


**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

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March 22, 2013

**TO:** Budget and Finance Committee  
**FROM:** Budget and Legislative Analyst   
**SUBJECT:** March 27, 2013 Budget and Finance Committee Meeting

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<b>Item 6</b> <b>File 13-0185</b>	<b>Department:</b> Public Defender
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<p>The proposed ordinance would appropriate \$751,312 from the General Fund Reserve to the Public Defender's FY 2012-13 budget to resolve the budgetary shortfall in permanent salaries, temporary salaries, premium pay, and one-time payments due to terminating employees. Approval of the requested \$751,312 requires two-thirds vote of the Board of Supervisors because the Board of Supervisors rejected appropriation of these expenditures in the Public Defender's FY 2012-13 budget.</p>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• The requested \$751,312 would pay for (1) \$466,851 in permanent salaries due largely to salary step increases exceeding the budget in FY 2012-13; (2) \$255,981 in temporary salaries due to the Public Defender's Office hiring more temporary employees and expending more temporary salaries than authorized in the FY 2012-13 budget; (3) \$4,192 in premium pay; and (4) \$24,288 in one-time payments pay for accrued vacation time owed to an employee terminating from the City.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• The General Fund Reserve balance is \$28,845,655 and the State Revenue Loss Reserve balance is \$8,410,605, totaling \$37,256,260.</li> <li>• In addition to the Public Defender's requested supplemental appropriation of \$751,312, two supplemental appropriations will be submitted to the Board of Supervisors for the Sheriff's Department and Department of Public Health, which will significantly draw down on the available reserve balances. According to Ms. Monique Zmuda, Deputy Controller, the Controller's Office and Mayor's Office are working with the Sheriff's Department and the Department of Public Health to identify additional revenues or expenditure savings, and therefore, as of the writing of this report, the Controller's Office cannot provide details on the funding sources for the pending supplemental appropriations for the Sheriff's Department and Department of Public Health.</li> <li>• The Public Defender's Office has hired temporary employees whose projected salary costs of \$375,056 in FY 2012-13 are \$255,981 more than the FY 2012-13 budget of \$119,075 for temporary salaries. Because the Public Defender's Office has spent more temporary salaries than authorized by the Board of Supervisors in the FY 2012-13 budget, the requested supplemental appropriation should be reduced by \$94,354 for temporary salaries not yet incurred for the pay periods beginning March 30, 2013 through June 30, 2013.</li> <li>• Therefore, the requested supplemental appropriation should be reduced by \$94,354 from \$751,312 to \$656,958.</li> </ul>	
<p style="text-align: center;"><b>Recommendations</b></p>	
<ul style="list-style-type: none"> <li>• Amend the proposed ordinance to reduce the requested supplemental appropriation by \$94,354 from \$751,312 to \$656,958 to account for the temporary salary expenditures, not yet incurred, in excess of the temporary salaries authorized by the Board of Supervisors in the Public Defender's FY 2012-13 budget.</li> <li>• Approve the supplemental appropriation, as amended.</li> </ul>	

## MANDATE STATEMENT AND BACKGROUND

### Mandate Statement

According to Charter Section 9.105, the Board of Supervisors may adopt amendments to the Annual Appropriation Ordinance in the same manner as other ordinances.

According to Charter Section 9.113, if the Mayor or Board of Supervisors has previously rejected an appropriation in the Annual Appropriation Ordinance, then approval of a supplemental appropriation requires a two-thirds vote of the Board of Supervisors.

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would appropriate \$751,312 from the General Fund Reserve to the Public Defender's FY 2012-13 budget to resolve a projected budgetary shortfall to pay for salary step increases, premium pay, one time payments to terminating employees for vacation pay-outs, and temporary salaries. Approval of the requested \$751,312 requires two-thirds vote of the Board of Supervisors, because the Board of Supervisors rejected appropriation of these expenditures in the Public Defender's FY 2012-13 budget.

## FISCAL IMPACT

The proposed ordinance would appropriate \$751,312 in the Public Defender's FY 2012-13 budget as shown in Table 1 below.

**Table 1: Proposed \$751,312 Appropriation**

	<b>FY 2012-13 Budget Previously Authorized by the Board of Supervisors</b>	<b>Estimated Actual Expenditures</b>	<b>Estimated Actual Expenditures Exceeding Authorized Budget</b>
Permanent Salaries <sup>1</sup>	\$17,673,624	\$18,140,475	\$466,851
Temporary Salaries	119,075	375,056	255,981
Premium Pay	62,571	66,763	4,192
One Time Payments	0	24,288	24,288
<b>Total</b>	<b>\$17,855,270</b>	<b>\$18,606,582</b>	<b>\$751,312</b>

<sup>1</sup> Includes reductions for salary step adjustments and attrition savings.

### Salary Step Adjustments (\$466,851)

The Public Defender's FY 2012-13 budget included \$17,855,270 for salaries funded by the General Fund, an increase of \$717,016 or 4.2% from the Public Defender's FY 2011-12 budget of \$17,138,254 for salaries funded by the General Fund. The Public Defender's FY 2012-13 budget did not correctly account for the difference between positions budgeted at the top salary step and the actual salary step paid to employees, resulting in an estimated deficit in permanent salaries of \$466,851.

### Temporary Salaries (\$255,981)

The Public Defender's FY 2012-13 budget included \$119,075 for temporary salaries, a reduction of \$295,464 from the Public Defender's FY 2011-12 budget of \$414,539 for temporary salaries. The Public Defender has hired 5.4 Full Time Equivalent (FTE) positions paid by temporary salaries, or 4.0 FTE more than the 1.4 FTE positions authorized by the Board of Supervisors in the FY 2012-13 budget, as follows:

- 2.4 FTE 8173 Legal Assistants. Of these 2.4 FTEs, 1.4 FTEs were included in the FY 2012-13 budget and provide support to attorneys in the Training and Specialty Courts Units. In addition, the Public Defender has hired 1.0 FTE in the Investigation Unit to serve subpoenas, collect court and expert records, and conduct various database searches on case information.
- 2.0 FTE 1406 Senior Clerk in the MAGIC Program<sup>1</sup> to coordinate the Public Defender's Community, Youth and Family Programs. These positions assist in maintaining program documents, communicating with members of the public, and conducting community outreach. These two positions do not support the Public Defender's core responsibility for providing legal defense to individuals who cannot pay for a private attorney.
- 1.0 FTE 8446 Court Alternative Specialist, who serves as the Department's Communication and Policy Assistant to administer a public information program for the Public Defender's Office. This position does not support the Public Defender's core responsibility for providing legal defense to individuals who cannot pay for a private attorney.

According to Mr. Matt Gonzalez, Public Defender's Office Chief Attorney, the Public Defender's Office will propose that these temporary positions become permanent in the FY 2013-14 budget.

### Other Pay

As shown in Table 1 above, the Public Defender estimates deficits in premium pay of \$4,192 and one-time payments of \$24,288 to pay for accrued vacation time owed to an employee terminating from the City.

### **General Fund and State Revenue Loss Reserves**

As of March 21, 2013, the General Fund Reserve balance was \$28,845,655 and the State Revenue Loss Reserve balance was \$8,410,605, for total reserve balances of \$37,256,260. Two supplemental appropriations will be submitted to the Board of Supervisors for the Sheriff's Department and Department of Public Health, which will significantly draw down on the available reserve balances. According to Ms. Monique Zmuda, Deputy Controller, the

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<sup>1</sup> The MAGIC Program (Mobilization for Adolescent Growth in Our Communities) is a Public Defender's Office program in the Bayview and Western Addition neighborhoods in which community based organizations coordinate programs and services for youth.

Controller's Office and Mayor's Office are working with the Sheriff's Department and Public Health Department to identify revenues or expenditure savings and therefore, as of the writing of this report, the Controller's Office cannot provide details on funding sources for the pending supplemental appropriations for the Sheriff's Department and Department of Public Health.

### **Temporary Salary Savings**

The Public Defender's Office has hired temporary employees whose projected salary costs of \$375,056 in FY 2012-13 are \$255,981 more than the FY 2012-13 budget of \$119,075 for temporary salaries. Because the Public Defender's Office has spent more temporary salaries than authorized by the Board of Supervisors in the FY 2012-13 budget, the requested supplemental appropriation should be reduced by \$94,354<sup>2</sup> for temporary salaries not yet incurred for the pay periods beginning March 30, 2013 through June 30, 2013.

The Budget and Legislative Analyst recommends approval to pay for the projected FY 2012-13 budgetary shortfall of (1) \$466,851 in permanent salaries due to higher than budgeted salary step increases, (2) \$4,192 in premium pay, (3) \$24,288 in one-time payments for accrued vacation time owed to an employee terminating from the City; and (4) \$161,627 for temporary salary expenditures which have been previously incurred, for a total recommended approval of \$656,958.

However, the Budget and Legislative Analyst recommends that the balance of temporary salaries, \$94,354 (the requested \$255,981 less recommended approval of \$161,627), not yet incurred for the period from March 30, 2013 through June 30, 2013, be disapproved because such funding was never authorized by the Board of Supervisors in the Public Defender's FY 2012-13 budget. Permitting a department to hire positions previously not authorized by the Board of Supervisors diminishes the Board of Supervisors budgetary process.

Therefore, the requested supplemental appropriation should be reduced by \$94,354 from \$751,312 to \$656,958.

## **RECOMMENDATIONS**

1. Amend the proposed ordinance to reduce the requested supplemental appropriation by \$94,354 from \$751,312 to \$656,958 to account for the temporary salary expenditures, not yet incurred, in excess of the temporary salaries authorized by the Board of Supervisors in the Public Defender's FY 2012-13 budget.
2. Approve the supplemental appropriation, as amended.

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<sup>2</sup> Based on temporary salary expenditures of \$14,516 per pay period for 6.5 pay periods from March 30, 2013 through June 30, 2013.