


Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Kwame R. Brown
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: March 28, 2011

SUBJECT: Fiscal Impact Statement – “Department of Forensic Sciences
Establishment Act of 2011”

REFERENCE: Bill 19-5, Draft Committee Print shared with the OCFO on
March 25, 2011

Conclusion

Funds are not sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation. Implementing the proposed legislation would not have any cost in FY 2011, but would cost \$4.2 million over the financial plan period. Of this amount, \$1.5 million in personnel and non-personnel costs, associated with providing new forensic services, would be subject to appropriations.

Implementation of the proposed legislation is subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Background

The proposed legislation would establish the Department of Forensic Sciences (DFS), a new subordinate agency in the executive branch of the government of the District of Columbia, to provide forensic science services.¹ Currently, the Metropolitan Police Department (MPD) and the federal government provide the D.C. government with forensic science services.

Under the proposed legislation, DFS would take over most of the forensic functions of MPD. As a result, it is expected to move into the new Consolidated Forensics Laboratory (CFL) that the District

¹ Forensic sciences services are defined as “forensic science research, analysis, and related services, including the examination of evidence, the interpretation of results, and the provision of expert testimony, including for the purposes of a criminal investigation or civil action.”

is in the midst of building. Beginning FY 2013, this new laboratory will house the Office of the Chief Medical Examiner (OCME), the Department of Health's Public Health Laboratory and MPD's forensics capacity. (See page 4 for a more detailed description of the current plans for CFL.) Thus, it is assumed that DFS would not be operational until October 1, 2012 since it would not have any laboratory space prior to this date.

The main requirements of the proposed legislation are detailed below.

Director of DFS

The Mayor would appoint a Director, who met the qualifications outlined in the legislation, to head DFS for a six-year term.² It is assumed that this appointment would occur in FY 2011 so that the Director could prepare CFL for the arrival of DFS and perform any other needed preparatory work for DFS. The Director would:

- Be responsible for the management and operation of DFS;
- Ensure that by December 31, 2013, DFS is accredited by the appropriate third-party national accrediting organization and maintains this accreditation. Currently, only the DNA laboratory located in Lorton has accreditation;
- Maintain all accreditation documents as public documents;
- Report to the Scientific Advisory Board any allegations of professional negligence, misconduct, or misidentification or other testing error that occurred in the provision of forensic science services at DFS;
- Prepare an annual report on the activities of DFS, which would be submitted to the Mayor and the Council, and made available to the public;
- Have procurement authority independent of the Office of Contracting and Procurement for purchases not to exceed \$100,000;
- Ensure that DFS has adopted training manuals and standard operating procedures; and
- Perform other acts as may be appropriate to accomplish the declared mission of DFS.

Personnel

- DFS would have a Deputy Director, as well as other professional and support personnel as necessary and appropriate to carry out the agency's mission.
- All forensic science personnel would be certified in their respective disciplines within one year of their employment with DFS and maintain certification throughout their employment with DFS.

Powers and Duties of DFS

1. DFS would provide forensic science services for the District of Columbia. Such services may include the following currently performed by MPD and the federal government. Those performed by the federal government would be subject to appropriations.

² These include having: 1) graduated from an accredited college or university with a masters or doctoral degree in an applicable area of science; 2) demonstrated training in scientific research and methodology; 3) demonstrated management and administrative skills; 4) demonstrated comprehensive knowledge of forensic sciences; 5) a minimum of 6 years experience in forensic sciences; 6) a minimum of 4 years experience in directing or supervising scientific and administrative staff in a forensic science, medical, or research setting.

(Currently performed by MPD)

- DNA/biological analysis and trace analysis. These two analyses are conducted at an accredited laboratory in Lorton, VA.³ MPD allocates 17 positions for this activity; 14 of these positions, including a Quality Assurance Manager for accreditation purposes, are filled. Due to budgetary reasons, the other three positions are vacant and unfunded.
- Firearms and tool mark examination. MPD allocates 12 positions for this activity; however, only seven of these positions are funded due to budgetary reasons. Nevertheless, in order to avoid service cuts MPD has temporarily filled the remaining five positions with detailed sworn officers.
- Fingerprint comparison. This is done by MPD employees at headquarters. There are 15 positions allocated to this activity and all but one are filled and funded.

(Currently performed by the federal government)

- Analysis of controlled substances. The federal Drug Enforcement Agency (DEA) handles these analyses for the District.
- Analysis of questioned documents, computer forensics, and forensic photography. These three activities are done by either the Federal Bureau of Investigations (FBI) or the Secret Service.

2. DFS would provide forensic laboratory services, upon request, to the below entities:
 - D.C. government agencies, including MPD, OCME, the Office of the Attorney General (OAG), the Department of Health (DOH), and The Fire and Emergency Medical Services Department (FEMS); and
 - The United States Attorney's Office for the District of Columbia.
3. DFS would provide training on the collection and preservation of forensic evidence to law enforcement agencies, hospitals, or other entities that collect evidence for testing or examination by DFS.
4. Upon request, DFS would make available all records pertaining to the analysis conducted in a particular case to the agency that requested the analysis, and to the party opposing the agency, the defendant in a criminal case, or the petitioner in a post-conviction case, when the results of the analysis were provided pursuant to court rules or court order.

Testing of breath alcohol equipment

DFS would test and certify, at least once every 3 months, or as recommended by the manufacturer, whichever is more frequent, the accuracy of all equipment used by any District law enforcement to test the alcohol content of breath.⁴

³ In the FY 2011 Budget, this laboratory is referred to as the Forensic Laboratory Technician Program. It was given this name because it originated in January 2004 as a training program under which employees of the MPD were trained by the Federal Bureau of Investigation (FBI) at the FBI laboratory in Quantico, VA. Due to space constraints, the MPD employees were moved to a laboratory in Lorton, VA. The federal government pays the lease of this building, as well as providing grants for equipment costs through the Paul Coverdell Forensic Science Improvement Grants Program. This program awards grants to states and units of local government to help improve the quality and timeliness of forensic science and medical examiner services. MPD pays for the FTEs and some non-personnel services. This laboratory received accreditation in November 2008.

⁴ Due to some recent problems with breathalyzer equipment, no such equipment is currently being used by the District.

Transfer of personnel, records, functions, and authority

The Mayor would provide for the orderly transfer to DFS of all of the authority, responsibilities, duties, and functions of MPD pertaining to forensic science services, including all of the vacant and filled positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available to MPD for the purposes of forensic science services. This transfer would occur no later than October 1, 2012.

Allegations of negligence or misconduct

- Allegations of professional negligence, misconduct, or misidentification or other testing error that the Director determines would substantially affect the integrity of the results of forensic analysis conducted by DFS would be investigated.
- The investigation would be conducted by an external evaluator selected by the Director and approved by the Board, be initiated within 10 business days after the Director becomes aware of the allegations, and include the preparation of a written report.

Scientific Advisory Board

A Scientific Advisory Board ("Board") consisting of nine members appointed by the Mayor for a three-year term would be established. This Board would:

- Meet at least two times every year;
- Review all reports of allegations of professional negligence, misconduct, or misidentification or other testing error that occurred in the provision of forensic science services at DFS;
- Review periodically the program standards and protocols related to DFS operations;
- Conduct a review of relevant scientific literature at least once every three years; and
- Review and make recommendations as necessary to the Director concerning: the quality of the forensic science services at DFS; new scientific programs, protocols, and methods of testing; plans; qualification standards for the analyst positions of DFS; and any other matters related to the scientific operation of DFS.

Stakeholder Council

A Stakeholder Council ("Council") consisting of 12 members, as specified in the legislation,⁵ would be established. The Council would:

- This Council would meet at least two times per year.
- The Council would identify and resolve issues or concerns regarding DFS's delivery of forensic science services to stakeholder agencies and the effectiveness of DFS in the furtherance of its agency mission; and advise the Mayor and Council on matters relating to the DFS or forensic science.

Financial Plan Impact

Funds are not sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation. Implementing the proposed legislation would not have any cost in FY 2011, but would cost \$4.3 million over the financial plan period. Of this amount, \$1.5

⁵ The members would include the Deputy Mayor for Public Safety and Justice, the Chief of MPD, the Chief Medical Examiner, the Attorney General, the United States Attorney for the District of Columbia, the Director of the Public Defender Service for the District of Columbia, the Federal Public Defender for the District of Columbia, the Director of DOH, the Chief of FEMS, the Chairperson of the Judiciary Committee of the Council, the Director of DFS; and the head of any other government agency that regularly utilizes the forensic science services of DFS.

million for personnel and non-personnel costs associated with providing new forensic services would be subject to appropriations.

Current Plans

In order to understand the fiscal implications of this proposed legislation, it is important first to understand the backdrop upon which it is being introduced. The District is currently building a 287,000 square-foot six story CFL.⁶ The OCME,⁷ the Department of Health's Public Health Laboratory⁸ and MPD's forensics capacity are scheduled to move into this laboratory in September 2012.⁹

In addition, the laboratory was designed (and partially funded by the federal government) with the expectation that the District would eventually provide the forensics services currently being provided by the federal government on our behalf: analysis of controlled substances, analysis of questioned documents, computer forensics and forensic photography. Thus, space already has been allocated for this purpose.

Given these plans, the proposed legislation would not have any impact on OCME's or the public health lab's move into CFL. Also, given these plans, it is reasonable to expect that DFS would move into CFL at the end of September 2012 and would take the space that has been allotted to MPD to perform the functions DFS now would perform: conducting DNA/biological and trace analyses, firearms and tool mark examinations, and fingerprint comparisons. MPD would retain some space for its Forensic Science Services Division, which also is slated to move into the laboratory.¹⁰

Thus, this fiscal impact statement does not incorporate any of the costs associated with the building of CFL, nor the costs to maintain it. It also does not take into account any additional costs to run the building, such as for security guards or utilities. This is because these costs would exist without the legislation.

This legislation creates a new agency, and specifies the governance structure of a subset of the people that are to move into the laboratory. As such, the fiscal impact analysis looks mainly at the costs of creating this new governance structure and fulfilling the duties of this new agency as outlined in the proposed legislation.

Key Fiscal Implications of the Proposed Legislation

The proposed legislation has five key fiscal implications.

1. New Governance

As a newly created agency, DFS would require a governance structure composed of a number of new positions. The proposed legislation specifically requires the creation of two of these new positions: Director and Deputy Director of DFS. The fiscal impact analysis assumes that the Mayor

⁶ The total cost of this project is \$218 million. The federal government contributed approximately \$60 million to help pay these costs.

⁷ OCME investigates and determines the cause and manner of all unexpected deaths in the District.

⁸ The DC Public Health Laboratory tests for a wide variety of threats to public health, including for communicable diseases, such as HIV and other biological and chemical substances and in the air, food and water.

⁹ All of these future tenants currently exist; they are just located separately elsewhere.

¹⁰ The Forensic Science Services Division is composed of the crime scene search, which handles minor crimes like theft from cars, and mobile crimes, which handles major crimes like murders.

would appoint the Director immediately after passage of the bill in order to prepare the new Consolidated Forensic Laboratory for the arrival of DFS. The District's budget and financial plan currently includes a position for the Director of CFL, which is paid for by capital funds allocated to the building of CFL.¹¹ The fiscal impact analysis assumes that funds for this position could be used to pay for the DFS Director through FY 2012.

While not specified in the legislation, this new agency, like any other agency, would require additional personnel to provide administrative, budget, legal, procurement and human resources support.¹² Given the expected move-in date of late September 2012, it is assumed that none of the FTEs who form the governance structure, other than the Director, would start until October 1, 2012.

2. Transfer of Existing Personnel

The proposed legislation requires that all of the funds and the nine vacant and 35 filled positions associated with the forensic functions to be performed by DFS, but that are currently performed by MPD, be transferred to DFS. In total, approximately \$3.5 million in personnel services and \$182,000 in non-personnel services would transfer.

3. Keep Services at Current Levels

This fiscal impact analysis assumes that DFS would provide the same level of forensic services currently provided by MPD (*i.e.* this level is the baseline). In order to do this, DFS would need to fund and fill the five positions in the firearms and tool mark examination unit that MPD has filled temporarily with detailed sworn officers. Neither the sworn officers, nor the funds that support them can be transferred to DFS.

4. Additional Personnel

Personnel would be needed to provide administrative support to the Scientific Advisory Board and the Stakeholder Council, to ensure that DFS were accredited and maintained accreditation, to test and certify the accuracy of all equipment used by any District law enforcement to test the alcohol content of breath, and to provide IT support.

5. Expansion of Forensic Services

Lastly, the proposed legislation requires DFS to provide forensic science services for the District. Currently, four of these services are provided by the federal government: analysis of controlled substances, analysis of questioned documents, computer forensics, and forensic photography.¹³ It is not possible for DFS to immediately provide these four services upon its establishment because of hiring and training constraints. This fiscal impact analysis considers this and provides a realistic timeline for DFS to incrementally build its capacity to provide these services. While DFS were building its capacity, it would continue to rely on the federal government to provide these four forensic services.

The provision of these services is subject to appropriations. (See *Expansion of Forensic Services* in the Structure table below and the shaded portion of the Fiscal Impact table.)

¹¹ This person also serves as the director of the forensic DNA laboratory in Lorton, VA.

¹² Given the size and the location of the new agency, OCFO would be able to absorb the cost of a new Agency Fiscal Officer.

¹³ The actual legislation says that DFS shall provide forensic science services for the District of Columbia

Structure of the Department of Forensic Sciences (FY 2011- FY 2014)				
Personnel Services (PS)	Number of FTEs	New or Existing Position	Grade	Average Annual Salary with Benefits for 1 FTE
<i>Governance and Administration</i>				
Director	1	New	ES 11	\$188,652
Deputy Director	1	New	MS 16	\$153,411
Executive Assistant/ Human Resources Manager	1	New	CS 12	\$82,358
Office Manager/ Procurement Specialist	1	New	MS 14	\$124,551
Attorney	.5	New	LS 12	\$87,616
Agency Fiscal Officer	1	New	DS 15	\$137,423
IT Specialist	1	New	CS 13	\$95,232
Quality Assurance Manager for Accreditation	1	Existing	MS 14	\$103,792
Administrative Assistant for Scientific Advisory Board and Stakeholder Council	.25	New	CS 8	\$50,371
<i>Current Forensic Services</i>				
Quality Assurance Analyst	1	New	CS 12 Union	\$89,078
Toxicologist to test and certify alcohol breath tests	1	New	CS 12 Union	\$89,078
Firearm and Tool Mark Examination Technicians	12	Existing	CS 7-12 Union	\$86,743
Fingerprint Specialists	14	Existing	CS 11-12 Union	\$94,567
Forensic Scientists (DNA/trace and biological analysis)	13	Existing	CS 8-15 Union	\$89,614
<i>Expansion of Forensic Services</i>				
Forensic Photographers	2	New	CS 11 Union	\$72,274
Controlled Substances Analysts	7	New	CS 12 Union	\$89,078
Questioned Documents Analyst	1	New	CS 12 Union	\$89,078
Computer Forensic Analysts	4	New	CS 12 Union	\$89,078
Non Personnel Services (NPS)				
<ul style="list-style-type: none"> • Transfer of \$181,711 for existing employees • Start-up costs (i.e., furniture, office supplies, etc.) for new employees (\$5,000 per person)* • Other costs for all new employees 				

* Only for full-time new employees under Governance and Administration, Toxicologist, IT Specialist and Quality Assurance Analyst.

Fiscal Impact of the Proposed Legislation

The District's FY 2011 through FY 2014 budget and financial plan and FY 2011 through FY 2015 Capital Improvement Plan include \$7.7 million in total funds that could be used to support DFS. Under the provisions of the proposed legislation, it is estimated that the District would need to allocate \$11.9 million to support DFS and its functions through the same period. The estimate excludes new funds for an Agency Fiscal Officer—OCFO would absorb this cost—and for laboratory equipment related to the provisions of new forensic services—capital funds could be used to pay for the costs.

Given the timeline for implementation, no new funds are required in FY 2011 or FY 2012. However, in the FY 2011 through FY 2014 financial plan period, \$4.2 million is needed to implement the proposed legislation. Of this amount, \$1.5 million in personnel and non-personnel costs associated with providing forensic services currently provided by the federal government is subject to appropriations.

Fiscal Impact of the Department of Forensic Sciences Establishment Act of 2011 (FY 2011-FY 2014)					
	FY 2011	FY 2012	FY 2013	FY 2014	Four Year Total
Sources of Funds^a					
Transfer of PS budget for DNA/biological and trace analysis (14 FTEs)	\$0	\$0	\$1,561,042	\$1,561,042	\$3,122,085
Transfer of PS budget for firearms and tool mark examination (7 FTEs)	\$0	\$0	\$616,262	\$616,262	\$1,232,525
Transfer of PS budget for fingerprint comparison (14 FTEs)	\$0	\$0	\$1,355,350	\$1,355,350	\$2,710,699
Transfer of NPS budget for DNA/biological and trace analysis	\$0	\$0	\$39,719	\$39,719	\$79,438
Transfer of NPS budget for firearms and tool mark examination	\$0	\$0	\$76,880	\$76,880	\$153,760
Transfer of NPS budget for fingerprint comparison	\$0	\$0	\$65,172	\$65,172	\$130,344
Capital Funds for Director	\$47,163	\$189,344	\$0	\$0	\$236,507
Total Sources of Funds	\$47,163	\$189,344	\$3,714,426	\$3,714,426	\$7,665,358
Uses of Funds					
Salaries and benefits for 35 funded positions transferred	\$0	\$0	\$3,532,654	\$3,532,654	\$7,065,309
Director ^b	\$47,163	\$189,344	\$190,055	\$190,782	\$617,344
Deputy Director	\$0	\$0	\$153,411	\$153,974	\$307,384
Executive Assistant	\$0	\$0	\$82,358	\$82,660	\$165,018
Office Manager	\$0	\$0	\$124,551	\$125,008	\$249,559

Fiscal Impact of the Department of Forensic Sciences Establishment Act of 2011 (FY 2011-FY 2014)					
	FY 2011	FY 2012	FY 2013	FY 2014	Four Year Total
Attorney (.5 FTE)	\$0	\$0	\$43,808	\$43,969	\$87,777
Administrative Assistant for Scientific Advisory Board and Stakeholder Council (.25 FTE)	\$0	\$0	\$12,593	\$12,639	\$25,232
IT Specialist	\$0	\$0	\$95,232	\$95,582	\$190,813
Quality Assurance Analyst	\$0	\$0	\$89,078	\$89,405	\$178,483
Toxicologist to test and certify alcohol breath test	\$0	\$0	\$89,078	\$89,405	\$178,483
Firearms Identification Specialists (4 FTEs)	\$0	\$0	\$356,311	\$357,620	\$713,931
Firearms Technician	\$0	\$0	\$56,383	\$56,590	\$112,973
Forensic Photographers (2 FTEs) ^c	\$0	\$0	\$72,274	\$145,080	\$217,354
Controlled Substances Analysts (4-7 FTEs) ^d	\$0	\$0	\$178,156	\$491,727	\$669,883
Questioned Documents Analyst ^e	\$0	\$0	\$44,539	\$89,405	\$133,944
Computer Forensic Analysts (2-4 FTEs) ^f	\$0	\$0	\$89,078	\$268,215	\$357,293
All transferred NPS costs	\$0	\$0	\$181,771	\$181,771	\$363,542
Start-up costs for new employees ^g (furniture, office supplies, etc.)	\$0	\$0	\$40,000	\$0	\$40,000
Other NPS costs	\$0	\$0	\$72,468	\$112,671	\$185,140
Total Uses of Funds	\$47,163	\$189,344	\$5,503,797	\$6,119,157	\$11,859,461
NET FISCAL IMPACT	\$0	\$0	(\$1,789,371)	(\$2,404,732)	(\$4,194,103)

General Assumptions

- PS and NPS budgets transferred in FY 2012 and FY 2013 are the same as FY 2011 budgeted amounts
- DFS moves into CFL in October 2012
- DFS provides the same level of forensic services currently provided by MPD
- No additional funds are necessary to support all of the funded positions that transfer from MPD to DFS
- The use of alcohol breath test equipment is reinstated by FY 2013
- Mayor can provide temporary office space for Director

Table Notes

^a Does not include any federal funds

^b Director starts July 2011 and position is funded through FY 2012 by capital funds currently used to support Director of CFL position

^c 2 Forensic Photographers start in April 2013

^d 4 Controlled Substances Analysts start in April 2013 and 3 additional analysts start in April 2014

^e 1 Questioned Documents Analyst starts in April 2013

^f 2 Computer Forensic Analysts start in April 2013 and 2 additional analysts start in April 2014

The Honorable Kwame R. Brown

FIS: 19-5, "Department of Forensic Sciences Establishment Act of 2011," Draft Committee Print Shared with OCFO on March 25, 2011

§ \$5,000 per FTE. For full-time new governance and administrative employees, Toxicologist, IT Specialist and Quality Assurance Analyst. Not for any employees providing new forensic services, as their laboratory equipment is being purchased with capital funds.