

HB 5043  
An Act Making Deficiency Appropriations and  
Addressing the Deficit for the Fiscal Year Ending  
June 30, 2016

Prepared for  
Appropriations Committee  
Public Hearing

March 18, 2016



**OFFICE OF FISCAL ANALYSIS**

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The following is an analysis of HB 5043, An Act Making Deficiency Appropriations for the Fiscal Year Ending June 30, 2016. This bill, which is the Governor’s proposed deficiency bill, results in no net impact to the General Fund. The General Fund increases of \$45.5 million are offset by reductions in appropriations to various agencies and accounts. See the table below for detail of the deficiency bill’s appropriations and reductions.

**Spending Cap Impact**

The deficiency bill increases room under the spending cap by \$35 million due to an increase of \$35 million in Debt Service appropriations (which are exempt from the cap) and other corresponding reductions which result in a net zero deficiency appropriation in FY 16.

**HB 5043, Expenditure Account Changes (in millions)**

Agency	FY 16 \$
<b>Section 1 General Fund Increases:</b>	
Office of the Chief Medical Examiner	.5
Office of Early Childhood	6.2
Public Defender Services Commission	3.9
State Treasurer - Debt Service	35.0
<b>Total - General Fund Increases</b>	<b>45.5</b>
<b>Section 2 General Fund Reductions:</b>	
Legislative Management	(1.5)
Department of Housing	(3.5)
Department of Public Health	(2.0)
Department of Children and Families	(5.0)
State Comptroller - Fringe Benefits	(33.5)
<b>Total - General Fund Reductions</b>	<b>(45.5)</b>
<b>NET GF Impact</b>	<b>-</b>

The bill is based on the Governor’s February projections. OFA is projecting \$71.7 million in General Fund state agency funding shortfalls. This differs from the Office of Policy and Management’s (OPM) February 20, 2016 projection of \$62.1 million by a total of \$9.6 million. The following table displays the level of funding needed by agencies as projected by OFA and OPM.

**FY 16 State Agency Estimated Deficiency Needs Comparison  
(in millions)**

Agency	HB 5043 \$	OFA \$	OPM \$ (3/20/16)	Diff. OFA/OPM \$
Office of the Chief Medical Examiner	.5	.5	.5	-
Office of Early Childhood	6.2	4.7	4.7	-
Public Defender Services Commission	3.9	3.7	4.0	(0.3)
State Treasurer – Debt Service	35.0	39.3	35.0	4.3
State Comptroller - Miscellaneous	-	23.5	17.9	5.6
<b>Total - General Fund</b>	<b>45.5</b>	<b>71.7</b>	<b>62.1</b>	<b>9.6</b>

Totals may not add due to rounding.

OFA’s deficiency projections are based on a comparison between the agency’s available funding and estimated annual spending. Available funding is generally lower than the original appropriation level due to OPM holdbacks of funding to meet budgeted lapse targets.

Given the reduction in available funding that occurs due to budgeted lapses (holdbacks), we currently identify five agencies that require \$71.7 million in deficiency funding. However, if available holdback funding is released, this will reduce the amount required to \$67.6 million.

The following table includes the agency’s FY 16 appropriation, total level of available funding (less holdbacks), estimated expenditures, and projected deficiency amounts.

**FY 16 Estimated Agency Deficiency Needs**

Agency	Budgeted Appropriation \$	Available <sup>1</sup> Appropriation \$	Estimated Exp. \$	Deficiency without release of holdbacks \$	Deficiency with release of holdbacks \$
<b>General Fund</b>					
Office of the Chief Medical Examiner	6,210,356	6,071,666	6,531,666	(460,000)	(323,556)
Office of Early Childhood	295,033,520	293,806,434	298,506,434	(4,700,000)	(4,153,643)
Public Defender Services Commission	70,272,615	67,968,503	71,668,503	(3,700,000)	(1,395,888)
Debt Service - State Treasurer	1,937,570,413	1,937,570,413	1,976,853,471	(39,283,058)	(39,283,058)
State Comptroller – Miscellaneous	69,584,293	65,521,899	89,025,550	(23,503,651)	(22,441,257)
			<b>TOTAL</b>	<b>(71,646,709)</b>	<b>(67,597,402)</b>

<sup>1</sup>Appropriation less budgeted lapses.

Details are provided on the following pages for each agency's deficiency needs.

**Detail on the Total Net Deficiencies - \$71.7 million**  
(The following assumes that holdbacks will not be released by OPM.)

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**Office of the Chief Medical Examiner (CME) - \$460,000**

The agency's projected FY 16 budget shortfall is composed of:

- \$220,000 in Personal Services (PS), and
- \$240,000 in Other Expenses (OE).

The \$220,000 shortfall in PS represents 4.6% of the FY 16 appropriation in the account. The \$240,000 shortfall in OE represents 17.9% of the FY 16 appropriation in the account. The shortfall in PS predominantly reflects overtime expenses. Expenditures in OE are projected to be 28.7% greater in FY 16 (\$1.6 million) than in FY 15 (\$1.2 million). Primary cost drivers for OE are laboratory services, body transportation, and medical supplies. CME's overall caseload continues to rise. From FY 14 to FY 15, autopsies increased by more than 33% from 1,488 to 1,993. Current projections for FY 16 place a two-fiscal-year increase in autopsies at over 58%. The Office is open 24 hours a day, every day of the year. It is charged to investigate all human deaths that fall into the following categories:

1. Violent (whether apparently homicidal, suicidal, or accidental),
2. Sudden, or unexpected, that are not caused by a readily recognizable disease,
3. Under suspicious circumstances,
4. Related to disease resulting from employment,
5. Related to disease that might constitute a threat to public health, and
6. The bodies of the deceased to be cremated.<sup>1</sup>

**Office of Early Childhood - \$4.7 million**

The agency's projected FY 16 budget shortfall is composed of:

- \$6.2 million in Early Intervention, and
- \$500,000 in Child Care Services- TANF/CCDBG.

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<sup>1</sup>There is a \$150 fee for this investigation and the associated certificate, which is usually handled through the funeral director of the family's choice. The revenue from the fee (\$2.3 million in FY 15) is deposited into the General Fund.

This shortfall is partially offset by \$2 million lapsing funds from the following accounts:

- \$1.5 million in Child Care Services, and
- \$500,000 Early Head Start-Child Care Partnership.

The \$6.2 million projected shortfall (25.1% of the FY 16 appropriation) in the Early Intervention account, commonly known as Birth to Three, is due to several factors: (1) underfunding of the Birth-to-Three program over the past three years, (2) an increase in the number of children served, (3) an increase in the number of children requiring more intensive services, and (4) an increase in federally funded infrastructure supports.

The Early Intervention account expenditures have been increasing over the past three years, from \$35.4 million in FY 13 to \$42.1 million in FY 15. This has resulted in a transfer of funding from other accounts (via an FAC transfer) to cover the shortfalls. In FY 13, Department of Developmental Services (DDS) transferred \$497,000 from the Employment Opportunities and Day Services to the Early Intervention account to support the Birth-to-Three program, while in FY 15 DDS transferred \$2.9 million from Personal Services. The FY 16 and FY 17 Budget transferred the Birth-to-Three Program from DDS to OEC. The amount transferred to OEC for the reallocation of the program did not include supplemental funds to cover the full program costs. Additionally, the FY 16 expenditure requirements include \$500,000 in unpaid FY 15 invoices, resulting in a total cost of \$3.4 million over budget.

The number of children in the Birth-to-Three program is projected to increase by 3.7%, resulting in a cost of approximately \$1.9 million. The number of children requiring intensive services (primarily those diagnosed with an autism spectrum disorder) is also increasing, resulting in a cost of approximately \$400,000.

An additional \$500,000 in higher than budgeted costs is attributable to supporting program costs that were previously supported by federal funds. Those federal funds are now being used for federal infrastructure supports including salaries and fringe benefits.

The \$500,000 projected shortfall (0.4% of the FY 16 appropriation) in Child Care Services-TANF/CCDBG, commonly known as Care4Kids, is primarily due to changing the redetermination process from evaluating eligibility every eight months to every twelve months.

Funding of \$1.5 million is available in the Child Care Services account due to the annual reconciliation of prior year slots. FY 16 payments are adjusted for FY 15 utilization.

Funding of \$500,000 is available in the Early Head Start-Child Care Partnership due to lower than anticipated program enrollment.

## **Public Defender Services Commission - \$3.7 million**

The agency's projected FY 16 budget shortfall is composed of:

- \$2.0 million in Assigned Counsel;
- \$1.6 million in Personal Services; and
- \$0.1 million in Expert Witnesses.

This shortfall is partially offset by \$150,000 lapsing funds from the following accounts:

- \$77,000 in Other Expenses;
- \$70,000 in Contracted Attorneys Related Expenses; and
- \$3,000 in Training and Education.

A total projected shortfall of \$3.7 million is due to a deficiency of \$2.0 million (9.1% of the appropriation) in the Assigned Counsel account, \$1.6 million (3.7% of the appropriation) in the Personal Services account, and \$0.1 million (3.3% of the appropriation) in the Expert Witnesses account.

The Assigned Counsel deficiency of \$2.0 million is due to: (1) an increase in child protection cases (\$1.2 million); and (2) an increase in habeas cases (\$820,000). In child protection cases, the Division of Public Defender Services is required to provide counsel for all children whose parents are deemed indigent and for any party where the court orders counsel. In FY 14 there were a total of 8,364 child protection cases (697 per month) and in FY 15 there were a total of 10,307 cases (859 per month). It is anticipated that there will be a total of approximately 12,000 cases in FY 16. From July through October of FY 16 they have averaged approximately 1,203 cases each month. While the number of child protection cases has increased significantly since FY 14, the funding level has remained the same at \$7.6 million. Child protection cases are assigned to outside counsel and are paid through the Assigned Counsel account at a flat rate of \$500 per case (attorneys can also petition for an hourly rate). The estimated 3,600 additional cases in FY 16 will require approximately \$1.2 million in additional funding.

In addition to the deficiency due to the child protection increases, PA 12-115, *An Act Concerning Habeas Reform*, reduced the time in which a habeas petition can be filed, and resulted in an influx of habeas petitions received by the agency. Habeas petitions have doubled since the legislation passed. Previous to the legislation, the agency averaged 25 petitions per month, or 300 per year. Since the legislation passed, the agency has averaged 50 petitions per month, or 600 per year. In FY 16 to date, the agency has been averaging approximately 54 petitions per month, or 648 per year. The cost per case can vary significantly depending on the complexity of the appeal but on average costs approximately \$11,000 per case. The additional 48 cases in FY 16 will require approximately \$820,000 additional funding in FY 16.

The Personal Services deficiency of \$1.6 million is due to the agency's inability to meet the assigned deficit mitigation amount of \$1.7 million in this account. In addition to the deficit mitigation reduction, the Personal Services account also included a holdback of \$562,000.

Funds in the Expert Witnesses account are used, in part, to support habeas cases, which have increased significantly, as explained above. The cost per case is, on average, approximately \$2,083 per case.

The projected shortfall is partially offset by projected lapses in various accounts totaling \$150,000.

### **Office of the State Treasurer - General Fund Debt Service - \$39.3 million**

The agency's projected FY 16 budget shortfall is composed of:

- \$39.3 million in Debt Service.

The projected \$39.3 million shortfall in the General Fund Debt Service account is due to a lower level of premium income related to the issuance of General Obligation bonds. This shortfall represents 2.4% of the FY 16 appropriation. The FY 16 budget included a reduction of \$142.8 million below the level requested by the Office of the State Treasurer primarily due to the anticipated receipt of premiums on bond issuances in the current fiscal year. To date, net premiums realized on issuances have not achieved budgeted levels. While a \$550 million general obligation bond issuance is being finalized, premiums from the current issuance attributable to the current fiscal year are unlikely to resolve the shortfall.

### **Office of the State Comptroller - Miscellaneous - \$23.5 million**

The agency's projected FY 16 budget shortfall is composed of:

- \$23.5 million in Adjudicated Claims.

The projected shortfall in the Adjudicated Claims account is due to higher than budgeted normal claims costs, including four, \$4.2 million settlements against the state for individuals who were wrongly incarcerated (totaling \$16.8 million). Average normal claims experience over the past 10 years, after adjusting for large settlements, has been approximately \$8 million annually. As of January, \$18.5 million has been expended. Normal claims experience for FY 16 is projected to be \$11.2 million, \$7.1 million greater than the historical \$4.1 million appropriation.



The total FY 16 appropriation included \$20.8 million for FY 16 settlement costs associated with the State Employees' Bargaining Agent Coalition (SEBAC) versus the State (commonly referred to as the Rowland settlement).

## **FY 16 Appropriation Reductions**

Section 2 of the bill reduces appropriations to six agencies by a total of \$45.5 million. The following provides additional detail on the appropriation reductions.

### **Legislative Management - \$1.5 million**

Funding is reduced in the following account:

- \$1.5 million in Personal Services

Funding is available in the Personal Services account due to holding nonpartisan positions vacant, savings from employee turnover, and continuing the practice of releasing most of the sessional assistant clerks two weeks after the Joint Favorable deadline while maintaining caucus savings.

### **Department of Housing - \$3.5 million**

Funding is reduced in the following account:

- \$3.5 million in Housing/Homeless Services.

The projected lapse in the Housing/Homeless Services account is due to slower than anticipated transition for individuals in the Money Follows the Person Program. As context, the FY 16 appropriated budget increased funding for the program by 24% from FY 15, due to an anticipated ramp up in the program. The program funding increase from FY 14 to FY 15 was 16%. Based on a five year review, this program historically lapses funds annually.

Background: The federal Money Follows the Person Rebalancing Demonstration Grant encourages states to reduce their reliance on institutional care for Medicaid recipients by transitioning individuals out of institutional settings and into community settings with appropriate supports.

## **Department of Public Health (DPH) - \$134,000**

Funding is reduced in the following account:

- \$134,000 in Personal Services.

Turnover, in combination with a hiring freeze, contribute to a projected \$134,000 lapse in Personal Services. As of the end of February 2016, there are approximately 52 full-time equivalent vacancies in DPH.

## **Department of Children and Families - \$4.2 million**

Funding is reduced in the following accounts:

- \$1.9 million in Personal Services,
- \$704,440 in Board and Care for Children – Residential, and
- \$1.7 million in Individualized Family Supports.

Turnover, in combination with a hiring freeze and less than anticipated overtime expenditures in FY 16, contribute to a projected \$1.9 million lapse in Personal Services. A \$704,440 lapse in the Board and Care for Children – Residential account is due to an estimated 70 placements decrease in the average monthly caseload by the end of the fiscal year. This reflects an 11.2% decrease from the start of the fiscal year (626 to 556). The Individualized Family Supports account is projected to lapse \$1.7 million due to reduced expenditures for unique, time-limited services based on families' needs.

## **Office of the State Comptroller - Fringe Benefits - \$25.5 million**

Funding is reduced in the following accounts:

- \$10.6 million in Retired State Employees Health Service Cost;
- \$8 million in Employers' Social Security Tax;
- \$4 million in Higher Education Alternative Retirement System;
- \$2.1 million in Unemployment Compensation;
- \$659,000 in Group Life Insurance; and
- \$115,000 in Pensions and Retirements – Other Statutory.

Funding is available in the Retired State Employees' Health Services Cost account due expenditures and population being less than budgeted. The budget assumed a 6% increase in population, however actual growth is trending closer to 3%. In addition projected Medicare Part B premium increases of approximately 51.9% (an increase of approximately \$54 per Medicare member per month did not materialize, the actual increase was 16.1% (or approximately \$17 per Medicare member per month)).

Funding is available in the Employers' Social Security Tax due to statewide payroll information reflecting lower than anticipated hiring and other personnel costs across state agencies funded by the General Fund. Average General Fund social security trends are 3.4% less than anticipated.

Funding is available in the Higher Education Alternate Retirement System predominately due to the distribution of General Fund funded employees and expenditures being less than was anticipated, due to a shift to funding SERS higher education employees versus ARP employees out of the General Fund.

Funding is available in the Unemployment Compensation due to average monthly unemployment benefit costs being 30.4% less than anticipated (year to date average month benefits are \$424,960).

Funding is available in the Group Life Insurance and the Pension and Other Statutory accounts due to actual expenditures being less than anticipated by 6.3% and 6.7% respectively.

Section 3 of the bill allows the following funding to lapse on June 30, 2016: 1) \$3,399 in the Department of Economic and Community Development for the Small Business Incubator program; 2) \$21,885 in the Office of Higher Education for the Minority Advancement program; 3) \$15 in the Department of Rehabilitation Services for Part-Time Interpreters; and 4) \$41,530 in the Labor Department for the Workforce Investment Act. All four of these agencies have these funds available to lapse.

Section 4 allows \$15,459,080 to lapse on June 30, 2016 for Pay-As-You-Go transportation projects in the Department of Transportation. These funds are available to lapse, and were already assumed to do so as part of OPM's lapse authority from Section 2 of PA 15-1 DSS (DMP) which allowed OPM to make allotment reductions in FY 16 of \$35.2 million in the Special Transportation Fund. On December 30<sup>th</sup>, 2015, OPM sent out allotment reductions in the STF which included \$17.6 million in the Pay-As-You-Go Transportations Projects account and \$1.8 million in the Highway Planning and Research account. It is unclear if the amounts in Section 4 replace the allotment reductions from OPM's December 30<sup>th</sup> 2015 letter.