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ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 3, 2022

The Honorable Karen Umberger, Chairman
Fiscal Committee of the General Court
State House
Concord, New Hampshire 03301

His Excellency, Governor Christopher T. Sununu
And the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

1. Pursuant to RSA 14:30-a, VI, authorize the Department of Justice to accept and expend, \$33,824, for State Fiscal Year 2022, and \$115,738, for State Fiscal Year 2023, for the purpose of creating class 059 for a temporary Assistant Attorney General dedicated to supporting the Public Utilities Commission upon approvals of the Fiscal Committee of the General Court and Governor and Executive Council through June 30, 2023. 100% Transfers From Other Agencies.

State Fiscal Year 2022 Funds are to be budgeted in account #02-20-20-201010-2620, Department of Justice, Civil Law Bureau as follows:

Fiscal Year 2022 Accept and Expend; Civil Law Bureau

Class & Object	Class Title	FY 2022 Current Adjusted Authorized	FY 2022 Requested Action	FY 2022 Revised Adjusted Authorized
Expenditures				
010-500100	PERSONAL SERVICES PERM CLASS	\$414,132	\$0	\$414,132
011-500126	PERSONAL SERVICES UNCLASSIFI	\$0	\$0	\$0
012-500128	PERSONAL SERVICES UNCLASSIFI	\$0	\$0	\$0
013-500132	PERSONAL SERVICES UNCLASSIFI	\$1,990,924	\$0	\$1,990,924
014-500134	PERSONAL SERVICES UNCLASSIFI	\$88,687	\$0	\$88,687
015-500137	PERSONAL SERVICES UNCLASSIFI	\$0	\$0	\$0
017-500147	FT EMPLOYEES SPECIAL PAYMENT	\$137,250	\$0	\$137,250

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018-500106	OVERTIME	\$1,500	\$0	\$1,500
020-500200	CURRENT EXPENSES	\$6,100	\$0	\$6,100
022-500255	RENTS-LEASES OTHER THAN STAT	\$3,233	\$0	\$3,233
024-500225	MAINT OTHER THAN BUILD-GRN	\$0	\$0	\$0
026-500251	ORGANIZATIONAL DUES	\$0	\$0	\$0
027-582703	TRANSFERS TO DOIT	\$178,609	\$0	\$178,609
030-500301	EQUIPMENT NEW REPLACEMENT	\$8,389	\$0	\$8,389
037-500174	TECHNOLOGY-HARDWARE	\$4,450	\$0	\$4,450
038-500175	TECHNOLOGY-SOFTWARE	\$3,400	\$0	\$3,400
039-500188	TELECOMMUNICATIONS	\$20,400	\$0	\$20,400
040-501587	INDIRECT COSTS	\$10,783	\$0	\$10,783
042-500620	ADDITIONAL FRINGE BENEFITS	\$0	\$0	\$0
049-584995	TRANSFER TO OTHER STATE AGEN	\$0	\$0	\$0
057-500531	BOOKS PERIODICALS SUBSCRIPTI	\$500	\$0	\$500
059-500117	SALARY TEMPORARY EMPLOYEES	\$0	\$23,072	\$23,072
060-500601	BENEFITS	\$1,197,999	\$10,752	\$1,208,751
066-500543	EMPLOYEE TRAINING	\$3,200	\$0	\$3,200
070-500704	IN STATE TRAVEL REIMBURSEMEN	\$3,725	\$0	\$3,725
073-500580	GRANTS NON FEDERAL	\$0	\$0	\$0
080-500713	OUT OF STATE TRAVEL REIMB	\$2,125	\$0	\$2,125
089-501543	TRANSFER TO DAS MAINT FUND.	\$10,162	\$0	\$10,162
211-500757	CATASTROPHIC CASUALTY INS	\$2,989	\$0	\$2,989
233-500769	LITIGATION EXPENSE	\$0	\$0	\$0
Total:		\$4,088,557	\$33,824	\$4,122,381
Revenue				
001-4849xx	TRANSFERS FROM OTHER AGENCIES	\$490,242	\$0	\$490,242
001-484955	TRANSFERS FROM OTHER AGENCIES	\$0	\$33,824	\$33,824
009-407079	AGENCY INCOME	\$115,930	\$0	\$115,930
00S-000010	GENERAL FUNDS	\$3,482,385	\$0	\$3,482,385
Total:		\$4,088,557	\$33,824	\$4,122,381

State Fiscal Year 2023 Funds are to be budgeted in account #02-20-20-201010-2620,
Department of Justice, Civil Law Bureau as follows:

Fiscal Year 2023 Accept and Expend; Civil Law Bureau

Class & Object	Class Title	FY 2023 Current Adjusted Authorized	FY 2023 Requested Action	FY 2023 Revised Adjusted Authorized
Expenditures				
010-500100	PERSONAL SERVICES PERM CLASS	\$443,932	\$0	\$443,932
011-500126	PERSONAL SERVICES UNCLASSIFI	\$0	\$0	\$0
012-500128	PERSONAL SERVICES UNCLASSIFI	\$0	\$0	\$0
013-500132	PERSONAL SERVICES UNCLASSIFI	\$2,074,273	\$0	\$2,074,273
014-500134	PERSONAL SERVICES UNCLASSIFI	\$92,386	\$0	\$92,386

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015-500137	PERSONAL SERVICES UNCLASSIFI	\$0	\$0	\$0
017-500147	FT EMPLOYEES SPECIAL PAYMENT	\$137,250	\$0	\$137,250
018-500106	OVERTIME	\$1,500	\$0	\$1,500
020-500200	CURRENT EXPENSES	\$10,702	\$0	\$10,702
022-500255	RENTS-LEASES OTHER THAN STAT	\$2,650	\$0	\$2,650
024-500225	MAINT OTHER THAN BUILD-GRN	\$0	\$0	\$0
026-500251	ORGANIZATIONAL DUES	\$0	\$0	\$0
027-582703	TRANSFERS TO DOIT	\$131,949	\$0	\$131,949
030-500301	EQUIPMENT NEW REPLACEMENT	\$3,000	\$0	\$3,000
037-500174	TECHNOLOGY-HARDWARE	\$1,450	\$0	\$1,450
038-500175	TECHNOLOGY-SOFTWARE	\$1,000	\$0	\$1,000
039-500188	TELECOMMUNICATIONS	\$20,400	\$0	\$20,400
040-501587	INDIRECT COSTS	\$10,783	\$0	\$10,783
042-500620	ADDITIONAL FRINGE BENEFITS	\$0	\$0	\$0
049-584995	TRANSFER TO OTHER STATE AGEN	\$0	\$0	\$0
057-500531	BOOKS PERIODICALS SUBSCRIPTI	\$500	\$0	\$500
059-500117	SALARY TEMPORARY EMPLOYEES	\$0	\$78,921	\$78,921
060-500601	BENEFITS	\$1,257,259	\$36,817	\$1,294,076
066-500543	EMPLOYEE TRAINING	\$1,200	\$0	\$1,200
070-500704	IN STATE TRAVEL REIMBURSEMEN	\$3,780	\$0	\$3,780
073-500580	GRANTS NON FEDERAL	\$0	\$0	\$0
080-500713	OUT OF STATE TRAVEL REIMB	\$2,180	\$0	\$2,180
089-501543	TRANSFER TO DAS MAINT FUND.	\$10,162	\$0	\$10,162
211-500757	CATASTROPHIC CASUALTY INS	\$3,275	\$0	\$3,275
233-500769	LITIGATION EXPENSE	\$0	\$0	\$0
	Total:	\$4,209,631	\$115,738	\$4,325,369
Revenue				
001-4849xx	TRANSFERS FROM OTHER AGENCIES	\$514,169	\$0	\$514,169
001-484955	TRANSFERS FROM OTHER AGENCIES	\$0	\$115,738	\$115,738
009-407079	AGENCY INCOME	\$111,739	\$0	\$111,739
00S-000010	GENERAL FUNDS	\$3,583,723	\$0	\$3,583,723
	Total:	\$4,209,631	\$115,738	\$4,325,369

- Pursuant to RSA 124:15, and contingent upon approval of Requested Action #1, authorize the Department of Justice, Civil Law Bureau to establish one (1) class 059 temporary full time Assistant Attorney General, position #9U697, dedicated to supporting the Public Utilities Commission upon approvals of the Fiscal Committee of the General Court and Governor and Executive Council through June 30, 2023. 100% Transfers From Other Agencies.

EXPLANATION

The Department of Justice is requesting to accept and expend funds, from the Public Utilities Commission, to establish a temporary Assistant Attorney General, position #9U697,

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Salary Temporary Employees. This accept and expend request will also adjust benefits, in class 060, for the position.

The Department of Justice will hire an attorney dedicated to providing legal and administrative support for all functions pertaining to regulating utilities. This position shall perform tasks as directed by the Chair of the Public Utilities Commission.

These funds were budgeted but not in the proper accounting unit, nor in the needed salary and benefit classes. The Department will work with the Department of Administrative Services to close out the original budgeted FY22 and FY23 appropriations, pursuant to Ch. 90 L 21 1.08 (I).

The funds are to be budgeted as follows:

The funds in Class 059, Salary-Temporary Employees, will be used to pay the temporary full time position salary.

The funds in Class 060, Benefits, will be used to pay the temporary full time position benefits.

The following information is provided in accordance with the comptroller's instructional memorandum dated September 21, 1981:

1. *List of personnel involved.* One (1) new full time-temporary position titled Assistant Attorney General.
2. *Nature, Need and Duration.* This position is needed to provide dedicated legal and administrative support for all functions pertaining to regulating utilities. This position shall perform tasks as directed by the Chair of the Public Utilities Commission.
3. *Relationship to existing agency programs.* This position will be placed in the Civil Law Bureau to provide counsel and litigation support when needed.
4. *Has a similar program been requested of the legislature and denied?* No.
5. *Why wasn't funding included in the agency's budget request?* These funds were budgeted but not in the proper accounting unit, nor in the needed salary and benefit classes. The Department will work with the Department of Administrative Services to close out the original budgeted FY22 and FY23 appropriations, pursuant to Ch. 90 L 21 1.08 (I).
6. *Can portions of the grant funds be utilized?* This is not a grant funded position, funds will come from the Public Utilities Commission.
7. *Estimate the funds required to continue this position?* It will cost approximately \$149,562 to continue the position through June 30, 2023.

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Please let me know if you have any questions concerning this request. Your consideration is greatly appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. M. Formella". The signature is fluid and cursive, with a large initial "J" and "M".

John M. Formella
Attorney General

#3417649

State of New Hampshire

Interagency Memorandum of Understanding

between the

New Hampshire Public Utilities Commission

and the

New Hampshire Department of Justice

Whereas, the New Hampshire Public Utilities Commission [*PUC*] is a duly constituted agency of the State of New Hampshire;

Whereas, the New Hampshire Department of Justice [*DOJ*] is a duly constituted agency of the State of New Hampshire;

Whereas, pursuant to Chapter 90 of the New Hampshire Laws of 2021 (2022 – 2023 Biennial State Budget), the *PUC* received an appropriation to fund an attorney position in the *DOJ*;

Whereas, the attorney position is to be funded through monies raised from the Utilities Assessment established in RSA 363-A and the individual hired into the position shall work to support the *PUC* in its adjudicative and administrative functions regulating utilities;

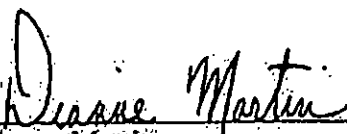
Whereas, the hiring of an attorney to support the *PUC* does not alter the *DOJ*'s continuing obligation to represent and to provide legal services to the *PUC* as a state agency consistent with RSA 7:8; and

Whereas, the attorney hired by the *DOJ*, shall be an employee of the *DOJ* and perform work as assigned by the Attorney General. In the attorney's work to support the *PUC* he or she shall perform tasks as directed by the Chair of the Commission. The Chair of the Commission shall be the attorney's primary point of contact.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding to their mutual benefit, the benefit of the State, and in furtherance of constitutional or statutory authority and objectives.

1. The New Hampshire Public Utilities Commission [*PUC*] agrees to perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.
2. The New Hampshire Department of Justice [*DOJ*] agrees to perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

3. The method of payment and payment amount for the above-referenced services, if any is required, is described in the attached MOU Exhibit B; such exhibit being hereby incorporated by reference.
4. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
5. The Memorandum of Understanding is effective until July 1, 2023, or the effective date of the next biennial budget, whichever is later, unless amended to continue thereafter.
6. This Memorandum of Understanding may be amended by an instrument in writing signed by the Parties.
7. The Parties agree that the obligations, agreements and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
8. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
9. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
10. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
11. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
12. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.
13. For the New Hampshire Public Utilities Commission



Dianne Martin
Chairwoman

10/26/2021
Date

14. For the New Hampshire Department of Justice



John M. Formella
Attorney General

10/26/21
Date

Exhibit A

to the Interagency Memorandum of Understanding between the New Hampshire Public Utilities Commission (PUC), and the New Hampshire Department of Justice (DOJ).

PUC and *DOJ* agree to the following:

1. *DOJ* and the Chair of the *PUC* will jointly agree upon the attorney to provide services to the *PUC* under this MOU. The *PUC* Chair will participate in the interview process. *PUC* shall pay for costs associated with advertising for the position subject to preapproval by *PUC* Chair.
2. The *DOJ* shall consult with the *PUC* Chair prior to the *DOJ* providing an employment offer if the applicant will fill the attorney position that is the subject of this MOU.
3. In the event of any vacancy in the position that is the subject of this MOU, the *DOJ* will immediately take steps to develop a mutually acceptable alternative arrangement to provide services to the *PUC* Chair, on either a permanent or temporary basis, until the *DOJ* can hire another candidate subject to the terms of this MOU.
4. The attorney shall provide legal advice, legal research and writing, and legal support to the *PUC* on a full-time basis. However, to the extent that the attorney has availability, he or she may work on other projects as assigned and directed by the *DOJ*. The *PUC* and the *DOJ* will jointly review the attorney's work product related to the *PUC*. The attorney's ongoing work related to the *PUC* will be supervised by the *DOJ*'s Chief of Client Counseling, or designee, in the Civil Bureau.
5. The *DOJ* and the *PUC* will coordinate their evaluation of the attorney to ensure that the legal services provided by the attorney are satisfactory to both the *PUC* and the *DOJ*. In the event that the *PUC* determines that the services are not provided in a satisfactory manner, the *PUC* shall report its concerns to the *DOJ*, and the *DOJ* shall take appropriate action to address the *PUC*'s concerns.

Exhibit B

to the Interagency Memorandum of Understanding between the New Hampshire Public Utilities Commission (PUC) and the New Hampshire Department of Justice (DOJ).

PUC and *DOJ* agree to the following:

1. Payment of salary and benefits for the attorney shall be based on the actual cost of salary and benefits for the attorney and funded out of the budgeted appropriation to the *PUC* and the budgeted transfer of appropriations to the *DOJ* by a quarterly transfer of funds, via *DOJ* invoice, from the *PUC* to the *DOJ*.
2. The *DOJ* will set up a job code for the attorney to record the hours spent conducting work on behalf of *PUC* on the individual's timecards. *DOJ* shall provide a report of hours worked with each quarterly invoice.
3. No later than 15 days upon the close of the fiscal quarter, *DOJ* shall invoice *PUC* for the salary and benefit costs associated with the attorney.
4. *DOJ* shall break out the salaries and benefits costs billed on all invoices.
5. No later than 15 days upon receiving an invoice, *PUC* shall pay to *DOJ* the amounts billed.
6. Reasonable expenses for travel, meals, and lodging incurred by the attorney while on assignment requested and approved by the *PUC* will be paid directly by the *PUC*.
7. Office space and administrative support shall be provided by the *DOJ*.