

Quick Facts

In response to a legislative request, we determined that

- the median salary of a department attorney is \$46,251, which ranks seventeenth out of 29 state agencies (see Appendix B);
- the department has a 9% attorney vacancy rate, which is the ninth highest vacancy rate among 29 state agencies (see Appendix C); and
- on January 20, 2000, department attorneys carried an average caseload of 123 cases, which ranged from 5 cases per attorney in the antitrust unit to 595 cases in Child Support Enforcement (see Appendix D).

Program Benefit and Placement

Centralizing the state's legal resources into the Department of Legal Affairs provides a uniform and cohesive source of legal expertise to state agencies. The placement of a variety of legal services within one department allows attorneys to specialize in particular areas of law across multiple state agencies. Department attorneys also serve as the state's primary litigators, distinguishing them from agency legal staff that perform ministerial work, such as rule making and contract review. The department has experienced trial lawyers to defend agencies that are sued. Thus, we concluded that the program benefits the state and should be retained in the Department of Legal Affairs.

Agency Performance

The department lacks a strong performance monitoring system. Its performance-based program budgeting (PB²) measures are limited ones that generally assess program outputs (workload) rather than program results, and its supplemental internal performance measures are not comprehensive. Available data indicate that the program has met some, but not all, of its PB² performance standards. However, judges and agencies are generally satisfied with the department's legal services and the outcomes of its court cases generally are favorable to the state.

The department does not maintain measures that assess program success

Agency performance accountability systems should include measures useful for budget accountability (Florida's PB² system) as well as supplemental internal performance measures. PB² measures should provide the Legislature with high-level information about the program's production or outputs and results or outcomes. Agencies should also maintain supplemental and more detailed internal measures that provide comprehensive information on all major program activities. Agency managers and the Legislature should be able to use these supplemental measures to track performance trends and identify underlying reasons why the PB² performance standards are or are not being met.

The department's PB² measures shown in Exhibits 2, 3, and 4 provide limited information on agency workload, but do not assess program results. The current PB² measures consist mostly of output measures that assess program activity levels, and include few outcome measures that evaluate program success.⁴ For example, the PB² measures focus on program activities such as opening and closing cases and the number of services provided to customers. Although these measures present useful information on the

⁴ The department stopped reporting data for 29 of its output and 18 of its outcome measures once these measures were dropped from the 1999-2000 General Appropriations Act.

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department's workload, they do not explain how well the department's programs are operating or whether they are having the desired results.

The department has not developed a comprehensive internal performance measurement system to supplement its limited PB² measures. Such measures would fill in the gaps in the department's PB² accountability measures and enable managers and the Legislature to track important outcomes such as customer satisfaction with services and the results of legal actions in which the department defends the state. The department should develop a stronger internal performance measurement system.

The agency's performance in meeting PB² standards was mixed

Despite the deficiencies of the department's performance measurement system, we were able to make limited conclusions about each program's performance using the PB² measures and other available data.

The **Civil Representation and Legal Services Program** met timeliness but not caseload standards. The Civil Representation and Legal Services Program includes four units: civil litigation, criminal defense, civil enforcement, and dispute resolution. Exhibit 2 lists the performance measures, standards, and actual performance of each unit.

Exhibit 2
The Civil Representation and Legal Services Program's Fiscal Year 1998-99
Performance-Based Budgeting Measures Report on Workload, Not Performance ¹

FY 1998-99 Measures	FY 1998-99 Performance Standards	FY 1998-99 Actual Performance	Met Standard?
Civil Litigation Defense for State Agencies			
<i>Outputs:</i> Cases opened	7,000	4,859	No
Cases closed	4,700	3,445	No
<i>Outcomes:</i> None			
Criminal Defense for State Agencies			
<i>Outputs:</i> Capital: briefs/state and federal responses/oral arguments	270	257	No
Non-Capital: briefs/state and federal responses/oral arguments	11,289	10,944	No
<i>Outcomes:</i> None			
Civil Enforcement			
<i>Outputs:</i> Number of cases closed - Antitrust	20	28	Yes
Number of cases closed - Economic Crime	375	504	Yes
Number of cases closed - Medicaid Fraud	625	462	No
Number of cases closed - Children's Legal Services (uncontested disposition orders entered)	700	1,136	Yes
Number of cases closed - Ethics	15	15	Yes
<i>Outcomes:</i> None			
Dispute Resolution			
<i>Outputs:</i> Opinions issued	255	211	No
Number/percent of disputes resolved through mediation	105/76%	99/75%	No
Cost per mediation	--	\$852	No
<i>Outcomes:</i> Average number of days for opinion responses	29	26.9	Yes
Percent of mediated cases resolved in three weeks or less	75%	69%	No
Percent of Lemon Law cases resolved in less than one year	99%	99%	Yes

¹ Exhibit 2 does not include 4 output and 10 outcome measures required by the Fiscal Year 1998-99 General Appropriations Act. The department stopped reporting these measures once the measures were no longer required by the Fiscal Year 1999-00 General Appropriations Act.

Source: 1998-99 General Appropriations Act and the department's 1999-00 Legislative Budget Request.

The department conducted a client satisfaction survey of state agencies in 1999 to measure the perceived quality of its civil litigation services. Of the 108 responses received, 83% rated department performance as good, very good, or excellent. Respondents were also generally satisfied with the quality of oral and written arguments provided by department lawyers and with case outcomes. However, the validity of these reported perceptions is suspect because client agency staff told OPPAGA they were reluctant to respond candidly to the department surveys due to a lack of anonymity.

The **Criminal Defense** unit met its PB² output performance standards.⁵ The unit sought to file 270 capital briefs, and came within 5% of the standard by filing 257 briefs. Similarly, it sought to file 11,289 non-capital briefs, and came within 3% by filing 10,944 briefs. The unit did not report performance outcome measures, nor did it track the extent to which it won or lost cases.

The **Civil Enforcement** unit exceeded its output standards in closing cases. The unit met its standards for opening antitrust, economic crime, children's legal services, and ethics cases during the year. However, the unit closed only 74% of the standard of 625 Medicaid fraud cases. A program manager asserted that the performance standard for this activity was unrealistically high. Although the unit was not required to report performance outcome measures, it made 133 arrests and recovered \$2.2 million from those guilty of Medicaid fraud.

The **Dispute Resolution** unit met its performance standard to resolve Lemon Law cases in less than one year, and it surpassed its timeliness goals for issuing legal opinions. The unit came close to meeting the standard of resolving 75% of all mediation cases within three weeks, as it resolved 69% of cases within this time period.

Although meeting the majority of its workload standards, the Victim Support Services Program fell short of its timeliness goals. The Victim Support

Services Program met most (7 of 10) of its PB² standards for program outputs. For example, the program issued more grants than anticipated, held more training sessions, and provided more information and referral services than called for by its legislative performance standards.

However, the program did not meet its outcome standard for providing timely payment to crime victims. As shown in Exhibit 3, the program took an average of 51 days to process payments for crime victims, compared to the performance standard of 22 days. Department staff asserted that the standard was unrealistic and should be changed to reflect staff capacity to process claims. The program also did not meet the expectation that 85% of counties that received motor vehicle theft grants would reduce the number of motor vehicle thefts to below their 1994 levels; only 68% of the counties met this crime reduction goal.

The Office of Statewide Prosecution maintains a high conviction rate and is highly regarded by law enforcement agencies. Although not meeting all of its performance standards, the Office of Statewide Prosecution showed several positive results (see Exhibit 4). The office achieved a conviction rate of 92%, which, although slightly below its conviction rate standard of 96%, nonetheless exceeded the national average conviction rate of 90%.

The program convicted 325 out of 353 defendants, which fell short of its PB² standard of convicting 625 defendants. However, the statewide prosecutor indicated that the standard was based upon Fiscal Year 1996-97 data during the peak of the Medicaid fraud initiative, when a large number of single defendant cases were filed. The statewide prosecutor has requested a revision to the standard.

The statewide prosecutor assesses client satisfaction on an annual basis by surveying law enforcement agencies that have worked with the office. The office's survey results show that law enforcement agencies generally are pleased with the attention the prosecutors devote to their cases, are satisfied with staff professionalism and work products, and believe the office operates in an efficient manner.

⁵ For purposes of this report, the department was considered to have met its standards when the difference between the standard and performance did not exceed 5%.

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Exhibit 3

The Criminal Justice and Victim Support Services Program's Fiscal Year 1998-99 Performance-Based Budgeting Measures Report on Workload, Not Performance ¹

Fiscal Year 1998-99 Measures		FY 1998-99 Performance Standards	FY 1998-99 Actual Performance	Met Standard?
Outputs:	Number of victim compensation claims eligibility determinations	7,950 ³	6,284	No
	Number of claims paid	7,000 ³	6,346	No
	Number of victim compensation final orders issued	170	180	Yes
	Number of appellate services provided	800	5,154	Yes
	Number of information and referral services provided	25,000	25,417	Yes
	Number of VOCA (Victims of Crime Act) grants funded ²	200	253	Yes
	Number of victims served through contract ²	100,000	176,303	Yes
	Number of training sessions held (victims/crime prevention)	33/30	33/36	Yes
	Number of sexual battery examination claims paid	5,200 ³	4,127	No
	Number of people attending training (victims/crime prevention)	1,368/3,550	1,436/4,047	Yes
Outcomes:	Average number of days from application to payment	22	51	No
	Percent of counties receiving motor vehicle theft grant funds that experienced a reduction in motor vehicle theft incidents below the 1994 levels	85%	68%	No

¹ Exhibit 3 does not include 16 output and 3 outcome measures required by the Fiscal Year 1998-99 General Appropriations Act. The department stopped reporting these measures once the measures were no longer required by the Fiscal Year 1999-00 General Appropriations Act.

² In a letter dated September 20, 1999, the Governor's Office approved adjustments to these two standards (after consultation with both the House and Senate Committees).

³ The performance standard for this measure was based on estimates of the number of victims in Florida.

Source: 1998-99 General Appropriations Act and the department's 1999-00 Legislative Budget Request.

Exhibit 4

The Office of Statewide Prosecution's Fiscal Year 1998-99 Performance-Based Budgeting Measures Report on Workload, Not Performance ¹

Fiscal Year 1998-99 Measures		FY 1998-99 Performance Standards	FY 1998-99 Actual Performance	Met Standard?
Outputs	Number of law enforcement agencies assisted	65	88	Yes
	Ratio of requests to number of intake prosecutors	--	342:6	--
	Investigations handled: ratio of investigations to number of prosecutors	--	584:33	--
	Total volume of final criminal cases handled (inclusive of prior years): ratio of total filed cases to total number of prosecutors	--	175:33	--
	Outcomes	Number of defendants convicted (of those who reached disposition)	625	325
Conviction rate per defendant		96%	92%	No

¹ Exhibit 4 does not include nine output and five outcome measures required by the Fiscal Year 1998-99 General Appropriations Act. The department stopped reporting these measures once the measures were no longer required by the Fiscal Year 1999-00 General Appropriations Act.

Source: 1998-99 General Appropriations Act and the department's 1999-00 Legislative Budget Request.

The department wins most of its court cases, but settlement agreements are not always monetarily favorable to the state

A critical element of performance not addressed in the department's current performance measures is the percentage of cases won and lost by the Attorney General. Our analysis of department data shows that the Attorney General wins the majority of

the cases heard by the court. As shown in Exhibit 5, the department "won" 151, or 79%, of the 190 cases heard by the court.

Working with the department, we defined a win as those cases where the verdict was less than 50% of the difference between the state's highest offer and the opposing counsel's lowest demand. For example, the eminent domain section represents the state in various land acquisition projects,

such as acquiring private land for public roads. In one case, a property owner wanted \$1.5 million for his land, but the Department of Transportation (DOT) offered \$212,000. The court ruled that DOT would pay the property owner \$406,000. The department defined this case as a "win" because the state paid less than 50% of the difference between the state's offer and the property owner's demand.

The department's performance in reaching settlements favorable to the state is mixed. Although any settlement can be a "win" under certain circumstances, for purposes of this report, we defined a settlement as monetarily favorable to the state, i.e., a win, when the settlement was less than 50% of the difference between the state's highest offer and the opposing counsel's lowest demand. Tort, employment litigation, economic crimes, Medicaid fraud, and statewide prosecution have all been relatively successful in reaching settlement agreements favorable to the state. However, the eminent domain, civil rights, and tax units have not been as successful.

For eminent domain, the state won 57% of its court cases and reached out-of-court case settlements that were favorable to the state 61% of the time. These case outcomes are less favorable than those reached by some of the other units shown in Exhibit 5. A contributing factor is that the Department of Transportation encourages department attorneys to reach settlements with property owners to shorten delays in starting road construction projects. Settling these cases more quickly may cost the state more in settlement agreements but may avoid costs associated with construction delays.⁶

Although the civil rights unit won 90% of its court cases, it reached favorable out-of-court settlements only 45% of the time. The director of this unit said that favorable settlements were not reached because in many of these cases the state had committed civil rights violations and restitution had to be made.

⁶ A recent OPPAGA study shows that Florida pays more to landowners than any other state when obtaining land that the Department of Transportation needs to build or expand roads. This may actually encourage landowners to litigate instead of settling. In 1997-98, Florida paid \$63.5 million in landowner eminent domain fees and \$18.8 million for business damages. The next closest state paying business damages was Georgia, which paid \$1.2 million. The study shows how Florida law may contribute to these high costs and recommends a balance between property and business owner protection and the state's eminent domain rights. See *A Justification Review of the Department of Transportation Right-of-Way Acquisition Program*, OPPAGA [Report No. 99-02](#), August 1999.

Exhibit 5
The Department of Legal Affairs Generally Wins Trials,
but Settlements Are Not Always Monetarily Favorable to the State¹

Case Disposition	Tort	Employment Litigation	Eminent Domain	Civil Rights	Tax	Corrections Litigation	Economic Crimes ²	Medicaid Fraud	Statewide Prosecution	Total
Court cases won	6	12	8	9	80	7	21	0	8	151
Court cases lost	0	1	6	1	30	0	1	0	0	39
Settlements won	25	17	198	5	36	0	45	33	40	399
Settlements lost	6	0	125	6	58	0	0	0	0	195
Cases dismissed	49	8	55	27	80	610	7	0	0	836
Total Number of Cases	86	38	392	48	284	617	74	33	48	1,620
Average Days Per Case	729	1,093³	869	549	400	467	445	612	474	

¹ A win was defined as those cases where the verdict was less than 50% of the difference between the state's highest offer and the opposing counsel's lowest demand.

² This unit processed considerably more cases than shown here. In response to fraudulent activity it uncovered, staff issued 224 cease and desist letters, obtained 70 assurances of voluntary compliance, and referred 11 cases to other agencies, some of which were for civil or criminal prosecution.

³ Department officials assert that in defense cases, it is in the best interest of the state to extend a case as long as possible. Source: OPPAGA analysis of Attorney General case outcome data.

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The tax unit won its court cases 73% of the time, but reached favorable out-of-court settlements only 38% of the time. A department official said that in negotiating with opposing counsel, it was customary for the state to drop the 25% tax penalty already assessed. By dropping the penalty, the state usually collected less than 50% of the difference between opposing counsel's lowest tax offer and the state's highest demand. Even in unfavorable settlements, the state is able to collect tax revenues without having to spend considerable resources going to trial.

As for dismissals, Exhibit 5 shows that selected legal units within the department have been particularly successful in getting cases dismissed for lack of merit. Such dismissals reduce the state's litigation costs. Slightly more than half of all civil rights and tort cases filed against the state have been dismissed. Ninety-nine percent of all inmate lawsuits are dismissed, which while tending to be frivolous are still burdensome and require due professional care.

Judges are generally satisfied with department work, but agencies complain about a lack of responsiveness

Our interviews with 11 appellate and chief circuit judges found that generally they were positive about the work done by the Attorney General lawyers. Most judges expressed satisfaction with the quality of attorneys' oral and written arguments, their responsiveness to judicial orders, and their ability to argue effectively in court. When asked to grade department attorneys, judges gave them an A-

Our interviews with state agencies found that they generally were satisfied with department attorneys and gave them an average grade of B. State agency staff indicated that they gave this lower grade because the department was not always responsive and sometimes failed to provide status briefings as frequently as needed.

Accountability System _____

Although performance measures are one tool the Legislature can use to hold agencies accountable, agencies are also required to have internal audit units that conduct internal performance and financial reviews to ensure accountability for the use of public resources. The department's Office of the Inspector General does not conduct oversight activities required by law, and the department's billing practices prevent the Legislature from knowing the true costs of their legal services.

The Office of the Inspector General's limited oversight has diminished accountability within the department

Florida law requires each agency to have an inspector general who coordinates activities that promote accountability in government. Toward that end, Florida law requires the inspector general to conduct internal financial, performance, and electronic data processing audits of the department. These audits help prevent fraud and provide decision-makers with information on agency performance.

The department's inspector general's office has not conducted internal performance audits required by law. The inspector general reported that the office has not conducted any financial, compliance, electronic data processing, or performance audits over the last three years. Instead, in response to agency leadership's priorities, the office's work has focused on investigating internal complaints related to personnel issues. This is a longstanding problem; our findings are consistent with a 1997 Auditor General report that concluded that this office did not maintain an appropriate balance of work. ⁷

⁷ *Quality Control Review of the Office of the Inspector General/Internal Audit Function of the Florida Department of Legal Affairs for the Period January 1, 1996, Through December 31, 1996.* Auditor General Report No. 13018, June 17, 1997.

The lack of internal auditing limits the department's ability to reasonably inform taxpayers about the effectiveness and efficiency of its operations, the reliability of its financial operations, and program compliance with laws and regulations. These audits are particularly important given the department's lack of strong PB² and internal performance monitoring systems.

Department billing practices obscure the true costs of its legal services

Department billing practices obfuscate the real cost of attorney general legal services in two ways. First, the department does not charge selected agencies for legal services. Second, when the department does charge for legal services, it does not charge its full costs. The department uses revenues from billable legal work to offset these shortfalls. However, there is limited accountability for the revenues generated by this billable work.

The department does not bill certain agencies for legal services. Section 287.059(3), F.S., authorizes the Department of Legal Affairs to provide legal representation to government agencies on a case-by-case basis. The department bills agencies for services, including reasonable expenses, as a private sector law firm would. However, unlike the private law firms that bill all but pro bono clients for legal services provided, the department historically has not billed the Legislature, the Governor's Office, the judiciary, cabinet agencies, law enforcement entities, and the Elections Commission for some of these services. Department staff said that the decision not to charge fees is influenced by such factors as historical practice and agency resistance to paying fees for certain cases.

In Fiscal Year 1998-99, the department provided the equivalent of \$515,946, or 13,923 unbilled attorney and paralegal hours. At the same time the department declined requests for legal services they could have otherwise accepted. As a result, state agencies had to hire private attorneys at a higher cost to taxpayers.

The department significantly undercharges for its legal services when billing agencies. A second weakness in the department's billing practices is that when it does bill agencies for legal services, it does not charge the full cost. The department's attorney billing rates are 30% lower than its actual costs. The department states that its current cost to provide legal services is \$52 an hour, but it charges \$40 an hour. An agency official said the department endorses this lower rate to discourage private sector competition for the work. If the department had charged its actual costs of providing legal services in Fiscal Year 1998-99, it would have recovered an additional \$263,000.

There is limited accountability for revenues generated from billable legal work. The Attorney General has considerable discretion over the funds generated from state agency billing. For example, department attorneys provide legal services to state agencies on a case-by-case basis. Attorneys bill for their time even though their salaries are already fully funded by general revenue. Instead of using these revenues to reimburse its salaries, the department deposits the revenues into the Legal Services Trust Fund. In Fiscal Year 1998-99, the department deposited \$564,130 in such receipts into the trust fund. The Attorney General uses these funds at his discretion to offset other legal costs, such as the cost of providing free legal services to cabinet agencies. This practice reduces legislative oversight of these funds.

Conclusions and Recommendations

To ensure accountability to legislators and taxpayers, we recommend that the department take the actions described below.

- Develop supplemental measures for each PB² program that assess performance of each of its units. These should include output and outcome measures, such as the "number of cases closed (per unit)" and the "percentage of

client agencies expressing satisfaction with civil defense services." Appendix E provides a list of suggested performance measures. The appendix footnotes provide instructions for how these measures should be maintained. These measures should be validated by the inspector general and used by department managers internally to monitor performance. The department should also make these supplemental measures available to the Legislature upon request to assist in the Legislature's oversight efforts.

- Collect performance data on its litigation efforts that include such case outcomes as wins and losses, amount of money paid out and recovered, and statutory challenges upheld.
- Ensure that client satisfaction survey responses are anonymous.
- Require the Office of the Inspector General to conduct financial, performance, and electronic data processing audits of the department as required by law.
- Assess the actual per-hour costs of its legal staff when establishing billing fees and charge agencies the actual cost for services.
- Track and report the costs of providing services to all entities, including those that it exempts from billing, which would provide more accurate accounting for the costs of its services.
- Report to the Legislature annually the total fees generated from billable hours and how the funds were spent.

We recommend that the Legislature take the actions described below.

- Require the department to bill every governmental entity for legal services with the exception of
 - the Speaker of the House of Representatives;
 - the President of the Senate;
 - the Governor;
 - the Florida Cabinet and Governor acting as an entity; and
 - the Judiciary.

Response from the Office of the Attorney General

May 15, 2000

John W. Turcotte, Director
Office of Program Policy Analysis
and Government Accountability
111 West Madison Street, Room 312
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

Thank you for the draft justification review report submitted on April 27, 2000.

The Department agrees that its performance-based program budgeting standards can always be improved. The Department further agrees that client satisfaction surveys should be anonymous; we will immediately implement such a policy. The Department also agrees, notwithstanding limited resources and severe recruiting difficulties, that its inspector general's office should conduct more financial and performance audits in addition to its investigations, hotline complaints, single-issue audits and data validation activities.

The Department respectfully points out that it has little or no control over the number of lawsuits filed against state agencies and, therefore, has no reasonable remedy if the number of cases opened falls short of a projected "standard". With respect to settlement agreements, we submit that any empirical formula to measure settlement "wins" will be fraught with problems because of the nature of settlement negotiations. In some cases, our "clients" accept or propose settlement terms against our advice.

While we may not agree with all of the findings and conclusions in your preliminary report, the Department appreciates the arms-length oversight provided by OPPAGA and its staff.

Sincerely,

/s/
Richard E. Doran
Deputy Attorney General

Appendix A

Statutory Requirements for Program Evaluation and Justification Review

Section 11.513(3), *F.S.*, provides that OPPAGA Program Evaluation and Justification Reviews shall address nine issue areas. Our conclusions on these issues as they relate to the Department of Legal Affairs are summarized in Table A-1.

Table A-1
Summary of the Program Evaluation and Justification Review of the Department of Legal Affairs

Issue	OPPAGA Conclusions
The identifiable cost of the program	The department was appropriated \$121 million and was authorized 1,019.5 positions for Fiscal Year 1999-2000. General revenue funds account for 27% of the department's total funding for Fiscal Year 1999-2000 and support 450 positions. Trust fund appropriations were \$88 million and account for the remaining 73% of the department's total appropriation.
The specific purpose of the program, as well as the specific public benefit derived therefrom	The Department of Legal Affairs, also known as the Office of the Attorney General, provides civil representation and legal services on behalf of the state. It also assists crime victims and law enforcement agencies and, through the Office of Statewide Prosecution, investigates and prosecutes criminal offenses that extend across multiple jurisdictions.
Progress towards achieving the outputs and outcomes associated with the program	The agency's performance in meeting PB ² standards was mixed. The Civil Representation and Public Legal Services Program met timeliness but not caseload standards. Although meeting the majority of its workload standards, the Victim Support Services Program fell short of its timeliness standards. The Office of Statewide Prosecution maintains a high conviction rate and is highly regarded by law enforcement agencies. Additional performance information showed that judges and agencies are generally satisfied with the department's legal services and the outcomes of its court cases are generally favorable to the state.
An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. 216.011, <i>F.S.</i> , associated with the program	The department indicated that a lack of baseline performance data prevented them from setting realistic performance standards. As a result, actual performance often fell far short of the standard. Staff also indicated that they were unable to report performance data due to a lack of an established performance reporting system. In addition, staff reported that some standards were artificially high because they were based on a past year's performance that was atypical.
Alternative courses of action that would result in administering the program more efficiently and effectively	<p>To ensure accountability to legislators and taxpayers, we recommend that the department take the actions described below.</p> <ul style="list-style-type: none"> • Develop supplemental measures for each PB² program that assess performance of each of its units, such as "number of cases closed (per unit)" and "percentage of client agencies expressing satisfaction with civil defense services." These measures should be used internally to monitor performance and serve as a justification for increased funding and staffing requests. • Collect performance data on its litigation efforts that include such case outcomes as wins and losses, amount of money paid out and recovered, and statutory challenges upheld. • Ensure that client satisfaction survey responses are anonymous. • Require the Office of the Inspector General to conduct financial, performance, and electronic data processing audits of the department as required by law.

Justification Review

Issue	OPPAGA Conclusions
	<ul style="list-style-type: none"> • Assess the actual per-hour costs of its legal staff when establishing billing fees and charge agencies the actual cost for services. • Track and report the costs of providing services to all entities, including those that it exempts from billing, which would provide more accurate accounting for the costs of its services. • Report to the Legislature annually the total fees generated from billable hours and how the funds were spent. <p>We recommend that the Legislature take the actions described below.</p> <ul style="list-style-type: none"> • Require the department to bill every governmental entity for legal services with the exception of <ul style="list-style-type: none"> • the Speaker of the House of Representatives; • the President of the Senate; • the Florida Cabinet and Governor acting as an entity; and • the Judiciary.
<p>The consequences of discontinuing the program</p>	<p>In the absence of the Department of Legal Affairs, the state would not have a central source of legal expertise and litigators to represent the state when the state is sued. Centralizing the state's legal resources into one department provides a uniform and cohesive source of legal expertise to state agencies. The placement of a variety of legal services within one department allows attorneys to become specialized in particular areas of law across multiple state agencies. Department attorneys also serve as the state's primary litigators, distinguishing them from agency legal staff that perform agency-related legal work, such as rule making and contract review. The department has experienced trial lawyers to defend agencies that are sued.</p>
<p>Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part</p>	<p>This program provides beneficial legal services to the state of Florida. This review identifies several alternatives for improving program accountability.</p>
<p>Whether the information reported pursuant to s. 216.03(5), <i>F.S.</i>, has relevance and utility for the evaluation of the program</p>	<p>The department's performance-based program budgeting (PB²) measures are limited and generally assess program outputs (workload) rather than program results, and its supplemental internal performance measures are not comprehensive. Available data indicate that the program has met some, but not all, of its performance standards.</p>
<p>Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports</p>	<p>Generally, our review found controls were in place to ensure accuracy of the performance data. We reviewed their data validation procedures and found the agency had staff assigned to review data for accuracy and had a strong management information system (Lotus Notes) in place to help ensure accuracy.</p>

Appendix B
The Department Ranks 17th Out of 29 State Agencies in Median Attorney Salary

Agency	Median (Midpoint)	Mean	Minimum	Maximum	Attorney Positions ¹
Department of the Lottery	\$77,336.88	\$77,336.88	\$77,336.88	\$77,336.88	1
Executive Office of the Governor	62,709.48	62,604.75	50,000.04	75,000.00	4
Department of Education	61,269.60	60,126.02	46,142.40	72,395.64	5
Department of Transportation	59,223.84	59,094.42	32,604.00	73,711.04	74
Department of Management Services	54,961.66	52,283.48	23,999.82	74,741.16	15
Department of Health	54,931.50	52,718.12	27,999.92	73,116.94	13
Department of Corrections	54,430.09	54,529.19	31,500.04	75,627.76	18
Department of Agriculture and Consumer Services	53,548.04	54,063.75	26,250.12	69,328.74	8
Department of Elder Affairs	53,020.92	53,569.72	53,020.92	54,667.32	3
Florida Department of Law Enforcement	52,020.28	54,049.04	43,730.44	64,867.14	13
Department of Environmental Protection	50,776.98	50,724.17	27,999.96	71,310.12	50
Department of State	50,000.04	49,620.29	39,056.28	57,156.12	7
Fish and Wildlife Conservation Commission	49,400.00	49,400.00	48,400.04	50,399.96	2
Office of Statewide Prosecutor	49,158.85	51,104.61	39,846.82	70,946.98	20
Department of Revenue	48,763.62	50,092.76	34,831.20	68,105.28	36
Department of Highway Safety and Motor Vehicles	46,269.84	50,089.04	33,999.96	68,156.76	8
Department of Legal Affairs	46,251.14	47,777.15	25,000.04	90,000.04	293
Department of Community Affairs	46,170.24	48,229.39	28,594.32	70,308.72	13
Department of Insurance	45,867.60	46,705.81	24,999.96	71,438.76	39
Department of Business and Professional Regulation	44,628.09	45,319.99	27,000.22	69,052.88	48
Parole Commission	44,235.88	43,412.98	38,500.02	46,680.14	4
Department of Labor and Employment Security	43,615.68	44,146.83	22,799.88	69,999.96	31
Judicial	43,167.60	49,407.76	21,600.00	127,018.92	2,735
Agency for Health Care Administration	43,145.44	44,376.23	28,000.18	67,039.96	42
Department of Children and Families	42,092.83	43,754.24	25,000.04	71,884.02	164
Department of Banking and Finance	40,824.30	42,961.32	26,000.04	64,996.44	26
State Courts	40,535.16	44,346.12	32,287.20	70,457.16	255
Department of Juvenile Justice	38,700.22	42,082.59	32,999.98	60,000.20	26
Public Service Commission	38,499.96	40,984.91	27,000.00	64,706.16	21

¹ Excludes attorneys in management positions.

Source: State Automated Management Accounting System (SAMAS) run on January 14, 2000.

Appendix C
Department of Legal Affairs Had a 9% Vacancy Rate in Attorney Positions

Agency	Attorney Positions ¹	Percent Vacant
Department of Agriculture and Consumer Services	16	43.8%
Fish and Wildlife Conservation Commission	4	25.0%
Department of Elder Affairs	5	20.0%
Department of Labor and Employment Security	43	18.6%
Department of Business and Professional Regulation	59	15.3%
Executive Office of the Governor	7	14.3%
Public Service Commission	27	11.1%
Department of Children and Families	195	10.3%
Department of Legal Affairs	356	9.0%
Department of Banking and Finance	29	6.9%
Department of Juvenile Justice	29	6.9%
Department of Community Affairs	15	6.7%
Florida Department of Law Enforcement	15	6.7%
Office of Statewide Prosecutor	34	5.9%
Department of Environmental Protection	59	5.1%
Department of Corrections	20	5.0%
Department of Management Services	20	5.0%
Department of Revenue	40	5.0%
State Courts	267	4.5%
Agency for Health Care Administration	46	4.3%
Department of Insurance	50	4.0%
Department of Health	26	3.8%
Judicial	2,894	3.1%
Department of Transportation	86	2.3%

¹ Excludes attorneys in management positions.

Source: State Automated Management Accounting System (SAMAS) run on January 14, 2000.

Appendix D
Department Attorneys Worked Varying Caseloads

Section	Number of Attorneys Per Section	Opened Fiscal Year 1998-99 ¹	Active Cases Per Section	Average Attorney Caseload ²
Antitrust	8	19	36	5
Economic Crimes /Tallahassee	27	481	340	13
Civil Rights	6	181	85	14
Ethics	2	13	34	17
Employment Litigation	7	67	131	19
State Programs	15	318	446	30
Capital Collateral/Tampa	13	250	403	31
Tort	6	131	242	40
Appellate	3	185	126	42
Eminent Domain	15	424	782	52
Administrative Law	17	1,690	953	56
Tax	11	475	756	69
Medicaid	7	618	566	81
Civil-Tampa	8	417	574	72
Civil-Broward	13	424	863	66
Corrections	5	702	568	114
Criminal Appeals /Tallahassee	103	15,825	13,712	133
Children's Legal	39	1,891	9,207	236
Child Support	14	17,927	8,327	595
Average Caseload				123

¹ Active cases as of January 2, 2000, represent a snapshot of those cases attorneys were actively involved with as of that day. Cases opened during the fiscal year reflect cases that attorneys have opened, worked on, and may have already closed. Both columns are presented to show as inclusive a measure of attorney workload as possible.

² Our survey of private law firms, the Florida Bar Association, and the American Bar Association found that there were generally no standards available on the types of caseloads that should be carried by attorneys to demonstrate sufficiency of workload.

Source: Department of Legal Affairs timesheet data and case log records.

Appendix E Suggested Department of Legal Affairs Performance Measures

Civil Representation and Legal Services

Civil Litigation Defense¹

Outputs: Cases closed
Cost per closed case

Outcomes: Percentage of client agencies satisfied with civil defense services
Percentage of closed cases won by the state of Florida

Criminal Appeals²

Outputs: Cases closed
Cost per closed case

Outcomes: Percentage of client agencies satisfied with civil defense services
Percentage of closed cases won by the state of Florida

Civil Enforcement³

Outputs: Cases closed
Cost per closed case

Outcomes: Percentage of closed cases won by the state of Florida

Dispute Resolution

Outputs: Number of opinions, mediated disputes, and Lemon Law cases
Cost per mediation

Outcomes: Average number of days for opinion responses
Percentage of clients satisfied with dispute resolution services

Criminal Justice and Victim Support Services Program

Outputs: Number of victims served

Outcomes: Percentage of victim service providers satisfied

Office of Statewide Prosecution

Outputs: Number of investigations
Number of cases filed

Outcomes: Conviction rate
Percentage of law enforcement agencies satisfied with legal services

¹ Performance data should be compiled individually for children's legal services, eminent domain, administrative law, child support enforcement, state programs, tax, tort, ethics, and all other branches within civil litigation. For reporting performance measures to the Legislature, data from each of the branches should be aggregated to report the total combined number of cases closed, the total combined cost per closed case, and total client agency satisfaction.

² For reporting performance measures to the Legislature, data from capital appeals and capital collateral should be aggregated to report the total combined cases closed, the cost of the closed cases, total client agency satisfaction, and the percentage of cases won by the state of Florida.

³ Performance data should be compiled individually for the following units: antitrust, Medicaid and consumer fraud. For reporting performance measures to the Legislature, data from each of these units should be aggregated to report the total combined cases closed, the cost of the closed cases, and the percentage of closed cases won by the state of Florida.

OPPAGA provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision making, to ensure government accountability, and to recommend the best use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). **The Florida Monitor:** <http://www.oppaga.state.fl.us/>

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