STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
DF-46 (REV 07/23)

Fiscal Year	Business Unit Number	Department
2024-25	0820	Department of Justice

Hyperion Budget Request Name	Relevant Program or Subprogram
0820-067-BCP-2023-MR	Legal Services – Public Rights Division

Budget Request Title
Contracts in Restraint of Trade: Noncompete Agreements (AB 1076)

Budget Request Summary
The Department of Justice (DOJ) requests $840,000 General Fund and 4.0 positions in 2024-25, $814,000 in 2025-26 and 2026-27, and $814,000 Unfair Competition Law Fund in 2027-28 and ongoing to address the requirements of Chapter 828, Statutes of 2023 (AB 1076).

Requires Legislation (submit required legislation with the BCP)	Code Section(s) to be Added/Amended/Repealed
☐ Trailer Bill Language ☐ Budget Bill Language ☒ N/A	

Does this BCP contain information technology (IT) components? ☐ Yes ☒ No *If yes, departmental Chief Information Officer must sign.*	Department CIO	Date

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), the approval date, and the total project cost.

Project No. Project Approval Document:

Approval Date: Total Project Cost:

If proposal affects another department, does other department concur with proposal? ☐ Yes ☒ No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By	Date	Reviewed By	Date
Amanda Cuevas	5/14/2024	Danielle F. O'Bannon	5/14/2024
Department Director	**Date**	**Agency Secretary**	**Date**
Chris Ryan	5/14/2024		

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ Dept. of Technology

Principal Program Budget Analyst	Date submitted to the Legislature
Emma Jungwirth	5/14/2024

A. Problem Statement

Business & Professions Code section 16600 has long provided that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Despite the statute, many employees are not aware that the provisions are void and unenforceable. One 2019 Economic Policy Institute study concluded that over 45 percent of businesses in California utilized noncompete provisions.[1] As a result, job mobility is compromised and workers are prevented from seeking better pay or working conditions for fear of violating these provisions. Suppressing worker mobility affects not only the prospects of the individual worker, but can contribute to suppressing wages and working conditions across an industry.

Chapter 828, Statutes of 2023 (AB 1076) both amends Section 16600 and creates a new provision, Section 16600.1, which together clarify the prohibitions of existing law, and also create new legal obligations which enhance worker protections and worker awareness of their rights under the law. Section 16600 now makes clear that no exceptions exist for the prohibition on noncompete agreements except as exist under statute, and that 16600 is not limited in its application to agreements where the person being restrained is a party to the contract (and thus can include, for example, contracts where a business agrees not to hire an individual from another business).

Section 16600.1 provides that it is now unlawful for a party to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, unless the agreement satisfies a statutory exception to the general rule against noncompete agreements. The provision further obligates employers to notify current employees or former employees who were employed after January 1, 2022, that any noncompete provision in their employment contracts or noncompete provisions that they were compelled to enter into are void, and to provide that notice by February 14, 2024.

DOJ anticipates that as a direct result of AB 1076, there will be an increase in demand for investigations and enforcement targeting unlawful worker restraints that cannot be met with currently available resources. Both the Worker Rights and Fair Labor Section and the Antitrust Section have devoted section resources over the past years to addressing the issue of noncompete agreements and related worker restraints. However, not only does AB 1076 create new legal prohibitions and potential liability for a broader range of employers, it also specifically provides notice to affected workers about the fact that they have been subjected to unlawful restraints.

As previously noted, there is a lack of awareness among workers about the existing prohibitions on enforcing noncompete agreements. The notice provisions of AB 1076 will increase awareness among workers of their legal rights and lead to a higher volume of complaints to DOJ about unlawful restraint agreements going forward. Worker complaints will in turn provide DOJ with greater awareness about industries and companies where significant problems exist, and where investigative and prosecutorial resources should be directed. However, in order to fulfill the Legislature's priorities and take advantage of the information we will be receiving, both the Worker Rights and Fair Labor Section and the Antitrust Section will need an additional permanent full-time attorney to adequately address the increased investigative and prosecutorial demands.

Because the new notices will be sent by employers to potentially millions of California workers in early 2024, the first three years will generate a large amount of general work that will not lead to any recoveries. Workers will have questions and make complaints to our office, and similarly employers will likely have questions and potentially make errors in how they send out the notices. Since this is a new law and a new regime, we will spend a lot of time working with employers to comply and with employees to understand their rights. Thus, we request General Funds for the first three years. Moreover, even if we were to uncover a serious violation in the first three years, each case takes many years to investigate and prosecute, so no funds would be available in the initial three-year period.

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[1] Colvin and Schierholz, *Noncompete Agreements: Ubiquitous, Harmful to Wages and Competition, and Part of a Growing Trend of Employers Requiring Workers to Sign Away Their Rights* (Dec. 10, 2019) Economic Policy Institute Noncompete agreements: Ubiquitous, harmful to wages and to competition, and part of a growing trend of employers requiring workers to sign away their rights | Economic Policy Institute (epi.org)

After the first three years, when both employers and employees are used to the new regime and DOJ has started to pursue the employers that are continuing to violate the law, we anticipate the receipt of recoveries to fund these positions using the Unfair Competition Law Fund.

Division and Classification	2024-25	Ongoing
Public Rights Division - Antitrust Law Section		
Deputy Attorney General IV	1.0	1.0
Legal Secretary	1.0	1.0
Total Positions	**2.0**	**2.0**
Total Funding	**$420,000**	**$407,000**
Public Rights Division - Worker Rights & Fair Labor Section		
Deputy Attorney General IV	1.0	1.0
Legal Secretary	1.0	1.0
Total Positions	**2.0**	**2.0**
Total Funding	**$420,000**	**$407,000**
DOJ Total Positions	**4.0**	**4.0**
DOJ Total Funding	**$840,000**	**$814,000**

Resource History

(Dollars in thousands)

Antitrust Law Section					
Program Budget	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
Authorized Expenditures	12,781	14,366	15,186	16,222	16,746
Actual Expenditures	10,647	19,321	12,258	15,646	29,214
Authorized Positions	32	31	31	31	37
Filled Positions	26	29	31	31	33
Vacancies	6	2	0	0	4

Worker Rights and Fair Labor					
Program Budget	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
Authorized Expenditures	1,465	1,525	3,057	3,284	5,066
Actual Expenditures	1,308	1,605	2,476	4,345	5,438
Authorized Positions	5	5	8	16	20
Filled Positions	5	5	8	16	19
Vacancies	0	0	0	0	1

Workload History

Antitrust Law Section					
Workload Measure	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
DAG - Existing Workload	32,045	36,362	32,946	38,698	42,159
Other - Existing Workload	17,212	21,611	22,050	20,244	20,286
Total Workload Hours	**49,257**	**57,974**	**54,996**	**58,941**	**62,445**
Total FTE	**28**	**33**	**31**	**33**	**35**

Worker Rights and Fair Labor					
Workload Measure	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
DAG - Existing Workload	8,508	15,110	8,845	22,260	23,650
Other - Existing Workload	4,133	3,896	3,446	11,133	15,207
Total Workload Hours	**12,641**	**19,006**	**12,291**	**33,393**	**38,857**
Total FTE	**7**	**11**	**7**	**19**	**22**

B. Justification

By passage of AB 1076, the Legislature has underlined both its concern about the proliferation of noncompete provisions and the need for additional enforcement. The mission of the Worker Rights and Fair Labor Section is to address systemic business practices that undermine the rights of California workers. The Antitrust Section prosecutes restraints on trade, including agreements between companies that limit hiring and employee mobility, such as "no-poach" agreements, and unlawful restraints in the labor market. The growth of noncompete agreements and similar restraints on the ability of workers to freely switch jobs and exercise a lawful profession implicates the goals of both sections, since such agreements hinder the ability of workers to seek better pay or working conditions, and distort the market for labor and potentially suppress wages.

No other state agency has specific authority to investigate and prosecute violations of Business and Professions Code 16600 or 16600.1. Initially, 16000.1 will require new notices to be sent by employers to potentially millions of California workers. The first three years will generate a large amount of general work that will not lead to any recoveries. Workers will have questions and make complaints to our office, and similarly employers will likely have questions and potentially make errors in how they send out the notices. Since this is a new law and a new regime, we will spend a lot of time working with employers to comply and with employees to understand their rights. Thus, we request General Funds for the first three years.

When both employers and employees are used to the new regime, we will be able to turn our focus to employers that are continuing to violate the law. We will begin these investigations whenever we uncover recalcitrant employers, but each investigation and lawsuit will take many years. DOJ is positioned to pursue violations of these provisions through utilization of the Unfair Competition Law (UCL), Business and Professions Code 17200, et seq., because the Attorney General is specifically authorized to bring UCL actions pursuant to section 17204. In fact, under AB 1076, section 16600.1 provides specifically that violations of that section constitute acts of unfair competition within the meaning of the UCL, signaling the Legislature's intent for the Attorney General to play a role in enforcing the new provision.

Over the past few years, DOJ has addressed the issues raised by Business and Professions Code 16600 and by noncompete agreements and other employee restraints in various ways, including through investigations and amicus briefs. However, DOJ currently has limited capacity to devote to projects related to these issues, given the breadth of other responsibilities handled by the Worker Rights and Fair Labor Section and the Antitrust Section.

For example, the Worker Rights and Fair Labor Section has engaged in two investigations related to Business and Professions Code section 16600 over the past two years, but has no additional current capacity to pursue further section 16600 investigations in light of over a dozen other major investigations or litigation currently being conducted related to wage theft, independent

contractor misclassification, and worker health and safety, as well as additional projects including amicus briefs or policy advocacy related to worker rights.

The Antitrust Section prosecuted one no-poach matter in 2014, obtaining a $3.75 million settlement, which included injunctive relief, in a case against eBay for implementing a no-hire agreement. More recently, our participation has been limited to amicus briefs arguing in favor of private cases against no-poach agreements and restraints on employee mobility.

As noted above and as intended by the Legislature, the passage of AB 1076 – and in particular the notice provisions of the bill – will result in greater public awareness about unlawful contractual restraints on workers and lead to an influx of complaints to the Office of the Attorney General. While the precise increase in public complaints to DOJ is difficult to predict, in light of the notice provisions in AB 1076 and the prevalence of noncompete provisions in California, it is reasonable to conclude that, conservatively, complaints that funnel through DOJ's Public Inquiry Unit to the Public Rights Division about these types of violations could easily quadruple.

Additional attorney resources will be necessary for DOJ to fulfill the Legislature's expectations to respond to allegations of systemic violations of Business and Professions Code sections 16600 and 16600.1.

Specifically, two additional Deputy Attorneys General are needed for an expansion of attorney resources devoted to this area of law that is commensurate with the expected increase in workload. General Fund is needed for the first three years as the new regime goes into effect and employers and employees understand their rights and obligations; after the first three years we should be able to support these positions with UCL recoveries. Failure to devote these resources will result in an inability of DOJ to expand its enforcement efforts related to noncompete agreements beyond its current efforts, which will result in many more of the new complaints from a newly-informed worker population going unanswered.

C. Departmentwide and Statewide Considerations

Despite noncompete agreements having been void and unenforceable in California for decades, almost half of California employers still include noncompete provisions in employment contracts, discouraging workers from seeking employment that pays better or provides superior working conditions. AB 1076 is an attempt by the Legislature to rectify this situation by making it unlawful to include noncompete provisions in employment agreements or impose such agreements as a condition of employment, and by requiring employers to notify current and some former employees that these provisions are void. However, new legal obligations and the means to gather information about violations are meaningless without the resources to engage in further investigation and enforcement. Providing the additional attorney resources requested in this BCP will help fulfill the statewide mission – as embodied in AB 1076 – of reducing the prevalence of unlawful contractual restraints on workers, and holding parties accountable that seek to exploit these types of provisions at the expense of California workers.

D. Outcomes and Accountability

By providing DOJ with positions and General Fund resources for two additional Deputy Attorneys General for the first three years, DOJ will be able to work with employers and employees to get the new notice regime working as the Legislature intended, and to begin investigations. After the first three years, DOJ anticipates it can self-fund these positions with recoveries under the UCL. DOJ will be able to carry out more investigations and/or prosecutions of employers and other entities for imposing noncompete restrictions on workers. Given the variation in the size and scope of different investigations, any outcome metrics based on cases will be inexact. However, for the Worker Rights and Fair Labor Section, it would be expected that the addition of another Deputy Attorney General to the section would result in conducting at least two times as many cases involving section 16600 or 16600.1, compared to what is possible at present. For the Antitrust Section, it would allow increased review of noncompete and no-poach allegations and private cases within California, as opposed to only joining amicus briefs in other circuits.

Projected Outcomes

Antitrust Law Section					
Workload Measure	**2023-24**	**2024-25**	**2025-26**	**2026-27**	**2027-28**
Existing Workload	62,445	62,445	62,445	62,445	62,445
AB 1076 New Workload	-	2,010	2,010	2,010	2,010
Total Workload Hours	**62,445**	**64,455**	**64,455**	**64,455**	**64,455**
Total FTE	**35**	**36**	**36**	**36**	**36**

Worker Rights and Fair Labor					
Workload Measure	**2023-24**	**2024-25**	**2025-26**	**2026-27**	**2027-28**
Existing Workload	38,857	38,857	38,857	38,857	38,857
AB 1076 New Workload	-	1,920	1,920	1,920	1,920
Total Workload Hours	**38,857**	**40,777**	**40,777**	**40,777**	**40,777**
Total FTE	**22**	**23**	**23**	**23**	**23**

E. Implementation Plan

Upon approval, DOJ will begin the necessary recruitment and hiring of Deputy Attorneys General to address the need for further noncompete enforcement. These positions will be utilized to allow the section to increase the amount of time spent on issues involving noncompete provisions and other unlawful contractual restraints on workers.

F. Supplemental Information (If Applicable)

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BCP Fiscal Detail Sheet

BCP Title: Contracts in Restraint of Trade: Noncompete Agreements (AB 1076)

BR Name: 0820-067-BCP-2024-MR

Budget Request Summary

Personal Services

Personal Services	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
Positions - Permanent	0.0	4.0	4.0	4.0	4.0	4.0
Total Positions	**0.0**	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**
Earnings - Permanent	0	394	394	394	394	394
Total Salaries and Wages	**$0**	**$394**	**$394**	**$394**	**$394**	**$394**
Total Staff Benefits	0	222	222	222	222	222
Total Personal Services	**$0**	**$616**	**$616**	**$616**	**$616**	**$616**

Operating Expenses and Equipment

Operating Expenses and Equipment	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
5301 - General Expense	0	146	120	120	120	120
5304 - Communications	0	8	8	8	8	8
5306 - Postage	0	2	2	2	2	2
5320 - Travel: In-State	0	6	6	6	6	6
5322 - Training	0	4	4	4	4	4
5324 - Facilities Operation	0	20	20	20	20	20
5340 - Consulting and Professional Services - Interdepartmental	0	32	32	32	32	32
5346 - Information Technology	0	6	6	6	6	6
Total Operating Expenses and Equipment	**$0**	**$224**	**$198**	**$198**	**$198**	**$198**

Total Budget Request

Total Budget Request	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
Total Budget Request	**$0**	**$840**	**$814**	**$814**	**$814**	**$814**

Fund Summary

Fund Source

Fund Source	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
State Operations - 0001 - General Fund	0	840	814	814	0	0
State Operations - 3087 - Unfair Competition Law Fund	0	0	0	0	814	814
Total State Operations Expenditures	**$0**	**$840**	**$814**	**$814**	**$814**	**$814**
Total All Funds	**$0**	**$840**	**$814**	**$814**	**$814**	**$814**

Program Summary

Program Funding

Program Funding	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
0435028 - Public Rights	0	840	814	814	814	814
9900100 - Administration	0	266	242	242	242	242
9900200 - Administration - Distributed	0	-266	-242	-242	-242	-242
Total All Programs	**$0**	**$840**	**$814**	**$814**	**$814**	**$814**

Personal Services Details

Positions

Positions	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
1282 - Legal Secty (Eff. 07-01-2024)	0.0	2.0	2.0	2.0	2.0	2.0
5705 - Dep Atty Gen IV (Eff. 07-01-2024)	0.0	2.0	2.0	2.0	2.0	2.0
Total Positions	**0.0**	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**

Salaries and Wages

Salaries and Wages	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
1282 - Legal Secty (Eff. 07-01-2024)	0	74	74	74	74	74
5705 - Dep Atty Gen IV (Eff. 07-01-2024)	0	320	320	320	320	320
Total Salaries and Wages	**$0**	**$394**	**$394**	**$394**	**$394**	**$394**

Staff Benefits

Staff Benefits	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
5150900 - Staff Benefits - Other	0	222	222	222	222	222
Total Staff Benefits	**$0**	**$222**	**$222**	**$222**	**$222**	**$222**

Total Personal Services

Total Personal Services	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
Total Personal Services	**$0**	**$616**	**$616**	**$616**	**$616**	**$616**