

THE COUNCIL OF THE CITY OF NEW YORK

Speaker of the Council
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Hon. Gale A. Brewer, Chair, Governmental
Operations Committee

Hearing on the Mayor's Fiscal 2013 Preliminary Budget & the Fiscal 2012 Preliminary Mayor's Management Report

Law Department

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Agency Overview

Under the direction of the corporation counsel, the New York City Law Department is responsible for all of the legal affairs of the City. It represents the City, the Mayor, other elected officials, and the City's many agencies in all affirmative and defensive civil litigation, as well as juvenile delinquency prosecutions brought in Family Court and Administrative Code enforcement proceedings brought in Criminal Court. Law Department attorneys draft and review local and State legislation, real estate leases, procurement contracts, and financial instruments for the sale of municipal bonds.

The Law Department is comprised of 17 legal divisions and 3 support divisions and is responsible for more than 80,000 matters, and provides legal advice to all City agencies. It is staffed with 690 lawyers and 850 support professionals (not all of which are salaried positions) in 10 offices located in all five boroughs, as well as in Kingston, N.Y.

This report provides a review of the Law Department's Fiscal 2013 Preliminary Budget. In the first section the highlights of the Fiscal 2013 Preliminary Plan are presented. The report then presents the City's Fiscal 2013 Judgment and Claims Budget, and a review of miscellaneous revenue projections. The report then describes the Department's Tort Division, the agency's largest, and the Family Court Division, discusses actions included in the November and February Financial Plans and reviews relevant sections of the Preliminary Mayor's Management Report for Fiscal 2012.

Fiscal 2013 Preliminary Plan Highlights

- **Judgment and Claims.** The City's projected Fiscal 2013 Judgment and Claims Budget is \$685.2 million. A breakdown of judgment and claims is outlined on page 3.
- **FDNY Hiring Bias Case.** Judge Nicholas Garaufis set the compensation pool at \$128 million for minority applicants who took the FDNY exam in 1999 or 2002 but were not hired. More details on the case are on page 5.
- **Additional Tort Division Staff New Need.** The Department needs 41 additional Tort Division staff for litigation-related discovery in Fiscal 2012 and 2013 due to an increase in the volume of cases. Details on this new need are described in the Tort Division section on page 4.
- **Performance Measures.** The number of tort cases commenced increased 13 percent during the first four months of the current fiscal year due in part to property damage claims from repeated flooding in Queens and Staten Island, as well as the December 2010 snowstorm. A more in depth review of the Department's performance measures is on pages 4 and 5.
- **CityTime.** In an agreement reached between Science Applications International Corporation (SAIC), the main contractor behind the CityTime scandal, and federal prosecutors, SAIC will pay \$500 million in restitution and penalties to the City. See page 5 for more details.

Law Department Financial Summary

<i>Dollars in Thousands</i>	2011 Actual	2012 Adopted	2012 Feb. Plan	2013 Feb. Plan	*Difference 2012 - 2013
Spending					
Personal Services	\$96,346	\$102,112	\$100,656	\$104,258	\$2,146
Full-Time Salaried	89,526	99,090	97,592	101,252	2,162
Other Salaried & Unsalaries	4,378	2,722	2,722	2,722	0
Additional Gross Pay	1,692	271	302	282	12
Overtime - Civilian	764	1	1	1	0
Fringe Benefits	0	28	38	0	(28)
PS Other	(15)	0	0	0	0
Other Than Personal Services	37,866	38,376	41,362	37,467	(909)
Supplies and Materials	1,096	1,220	1,315	1,220	0
Property and Equipment	690	524	797	524	0
Other Services and Charges	20,002	23,718	19,893	19,442	(4,276)
Contractual Services	16,046	12,896	19,320	16,263	3,367
Fixed and Misc. Charges	32	18	38	18	0
TOTAL	\$134,212	\$140,488	\$142,017	\$141,725	\$1,237
Funding					
City Funds	NA	\$133,358	\$131,696	\$134,749	\$1,391
Other Categorical	NA	437	752	417	(20)
Capital-IFA	NA	3,335	3,335	3,335	0
Federal - Other	NA	134	249	0	(134)
Intra-City	NA	3,225	5,985	3,225	0
TOTAL	\$134,212	\$140,488	\$142,017	\$141,725	\$1,237
Positions					
Full-Time Positions	1,199	1,283	1,327	1,322	39

**The difference of Fiscal 2012 Adopted compared to Fiscal 2013 February Plan funding.*

In the Preliminary Plan, the Law Department's budget for Fiscal 2013 totals \$141.7 million, of which 95 percent is city tax levy funding. The slight increase in Fiscal 2013 when compared to the 2012 Adopted Budget is the result of several budget actions, most notably the addition of 41 Tort Division staff.

Judgment and Claims

The Judgment and Claims (J&C) Budget is a part of the City's Miscellaneous Budget and includes \$685.2 million in Fiscal 2013 for payments resulting from judgments against the City.

	Actual			Planned	
	2009	2010	2011	2012	2013
Non Med Mal. Per. Injury & Prop. Damage	\$437,615,570	\$407,956,182	\$421,942,969	\$453,925,430	\$476,515,148
Medical Malpractice	132,965,395	133,638,905	143,263,610	163,033,242	169,643,524
Non-Tort	23,619,664	26,650,994	28,866,773	38,000,000	39,000,000
Special Cases	28,991,686		70,000,000		
TOTAL	\$623,192,315	\$568,246,081	\$664,073,352	\$654,958,672	\$685,158,672

As outlined above, non-medical malpractice personal injury and property damage, which include a wide range of cases, comprises the majority (63.5 percent in Fiscal 2011) of J&C payments. Medical malpractice accounts for 24.8 percent of the total projected J&C budget for Fiscal 2013. Non-tort payments cover contract disputes and fair labor standards and accounts for 5.7 percent of the Fiscal 2013 total. Funding for special cases is added only when warranted.

Miscellaneous Revenue

The Department's miscellaneous revenue sources include: fines from violations to the City's administrative code; revenues for the sale of de-mapped, small non-functional city roads; affirmative judgments and settlements in cases brought by the City; fees for OTPS costs associated with FOIL requests; and reimbursements for worker compensation pay-outs.

The Affirmative Litigation Division oversees the activities of the Department's collection contract. Attorneys in this Division represent the City as plaintiff on a wide range of issues including restitution, breach of contract and insurance.

Law Dept. Misc. Rev. Sources	Actual		Planned			
	2010	2011	2012	2013	2014	2015
Admin. Code Violations	\$2,100,417	1,635,704	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000
Sale of Streets	8,773,774	6,970,150	1,625,000	275,000	275,000	275,000
Affirmative Real Estate Litigation	437,532	2,276,361	448,000	448,000	448,000	448,000
Affirmative Litigation	10,877,825	21,584,073	11,806,000	10,014,000	9,759,000	9,759,000
Administrative Fees (FOIL)	97,252	57,269	100,000	100,000	100,000	100,000
Collection Agency Claims	1,783,027	2,193,358	1,100,000	1,100,000	1,100,000	1,100,000
Worker Compensation	8,674,351	8,704,869	7,404,000	7,404,000	7,404,000	7,404,000
TOTAL	\$32,744,178	\$43,421,784	\$23,783,000	\$20,641,000	\$20,386,000	\$20,386,000

Increased Revenue Collections. The Department will realize additional revenue of \$1.1 million in Fiscal 2012 and \$255,000 in Fiscal 2013 from a Verizon settlement and the World Trade Center Captive Insurance reimbursement. This action was included in the 2011 November Plan as a Program to Eliminate the Gap (PEG), allowing the Law Department to receive PEG credit.

Tort Division

The Tort Division is the Law Department's largest. It employs over 200 lawyers and almost as many support staff. The Division represents the City, the Department of Education, and the Health and Hospitals Corporation in all tort claims. It handles a caseload of over 7,000 new cases each year, with another 33,000 pending as a result of an investigation, defense before State and federal courts, and settlement.

Financial Plan Actions

- **Additional Tort Division Staff New Need.** The Department needs 41 additional Tort Division staff in Fiscal 2012 and 2013 for litigation-related discovery due to an increase in the volume of cases. The positions are not budgeted beyond Fiscal 2013. This action would add \$1.5 million to the Department's Fiscal 2012 budget and \$2.5 million in Fiscal 2013.
- **Personal Services (PS) Accruals.** Savings totaling \$3.1 million will be realized in Fiscal 2012 from PS accruals as a result of vacant positions.

Performance Measures

	FY 09	FY 10	FY 11	4-Month Actual FY 11	4-Month Actual FY 12	Target FY 13
Total tort cases pending	17,791	17,362	16,850	17,450	16,927	17,800
Tort cases commenced – Citywide	6,337	6,442	6,388	2,136	2,405	*
Tort dispositions – Citywide	6,730	6,921	6,573	1,929	1,886	6,100
Total Tort Payout – Citywide	\$570,581	\$541,595	\$560,852	\$124,547	\$97,895	*

According to the PMMR, during the first four months of the current fiscal year the number of tort cases commenced increased 13 percent due in part to property damage claims from repeated flooding in Queens and Staten Island, as well as the December 2010 snowstorm.

The citywide tort payout decreased 21 percent. This is due, in part, to successful attempts to dismiss matters before trial. In addition, the Department's long-term focus on the dual goals of backlog reduction and early resolution of meritorious claims, as well as the enactment of the sidewalk law that transferred liability for certain matters from the City to property owners, has yielded results.

The Family Court Division

The Family Court Division is the Department's second largest division, with over 80 attorneys who are responsible for handling some 15,000 cases annually. The Division is responsible for prosecuting juvenile crime, and its work also encompasses assisting victims of youth crime to secure access to a broad array of community-based services, including counseling, crisis intervention, and safety planning. In its civil practice, the Family Court Division aids families by bringing enforcement proceedings designed to obtain necessary financial support for children.

Performance Measures

	FY 09	FY 10	FY 11	4-Month Actual FY 11	4-Month Actual FY 12	Target FY 13
Referred cases for prosecution (%)	59%	55%	55%	55%	55%	55%
Crime victims assessed for comm. based services (%)	34%	34%	46%	48%	50%	35%
Juvenile conviction rate (%)	71%	72%	71%	69%	71%	70%

The Division's increased efforts to assist victims of youth crime has led to an increase in the percentage of youth crime victims assessed for community-based services.

Law Department High Profile Cases

FDNY Hiring Bias Case

Judge Nicholas Garaufis set the compensation pool at \$128 million for minority applicants who took the FDNY exam in 1999 or 2002 but were not hired. The judge appointed four attorneys, all ex-prosecutors, as "special masters" to oversee how the "back pay" is distributed to as many as 2,200 black and Latino firefighter applicants as possible. Virtually any minority test taker, as long as his or her written test score was higher than 25 out of 100, may qualify for compensation.

Corporation Counsel Michael Cardozo has indicated that the Law Department believes the Judge's opinion is erroneous and "When all the proceedings have been completed, the damages, if any, that the city will have to pay will be far less than \$128 million."

(source: NY Post)

CityTime Scandal

In an agreement reached between Science Applications International Corporation (SAIC), the main contractor behind the CityTime scandal, and federal prosecutors, SAIC will pay \$500 million in restitution and penalties for "defrauding the city into significantly overpaying" for services. CityTime is a secure web-based timekeeping and payroll system, which now serves 163,000 employees. The final cost is estimated to be between \$134 million and \$186 million.

Under the agreement, the City will receive more than \$370 million in restitution and another \$96 million in penalties paid by SAIC. The remaining \$34 million of the \$500 million payout goes to the Justice Department. The company will also forgive another \$40 million in pending billings from the City in one of the biggest scandals in New York history.

(source: NY Daily News)

Appendix A: Budget Actions in the November and February Plans

<i>Dollars in Thousands</i>	FY 2012			FY 2013		
	City	Non-City	Total	City	Non-City	Total
Agency Budget as of June 2011 Plan	\$133,358	\$7,131	\$140,489	\$131,884	\$6,997	\$138,881
Program to Eliminate the Gap (PEGs)						
PS Accruals	(3,133)		(3,133)			0
TOTAL, PEGs	(\$3,133)	\$0	(\$3,133)	\$0	\$0	\$0
New Needs						
Funding for WTC Matters			0	356		356
41 New Positions: Litigation-Related Discovery	1,454		1,454	2,492		2,492
TOTAL, New Needs	\$1,454	\$0	\$1,454	\$2,848	\$0	\$2,848
Other Adjustments						
Other Categorical Grants and Adjustments		315	315			0
Federal Funding		116	116			0
Intra-City Adjustments		2,759	2,759			0
Collective Bargaining adjustment	17		17	17		17
TOTAL, Other Adjustments	\$17	\$3,190	\$3,207	\$17	\$0	\$17
TOTAL, All Changes	(\$1,662)	\$3,190	\$1,528	\$2,865	\$0	\$2,865
Agency Budget as of February 2012 Plan	\$131,696	\$10,321	\$142,017	\$134,749	\$6,997	\$141,746

Appendix B: Contract Budget

Category	Number	Budgeted	Pct of DOL Total	Pct of City Total by Cat.
Contractual Services General	12	\$410,300	2.52%	0.09%
Maint & Repair, General	40	\$1,770,632	10.89%	1.50%
Office Equipment Maintenance	53	\$200,000	1.23%	1.43%
Data Processing Equipment	9	\$701,200	4.31%	0.43%
Temporary Services	20	\$3,734,973	22.97%	10.94%
Cleaning Services	7	\$15,000	0.09%	0.07%
Transportation Expenditures	2	\$50,000	0.31%	0.38%
Training Programs for City Employees	2	\$85,450	0.53%	0.57%
Professional Services Accounting & Auditing	5	\$100,000	0.61%	0.39%
Professional Services Legal Services	17	\$2,709,000	16.66%	2.87%
Professional Services Engineer. & Architect.	11	\$130,000	0.80%	6.82%
Professional Services: Other	39	\$6,356,773	39.09%	4.31%
Fiscal 2013 Preliminary Budget	217	\$16,263,328	100%	0.16%

The Law Department's Fiscal 2013 Contract Budget totals \$16.2 million and represents less than one percent of the City's total contract budget. The Department's temporary service contracts which include payments, fees and commissions for administrative and clerical support, court reporting and transcribing and other outside temporary services, account for more than 10 percent of the City's total budget for that category. The Department uses temporary services to manage increases in case volume.